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10-27-80
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federal register

Book 1 of 2 Books
Monday October 27, 1980

Highlights

Seminar on Principles of Regulations Writing—For details on seminar in **Washington, D.C.**, see announcement in the **Reader Aids** section at the end of this issue.

70736 **Housing** USDA/FmHA releases a rule on the management and supervision of multiple family housing borrowers and grant recipients; effective 10–27–80

70841 **Housing** USDA/FmHA amends regulations regarding tenant grievances and appeals in FmHA projects; effective 10–27–80

70775 **Housing** USDA/FmHA finalizes rule concerning rural rental housing loans; effective 10–27–80

70858 **Social Security** HHS/SSA explains whom it refers to other agencies for vocational rehabilitation services, treatment for alcohol or drug abuse and the consequences for refusal of services or treatment; effective 10–27–80

70860 **Excise Tax** Treasury/IRS publishes regulations relating to the excise tax on the use of fuel in commercial waterway transportation; effective 9–30–80

70909 **Taxes** Treasury/IRS proposes regulations relating to the classification, for Federal tax purposes of limited partnerships; comments by 12–26–80

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

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

Highlights

70968 **Gasoline** DOE/ERA reports designing methods for distributing petroleum during a shortage and selecting standby distribution mechanisms

70967 **Gasoline** DOE gives notice of availability of first edition of 1981 Gas Mileage Guide

71023 **Nuclear Safety** NRC plans to develop safety goals; comments by 11–19–80

71251 **Airports** DOT/FAA announces delay of implementation regulations to guide future operation and development of Washington National Airport and Dulles International Airport; effective 10–27–80; implementation guidance regulations effective date changed from 1–5–81 to 4–26–81 (Part VIII of this issue)

71236 **Air Traffic Control** DOT/Sec'y proposes procedures for allocating the hourly number of instrument flight operations (takeoffs and landings) that may be reserved at Washington National Airport (DCA) in accordance with FAA's High Density Rule; comments by 12–26–80 (Part VII of this issue)

70890 **Securities** SEC proposes to regulate purchases of certain classes of common stock and preferred stock by or for the issuer; comments by 1–15–81

70916 **Postal Service** PS relaxes eligibility requirements for supplements in second-class publications; comments by 11–10–80

71088 **Improving Government Regulations** Commerce publishes review of significant and nonsignificant regulations (Part II of this issue)

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70983 HUD

71036 **Sunshine Act Meetings**

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71140 **Part III, Interior/BLM**
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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

Animal and Plant Health Inspection Service

7 CFR Part 354

Overtime Services Relating to Imports and Exports, Overtime Work at Border Ports, Seaports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for overtime work at border ports, seaports, and airports. Agricultural quarantine inspectors of the U.S. Department of Agriculture are charged with performing inspection duties relating to imports and exports at border ports, seaports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following document amends the regulation entitled, "Overtime Work at Border Ports, Seaports, and Airports," by increasing the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12248 dated October 16, 1980.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, (301-436-8247).

Pursuant to the authority conferred by the Act of August 28, 1950, (64 Stat. 561; 7 U.S.C. 2260) and the Airport and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), § 354.1 of Part 354 Title 7, Code of Federal Regulations, is amended as set forth below:

§ 354.1 Overtime work at border ports, seaports, and airports.

(a) Any person, firm, or corporation having ownership, custody, or control of plants, plant products, animals, animal products, or other commodities or articles subject to inspection, laboratory testing, certification, or quarantine under this chapter and Subchapter D of Chapter I, Title 9 CFR, who requires the services of an employee of Plant Protection and Quarantine on a Sunday or holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of Sunday or holiday or overtime service request the Plant Protection and Quarantine inspector in charge to furnish inspection, laboratory testing, certification, or quarantine service during such overtime, or Sunday or holiday period, and shall pay the Government therefor at the rate of $25.04 per man-hour per employee on a Sunday and at the rate of $18.08 per man-hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, or at any time after 5 p.m. or before 8 a.m. or a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture; and except that owners and operators of aircraft will be provided service without reimbursement during regularly established hours of service on a Sunday or holiday; and except that the overtime rate to be charged owners and operators of aircraft at airports of entry or other places of inspection as a consequence of the operation of aircraft, for work performed outside of the regularly established hours of service on a Sunday will be $21.72 and for work performed outside of the regularly established hours of service for holiday or any other period will be $14.72 per hour, which charges exclude administrative overhead costs.

A minimum charge of 2 hours shall be made for any Sunday or holiday or unscheduled overtime duty performed by an employee on a day when no work was scheduled for him or which is performed by an employee on his regular workday beginning either at least 1 hour before his scheduled tour of duty or which is not in direct continuation of the employee's regular tour of duty. In addition, each such period of Sunday or holiday or unscheduled overtime work to which the 2-hour minimum charge provision applies which requires the employee involved to perform additional travel may include a commuted traveltime period the amount of which shall be prescribed in administrative instructions to be issued by the Deputy Administrator, Plant Protection and Quarantine, for the areas in which the Sunday or holiday or overtime work is performed and such period shall be established as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which the employee performs such Sunday or holiday or overtime duty if such travel is performed solely on account of such Sunday or holiday or overtime service. With respect to places of duty within the metropolitan area of the employee's headquarters, such commuted travel period shall not exceed 3 hours. When inspection, laboratory testing, certification, or quarantine services are performed at locations outside the metropolitan area in which the employee's headquarters is located, one-half of the commuted travel period applicable to the point at which the services are performed shall be charged when duties involve overtime that begins less than 1 hour before the beginning of the regular tour and/or is the continuation of the regular tour of duty. It will be administratively determined from time to time which days constitute holidays.

(b) The Plant Protection and Quarantine inspector in charge in honoring a request to furnish inspection, laboratory testing, quarantine, or certification service, shall assign employees to such Sunday or holiday or overtime duty with due regard to the work program and availability of employees for duty.

(c) As used in this section—

(1) The term "private aircraft" means any civilian aircraft not being used to transport persons or property for compensation or hire, and

(2) The term "private vessel" means any civilian vessel not being used (i) to transport persons or property for compensation or hire, or (ii) in fishing operations or in processing of fish or fish products.

(64 Stat. 561 (7 U.S.C. 2260); (Sec. 15 of Pub. L. 94–353, 90 Stat. 882) (49 U.S.C. 1741))

Determination of the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternative to raising the overtime rate. By law, importers and exporters are required to reimburse the Agency for its costs associated with the services rendered. Unless the rate is raised, it will not cover the pay raise which commenced October 5, 1980. Accordingly, pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest and good cause is found for making this amendment effective less than 30 days after publication in the **Federal Register.**

Note.—This final rule has been reviewed under the provisions of Executive Order 12044, "Improving Government Regulations." A determination has been made that this action is a matter related to Agency management and is, therefore, exempt from the provisions of the Order (E.O. 12044, Section 6(b)(3)).

Done at Washington, D.C. this 22nd day of October 1980.

Murray T. Pender,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 80-33325 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

Farmers Home Administration

7 CFR Parts 1802, 1930, and 1944

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) redesignates and revises its regulations pertaining to the management and supervision of the recipients of FmHA Rural Rental Housing loans, Labor Housing loans and grants, and Rural Housing Site loans. The action is taken in response to numerous requests from the public and FmHA personnel for more guidance and clarification on FmHA Multiple Family Housing project management and supervision. The intended effect of the action is to provide guidance to both FmHA personnel and the public which will result in uniform management and supervision of the effected programs; and to make appropriate changes to comply with the reorganization being implemented in the Agency.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Paul Conn, Division Director, Multiple Family Management and Support Division, USDA, FmHA. Telephone 202–447–7207.

The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, 14th and Independence SW., Washington, DC 20250, Telephone (202) 447–4057.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant." This Instruction does not directly affect any FmHA programs or projects which are subject to A–95 Clearinghouse review.

FmHA revises and redesignates its regulations concerning the management and supervision of Multiple Family Housing borrowers and grant recipients from Part 1802, Subpart G, to a new Subpart C of Part 1930, Chapter XVIII, Title 7, Code of Federal Regulations. The Title of Part 1930 is changed from "Borrower Property Security Servicing (Individual)" to "General." Subpart G of Part 1802 is hereby deleted and reserved. FmHA regulations presently provide only limited guidance to the public and FmHA personnel concerning supervision of Multiple Housing loan and grant recipients and no guidance concerning the operation and maintenance of these housing projects to assure that the projects are operated for the benefit of those they are intended to serve. Consequently, numerous requests have been received from loan and grant recipients, intended program beneficiaries, and FmHA personnel for the establishment of FmHA policies on project management and supervision and reporting requirements of Multiple Family Housing loan and grant recipients themselves. The purpose of this regulation is to provide the requested policy, and to establish uniform management and supervision in the affected programs. An integral part of the regulation is a Handbook prescribing FmHA policies and procedures for management of Multiple Housing projects.

The new regulation also makes appropriate changes to comply with the reoganization in the Agency. The reorganization that has been implemented requires that loans will be supervised to the maximum extent possible by the FmHA District Office staff. The State Office staff will monitor Multiple Family Housing program loan making and servicing, and will provide assistance to District Office personnel to the extent necessary to ensure that the activities are being accomplished in an orderly manner consistent with FmHA regulations.

A proposed rule was published in the **Federal Register** (44 FR 69937) on December 5, 1979, requesting comments on this regulation. Also, the proposed rule concerning approval of rental rate increases, which was published for comment as Exhibit F of Subpart G of Part 1802 in the **Federal Register** on September 20, 1979, (44 FR 54517) is now Exhibit C, "Rent Increases," of this Subpart. Comments received on these proposed rules have been considered in the revision of these regulations.

Major concerns reflected in the comments were as follows:

(1) Exhibit B should not be referred to as a "guide" but should be incorporated into the regulations.

The title of Exhibit B has been changed from "Multiple Housing Management Guide" to "Multiple Housing Management Handbook," and language has been added on page 1 of Exhibit B to clarify that the Handbook prescribes FmHA policies and procedures for management of Rural Rental Housing (RRH) and Labor Housing (LH) projects.

(2) Rent—up fees should be permitted.

Paragraph IV d has been amended to clarify that rent-up fees on a per unit basis will not be permitted where there is an identity of interest between the management agent and the borrower or where the borrower manages the project. However, the borrower or management agent may be reimbursed from the 2 percent initial operation and maintenance investment for *actual expenses* paid out in connection with initial rent-up.

(3) Nonpayment of rent should not be considered a minor violation but should be grounds for eviction. Paragraph XVII A 2 has been revised to clarify that *repeated* nonpayment of rent or any other financial obligation due under the lease (including any portion thereof)

beyond any grace period constitutes a *substantial* violation.

(4) The Debt Service Account and Operation and Maintenance Account should not be required.

Paragraph XI A of Exhibit B and paragraph numbered 16 of Exhibit B–3 have been revised to require the establishment of four accounts:

(1) General Operating Account, which will function as an all-purpose account for receiving and disbursing all project funds assuming the combined functions of the previously required General Fund Account and Operation and Maintenance Account, (2) Reserve Account, which will serve the same purpose as the previously required reserve account, (3) Tax and Insurance Escrow Account, which is a new account required to enable a borrower to escrow taxes and insurance payments one year in advance, and (4) Security Deposit Account, which is required where a borrower collects security deposits.

(5) An audit report should not be required for borrowers with 21 or more units in one or more projects in order to preclude the necessity of an audit report being provided for small projects. Paragraph 1930.124(c) and paragraph X B 2 c of Exhibit B have been revised to require annual audit report for *projects with 25 or more units.*

(6) Tenants who reside in LH projects which are occupied on a seasonal basis should be given an opportunity to comment on a proposed rent increase.

Paragraph II of Exhibit C has been revised to state that LH borrowers and/or grant recipients whose projects are occupied on a seasonal basis should not request rent increases when the project is less than 40 percent occupied in order that a greater number of tenants will have an opportunity to make comments. The paragraph also clarifies that requests for rent increses by LH borrowers normally should be made at least 60 days prior to the start of the season.

(7) Profit-motivated borrowers should not be encouraged to convert to limited profit in order for FmHA to approve a rent increase that is profit-margin motivated, unless the project being operated on all profit basis has historically been occupied by tenants eligible for rental assistance.

The purpose of the Multiple Housing program is to provide housing for low- and moderate-income persons. The agency cannot administer the Rental Assistance program based on what occupancy has been historically but is responsible for making the program available to existing and prospective tenants who may be in need of the benefits of the program. Therefore, paragraph IV B 1 c has not been amended.

(8) The rent increase requirements of the procedure should not have to be met in the case of Department of Housing and Urban Development (HUD) automatic rent increase.

FmHA has found that in some cases, all or part of a HUD automatic rent increase is not justified in a project budget and must require that excess funds be deposited in the Reserve Account. Therefore, the regulation has not been amended to exempt HUD automatic rent increases from the requirements of Exhibit C.

(9) Borrowers who did not sign a Loan Agreement should be required to comply with the regulation.

In the case of an RRH loan made to an individual prior to (date regulations are issued) in an amount not to exceed $150,000, a Loan Agreement was not mandatory under regulations then extant, unless required by the State Director. Also, in the case of LH loans to individual farmowners where units are part of the farm operations, the borrower is not required to sign a Loan Agreement.

Since the State Director may require compliance with any sections of the regulation to assure that the objectives of the loan are carried out, the regulation has not been amended to require compliance by those individuals who were not required to sign a loan agreement. However, all RRH and LH borrowers, except those LH borrowers who are individual farmowners where units are part of farm operations, are required to comply with Exhibit C pertaining to rent increase requests.

(10) The requirement that *20 percent* of the low-income tenants be in need of rental assistance before a borrower who is eligible for rental assistance is *required* to participate in the Rental Assistance program as a condition for approval of a rent increase should be eliminated.

Paragraphs II, III A 1, and IV B 1 d have been amended to delete the 20 percent requirement and to clarify that a borrower who is eligible for Rental Assistance will be required to participate in the Rental Assistance program as a condition for approval of a rent increase if *only one* tenant will be required to pay in excess of 25 percent of adjusted income for rent and utilities.

Other changes that have been made in the regulations are as follows:

(1) Rural Cooperative Housing has been deleted from the regulation.

(2) Paragraph 1930.105 has been amended to state the primary objective of a Multiple Housing loan and/or grant; i.e., to provide decent, safe, and sanitary housing for low- and moderate-income persons.

(3) Paragraph 1930.110(b) has been amended to provide that FmHA may require that a borrower contract with an acceptable management firm.

(4) Paragraph 1930.124(c)(3) has been amended to authorize the FmHA State Director or District Director to require that the accounts of Rural Housing Site Loan (RHS) borrowers be audited if their loan exceeds the 2-year repayment term.

(5) Paragraph 1930.124(f) has been amended to discontinue the requirement for submission of copies of annual reports to the National Office during the first two years of a borrower's operations.

(6) Section 1930.142, "Complaints regarding discrimination in use and occupancy of RRH housing," has been added.

(7) Exhibit B, paragraph II N 2 e has been added to exempt the income of "chore service" workers residing with a tenant when such person's occupancy is essential to the well-being of the tenant and when such services are compensated by a Federal, State, or local assistance program designed to enable such person to achieve and maintain independent living and/or avoid inappropriate institutionalization.

(8) Exhibit B, paragraph N 3 d has been added to permit a deduction for full-time nursing home or institutional type care for purposes of determining interest credit or rental assistance subsidy.

(9) Exhibit B, paragraph IV D, has been amended to deny rent-up fees on a per unit basis where there is an identity of interest between the management agent and the borrower or where the borrower manages the project. However, there is provision for the borrower or management agent to be reimbursed from the 2 percent initial operation and maintenance investment for *actual expenses* paid out in connection with initial rent-up. The paragraph has also been amended to exclude from the management agent's compensation the cost of services for the management agent's resident manager.

(10) Exhibit B, paragraph IV E, has been amended to add a requirement for a written agreement with the resident manager.

(11) Exhibit B, paragraph IV F, has been added to provide for a contact person for a project without a resident manager or caretaker.

(12) Exhibit C, paragraph V B, has been amended to specifically describe eligible tenants, and to prescribe policies regarding Surviving Members of

an Eligible Tenant Household and Formerly Eligible Tenants and to state those situations where the State Director has the authority to permit a borrower to rent to ineligible tenants and the conditions for doing so.

(13) Exhibit B, paragraph V C 1, has been amended to provide for a cut-off point for receiving and processing applications where it would be awhile before additional appliciants could be reached on a waiting list.

(14) Exhibit B, paragraph V C 3 e has been added to provide that in the case of LH projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy.

(15) Exhibit B, paragraph VI B has been amended to provide for an affidavit from a tenant where no other source is available for verification of income. It also provides that in the case of domestic farm laborers, including migrants, the borrower may project monthly income for determining eligibility for occupancy and subsidized assistance.

(16) Exhibit B, paragraph VI D has been amended to require that a verification statement be inserted on the botton of HUD Form 52659, "Application for Tenant Eligibility and Recertification."

(17) Exhibit B, paragraph VII B 1 has been added to provide a lease clause to ensure that a tenant understands that he/she will no longer be eligible for occupancy if his/her income exceeds the maximum allowable income limit.

(18) Exhibit B, paragraph VIII C has been added to provide for the Recapture of Improperly Advanced Rental Assistance.

(19) Exhibit B, paragraph XIV A has been amended to address Fidelity Bond requirements for Land Trusts and 2-party General Partnerships.

(20) Exhibit B–2 has been amended to add a paragraph to require a project owner to refer cases to the FmHA for review where there is evidence of a management agent's transactions with identity of interest claims or central service units so that FmHA can determine the reasonableness of charges to the project based on competitive costs.

(21) Exhibits B–10, B–10 A thru B–10 C have been added to provide Objective Guides to assist management in determining the ability of tenants in congregate housing to sustain relative independence.

(22) Exhibit C, paragraph II has been amended and paragraph III A 8 has been added to provide for a copy of an Energy Audit where an initial rent increase is requested or where an Energy Audit has not yet been provided. This assists in implementing Executive Order 12185, "Conservation of Petroleum and Natural Gas".

(23) Exhibit C, paragraph IV B 2 has been added to require that where rental assistance units are not available, the State Director must approve the rent increase subject to the borrower's acceptance of the units when they become available.

(24) Exhibit C, paragraph IV B 3 has been amended to provide that if there is a buildup of excess funds in the Reserve Account as a result of HUD automatic rent increases, Interest Reduction on Section 8/515 projects should be further reduced or canceled.

(25) Exhibit C, paragraph IV B 4 has been amended to provide that a return to owner that is not earned in a given accounting period may be recouped in future years, provided this does not result in a rent increase.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Accordingly, various sections of Part 1944, Subpart D are amended and Subpart C of Part 1930 is added as follows:

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

§ 1944.181 [Amended]

1. In § 1944.181, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; "(FmHA Instruction 430.2)" to "(FmHA Instruction 1930–C)", and "Exhibit F" to "Exhibit C."

Exhibit B [Amended]

2. In Exhibit B, item 10, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; and "FmHA Instruction 430.2" to "FmHA Instruction 1930–C."

3. In Exhibit B item 13, change references of "Subpart G of Part 1802" to "Subpart C of Part 1930"; "FmHA Instruction 430.2" to "FmHA Instruction 1930–C"; and "Exhibit F" to "Exhibit C".

PART 1802—SUPERVISION OF BORROWERS

Subpart G—[Reserved]

4. Part 1802, Subpart G (§§ 1802.71–1802.81) is deleted and reserved.

SUBCHAPTER H—PROGRAM REGULATIONS

5. A new Part 1930 and Subpart C is hereby added to read as follows:

PART 1930—GENERAL

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Sec.

1930.101 General.
1930.102 Definitions.
1930.103–104 [Reserved]
1930.105 Objective of management and supervision.
1930.106–107 [Reserved]
1930.108 Extent of management.
1930.109 Extent of supervision.
1930.110 Methods of supervision.
1930.111–112 [Reserved]
1930.113 Borrower responsibilities.
1930.114–116 [Reserved]
1930.117 Effective supervision.
1930.118 [Reserved]
1930.119 Supervisory visits.
1930.120–121 [Reserved]
1930.122 Accounts and records.
1930.123 [Reserved]
1930.124 Borrower reports, audits, and analysis.
1930.125–127 [Reserved]
1930.128 Labor housing grants.
1930.129 Rural housing site loans.
1930.130–133 [Reserved]
1930.134 State Office records.
1930.135–136 [Reserved]
1930.137 State supplements, guides, forms and other issuances.
1930.138–140 [Reserved]
1930.141 Materials to be provided borrower/applicant.
1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.
1930.143 Exception authority.
1930.144–1930.150 [Reserved]

Exhibits

	Exhibit
Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations.	A
Review of Audit Reports	A–1
Multiple Housing Management Handbook	B
Management Plan Requirements for FmHA Multiple Family Housing Projects.	B–1
Requirements for Management Agreements	B–2
Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects.	B–3
Questionnaire for Management Agent of FmHA Multiple Family Housing Projects.	B–4
Questionnaire for Owners of FmHA Multiple Family Housing Projects.	B–5
Monthly Reports (Chart)	B–6
Annual Reports (Chart)	B–7
Miscellaneous Reports or Submittals (Chart)	B–8
Employment Inquiry	B–9
Objective Guides To Assist Management in Determining the Ability of Tenants To Sustain Relative Independence.	B–10
Physical Self-Maintenance Scale (PSMS)	B–10A
Instrumental Activities of Daily Living Scale (IADL)	B–10B
Index of Independence in Activities of Daily Living Scale (ADL).	B–10C
Rent Increases	C
Notice to Tenants of Proposed Rent Increase	C–1

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.101 General.

This Subpart prescribes the policies, authorizations, and procedures for management and supervision of the following Farmers Home Administration (FmHA) loan and grant recipients (existing and future).

(a) Farm Labor Housing (LH).

(b) Rural Rental Housing (RRH) including congregate housing.

(c) Rural Housing Site Loans (RHS).

(d) This Subpart, with the exception of Exhibit C "Rent Increases," does not apply to individual type borrowers who did not sign a loan agreement. However, in the case of individual type borrowers who are delinquent on their loan payments or are not otherwise carrying out the objectives of their loans, the State Director may require compliance with any Sections of this Subpart to assure that the objectives of the loan are carried out. For RHS borrowers, the following Sections of this Subpart do not apply: §§1930.108, 1930.124, 1930.128, and 1930.141.

§ 1930.102 Definitions.

(a) *FmHA.* "FmHA" means the United States of America acting through the Farmers Home Administration; it includes FmHA's predecessor agencies.

(b) (*OGC*). "OGC" means the Regional Attorney or the Attorney in Charge in the field office of the Office of the General Counsel of the United States Department of Agriculture.

(c) *Supervision.* "Supervision" includes the broad scope of guidance available through the FmHA to assist borrowers in carrying out the objectives of the loan and in complying with FmHA regulations.

(d) *Management.* "Management" is the overall direction given by the owner or the owner's agent in meeting the needs of the tenants, maintaining the project, and providing sound and economical operation of the project.

(e) *Borrowers.* "Borrowers" means all individuals, partnerships, cooperatives, trusts, public agencies, private or public corporations and other organizations which have received a loan or grant from FmHA for LH, RRH, or RHS purposes.

(f) *Governing Body.* "Governing Body" means those elected or appointed officials of an organization or public agency type borrower responsible for the operations of the project.

(g) *District Director.* For the purpose of this Subpart, the term also includes the Assistant District Director, and other qualified District Staff who may be delegated responsibilities under this Instruction in accordance with the provisions of Subpart F of Part 2006.

§§ 1930.103–1930.104 [Reserved]

§ 1930.105 Objective of management and supervision.

(a) Each loan or grant made by FmHA is designed to attain the primary objective of providing decent, safe and sanitary housing for low- and moderate-income persons. Therefore, each borrower and grant recipient will be provided supervision to help in accomplishing the objectives of the loan grant.

(b) To accomplish this objective primary emphasis will be given to the following:

(1) Proper and efficient management policies as prescribed in Exhibit B of this Subpart.

(2) Complying with agreements.

(3) Repaying loans on schedule.

(4) Maintaining security property.

(5) Protecting the interests of FmHA.

(6) Operating facilities in accordance with State and local laws and regulations.

(7) Maintaining accounts and records.

(8) Submitting reports and audits.

(9) Processing rent increases in accordance with Exhibit C of this Subpart.

§§ 1930.106–1930.107 [Reserved]

§ 1930.108 Extent of management.

In accordance with Exhibit B of this Subpart, the borrower or the borrower's agent will develop a management plan for each project. It may be necessary to obtain management from other than the owner. If so, a management agreement is to be used to define the responsibilities of the management agent. This agreement must be accepted by the FmHA loan approval official. A suggested management agreement is provided in Exhibit B–3 of this Subpart.

§ 1930.109 Extent of supervision.

All borrowers will be given guidance and advice to help assure successful completion and operation of facilities, compliance with their agreements and obligations, and protection of the FmHA's financial interest. Supervision does not relieve borrowers of their own responsibilities and obligations. Supervision starts with the first contact with the applicant and continues through the life of the loan or, through any restrictive time period where prepayment is authorized. In the case of a grant, supervision continues until the requirements of the grant agreement have been fulfilled. Supervision of Multiple Family Housing borrowers is a primary responsibility of the District Director; however, additional supervision and guidance will be given by the Multiple Family Housing Coordinator, and/or other members of the State Office staff, as appropriate.

§ 1930.110 Methods of supervision.

Supervisory methods used by FmHA employees include organizational and development planning; management planning; affirmative marketing; construction conferences; long-term, annual, and other periodic planning; accounts and records inspections and guidance; project inspections; attendance at membership and governing body meetings; analysis of accounting and audit reports; guidance by memorandums; and similar activities.

(a) *Applicants.* Prior to loan or grant closing, supervision will largely be conducted during conferences and meetings with prospective borrowers, members, organizing committees; governing bodies, officers, applicant's attorney, architects, project manager, bookkeeper, other authorized representatives of the applicant, and involved government agencies. Examples are:

(1) Organizational meetings to discuss needs, services available, owner obligations, and to establish steering or organizational committees.

(2) Preapplication and application conferences.

(3) Preconstruction conferences to reach an understanding regarding responsibilities and the manner in which development will be performed. The applicant at this point should be made fully aware of the responsibilities entailed in assuring Fair Housing and/or Equal Opportunity requirements provided by title VI and title VIII of the Civil Rights Acts of 1964 and 1968.

(4) Preloan and/or grant closing conferences to review requirements of the loan resolution or agreement, closing requirements, and management plan to establish responsibilities for the operation of the project. The applicant at this point should be made fully aware of the responsibilities entailed in assuring Fair Housing and/or Equal Opportunity requirements provided by title VI and title VIII of the Civil Rights Acts of 1964 and 1968.

(b) *Borrowers who have yet to demonstrate their ability and borrowers with problems.* When the borrower is establishing its operations, or for borrowers that are delinquent, or have other difficulties, supervisory guidance will include:

(1) Implementation and/or review for compliance with the management plan.

(2) Establishment and maintenance of a recordkeeping and reporting system.

(3) Compliance with the requirements of the loan agreement or loan resolution.

(4) Review of annual audit and budget requirements.

(5) Any other supervision as may be necessary to assure effective and successful operation of the project.

(6) A requirement that the borrower contract with an acceptable management firm.

(c) *Borrowers who have demonstrated ability.* When the borrower has successfully completed its first full fiscal year of operation, is current with its payments, is in compliance with other loan or grant requirements, is maintaining the security in a satisfactory manner, and otherwise is progressing statisfactorily, supervision will consist of at least an annual review of budgets and reports in accordance with § 1930.124, and at least a biennial security inspection. HUD Form 92470, "Physical Inspection Report," may be used for the inspection.

Steps for conducting a review are outlined in Exhibit A of this Subpart. Supervision of grant-only recipients will consist of at least the reviews and inspections outlined in § 1930.119 of this Subpart.

§§ 1930.111–1930.112 [Reserved]

§ 1930.113 Borrower responsibilities.

Borrowers should understand the difference between FmHA supervised credit and credit from other Federal, State, and conventional sources. Borrowers are expected to have the ability to analyze and plan their activities, initiate and carry out adjustments and improvements, maintain suitable records, meet their obligations, make required reports, and maintain and properly account for project income and security property. Borrower members should understand their organization and the responsibilities of its governing body. That understanding includes the prohibitions against discrimination because of race, color, religion, sex, national origin, marital status, age, physical or mental handicap (applicant must have capacity to execute a legal contract) which accompany all such assistance from FmHA and the need to maintain adequate records by which the borrowers, compliance can be measured.

(a) *Borrowers with governing bodies.* Those elected or appointed officials comprising the governing body are responsible for:

(1) Knowing their responsibilities and obligations and conducting the affairs of the borrower so that the terms of its agreement(s) with FmHA will be fulfilled.

(2) Maintaining records of all current members and maintaining membership at the required level.

(3) Establishing and maintaining rules, regulations, rent schedules, fees, and other policies necessary for orderly operation of the project, payment of debts, and maintenance of required reserves.

(4) Preparing reports, audits, and other material required by FmHA for sound financial practices.

(5) Holding meetings as required by the organizational documents, and as otherwise necessary, to provide proper control and management of its operations, and to keep the membership informed.

(b) *Membership.* Members are responsible for full support of the project and operation by:

(1) Paying any dues, fees, and other required charges promptly.

(2) Electing responsible officials.

(3) Complying with organization rules and regulations.

(4) Attending annual and special meetings.

§§ 1930.114–1930.116 [Reserved]

§ 1930.117 Effective supervision.

For effective supervision, FmHA employees who are responsible for making and servicing Multiple Family Housing loans must be familiar with the complexities of the various types of borrowers; communicate effectively with the borrowers, and, if applicable, borrower's management agent; and provide guidance in the operation and management of projects.

(a) *District Director.* District Directors supervise a wide range of borrowers, from the individual to public agencies. To provide successful supervision, District Directors will use supervisory methods which will be the most effective. This includes but is not limited to the following:

(1) Organize their work and the work of their staffs in order that time is used effectively in providing supervision.

(2) Emphasize to the borrower and/or the borrower's management agent that they, not FmHA, are responsible for managing the project, collecting rents, repayment of the loan on schedule, and for compliance with any loan or grant agreement or resolution, State laws and other FmHA requirements.

(3) Monitor the borrowers' compliance with real property tax, insurance, bonding, security, and reporting requirements of FmHA regulations.

(4) See that each borrower designates a representative to serve as its contact source.

(5) Become familiar with the borrower's bylaws or other rules and regulations when necessary to assure compliance with FmHA requirements.

(6) Provide governing bodies with suggestions for disseminating information that may be helpful in keeping the membership in touch with activities of the governing body to increase and maintain membership interest.

(7) Provide adequate advice and guidance to governing bodies as needed.

(8) Avoid doing any of the following:

(i) Try to run the borrower's business.

(ii) Take charge of the borrower's meetings.

(iii) Attempt to supervise the borrower through its attorney or architect.

(iv) Assume that in the absence of adverse complaints, the borrower is proceeding successfully.

(b) *State Director.* State Directors will:

(1) Coordinate and direct supervisory activities related to borrowers and perform other functions as prescribed by this Subpart.

(2) Provide guidance and leadership to assure that the State staff and District Directors thoroughly understand and carry out their responsibilities.

(3) Develop training programs necessary to assure that FmHA personnel are kept up-to-date regarding the most effective supervisory methods, that the proper time is allotted to supervision, and that borrowers receive supervision to the extent necessary.

(4) Maintain necessary liaison with the OGC.

(5) Maintain necessary liaison with State and local authorities and agencies. For examples, in the case of projects benefiting the elderly, it is essential that liaison be maintained with State and Area Agencies on Aging.

(6) See that State Office records are maintained to assure effective supervision.

(c) *State staff.* State staff members including Rural Housing loan officers, management specialists, architects, and others responsible for supervision of borrowers covered by this Subpart will:

(1) Continuously monitor supervisory activities to assure that each borrower is receiving timely and effective supervision.

(2) Keep currently informed of the supervision being given and frequently check the status of borrowers.

(3) Train District Directors and other District staff to effectively perform the required supervisory activities, and to provide guidance in sound operation and management policies. The

assistance of State Agencies on Aging should be sought in connection with training which pertains to the management of services to their elderly.

(4) Post review closing of loans and grants to determine that they have been properly closed.

(5) Visit a sufficient number of projects to assure that proper supervision is being provided.

§ 1930.118 [Reserved]

§ 1930.119 Supervisory visits.

(a) *Purpose.* District Directors and other FmHA officials will visit the project site, including the management office, as necessary to enhance accomplishment of the objectives of the loan or grant. Following are the major purposes for which visits may be made:

(1) To assist with satisfactory development of the project.

(2) To evaluate the management program of the project pursuant to Exhibit B of this Subpart, such as:

(i) Adherence to the management plan.

(ii) Compliance with the management agreement when applicable.

(iii) Compliance with the Affirmative Fair Housing Marketing Plan.

(3) To review borrower records and verify information, such as:

(i) Tenant eligibility.

(ii) Tenant income.

(iii) Tenant selection criteria.

(iv) Waiting lists.

(v) Rental rates.

(vi) Other items as necessary.

(4) To inspect and ascertain proper maintenance and assure protection of the security for the FmHA loan.

(b) *Frequency.* Visits will be made when necessary to assure compliance with FmHA policies and objectives. The District Director after the first year of operation will make one visit at least every two years to each project. Planned visits will be included in the monthly work calendar. The visit shall be conducted with the borrower or its official representative.

(c) *Preparation.* The District Director will review the most recent monthly or annual reports, the running records, correspondence and other District Office records to determine payment dates of taxes, insurance, and bond premiums. The loan payment status will also be noted.

(d) *Recording and reporting.* The results of each visit will be recorded in the running record or, when appropriate, a letter summarizing the visit and outlining followup action may be directed to the borrower. Any major problems with the project will be reported in writing to the State Director with recommendations for corrective action. Exhibit A to Subpart A of Part 1955 or Form FmHA 465–7 "Report on Real Estate Problem Case" may be used.

(e) *Biennial inspections.* The District Director will conduct at least a biennial inspection of each project with the borrower, manager or designated representative present. This inspection may be made simultaneously with a visit scheduled in accordance with this section. The results of the inspection will be documented in the running record and formally recorded on Form FmHA 1930–8, "Year End Report and Analysis."

§§ 1930.120–1930.121 [Reserved]

§ 1930.122 Accounts and records.

Borrowers and grant recipients are required to maintain accounts and records as necessary to conduct their operation successfully, to meet the requirements of Federal, State and local laws and regulations, and to meet the terms of their agreements with FmHA, including such records on occupancy by race and/or ethnic origin that FmHA will need to be able to measure the Fair Housing compliance posture of the borrower during the conduct of compliance reviews. Borrowers and grant recipients will be required to implement accounting and recordkeeping systems as may be prescribed by FmHA.

(a) *Types of records and accounts.* The borrower must keep records and accounts sufficient to provide accurate, permanent, and current information. In order to meet this requirement, the type and form of records and accounts must be determined prior to loan or grant approval. The person responsible for maintaining such records and accounts (and if audits will be required, the Auditor) should be selected prior to loan or grant closing. Borrowers who are required to provide audits should have their auditors develop a recordkeeping system or at least review their systems and agree that it is acceptable for auditing purposes before loan closing. The recordkeeping system must conform to FmHA requirements.

(b) *Recordkeeping guides.* The following items will be considered in establishing a recordkeeping system:

(1) Prepare accounting records required by this Subpart on a cash or accrual basis.

(2) The requirements of Federal, State or local laws.

(3) If outside bookkeeping services are available, they may be used if the cost is reasonable. Management agents may also provide this service. The cost of contracting with an outside service must be shown separately and not included in the management fee.

§ 1930.123 [Reserved]

§ 1930.124 Borrower reports, audits, and analysis.

In order that borrowers establish and maintain adequate business management practices, it is essential that a system of reports, and analysis of such reports, be established at the onset. Timely reports will furnish necessary information on which to make sound management decisions essential to efficient operations and provide FmHA with periodic reports that will indicate trends and reflect the type and extent of management assistance needed. Timely analysis of such reports will reveal potential problems and provide an opportunity for corrective action before such problems develop to the extent that they have an adverse effect on fiscal or operational conditions. All reports will pertain only to the FmHA financed project. Forms and Forms Manual Inserts (FMI) necessary in making the required reports may be requested from FmHA. The following reports will be required, and borrowers and grant recipients will be required to implement a uniform reporting system that may be prescribed by FmHA.

(a) *Monthly report.* (1) Each borrower will complete Form FmHA 1930–6, "Monthly Report," the first month after: (i) completion of a project or occupancy of any units when FmHA provides the construction financing, (ii) FmHA loan closing or occupancy of any of the units where interim financing is used, (iii) reamortization, (iv) transfer, (v) failure to make scheduled payment, or (vi) failure to make or maintain required transfers to reserve. Complete reports in accordance with the FMI. The District Director will review the report, take appropriate action and forward one copy of the report to the State Director with comments within 15 days after the end of each month. The State Director will review and when necessary, make any appropriate comments to the District Director.

(2) Monthly reports are required through the borrower's first full fiscal year of operation and each month thereafter until discontinuance is authorized in writing by the District Director. At the end of such fiscal year, the District Director may inspect the project and review the operation including the annual analysis and audit. Monthly reports may be discontinued after the first full fiscal year of operation when the District Director determines that: (i) the project is being operated and maintained in a satisfactory manner; (ii)

an adequate accounting system is being maintained; (iii) payments to FmHA are on schedule; and (iv) the reserve account is on schedule except for authorized expenditures. Authorization to discontinue the monthly reports will be made by the District Director in writing to the borrower with a copy to the State Director.

(b) *Annual reports.* Each borrower will submit, within 45 days following the close of its fiscal year, a report consisting of:

(1) An audit report or verification of accounts as required by paragraph (c) of this Section.

(2) Form FmHA 1930–7, "Statement of Budget, Income and Expense," for the year being planned and the actual income and expenses for the previous year. The form will be completed in accordance with the FMI.

(3) Exhibit A–5, "Housing Allowances for Utilities and Other Public Services," of Subpart E to Part 1944 when required for the project.

(4) Form FmHA 1930–8, "Year-End Report and Analysis," completed in accordance with the FMI.

(5) Copies of the minutes of the annual meeting or other related material that the District Director may request.

(c) *Audit reports.* Annual audit reports substantially complying with FmHA's "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," which will be provided by FmHA, are required. Audit Reports from public bodies must comply with OMB Circular A–102. Audit Reports will be provided for each project as follows:

(1) For all projects with 25 or more units, an audit report will be prepared by a (i) Certified Public Accountant (CPA) or (ii) Licensed Public Accountant (LPA) licensed on or before December 31, 1970, except as outlined in Paragraph (c)(5) of this Section. The CPA or LPA may not be an individual or organization that is closely associated with the borrower in any manner that creates a possible conflict of interest. For example, the CPA or LPA cannot be an employee of the borrower or a member, stockholder, partner, principal, or have any interest in the borrower organization.

(2) For all borrowers with 24 or less units, an audit will not be required except as outlined in paragraph (c)(3) of this Section. The borrower will, however, provide for each project a verification of accounts on Form FmHA 1930–8 by a competent individual qualified by education and/or experience who is independent of the borrower or in the case of a nonprofit organization, by a committee of the membership not including any officer, director, or employee of the borrower.

(3) The State Director or District Director may, for good cause, require that the accounts for any project be audited by a CPA or LPA, such as when records are incomplete or inaccurate or it appears that the borrower has not adequately accounted for project income. The State Director or District Director may require that the accounts of RHS borrowers be audited if the loan exceeds the 2-year repayment term.

(4) The State Director or District Director may authorize the initial audit to cover a period up to 18 months for new projects whose first operating year was for a period of 6 months or less.

(5) The State Director may also make an exception to the CPA or LPA audit requirement for not more than one successive year in a specific case providing: (i) the borrower submits a written request and (ii) the FmHA approved budget for the project includes a typical and reasonable fee for the audit but the negotiated cost of the audit will increase the monthly per unit rental rate by more than $2.00; and (iii) the required reports, including a CPA or LPA audit, were properly submitted for the prior year's operations; and (iv) the borrower provides a verification by a competent individual who is independent of the borrower.

(d) *Annual analysis.* The business of each borrower will be scheduled for analysis each year not later than 60 days following the end of the borrower's fiscal year and will be completed except for extenuating circumstances such as the borrower's failure to provide the required information on time.

(1) *Preparation for the analysis.* No later than 30 days before the end of the borrower's fiscal year, the District Director will:

(i) Notify the borrower of the required reports, the due dates, and provide the borrower with necessary guides and forms for use in preparing reports.

(ii) When applicable, such as a loan to a new nonprofit organization, see that the borrower properly plans for its annual meeting, see that it will be held on the correct date and plan to attend the annual meeting of nonprofit organizations, unless the borrower has progressed as described in § 1930.110(c) of this Subpart.

(iii) Arrange to conduct an inspection of the project with the borrower or the borrower's representative so as to comply with the frequency of visits contained in 1930.119(b) of this Subpart.

(2) *Conducting the analysis.* The analysis will be conducted by the District Director as soon as possible after the required reports are submitted by the borrower. It is not necessary that the borrower be present during the actual analysis provided the information required by Part IV of Form FmHA 1930–8 can be completed from the District Director's knowledge of the operation. The District Director should review each step listed in Exhibit A of this Subpart when conducting the annual analysis and carefully document the results in a memorandum or in the borrower's case file. Exhibit A–1 should be reviewed when analyzing the results of the required audit reports to determine that the reports are in compliance with Agency regulations. Comments and recommendations should also be recorded in the appropriate section of the analysis report.

(e) *Distribution of reports and annual analysis information.* The information required by this Subpart will be distributed according to Exhibits B–6 and B–7 of this Subpart.

(f) *State Director's review of annual analysis.* Upon receipt of the items listed in paragraph (b) of this Section the State Director will:

(1) Review the information submitted, obtain any required modifications, approve Form FmHA 1930–7 and provide comments and recommendations by memorandum to the District Director. The State Director may delegate the authority to approve budgets to State Office staff members and to District Directors. If the authority to approve budgets is delegated to District Directors, a copy should be sent to the State Office for review.

(2) Be prepared for a review of reports by the National Office upon request.

§§ 1930.125–1930.127 [Reserved]

§ 1930.128 Labor housing grants.

In addition to the supervision provided in connection with LH loans, recipients of LH grants will receive supervision to assure that the terms of the grant agreement and other objectives of the LH grant are carried out. This supervision will be continued for a period of 50 years from the date of the grant agreement unless supervision is terminated by FmHA regulations at an earlier date. Comments on these points will be included in appropriate reports, including assurance that:

(a) The rents are reasonable.

(b) The project is operated as a community service for the benefit of the tenants.

(c) Domestic farm laborers are given absolute priority in occupancy. (This requirement also applies to borrowers who have LH loans only.)

(d) No organization borrower, other than an association of farmers or family farm corporation or partnership, may require that an occupant work for a particular farm or for a particular owner or interest as a condition of occupancy of the housing.

§ 1930.129 Rural housing site loans.

For RHS loan borrowers the following additional supervisory action will apply to assure that the terms of the loan resolution and loan objectives are carried out:

(a) Review of the site development account records for compliance with authorized loan expenditures.

(b) Work with the borrower on the adjustment of sales price of the developed lots as they are being sold to assure adequate income to repay the loan, pay taxes, accrued interest and any other authorized debt or expenditures.

(c) Determine that lots are sold only to eligible buyers.

(d) Work closely with the borrower to enhance the sale of all lots prior to the due date of the note.

(e) Should the borrower fail to repay the loan as agreed, the District Director should submit a report to the State Director within 30 days containing the following information:

(1) The status of the account, number of lots unsold, and reasons for the problem.

(2) Prospects of selling lots to eligible buyers and a target date as to when this can be accomplished, if feasible.

(3) General comments and recommendations for future servicing of this account. Where necessary, liquidation may be recommended.

(f) State Directors will take the following actions in connection with problem RHS accounts:

(1) Provide additional guidance and assistance as necessary. If the proposal for selling the remaining lots is feasible, is within FmHA authorities, and the account will likely be paid in full within one year, the State Director may continue with the loan until the lots are sold.

(2) Where no satisfactory proposal for selling the remaining lots can be developed, the account will be handled in accordance with Part 1955, Subpart A of this Chapter for liquidation.

§§ 1930.130–1930.133 [Reserved]

§ 1930.134 State office records.

State Directors will maintain records as necessary to assure that the requirements of this Subpart are met. Form FmHA 1930–9, "Multiple Family Housing Activity Card," will be maintained for each loan and/or grant recipient.

§§ 1930.135–1930.136 [Reserved]

§ 1930.137 State supplements, guides, forms, and other issuances.

The State Director may issue State supplements to this Subpart as necessary to assure the successful operation of the program. The State Director, with the assistance of the OGC, may supplement procedures or exhibits as set out in this Subpart to the extent necessary to enable borrowers to comply with the applicable provisions of State laws. State supplements to this Subpart require prior National Office approval. Under no circumstances will State forms be developed as replacements for the forms referred to in this Subpart.

§§ 1930.138–1930.140 [Reserved]

§ 1930.141 Materials to be provided borrower/applicant.

In order to enable borrowers and applicants to meet the intent of this Subpart, they will be supplied the following FmHA exhibits and materials:

(a) Exhibit B and Exhibits B–1 through B–9 and Exhibits B–10 through B–10C, of this Subpart if applicable.

(b) Exhibits C and C–1 of this Subpart.

(c) Exhibits B and B–1 of Supart E of Part 1944 of this Chapter.

(d) Exhibit C of Subpart E of Part 1944, of this Chapter.

(e) Booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees.

(f) The following forms and FMI's:

(1) Form FmHA 1930–7 and attached Exhibit A–5 of Subpart E of Part 1944, if applicable.

(2) Form FmHA 1930–6.

(3) Form FmHA 1930–8.

(4) Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement."

(5) Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

(6) Form FmHA 444–8, "Tenant Certification."

§ 1930.142 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH or LH housing or related facilities who believes he or she has been discriminated against because of race, color, religion, sex, national origin, age, marital status, physical or mental handicap (must possess capacity to enter into legal contract) should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA County, District, or State Office, the complaint should be directed to the Office of Equal Opportunity (USDA–OEO) by the Supervisor of that office. If the complaint is forwarded to USDA–OEO by a County or District Office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA District Office. The complainant should provide the following information:

(1) The name, address, and telephone number of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations, (which are found at 7 CFR § 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the

violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1930.143 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identifying how the adverse impact will be eliminated.

§§ 1930.144–1930.150 [Reserved]

Exhibit A—Steps for FmHA Personnel in Conducting Annual Analysis of Rental Operations

I *Examine the condition of the records to determine that:*

A. Required records are being properly maintained in accordance with loan resolution or agreement.

B. Decisions of officials are being entered in the minutes book, if applicable.

C. Financial transactions are recorded as they occur in a complete and orderly manner in appropriate books.

D. Any membership or stock transfers have been approved by FmHA as required and are recorded.

E. The records of accounts are maintained by qualified persons.

F. The records are reviewed by an auditing committee or qualified accountant as required.

II *Study the financial progress:* Compare current financial condition and net worth with previous years to discover any trends, for example:

A. Has cash carryover increased or decreased?

B. Are the debts greater or less?

C. Is the net worth greater or less?

D. Are accounts receivable greater or less?

E. Are collection provisions being enforced?

F. Are reserve and other required funds or accounts properly maintained?

III *Study the statement of income and expenditures for the past year:* Compare it with the budget for the past year and the same statement for previous years.

A. Were rents collected sufficient to produce the required revenues for planned expenditures?

B. Were actual expenditures significantly different from those budgeted?

C. Were the expenditures sufficient to adequately maintain the project?

D. Were expenditures reasonable and typical for similar projects?

E. Were any essential items of maintenance deferred during the past year?

F. Were payments made on debts in the proper amounts and on the dates agreed to?

G. If the borrower is operating on a limited profit basis, did net cash return exceed the amount permitted in the loan agreement or loan resolution?

IV Study the budget for the next year: Compare it with the statement of income and expenditures for the past year, taking into consideration any known increase or decrease in operating expenses for the planned year.

A. Are proposed expenditures adequate for normal maintenance and operation of the project?

B. Are proposed fees to be paid to firms closely associated with the borrower and their management agents typical, reasonable, and earned for the services to be provided?

C. Does the budget make provision for financing maintenance deferred from the previous year?

D. Does it provide for the required financial reserves?

E. Is planned revenue adequate to cover planned expenditures?

F. Will the budget and planned operating practices correct any deficiencies in the past year's operations?

V *Study the aduit report:* Compare it with the audit from the previous year, noting any significant changes affecting the borrower's operations. Exhibit A–1 may be used as a guide.

VI *Determine whether or not the borrower has:*

A. Followed the management plan, including occupancy requirements, leasing requirements, Affirmative Fair Housing Marketing Plan, and Tenant Grievance and Appeals Procedure.

B. Renewed fidelity bonds and insurance policies.

C. For borrowers with governing bodies.

1. Held regular board and membership meetings.

2. Conducted the affairs along sound business lines.

D. Made a change in any organizational documents without FmHA consent.

E. Made a change in the plans for management and operation of the project without FmHA consent.

F. Made a change in the membership or interest in ownership without FmHA consent.

VII *Summary:* Summarize major observations and decisions reached as the result of the review and record on Form FmHA 1930–8, "Year End Report and Analysis."

Exhibit A–1—Review of Audit Reports

I. *Purpose.* To present a general guide for use of FmHA staffs in the review of independent accountants' audit reports in order to obtain maximum benefit from these audits. The procedures are designed to provide uniformity in the audit review, improve loan program servicing and help to promote better independent audits.

II. *General.* FmHA guidelines for independent audits are detailed in the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees," (hereinafter called Audit Guide and available from FmHA). This Audit Guide, along with other instructions, is designed to protect the security of Government loans. The review of the financial and financially related information in the audits must be performed from a technical standpoint in a prompt manner so that the facts and conclusions are readily available for analysis; only then can results be used effectively for management purposes and help to insure improved audit practices.

III. *Scope.* The review should include:

A. A determination of the adequacy of the audit in relation to FmHA regulations and Audit Guide.

B. Interpretation of Information included in the audit.

C. Preparing a letter to the borrower on any missing or adverse audit data.

D. Informing appropriate FmHA offices of review results and recommendations.

IV. *Review procedures to be followed.*

A. *General.* The individual professional judgment of the reviewer should be used at all times. Considerations and decisions requiring the exercise of judgment should be used in the following:

1. Circumstances peculiar to the borrower.

2. Degree of importance attached to each item questioned.

3. Number of exceptions.

4. Whether the exceptions relate to the auditors work or the borrower's records and operations.

5. If specific action is to be requested of the borrower.

6. Whether or not the report as a whole is acceptable.

B. *Review and Procedure.*

1. *Specific.*

a. Determine if the audit was performed by a Certified Public Accountant or Licensed Public Accountant licensed on or before December 31, 1970.

b. Does the audit cover the most recent 12 months since the previous audit?

c. Was the audit received within 45 days of the borrower's year end?

2. *Evaluation checklist for audit reports.* The "Evaluation checklist for Audit Reports" which is part of this Exhibit is designed to systematically record and reveal the audit findings. Information tallied on this form is a good indication of whether or not additional contact needs to be made with the borrower.

3. *Previous audits and correspondence.* Reference to the prior audit and any correspondence concerning it can be most helpful in the current review. Determine whether corrections requested in the previous year, if any, have been made, and whether the auditor has complied with previous suggestions for improvement in the audit report, if any.

C. *Preparing the audit review letter.*

General. After completion of the "Evaluation Checklist for Audit Reports" which follows and applying personal judgment, a decision must be made on whether or not to prepare an audit review letter similar to that shown as part of this exhibit.

a. If the audit fully complies with the Audit Guide and instructions, a letter is not necessary.

b. If the audit substantially meets the requirements and is lacking in only a few points, ask the borrower to have the auditor furnish this additional information.

c. Audits which are unacceptable should be returned to the borrower for full compliance, indicating the reasons.

Exhibit A–1—Evaluation Checklist for Audit Reports

State _____
Name of Borrower _____
County _____
Address _____
Case No. _____
Name of Auditor _____
Project No. _____
Date of Audit Report _____
Period Covered _____

1. *Auditor's Opinion* (Section III*—Check one)
——(a) Unqualified
——(b) Qualified
——(c) No opinion

2. *Financial Statements* (Section II C*)
——(a) Balance Sheet
——(b) Income and Expense
——(c) Changes in Financial Position
——(d) Net Worth Reconciliation
——(e) Comparative Statements

3. *Required Supplemental Letter* (Section II D*) *or comments on the following:*
——(1) A statement that generally accepted auditing procedures were used but if not, which were omitted.
——(2) Evaluation of system of internal control.
——(3) Adequacy of accounting records and outline any recommendations for improvement.
——(4) Adequacy of physical control over assets.
——(5) Financial compliance with loan agreement including maintenance of cash reserves.
——(6) Financial reports in audit are in agreement with accounting records of organization. Indicate any material or unusual adjustments.
——(7) State whether deposit funds are in institutions insured by the Federal Government.
——(8) List kinds and amounts of insurance coverage.
——(9) Indicate if borrower is exempt from Federal income tax.
——(10) For unsatisfactory conditions disclosed by audit, state their nature and, if possible, recommend corrective action.
——(11) List names of members, users or renters delinquent over 60 days and the amount of each delinquency.
——(12) Indicate any other information that the auditor believes necessary for full disclosure.

Note.—If information is provided by the auditor which answers these items, although not in supplemental letter, it is acceptable.

4. Comments by auditor on previously recommended items which have or have not been implemented by borrower (Section IV*).

5. Was report received within 45 days of the end of the borrower's operating year?

6. Was audit performed by a CPA or LPA? If by an LPA verify that the LPA was licensed on or before December 31, 1970.

Exhibit A–1—Example Audit Review Letter

Dear _____:

We have reviewed your audit report for the period _____ to _____, prepared by _____. This review was made in accordance with current FmHA regulations and the Audit Guide entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Administration Borrowers and Grantees." Based on this review, your audit:

1. [ ] Is acceptable. However, the auditor's recommendations concerning _____ _____ should be implemented prior to next year's audit.

2. [ ] Is acceptable but did not include comparative-type financial statements as indicated in Section II C of the Audit Guide. Please inform the auditor to prepare such statements next year.

3. [ ] Is acceptable but was not submitted within 45 days after the end of the year. Please insure that next year's audit is forwarded before _____.

Exhibit A–1

4. [ ] Substantially meets all the requirements. However, the following items were omitted as detailed in the Audit Guide, Section II D, "Required Supplemental Letter." Please have your auditor comment on the number(s) circled and forward a copy to us. These numbers correspond to the 12 items listed in Section II D of the Audit Guide.

1 2 3 4 5 6 7 8 9 10 11 12

5. [ ] Is returned as unacceptable for the following reason(s). Please have the auditor prepare your audit in accordance with the Audit Guide.

a. [ ] It was prepared without audit.
b. [ ] The following financial statements were omitted: (Audit Guide, Section II C)
[ ] Balance Sheet
[ ] Statement of Income and Expense
[ ] Statement of Changes in Financial Position
[ ] Reconciliation of Net Worth
c. [ ] The auditor's opinion. (Audit Guide, Section III)
d. [ ] Other
6. [ ] Other.

District Director:

This letter will be prepared in the District Office. A copy of the audit and the approval memorandum will be sent to the State Office.

Exhibit B—Multiple Housing Management Handbook

Table of Contents

I. Purpose

*References to "Sections" indicate the appropriate section in the FmHA Audit Guide booklet entitled "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits of Farmers Home Admininstration Borrowers and Grantees."

II. Definitions
III. Rent Subsidy Opportunities
IV. Management Plan
V. Renting Procedure
VI. Verification and Certification of Tenant Income
VII. Leases
VIII. Rent Collection
IX. Rent Increases
X. Maintenance
XI. Accounting and Reporting Requirements and Financial Management Analysis.
XII. Management-Tenant Relations.
XIII. Termination of Tenancy and Eviction.
XIV. Security Servicing.

Title	Exhibit
Management Plan Requirements for FmHA Multiple Family Housing Projects	B-1
Requirements for Management Agreements	B-2
Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects	B-3
Questionnaire for Management Agent of FmHA Multiple Family Projects	B-4
Questionnaire for Owners of FmHA Multiple Family Housing Projects	B-5
Monthly Reports (Chart)	B-6
Annual Reports (Chart)	B-7
Miscellaneous Reports of Submittals (Chart)	B-8
Employment Inquiry	B-9
Objective Guides To Assist Management in Determining the Ability of Tenants to Sustain Relative Independence	B-10
Physical Self-Maintenance Scale (PSMS)	B-10A
Instrumental Activities of Daily Living Scale (IADL)	B-10B
Index of Independence in Activities of Daily Living Scale (ADL)	B-10C

Multiple Housing Management Handbook

I. *Purpose:* This management handbook prescribing Farmers Home Administration regulations, policies and procedures for management of RRH and LH projects will be used by multiple housing borrowers and applicants and their management agents and resident managers. The subject matter is in chronological stages of management considerations. Several exhibits are also included to provide further clarification and guidance. These regulations are intended to assist in the successful operation of FmHA-financed rental projects.

II. *Definitions:*

A. *Forms Manual Insert (FMI).* A type of directive which includes a sample of the form and complete instructions for its preparation, use and distribution.

B. *Management Plan.* The applicant's written proposal for the overall operation and management of the rental project.

C. *Management Agent.* The firm of individual engaged by the borrower to manage the project in a accordance with a written agreement.

D. *Management Agreement.* The written agreement between the borrower and management agent setting forth the management agent's responsibilities and fees for services.

E. *Management Fee.* The total cost of the management service paid by the borrower directly or indirectly and includes all items in the management agreement.

F. *Project Manager.* The individual(s) and/or firm(s) responsible for management of the project; could be the owner and/or management agent and/or resident manager.

G. *Resident Assistant.* A person(s) residing in the living unit who is essential to the well-being and care of the senior citizen or handicapped person(s) and who is not related by blood, marriage or operation of the law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive services.

H. *Residing Manager.* The individual employed by the borrower or the management agent who lives on the site and is responsible for the day-to-day operations of the project.

I. *Rental Agent.* The individual responsible for the leasing of the units. This individual may be hired by the owner or management agent.

J. *Caretaker.* The individual(s) employed by the borrower or management agent to handle normal maintenance and upkeep for the project.

K. *Senior Citizen.* A person 62 years of age or over; and may be either the tenant or co-tenant. (Also see Subpart E of Part 1944 of this chapter.

L. *Handicapped Person.* A person, or in the case of a household, either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets the qualifications of either of the following paragraphs:

1. A person who has an impairment which (a) is expected to be of long-continued and indefinite duration, (b) substantially impedes his or her ability to live independently, and (c) is of such a nature that such ability could be improved by more suitable housing conditions.

2. A person who is developmentally disabled. A developmentally disabled person is handicapped with a severe, chronic disability which: (a) is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) is manifested before the person attains age 22; (c) is likely to continue indefinitely; (d) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic sufficiency; and (e) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

M. *Household.* One or more persons who maintain or will maintain residency in one rental unit.

N. *Annual Income.* Planned income of the tenant, co-tenant, and spouse of either, and all other adults who live, or propose to live, in the rental unit within the next 12 months.

1. *Income Included.* All net business income and gross income from wages, salaries, commissions, pensions, social security, welfare, GI Bill, fellowships, scholarships, assistantships, unemployment compensation, alimony, and all other sources, except as indicated in paragraph N 2 below, must be counted. This includes:

a. Welfare, Social Security, child support payments, and other payments made on behalf of minors.

b. All expected overtime and bonus income which can reasonably be considered dependable.

c. Proceeds from the sale of equipment, mineral rights or real estate sold under a long-term contract (usually more than 3 years).

d. Projected business losses will be considered as "0" in determining annual income.

2. *Exempted Income.* The following income is not counted.

a. Earnings from employment or income from GI Bill, fellowships, scholarships, or assistantships for schooling received by a *full-time student* who is not the tenant, co-tenant, or spouse of either.

b. Proceeds from the sale of equipment, mineral rights, or real estate sold under a short-term contract (usually 3 years or less).

c. Cash value of food stamps, real estate tax exemptions, or similar types of assistance.

d. Payments received for the care of foster children or services rendered as a volunteer on a project sponsored by any of the following:

(1) Retired Senior Volunteer Program.

(2) Foster Grandparent and Older American Community Service Programs (as either a foster grandparent, senior health aid, or senior companion).

(3) National Volunteer Programs to Assist Small Business and Promote Volunteer Service by Persons with Business Experience.

(4) Peace Corps, Vista, or any other volunteer program sponsored by ACTION.

e. Income received for services rendered by chore service workers residing with a tenant when such person's occupancy is essential to the well-being of the tenant when such services are compensated by a Federal, State, or local assistance program designed to enable such person to achieve or maintain independent living and/or to avoid inappropriate institutionalization.

f. Allowances paid by the Department of Labor to CETA participants. Wages paid by the employers of CETA workers will be included.

g. The income of a tenant, co-tenant, or spouse of either not living in the rental unit for reasons of broken marriage or separation, and not because of work assignment or military order when:

(1) Legal papers have been filed with the appropriate court to commence divorce or legal separation proceedings provided the tenant or co-tenant agrees that should the spouse begin to live in the rental unit, that spouse's income will then be counted toward annual income and the tenant or co-tenant may be required to vacate the unit if no longer eligible from an income standpoint.

(2) Papers have not been filed to commence divorce or legal separation proceedings provided the spouse has been living apart from the tenant or co-tenant for at least six months, and the tenant or co-tenant is informed and agrees that should the spouse begin to live in the rental unit, that the spouse's income will then be counted toward annual income and the tenant or co-tenant may be required to vacate the unit if no longer eligible from an income standpoint.

3. *Deductions From Income.* In determining the tenant's annual income, the following deductions may be made:

a. A deduction may be made in the same manner as outlined in Internal Revenue Service (IRS) regulations for the exhaustion wear and tear, and obsolescence of depreciable property used in the trade or business of the tenant, co-tenant, or spouse of either. An itemized schedule must be provided showing the depreciation claimed. The schedule should be consistent with the amount of depreciation actually claimed for these items for Federal income tax purposes.

b. A deduction may be made in the same manner as outlined in IRS regulations for necessary work-related expenses actually paid by the employee in excess of the amount reimbursed by the employer. The deduction must be reasonable and, in the judgment of the approving officials, should be deducted from an employee's income to reflect annual income on an equal basis with other employed persons. Deductions, however, are not permitted for the following:

(1) Transportation to and from work.

(2) Cost of meals incurred on one-day business trips.

(3) Educational expenses except those incurred to meet the minimum requirements for the employee's present position.

(4) Fines and penalties for violation of laws.

c. A maximum aggregate deduction of $400 per month may be made for child care, disabled dependent care, or care of an incapacitated spouse of a tenant or co-tenant. The deduction will be limited to expenditures *actually paid* to enable the tenant or co-tenant to be gainfully employed. The reason for any deduction must be recorded in detail and attached to Form FmHA 444–8, "Tenant Certification." Payments for these services may not be made to persons whom the tenant is entitled to claim as personal deductions for income tax purposes.

d. For purposes of determining interest credit or rental assistance subsidy a deduction may be made for full-time nursing home or institutional type care which cannot be provided in the home for member of the household who is a senior citizen or handicapped person. Such care must be expected to be required for six months or more. The deduction will be limited to expenditures actually paid for such services. For determining eligibility the maximum deduction may not exceed $400 per month.

O. *Adjusted Annual Income.* This is the current annual income of the household as defined in paragraph II of this Exhibit, less 5 percent and less an additional $300 for each minor person, (excluding the tenant, co-tenant and foster children), who is a member of the household and lives in the rental unit.

P. *Adjusted Monthly Income.* This is the amount obtained by dividing the adjusted annual income by 12.

Q. *Low-Income Household.* A household having an adjusted annual income within the maximum limit stated in Exhibit C of Subpart A of Part 1822 (FmHA Instruction 444.1).

R. *Moderate-Income Household.* A household having an adjusted annual income within the maximum limit stated in Exhibit D of Subpart A of Part 1822 (FmHA Instruction 444.1).

S. *Domestic farm laborers.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons, and as further defined in FmHA Instruction 1944–D, paragraph 1944.153(d).

T. *Migrant.* A domestic farmworker who works in any given local area on a seasonal basis and relocates his or her place of residence as farm work is obtained during the year.

U. *RRH* means Rural Rental Housing loans.

V. *LH* means Labor Housing loans and/or grants.

W. *RHS* means Rural Housing Site Loans.

X. *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

1. Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements each single family dwelling is considered a unit.

2. *Housing involving a group living arrangement* where one or more senior citizens or handicapped persons may share *living space within a rental unit* in which a resident assistant is normally required. Each housing may be one or more single family dwellings or a multi-unit structure.

III. *Rent Subsidy Opportunities:* Because of high housing costs, it is often extremely difficult to house persons with low and moderate incomes without some type of rental subsidy. The subsidy programs available should be considered at the time of developing a project proposal and, in some cases, used in an existing FmHA financed project where persons are required to pay more than 25 percent of their adjusted income for the cost of rent and utilities. These subsidy programs are as follows:

A. *FmHA Interest Credit—Section 515 Loans.* Regulations are contained in Exhibit B to Subpart E or Part 1944.

1. Plan I—Available only to broadly-based nonprofit corporations and consumer cooperatives.

a. Occupancy is limited to low-income nonsenior citizens, low- and moderate-income senior citizens, and low- and moderate-income handicapped persons.

b. Budgets and rental rates are based on a 3 percent loan. The difference between the note rate of interest and the 3 percent interest is made up in the form of an interest credit to the borrower's account.

c. Normally this plan would only be considered during the development of a new project proposal when greater benefits cannot be achieved for the prospective tenants under interest credit Plan II.

2. Plan II—Available to broadly based nonprofit corporations, consumers cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

a. Occupancy is limited to low- and moderate-income persons, except those senior citizens and handicapped persons not meeting the definition of a low- or moderate-income person may continue occupancy if they were tenants prior to the issuance of this regulation on *10–27–80.*

b. Budgets for the housing are prepared for two rental rates—basic and market. Minimum (basic) rental rate is based on a 1 percent loan. The maximum (market) rental rate is based on the interest rate shown in the promissory note.

c. Tenants pay 25 percent of their adjusted income, less a utility allowance if applicable, or the basic rental rate, whichever is the greater. In no case will the tenant pay more than the market rental rate.

d. Existing rural rental housing borrowers whose loans were approved subsequent to August 1, 1968, may convert from Plan I to Plan II, or if presently profit motivated, convert to Plan II by executing a new or amended loan resolution or loan agreement and an interest credit and rental assistance agreement in accordance with Exhibit B of Subpart E of Part 1944 of this Chapter.

B. *Rental Assistance Program—FmHA.* This is a subsidy program available to RRH, and LH borrowers to assist low-income tenants in paying their rent. Rental assistance is not authorized for tenants whose income is above the low-income rate. LH borrowers who are individual farmowners or association of farmers cannot obtain rental assistance. RRH borrowers with loans approved after August 1, 1968, must be, or change to, operating under Interest Credit Plan II.

1. Occupancy requirements are the same as for Plan II borrowers.

2. Tenants occupying a unit and eligible to receive rental assistance pay 25 percent of their adjusted income less an approved utility allowance when applicable. The difference between the amount of rent paid by the tenant and the basic rent (for labor housing the established FmHA approved rental rate) is paid to the borrower as a rental assistance payment.

3. Existing multiple housing borrowers including eligible labor housing borrowers may request to participate in the program by contacting the appropriate FmHA District Office. Multiple housing loan applicants wanting to participate should make the request a part of their loan application.

4. Regulations for this program are contained in Exhibit C to Subpart E of Part 1944 of this Chapter.

C. *Department of Housing and Urban Development (HUD)—Section 8 Housing Assistance Payments Program.* This program is similar to the FmHA subsidy rental assistance program but is administered by HUD. There are two programs, one for new construction and rehabilitation and another for existing housing. The FmHA and HUD have entered into a Memorandum of Understanding (See Exhibit H to Subpart E of Part 1944 of this Chapter.) Wherein HUD sets aside units for use by FmHA for new construction financed with rural rental housing loans. Additional information on the HUD Section 8 program is contained in Exhibits G and H to Subpart E of Part 1944 (FmHA Instruction 1944–E).

IV. *Management Plan:*

A. *General.* A comprehensive management program is essential to the successful operation of a project. A written plan is the primary ingredient which should describe the detailed policies and procedures in managing the project. *A management plan is required for all FmHA multiple housing projects.* The detailed plan must be submitted to FmHA with the loan application, (Form AD 625, "Application for Federal Assistance"). Exhibit B–1 of this Subpart outlines the requirements of the plan. The following items should be addressed in the plan, some of which are discussed later in more detail:

1. *The relationship between owner and management agent (if applicable).*

2. *Personnel policy and staffing arrangements.*

3. *Publicizing and achieving early occupancy and affirmative marketing.*

4. *Tenant certification and verification of income.*

5. *Tenant admissions policies and leasing policies.*

6. *Rent collection.*

7. *Rent increases.*

8. *Maintenance.*

9. *Record maintenance and reports.*

10. *Energy conservation measures.*

11. *Management-tenant relations*

12. *Termination of leases and evictions.*

13. *Management of Services to the Elderly (if congregrate housing project).*

14. *Management agreement (if applicable).*

B. *Management Agreement.* The management agreement is a primary management ingredient and bears a close relationship to the management plan. Requirements of a management agreement are listed in Exhibit B–2 of this Subpart. A management agreement is required except in cases where the borrower (owner) fills the role of manager. The management agreement is the primary document by which the management agent is guided and evaluated. Exhibit B–3 of this Subpart is a suggested management agreement. There are two types of agreements acceptable to FmHA, described as follows:

1. The owner hires a professional management agent to operate the project. The management agent may provide a resident manager for onsite management and/or caretaker when justified by the size of the project. A qualifications statement by the management agent is required in accordance with Exhibit B–4 of this Subpart.

2. The owner maintains all or a part of the management role. A qualifications statement by the owner in accordance with Exhibit B–5 of this Subpart is also required. The owner may use the services of a resident manager in providing onsite management and/or services of a caretaker when justified by the size of the project.

C. *Responsibility.* Regardless of the management system used, the management plan and management agreement or contract must be based on applicable provisions of local, State, and Federal statutes and the regulatory requirements of the loan used to finance the project. Regardless of the authority delegated by the owner to the management agent, the owner remains totally responsible to FmHA for the project.

D. *Compensation.*

1. *Projects with management agent.* The amount of compensation is to be negotiated between the owner and the management agent. The amount of compensation should be based on a percentage of gross rents collected for each occupied unit. This should include any rental assistance and/or interest

credit paid by the Government. The percentage may vary from project to project depending upon size, complexity, services to be provided, type of project, and other pertinent factors, such as comparable fees for the area in which the project is located. An initial rent-up fee payable on a per unit basis will not be permitted when the borrower or any member of the borrower organization owns an interest in the management firm or where the borrower manages the project. The borrower or management agent may be reimbursed from the 2 percent initial operation and maintenance investment paid out in connection with initial rent-up. The management agreement must be specific as to services to be provided that are not borne by the management agent, such as:

a. Cost of services of management agent's resident manager.

b. Legal fees.

c. Auditing fees.

d. Repair and maintenance costs.

e. Fidelity bond premiums.

2. *Owner managed projects.* Only when FmHA determines that the owner (either as an individual or as a part of an organization) has the necessary management capabilities, will the owner be authorized to manage the project. A typical management fee may be charged as an expense to the project. The compensation must be reasonable, earned, and not exceed the normal cost of similar management services for the project, had such services been provided by an independent management agent. This compensation will never include costs normally included in the project budget for other allowable operation and maintenance expenses such as: caretaker, resident manager, recordkeeping, etc.

E. *Resident Manager and/or Caretaker Services.* Whether a project is managed by a management agent or by the owner, the onsite services of a resident manager and/or caretaker may be used when justified by the size of the project. In such cases, there should be a written agreement with the resident manager to define the role and duties of the resident manager as distinct from the owner and which can be used as a basis for evaluating the resident manager. A project must generally have 12 or more rental units in order to justify the services of a resident manager. For larger projects, FmHA may require an onsite resident manager and/or caretaker. It is desirable but not mandatory that the resident manager and/or caretaker meet the tenant eligibility requirements for occupancy in the project. If a full-time resident manager and/or caretaker is not needed, these functions should, if at all possible, be performed by an eligible tenant.

1. *Calculation of rental rate.* For the purposes of calculating an appropriate rental rate for a resident manager and/or caretaker and for determining the borrower's appropriate payment on Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," the following policies will apply:

a. Compensation paid to the resident manager and/or caretaker for services rendered should be reflected in the operation and maintenance expenses of the project and be included in the annual income of the resident manager and/or caretaker. This will include the value of any in-kind compensation received. When a living unit is provided at no cost or at a reduced cost to the resident manager and/or caretaker, the rental value of that rental unit for all projects except those operating under interest credit Plan I will be calculated at the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the value of the rental unit will be calculated at the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

b. For resident manager and/or caretaker not provided a living unit at no cost, the rental rate will be calculated as follows:

(1) If the resident manager and/or caretaker meets the tenant eligibility requirements for the type of project being occupied, appropriate rental rate will be the rate established for an eligible tenant in accordance with paragraph V B of this Exhibit.

(2) If the resident manager and/or caretaker does not meet the tenant eligibility requirements for the type of project being occupied because the resident manager's and/or caretaker's adjusted annual income exceeds the maximum income limits, the resident manager's and/or caretaker's appropriate rental rate for all projects except those operating under interest credit Plan I will be the FmHA approved market rental rate for the size of unit occupied. For interest credit Plan I projects, the appropriate rental rate will be the FmHA approved market rental rate for the size of unit occupied, plus 25 percent.

2. *Owner Occupancy.* Since homeownership is not an objective of the FmHA Multiple Housing loan programs, owners will not be permitted occupancy in a project unless the owner will manage the project (rather than hiring a management agent), the size of the project (usually 12 units or more) justifies the services of a resident manager and/or caretaker, and the owner is determined capable and will perform these services.

F. *Projects Without a Resident Manager and/or Caretaker.* Projects without a resident manager and/or caretaker must have, at a minimum, a tenant who is agreeable to serve as a contact person or a person who is easily accessible to the project who is able to speak on behalf of project management or owner.

V. *Renting Procedure:* Planning for initial rent-up, occupancy and maintenance should begin months ahead of the projected completion of the project. Decisions must be made concerning advertisement of the availability of units, how affirmative marketing practices will be used, tenant eligibility, and tenant selection criteria.

A. *Affirmative Fair Housing Marketing Plan:* All borrowers with *five* or more rental units must meet the requirements of section 1901.203(c) of Subpart E of Part 1901 of this Chapter by preparing and submitting an Affirmative Fair Housing Marketing Plan on HUD Form 935.2, or providing evidence of being a signatory to a voluntary affirmative marketing agreement approved by HUD. Records must be maintained by the borrower reflecting efforts to fulfill the plan and will be subject to review by FmHA. *The approved plan will be made available by the borrower for public inspection at the borrower's place of business or rental office which must be in the same local area as the housing.* In developing the plan, the following items should be considered.

1. Direction of Marketing Activity: The plan should be designed to attract applications for occupancy from all potentially eligible groups of people in the housing marketing area regardless of race, color, religion, sex, age, marital status, or national origin, or physical or mental handicap (must possess capacity to enter into legal contract). The plan must show efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts.

2. Marketing Program. The applicant or borrower should determine which methods of marketing such as radio, newspaper, TV, signs, etc. are best suited to reach those low-income and minority persons who otherwise might not apply for occupancy in the project. The Agency on Aging serving the particular community should be contacted to assist in reaching senior citizens.

a. Signs, Brochures, Etc. Any signs, pamphlets, or brochures used must

contain appropriate equal opportunity statements. A copy of this proposed material should be submitted along with the HUD Form 935.2 for approval. The nondiscrimination poster entitled, "And Justice For All" and/or the "Fair Housing" poster must be displayed in the rental office.

b. Community Contact. In small communities where there may not be formal communication media aimed at minorities, contacts with special interest groups such as places of worship and social organizations should be made in affirmative marketing. Community contacts may also be used in reaching specific elements of the community such as the elderly or particular ethnic groups.

c. Rental Staff. All persons responsible for rental of the units will be instructed in the procedures and requirements of the Affirmative Fair Housing Marketing Plan and in those actions necessary to carry out the plan in promoting equal housing opportunity.

3. The borrower will be required to provide data in accordance with Subpart E of Part 1901 of this Chapter, pertaining to compliance reviews to indicate to what extent minority groups are being benefited.

B. *Tenant Eligibility:* It is important that the rental agent of the project be knowledgeable about the FmHA eligibility requirements as they relate to a particular project. FmHA loans are made on housing projects contingent upon the units being occupied by eligible tenants.

1. *Eligible Tenants.* Eligible tenants in a project may be either senior citizens, handicapped, or low- and moderate-income persons or any combination thereof in a Rural Rental Housing project or domestic farm laborers in a Labor Housing project as planned for the project and shown on the borrower's loan resolution or loan agreement and who comply with the following number of authorized occupants in the units:

Number bedrooms	Occupants	
	Min	Max
0	1	2
1	1	2
2	2	4
3	4	6
4	6	8
5	8	10

The above occupancy requirements for eligibility of migrants may not be applicable. Density levels will be determined in those cases based on project design.

In other cases, when a unit cannot be rented because a family of the size needed to rent the unit is not available, the State Director may authorize an exception to this requirement in accordance with paragraph V B 5 of this Exhibit. Also in case of unusual household situations such as a single parent with older children of opposite gender the State Director may make an exception to the above requirements on a case by case basis and determine the household eligible.

a. Tenants must generally be capable of caring for themselves. However, in the case of congregate housing with supportive services, eligible tenants may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. In congregate housing projects, the tenant or co-tenant's level of function and degree of competence in performing daily living activities must be assessed by the borrower and the tenants may be permitted occupancy if found to possess the ability to sustain relative independence, given the supportive services in the project. See Exhibit B–10, "Objective Guides to Assist Management in Determining the Ability of Tenants to Sustain Relative Independence." All tenants must meet the following criteria:

(1) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations.

(2) Be able to provide for their own sustenance in projects that provide less than full food service.

(3) Possess the legal capacity to enter into a lease agreement, except in the case of tenants with legal guardians residing in a congregate housing project.

(4) Be of legal age.

b. For projects under Plan I:

(1) Be a low- or moderate-income senior citizen or low- or moderate-income handicapped person.

(2) Be a low-income non-senior citizen or low-income, non-handicapped person.

c. For other RRH loans including those developed under Plan II: Any low- or moderate-income persons, except those senior citizens and handicapped persons who do not meet the definition of a low- or moderate-income person may continue occupancy if they were tenants prior to the issuance of this regulation on October 27, 1980.

d. For LH projects and for those RRH projects designed and designated to provide housing specifically for senior citizens and/or handicapped persons as defined in paragraph II of this exhibit, occupancy is limited solely to those meeting the eligibility requirements for the persons for whom the housing is designed and designated (i.e., domestic farm laborers, senior citizens, and/or handicapped persons), except that occupancy may be permitted by a person or person considered a member of the household of the domestic farm laborer, senior citizen, or handicapped person. However, the total income of all adult members in the household and the number of persons to occupy the unit cannot exceed eligibility requirements.

e. In a congregate housing project, a Resident Assistant may occupy living space in a congregate housing group living arrangement without regard to income.

f. Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student or other seemingly temporary resident of the community who is otherwise eligible and seeks occupancy in a project, other than farm workers in the case of Labor Housing projects, may be considered an eligible tenant if all of the following conditions are met:

(1) Is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(2) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(3) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(4) the person seeking occupancy signs a written statement indicating whether or not the persons's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

g. A former domestic farm laborer may continue occupancy of a LH project after retirement or after becoming disabled if they were an eligible tenant living in the project prior to the event.

h. A tenant who was determined eligible prior to October 27, 1980 (issuance date of these regulations) but does not meet eligibility requirements regarding income and number of occupants in the size unit as prescribed in these regulations may be permitted continued occupancy based on regulations then extant).

2. Other Items the Rental Agent Should Consider in Determining Eligibility of Applicants for Admission to the Project:

a. Credit reports to determine the applicant's past record of meeting obligations.

b. Prior landlord references to determine if the tenant was responsive in meeting rent payment obligations, care, and maintenance of the unit.

c. Income must be verified according to paragraph VI of this Exhibit.

d. The applicant's financial capability to meet other basic living expenses and the rental charge, taking into consideration any subsidy assistance that could be made available to the tenant. Where rental is not available, any low-income household that would be required but unable to pay more than 25 percent of adjusted income for rent including utilities may be eligible for Section 8 subsidy if it is being administered in the area.

e. Priority to displaced tenants in accordance with § 1944.250 of Subpart E of Part 1944.

3. Surviving Members of Eligible Tenant Household.

a. Surviving members of a senior citizen and/or handicapped tenant's household may continue occupancy of the project even though they may not meet the definition of a senior citizen or handicapped person stated in paragraph II of this Exhibit, provided:

(1) they are eligible occupants in all other respects,

(2) they occupied the unit at the time of the event that the original tenant ceased to occupy the unit, and

(3) the State Director determines on a yearly review basis that their continued occupancy will not be detrimental to preserving the integrity of the project.

b. Surviving members of a domestic farm laborer household must meet the definition of a domestic farm laborer as defined in paragraph II of this Exhibit or vacate the unit within 90 days or at the end of the lease term, whichever is longer unless the State Director provides an extension of time because of an extreme hardship placed on the household.

4. Formerly Eligible Tenants.

a. Formerly eligible tenants who no longer meet eligibility requirements regarding income or in the case of an LH project, occupation, except as authorized in Paragraph V B 1 h, may not be permitted continued occupancy of the project as an eligible tenant and must vacate the unit within 90 days or the end of the term of the lease whichever is longer if an eligible tenant is available for occupancy. The District Director must monitor the borrower's efforts to locate eligible tenants.

b. Formerly eligible tenants who no longer meet tenant eligibility requirements regarding number of occupants in the size unit, except as outlined in paragraph V B 1 h, must move to a unit of appropriate size when it becomes available. The District Director must monitor the borrower's efforts to find a unit of appropriate size for the household.

5. State Director Authority To Permit Borrower To Rent To Ineligible Tenants:

a. If it becomes necessary in the servicing of a loan made to finance an RRH project, the State Director may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent units to ineligible persons for temporary periods in order to protect the financial interests of the Government. The following determinations must be made:

(1) There are no eligible persons on a waiting list.

(2) The borrower provides evidence that he/she has made a diligent but unsuccessful effort to rent the unit to an eigible tenant household. Such evidence must consist of advertisements in appropriate publications, posting notices in several public places, holding open houses, if appropriate contacts with public housing agencies and authorities (where they exist), State and local agencies and organizations, Chamber of Commerce, real estate agencies, and other places, persons seeking rental housing would likely contact.

(3) The borrower will continue with aggressive efforts to locate eligible tenants and submit to the District Office, along with Form FmHA 444–29, a report of efforts made. The required followup should be posted in the District Office on Form FmHA 1905–6, "Management System Card—Multifamily Housing."

(4) The units will be rented on a monthly basis and only until they can be rented to eligible tenants. The monthly lease must require that the unit be vacated when an eligible tenant becomes available. The ineligible tenant should be given sufficient time to locate other housing not to exceed 90 days. In those cases where the tenant household does not consist of the appropriate number of occupants for the size unit, the tenant will be required to vacate when a unit of appropriate size becomes available.

(5) Tenants who are ineligible, because their household income exceeds the maximum for the project, will be charged the FmHA approved market rental rate for the size of unit occupied. In projects operated under Interest Credit Plan I, however, ineligible tenants will also be charged an additional rental surcharge of 25 percent of the approved market rental rate.

b. Examples of situations where the State Director may consider authorizing a borrower to rent units to ineligible persons are:

(1) A project designed for, designated as, and limited to occupancy by eligible senior citizens and/or handicapped persons.

(2) A household that does not consist of the appropriate number of occupants for the size unit.

(3) A household that does not meet eligibility requirements regarding income, i.e., an above moderate-income household.

C. Notification of Eligibility or Rejection.

1. *Application Status for Determining Eligibility.* All persons desiring to apply for units will be provided a written listing of all documentation required. Applications are considered received when the tenant has submitted all forms and information to the borrower. If additional information is required, the borrower must notify the applicant, in writing, within 10 days of receipt of the initial application of specific additional information needed in order to complete a review of eligibility. In the case of an existing project with little or no vacancies, when there are applications on hand from households determined eligible for 25 percent of the number of units in a project, and it will be awhile before additional applicants could be reached on the waiting list, the borrower may postpone a verification of eligibility. In such cases, the borrower may place the inquirer's name on the waiting list and keep a record of the address and telephone numbers where the person can be reached at such time as it appears an application could be processed.

2. *Notification to Applicant.* When a decision regarding an application has been made, the borrower will notify the applicant in writing that he or she has been selected, rejected, or placed on a waiting list.

3. *Applicants Determined Ineligible.* If the applicant is determined ineligible, the reason for rejection must be provided in writing in sufficient detail so that the applicant will have the opportunity to effectively evaluate the reason.

a. The letter of rejection must also outline the applicant's rights under the FmHA Tenant Grievance and Appeals Procedures in Part 1944, Subpart L of this Chapter.

b. If the rejection is because of information from a Credit Bureau, the source of the report must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

c. Applicants may be rejected because of:

(1) A history of unjustified and chronic nonpayment of rent.

(2) A history of violence and harassment of neighbors and management.

(3) A history of disturbing the quiet enjoyment of neighbors.

d. Rejection of applicants on the basis of arbitrary classifications is prohibited. Examples of such classifications are:

(1) Race, color, religion, sex, age, marital status, national origin, physical or mental handicap (except in those facilities designated for senior citizens and/or handicapped, where occupancy by non-senior citizens or non-handicapped can be prohibited).

(2) Receiving income from welfare.

(3) Families with children of undetermined parentage.

(4) Participation in tenant organizations.

e. In the case of Labor Housing projects, no organization borrower other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupany of the housing.

f. Rejected applications must be kept on file until such time as a compliance review has been conducted in accordance with Subpart E of Part 1901 of this Chapter.

D. Maintenance of Waiting List.

1. If an eligible applicant is not assigned a unit initially, the applicant will be placed on a waiting list in the chronological order in which the applications were received.

2. A different waiting list or a master waiting list with different categories or priorities indicated on it may be maintained as long as each list is in chronological order. If there are separate lists, they must be cross-referenced for applicants who fit more than one category or priority. Separate lists may be maintained for:

a. Various size units;

b. Units for senior citizens and handicapped;

c. Displaces, such as victims of natural disasters and eminent domain, to whom priority consideration may be given. Each list by category will be available for inspection by applicants on the waiting list. When the application is first submitted, the applicant will be notified of the category(s) assigned to that application. No application may be removed from a waiting list after any period of time without prior notification to the applicant or at least a reasonable attempt to locate the applicant.

E. Tenant record file: A separate file must be maintained for each tenant. This file will include items such as application, income verification, credit report, tenant certification forms, recertification and verification forms, lease, inspection reports for moving in and moving out, correspondence and notices to the tenant, and any other information as may be necessary. The information as to income verification, tenant eligibility certification and recertification must be retained for at least 2 years after the tenant has moved out.

VI. *Verification and certification of tenant income:* The incomes reported by the tenants selected for occupancy must be verified by the borrower.

A. *Verification of Income from Employment.* Verification of income from employment must be from the employer in writing and filed in the "Tenant Record File." A suggested Employment Inquiry form which is used by HUD is attached as Exhibit B–9.

B. *Verification of Income from Other Sources.* If income is from other than employment (e.g., social security, Veterans Administration, welfare), it must be verified in writing by the income source. If it is not immediately possible to obtain the written verification from the income source, the income may be verified in the interim by actually examining the income checks, check stubs, or other reliable data the tenant possesses which indicates the tenant's gross income. Verification may also be obtained through contacts with individuals who may be knowledgeable of the tenant's income. If no other verifiable source is available, a notarized affidavit from the tenant attesting to his/her gross annual income may be accepted. Verification of income must be documented and filed in the "Tenant Record File." In the case of domestic farm laborers, including migrants, who do not have easily verifiable income, the borrower may project monthy income expected to be received by the tenant during occupancy for determining eligibility and subsidy assistance.

C. *Random Sample of Tenant Income Verifications.* District Directors are required to make a random sample of tenant income verifications. The random sample can be devised from information on the tenant certification forms that will be submitted to the District Office in accordance with paragraph VI E of this Exhibit. The random sample should be representative of both low- and moderate-income persons in the project, including those receiving subsidy assistance, those paying in excess of 25 percent of their income for the costs of rent and utilities, and those paying the market rent. District Directors will conduct the random sample in the borrower's office during their supervisory visits and at any time he/she may be knowledgeable of discrepancies in income verifications. If the random sample discloses discrepancies, the District Directors will be required to investigate further or report to the State Director to obtain the assistance of the Office of Audit or the Office of Investigations.

D. *Use of HUD Certification Form for Section 8 Recipients.* For projects where the tenants are receiving Section 8 assistance, HUD Form 52659, Application for Tenant Eligibility and Certification or other appropriate HUD approved form may be used in lieu of Form FmHA 444–8 for the tenants receiving Section 8 assistance. The following verification statement by the project manager must be inserted on the bottom of the form: "The tenant's income and/or handicapped condition (if applicable) has been verified and found to be accurate."

E. *Certification of Tenant Income.* The borrower must initially submit to the District Office Form FmHA 444–8 or the acceptable HUD Form for each tenant. The initial signed tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the unit. Borrowers who are required to submit monthly payments will be required to submit these certifications to the District Office within 60 days. Subsequently signed tenant certifications must be obtained by all borrowers no later than the twelfth month after the previous certification and submitted to the FmHA District Office, except that subsequent certifications for senior citizens projects receiving 100 percent Section 8 Assistance will be obtained biennially. Furthermore, it will be necessary for the borrower to obtain the required verification of income on all tenants. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

VII. *Leases:* A Lease is a written contract between the tenant and the landlord assuring the tenant quiet, peaceful enjoyment and exclusive possession of a specific dwelling unit in return for payment of rent and reasonable protection of the property.

A. *Form of Lease.*

1. All leases will be in writing and must cover a period of at least 30 days but not more than 1 year. In areas where there is a concentration of non-English speaking individuals, leases and the

established rules and regulations for the project written in both plain English and the non-English concentration language must be available to the tenants. The tenant should have the opportunity to execute either lease form.

2. Annual leases may contain an appropriate escalation clause permitting rental increases prior to the expiration of the lease. Such increases would normally be necessary due to higher utility and other operating costs. Such increases must be approved by FmHA in accordance with Exhibit C of this Subpart.

3. The form of lease to be used, and any modifications thereof, must be approved by the FmHA District Director. When submitting a lease form for FmHA approval, it must be accompanied by a letter from the borrower's attorney regarding its legal sufficiency and compliance with Federal and State Law and FmHA regulations.

4. A copy of completed Exhibit A–5, "Housing Allowances for Utilities and Other Public Services," of Subpart E of Part 1944 and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

B. *Required Lease Clauses.* The following clauses will be required in leases used in connection with FmHA financed housing projects.

1. For all leases used in connection with FmHA financed RRH projects, the following clause will be included except in the cases of those senior citizens and handicapped persons who did not meet the definition of a low- or moderate-income person prior to the issuance of this regulation: "I understand that I will no longer be eligible for occupancy in this project if my income exceeds the maximum allowable adjusted income as defined by the Government for the State/Territory."

2. For leases in connection with borrowers participating in the FmHA rental assistance program Exhibit C of Subpart E of Part 1944 of this Chapter, the following clause will be used:

"I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be $————, (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable T.V.), a utility allowance of $——— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

"I further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of family members living in the household. I understand that should I receive rental assistance benefits to which I am not entitled, I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

"I also understand and agree that monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of members living in my household and based on the escalation clause in the lease. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than $———— (basic rental) nor more than $———— (market rental) during the remaining term of this lease."

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $———— (basic rental) nor more than" from the last sentence of the above statement.

3. For leases with borrowers operating under Plan II Interest Credit only:

"I understand and agree that the monthly rental payment under this lease will be $————. I also understand and agree that my monthly rental payment under this lease may be raised or lowered based on changes in my income and changes in the number and age of family members living in my household and based on the escalation clause in the lease. The rental payment will not, however, be less than $———— (basic rental) nor more than $———— (market rental) during the term of this lease. I agree to promptly provide any certifications and income verifications required by the owner to permit eligibility determination and, if applicable, rental rate to be charged."

4. For all cases involving farm labor housing loans and/or grants, the following additional clauses:

a. "I understand that the project is operated and maintained for the purpose of providing housing for domestic farm laborers and their families. I do hereby certify that a substantial portion of my family income is and will be derived from farm labor. I further understand that domestic farm labor means persons who receive a substantial portion of their income as laborers on farms in the United States and either (1) are citizens of the United States, or (2) reside in the United States, Puerto Rico, or the Virgin Islands, after being legally admitted for permanent residence therein, and may include the immediate families of such persons. Laborers on farms may include laborers engaged in handling agricultural commodities while in the unprocessed stage, provided the place of employment, such as a packing shed, is on or near the farm where the commodity is produced. It also includes labor for the production of aquatic organisms umder a controlled or selected environment."

b. "I agree that if my household income ceases to be substantially from farm labor for reasons other than disablement or retirement, I will promptly vacate my dwelling after proper notification by the owner."

5. The lease agreement in congregate housing cases must include in the major provisions the following statement: "I understand that my ability to live independently in the project with the support services available will be evaluated on a continuous basis. I may be requested to vacate if a determination is made that I am no longer able to live in the project without additional assistance." This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

C. *Other Required Lease Provisions.* All leases must contain provisions covering:

1. Names of the parties to the lease and all individuals to reside in the unit and the identification of the premises leased.

2. The amount and due date of rental payments.

3. Any penalty for late payment of rent in accordance with Section VIII B of this Exhibit.

4. The utilities and quantities thereof and the services and equipment to be furnished to the tenant by management.

5. The process by which rents and eligibility for occupancy shall be determined and redetermined including:

a. The frequency of such rental and eligibility determinations.

b. The information which the tenant shall supply to permit such determinations.

c. The standards by which rents, eligibility, and appropriate dwelling unit size shall be judged.

d. The circumstances under which a tenant may request a redetermination of rent.

e. The effect of misrepresentation by tenant of the facts upon which rent or eligibility determinations are based.

f. The time at which rent changes or notice of ineligibility shall become effective.

6. The limitation upon the tenant of the right to the use and occupancy of the dwellings.

7. The responsibilities of the tenant in the maintenance of the dwelling and the obligation for intentional or negligent failure to do so.

8. The use of separate legal process to collect monetary claims for damages.

9. The responsibility of management to maintain the buildings and any unassigned community areas in a decent, safe, and sanitary condition in accordance with local housing codes and FmHA regulations, and its liabilities for failure to do so.

10. The responsibility of management to provide the tenant with a written statement of the condition of the dwelling unit (when the tenant initially enters into occupancy and when vacating the dwelling unit), and the conditions under which the tenant may participate in the inspection of the premises which is the basis for such statement.

11. The circumstances under which management may enter the premises during the tenant's possession thereof, including a periodic inspection of the dwelling unit as a part of a preventive maintenance program.

12. The formalities that shall be observed by management and tenant in giving notice one to the other as may be called for under the terms of the lease.

13. The circumstances under which management may terminate the lease, all limited to good cause, and the length of notice required for the tenant to exercise the right to terminate.

14. The agreement that any tenant grievance or appeal from management's decision shall be resolved in accordance with procedures consistent with FmHA regulations covering such procedures, which are posted in the rental office.

15. The usual signature clause attesting that the lease has been executed by the parties.

D. *Prohibited Lease Clauses.* Lease clauses in the classifications listed below shall not be included in any lease.

1. Confession of judgment. Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

2. Distraint for rental or other charges. Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

3. Exculpatory clause. Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

4. Waiver of legal notice by tenant prior to actions for eviction or money judgments. Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

5. Waiver of legal proceedings. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred.

6. Waiver of jury trial. Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

7. Waiver of right to appeal judicial error in legal proceedings. Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

8. Tenant chargeable with costs or legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant, as a party to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

E. *Modification of Lease—Notification to Tenants.* The landlord may modify the terms and conditions of the lease, effective at the end of the initial term or a successive term, by serving an appropriate notice on the tenant, together with the tender of a revised lease or an addendum revising the existing lease. This notice and tender shall be sent to the tenant by first-class mail, properly stamped and addressed or delivered to the premises.

The date on which the notice shall be deemed to be received by the tenant shall be the date on which the first-class letter is mailed or the date on which the copy of the notice is delivered to the premises. The notice must be received within 30 days prior to the last date on which the tenant has the right to terminate the tenancy without executing the revised lease. The notice must advise the tenants that they may appeal modifications to the lease in accordance with Subpart L of Part 1944 of this Chapter if said modification will result in a denial, substantial reduction, or termination of benefits being received.

The same notification will be applicable to any changes in the rules and regulations for the project.

F. *Rules for Occupancy.*

1. All rules for occupancy, including rent structures will be in writing, posted conspicuously in the borrower's and/or manager's offices, and made available to each tenant with the lease agreement.

2. Proposed changes of any rules for occupancy must be made available to each tenant at least 30 days in advance of implementation, and tenants must be advised that they may appeal changes in accordance with Subpart L, Part 1944, of this Chapter.

3. No rule may infringe on the rights of the tenants to organize an association of tenants. Such associations may be organized to bargain with management, as well as to act socially and/or provide for the welfare of its members.

4. Rules may be promulgated that prohibit activities which are detrimental to management and tenants, such as activities which are a threat to the health or safety of other tenants or the employees of the borrower, interfere with the quiet enjoyment of the premises by other tenants, or are damaging to the physical structure of the project.

5. Initial rules will be attached to the lease agreement and be approved by FmHA. Approval of FmHA for changes and additions may be requested annually with submission of annual reports or more frequently only in the case of an emergency situation.

G. *Security Deposits.*

1. Security deposits are not mandatory but may be permitted if reasonable and customary for the area. If used they will not be in an amount in excess of the tenant's one month's rent or the basic rent for the project, whichever is greater. The amount of security deposits should be reflected in the borrower's management plan and not be changed without the written consent of the FmHA District Director. Security deposits for persons eligible for Rental Assistance or Section 8 assistance shall be adminstered so as not to create a hardship on the household and should ordinarily:

a. For RRH projects, not exceed a down payment of 25 percent of adjusted monthly income plus $5 per month until the basic rent amount is reached.

b. For low-income farmworkers in a LH project not exceed a $25 down payment and $5 per month until an equivalent of one month's rent is reached. In the case of migrants who will occupy the units for a short period of time, the State Director may make an exception to this policy upon written request from the borrower when it is shown that such deposit needs to be raised to protect the security interest of the government and will not create a hardship on the tenants.

2. Security deposits shall be handled in accordance with any State or local laws governing tenant security deposits. Tenant security deposits shall be deposited in a separate account at a Federally insured institution, and shall be handled in accordance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management, and until so used, shall be held by the borrower in trust for the respective tenants.

3. Borrowers may assess fair and reasonable charges to the security deposit for damage and losses caused or allowed by the tenant. An itemized accounting for such charges must be presented to the tenant in such cases, after the move-out inspection provided for in Paragraph XE2, unless the tenant has abandoned the property and his/her whereabouts are unknown and cannot be ascertained after reasonable inquiry.

VIII *Rent collection:* A pre-established day of the month should be designated rental collection day. The time and place of onsite collection and the correct address for payment by mail should be well publicized and consideration should be given to any need for an after-hours' depository.

A. *Rental Receipts.* A form of serially-numbered rental receipts should be selected for use and the collection agent held accountable for every receipt. If optional collection services are available, they may be considered.

B. *Delinquent Rents.* A system to identify and detect unpaid rents should be instituted within the project. A penalty for late payment of rent beyond a 10-day grace period not to exceed $10.00 may be permitted. The borrower should consider the circumstances causing the late payment before assessing any penalty. True hardship cases should not be assessed penalties; however, a firm and fair policy on payment of rent will help collections.

C. *Recapture of Improperly Advanced Rental Assistance.* In cases where a tenant has received rental assistance benefits to which he/she may not be entitled, the borrower-landlord must provide the tenant with a notice of intent to recoup improperly advanced rental assistance benefits. Such a notice must inform the tenant of the amount improperly advanced and the monthly amount that will be added to the tenant's rent to recoup the improper rental assistance. If it appears that the tenant has willingly and knowingly misrepresented his/her income, the case will be reported to FmHA District Director.

IX *Rent increases:* It may be necessary as operating costs increase or revenue decreases to consider a rental increase to keep the project viable. If this occasion should arise, *prior consent* of FmHA *is required.* The procedure to initiate a rent increase is specifically covered in Exhibit C of this Subpart. The borrower must meet these requirements.

X *Maintenance:* Maintenance is the process by which a project is kept up in all respects and includes land, buildings, and equipment. Maintenance responsibilities will be included in the management plan. Proper maintenance will help to keep a good image for the project and help to minimize vacancies. Plans and policies for inspections, effective maintenance and repair are to be established at the outset. The following types of maintenance items will be necessary:

A. *Routine Maintenance.* Routine or short-term type maintenance and repairs will be those cost items and services allowed for in the annual budgets to be paid for out of the operations and maintenance expense account. These are tasks concerning the maintenance of the project that can be prescheduled or planned for, based on equipment need and property characteristics. Also included are janitorial tasks performed on a regular basis in order to maintain the appearance of the project and to prevent an accumulation of dirt and subsequent deterioration.

B. *Responsive Maintenance.* This is all tasks of maintenance performed in response to either requests for service from tenants or to unplanned breakdowns. An essential part of any maintenance system is to plan for requests coming from the dwelling units and for emergencies occurring in the systems serving the apartments. The project manager should develop a plan to focus on: who receives the requests, how they are handled, how specific employees are assigned in the tasks and what kind of records are kept. The capacity of the project manager to respond to requests and emergencies is one of the true tests of a successful maintenance program.

C. *Preventive Maintenance.* This is similar to inspection type maintenance in that regular checking and servicing of equipment and systems are done as required by service information. Preventive maintenance of mechanical systems, building exteriors, elevators, and heating systems in rental projects require specially trained personnel. The project manager should establish biweekly or monthly schedules in which the routine oiling, replacing of filters, and the like is done based on manufacturer's manuals and specifications.

D. *Long-term Maintenance.* These are major expense items which normally do not occur on an annual basis. When such expenses occur, the borrower may request permission to use reserve funds to pay for these expenses. However, use of funds out of the reserve account must be preapproved by FmHA.

E. *Inspection Maintenance.* These are maintenance inspections performed periodically to discover problems before crisis situations develop. The following inspections should be made at various times of each tenant's apartment:

1. Move-in inspection. When an applicant is accepted for occupancy of a unit, the management and the applicant together should inspect the unit to be occupied and agree upon any repairs needed. A written inspection report shall be prepared and a copy retained in the tenant's file. Any of these deficiencies not corrected prior to occupancy should be noted on the lease.

2. Move-out inspection. When the management becomes aware that the tenant is moving out or has vacated the unit, an inspection should be scheduled with the tenant. Any repairs or costs to be charged to the tenant will be in accordance with the terms of the lease and regulations governing security deposits in paragraph VIIG.

3. Periodic inspection. The borrower should make allowances in the lease for periodic inspection of the units as a part of preventive maintenance. An inspection of this type should be made at least annually.

XI Accounting and reporting requirements and financial management analysis:

A. *Accounting System.* The type and form of accounting to be used will have been determined prior to the loan closing. The underlying purpose of an accounting system is to provide the financial information needed by the project manager to help plan and control the activities of the project. It is also needed by the owner, FmHA, investors, and the public who have an interest that will be served by information about its financial position and operating results. Therefore the borrower must develop a systematic method to record the business transactions of the project. Borrower and grant recipients may be required to implement a bookkeeping and accounting system that may be prescribed by FmHA. The following accounts, as a *minimum,* will be established for all projects and shall be maintained for so long as the loan obligations remain unsatisfied or through any restrictive time period in the case of prepayment.

1. *General Operating Account.* This will be a checking account and must be maintained in a bank or banks insured by the Federal Deposit Insurance Corporation (FDIC). The borrower will have deposited the required initial operating capital into this account by the time of loan closing or when interim funds were obtained in order to preclude the necessity for multiple advances of FmHA loan funds, whichever occurs first.

a. *Deposits.* All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts, housing subsidy payments, laundry revenue, or any other project income. The borrower may also at its discretion at any time deposit therein other funds which are also to be used for purposes authorized by this section. Funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the borrower in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the borrower or grant recipient in trust for the Government as security for the loan obligations.

b. *Disbursements.* Not later than the 15th of each month, out of the General Operating Account the borrower or grant recipient shall pay the actual, reasonable and necessary monthly expenses, for the current and the ensuing month, of operating and maintaining the project. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. Other authorized disbursements are as provided in Sections 2 and 3 below. Each month after the transfer of funds from the General Operating Account to the Tax and Insurance Escrow Account as provided in Section 2 below, any balance remaining in the General Operating Account, or so much thereof as may be necessary, shall be applied to the next installment due on the loan.

2. *Tax and Insurance Escrow Account.* This account shall be established as an interest bearing account at a Federally insured institution. This account will enable borrowers and grant recipients to escrow their tax and insurance payments one year in advance. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the Generl Operating Account to the Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated tax and insurance payments for the year. All interest earned shall be prorated based on the amount in each escrow at the time the interest is earned. Funds in the Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the borrower or grant recipient in trust for the Government as security for the loan obligations.

3. *Reserve Account.* This should be an interest bearing account or accounts at a Federally insured institution. Immediately, after each installment to the orderly retirement of the loan as provided in the borrower's promissory note, any balance in the General Operating Account shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's Loan Agreement or Resolution until the account reaches the aggregate amount specified in the Loan Agreement or Resolution, and shall be resumed at any time when necessary, because of disbursement from the Reserve Account to restore it to said sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the borrower or grant recipient in trust as security for the loan obligations. Reserve Account funds which will not be immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution or invested in readily marketable obligations of the United States Treasury Department the earnings on which shall accrue to the reserve account. Any amount in the reserve account which exceeds the aggregate sum specified in the Loan Agreement or Resolution and is not agreed between the borrower or grant recipient and the Government to be used for authorized purposes as described below shall be transferred to the General Operating Account unless the Government directs said sum to be retained in the Reserve Account. With prior consent of the Government, funds in the Reserve Account may be used by the borrower for the following purposes:

a. To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

b. To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses.

c. To make improvements for extensions to the housing.

d. For other purposes desired by the borrower which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

e. To pay a return on investment, provided that after such disbursements (a) the amount in the Reserve Account will not be less than that required by the Loan Agreement or Resolution to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

1. In the case of borrowers operating on a limited profit basis, to pay a return of up to 8 percent per annum of the borrower's initial investment as identified in the Loan Agreement or Resolution.

2. In the case of borrowers operating on a full profit basis, to pay a return on the borrower's initial investment as identified in the Loan Agreement or Resolution.

4. *Security Deposit Account.* (If applicable) Immediately upon receipt, all tenant security deposits collected shall be deposited into a separate account at a Federally insured institution, and shall be handled in compliance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management and, until so used, shall be held by the borrower in trust for the respective tenants. Any balance in the tenant Security Deposit Account which is retained by the borrower as a result of lease violations and any interest that may be transferred to the General Operating Account and treated as income of the housing.

B. *Borrower Reporting Requirements.* Certain reports will be necessary in order to meet the FmHA requirements and aid the borrower in carrying out the objectives of the loan. Some must be submitted with the FmHA payments and others submitted to FmHA either monthly or annually. The following reports will be prepared and submitted by the borrower. Exhibits B–6, B–7, and B–8, which are available in the FmHA District Office, are to be used as a guide for determining when reports are due and the number of copies.

1. MONTHLY REPORTS:

a. Submit Form FmHA 1930–6, "Monthly Report," by the tenth of each month to the District Office. Monthly reports may be completed on a cash basis if the borrower elected to use modified accrual accounting.

b. Submit Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with the payment to the District Office.

2. ANNUAL REPORTS: Within 45 days following the close of the borrower's fiscal year, the borrower will submit the following reports to the FmHA District Office. Annual reports will be completed on an accrual basis.

a. Form FmHA 1930–7, "Statement of Budget, Income and Expense," showing planned income and expenses for the next year as well as actual income and expenses for the past year.

b. Form FmHA 1930–8, "Year End Report and Analysis."

c. Audit report to be completed in accordance with the booklet, "Instructions to Independent Certified Public Accountants and Licensed Public Accountants Performing Audits for FmHA Borrowers and Grantees." For projects with 25 or more units, the audit will be prepared by (1) a CPA or (2) LPA licensed on or before *December 31, 1970.* Borrowers with 24 units or less will need to provide a verification by an individual who is qualified by education and/or experience and who is independent of the borrower or by a committee of the membership not including any officer, director, or employee of the borrower; however, the State Director may also require audits by a CPA or LPA for any project.

d. Copy of the minutes of the annual meeting, if applicable.

e. Any other related material that may be requested by the District Director.

C. *Financial and Management Analysis.* Financial and management analysis provides information on how the project is progressing. Regular analysis of the project's operations can help identify problems and deficiencies early so that appropriate corrections can be initiated. Some methods of analysis are:

1. Budget Analysis: This is one of the simplest tools to use in financial analysis. Utilizing the monthly and annual reports, the project manager records actual income and expenses and compares them with the budgeted amounts. Any differences between the budget and actual figures indicate where the manager may need to focus added attention or take corrective action.

2. Ratio Analysis: This is another technique used in financial analysis. It prescribes various measures of actual operating performance in terms of ratios. Some useful ratios are:

a $$\text{Vacancy Rate} = \frac{\text{Total vacancy days for the month}}{\text{Total unit days for the month}}$$

b $$\text{Resident Turnover Ratio} = \frac{\text{Total units becoming vacant during the period}}{\text{Average units occupied for the period}}$$

c $$\text{Expense Ratio} = \frac{\text{Total Expense}}{\text{Total Income}}$$

d $$\text{Cost Per Unit} = \frac{\text{Total Expense (By category)}}{\text{Total No. of Units}}$$

e $$\text{Working Capital Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

f $$\text{Collection Ratio} = \frac{\text{Total Collections}}{\text{Total Rent Roll}}$$

g $$\text{Percent of Revenue from Government Sources} = \frac{\text{FmHA Rent Assistance}}{\text{Total Market Rent}} \text{ or } \frac{\text{HUD Section 8 Payments}}{\text{Total Market Rent}}$$

XII. *Management-Tenant Relations:* This portion of the management plan should be complete since it establishes the basic relationships that could be the difference between success and failure in the project. A well-planned orientation for tenants or prospective tenants is advisable. Rules and regulations must be provided and adequately explained so the tenant will understand the goals and objectives of the project. The management should be available and willing to work with a tenant organization. Listed below are a number of areas that should be addressed in written materials developed by management and provided to all tenants prior to move-in:

A. *Explanation of rights and responsibilities under the lease.* Where a non-English language is common to an area, a lease written in that language should also be provided.

B. *Rent payment policies and procedures should be fully explained.*

C. *Policy on periodic inspection of units.*

D. *Responding to tenant complaints.*

E. *Maintenance request procedure.*

F. *Services provided by management.*

G. *Office hours, emergency telephone numbers.*

H. *Map showing location of community facilities including schools, hospitals, libraries, parks, etc.*

I. *Restrictions on storage and prohibition against abandoning vehicles in the project area.*

J. *A project newsletter;* if desired.

XIII. *Termination of Tenancy and Eviction:* Borrowers should actively work to avoid forced terminations of leases and evictions. The rules governing termination of leases and evictions for cause are outlined in this section.

A. *Entitlement of Tenants to Continued Occupancy.*

1. *General.* The borrower may not terminate or refuse to renew any tenancy except upon material noncompliance with the lease or for other good cause. Any termination or refusal to renew tenancy must be grounded upon material noncompliance with the lease, non-eligibility for tenancy, or action or conduct of the tenant which disrupts the liveability of the project, adversely affects the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and related project, or has an adverse financial effect on the project.

2. *Material Noncompliance.* Material noncompliance with the lease includes (a) one or more substantial violations of the lease or (b) repeated minor violations of the lease which disrupt the liveability of the project, adversely affect the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and related project or have an adverse financial effect on the project. Repeated nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period constitutes substantial violation.

3. *Notice of Other Good Cause.* Conduct cannot be considered other good cause unless the borrower has given the tenant prior notice that the conduct will constitute a basis for termination of tenancy.

4. *Rent Overburden.* Any tenant household paying more than 25 percent of their adjusted income toward rent, including utilities, is experiencing rent overburden. No evictions will be permitted for non-payment of rent when a tenant experiences rent overburden and the tenant may be eligible for rental assistance or Section 8 assistance and resides in an eligible project where such assistance is available to him/her upon application by the borrower. A borrower is encouraged to use forebearance in eviction for nonpayment of rent where he/she has applied for rental assistance and rental assistance is not immediately available. For example, when a tenant who is in need of subsidy assistance cannot meet full rent payments on a timely basis, the borrower should collect the amount of rent that is within the tenant's ability to pay and collect the excess due on an installment basis when rental assistance is made available.

B. *Notice of Termination.*

1. The borrower's notice of intent to terminate the tenancy will be handled in accordance with section 1944.555(b) of Subpart L, of Part 1944 of this Chapter and must:

a. Refer to relevent provisions in the lease.

b. State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In those cases where the proposed termination of the tenancy is due to the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

c. State the tenant's right under the Tenants Grievance and Appeals Procedures as outlined in Subpart L or Part 1944 of this Chapter.

2. If the tenant's continued occupancy constitutes a threat to the health and safety of other tenants or management (generally, by a violent action such as the use of firearms, arson, etc.), or the tenant waives his/her rights under the Tenant Grievance and Appeals procedures, eviction should be accomplished in accordance with State Law.

XIV. *Security Servicing:* Security servicing, as contained in this Exhibit, concerns the borrower's responsibilities in relation to the loan agreement or resolution, mortgage, and other loan closing papers. It does not deal with security items between the borrower and the tenants. FmHA will look to the borrower to fulfill its obligation in accordance with the requirements of the loan agreement or resolution, note, mortgage, and other legal or closing documents. Some items of special emphasis are:

A. *Fidelity Bond.* All borrowers will be required to provide Fidelity Bond coverage for the officials, employees, and management agents entrusted with the receipt, custody, and disbursement of its funds or any other negotiable or readily saleable personal property except in those cases where a loan has been made to an individual (natural person) and that individual will be responsible for such activities. In the case of a Land Trust where the beneficiary is responsible for management, the beneficiary will be treated as an individual. Also, a 2-party General partnership where there is no power of attorney or designated partner, will be treated as an individual. The amount of the bond will at least equal the potential gross project income for two months rental collection or the maximum amount of money the project will have on hand at any one time, including cash on hand, money in reserve and other special accounts, etc., whichever is greater. The United States will be named as co-obligee in the bond if not prohibited by State Law. Form FmHA 440–24, "Position Fidelity Schedule Bond," will be used if not prohibited by State Law. A blanket policy may be accepted in the case of borrowers with more than one project if blanket coverage is more advantageous cost-wise and the amount of coverage for each project is identified.

B. *Insurance.* The minimum amounts and types of insurance required of the borrower will be determined by FmHA:

1. Adequate fire and extended coverage and earthquake as needed will be required on all buildings included as security for the loan. The amount of coverage will be not less than the amount specified on Form FmHA 421–1, "Valuation of Buildings."

2. Suitable Workmen's Compensation Insurance will be carried by the borrower for all its employees.

3. The borrower will also carry adequate liability insurance.

4. If the project is located in a designated flood hazard area, flood insurance will be required.

Exhibit B–1—Management Plan Requirements for FmHA Multiple Family Housing Projects

A detailed Management Plan is required for all FmHA Multiple Housing projects. Also, a Management Agreement must be provided where a management agent is to be used. The Management Plan will be used by FmHA in evaluating the feasibility of the project from a management standpoint. A Management Plan will be considered sufficiently detailed if it is at least responsive in depth to each of the following areas.

1. *The role and responsibility of the owner and the relationship and delegations of authority to the management agent.* If there is no Management Agent, supply the equivalent information concerning the management staff assigned to day-to-day operation of the project.

a. If the management agent is closely associated with the owner in such a manner that creates a possible conflict of interest, is such relationship fully explained and justified?

b. What are the supervisory relationships, and to whom are the

persons responsible for the day-to-day operation of the project accountable?

c. Under what conditions must the management agent consult the owner before taking action?

d. What are the areas in which the management agent may make decisions without consulting the owner?

e. Who, in the owner's organization, is the key contact person for the management agent? What decision making powers does this contact person have?

f. Are the respective responsibilities of the owner and the managing agent listed? Are these responsibilities clearly defined so as not to overlap? Are they clearly assigned? Are all basic responsibilities covered.

2. *Personnel policy and staffing arrangements.*

a. Is all hiring in conformance with equal employment opportunity requirements?

b. What are the projected staffing needs for the project?

c. What are the lines of authority, responsibility, and accountability within the management entity?

d. What are the positions to be filled, the duties of each position, and the compensation?

3. *Plans and procedures for marketing units and achieving and maintaining full occupancy, and affirmative marketing.*

a. How and when will the units be advertised as available?

b. How will affirmative marketing practices be used? What outreach and marketing efforts will be made to reach those low-income and minority persons who traditionally would not be expected to apply for such housing without special outreach efforts?

c. What plans are being made to achieve and maintain the highest level of occupancy reasonably obtainable.

d. What are the procedures to allow for eligible applicants to inspect the units prior to their being made available for occupancy?

e. What orientation services are to be provided tenants to acquaint them with the project and care of the units?

f. Who is responsible for selecting the tenants? Is this selection subject to review? If so, under what conditions and by whom?

4. *Procedures for determining tenant eligibility and for certifying and recertifying incomes.*

a. How are applications and other records pertinent to this function kept?

b. Who will be responsible for carrying out this function?

c. Is the responsible person knowledgeable regarding certification and recertification requirements? If not, what provisions are being made to provide this person with the necessary training?

d. Is the responsible person aware of FmHA requirements covering family size and needs as they relate to unit size?

e. Is the responsible person aware of FmHA requirements regarding tenant eligibility, rejection, or placement on a waiting list?

5. *Tenant Admissions Policies and Leasing Policies.*

a. What procedures will be used in maintaining a waiting list?

b. What are leasing policies and procedures?

c. Is the person who is responsible, knowledgeable of FmHA required lease clauses? FmHA prohibited lease clause?

d. What are the Rules for Occupancy?

e. If a substantial number of tenants do not speak or read the English language, are leases and the established rules and regulations for the project written in both English and the non-English concentration language available?

6. *Rent Collection Policies and Procedures.*

a. What are the rent collection policies and procedures?

b. Where are rents to be paid and who is responsible for collection?

c. Is there a provision for on-site collections? After hours depositing?

d. Are rent payments adequately recorded and kept in a separate account?

e. What is the amount of any required security deposits? What is the program for maintaining adequate accounting records of security deposits?

7. *Procedures for requesting and implementing a rent increase.*

a. What procedures will be followed in requesting FmHA approval of a rent increase? (Refer to Exhibit C of this Subpart.)

b. At what time of year will such a request normally be made and what information will be presented to FmHA as justification?

c. How will the tenants be notified of a proposed increase, and if approved, who will you inform the tenants?

8. *Plans for carrying out an effective maintenance and repair program.*

a. What procedures have been developed to service appliances and the mechanical equipment? To check out all such equipment to be sure that it is properly installed and operating prior to releasing units for occupancy.

b. What are the procedures for inspecting and carrying out maintenance activities in units prior to a moveout? Prior to rerenting the unit?

c. What is the schedule for interior and exterior painting and redecorating?

d. How will garbage and trash removal be handled?

e. How will major repairs be handled?

f. How will grounds upkeep and maintenance be carried out?

g. What is the schedule for cleaning entryways, halls, and other common areas?

h. How will tenants be instructed to report major and/or minor maintenance repair needs?

i. What security provision will be made for the protection of project residents such as fire extinguishers, outside lighting, etc.?

9. *Plans for Record Maintenance and Reports.*

a. Who will be responsible for the preparation and submission of the monthly and annual reports required by FmHA?

b. What type of project records will be used and how will they be maintained?

c. Discussed the proposed tenant record and maintenance system including retention of records.

d. Where will records subject to FmHA review be kept?

10. *Energy Conservation Measures.*

a. What utilities will the tenants have direct control of where energy conservation can be practiced.

b. What utilities will the management have direct control of where energy conservation can be practiced?

c. Explain the proposed energy conservation practices in connection with utilities paid by the management.

d. Describe proposed actions to stimulate energy conservation by the tenants.

e. How will tenants be oriented to energy conservation measures?

11. *Plans for tenant-management relations.*

a. How will tenants be oriented to the project?

b. Is the person who is responsible, knowledgeable of FmHA Tenant Grievances and Appeals procedures?

12. *Termination of Leases and Evictions.*

a. Is the person responsible, knowledgeable of FmHA's requirements regarding termination of leases and evictions?

b. Is the person responsible, knowledgeable of FmHA's requirements regarding notification that must be given to a tenant when termination of the lease or eviction is proposed?

13. *Security Servicing.*

a. Is the person responsible, knowledgeable of FmHA requirements for Fidelity Bond coverage?

b. Is the person responsible, knowledgeable of FmHA's insurance requirements?

14. *Management Agreement (Contract).*

a. Attach a copy of the proposed form of Management Agreement (Contract) that will be used if the project will not be owner-managed. (See Exhibit B–2 for requirements for management agreements.)

Exhibit B–2—Requirements for Management Agreements

A completed and executed management agreement must be submitted to Farmers Home Administration (FmHA) whenever a management agent is to be used.

1. A written management agreement shall be requird for any project when the owner retains a management agent. Although a written management plan is required for all projects, a management agreement is not required if the project is managed by the owner.

2. The management agreement shall conform to FmHA requirements. The owner may delegate to the agent any management duties which are not required to be performed by the owner. Nevertheless, whatever the scope of the agent's authority, the owner remains totally responsible to FmHA for all aspects of management, including duties delegated to the agent.

3. The management agreement shall be consistent with the management plan for the project. The management plan is the primary management charter, constituting a comprehensive description of the detailed policies and procedures to be followed in managing the project. The function of the management agreement in incident to implementation of the management plan. The agreement must define in previse language the terms of the agreement, and accordingly, the agreement need not repeat all of the detailed procedures contained in the management plan.

4. In all cases where the owner retains a management agent, the Management Agreement document shall contain the management agent's organized and staffing structure, management controls, and outside ownership interests. When evidence of transaction with identity of interest firm, or central service unit exists, the owner shall refer this case to the FmHA for review and approval of such procurement arrangements and the reasonableness of charges to the project. List of competitive costs shall be provided.

5. The management agreement may conform to the suggested housing management agreement as reflected in Exhibit B–3 of this Subpart. Each management agreement shall be realistically tailored to the specific conditions of the particular project. The site, design, and size of the project fiscal constraints; market conditions; social factors; local law and business practices are among the elements which may require variations in the management agreement. Consideration should also be given to the capabilities and legitimate desires of the owner and agent.

Exhibit B–3—Suggested Housing Management Agreement for FmHA Multiple Family Housing Projects

This Agreement is made this ——— day of ———, 19——, between ——— (the "Owner") and ——— (the "Agent").

1. *Appointment and Acceptance.* The Owner appoints the Agent as exclusive agent for the management of the property described in Section 2 of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

2. *Description of Project.* The property to be managed by the Agent under this Agreement (the "Project") is a housing development consisting of the land, buildings, and other improvements which make up Project No. ———. The Project is further described as follows:

Name:———
Location:
City: ———
County: ———
State: ———
No. of dwelling units ———

3. *Definitions.* As used in this Agreement:

a. "FmHA" means the Farmers Home Administration, including any successor agencies.

b. "Principal Parties" means the Owner and the Agent.

4. *FmHA Requirements.* In performing its duties under this Management Agreement, the Agent will comply with all pertinent requirements of FmHA.

5. *Management Input During FmHA Processing.* The agent will advise and assist the owner with respect to management input during the remaining stages of FmHA loan processing. The Agent's specific tasks will be as follows:

a. Preparation and submisssion to the Owner of a recommended operating budget for the initial operating year of the Project.

b. Participation in any conference with FmHA officials involving project management.

c. Preparation and submission to the Owner (for the Owner's signature and submission to FmHA) of Form FmHA 1930–6, "Monthly Report" throughout the period from initial occupancy after FmHA loan closing until such time as no longer required by FmHA. If the management is authorized to sign the reports in the owner's absence, a copy of the signed report as submitted to FmHA will be provided.

d. Participation in the on-site final inspection of the Project, required by FmHA prior to initial occupancy.

e. Continuing review of the Management Plan, for the purpose of keeping the Owner advised of necessary or desirable changes.

6. *Management Plan.* Attached hereto, and hereby incorporated herein, is a copy of the Management Plan for the Project, which provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the Project. In many of its provisions, this Agreement briefly defines the nature of the Agent's obligations, with the intention that reference be made to the Management Plan for more detailed policies and procedures. Accordingly, the Owner and the agent will comply with all applicable provisions of the Management Plan, regardless of whether specific reference is made thereto in any particular provision of this Agreement. A copy of the Loan Resolution or Agreement with FmHA is also attached.

7. *Basic Information.* As soon as possible, the Owner will furnish the Agent with a complete set of "as built" plans and specifications and copies of all guarantees and warranties pertinent to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, the Agent will become thoroughly familiar with the character, location, construction, layout, plan and operation of the Project, and especially of the electrical, heating, plumbing air-conditioning and ventilating systems, the elevators, and all other mechanical equipment.

8. *Liaison with Architect and General Contractor.* At the direction of the owner during the planning and construction phases, the Agent will maintain direct liaison with the architect and general contractor, in order to coordinate management concerns with the design and construction of the Project, and to facilitate completion of any corrective work and the Agent's responsibilities for arranging utilities and services pursuant to Section 14 of this Agreement. The Agent will keep the Owner advised of all significant matters in this connection.

9. *Marketing.* The Agent will carry out the marketing activities prescribed in the Management Plan, observing all requirements of the Affirmative Fair Housing Marketing Plan.

10. *Rentals.* The Agent will offer for rent and will rent the dwelling units in

the Project. The following provisions will apply:

a. The Agent will make preparations for initial rent-up, as described in the Management Plan.

b. The Agent will follow the tenant selection policy described in the Management Plan.

c. The Agent will show the premises to prospective tenants.

d. The Agent will take and process applications for rentals. If an application is rejected, the agent will inform the applicant in writing of the reason for rejection, and the rejected application, with reason for rejection noted thereon, will be kept on file until a compliance review has been conducted. If the rejection is because of information obtained from a Credit Bureau, the source of the report must be revealed to the applicant in accordance with the Fair Credit Reporting Act. A current list of prospective tenants will be maintained.

e. The Agent will prepare all dwelling leases, parking permits, and will execute the same in its name, identified thereon as agent for the Owner. The terms of all leases will comply with the pertinent provisions of FmHA regulations. Dwelling leases will be in a form approved by the Owner and FmHA.

f. The Owner will furnish the Agent with rent and income report forms required by FmHA, showing rents as appropriate for dwelling units, and other charges for facilities and services, and income data pertinent to determinations of tenant eligibility and tenant rents. In no event will such rents and other charges be exceeded.

g. The Agent will counsel all prospective tenants regarding eligibility and will prepare and verify eligibility certifications and recertifications in accordance with FmHA requirements.

h. The Agent will collect, deposit, and disburse security deposits, if required, in compliance with any State or local laws governing tenant security deposits. Security deposits will be deposited by the Agent in a separate account, at a Federally insured institution. This account will be carried in the Agent's name and designated of record as "(Name of Project) Security Deposit Account."

11. *Collection of Rents and Other Receipts.* The Agent will collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the Project. Such receipts will be deposited immediately in the General Operating Account with a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

12. *Enforcement of Leases.* The Agent will ensure full compliance by each tenant with the terms of the lease. Voluntary compliance will be emphasized. The Agent, using the services of local social service agencies when available, will counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Agent. Involuntary termination of tenancies should be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, and subject to the pertinent procedures prescribed in the Management Plan, the Agent may initiate action to terminate any tenancy when, in the Agent's judgment, there is material noncompliance with the lease or other good cause, as prescribed by FmHA regulations for such termination. The tenant must be given notification in accordance with FmHA regulations and must be notified of his/her right to appeal the proposed action. Subject to the Owner's approval, attorney's fees and other necessary costs incurred in connection with such actions will be paid out of the General Operating Account as Project expenses.

13. *Maintenance and Repair.* The Agent will cause the Project to be maintained and repaired in accordance with the Management Plan and local codes, and in a condition at all times acceptable to the Owner and FmHA. This will include but is not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by the Owner in addition to those contained herein.

Incident thereto, the following provisions will apply:

a. Special attention will be given to preventive maintenance, and to the greatest extent feasible, the service of regular maintenance employees will be used.

b. Subject to the Owner's prior approval, the Agent will contract with qualified independent contractors for the maintenance and repair of air-conditioning systems and elevators, and for extraordinary repairs beyond the capability of regular maintenance employees.

c. The Agent will systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a twenty-four (24) hour basis. Serious complaints will be reported to the Owner after investigation.

d. The Agent is authorized to purchase all materials, equipment, tools appliances, supplies and services necessary for proper maintenance and repair with prior approval of the owner.

e. Notwithstanding any of the foregoing provisions, the prior approval of the Owner will be required for any expenditure which exceeds ——— dollars ($———) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the project. This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

14. *Utilities and Services.* In accordance with the Management Plan, the Agent will make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service. Subject to the Owner's prior approval, the Agent will make such contracts as may be necessary to secure such utilities and services acting as agent for the owner.

15. *Employees.* The Management Plan prescribes the number, qualifications, and duties of the personnel to be regulatory employed in the management of the Project, including a Resident Manager, maintenance, bookkeeping, clerical and other managerial employees. All such personnel will be employees of the Agent and not the Owner, and will be hired, paid, supervised, and discharged by the Agent.

16. *Records and Reports.* In addition to any other requirements specified in the Management Plan or other provisions of this Agreement, the Agent will have the following responsibilities with respect to accounts and reports:

a. *Accounting System.* The Agent must develop a systematic method to record the business transactions of the project. The Agent may be required to implement a bookkeeping and accounting system that may be prescribed by FmHA. The following accounts, as a minimum, will be established for all project and shall be maintained for so long as the loan obligations remain unsatisfied or through any restrictive time period in the case of repayment.

(1) *General Operating Account.* This will be a checking account and must be maintained in a bank or banks insured by the Federal Deposit Insurance Corporation (FDIC). The Agent will have

deposited the required initial operating capital into this account by the time of loan closing or when interim funds were obtained in order to preclude the necessity for multiple advances of FmHA loan funds, whichever occurs first.

(a) *Deposits.* All income and revenue from the housing project shall, upon receipt, immediately be deposited in the General Operating Account. This will include rent receipts, housing subsidy payments, laundry revenue, or any other project income. The owner and Agent may also at their discretion at any time deposit therein other funds which are also to be used for purposes authorized by this section. Funds in the General Operating Account will be used only as authorized in this section and until so used, will be held by the Agent in trust for the Government as security for the loan obligations. All Housing Assistance Payments received from the Department of Housing and Urban Development (HUD) on the basis of eligible occupants in the project shall be deemed to be revenue derived from the operation of the project and shall be held by the Agent in trust for the Government as security for the loan obligations.

(b) *Disbursements.* Not later than the 15th of each month, out of the General Operating Account the Agent shall pay the actual, reasonable and necessary monthly expenses, for the current and the ensuing month, of operating and maintaining the project. Current expenses may include the initial purchase and installation of furnishings and equipment with any funds deposited in the General Operating Account which are not proceeds of the loan or income or revenue from the project. Other authorized disbursements are as provided in Sections 2 and 3 below. Each month after the transfer of funds from the General Operating Account to the Tax and Insurance Escrow Account as provided in Section 2 below, any balance remaining in the General Operating Account, or so much thereof as may be necessary, shall be applied to the next installment due on the loan.

(2) *Tax and Insurance Escrow Account.* This account shall be established as an interest bearing account at a Federally insured institution. Each month after the payment of actual, reasonable, and necessary current operating and maintenance expenses there shall be transferred from the General Operating Account to the Tax and Insurance Escrow Account an amount equal to one-twelfth of the total anticipated tax and insurance payments for the year. All interest earned shall be prorated based on the amount in each escrow at the time the interest is earned. Funds in the Tax and Insurance Escrow Account shall be used only as authorized by this section and until so used, shall be held by the Agent in trust for the Government as security for the loan obligations.

(3) *Reserve Account.* This should be an interest bearing account or accounts at a Federally insured institution. Immediately, after each installment to the orderly retirement of the loan as provided in the borrower's promissory note, any balance in the General Operating Account shall be transferred to the Reserve Account at the monthly rate stipulated by the borrower's Loan Agreement or Resolution until the account reaches the aggregate amount specified in the Loan Agreement or Resolution, and shall be resumed at any time when necessary, because of disbursement from the Reserve Account to restore it to said sum. Funds in the Reserve Account shall be used only for authorized purposes as described below and, until so used, shall be held by the Agent in trust as security for the loan obligations. Reserve Account funds which will not be immediately needed for authorized purposes may be invested in saving certificates insured by a Federal institution or invested in readily marketable obligations of the United States Treasury Department the earnings on which shall accrue to the reserve account. Any amount in the reserve account which exceeds the aggregate sum specified in the Loan Agreement or Resolution and is not agreed between the Owner and Agent and the Government to be used for authorized purposes as described below shall be transferred to the General Operating Account unless the Government directs said sum to be retained in the Reserve Account. With prior consent of the Government, funds in the Reserve Account may be used by the Owner and Agent for the following purposes:

(a) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for the purpose.

(b) To pay costs of repairs or replacements to the housing, furnishings or equipment caused by catastrophe or long-range depreciation which are not current expenses.

(c) To make improvements for extensions to the housing.

(d) For other purposes desired by the Owner which in the judgment of the Government likely will promote the loan purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security, or will strengthen the security, or will facilitate, improve, or maintain the orderly collectibility of the loan.

(e) To pay a return on investment provided that after such disbursement (a) the amount in the Reserve Account will be not less than that required by the Loan Agreement or Resolution to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period:

(i) In the case of borrowers operating on a limited profit basis, to pay a return of up to 8 percent per annum on the borrower's initial investment as identified in the Loan Agreement or Resolution.

(ii) In the case of borrowers operating on a full profit basis, to pay a return on the borrower's initial investment as identified in the Loan Agreement or Resolution.

(4) *Security Deposit Account.* (If applicable) Immediately upon receipt, all tenant security deposits collected shall be deposited into a separate account at a federally insured institution, and shall be handled in compliance with any State or local laws governing tenant security deposits. Funds in the Security Deposit Account shall only be used for authorized purposes as intended and represented by the project management and, until so used, shall be held by the Agent in trust for the respective tenants. Any balance in the Security Deposit Account which is retained by the Agent as a result of lease violations and any interest that may be earned which is not payable to the respective tenants shall be transferred to the General Operating Account and treated as income of the housing.

(b) *Reports.*

(1) The Agent will furnish information (including occupancy reports) as may be requested by the Owner or the FmHA from time to time with respect to the financial, physical, or operational condition of the Project.

(2) The Agent will prepare and submit:

Form FmHA 444–8—"Tenant Certification"
Form FmHA 444–29—"Project Worksheet for Interest Credit and Rental Assistance"
Form FmHA 1930–6—"Monthly Report"
Form FmHA 1930–7—"Statement of Budget, Income and Expense"
Form FmHA 1930–8—"Year End Report and Analysis"

(3) The Agent will assist the owner in completing all additional forms and data prescribed by FmHA affecting the operation and maintenance of the project.

17. *Fidelity Bond.* The Agent will furnish, at its own expense, a fidelity bond in the principal sum of———— Dollars ($————), which is at least equal to the potential gross project income for two months and cash on hand and is conditioned to protect the Owner and FmHA against misapplication of project funds by the agent and its employees. The United States will be named as co-obligee in the bond at the time of FmHA loan closing if not prohibited by the State law. The other terms and conditions of the bond, and the surety thereon, will be subject to the approval of the Owner.

18. *Bids, Discounts, Rebates, etc.* With prior approval of the owner, the Agent will obtain contracts, materials, supplies, utilities, and services on the most advantageous terms to the Project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Agent will secure and credit to the Owner all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

19. *Insurance.* The Owner will inform the Agent of insurance to be carried with respect to the Project and its operations, and the Agent will cause such insurance to be placed and kept in effect at all times. The Agent will pay premiums out the General Operating Account, and premiums will be treated as operating expenses. All insurance will be placed with such companies, on such conditions, in such amounts, and with such beneficial interests appearing thereon as shall be acceptable to the Owner and the FmHA provided that the same will include public liability coverage, with the Agent designated as one of the insured, in amounts acceptable to the Agent as well as the Owner and FmHA. The Agent will investigate and furnish the Owner with full reports as to all accidents, claims, and potential claims for damage relating to the Project, and will cooperate with the Owner's insurers in connection therewith.

20. *Compliance with Governmental Orders.* The Agent will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, whether imposed by federal, state, county or municipal authority, subject, however, to the limitation stated in Subsection 13e of this Exhibit with respect to repairs. Nevertheless, the Agent shall take no such action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Agent will notify the Owner in writing of all notices of such orders or other requirements, within seventy-two (72) hours from the time of their receipt.

21. *Nondiscrimination.* In the performance of its obligations under this Agreement, the Agent will comply with the provisions of any Federal, State or local law prohibiting discrimination in housing on the grounds of race, color, creed, sex, age, marital status, national origin, or physical or mental handicap (applicant must have capacity to execute a legal contract) including Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241), Title VIII of the Civil Rights Act of 1968, Executive Order 11246, and the Equal Credit Opportunity Act of 1974, as they relate to the Farmers Home Administration (FmHA).

22. *Agent's Compensation.* The Agent will be compensated for its services under this Agreement by monthly fees, to be paid from the Operating and Maintenance Account and treated as project expenses. Such fees will be payable on the ——— day of each month for the preceding month. Each such monthly fee will be in an amount computed as follows: ———% of the actual gross rents collected for the preceding month.

23. *Term of Agreement.* This Agreement shall be in effect for a period of ——— year(s), beginning on the ——— day of ———, 19——, subject, however, to the following conditions:

a. This Agreement will not be binding upon the Principal Parties until approved by FmHA.

b. This Agreement may be terminated by the mutual consent of the Principal Parties as of the end of any calendar month, provided that at least thirty (30) days advance written notice thereof is given to FmHA.

c. In the event that a petition in bankruptcy is filed by or against either of the Principal Parties, or in the event that either makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice to the other, provided that prompt written notice of such termination is given to FmHA.

d. Upon termination, the Agent will submit to the Owner all project books and records and any financial statements required by the FmHA, and after the Principal Parties have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Agent security, in form and principal amount satisfactory to the Agent, against any obligations or liabilities which the Agent may properly have incurred on behalf of the Owner hereunder.

24. *Interpretative Provisions.*

a. This Agreement constitutes the entire agreement between the Owner and the Agent with respect to the management and operation of the Project, and no change will be valid, unless made by supplemental written agreement, approved by FmHA.

b. This agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

In witness whereof, the Principal Parties [by their duly authorized officers] have executed this Agreement on the date first above written.

Owner: — ————————————
By: — ————————————
Title: — ————————————
Witness: — ————————————
Agent: — ————————————
By: — ————————————
Title: — ————————————
Witness: — ————————————

Approved as lender or insurer of funds to defray certain costs of the project and without liability for any payments hereunder, the Farmers Home Administration hereby approves this Agreement.

By: ————————————
Title: ————————————
Date: ————————————

Attachments: Management Plan; Loan Resolution or Agreement.

Exhibit B–4—Questionnaire for Management Agent of FmHA Multiple Family Housing Projects

Please provide a written signed statement for FmHA giving your answers in the same order, to the information requested. Please be brief and concise in your answers and indicate if a certain question is not applicable in your particular case. Your statement will be used by FmHA to evaluate your capacity to successfully manage the project.

1. Provide your name, address, name of project, location of project, and the name of the owner.

2. Provide information as to projects previously or presently managed by the management entity and its employees, including information relative to default history, mortgage relief history, and foreclosure history along with an explanation of the circumstances that led to such actions.

3. Describe your firms including number of staff employed in the following capacities: supervisory, clerical, maintenance, and social services.

4. Give the distance in miles from your home office or branch office to the project.

5. Describe the accounting system, rent-up procedure, rent-collection policy, and preventive maintenance program you intend to use in the proposed project.

6. Describe your relationship with the owner and your knowledge of the intended degree of owner involvement in operating the project.

7. Describe the frequency and type of direct supervision to be given the resident manager.

8. Give a description of your financial stability and financial resources.

9. Describe applicable FmHA accounting requirements for your particular type of project. If you have managed this type of project before, cite those projects as a showing of your knowledge of such requirements. If you have not managed such projects, indicate your understanding of what needs to be done to fulfill such requirements.

10. Please also describe:

a. Your plans for handling tenant grievances and appeals, providing tenant counseling, and using outside social service agencies.

b. The extent of your knowledge of FmHA requirements for tenant eligibility, tenant certifications and recertifications.

c. Your plans, if any, to train your personnel in the management of FmHA multifamily housing.

11. Provide evidence of fidelity bonding capacity.

12. Include the following statement: "I hereby certify that there is no close association between the management Agent and the Owner of the above described project in such manner that creates a possible conflict of interest." If such an association exists (e.g. the management agent is a member, stockholder, partner, principal, etc., of the borrower organization) explain in detail.

Exhibit B–5—Questionnaire For Owners of FmHA Multiple Family Housing Projects

Please provide a written signed statement for FmHA responding in the same order to the items that follow. Please be brief and concise in your answers and indicate if a certain item is not applicable in your case. Your statement will be used by FmHA to evaluate your capacity to operate successfully the project. For projects owned by a partnership, the following information should be provided for the partnership entity as well as each general partner.

1. Provide name of Owner, address, and the name and location of project. State the number of units in the proposal.

2. Provide information on your previous projects, regardless of the source of financing, including mortgage relief and foreclosure history along with an explanation of the circumstances that led to such actions.

3. List names and addresses of management agents who manage your previously or presently owned projects.

4. Describe your understanding of the responsiblities connected with owning and managing a multifamily project under FmHA.

5. Outline your experience and capabilites in providing housing for low- and moderate-income tenants.

6. Describe your intended tenure of ownership and the extent of personal involvement in operating and managing this project.

7. Describe your intentions and capacity to meet negative cash flow situations.

8. Describe your plans for the management of the proposed project. If you intend to manage the project, describe your management capacity by answering the "Questionnaire for Management Agent of FmHA Multiple Family Housing Projects," Exhibit B–4 of this Subpart.

BILLING CODE 3410-07-M

MONTHLY REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
PROJECT WORK-SHEET FOR INTEREST CREDIT AND RENTAL ASSIS-TANCE (Form FmHA 444-29)	By the 10th of each month	Borrower	All Borrowers-Individuals and Organiza-tions.	copy kept by borrower, original to the FmHA district office	Instructions for preparation continued in the FMI for Form FmHA 444-29
MONTHLY REPORT (Form FmHA 1930-6)	Submit to FmHA District Director by the 10th of each month; due in State Office before 15th	Borrower	All Borrowers	Copy kept by borrower. Original & copy to FmHA District Office; District Director to forward a copy to State Office	Reports will continue until notice for discon-tinuance is received from FmHA District Director. Instruc-tions for preparation are in the FMI for Form FmHA 1930-6

ANNUAL REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
VERIFICATION OF ACCOUNT (in lieu of Audit Report) according to this Subpart	Within 45 days following close of borrower's fiscal year	Competent individual, independent of the borrower, or by a commit-tee of the membership not including any officer, director or employee of borrower	Borrowers with 24 or less units	Original and two copies to FmHA District Office; two copies to State Office. State Office to send one copy to National Office. Copy kept by borrower.	
STATEMENT OF BUDGET, INCOME & EXPENSE (Form FmHA 1930-7)	Within 45 days following close of borrower's fiscal year	Borrower	All Borrowers-	Original and two copies to FmHA District Office, two copies to State Office. State Office sends one copy to National Office. Copy kept by borrower	Instructions for preparation are in the FMI for Form FmHA 1930-7
HOUSING ALLOW-ANCE FOR UTILI-TIES & OTHER PUBLIC SERVICES Exhibit A-5 to FmHA Instruction 1944-E	Submitted with Form FmHA 1930-7 "Statement of Budget, Income & Expense	Borrower	Plan II and Rental Assistance Borrowers where tenant pays any utilities	Original and two copies to FmHA District Office with backup data; District Office returns origi-nal to Borrower after State Office approval.	Instruction for preparation in FmHA Instruction 1944-E

ANNUAL REPORTS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	REFERENCES AND NOTES
YEAR END REPORT AND ANALYSIS (Form FmHA 1930-8)	Within 45 days following close of borrower's fiscal year	Borrower	All Borrowers-Individuals & Organizations	Copy kept by borrower. Original and two copies to FmHA District Office. District Office to send original and two copies to State Office. State Office to send National Office one copy and return original to District Office.	Instructions for preparation in the FMI for Form FmHA 1930-8
MINUTES OF ANNUAL MEETING	Within 45 days following close of borrower's fiscal year	Borrower	All Organizational Borrowers with governing bodies, and all corporations	Two copies to FmHA District Office; one to be sent by District Office to State Office.	
AUDIT REPORT	Within 45 days following close of borrower's fiscal year	Borrower's CPA or LPA in accordance with booklet "Instructions to Independent Certified Public Accountants & Licensed Public Accountants Performing Audits of FmHA Borrowers & Grantees"	Borrowers with 25 or more units in one or more projects, or as required by State Director of FmHA	Original and two copies to FmHA District Office; two copies to State Office. State Office to send National Office a copy. Copy kept by Borrower.	

MISCELLANEOUS REPORTS OR SUBMITTALS

REPORT OR ITEM REQUIRED	DUE DATE	PREPARED BY	REPORT OR ITEM APPLICABLE TO	DISTRIBUTION	EXAMPLES AND NOTES
REQUEST FOR RENTAL ASSISTANCE (Form FmHA 444-25)	When rental assistance is requested	Borrower	Multiple Family Housing Borrowers and Applicants with tenants paying rent in excess of 25% of their adjusted income	Original and copy to District Office; submit to State Office for approval after District Office review	Refer to Exhibit C to Subpart E, Part 1944 for material to be included with request
COMPLIANCE REVIEWS Review conducted ducted within the 1st reporting year after the loan is closed or after Form FmHA 400-4, "Assurance Agreement,: is signed	November 1st to October 31st of each year	FmHA District Director	All Multiple Family Housing Borrowers	Original to State Office; copy retained in District Office	
a) Initial reviews Form FmHA 400-8, "Compliance Review."	To be completed only after all units are occupied				
b) Subsequent Reviews Form FmHA 400-8	Minimum of every 3 years				

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Exhibit B–9—Project Name, Project Address

Employment Inquiring

Date ———————
Employee ———————
Address ———————
(incl. zip code) ———————

Gentlemen: The person named above is a tenant/applicant for a dwelling unit and subsidy assistance in this housing project. One of the requirements of the Federal law that provides the assistance is that family incomes must be within the limits set by the Government agency. The information requested below is for the purpose of determining eligibility and will be kept in *STRICT CONFIDENCE.* Thank you for your cooperation and return of the form in the enclosed self-addressed envelope.

Please complete that portion below which is applicable.

Very truly yours,

———————

Project Manager

Presently Employed:

1. Date employment began ———.
2. Occupation ———.
3. Present rate of pay $——— per (Check one: hour-day-week).
4. If present rate of pay has been in effect less than 12 months, give previous rate of pay $———.
5. Average regular (a) hrs. worked per day ——, (b) days worked per wk. ——.
6. Average overtime (a) hrs. worked per day ——, (b) rate per overtime hr. ——.
7. Other estimated income (tips-meals), if any $——— per (day-week).

Previously Employed:

1. (Period) From ——— To ———.
2. Rate of pay at termination $——— per ———.

Remarks:

———————

———————

Date: ———————
Signature: ———————
Telephone No.: ———————
Title: ———————

(To Be Reproduced Locally)

Exhibit B–10—Objective Guides To Assist Management in Determining the Ability of Tenants To Sustain Relative Independence

In providing housing for senior citizens and handicapped persons, especially when that housing is provided in the form of congregate housing or housing involving group living arrangements, there is a critical dimension of occupancy that must be considered by the project management when selecting, placing, certifying and recertifying tenants. This dimension concerns the ability of tenants with functional impairments to sustain relative independence given the supportive services provided in the project.

No matter how well meaning management might be in trying to provide housing or those tenants that have become ill or acutely impaired, rural rental housing apartment projects are designed for occupancy by tenants who are capable of caring for themselves. In a similar sense, congregate housing is designed for occupancy by those who are fully capable of living totally independent lives as well as those who are able to sustain relative independence given the non-shelter supportive services provided in the project. When management provides additional types of non-shelter support services to counteract the progressive functional impairments that prohibit tenants from being able to function on a semi-independent basis, it only makes those tenants more *dependent* on project management. Over time, this increased dependency has the effect of creating an "institution," and it runs contrary to the congregate housing objective of enabling tenants that are functionally impaired (but not ill) to sustain relatively independent lives.

Physicians, or state or local agencies responsible for providing non-shelter supportive services to the tenants, can assist project managers by providing certificates or statements concerning the degree of a tenant's functional impairment. This information can be used by project management to assess the tenant's ability to remain independent with an assist from the services provided in the project.

In addition, there are several other more technical and scientifically developed scales of competence that can be used by *the project management* to assess a tenant's capacity for personal care, capacity for continued living in the housing project, or competence in the activities of daily living. The Physical Self Maintenance Scale (Exhibit B–10A) may be used by project management to measure a person's capacity for personal care. The Instrumental Activities of Daily Living Scale (Exhibit B–10B) may be used by project management to measure a person's capacity for continual living in the "community" of the housing project and the Index of Independence in Activities of Daily Living Scale (Exhibit B–10C) may be used by project management to measure the relationship of functional capacity to the accomplishment of daily activities. These scales should be used by project management only when absolutely necessary.

It is extremely important that project management understand that these scales are tools available for *use by the management* and *not for the use of or completion by tenants or prospective tenants.* Project managers may gather the information necessary to complete any one of these scales of competence through a variety of methods, including tactful interviews or conversations with the tenants, friends or relatives, or by any other appropriate means. Under no circumstances, however, is it appropriate to give the scale to a tenant or prospective tenant to complete, or to read it to a tenant or prospective tenant as a questionnaire would be. Assessments must be made by project managers in such a way that tenants and prospective tenants are not made to feel humiliated, degraded or embarrassed in the process.

Exhibit B–10A—Physical Self-Maintenance Scale (PSMS)

Name ———————
Rated by ———————
Date ———————

A. *Toilet*

1. Cares for self at toilet completely, no incontinence.
2. Needs to be reminded or needs help in cleaning self, or has rare (weekly at most) accidents.
3. Soiling or wetting while asleep more than once a week.
4. Soiling or wetting while awake more than once a week.
5. No control of bowels or bladder.

B. *Feeding*

1. Eats without assistance.
2. Eats with minor assistance at meal times and/or with special preparation of food, or help in cleaning up after meals.
3. Feeds self with moderate assistance and is untidy.
4. Requires extensive assistance for all meals.
5. Does not feed self at all and resists efforts of others to feed.

C. *Dressing*

1. Dresses, undresses and selects clothes from own wardrobe.
2. Dresses and undresses self, with minor assistance.
3. Needs moderate assistance in dressing or selection of clothes.
4. Needs major assistance in dressing, but cooperates with efforts of others to help.

5. Completely unable to dress self and resists efforts of others to help.

D. *Grooming* (neatness, hair, nails, hands, face, clothing)

1. Always neatly dressed, well-groomed, without assistance.

2. Grooms self adequately with occasional minor assistance, e.g. shaving.

3. Needs moderate and regular assistance or supervision in grooming.

4. Needs total grooming care, but can remain well-groomed after help from others.

5. Actively negates all efforts of others to maintain grooming.

E. *Physical Ambulation*

1. Goes about grounds or city.

2. Ambulates within residence or about one block distant.

3. Ambulates with assistance of (check one)

a. Another person ———

b. Railing ———

c. Cane ———

d. Walker ———

e. Wheelchair ———

1. ——— gets in and out without help.

2. ——— needs help in getting in and out.

4. Sits unsupported in chair or wheelchair, but cannot propel self without help.

5. Bedridden more than half the time.

F. *Bathing*

1. Bathes self (tub, shower, sponge bath) without help.

2. Bathes self with help in getting in and out of tub.

3. Washes face and hands only, but cannot bathe rest of body.

4. Does not wash self but is cooperative with those who bathe.

5. Does not try to wash self, and resists efforts to keep clean.

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Exhibit B–10B—Instrumental Activities of Daily Living Scale (IADL)

Name ———

Rated by ———

Date ———

A. *Ability to Use Telephone*

1. Operates telephone on own initiative—looks up and dials numbers, etc.

2. Dials a few well-known numbers.

3. Answers telephone but does not dial.

4. Does not use telephone at all.

B. *Shopping*

1. Takes care of all shopping needs independently.

2. Shops independently for small purchases.

3. Needs to be accompanied on any shopping trip.

4. Completely unable to shop.

C. *Food Preparation*

1. Plans, prepares and serves adequate meals independently.

2. Prepares adequate meals if supplied with ingredients.

3. Heats and serves prepared meals, or prepares meals but does not maintain adequate diet.

4. Needs to have meals prepared and served.

D. *Housekeeing*

1. Maintains house alone or with occassional assistance (e.g. "heavy work-domestic help").

2. Performs light daily tasks such as dish-washing, bed-making.

3. Performs light daily tasks but cannot maintain acceptable level of cleanliness.

4. Needs help with all home maintenance tasks.

5. Does not participate in any housekeeping tasks.

E. *Laundry*

1. Does personal laundry completely.

2. Launders small items—rinses socks, stockings, etc.

3. All laundry must be done by others.

F. *Mode of Transportation*

1. Travels independently on public transportation or drives own car.

2. Arranges own travel via taxi, but does not otherwise use public transportation.

3. Travels on public transportation when assisted or accompanied by another.

4. Travel limited to taxi or automobile with assistance of another.

5. Does not travel at all.

G. *Responsibility for Own Medication*

1. Is responsible for taking medication in correct dosages at correct time.

2. Takes responsibility if medication is prepared in advance in separate dosages.

3. Is not capable of dispensing own medication.

H. *Ability to Handle Finances*

1. Manages financial matters independently (budgets, writes checks, pays rent and bills, goes to the bank), collect and keep track of income.

2. Manages day-to-day purchases, but needs help with banking, major purchases, etc.

3. Incapable of handling money.

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Exhibit B-10C
Page 1

INDEX OF INDEPENDENCE IN ACTIVITIES OF DAILY LIVING SCALE (ADL)

Table 1. Evaluation Form

Name _____ Day of evaluation _____

For each area of functioning listed below, check description that applies. (The word "assistance" means supervision, direction, or personal assistance).

BATHING-either sponge bath, tub bath, or shower

☐	☐	☐
Receives no assistance (gets in and out of tub by self if tub is usual means of bathing)	Receives assistance in bathing only one part of the body (such as back or a leg)	Receives assistance in bathing more than one part of the body or not bathed

DRESSING-gets clothes from closets and drawers--including underclothes, outer garments and using fasteners (including braces if worn)

☐	☐	☐
Gets clothes and gets completly dressed without assistance	Gets clothes and gets dressed without assistance except for assistance in tying shoes	Receives assistance in getting clothes or in getting dressed or stays partly or completely undressed

TOILETING- going to the "toilet room" for bowel and urine elimination; cleaning after elimination and arranging clothes

☐	☐	☐
Goes to "toilet room," cleans self and arranges clothes without assistance (may use object for support such as cane, walker, or wheelchair and may manage night bedpan or commode emptying same in morning)	Receives assistance in going to "toilet room" or in cleaning self or in arranging clothes after elimination or in use of night bedban or commode	Doesn't go to room termed "toilet" for the elimination process

Exhibit B-10C
Page 2

TRANSFER-

☐	☐	☐
Moves in and out of bed as well as in and out of chair without assistance (may be using object for support such as cane or walker)	Moves in and out of bed or chair with assistance	Doesn't get out of bed

CONTINENCE-

☐	☐	☐
Controls urination and bowel movement completely by self	Has occasional "accidents"	Supervision helps keep urine or bowel control: catheter is used, or is incontinent

FEEDING-

☐	☐	☐
Feeds self without assistance	Feeds self except for getting assistance in cutting or buttering bread	Receives assistance in feeding or is fed partly or completely by using tubes or intravenous fluids

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Table 2. Index of Independence in Activities of Daily Living

The Index of Independence in Activities of Daily Living is based on an evaluation of the functional independence or dependence of persons in bathing, dressing, going to toilet, transferring, continence, and feeding. Specific definitions of functional independence and dependence appear below the index.

A—Independent in feeding, continence, transferring, going to toilet, dressing and bathing.

B—Independent in all but one of these functions.

C—Independent in all but bathing and one additional function.

D—Independent in all but bathing, dressing, and one additional function.

E—Independent in all but bathing, dressing, going to toilet, and one additional function.

F—Independent in all but bathing, dressing, going to toilet, transferring and one additional function.

G—Dependent in all six functions.

Other—Dependent in at least two functions, but not classified as C, D, E or F.

Independence means without supervision, direction, or active personal assistance, except as specifically noted below. This is based on actual status and not on ability. A person who refuses to perform a function is considered as not performing the function, even though the person is deemed able.

Bathing (Sponge, Shower or Tub)

Independent: assistance only in bathing a single part (as back or disabled extremity) or bathes self completely

Dependent: assistance in bathing more than one part of body; assistance in getting in or out of tub or does not bathe self

Transfer

Independent: moves in and out of bed independently and moves in and out of chair independently (may or may not be using mechanical supports)

Dependent: assistance in moving in or out of bed and/or chair; does not perform one or more transfers

Dressing

Independent: gets clothes from closets and drawers; puts on clothes, outer garments, braces; manages fasteners; act of tying shoes is excluded

Dependent: does not dress self or remains partly undressed

Going to Toilet

Independent: gets to toilet; gets on and off toilet; arranges clothes; cleans organs of excretion; (may manage own bedpan used at night only and may or may not be using mechanical supports)

Dependent: uses bedpan or commode or receives assistance in getting to and using toilet

Continence

Independent: urination and defecation entirely self controlled

Dependent: partial or total incontinence in urination or defecation; partial or total control by enemas, catheters, or regulated use of urinals and/or bedpans

Feeding

Independent: gets food from plate or its equivalent into mouth; (precutting of meat and preparation of food, such as buttering bread, are excluded from evaluation)

Dependent: assistance in act of feeding (see above); does not eat at all or parenteral feeding

The Index of ADL

The Index of ADL summarizes overall performance in six functions namely, bathing, dressing, going to toilet, transferring, continence and feeding. According to the Index, performance is summarized as grades A, B, C, D, E, F, or G, where A is the most independent grade relative to the scale and G the most dependent grade.

By means of a series of questions and observations, the observer forms a mental picture of the person's ADL status as it existed during a 2-week period preceding the evaluation. The observer determines whether another person assisted the person evaluated or whether the person being evaluated functioned alone, defining assistance and active personal assistance, directive assistance, or supervision. The actual existence of such assistance is considered in the evaluation, not the potential or ability of the person being evaluated. Thus, for example, overprotective assistance is defined as assistance although the observer considers the person as more able; and refusal to perform a function is considered nonfunctioning although the person is deemed able. The observer uses the following definitions in completing the form reproduced in Table 1 and records, for each function, the most dependent degree of performance during the 2-week period.

Bathing is the overall complex behavior of getting water and cleansing the whole body. A person receives "no assistance" (first of the three classes of bathing in Table 1) if no other person is involved in any part of the process of taking a sponge, shower, or tub bath to wash the whole body. Such a person goes to the sink unaided if the person sponge-bathes at the sink, gets in and out of a tub unaided if the person tub-bathes, and is not supervised in the shower if showering is the means of bathing. A person receives "assistance in bathing only one part of the body" if the person functions as defined above, except that the person is assisted in washing only one part of the body, such as the back alone or one leg alone. The class "assistance in bathing more than one part of the body" includes the individual who is assisted in washing more than one part of the body or who does not bathe. This last, most dependent category, includes also the following: the person to whom water is brought even though the person may wash independently; the person who is helped in or out of a tub as regularly as once a week; the person who is regularly supervised for reasons of safety although the person may wash independently; and the person who cannot reach the feet to wash them.

Dressing is the overall complex behavior of getting clothes from closets and drawers and then getting dressed. A person gets "completely dressed without assistance" (first of the three classes of dressing in Table 1) if no other person is involved in getting clothes from closets and drawers or in putting on the clothes, including brace, if worn, and including outer garments and footwear. Fasteners must also be managed without assistance. Footwear includes such items as socks and slippers or shoes. The intermediate category of dressing includes those who get their own clothes and dress independently as defined above "except for assistance in tying shoes." A person is placed in the third and most dependent category if the person receives "assistance in getting clothes or in getting dressed" or remains "partly or completely undressed."

Going to toilet is the act of going to the room termed the "toilet room" for bowel and bladder function, transferring on and off the toilet, cleaning after elimination, and arranging clothes. The person who functions wholly unaided, including getting to the room, is classed as functioning "without assistance" (first of the three classes in Table 1). It should be noted that an individual in this class may or may not be using an object for support such as a cane, walker, or wheelchair; and may be using a bedpan or commode at night, in which case the individual must empty it in order to be considered in the "without assistance" category. If another person assists in any part of the function, the toileting status is recorded as "receives assistance" (intermediate toileting category in Table 1). Toileting status is also recorded as "receives assistance" for an individual who uses the toilet room at certain times and at other times

uses a daytime bedpan or commode. If a person is occasionally incontinent, but manages completely independently insofar as toileting is concerned, toileting function is recorded as "without assistance."

Transfer is the process of moving in and out of bed and in and out of a chair. If no other person is involved in the transfer, the person being evaluated is considered to function "without assistance" (first of three classes of transfer in Table 1). Such a person may be using an object for support, e.g., cane, walker, or bedpost. The intermediate category, namely, "with assistance," applies if another person is involved in the process. For persons in the third category and bedridden who do not leave the bed at all, when evaluating transfer status, the observer may be told that the person is not allowed to transfer unless supervised for reasons of safety. The observer then determines whether such supervision is a reality. The observer may occasionally find, for example, that a daughter claims she supervises her mother whenever the mother moves from one place to another, when observation reveals that the mother moves about entirely on her own and the daughter means that she is always within hearing distance.

Continence refers to the physiological process of elimination from bladder and bowel where incontinence is the involuntary loss of urine and/or feces. The function is thought of as the primitive function of control and does not include any consideration of hygiene, toileting, or constipation. The person is classed as "controls urination and bowel movement completely by self" (first of three continence categories in Table 1) if no other person assists. Such a person can exert some degree of control on the process independently by medication or by self-administered enema (or, in the case of a person with a colostomy, may manage this independently). The case in which a slight amount of wetness or slight soiling of underclothes is occasionally noted by others and not perceived as incontinence by the person is recorded as "controls urination and bowel movement." The person who does not get to the bathroom or commode on time or who is incontinent at least once during the 2-week period of the evaluation is considered as "has occasional accidents," the intermediate category. Persons in the third category are incontinent or controlled by the supervision, direction or intervention of another person. Presence of a catheter or planned, supervised scheduling for bowel control are included in the incontinent category.

Feeding concerns the process of getting food from a plate or its equivalent into the mouth. It is considered in a primitive sense and without concern for social niceties. A person feeds independently "without assistance" (first of three classes of feeding in Table 1) when this primitive process of ingestion is accomplished without the aid of another person. The intermediate category applies to the individual who feeds independently but receives assistance in cutting meat or buttering bread. The third category, "receives assistance," applies to the individual who is assisted in this feeding process or who is fed partly or completely parenterally.

The form in Table 1 includes all the terms needed in the evaluation. Extensive guides are not needed, although the definitions presented above may be required initially to instruct the observer or in unusual individual patient circumstances. In the interest of maximum accuracy and reliability, the observer may create test situations. The observer may, for example, ask the person to show the bathroom and medications in another room (or a meaningful substitute object). This serves as an opportunity for direct observation of transfer and locomotion and checks on the reliability of information given about bathing, dressing, going to the toilet, and transferring.

Data recorded on the form are converted into an Index ADL grade with the aid of the definitions presented in Table 2. Note from Table 2 that two descriptions would permit one to distinguish between "Independent" and "Dependent" levels for grading purposes; yet three descriptions are presented for the observer to consider on the recording form. Introduction of an intermediate description increases observer awareness of subtle distinctions and, thereby, increases reliability. The intermediate description is classified as dependent for certain functions and independent for others. For grading purposes, the intermediate description of bathing and dressing for example, is classed as dependent. The occasional individual classified as Other (usually less than 5% of the persons) according to the Index, does not have to be eliminated from all studies. By definitions, a person so classed is more dependent than one classed as A or B, and more independent than one classed as G. Individuals classed as Other can, therefore, always be compared relative to those classed as A, B or G.

Experience has also shown that the unique profile of a person classed as Other tends to persist and thus permits a precise determination of improvement or deterioration when changes occur. For example, a person who is classified as Other because he is incontinent and dependent in dressing clearly deteriorates when the person develops bathing dependence in addition to incontinence and dressing dependence (grade of D).

Environmental artifacts that tend to influence ADL levels are occasionally encountered. For safety reasons, some hospitals require nurses to supervise patients who shower or get into tubs. During the first few days in the hospital, patients are sometimes kept in bed until the staff can assess their behavior and the degree of dependence permissible. In some nursing homes, patients are kept in bed and not permitted to dress. For safety and convenience, water for bathing and clothes for dressing are sometimes brought to patients. All these special conditions can result in ADL ratings that are lower than they might be in the absence of such restrictions. A test of actual functional level is possible and is indicated for certain studies.

Exhibit C—Rent Increases

I. *Objectives:* The basic objective of this Exhibit is to provide a method of processing requests for increases in the monthly rental rates for tenants in Farmers Home Administration (FmHA) Rural Rental Housing (RRH) and Labor Housing (LH) projects. This Exhibit covers all RRH and LH loans including those approved before the date of this Subpart.

II. *Initial understanding with borrower:* All RRH and LH applicants will be informed at the time of application that rental rates in projects financed in whole or in part by an RRH or LH loan cannot be raised without FmHA consent in accordance with requirements in loan agreements, loan resolutions, and other instruments executed in connection with RRH and LH loans. LH borrowers and/or grant recipients whose projects are occupied on a seasonal basis should not request rent increases when the project is less than 40 percent occupied in order that a greater number of tenants will have an opportunity to make comments. Borrowers should be encouraged to have the effective date of needed rent increases coincide with the start of their fiscal year or with the start of the season in the case of LH projects occupied on a seasonal basis. Rental increase requests, therefore, normally should be made at least 60 days prior to the end of the season in the case of LH

projects occupied on a seasonal basis. It is anticipated that rent increases would not be necessary more than once a year. All borrowers should be encouraged to participate in the Rental Assistance Program. However, borrowers with the projects meeting the eligibility requirements of paragraph II D of Exhibit C Part 1944 Subpart E will be *required* to participate in the Rental Assistance program if it appears that a rent increase will cause any low-income tenant to pay in excess of 25 percent of adjusted monthly income for costs of rent and utilities. All borrowers will be advised that all proposed rent increases are subject to compliance with this Exhibit. This Exhibit will also apply to rent increase resulting from HUD's Automatic Adjustment Factors for units receiving Section 8 assistance. An Energy Audit will be required before an initial rent increase can be approved and where an energy audit has not yet been provided.

III. *Borrower's responsibility in processing requests:*

A. When an RRH or LH borrower determines that a rental increase is needed, the borrower should provide FmHA with the followng information:

1. An application for Rental Assistance of Form FmHA 444–25, "Request For Rental Assistance," if the borrower's project is an eligible project and the proposed rent increase will cause any low-income tenant to pay in excess of 25 percent of adjusted monthly income for the costs of rent and utilities.

2. Facts demonstrating the need and justification for a rent increase.

3. Current year's operating budget showing actual income and expenses for the project to date and estimating the income and expenses for the remainder of the year or to the end of the season in the case in LH projects occupied on a seasonal basis.

4. A new operating budget based on the old rates covering the period to the effective date of the proposed rent increase and then using the new rates to the end of the operating year selected by the borrower, if applicable.

5. A budget for the next full year of operation using the proposed rents for each size unit.

6. Current tenant Certifications of Form FmHA 444–8 or other form approved by FmHA.

7. A dated copy of the Notice requied by paragraph II B of this Exhibit.

8. An energy audit for the project conducted in accordance with the procedures established by the Department of Energy (DOE) Resource Conservation Service (RCS) or other energy audit which meets the requirements of 10 CFR 456 is acceptable. This audit will determine what improvements could be made to conserve energy in the project, how much energy would be saved and what the estimated costs of the improvements would be.

9. Any other information the borrower believes necessary to justify the proposed rent increase.

B. The borrower will notify tenants of any proposed rent increase unless an exception is permitted in accordance with paragraph III C of this Exhibit. Tenants must be notified by the following methods on the same date the application for the proposed rent increase is submitted to FmHA:

1. Post prominently in common areas around the project (laundry rooms, parking areas, recreation rooms, etc.) a Notice to Tenants of Proposed Rent Increase (hereinafter referred to as Notice) in the format of Exhibit C—1. In addition to plain English, all notifications will be published in the other primary languages of the tenants, and will:

(a) Advise the tenants that during a 30-day waiting period in which the Notice will be posted, they have an opportunity to inspect, copy, and make written comments or objections to all materials justifying the proposed rental increase which will be made available to them.

(b) Advise the tenants that all written comments or objections should be submitted directly to the FmHA District Director by the end of the 30 day waiting period.

2. Give or mail copies of the Notice to all tenants.

3. After the 30 day waiting period has ended, submit any other information to be considered to the District Director.

C. Notification to the tenant of proposed rent increase will not be required in the following instances:

1. When the borrower is receiving either FmHA rental assistance or HUD Section 8 on all units, and all tenants are eligible tenants participating in the rent subsidy program.

2. When an increase in the utility allowance only is proposed on Exhibit A–5 and the utilities are paid directly by the tenants.

3. This does not preculde posting of the FmHA Letter of Approval as provided for in paragraph IV B 2 of this Exhibit.

IV *Determininationby FmHA:*

A. *Actions by District Director.* When the application and all attachments for the proposed rent increase have been submitted (including the tenant comments when notification is required), the District Director will:

1. Review the application, past year's budgets, planned budgets, schedule for proposed rents, and other information submitted.

2. Write a short narrative describing the general tone of the tenant comments and complaints.

3. Provide copy of the borrower's latest Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

4. Determine whether the borrower's project is eligible to receive Rental Assistance on behalf of the low-income tenants of the project and whether or not rental assistance is available for the borrower's project.

5. The District Director shall consider the amount of proposed rent increase attributable to increased energy costs and compare that to the amount of monthly payment necessary to amortize a subsequent loan for energy improvements which yield utility cost savings equivalent to the proposed rent increase attributable to utility costs. Where the amortized loan payment is equal to or less than the cost of energy which would be saved the District Director shall recommend that the rent increase be approved only if the cost effective energy conservation measures are taken.

6. Recommend whether the proposed increase should be approved, and if the borrower's project is eligible for Rental Assistance, whether the borrower should be required to participate in the Rental Assistance program.

7. Submit all the material, including tenant comments or objections to the State Director within 10 days after receipt from the borrower.

B. *Actions by the State Director.* When the application and attachments with comments have been submitted, the State Director will review the material to make a determination on the rent increase.

1. *Disapproval Actions.* When the State Director determines an application for a proposed rent increase is not justified on the basis of the information submitted, the State Director will directly, or through the District Director, notify the borrower in writing stating the reason(s) why the rent increase is not authorized. Rent increases may not be authorized if any of the following circumstances exist:

(a) The borrower is able but unwilling to comply with applicable tenant eligibility requirements, the audit and reporting requirements of this Subpart or the conditions set forth in the borrower's loan agreement or resolution, interest credit and/or rental assistance agreement, form of note, or mortgage.

(b) The budget for the project reflects sufficient income at the present rent structure to meet operation and maintenance expenses which are appropriate and reasonable in amount, meet the FmHA debt service requirements, meet the required reserve account deposit, and provide a return to the borrower, if appropriate.

(c) The borrower's project is operated on a profit basis as defined in § 1944.205(s) of Subpart E to Part 1944 and the proposed rent increase is for purposes other than meeting operation and maintenance expenses and debt service; i.e., the purpose is profit margin motivated, and the proposed rent increase will result in rental rates in excess of what eligible tenants can afford. FmHA may approve the rent increase and enable the borrower to make a profit if the borrower is willing to operate on a limited profit basis as defined in § 1944.205 (r) of Subpart E to Part 1944. By operating on a limited profit basis, the borrower will be able to participate in the rental assistance program. All borrowers operating on a profit basis should be encouraged to convert to a limit profit basis.

d. The borrower's project is operated on either a nonprofit basis or limited profit basis as defined in § 1944.205 (r) of Subpart E to Part 1944, the borrower is not willing to participate in the rental assistance program, one or more low-income tenants of the project are eligible to receive rental assistance, and the State Director is able to provide the rental assistance units to the project.

2. *Approval Actions.* When a rent increase is approved,the State Director will notify the borrower by a Letter of Approval of the amount of rent increase approved. The letter must:

(a) Show the current rate(s), the rate(s) requested, and the rate(s) approved.

(b) Contain concise statements of FmHA's reasons for approval of the rent increase.

(c) Indicate that it does not authorize the borrower to violate the terms of any leases with the tenants.

(d) For those projects where there is rental assistance and/or HUD section 8 assistance, explian that for those receiving subsidy assistance, their costs for rent and utilities will continue to be based on 25 percent of their adjusted montly income.

(e) If rental assistance units are not available, approve the rent increase subject to the borrower's acceptance of the units when they become available. Acknowledge that the borrower has applied for rental assistance on behalf of other tenants who are eligible for rental assistance.

(f) Require that the borrower must notify the tenants individually at least 30 days before any approved increase is put into effect.

(g) For profit motivated borrowers which do not desire to convert to limited profit and apply for rental assistance, and where rental assistance units are not available, suggest that the borrower advise tenants of the availability of Section 8 assistance for low-income tenants and that they may apply to the local HUD office or State or local Public Housing Agency for certification of eligibility.

(h) Grant the rent increase conditioned on the requirement that the borrower plan for energy conservation measures as determined necessary by the energy audit. Allow a sufficient time frame for completion of the work and offer FmHA assistance, if necessary, to finance the improvements needed.

(i) Advise the borrower and the tenants of either party's right to file an appeal regarding the rent increases as approved within 45 days of the date of the notice by writing to the Administrator, Farmers Home Administration, Washington, D.C. 20250. Until the appeal is resolved, the tenants are required to pay the increased amount of rent as indicated in the Notice of Approval.

(j) Require that the borrower post the Letter of Approval in a conspicuous place for the information of the tenants.

3. *Automatic Adjustment Factors for Section 8 Units.* If the State Director disapproves a rental rate increase requested as a result of HUD's automatic adjustment increase for units receiving Section 8 assistance or approves a rent increase for a lesser amount than the increase permitted by HUD, the State Director must require the borrower to deposit any excess funds into the Reserve Account. If this results in a buildup of excess funds in the Reserve Account, the interest reduction on a Section 8/515 project should be further reduced or canceled.

4. *Return on Investment.* Limited profit borrowers can take their 8 percent return if the project produces adequate income to cover all expenditures in accordance with the actual "Statement of Budget Income and Expense." If income is not adequate in any given accounting year to cover the return to owner, the return can be recouped in future years, provided it does not result in a rent increase.

V. Special Problem Cases: Problem cases which cannot be handled under this Subpart should be submitted to the National Office for review with the State Director's recommended plan of action.

Exhibit C–1—Notice to Tenants of Proposed Rent Increase

_____

Date Posted

This will advise you that the

_____

has filed with the Farmers Home Administration (FmHA), United States Department of Agriculture, a request to approve an increase in the monthly rental rates of the

_____

project for the following reasons:

1.
2.
3.
4.

Planned rent increases are as follows:

Project name	Unit	Present rent		Proposed rent		Amount increase
		Basic	Market	Basic	Market	

(Use where applicable:

Since you receive rent subsidy, your rent will not be changed so long as your income remains unchanged.)

All materials justifying the proposed rent increases will be made available for the tenants to inspect and copy at

_____

during the hours of

_____

Tenants may submit comments or objections in writing to the District Director of the FmHA District Office for a 30 day period or until

_____

The FmHA District Director is

_____

and the District Office is located at

_____

These comments will be reviewed by the FmHA District Director and forwarded to the FmHA State Director and a decision will be made as to whether the rent increase should be granted.

Each tenant will be notified of the FmHA decision and at least 30 days before the effective date of any authorized rent increase.

By

_____

Borrower or Borrower's Representative

_____

This final rule has been reviewed in accordance with Subpart G of Part 1901

of this Chapter, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture 7 CFR 2.23)

(FCDA No. 10.405, Farm Labor Housing Loans and Grants); (FCDA No. 10.415, Rural Rental Housing Loans); (FCDA No. 10.427, Rural Rental Assistance Payments); (FCDA No. 10.411, Rural Housing Site Loans)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

Dated: October 2, 1980.

Alex P. Mercure,

Assistant Secretary for Rural Development, U.S. Department of Agriculture.

[FR Doc. 80-33342 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-07-M

7 CFR Parts 1822, 1933, and 1944 Rural Rental Housing; Revision—Redesignation of Loan Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends and redesignates its regulations concerning rural rental housing loans. The action is taken because of the general administrative restructuring of Agency regulations and restructuring of the Agency field staff. It is also taken to strengthen the Agency's mission of rural development and strengthen Agency efforts to assist distressed communities and rural areas which have significant populations of poor and disadvantaged persons. The action will clarify and update the regulations and will provide uniformity between the numbering of FmHA regulations and the Code of Federal Regulations.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Antonio O. Izquierdo, Loan Officer, Rural Rental Housing Loan Division, Room 5331, South Agriculture Building, 14th St. and Independence Avenue, SW, Washington, DC 20250, Telephone 202–447–7207. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Farmers Home Administration, Office of the Chief, Directives Management Branch, Room 6346, South Agriculture Building, 14th St. and Independence Ave., SW, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant".

This action is taken in reply to findings and recommendations of the USDA Office of the Inspector General which requires that certain changes be made to the rural rental housing regulations as soon as possible in order to better protect the integrity of the program and to provide verification of proper use of Federal funds to more effectively meet the needs of the primary beneficiaries of the program. This action also implements certain requirements established in the Housing and Community Development Amendments Act of 1979 and 1980, which were effective on the ratification of the Acts in December 1979 and October 1980, respectively. In addition, due to a reorganization of the Agency field staff, authorities must be made official to the individuals responsible for loan processing and review.

The FmHA programs and projects which are affected by this instruction are subject to state as local clearinghouse review in the manner delineated in FmHA Instruction 1901–H.

The Farmers Home Administration amends its regulations under Chapter XVIII, Title 7 in the Code of Federal Regulations by revising and redesignating the present Subpart D "Rural Rental Housing Loan Policies, Procedures, and Authorizations" of Part 1822, to a new Subpart E "Rural Rental Housing Loan Policies, Procedures, and Authorizations" under Part 1944. As a result of publication of the amendments in **Federal Register** Vol. 44, No. 23 Part V on Friday, November 30, 1979, for proposed rule the Agency received 44 comments from the general public, other Federal agencies and FmHA field offices. These comments addressed the specific changes or amendments indicated in the preamble to the proposed rule publication, but in addition, some of them addressed other sections of the proposed regulations. Based on the comments received certain other sections have been amended, deleted or revised. Therefore, the specific amendments contained in the regulations are as follows:

1. Section 1944.205(f) has been revised to include the bedroom to tenant occupancy ratios permitted and to require that a tenant be of legal age.

2. Section 1944.205(g) has been amended to better define the trade area of a community.

3. Section 1944.205(k) has been revised to clarify eligible legal, professional and technical services and to include costs incurred in relocating persons on a proposed project site to be acquired by a public body.

4. Section 1944.211(a)(5)(iii) has been added to allow the borrower's initial two percent operating capital to be returned after two years.

5. Section 1944.211(a)(8) and § 1944.211(a)(9)(i)(F) have been amended for clarification purposes.

6. Section 1944.212(k) has been amended to clarify legal, technical and professional services which can be paid from loan funds.

7. Section 1944.212(q) has been added to include the costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

8. Section 1944.213(a) has been revised to equate the amount of the State Directors approval authority with the amount of loan that can be approved on any one project at any one time without the prior written concurrence of the National Office.

9. Section 1944.213(a)(1) is amended to clarify the two percent borrower investment in the project.

10. Section 1944.213(b)(11) has been deleted.

11. Section 1944.213(b)(15) has been added to clarify that loan funds cannot be used to compensate an applicant for land in excess of the five percent initial contribution.

12. Section 1944.213(c) has been amended to clarify acceptable cost before closing and to comply with certain requirements of the National Environmental Policy Act.

13. Section 1944.215(a)(1) has been revised to accommodate solar and alternate methods of energy uses.

14. Section 1944.215(b) has been revised to make rent determinations more equitable in congregate housing units with those of regular rental units.

15. Section 1944.215(c) has been amended. Deferring of principal payments will no longer be permitted in loans using interim financing for the construction period.

16. Section 1944.215(d) has been amended to include the requirements of the Housing and Community Development Amendments of 1979 on repayment penalties.

17. Section 1944.215(i)(1) has been revised to require eligibility for occupancy to be determined based upon

the combined incomes of all adult occupants.

18. Section 1944.215(i)(2) has been added to clarify conditions under which the seemingly more temporary residents of the community may be considered eligible for occupancy.

19. Section 1944.215(i)(7) has been added to comply with the HUD Section 8/515 program requirements.

20. Section 1944.215(l)(1) has been revised to clarify that the borrower's initial investment in a project wil not include any cash equity contribution which, when added to the loan amount, is in excess of the security value of the project.

21. Section 1944.215(l)(2) has been revised to recognize the applicant's amount over and above the five percent intial contribution as part of the contribution.

22. Section 1944.215(u) has been added to include the requirements of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970.

23. Section 1944.231 has been revised to: (a) Specify that while primary responsibility for loan making and servicing is in the District Office, County Offices may accept preapplications and assist applicants as needed; (b) specify the actions to be taken by the District Director; (c) specify the information necessary for submission to the National Office when review at the National Office level is either desired or required; (d) specify the priority criteria and weighting system to be used in selecting preapplications for further processing; and (e) specify the conditions under which selected preapplications can be authorized for development into completed loan applications.

24. Section 1944.231(d)(3)(iii) has been revised to clarify the point system to be used in approving projects in accordance with comments received.

25. Section 1944.232(b) has been revised to establish the District Director's responsibilities in application processing and review. It is also revised to permit the use of any processing check-list that may be developed to assist in application development and review.

26. Section 1944.235(b)(1)(iii) has been revised to eliminate the requirement that banks limit their disbursements to no more than 60 percent of the work in place during the construction period.

27. Section 1944.235(b)(1)(vii) has been added to clarify under what conditions FmHA may close an RRH loan with debts outstanding.

28. Section 1944.235(h) has been added to include the requirements of a prerent-up conference.

29. Section 1944.236(b)(4) has been added to comply with certain requirements of the Housing and Community Development Amendments of 1979.

30. Section 1944.250 has been changed to comply with Section 514 of the Housing and Community Development Act of 1980, which prescribes prepayment requirements for loans approved prior to December 21, 1979.

31. Exhibit A, Section 5 under "Applying for a Loan" has been revised to clarify certain requirements.

32. Exhibit A, Section 5 under "Developing the Loan Docket" has been revised for clarification.

33. Exhibit A, Section 8 under "Developing the Loan Docket" has been revised to include requirements of the National Environmental Policy Act.

34. Exhibit A–5 has been deleted. The "Statement of Budget, Income and Expense" has been converted into Form FmHA 1930–7.

35. Exhibit A–6 has been revised to: (a) Permit the acceptance of a certificate of net worth in lieu of a financial statement from a limited partner in a limited partnership; (b) require proposed general partners, stockholders, members, or beneficiaries to collectively possess sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirements of applicant organizations not yet in legal existence at the time the preapplication is submitted; (c) require a certification of truth and accuracy on all financial statements; (d) clarify the information necessary to pass the test for other credit; (e) require a written, dated, and signed statement disclosing any identity of interest between the applicant and others to be used in connection with the construction of the project; (f) require the completion of Form FmHA 449–10, "Applicant's Environmental Impact Evaluation," and (g) request the social security number of the applicant and all associates.

36. Exhibit A–7 has been revised to: (a) Clarify the demand for the project which can help justify the size of the project and mix of units proposed; (b) require a copy of the proposed management agreement; (c) clarify the contents of an acceptable management plan; and (d) require a schedule of any separate charges for the use of non-shelter services to be provided in a congregate housing project.

37. Exhibit A–8, A–8A, A–8B, and A–8C have been deleted and transferred to FmHA Instruction 1930–C.

38. Exhibit B, III A has been revised to no longer accept Plan I as an acceptable interest credit plan.

39. Exhibit B, VII B has been changed to permit the changing of Interest Credit Plans at anytime during the year.

40. Exhibit C II A has been added to permit an amount in excess of the $400 allowed for extended health care in regards to the ?????

41. Exhibit C, paragraph V C 1 has been revised to be more definitive concerning the information necessary for National Office review of exception requests.

42. Exhibit C, paragraph VI has been revised to permit borrowers to select tenants for congregate housing projects in accordance with selection criteria specified in their FmHA approved management plans.

43. Exhibit C, Section VI A 3 has been deleted since it was repetitious of the preceding section.

44. Exhibit C, X A 1 c and X C 2 have been added to require energy audits before rent increases or rental assistance are approved.

45. Exhibit J through R (inclusive) have been deleted. These loan resolutions and loan agreements have been condensed into three new FmHA forms.

46. Numerous revisions have been made to place responsibility for loan making and servicing in the hands of District Directors rather than County Supervisors.

47. Numerous revisions have been made to eliminate any connotation of sexual bias.

48. Numerous editorial changes have been made.

Accordingly, Chapter XVIII has been amended as follows:

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

§ 1822.81—1822.98

(Subpart D—Rural Rental Housing Loan Policies, Procedures, and Authorizations) [Deleted]

1. Subpart D of Part 1822 is hereby deleted from the Code of Federal Regulations.

Subpart F—Rural Cooperative Housing Loans

§ 1822.231 [Amended]

2. In § 1822.231, line 8, change the reference from "Subpart D of this part" to "Part 1944 Subpart E".

§ 1822.232 [Amended]

3. In § 1822.232, paragraph (h), lines 1 and 2, change the reference from

"Subpart D of this part" to "Part 1944 Subpart E".

4. Section 1822.232, paragraph (i) is amended to read as follows:

§ 1822.232 Definitions.

* * * * *

(i) Definitions in § 1944.205 except those in paragraphs (h) through (l) of this section are applicable to this subpart.

* * * * *

§ 1822.233 [Amended]

5. In § 1822.233, paragraph (a)(1), line 5, change the reference from "§ 1822.82(c)" to "§ 1944.205(f)."

6. In § 1822.233, paragraph (a)(2), lines 2 and 3, change the reference from "§ 1822.83(a) (3), (4), (5), (6), (7), (8), and (10)" to "§ 1944.211(a) (3), (4), (5), (6), (7), and (8)."

§ 1822.234 [Amended]

7. In § 1822.234, line 2, change the reference from "§ 1822.84" to "§ 1944.212". In line 3 change the reference from paragraph (a)(8) of § 1822.84" to "applicable paragraphs of Part 1944 Subpart E." In lines 4 and 5, change the reference from "paragraph (h) of § 1822.84" to "§ 1944.212(k)".

§ 1822.235 [Amended]

8. In § 1822.235, lines 1 and 2, change the reference from "§ 1822.87, except paragraph (d)" to "§ 1944.215, except paragraph (d)."

§ 1822.237 [Amended]

9. In § 1822.237, line 1, change the reference from "Section 1822.89" to "§ 1944.222".

§ 1822.238 [Amended]

10. In § 1822.238, line 1, change the reference from "§ 1822.91" to "§ 1944.231".

§ 1822.239 [Amended]

11. In § 1822.239, line 2, change the reference from "§ 1822.92" to "§ 1944.232".

§ 1822.240 [Amended]

12. In § 1822.240, paragraph (b), line 2, change the reference from "§ 1822.93(b)" to "§ 1944.233(b)".

§ 1822.241 [Amended]

13. Section 1822.241 is amended to read as follows:

§ 1822.241 Loan Closings.

The provisions of § 1944.236 for loans to organizations are applicable.

SUBCHAPTER G—RURAL HOUSING SITE LOANS POLICIES, PROCEDURES, AND AUTHORIZATIONS

§ 1822.272 [Amended]

14. In § 1822.272, lines 1 and 2, change the reference from "paragraph (b)(2) of § 1822.93 Subpart D of this Part" to "§ 1944.233 (b) of Subpart E to this Part".

§ 1822.273 [Amended]

15. In § 1822.273, line 3 change the reference from "§ 1822.97" to "§ 1944.235".

§ 1822.277 [Amended]

16. In § 1822.277, line 8, change the reference from "§ 1822.97" to "§ 1944.239".

SUBCHAPTER H—PROGRAM REGULATIONS

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance Grants

§ 1933.404 [Amended]

17. In § 1933.404, paragraph (a)(4)(iii), lines 3, 4, 5, 6 and 7, change the reference from "Exhibit D and E of Subpart D of Part 1822 (Exhibits D and E of FmHA Instruction 444.5)" to "Exhibits E and F of Subpart E of Part 1944".

§ 1933.416 [Amended]

18. In § 1933.416, paragraph (b), lines 1, 2 and 3, change the reference from "paragraph (b)(2)(i) of § 1822.93 Subpart D of Part 1822 Subchapter B of this Chapter" to "§ 1944.233(b) (1) and (2) of Subpart E of Part 1944 Subchapter H of this Chapter".

PART 1944—HOUSING

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations.

§ 1944.182 [Amended]

19. In § 1944.182, lines 3, 4 and 5, change the reference from "Exhibit R of Subpart D of Part 1822 of this Chapter (Exhibits R of FmHA Instruction 444.5)" to "Exhibit C of Subpart E of Part 1944 of Subchapter H of this Chapter".

Subpart E—Rural Rental Housing Loan, Policies, Procedures, and Authorizations.

20. Subpart E of Part 1944 is added and reads as follows:

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.201 General.
1944.202 Objective.
1944.203–1944.204 [Reserved].
1944.205 Definitions.
1944.206–1944.210 [Reserved].
1944.211 Eligibility requirements.
1944.212 Loan purposes.
1944.213 Limitations.
1944.214 Rates and terms.
1944.215 Special conditions.
1944.216–1944.220 [Reserved].
1944.221 Security.
1944.222 Technical, legal and other services.
1944.223–1944.230 [Reserved].
1944.231 Processing preapplications.
1944.232 Preparation of completed loan docket.
1944.233 Loan approval.
1944.234 [Reserved].
1944.235 Actions Subsequent to loan approval.
1944.236 Loan closing.
1944.237 Subsequent RRH loans.
1944.238 Coding loans as to initial or subsequent.
1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.
1944.240 Exception authority.
1944.241–1944.249 [Reserved].
1944.250 Prepayment of RRH loans approved prior to December 21, 1979.
Exhibit A How to bring rental housing to your town.
Exhibit A–1 Legal services agreement.
Exhibit A–2 Survey of existing rental housing.
Exhibit A–3 Rental housing survey.
Exhibit A–4 Rental housing survey summary.
Exhibit A–5 Housing allowances for utilities and other public services.
Exhibit A–6 Information to be submitted with preapplication for rural rental housing (RRH) loan.
Exhibit A–7 Information to be submitted with Application for Federal Assistance (short form).
Exhibit B Interest Credits on Insured RRH and RCH loans.
Exhibit B–1 Example of Interest Credit determination for RRH or RCH projects (Plan II).
Exhibit C Rental Assisfance Program.
Exhibit D Guide letter for use in Informing Interim Lender of FmHA's Commitment.
Exhibit E Articles of Incorporation (Not for Profit).
Exhibit F Bylaws.
Exhibit G RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units).
Exhibit H RRH Loans and the HUD Section 8 Housing Assistance Payments Programs (New Construction).
Exhibit H–1 Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949.
Exhibit H–2 Section 8 Housing Assistance Payments program: Information For New Construction.
Exhibit H–3 Suggested Proposal Certification Format (Section 8/515 Program).
Exhibit H–4 Equal Opportunity Site And Neighborhood Standards Checklist.
Exhibit H–5 Certification by the applicant.

Exhibit H–6 Guide letter for Architect's Certification; New Construction; Inspecting Architect's Certification.
Exhibit H–7 Suggested Project Completion Certification Format (Section 8/515 program).
Exhibit I Memorandum of Understanding Between Farmers Home Administration and Administration on Aging.
Exhibit J Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."
Exhibit K Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."
Exhibit L Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to a Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."
Exhibit M FHA Form 2530, "Previous Participation Certificate."

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

§ 1944.201 General.

This subpart sets forth the policies and procedures and delegates authority for making Rural Rental Housing (RRH) loans under Sections 515 and 521 of the Housing Act of 1949.

§ 1944.202 Objective.

The basic objective of RRH loans is to provide eligible occupants economically designed and constructed rental housing and related facilities suited to their living requirements.

§§ 1944.203–1944.204 [Reserved].

§ 1944.205 Definitions.

(a) *Household.* One or more persons who maintain or will maintain residency in one rental unit. Eligibility for occupancy is outlined in § 1944.215(i) of this Subpart.

(b) *Senior citizens or handicapped persons.* Any senior citizen provision in this Subpart will also apply to handicapped persons. Senior citizens or handicapped persons will be considered eligible occupants without regard to income for projects operated on a for profit basis only. The two terms are defined as follows:

(1) *Senior citizen.* A person 62 years of age or over and may be either the tenant or co-tenant. A person(s) younger than 62 years of age may reside with a senior citizen provided the person is considered a member of the household of the senior citizen. The term "senior citizen" also includes the elderly as used in this Subpart.

(2) *Handicapped person.* A person, or in the case of a household either the tenant or co-tenant, who does not need constant supervision or constant medical or nursing care, but meets either of the following qualifications:

(i) A person who has an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes the ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions.

(ii) A person who is developmentally disabled. A developmentally disabled individual is a handicapped person with a severe, chronic disability which: (A) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (B) is manifested before the person attains age twenty-two; (C) is likely to continue indefinitely; (D) results in substantial functional limitations in three or more of the following areas of major life activity; (*1*) self-care, (*2*) receptive and expressive language, (*3*) learning, (*4*) mobility, (*5*) self-direction, (*6*) capacity for independent living, and (*7*) economic sufficiency; and (E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(c) *Resident assistant.* A person(s) residing in the living unit who is essential to the well being and care of the senior citizen or handicapped person(s) and who is not related by blood, marriage, or operation of law to the senior citizen or handicapped person(s) residing in the unit and receiving supportive service(s).

(d) *Low or moderate income household.* Households having incomes within the limits of the maximum adjusted income as outlined in Exhibits C and D of Subpart A of Part 1822, (Farmers Home Administration (FmHA) Instruction 444.1).

(e) *Plan I and Plan II.* The two interest credit plans outlined in Exhibit B of this Subpart.

(f) *Eligible occupants.* Eligible occupants in a project may be either the elderly, handicapped, or low- and moderate-income households, or any combination thereof as planned for the project and shown on the applicant's loan resolution or loan agreement and who comply with the following number of authorized persons in the units and in accordance with paragraph V B 1 of Exhibit B to Subpart C of Part 1930:

	Occupants	
	Minimum	Maximum
0-Bedroom	1	2
1-Bedroom	1	2
2-Bedroom	2	4
3-Bedroom	4	6
4-Bedroom	6	8
5-Bedroom	8	10

The term "occupant" also includes the term "tenant" as used in this Subpart. The occupants must:

(1) Be eligible households usually living in the local community and the surrounding area capable of caring for themselves. However, in the case of congregate housing with supportive services, this may include elderly or handicapped persons who require some supervision and central services, but are otherwise able to care for themselves. All occupants, however, must meet the following criteria:

(i) Not be totally dependent on others to be able to vacate the unit for their own safety in emergency situations.

(ii) Be able to provide for their own sustenance in projects that provide less than full food service.

(iii) The occupant or legal guardian must possess the legal capacity to enter into a lease agreement.

(iv) The tenant or co-tenant must be of legal age.

(2) For a direct loan or a loan developed under Plan I, be:

(i) A senior citizen or handicapped person with a low or moderate income, or

(ii) Any household with a low-income.

(3) For loans developed under Plan II, be persons with a low or moderate-income.

(4) For all other loans be persons with a low or moderate income or senior citizens or handicapped without regard to income.

(g) *Housing.* Structures in a rural area which are or will be suitable for, and available to, eligible occupants for dwelling use to provide congregate or completely independent living on a rental basis. The structures may include related facilities where appropriate. For the purpose of a loan developed under this Subpart, generally be to provide housing for eligible households usually living in the local community and the surrounding area capable of caring for themselves.

(h) *Congregate housing.* Housing that affords an assisted independent living environment that offers the senior citizen or handicapped person who may be functionally impaired or socially deprived, but in good health (not acutely physically ill), the residential accommodations, central dining facilities, related facilities, and supporting service(s) required to achieve, maintain or return to a semi-independent life style and prevent premature or unnecessary institutionalization as they grow older. Congregate housing is also:

(1) Housing which has complete kitchen facilities in each unit. However, some or all of the units may have limited kitchen facilities, such as a cooktop with a small oven and a refrigerator. In the case of group living arrangements, each single person dwelling is considered a unit.

(2) A group living arrangement where one or more senior citizens or handicapped persons may share living space within a rental unit and in which a resident assistant is required. Such housing may be one or more single person dwellings or a multi-unit structure.

(i) *Related facilities.* Related facilities may consist of community rooms or buildings, cafeterias, dining halls, appropriate recreation facilities, and other essential service facilities such as central heat and cooling, sewerage, light systems, ranges and refrigerators, clothes washing machines and clothes dryers, and a safe domestic water supply. Under special conditions, such as a congregate housing project or a project housing handicapped tenants, space may be provided for cafeterias, dining areas, an infirmary, therapy room, special bathing room, and other special areas needed by the elderly and handicapped tenants when determined to be economically feasible. The cost of kitchen equipment such as stoves, ovens, steam tables and other such items may be included in the loan. However, the cost of specialized equipment such as that used for training and therapy will not be included in the RRH loan to equip these facilities. When ranges, refrigerators, dish washing machines, dish dryers and other kitchen equipment are included, they will be attached to the real estate in a manner to prevent easy removal.

(j) *Project.* A project is the total number of rental housing units to be built or to be purchased by one applicant in one market area at any one time. Subsequent loans may be made to complete the units started with the initial loan. Additional units or additional projects in the same market area may be developed on a contiguous or separate tract of land at a later time if it can be shown that there is a need for this project in the market area and if the project already developed is operating successfully and in accordance with § 1944.213(a) of this Subpart.

(k) *Development cost.* The cost of constructing, purchasing, improving, altering, or repairing housing and related facilities and the value or cost of purchasing and improving the necessary land. It includes necessary architectural, engineering, legal, official and other appropriate technical and professional fees and charges. However, legal, technical and official fees are not intended to include the costs incurred in the formation or incorporation of the applicant organization except as indicated in § 1944.212(k) of this Subpart. For nonprofit organizations and State or local public agencies the development cost may include initial operating expenses up to 2 percent of the aforementioned costs. It does not include fees, charges, or commissions such as payments to brokers, negotiators, or other persons for the referral of prospective applicants or solicitation of loans. In the case of State or local public agencies the costs incurred in the relocation of individuals may be included as part of the total development cost in accordance with § 1944.215(u) of this Subpart.

(l) *Rural Area.* Open country or rural places as defined in § 1822.3(c) of Subpart A to Part 1924 (paragraph III C of FmHA Instruction 444.1).

(m) *Individual.* A natural person.

(n) *Organization.* A private nonprofit corporation, profit corporation, consumer cooperative, association, State or local public agency, trust, partnership, or limited partnership.

(o) *Private nonprofit corporation.* A corporation which (1) is controlled by private persons or interests, (2) is organized and operated for purposes other than making gains or profits for the corporation or its members, (3) is legally precluded from distributing to its members any gains or profits during its existence, and (4) in the event of its dissolution, is legally bound to transfer its net assets to a nonprofit corporation of a similar type or to a municipal corporation which will operate the housing for the same or similar purposes.

(p) *Profit corporation.* A corporation (1) which is controlled by private persons or interests, (2) whose organization permits the making of gains or profits for the corporation or its members, (3) which is authorized to do business in the state, and (4) which can legally carry out the purposes of the loan.

(q) *Consumer cooperative.* A corporation which (1) is organized as a cooperative, (2) will operate the housing on a nonprofit basis solely for the benefit of the occupants, and (3) is legally precluded from distributing, during the life of the loan, any gains or profits from operation of the housing. For this purpose any patronage refunds to occupants of the housing would not be considered gains or profits. A consumer cooperative may accept nonmembers as well as members for occupancy of the housing.

(r) *Limited profit basis.* An individual or organization applicant who, in order to obtain interest credit assistance, will agree to limit the amount of profit to be obtained. Applicants operating on this basis will be permitted to receive a return on their initial investment in accordance with the requirement outlined in § 1944.215 (l) of this Subpart. The applicant will legally obligate itself to regulate rents, charges, rate of return, and methods of operation.

(s) *Profit basis.* An individual or organization applicant who will operate the housing at rental rates low- and moderate-income persons, senior citizens and handicapped persons can afford, and whose return on their initial investment will not be limited to a certain percentage per year.

(t) *Limited partnership.* A partnership consisting of (1) one or more general partners jointly and severally responsible as ordinary partners, and by whom the business is conducted, and (2) one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the funds so contributed.

(u) *Owner-builder.* A qualified builder-applicant who has experience and demonstrated ability and capability and will build the RRH project.

(v) *Security value.* As used in this Subpart, the security value means the present market value of the real estate offered as security for the loan as determined by the loan approval official less than unpaid principal balance plus past-due interest on any other liens against it. Other liens will include any prior liens and junior liens to be or likely to be taken or subordinated at or immediately after loan closing. The security value of the real estate offered as security will be determined in accordance with the provisions of Subpart B to Part 1922 (FmHA Instruction 1922–B), "Appraisal of Real Estate Security for Rental, Cooperative, and Labor Housing Loans."

(w) *Gains or profits.* For the purpose of paragraphs (o) and (p) of this section, gains and profits do not include dividends payable on stock which is (1) nonvoting, (2) limited as to the amount of dividends that can be paid thereon, and (3) limited as to liquidation value in the event of corporate dissolution.

(x) *Members and membership.* These terms include stockholders and stock when appropriate.

(y) *Board and directors.* The governing body and members of the governing body of an organization.

(z) *Note.* This term also includes a bond or other form of obligation.

(aa) *Mortgage.* This term also includes any appropriate form of security instrument.

(bb) *Office of the General Counsel (OGC).* The Regional Attorney or the attorney in charge who provides legal services to the FmHA for the particular State.

§§ 1944.206–1944.210 [Reserved]

§ 1944.211 Eligibility requirements.

(a) *Eligibility of applicant.* To be eligible for an RRH loan, the applicant must:

(1) Be either an individual who is a citizen of the United States or a legally admitted alien for permanent residence in the United States, or an organization as defined in § 1944.205 (n) of this Subpart which will provide housing for eligible occupants as defined in § 1944.205 (f) of this Subpart.

(2) Be unable to provide the housing from its own resources and with the exception of a state and local public agency, be unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the applicant to rent the units for amounts that are within the payment ability of eligible low- and moderate-income, senior citizen or handicapped occupants.

(i) For an individual, the assets of both the applicant and spouse will be considered.

(ii) For profit organizations, the assets of the individual members or stockholders will be considered.

(iii) For nonprofit organizations, the assets of the individual members will not be considered.

(iv) For a loan to provide congregate housing with central dining facilities or space for other services, provided by the RRH loan, the applicant must be able to (A) operate such facilities with its own funds other than rent, or (B) obtain such funding from other sources, or (C) lease such facilities to an individual organization or firm with the ability to operate the facilities. In the case of a lease, the payment to the borrower should be sufficient to cover the annual operating expenses, debt service, and reserve account attributable to the leased portion of the project. The cost of the food and other support services will not be reflected in the FmHA budget that shows the operation and maintenance cost of the housing project. This will not preclude tenants who voluntarily use the service from paying a separate charge for these services.

(3) Have the ability and intention to maintain and operate the housing for the purposes for which the loan is made.

(4) Own the housing and related land, or become the owner when the loan is closed. An owner may include, in addition to the owner of full marketable title, a lessee of a tract of land owned by a State, political subdivision, public body or public agency, or Indian tribal lands which are not available for purchase. It may also include land when the State Director determines that long-term leasing of sites by nonpublic bodies is a well established practice and such leaseholds are fully marketable in the area, provided:

(i) The applicant is unable to obtain fee title to the property.

(ii) A recorded mortgage constituting a valid and enforceable lien on the applicant's leasehold will be given as security.

(iii) The amount of the RRH loan against the property will not exceed the maximum security value determined in accordance with Subpart B of Part 1922 (FmHA Instruction 1922–B).

(iv) The unexpired term of the lease on the date of loan approval is at least 25 percent longer than the repayment period of the loan and rental charged for the lease should not exceed the rate being paid for similar leases in the area.

(v) The borrower's interest may not be subject to summary foreclosure or cancellation.

(vi) The lease must:

(A) Not restrict the right to foreclose the RRH mortgage or to transfer the lease.

(B) Permit FmHA to bid at a foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(C) Permit FmHA after acquiring the leasehold through foreclosure, or voluntary conveyance in lieu of foreclosure, or in event or abandonment by the borrower, to occupy the property, or to sublet the property and to sell the leasehold for cash or credit.

(D) Permit the borrower, in the event of default or inability to continue with the lease and the RRH loan, to transfer the leasehold, subject to the RRH mortgage, to a transferee with assumption of the RRH debt.

(vii) The advice of OGC will be obtained as to legal sufficiency of the lease. When the State Director is uncertain as to whether a loan can be made on a leasehold, the request should be submitted to the National Office for evaluation and instructions.

(5) Have or be able to obtain initial operating capital and other assets needed for a sound loan. RRH loans made to nonprofit organizations and to State or local public agencies may include up to 2 percent of the development cost for initial operating expenses.

(i) Initial operating capital should be sufficient to pay for such costs as property and liability insurance premiums, fidelity bond premiums if an organization, utility hookup deposits, maintenance equipment, movable furnishing and equipment, printing lease forms, and other initial operating expenses. The initial operating capital required will be at least 2 percent of the total development cost of the project. It shall be deposited into the general fund account in accordance with the provisions of the Loan Agreement or Loan Resolution prior to the start of construction or loan closing, (whichever is first) and will be used for such authorized purposes only.

(ii) When the applicant is to provide other movable equipment and furnishings, the initial capital will be increased sufficiently to cover the cost of these items.

(iii) In cases where the borrower has provided for the initial 2 percent operating expense amount from the borrower's own funds, the State Director may authorize the return of the balance of those funds still remaining of the original initial operating and expense amount to the borrower after two year's operation of the project, provided the borrower has submitted the year-end audit, the estimated and actual budget, has paid for all required expenses, and they have been reviewed and approved by the State Director.

(iv) In the case of congregate housing involving a group living arrangement, the applicant/borrower will not include in the budget items (Form FmHA 1930–7, "Statement of Budget, Income and Expense," item 8) any salary, wages or expense items to compensate the resident assistant(s). Therefore, these expense items must be provided by other sources. However, this will not preclude the resident assistant from receiving compensation for any duties performed by a resident manager or caretaker in a typical RRH project.

(6) Possess the ability, experience, and the legal and financial capacity to incur and carry out the undertakings and obligations required for the loan.

(7) Agree to comply with all FmHA requirements such as those set forth in the loan resolutions, loan agreement, the form of note, the mortgage, and FmHA regulations.

(8) Provide necessary management to assure the successful operation of the project. Management services may be provided by the applicant, a management firm, or an agent. If the borrower or a member of the borrower organization does not live close enough to the project to provide the general supervision, a management firm or an individual located in close proximity who is experienced and has full authority to act on behalf of the owner must be retained. Generally, projects of more than 12 units should have a resident manager/contact person on the project site. Projects which are not large enough to justify a resident manager must, at a minimum, have a tenant who agrees to serve as a contact person or have a person easily accessible to the project who will be a contact person able to speak on behalf of project management or owner. An attractive sign should be placed in a conspicuous location providing the name, address, and telephone number of the local contact person able to speak on behalf of project management.

(9) In the case of a private nonprofit organization:

(i) If operating in one community and its trade area, meet the following additional requirements:

(A) Each member must be limited to one vote in the affairs of the organization.

(B) A majority of the members must reside in the community or the trade area where the housing will be located.

(C) The Board of Directors must not be less than 5, and must be selected by a procedure that insures that the interests of minorities and women are adequately represented.

(D) The directors must be members of the organization.

(E) Not less than five of the directors must be recognized as leaders in civic, governmental, fraternal, religious, and other community organizations of the community where the housing will be located.

(F) The organization must have and maintain a broadly-based membership representing or reflecting a variety of interests in the community. For a loan of less than $500,000, the organization should have at least 25 members. The number of members should be increased for larger projects.

(G) The organization should adopt articles of incorporation and bylaws substantially conforming to the model articles and bylaws set forth in the appropriate FmHA State Supplement. The State Director, with the assistance of OGC, will develop a model set of articles of incorporation and bylaws for the State which will be consistent with the provisions of Exhibits E and F, modified as appropriate in accordance with the State law.

(ii) If operating in more than one community or on a county or regional basis and providing or planning to provide rental housing in more than one community, meet the following requirements in addition to those in paragraph (a)(9)(i) of this section with the exception of § 1944.211 (a)(9)(i)(B):

(A) The membership base should be representative of the area being served with at least 5 members representing a variety of interests from each community where the housing will be located. Each member must be limited to one vote in the affairs of the organization.

(B) The Board of Directors should be representative of each community or trade area where the housing is located.

(C) The total number of directors should not be less than 5 and the directors must be members of the organization.

(D) The organization's articles of incorporation and bylaws must include the requirements outlined in paragraphs (a)(9)(ii) (A) and (B) of this section.

(10) In the case of a limited partnership the general partners:

(i) Will be required to maintain a minimum of 5 percent financial interest in the organization.

(ii) Must agree that new partners can be brought into the organization only with the consent of the Government.

(b) *Authorized representative of applicant.* FmHA will deal only with the applicant or a bona fide representative of the applicant and the representative's technical advisers. An authorized representative of a nonprofit applicant must have no pecuniary interest in the award of the architectural or construction contracts, the purchase of equipment, or the purchase of the land for the housing site.

§ 1944.212 Loan purposes.

RRH loans may be made to qualified applicants to:

(a) Construct new housing.

(b) Purchase and rehabilitate existing housing only when major modifications, repairs, or improvements to the housing are necessary to meet the requirements of decent, safe, and sanitary living units. Loans will not be made for the purchase of adequate housing not in need of major rehabilitation. Major rehabilitation shall not be considered to be minor items of development work such as painting, cleaning, and improvements to related facilities.

(1) The structure to be rehabilitated must be physicially and structurally sound enough to afford maximum safety (including fire safety) to the eventual residents of the structure after rehabilitation.

(2) Rehabilitation must be planned and accomplished so that the resulting housing will:

(i) Meet the Minimum Property Standards (MPS) requirements for new construction as approved by the respective loan approving official.

(ii) Create a suitable and appealing living environment, and be substantially equivalent to new construction in quality, livability, design, and all other respects.

(iii) Have a total development cost equal to or less than that of new construction in the same area.

(3) Complete plans and specifications for rehabilitation will be provided for review and approval. The plans, specifications, and other pertinent documents must be in sufficient detail to leave no question as to the work to be performed or the materials to be used.

(4) The rehabilitated project must generally meet the provisions of § 1944.215(a).

(5) When the downtown location of a rehabilitation project dictates such, a portion of the structure (such as part of the ground floor and basement) could be designated for commercial use on a lease basis. RRH loan funds, however, cannot be used to finance *any* cost associated with that commercial space. In order to determine the correct RRH loan amount for the residential development of such a structure, the following guidelines will apply:

(i) The applicant must supply a complete cost breakdown for purchasing and rehabilitating the entire structure into its joint residential/commercial use.

(ii) From the complete cost breakdown, the costs that can be easily and appropriately identified as being part of the commercial portion of the structure should be isolated as such, and likewise the costs easily and appropriately identified with the residential portion should be isolated.

(iii) The costs which cannot be easily and appropriately isolated (such as the cost associated with repair and renovation of a boiler, the value of the structure "as is," and certain mechanical or electrical components that will benefit both commercial and residential occupants) should be prorated between

the two uses based on the percentage of equipment load (example—central boiler or air conditioning) which would be necessary for each portion of the structure.

(iv) For the purposes of the loan limitations set forth in § 1944.213(a) (1) of (2) of this Subpart, the term "development cost" shall mean the development costs associated with prorated to the residential use of the structure, and the term "security value" shall mean the security value of the project exclusive of the value contributed to the land and structuure(s) by the commercial space. The capitalization approach to value is one means by which FmHA may establish the value contributed by the commercial space.

(v) The applicant must rely on other sources of financing for all costs associated with or prorated to the commercial space, given the FmHA security requirements of § 1944.221 of this Subpart.

(6) The applicant may not lease any commercial space which may be permitted in a structure in accordance with paragraph (b)(5) of this section without the prior written consent of the State Director. The advice of OGC will be obtained prior to loan closing as to any modifications needed in the mortgage, loan agreement, or loan resolution to enforce this requirement. In addition, the District Director may not consent to any lease unless:

(i) The lease contains a provision by which the lessee agrees to vacate the premises should FmHA withdraw its consent to the lease.

(ii) The proposed use of the leased space has a mutually supportive relationship to the needs of the residential tenants and to the use of the residential portion of the structure as rental housing.

(iii) The terms of the lease and the proposed use of the leased space does not jeopardize the interests of the tenants of the project or the continued use of the residential portion of the structure for the purposes for which the loan is made.

(iv) The lease has been reviewed by OGC and found to be legally sufficient and in compliance with the requirements of this Subpart.

(c) Purchase and improve the necessary land on which the housing will be located.

(1) Loan funds used to purchase land may not exceed the present market value in its present condition. Present market value will be determined by a current FmHA appraisal in accordance with applicable FmHA regulations. Purchase price in excess of present market value will not be included in determining the applicant's initial investment.

(2) Loan funds will not be used to buy land from an applicant or a member of an applicant-organization, or from another organization in which any member of the applicant-organization has an interest except that with prior approval of the State Director loan funds may be used to buy land from a member of a broadly-based nonprofit applicant-organization.

(3) Loan funds may be used to acquire land in excess of that needed for the housing, including related facilities, when:

(i) The cost of the excess land is a reasonable portion of the loan.

(ii) The applicant cannot acquire only the needed land at a fair price, can justify the acquisition, agrees to sell the land as soon as practicable and apply proceeds on the loan, and has legal authority to acquire and administer the land.

(d) Develop and install water supply, sewage disposal, streets, heating, cooling and light systems necessary in connection with the housing. If the facilities are located offsite, the following requirements must be met:

(1) The applicant will hold the title to the facility or have a legally assured right to use of the facility for at least the life of the loan and such title or right can be transferred to any subsequent owner of the site.

(2) The facilities are provided for the exclusive use of the RRH project, or funds are limited to the prorated part of the total cost of the facility, according to the use and benefit to the project. The applicant will agree in writing to the application, as extra payments on the RRH loan, of any subsequent collection by the borrower from other users or beneficiaries of the facility.

(3) Adequate security can be obtained with or without a mortgage based on the offsite facilities.

(e) Develop other related facilities in connection with the housing such as:

(1) Maintenance workshop and storage facilities.

(2) Recreation center including lounge if the project is large enough to justify such a facility.

(3) Central cooking and dining facilities when the project is large enough to justify such services to supplement the kitchen facilities in each unit. All equipment purchased with loan funds for the central cooking and dining facilities, such as stoves, refrigerators, ovens, dish washing machines and steam tables should be attached to the real estate in a manner to prevent easy removal. In determining whether to finance such facilities, the long-term availability of assistance from local organizations and other State or Federal agencies such as the Area Agency on Aging or the local office of the State Vocational Rehabilitation Agency or State developmental disabilities or mental health agency should be considered. Exhibit I of this subpart is to be used as a guide in working with the Administration on Aging (AoA) and State agencies in providing support services. If needed in the community, FmHA may permit facilities in the project larger than that required solely by the tenants provided other sources of funds are available to pay a prorata share of the cost. Whenever such facilities are provided with loan funds, the following conditions must be met:

(i) The meals to be provided must be wholesome and economical. A minimum of one cooked meal per day, at least 5 days per week, must be provided. If tenants are charged for meals, such charges must be separate from their rental charges.

(ii) If the operator of the facility is the type of entity that is eligible to accept Food Stamps under the regulations of the Food and Nutrition Service (FNS) of the USDA, such operator must be authorized by FNS to accept Food Stamps from the tenants for the purchase of meals.

(iii) The services to be provided and the fees to be charged (if any) for those services must be fully documented by a signed statement from the applicant, if it will provide the services, or in a lease agreement, if the services will be provided by others. Any lease agreement must be approved by the State Director or the loan approval official and contain the following statement:

This agreement shall not be effective unless and until approved by the State Director of the Farmers Home Administration, U.S. Department of Agriculture, or the State Director's delegated representative.

Farmers Home Administration

(Date)_____

By _____

(Title)_____

(4) Space for a small infirmary for emergency care only when justified.

(5) Laundry room and equipment.

(6) Appropriate recreational and other facilities to meet essential needs.

(f) Construct office and living quarters for the resident manager and other operating personnel if such facilities would be to the advantage of the project and the Government. The State Director should make a determination and the

justification will be included in the docket.

(g) Construct fallout shelters or similar structures.

(h) Purchase and install ranges, refrigerators, drapes, drapery rods, clothes washers, and clothes dryers. Laundry facilities are required in all projects, and clothes washers and dryers should be provided in a central laundry room. Normally, about one washer and dryer should be provided for every 8 to 12 units in the project at a minimum. Clothes washers and clothes dryers may not be installed in individual rental units if the inclusion of such items in the individual units is not customary in the area for the size of project and type of housing involved. In any case, both central and individual laundry facilities will not be provided in a single project.

(i) Purchase and install essential equipment which upon installation becomes a part of the real estate. Sections 1944.205(i) and 1944.213(b) contain further guidance on the use of loan funds to purchase certain equipment.

(j) Provide landscaping, seeding or sodding of lawns, and other necessary facilities related to buildings such as walks, yards, fences, parking areas, and driveways.

(k) Pay related costs such as fees and charges for legal, architectural, engineering, and other appropriate technical and official services. Such fees and charges may be paid to an applicant or to an officer, director, trustee, stockholder, member, or agent of the applicant provided such fees and charges are reasonable and typical for that area and are earned. Legal, technical and official fees do not include the costs incurred in the formation or incorporation of the applicant entity or the payment of a "packaging" or development fee. Ordinarily FmHA will furnish the needed guidance for the development of an RRH loan docket and project. However, the State Director may authorize the use of loan funds to enable a nonprofit corporation or consumer cooperative to pay a qualified consulting organization or foundation, operating on a nonprofit basis, charges for necessary legal, technical and professional services, provided the State Director determines that:

(1) Either (i) the applicant, with available FmHA assistance, cannot meet all requirements for a sound loan without the services, or (ii) the services would permit significant financial savings to the Government, either directly or by lightening the workload involved in processing applications, and

(2) The charges are reasonable in amount, considering (i) the amount and the purpose of the loan, (ii) the payment ability of the borrower, and (iii) the cost of similar services in the same or similar rural areas.

(l) Pay interest which will accrue on the RRH loan during the estimated construction period.

(m) Pay interest and other customary charges necessary to obtain interim financing.

(n) Pay initial operating expenses up to 2 percent of the development cost for nonprofit organizations and State and local public agencies.

(o) Purchase housing from an interim lender that holds free and clear title to an RRH project upon which construction commenced pursuant to § 1944.235(b)(1) and after issuance of a letter of commitment to the interim lender in accordance with this Subpart, when all of the following conditions exist:

(1) The interim lender holds title to the property because the original RRH applicant for whom funds were obligated will not or cannot continue with the project after a letter such as that shown as Exhibit D to this Subpart was issued.

(2) The owner of the property is the interim lender to whom FmHA issued a letter such as that shown in Exhibit D to this Subpart for the construction of the project.

(3) The project is substantially complete, see § 1944.235(b)(1)(vi) of this Subpart, all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications, and contract documents, and is in compliance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5).

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(p) Purchase an RRH project in which the original applicant/borrower or the contractor has defaulted before the project is completed and in which a letter of commitment dated prior to July 26, 1978, was issued to an interim lender.

(q) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with § 1944.215(u) of this Subpart.

§ 1944.213 Limitations.

(a) *Loan limits.* For all applicants, the amount of the RRH loan or loans on each project at any one time will be limited to the maximum amount of the State Director's loan approval authority unless prior written concurrence and authorization to develop an application for a larger project is obtained in advance from the National Office. If the State Director recommends a larger project, the preapplication and detailed information on the need and market for the project will be submitted to the National Office with the State Director's specific recommendations before Form AD–622, "Notice of Preapplication Review Action," or any other notice is given to the applicant indicating that the loan can be made. Additional loans may be made on the same or contiguous site, without regard to this limitation provided the previous project is completed and the housing has been successfully operated for at least 12 months. A clear market demand must be evidenced for any additional units to be provided. Each loan will also be subject to the following additional requirements:

(1) For private nonprofit corporations, consumer cooperatives, State or local public agencies, and other nonprofit organizations, the amount of the RRH loan or loans will be limited to the development cost or the security value of each project, whichever is less plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in § 1944.215(u) of this Subpart.

(2) For all other applicants, the amount of the RRH loan or loans will be limited to no more than 95 percent of the development cost or 95 percent of the security value of each project, whichever is less. The applicant's contribution must be in the form of either cash or land or a combination of both.

(b) *Limitations on use of loan funds.* Loans will not be made for:

(1) The purchase of a partially completed project except as provided in § 1944.212(p) of this Subpart or for the purchase of an existing housing project unless the provisions of § 1944.212(b) of § 1944.212(o), as applicable, can be met.

(2) Housing or related facilities which are elaborate or extravagant in design or materials.

(3) Nursing or medical facilities other than a small emergency-care infirmary when justified by the size of the project and the fact that facilities for the emergency care expected to be needed by the occupants are not readily accessible elsewhere.

(4) Specialized equipment for training and therapy.

(5) Any commercial facilities except essential service-type facilities for use by the tenants when such facilities are not otherwise conveniently available in the area.

(6) Housing to be used primarily for serving temporary residents of the community, or to be used for any transient or hotel purposes. No rental term will be for less than 30 days.

(7) Nursing homes, special care facilities, or institutional-type homes. This limitation should not, however, preclude making loans for housing which is designed for occupancy by senior citizens or handicapped persons who are capable of caring for themselves, but will not live on a totally independent basis because of a need for some supervision and central services. Loan funds will not be used to finance these support services.

(8) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables and chairs, etc.

(9) Any facility not essential to the needs of the tenants.

(10) Refinancing debts of the applicant except:

(i) As authorized in § 1944.213(c) and § 1944.235(b)(1) of this Subpart, or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained, and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes shall be limited to the amount necessary to obtain the release and, in any case, shall not exceed the "as is" value of the land as determined in accordance with Subpart B of Part 1922 (FmHA Instruction 1922–B, available in any FmHA Office).

(11) Housing which the applicant plans to lease to another operator except for leases to public housing authorities.

(12) Payment for any fee, charge, or commission to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of a loan.

(13) Payment of any fee, salary, commission, profit, or compensation to an applicant, or to any officer, director, trustee, stockholder, member, or agent of an applicant, except as provided in §§ 1944.212(c)(2) and 1944.222(d) of this Subpart.

(14) Land which the applicant or a member of an applicant-organization owns, or from any other organization in which any member of the applicant-organization has an interest, except as authorized in § 1944.212(c)(2).

(15) Compensation to an applicant for value of land contributed in excess of the five percent initial contribution.

(c) *Obligations incurred before loan closing.* When an applicant files an application for a loan, the County Supervisor or District Director, as appropriate, will advise the applicant not to start construction or incur any indebtedness until the loan is closed, with the exception of those cases involving interim financing, and then the guidelines outlined in § 1944.235 (b)(1) of this Subpart will apply. During the period of application review and processing, applicants shall not take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude development by applicants of preliminary plans or designs or performance of other work necessary to support an application for Federal, State, or local permits or assistance. However, the development of detailed plans and specifications shall be discouraged when the costs involved inhibit the realistic consideration of alternative actions. If, nevertheless, the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay such debts when the State Director finds that all the following conditions exist:

(1) The debts were incurred: (i) After the applicant filed a written application for a loan with FmHA; or (ii) after the submission of a preliminary proposal to the Department of Housing and Urban Development (HUD) in the case of a project involving the Section 8 Housing Assistance Payments program with a loan made in compliance with this subpart; or (iii) prior to the date of application as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or (iv) prior to the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such debts from the applicant's own resources or to obtain credit from other sources, and failure to authorize the use of loan funds to pay debts would impair the applicant's financial position.

(3) The debts were incurred for authorized loan purposes.

(4) Contracts, materials, construction, and any land purchased meet FmHA standards and requirements.

(5) Payment of the debts will remove any liens which have attached, and any basis for liens that may attach, to the property on account of such debts.

§ 1944.214 Rates and terms.

(a) *Interest.* Loans will be made at interest rates specified in Exhibit B to Subpart A of Part 1810 (FmHA Instruction 440.1) available in any FmHA office.

(b) *Amortization period.* Each loan will be scheduled for payment within such period as may be necessary to assure that the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 50 years from the date of the note.

§ 1944.215 Special conditions.

(a) *Type of housing.* All housing must meet the following requirements:

(1) Be economical in construction and not of elaborate or extravagant design or materials and all new construction shall be in conformance with HUD MPS 4910.1. As a general rule, the square footage living area of new rental units and related facilities to be constructed with RRH loan funds should be within the guidelines listed below.

Type of unit	Maximum living area (ft^2)
0-Bedroom unit	425–525
1-Bedroom units	570–700
2-Bedroom units	700–850
3-Bedroom units	850–1,020
4-Bedroom units	1,020–1,200

(i) An additional 100–120 square feet of living area may be added to the 4-bedroom unit guideline for each bedroom in excess of 4.

(ii) In townhouse units where living is on two floor levels of the rental unit, the maximum square footage of living area may be exceeded by up to 12 percent, but only to the extent necessary to accommodate interior stairways.

(iii) Room sizes must be in compliance with the HUD MPS 4910.1. Minimum room sizes may be determined by the minimum areas and least dimensions listed in the MPS or on a required furnishing basis.

(iv) When community rooms or buildings are provided as part of the related facilities, their gross square footage area should be within the guidelines set forth in the HUD Manual of Acceptable Practices (MAP) 4930.1.

(v) Additional area to accommodate energy conserving and solar heating elements such as vestibules, heat sinks, solar greenhouses, solar heat storage devices and the like may be allowed in excess of the stated maximum size guidelines. However, such devices, if included, must be justified on a cost effective basis.

(2) As a general rule, consist of multi-unit type housing with two or more person units and any appropriate related facilities. However, in some congregate housing cases, single household dwelling may provide for a group living arrangement, if the senior citizen or handicapped persons' need cannot be met in multi-unit structures. Such group-type single household dwellings, if financed, must meet the following requirements:

(i) Consist of single houshold dwellings that can be easily converted to a rental or homeownership unit for a family in the event the need for such housing by senior citizens or handicapped persons ceases.

(ii) The applicant must show that adequate support services needed by the tenants will be available on a continuous long range basis. As a general rule the support services must be provided by a State or local public agency. However, a nonprofit organization with a good track record and an ongoing program may be considered capable of providing these support services.

(iii) The senior citizen or handicapped person(s) to be housed must be capable of caring for themselves except for some supervision and support services.

(3) Be residential in character and be designed to meet the needs of eligible occupants. Generally, RRH units should not be more than two-story structures. However, in some cases, especially those projects designed for occupancy by senior citizens or handicapped persons, low-rise structures with elevators can be considered on an individual case-by-case basis, with prior written authorization from the National Office, when the following conditions exist:

(i) There is a serious shortage of suitable building sites, and the number of units needed cannot be built due to lack of space on the site and other building sites are not available.

(ii) Land costs are such that one- or two-story construction would result in a unit cost and rental rates in excess of what eligible occupants can afford.

(iii) The number of stories proposed for the rural rental housing structure is compatible with other rental structures in the community. If there are no other low-rise rental structures in the community, the proposed structure must be in character with surrounding structures and the applicant's market survey report, submitted in accordance with Exhibit A–7 of this Subpart, must identify market acceptability for the number and type of low-rise rental units proposed.

(iv) The cost of the units should compare favorably with one- and two-story construction financed with RRH loans. If the costs are higher, the loan will not be approved until the FmHA State Architect or Engineer has reviewed the plans, specifications, and cost data to assure that further cost savings cannot be achieved without sacrificing the quality and serviceability of the housing.

(v) Elevators will be provided in accordance with the HUD MPS 4910.1. If elevators are included, the subsoil conditions of the site must be adequate for the installation of hydraulic elevators and sufficient service personnel must be available in the area for service and repair work.

(4) Consideration must be given to safety, convenience, and comfort of the prospective tenants.

(5) Based on the demand shown by a market analysis, it may include "efficiency" type, one, two, three or more bedroom units.

(6) Contain bathroom and kitchen facilities in each unit. In the case of group living arrangements, each single household dwelling is considered a unit. Congregate housing projects with central dining facilities may have somewhat limited kitchen facilities, but must contain as a minimum, a cooktop, a refrigerator, and a small oven in each unit. The kitchen facilities in a single household dwelling for a congregate housing group living arrangement may be designated to meet the special needs of the tenants.

(7) All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly.

(8) Be designed to provide for the greatest energy conservation and promote the concept of modest housing and yet provide a highly desirable and attractive environment for the tenants.

(b) *Determination of per unit rental rates for group living arrangments.* To determine the amount of rental payment to be collected per unit for congregate housing involving a group living arrangement (and only for this particular determination), the total annual cost to operate the facility (item 8 of Form FmHA 1930–7, "Statement of Budget. Income and Expense") will be divided by the total square footage to be occupied by the tenant. If the project also includes conventional rental apartment units (1, 2, 3, etc. bedroom units), the square footage of those *units* (not bedrooms) will be added to the square footage of the other units (bedrooms) contained in the housing involving group arrangement, and the total square footage of all the units will be divided into item 8 of Form FmHA 1930–7. The number arrived at by dividing the total square footage into item 8 of Form FmHA 1930–7 will then be multiplied by the square foot area of each *unit* to determine the rental rate for that particular *unit*. In the case of congregate housing involving a group living arrangement, each bedroom will be counted as if it were one rental unit. However, the bedroom occupied by the resident assistant will be excluded from this number and will not be counted in making the determination of rental payment to be charged to all the other bedrooms occupied by the tenant(s). Once this charge per unit has been calculated, the rental payment by the tenant(s) will be determined in the usual manner.

(c) *Deferred principal payments.* (1) When necessary and advisable, principal payments may be deferred for the first full year or the first full two years after loan closing in cases of multiple advances only. Principal payments should not be deferred beyond the first annual anniversary date of the note following the anticipated date of construction completion, since payments are deferred only to permit the project to be completed. Payments of accrued interest cannot be deferred.

(2) Monthly payments of accrued interest should be implemented beginning the month construction is completed. However, if the project is not completed by the date of the interest only payment(s) as shown on the note, the note date(s) will determine the time of the interest only payment. (See Forms Manual Insert (FMI) for Form FmHA 440–16, "Promissory Note," available at any FmHA Office, for the payment schedule.)

(d) *Refinancing RRH loans.* Each borrower must agree to refinance the unpaid balance of the RRH loan at the request of FmHA whenever it appears to FmHA that the borrower is able to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an RRH loan must comply with the restrictions indicated in § 1944.236(b)(4) of this Subpart. For all loans closed prior

to December 21, 1979, the State Director shall comply and the borrower agrees to, the restrictive provisions of § 1944.250 of this Subpart as a condition for the State Director's approval or acceptance of prepayment of the FmHA loan.

(e) *Loan resolution or loan agreement.* The loan resolution or loan agreement contains provisions of policy and procedure which should be carefully read and fully understood by the applicant. This is particularly important for applicants operating on a limited profit basis. If any provisions are not appropriate to a particular case, proposed substitute language will be approved by FmHA and OGC. Subpart C of Part 1930 (FmHA Instruction 1930–C) provides for the maintenance of certain accounts and the pledge of housing income as security. It contains regulatory provisions governing and giving the FmHA power to impose requirements regarding the housing and related operations of the applicant. Types of loan resolutions and loan agreements are contained as Exhibits J, K and L to this Subpart and are incorporated as part of this regulation. All sections and requirements as determined applicable by OGC shall form part of any other loan resolution or agreement that may be submitted by the applicant. These are:

(1) Exhibit J. Form FmHA 1944–33, "Loan Agreement for an RRH Loan to an Individual Operating on a Profit Basis or RRH Loan to an Individual Operating on a Limited Profit Basis."

(2) Exhibit K. Form FmHA 1944–34, "Loan Agreement for an RRH Loan to a Partnership Operating on a Profit Basis or RRH Loan to a Limited Partnership Operating on a Profit Basis or RRH Loan to a Partnership Operating on a Limited Profit Basis or RRH Loan to a Limited Partnership Operating on a Limited Profit Basis."

(3) Exhibit L. Form FmHA 1944–35, "Loan Resolution for an RRH Loan to a Broadly Based Nonprofit Corporation or RRH Loan to an Profit Type Corporation or RRH Loan to a Profit Type Corporation Operating on a Limited Profit Basis."

(4) Exhibit M. HUD Form 2530, "Previous Participation Certificate."

(f) *Multiple advances.* Loan funds will be disbursed in accordance with the provisions outlined in § 1944.235 of this Subpart.

(g) *Interest credits and rental assistance.*

(1) Borrowers may receive interest credits provided they meet the requirements outlined in Exhibit B of this Subpart.

(2) Rental assistance may be provided to eligible tenants in eligible projects in accordance with Exhibit C of this Subpart.

(h) *Nondiscrimination in use and occupancy.* The borrower will not discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because of race, color, religion, age, sex, marital status, handicap, or national origin, and will comply with Subpart E of Part 1901.

(i) *Eligibility for occupancy.* Loans will be made on the basis of the housing being occupied by eligible occupants as defined in § 1944.205 paragraph (f) of this Subpart. The following policies will apply:

(1) When a household consists of only one individual an additional individual or individuals may reside in the unit provided the unit has adequate space for their total needs and provided the combined incomes of the occupants does not exceed the levels set for the project in accordance with § 1944.205(f) of this Subpart and as defined in Exhibits C and D of Subpart A to Part 1822 (FmHA Instruction 444.1). A resident assistant may occupy living space in a congregate housing group living arrangement without regard to income. In cases involving deceased senior citizens or handicapped tenants, only the surviving member(s) of the household of the deceased senior citizen or handicapped person who was living in the unit under the above stated guidelines with the deceased senior citizen or handicapped person at the time of his or her death may continue to occupy the rental unit as a tenant. The surviving household member(s) must meet all the eligibility requirements for occupancy except that of being a senior citizen or a handicapped person and must be approved by the State Director. If it is determined by the State Director that the integrity of the project cannot be maintained, the surviving household member(s) may be allowed to remain in the project for a period not to exceed one year. If the borrower receives interest credits, the rent paid for the unit will be based on the combined incomes of the occupants, except in those cases prior to the implementation date of this Subpart, where the incomes of two or more individuals sharing a unit were considered separately for occupancy eligibility. These situations should be phased out by attrition.

(2) Although the purpose of the program is to provide adequate housing for the eligible permanent residents of the community, a student resident of the community who is otherwise eligible and seeks occupancy in a project may be considered an eligible tenant if all of the following conditions are met:

(i) The person seeking occupancy is either of legal age in accordance with applicable State law or is otherwise legally able to enter into a binding contract under State law.

(ii) The person seeking occupancy has established a household separate and distinct from the person's parents or legal guardians.

(iii) The person seeking occupancy is no longer claimed as a dependent by the person's parents or legal guardians pursuant to Internal Revenue Service regulations, and evidence is provided to this effect.

(iv) The person seeking occupancy signs a written statement indicating whether or not the person's parents, legal guardians, or others provide any financial assistance and such financial assistance is considered as part of current annual income and is verified in writing by the borrower.

(3) Ineligible persons may occupy the housing for temporary periods in order to protect the interest of the Government in accordance with Exhibit B of this Subpart and § V B 4 of Exhibit B to Subpart C to Part 1930 (FmHA Instruction 1930–C).

(4) For housing projects financed with RRH loans and limited to occupancy by eligible senior citizens or handicapped tenants, the State Director is authorized to permit the borrower to rent units to other eligible low- or moderate-income families and persons, provided such units will be rented on a temporary basis and only until they can be rented to eligible senior citizens or handicapped persons.

(5) Congregate housing projects which involve a group living arrangement may limit occupancy to eligible developmentally disabled individuals. This limitation will be outlined in the applicant/borrower's management plan.

(6) In congregate housing projects, including those involving group living arrangements, a further critical dimension is added by the selection and placement of tenants. This involves a determination concerning the ability of a tenant with a functional impairment to sustain relative independence, given the supportive service(s) provided. While this determination can be made by the project management, it is recommended that it be made by a professionally qualified tenant selection committee, and the decision presented to the project management for acceptance or rejection. This determination can be made in a highly technical fashion using scientifically developed scales of competence in the activities of daily living, or it can be made through social

or medical sources. The functional impairments of tenants should be verified by one of the following methods.

(i) Certification by a physician, or State or local agency responsible for supportive services to the tenant as to the tenant's ability to remain independent with an assist from service(s).

(ii) By the use of any objective guide, such as the following three objective guides which are further explained in Exhibit B–10 of Subpart C of Part 1930 (FmHA Instruction 1930–C):

(A) The Physical Self Maintenance Scale, Exhibit B–10A of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure a person's capacity for personal care.

(B) The Instrumental Activities of Daily Living Scale, Exhibit B–10B of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure a person's capacity for continued living in the project.

(C) The Index of Independence in Activities of Daily Living, Exhibit B–10C of Subpart C of Part 1930 (FmHA Instruction 1930–C) may be used to measure the relationship of functional capacity to the accomplishment of daily activities, such as bathing, dressing, toilet performance, transferring (from prone to upright position and back again) continence, and eating.

(7) If a family type rental unit receiving HUD Section 8 assistance is to be occupied by a one member household the State Director must request the prior authorization of the respective HUD Filed Office Director.

(j) *Tenant certification.* Initial certification and recertifications will be executed on Form FmHA 444–8, "Tenant Certification," as follows:

(1) Initial certification will be executed for each household when it initially occupies the housing. Borrowers will promptly provide the District Director with an executed copy of these forms.

(2) Recertification will be completed by having a new Form FmHA 4448–8 executed at least annually by each tenant except in senior citizen projects in which all the units are assisted with Section 8 housing assistance payments, in which case tenant recertification will be done at least every two years. The certification forms will be obtained by the borrower and a copy provided to the District Director to verify continued tenant eligibility and the amount of interest credit or rental assistance given to the borrower.

(3) The incomes reported by all tenants must be verified by the borrower. Such verification may be obtained on verification forms prepared by the borrower or other sources. However, any such form must include among other items the following:

(i) Income of person during the previous 12 months.

(ii) Current rate of pay (weekly, biweekly, monthly or by hour).

(iii) Expected income of person for the next 12 months.

(iv) Any income indicated should be subdivided into basic salary, bonuses, and overtime.

(v) In the case of the elderly or other persons whose income is not from wages or salary, by actually examining the income checks, check stubs, or other reliable data the tenant possesses.

(4) Form FmHA 444–8 need not be required of tenants who have executed Form HUD 52659 "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director on an annual basis.

(k) *Supervisory assistance.* Supervision will be provided borrowers, in accordance with Subpart C of Part 1930 of this Chapter (FmHA Instruction 1930–C), to the extent necessary to achieve the objective of the loan and to protect the interests of the Government.

(l) *Limited profit determinations.* Applicants agreeing to operate on a limited profit basis will be permitted a return not to exceed 8 percent per annum on their initial investment determined at the time of loan approval. This amount shall be reflected in the loan agreement of loan resolution and will not be changed once it is determined. The initial investment may exceed the required 5 percent in § 1944.213(a)(2) of this Subpart and may include the following:

(1) Any cash contribution which, when added to the FmHA loan amount, is not in excess of the security value of the project.

(2) Value of the building site or essential related facilities contributed by the applicant. Value will be determined by an appraisal in accordance with applicable FmHA regulations on an "as is" basis by the FmHA employee authorized to make the appraisal for the project less any amount owed on the property. The value of the building site or essential related facilities contributed by the applicant in excess of the five percent initial contribution may be counted as part of the initial contribution.

(m) *RRH loans made in connection with HUD Section 8 Housing Assistance Payments program.* RRH loans involving the HUD Section 8 Housing Assistance Payments program under the Memorandum of Understanding (Exhibit H–1) will be handled in accordance with Exhibit H of this Subpart. Any applicant who has obtained approval of use of Section 8 units from HUD or a State Housing Finance Agency, which cannot be processed in accordance with Exhibit H, may be processed in accordance with HUD's regulations under a dual track processing system provided all other requirements of this Subpart are met. When a dual track processing system is followed, the provisions of paragraph II of Exhibit H to this Subpart allowing for an interest rate reduction (interest credit) may be followed. Section 8 Housing Assistance Payments for existing housing will be handled in accordance with Exhibit G of this Subpart.

(n) *Implementation of Office of Management and Budget (OMB) Circular A–95 concerning formulation, evaluation, and review of Federal programs and projects having significant impact on area and community development.* When projects will have 25 or more units, the provisions of FmHA Instruction 1901–H will be applicable. FmHA shall give all due consideration to clearinghouse comments and priority recommendations.

(o) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with Subpart G of Part 1901 of this Chapter (FmHA Instruction 1901–G). Projects involving Section 8/515 loans shall also comply with Exhibit H of this Subpart.

(p) *National flood insurance.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 and Executive Order 11988 are applicable to FmHA authorities permitting financing of rental housing now located in, or to be located in, special flood or mudslide-prone areas as designated by the Federal Insurance Administration (FIA) of HUD. Subpart B of Part 1806 of this Chapter (FmHA Instruction 426.2) will apply.

(q) *Location of housing.* (1) The location of the housing project should expand the supply of decent, safe, and sanitary housing for low- and moderate-income, senior citizens, and handicapped persons in a nondiscriminatory way outside areas of concentration of economically disadvantaged or minority residents. The location should promote a greater choice of housing opportunities and avoid undue concentration of eligible tenants in areas containing a high proportion of low-income persons, and should further fair housing.

(2) Project locations should promote an equal opportunity for the inclusion of all groups regardless of race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (mentally handicapped must possess the capacity to enter into a legal contract except as indicated in § 1944.205(f)(1)(iii) of this Subpart), thereby opening up nonsegregated housing opportunities for minorities and helping overcome the effects of any past discrimination. To the extent possible, the location of an RRH project should provide housing opportunities for minorities outside areas of minority concentration and areas which are already substantially racially mixed. An area of minority concentration is any part of a community adjacent to or within the confines of a greater area such as a place, town, village, or city in which the majority of the residents are minority. If the proposed location is in an area of minority concentration, it will not be accepted unless:

(i) Comparable housing opportunities exist outside the minority area for minorities in the income range to be served by the project; or

(ii) The applicant provides written documentation which adequately demonstrates that there are no other acceptable sites available outside the area of minority concentration, and housing on the proposed site is necessary to meet an overriding housing need in the market area.

(3) Except as otherwise permitted by paragraph (q)(4) of this section housing projects must be located in residential areas as part of established rural communities where essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) are readily available in close and convenient proximity to the site. Public facilities and services must be adequate to support the needs of the tenants and the housing project.

(4) FmHA will consider financing new construction or the purchase and rehabilitation of existing structures in accordance with § 1944.212(b) of this Subpart, located in the downtown business areas of those rural communities that have established a comprehensive strategy for meeting their community development and housing needs, and that strategy includes the redevelopment, rehabilitation, restoration, or revitalization of the downtown business area. The proposed project site must be located within the downtown business redevelopment/revitalization area and the following conditions must be met:

(i) Essential public facilities (such as schools, hospitals, and generally central water and sewer systems) and services (such as shopping, medical services, and pharmaceutical services) must be readily available in close and convenient proximity to the site, and they must be adequate to support the needs of the tenants and the housing project.

(ii) The community must have an official short-term community development and housing plan which sets forth its comprehensive strategy for meeting identified community development and housing needs, particularly the needs of eliminating or preventing economic decay, slums, or blight; the needs of benefiting the lower income population; or other community development needs having a particular urgency. The strategy should include a community-wide component which describes the development strategy of the governing body, the major objectives the governing body seeks to accomplish, the priorities it has established, the factors taken into account in selecting areas for treatment, and the anticipated public and private sources of funds necessary to conduct the treatment of each area selected. In addition, the plan should contain the following component strategies:

(A) Neighborhood revitalization: The strategy for alleviating physical deterioration, for maintaining viable neighborhoods, and for stimulating investment to upgrade neighborhoods affected by blight and deterioration.

(B) Housing: The community-wide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. Reference to any current HUD approved Housing Assistance Plan would be helpful as part of this component strategy.

(C) Economic development: The strategy for attracting private investment in the business community and for solving the critical problems which may be the result of a stagnating or declining tax base, or from population outmigration.

(iii) Evidence must be presented from the local governing body verifying that the community has adopted, through resolution or other official act, the community development and housing plan referenced in paragraph (q)(4)(ii) of this section. A copy of the adopted plan should be made available to FmHA. While it is not necessary that the downtown redevelopment/revitalization area be formally designated as an urban renewal or other similar area, evidence supporting a local determination that the downtown business area meets the criteria established in the community development and housing plan must be maintained in the locality's records. Documentation received from the local governing body must also identify the site or structure involved in the applicant's RRH proposal as part of or essential to the downtown redevelopment/revitalization area.

(iv) Evidence must be made available to FmHA verifying the intended commitment of public and private resources which will be available for completing the other integrally related redevelopment/revitalization activities being undertaken in the downtown business area together with applicant's proposed RRH project.

(v) If the structure to be built or rehabilitated is more than two stories, the housing must be designated and designed for occupancy only by senior citizens and handicapped persons.

(vi) Prior review and concurrence must be received from the FmHA National Office before the FmHA State Director or District Director authorizes the applicant to develop a complete application. All of the information requested in § 1944.215(q)(4) must be provided by the applicant before National Office review.

(r) *Clean Air Act and Water Pollution Control Act requirements.* (1) As a condition for FmHA's making a loan in excess of $100,000 and unless otherwise exempted, an applicant for a loan will:

(i) Comply with all requirements of section 114 of the Clean Air Act (42 U.S.C., 1857 C–9) and section 308 of the Federal Water Pollution Control Act (33 U.S.C., 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in section 114 of the Clean Air Act and section 308 of the Federal Water Pollution control Act and all regulations and guidelines issued thereunder after the award of the contract. (Such regulations and guidelines can be found at 40 CFR 15.4 and 40 FR 17126, April 26, 1975.)

(ii) As a condition for the award of contract, notify FmHA of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities. (Prompt notification is required prior to contract award.)

(iii) Certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award; and

(iv) Include or cause to be included the above criteria and requirements in every nonexempt subcontract and will take such action as the Government may direct as a means of enforcing such provisions.

(2) As a further condition for FmHA's making a loan in excess of $100,000 but not otherwise exempted, the applicant for the loan will secure the services of a contractor who agrees to comply with the provisions in paragraph (r)(1) of this section. (3) The term "facility" as used in this section only means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, EPA, determines that independent facilities are co-located in one geographical area.

(s) *Approval of construction contracts.* Construction contracts between the borrower and contractor for development of an RRH project will contain a provision that the contract is not in full force and effect until it has been approved by the State Director or the State Director's delegate in writing. This approval relates to form, content, and proper execution of the document and statement that FmHA is not to be considered a party to the contract or incur any liability thereunder. Therefore, before loan closing or before the start of construction, whichever occurs first, the State Director or the State Director's delegated representative will approve the contract form, content, and execution by including the following paragraph at the end of the contract:

The Farmers Home Administration, as potential lender or insurer of funds to defray the costs of this contract, and without liability for any payments thereunder, hereby approves the form, content, and execution of this contract.

Date _____

Farmers Home Administration

By: _____

Title: _____

(t) *Historic preservation requirements.* the District Director should take the necessary action to assure that the applicant will comply with the provisions of Subpart F of Part 1901 of this Chapter (FmHA Instruction 1901–F). This regulation concerns compliance with the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291), and Executive Order 11593 dated May 13, 1971.

(u) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Compliance with the requirements of this Act applies to public bodies and agencies which have the power of emminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a section 515 RRH project will be located. FmHA loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national FmHA instructions are published the Department regulations found at Part 21 of this Chapter should be followed and the National Office should be consulted for guidance in developing an RRH or RCH loan for a project affected by this Act. However, the following should be considered:

(1) Generally, if there are alternative sites of equal quality which meet the Agency's requirements, the site with the least relocation impact shall be selected.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect in RRH and RCH projects only, the designated FmHA multiple family housing appraiser or such other agency designated appraiser shall be used.

§§ 1944.216–1944.220 [Reserved].

§ 1944.221 Security.

Each loan will be secured in a manner that adequately protects the financial interest of the Government. A first mortgage, except as indicated in paragraphs (a) and (c) of this section, will be taken on the property purchased or improved with the loan. A mortgage should be taken on only that part of the land which is necessary to provide adequate security for the loan as determined by the appraisal, except when excess land is purchased as authorized in § 1944.212(c)(3) of this Subpart.

(a) A second mortgage will be taken on a site developed with prior RRH loan(s) when a subsequent loan is made to complete or finish out units on the site, or when a second initial loan is made to develop units on a contiguous site.

(b) Personal liability will not be required for the members or stockholders of any corporation or trust or any partners in a limited partnership. Personal liability will be required of all members of other partnerships. For limited partnerships the State Director will obtain the advice of the Regional Attorney as to any modifications needed in the Promissory Note and mortgage.

(c) If it is impossible or inadvisable for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible.

§ 1944.222 Technical, legal, and other services.

(a) *Appraisals.* When real estate is taken as security, the property will be appraised by the multiple housing appraiser or such designated FmHA employee authorized to make real estate appraisals. If the security does not involve more than two rental units, the property will be appraised in accordance with the policies outlined in FmHA Instruction 422.3, available in any FmHA Office. For security involving more than two rental units, the appraisal will be made in accordance with Subpart B of Part 1922 of this Chapter (FmHA Instruction 1922–B). Form FmHA 426–1, "Valuation of Buildings," will be completed to show the depreciated replacement value of all the buildings existing or to be constructed on the property to be taken as security.

(b) *Title clearance and legal services.* When the applicant is an organization or an individual with special title or loan closing problems, title clearance and legal services will be obtained in accordance with instructions from OGC. In other cases, the provisions of Part 1807 and Subpart A of Part 1822 of this Chapter (FmHA Instructions 427.1 and 444.1 respectively) regarding title clearance and legal services will apply.

(c) *Architectural and engineering services.* (1) Housing and related facilities will be planned and developed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5). The housing will be designed to meet the needs of the types of occupants who will likely occupy it.

(2) A written contract for architectural and engineering services will be required as outlined in Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A).

(d) *Construction and development policies.* (1) Construction and development will be performed in accordance with Subpart A of Part 1924 and Subpart D of Part 1804 of this Chapter (FmHA Instructions 1924–A and 424.5), except that § 1924.6(b)(3)(i) of

Subpart A of Part 1924 will not apply to projects constructed by the owner-builder method. These projects will be governed by the following:

(i) The Development cost may include a typical builder's fee. The typical builder's fee may be determined by local investigation and also from HUD data for the area.

(ii) The Development cost cannot exceed that which is typical for similar type projects in the area.

(iii) The Development cost for each individual case will be determined by the Multiple Family Housing Coordinator with the advice of the State Architect.

(iv) The plans and specifications must be specific and complete so that there is a clear understanding as to how the facility will be constructed and the materials that will be used.

(2) In all cases of RRH, loans exceeding $50,000, interim financing for the construction period will be obtained when it is available at reasonable rates and terms in order to preclude the necessity for multiple advances of FmHA loan funds.

(i) The applicant shall provide preliminary evidence concerning the availability of interim financing with the application, or in any event, prior to loan approval.

(ii) FmHA loan funds will be obligated before the applicant proceeds with the final arrangements or interim financing.

(e) *Compliance with Federal, State and local codes, regulations and ordinances.* Planning, construction, and operation of housing financed with an RRH loan will conform with any applicable laws, ordinances, codes, and regulations (including any licensing required governing such matters as construction, heating, plumbing, electrical installation, fire prevention, health, sanitation, use and occupancy), and must meet all the applicable laws and statutes pertaining to the operation of a facility in which some of the occupants may require some supervision and central services.

(f) *Contracts for legal services.* On projects requiring extensive legal services, the applicant will be required to have a written contract when loan funds will be used for these services. All such contracts will be subject to review and approval by FmHA and, therefore, should be submitted to FmHA before execution by the applicant. Contracts will provide for the types of services to be performed and the amount of the fees to be paid, either in lump-sum on the completion of all services or in installments as services are performed.

(g) *How to Apply for a Rural Housing Loan.* Exhibit A may be used as a guide for organization applicants applying for loans to finance projects of substantial size. Extra copies may be obtained from the Finance Office for applicants after preliminary discussions indicate that a loan may be developed. Exhibits A–1 through A–5 of this Subpart may be adapted for use by States so that adequate supplies will be available to applicants.

(h) *Technical services by consultant organizations.* Technical services by consultant organizations will be governed by § 1944.212 (k) of this Subpart.

(i) *Optioning of land.* If a loan includes funds to purchase real estate, the applicant will be responsible for obtaining an option on the parcel to be purchased. Form FmHA 440–34, "Option to Purchase Real Property," or other option form with provisions acceptable to FmHA and the applicant may be used. When an option form other than Form FmHA 440–34 is used, it is recommended that a provision be included indicating that the option is contingent upon FmHA making a loan to the buyer. After the loan is approved, the District Director will have Form FmHA 440–35, "Acceptance of Option," or other appropriate form of acceptance complete, signed, and mailed to the seller.

(j) *Use of, and accountability for loan funds.* Loan funds and any funds furnished by the borrower for eligible loan purposes may be deposited in accordance with the loan agreement or loan resolution and the provisions of Subpart A to Part 1902 (FmHA Instruction 1902–A) and Subpart C to Part 1930 (FmHA Instruction 1930–C). Collateral for deposit of funds will be pledged in accordance with § 1902.7 of Subpart A of Part 1902. Funds furnished by the borrower for the purchase of special equipment and furnishings to be used in connection with the project, for which loan funds could not be used, should not be deposited in the supervised bank account with loan funds. Withdrawals of funds from the supervised bank account may be made only for legally eligible loan purposes.

(k) *Insurance.* The loan approval official will determine the minimum amounts and types of insurance the applicant will carry.

(1) Fire and extended coverage will be required on all buildings included in the security for the loan in accordance with Subpart A of Part 1806 (FmHA Instruction 426.1).

(2) Suitable Workman's Compensation Insurance will be carried by the applicant for all its employees.

(3) The applicant will be advised of the possibility of incurring liability and encouraged, or required when appropriate, to obtain liability insurance.

(4) Flood Insurance will be required on all buildings located in or to be located in special flood or mudslide prone areas in accordance with Subpart B of Part 1806 (FmHA Instruction 426.2)

(l) *Bonding.* (1) The provisions of Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A) pertaining to surety bonds are applicable to RRH loans. When interim financing is used during the construction period, the decision concerning whether or not to require surety bonds shall be the interim lender's. If the *interim lender* decides not to require surety bonds, a bond waiver is not required from the National Office.

(2) If the applicant is an organization, it will provide fidelity bond coverage for the officials, employees, and management agents entrusted with the receipt, custody, and disbursement of its funds and the custody of any other negotiable or readily salable personal property. The amount of the bond will be at least equal to the maximum amount of money that the applicant will have on hand at any one time exclusive of loan funds deposited in a supervised bank account. The United States will be named co-obligee in the bond if not prohibited by State law. Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used if permitted by State law.

(m) *Previous participation certification.* The applicant, the applicant's architect, and the contractor of the proposed project (when known) will each be required to submit HUD Form 2530, "Previous Participation Certificate" fully completed.

§§ 1944.223–1944.230 [Reserved]

§ 1944.231 Processing preapplications.

Preapplications will be processed in accordance with this section to assure that loan funds are used, to the extent possible, to provide housing for eligible occupants in need of adequate housing.

(a) *Preapplications.* Preapplication information is used to determine the applicant's eligibility and priority for available funds, and to eliminate any proposals which have little or no chance for funding in the near future. Information necessary in a preapplication consists of Form AD–621, "Preapplication for Federal Assistance," and all of the additional information and material outlined in Exhibit A–6. Preapplications should be filed in the FmHA District Office, but may also be filed in the County Office.

(b) *Action by the County Office.* The County Office may handle initial inquiries and provide basic information about the program. They are to provide the preapplication form (Form AD–621), Exhibit A–6 to this Subpart, and Form FmHA 449–10, "Applicant's Environmental Impact Evaluation." The County Supervisor may assist applicants as needed in completing Form AD–621 and the information required in Exhibit A–6. Preapplications filed in the County Office will be immediately forwarded to the FmHA District Office. The County Office will inform the applicant that further processing will be handled by the District Office, and will advise the applicant not to prepare or develop an application until notified by FmHA to proceed. An information folder will be established and maintained by the County Office once a preapplication is received.

(c) *Actions by the District Office.* Upon receipt of the preapplication, Form AD–621 and all other required information and material will be thoroughly reviewed by the District Director for completeness, accuracy, and conformance with program policy and regulations. Incomplete preapplications will be returned to the applicant for completion. In the event that the preapplication is filed in the District Office, the District Director may assist the applicant in completing the preapplication requirements. In such case, however, the District Director will send the County Supervisor all of the appropriate information necessary to establish the County Office information file. The District Director may request the County Supervisor's written comments and recommendations on the proposed site and local housing market demand. After the District Director has fully reviewed the preapplication material, has determined that the preapplication is complete and accurate, and has properly assembled the preapplication material in an applicant case file, the District Director will then forward the following to the State Director:

(1) Form AD–621.

(2) All information and material listed in Exhibit A–6.

(3) Original and one copy of Form FmHA 440–46, "Environmental Impact Assessment."

(4) Eligibility determination and recommendations.

(5) General comments and recommendations.

(6) Comments and recommendations of the proposed project site resulting from an on-site visit to determine its overall desirability as well as conformance with the site location requirements indicted in § 1944.215 (q). In those cases where the District Director determines the applicant not eligible, the District Director will so inform the applicant by issuing an AD–622 and inform the applicant of their appeal rights in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

(d) *Actions by the State Office.* (1) Unless the applicant is an individual or an organization adopting without change the "Articles and Bylaws" prescribed by Exhibits E and F of this Subpart or by State Supplements or has received clearance form OGC for the same type financing, the appropriate documentation necessary in order to make the appropriate eligibility determination and any questions or comments of the State Director will be submitted to OGC for a preliminary opinion as to whether the applicant and the proposed loan meet or can meet the requirements of State Law and this Subpart.

(2) When the State Director determines it necessary, and for all preapplications in excess of the State Director's approval authority, the preapplication will be sent to the National Office for evaluation, authorization, and instructions. When projects are submitted to the National Office, the following information must be included in the submission:

(i) The complete and properly assembled preapplication case file.

(ii) The schematic or preliminary plans and specifications, together with the architectural comments and recommendations of the State Office Architect.

(iii) The information required by § 1944.213(a) of this Subpart.

(iv) The comments and recommendations of the District Director.

(v) The comments and recommendations of the State Director.

(3) The State Director, with the assistance, advice, and council of the Multiple Family Housing Coordinator, will review the preapplication information, credit report(s), and the District Director's eligibility determination and recommendations.

(i) When considering authorizing the development of applications for loan funds, the State Director should consider the remaining funds in the State or district, as appropriate, and the amount of time necessary to complete the final application. All preapplications on hand for which no Form AD–622 has been issued will be ranked semi-annually (on or about October 1 and April 1) according to the priority order established in this subpart. Applications which obviously cannot be funded within a six month period of this time, and within 150 percent of the State's or District's allocation, will be given adverse notice through Form AD–622 and advised of their appeal rights in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B). The State Director should not authorize the development of applications for more than 150 percent of the Funds available in the State or District. The fact that a preapplication is rejected during one rating period does not preclude the applicant from seeking reconsideration of the project at a subsequent time. In addition, where an applicant prevails on an appeal from a rejection, the preapplication should be reinstated and given the priority it would have had originally.

(ii) Preference in selecting and processing loan requests within the annual allocations, will be based on the priorities indicated and in the order they are listed below:

(A) Projects using FmHA's Rental Assistance (RA) or HUD's Section 8 program. Thirty points to be distributed in the following manner:

(1) Section 8:

0–20 percent of units, 5 points
21–40 percent of units, 10 points
41–60 percent of units, 15 points
61–80 percent of units, 25 points
61–100 percent of units, 30 points

(2) Rental Assistance:

5–20 percent of units, 15 points
21–40 percent of units, 30 points
41–60 percent of units, 25 points
61–70 percent of units, 23 points
71–80 percent of units, 22 points
81–90 percent of units, 21 points
91–100 percent of units, 20 points

(B) Projects in areas or communities having a higher percentage of substandard housing. For this purpose FmHA will use the county data provided by the National Office, unless better and more specific data approved by the National Office is available for a particular State. Twenty points to be distributed in the following manner:

Over 25 percent, 20 points
16–25 percent, 15 points
11–15 percent, 10 points
0–10 percent, 5 points

(C) Projects in areas or communities having the lowest medium per capita income. This data will be provided by the FmHA National Office. Twenty points to be distributed in the following manner:

100 percent or more of State per capita income, 5 points

85–99 percent of State's per capita income, 10 points
70–84 percent of State's per capita income, 15 points
Less than 69 percent of State's per capita income, 20 points

(D) Projects having the highest percentage of three or more bedroom units, where the market data indicates a need. Fifteen points to be distributed in the following manner:

With more than 50 percent of 3 or more bedrooms, 15 points
With 30–49 percent of 3 or more bedrooms, 10 points
With 15–29 percent of 3 or more bedrooms, 5 points
With 0–14 percent of 3 or more bedrooms, 0 points

(E) Projects which will serve the needs of rural communities located a number of miles from the FmHA eligibility line from a town with a population of 50,000 or more. Ten points to be distributed in the following manner:

50 or more miles, 10 points
30–49 miles, 8 points
20–29 miles, 6 points
10–19 miles, 4 points
0–9 miles, 0 points

(iii) In situations where priorities among competing loan requests are essentially equal, preference will be given to preapplications from public bodies and nonprofit corporations. In other cases were requests are essentially equal, preference will be given to preapplications on the basis of preapplication date.

(4) After completing the review, determining priority, and making a decision concerning selection, the State Director will notify the District Director of the results of the review action. The State Director will return the preapplication information and the executed original Form FmHA 440–46 to the District Office with authorization for the District Director to prepare and issue Form AD–622.

(5) Form AD–622 will be prepared by the District Director stating the results of the review action. The original will be signed and delivered to the applicant, with a copy to the applicant's case file, a copy to the County Supervisor, and a copy to the State Director.

(i) Applicants with preapplications which are not favorably considered will be notified in writing of the reasons why the request was not favorably considered, and will be informed in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B), that they may request a further review of this decision.

(ii) Applicants with preapplications which are favorably considered, but are unable to be selected for further processing within approximately 150 percent of the State Office or District Office allocation of funds, will be notified that their preapplications lack sufficient priority for further consideration at the present time. Applicants should be advised in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B) that they may request a further review of this action. In addition, such applicants will be advised against incurring obligations for legal and architectural and engineering work, perfecting interests in land rights, and inviting construction bids or making other commitments which cannot be fulfilled without loan funds, until funds are actually made available.

(iii) When an applicant is notified to proceed with an application, the following paragraphs should be contained on or attached to Form AD–622: "The review action taken by FmHA is based upon representations made in your preapplication presented to FmHA. Any changes in approximate project costs, size or scope of the project, rental rates to the tenants or subsidy costs to the Government, scope of services, sources of funds, or any other significant changes in the project or applicant, must be reported to and approved by FmHA in writing. Any changes not approved by FmHA shall be cause for discontinuing processing of the application. All applicants requesting changes will be required to give full justification for each change, and if FmHA approval is not given, written reasons should be provided along with a 30 day negotiation period to resolve the differences. This action is not to be considered as loan approval or as a representation of the availability of funds. The loan docket may be completed on the basis of a loan not to exceed the amount shown on Form AD–622. If a complete application has not been developed in approvable condition by the date specified on Form AD–622, FmHA reserves the right to discontinue processing the application."

§ 1944.232 Preparation of completed loan docket.

(a) *Information needed.* If the applicant has been requested to file an application, Form AD–625, "Application for Federal Assistance (Short Form)," with the additional forms, materials, and information outlined in Exhibit A–7, will be assembled and submitted to the District Director. An application is not considered complete until all required information has been submitted in a complete and acceptable form.

(b) *District Director's responsibility.* (1) When an applicant is notified to proceed with an application, the District Director should arrange for a pre-application conference with the applicant to provide copies of appropriate Exhibits and forms; furnish guidance necessary for orderly application processing; and initiate a processing checklist, (if one has been adopted for use in the State), for use in establishing a time schedule for completion of docket items. The District Director will confirm decisions made at this conference by letter to the applicant and will provide the applicant a copy of any processing checklist initiated. The original and a copy of the processing checklist will be retained in the District Office and a copy will be forwarded to the State Office. The original and copy retained in the District Office will be kept current as application processing actions are taken. The copy will be periodically updated and routed through the State Office and back to the District Office for use in updating the State Office copy of the checklist.

(2) The District Director will assist the applicant in application assembly and processing, and will work closely with the applicant as the loan docket is being developed. As the application is being processed and the need develops for additional conferences, the District Director will arrange with the applicant for such conferences, and will extend and update any processing checklist initiated in connection with the application.

(3) The District Director will review and check all information and materials furnished by the applicant for completeness, correctness, and adequacy. The District Director will review the applicant's rental market survey in detail, and will determine its completeness and accuracy. A random sampling will be made if necessary to verify the completeness and accuracy of the survey. The proposed site will be inspected and the District Director will consider its overall desirability as well as conformance with the site location requirements of § 1944.215(q) of this Subpart. In addition, the District Director will evaluate the information presented concerning the manner in which the applicant plans to conduct its business and financial affairs, and will comment on the adequateness and appropriateness of the proposed management.

(c) *County Committee certification.* County Committees will not be used to review RRH loan applications.

(d) *Assembly, review, and distribution of complete loan docket items.* Ordinarily, FmHA staff review will

proceed as applications are being developed. However, prior to presenting the application to the loan approval official, the District Director will thoroughly examine all items to make sure they are properly and accurately prepared and are complete in all respects, including dates and signatures. The District Director will also set forth the proposed conditions of loan approval.

(1) Prior to presenting the properly assembled application to the approval official, the District Director will provide comments and recommendations, and obtain the written analysis and recommendations of the FmHA State Office Architect/Engineer. The District Director will also obtain the analysis and recommendations of the Multiple Family Housing Coordinator. This analysis will include a review of and recommendations concerning the proposed conditions of loan approval.

(2) Loan docket items will be assembled in the following order for distribution after loan approval:

Form No.	Name of form or document	Total number of copies	Signed by borrower	Number for loan docket	Copy for borrower
FmHA 444-5	Multiple Family Housing Fund Analysis	4		4-O&3C	
FmHA 440-1	Request for Obligation of Funds	5	O&C	4-O&3C	1
AD-621	Preapplication for Federal Assistance	3	1	2-O&1C	1-C
Exhibit A-6	Information to be Submitted with Preapplication for RRH Loan.	2	0	1-O	1-C
AD 622	Notice of Preapplication Review of Action	4		3-C	1-O
AD 625	Application for Federal Assistance (Short Form)	3	1	2-O&1C	1-O
HUD Form 2530	Previous Participation Certificate	2	1	2-O&1C	1-C
Exhibit A-7	Information to be Submitted with Application for Federal Assistance (Short Form).	2	0	1-O	1-C
FmHA 400-4	Nondiscrimination Agreement	2	2-O&1C	1-C	1-C
FmHA 400-1	Equal Opportunity Agreement	2		1-O	1-C
FmHA 400-3 [1]	Notice to Contractors and Applicants	3		1-C	1-C
FmHA 400-6	Compliance Statement (when applicable)	3		1-C	1-C
	Evidence of Legal Authority (copies of citation of specific provisions of State constitution and statutory authority) [2].	2	1	1-O	1-C
FmHA 422-7	Appraisal Report for Multiunit Housing	1		1-O	
FmHA 426-1	Valuation of Buildings	1		1-O	
	Proof of Organization (certified copy of character or articles of incorporation) [2].	2	1	1-O	1-C
	Certified copies of bylaws or regulations [2]	2	1	1-O	1-C
	List of names and addresses of officers, directors, and members, and membership interest held by each [2].	2	1	1-O	1-C
	Certified copy of Loan Resolution [2]	1	1	1-O	
	Loan Agreement or Resolution, if applicable	2	1	1-O	1-C
	Survey of land given as security, plans, specifications, cost estimates, and proposed manner of construction [1].	3	1	1-O	1-C
FmHA 1930-7	Operating budget (first year)	2	1	1-C	1-C
FmHA 1930-7	Operating budget (typical year)	2	1	1-O	1-O
Exhibit A-5	Housing Allowances For Utilities and Other Public Services, if applicable.	2	1	1-O	1-C

[1] One copy for contractor.
[2] When applicant is an organization.

(3) Other loan Docket Items. A preliminary Title and a Final Title Opinion or a title insurance binder, an Affirmative Fair Housing Marketing plan, a mortgage title insurance policy, and a copy of deed, purchase contract, or other instrument of ownership.

(4) When applicable, include copy of lease or lease form to be used between borrower and public housing authority or other authorized lessees, report of lien search, option or foreclosure notice agreement, and items of information concerning prior mortgage.

(e) *Submission of docket to State Office.* When submitting the loan docket to the State Office for the review required in § 1944.232 (d)(1), or in those cases where the loan will be approved in the State Office, the docket must be properly completed and assembled, and must contain the comments and recommendations of the District Director. The State Director, with the advise of OGC if requested or needed, will prepare a memorandum to the District Director setting forth the conditions of loan approval, or requesting additional information if the material submitted is inadequate.

(f) *Submission of docket to National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendations, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included.

(g) *Press release.* When it is determined that the loan can be approved, a press release will be prepared in accordance with Subpart C to Part 2015 (FmHA Instruction 2015–C), available from any FmHA State Office.

§ 1944.233 Loan approval.

(a) *Authority.* Loans will be approved or disapproved in accordance with this Subpart and Subpart A of Part 1901 (FmHA Instruction 1901–A). The State Director may redelegate loan approval authority in writing to State Office employees.

(b) *Loan approval action*—(1) *Responsibilities of loan approval official.* The loan approval official is responsible for reviewing the docket to determine that the proposed loan complies with established policies and all pertinent regulations. In making this review, the loan approval official will determine that:

(i) The applicant is eligible, and has legal authority to contract for a loan and enter into the required agreements.

(ii) The location of the housing meets the requirements outlined in § 1944.215 (q) of this Subpart.

(iii) The State Director has taken the necessary action to comply with § 1901.406 of Subpart I of Part 1901 (FmHA Instruction 1901–I), on projects of 4 or less units.

(iv) The funds are requested for authorized purposes.

(v) The proposed loan is sound.

(vi) The security is adequate.

(vii) All pre-approval requirements have been met, including the applicant's execution of Form FmHA 400–4.

(viii) All other requirements will be met.

(2) *Approval or disapproval of a loan*—(i) *Approval.* Before the loan approval official executes documents evidencing loan approval, a complete review of the project location and proposed management and rental procedures must be made to assure compliance with Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973. If the loan approval official is assured of compliance after a review of the site location, management and rental procedures, and FmHA Instruction 1901–E, the loan approval official may then execute the loan approval documents. When a loan is approved:

(A) The loan approval official will prepare and sign Form FmHA 440–1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station requesting that loan and/or grant funds for a particular project be obligated.

(B) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440–1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(C) The individual making the request will record the date and time of request and sign Form FmHA 440–1 in section 37.

(D) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time to the extent possible will be processed on the date received; however, there may be instances in which a request will be processed on the next working day.

(E) Each working day the Finance Office will notify the State Office by telephone of all projects for which funds are reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance Office. The Finance Office will mail to the State Offices Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA 440–57.

(F) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 444–5 will be mailed to the Finance Office. Forms FmHA 440–1 for those obligations requested by telephone *will not* be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds, the State Director will call the Information Division in the National Office as required by Subpart C of Part 2015 (FmHA Instruction 2015–C). Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form FmHA 440–1 on the obligation date. The State Director or the State Director's designee will record the actual date of application notification on the original of the form as a permanent part of the District Office project file with a copy in the State Office file.

(ii) *Disapproval.* If a loan is disapproved after the docket has been developed, the reason for such action will be shown on the original Form FmHA 440–1, will be initialed and dated. The District Director will notify the applicant of the disapproval of the loan and the reasons therefor. The disapproved docket will then be handled in accordance with Subpart A of Part 2033 (FmHA Instruction 2033–A). If disapproval is not at the applicant's request or by mutual agreement, the applicant will be notified that it may request a further review of the decision in accordance with Subpart B of Part 1900 (FmHA Instruction 1900–B).

(3) *Distribution of items.* After the loan is approved, the contents of the docket will be distributed as follows:

(i) To the Finance Office: Form FmHA 444–5 (original). After being processed, an original and copy of Form FmHA 440–57 will be processed and distributed by the Finance Office.

(ii) To the State Office: One copy of Forms FmHA 440–1 and FmHA 444–5.

(iii) To the District Office: One copy of Form FmHA 440–1 and the remainder of the loan docket.

(iv) To the National Office: A copy of Form FmHA 444–5.

(4) *To OGC.* For a loan to an organization, or for a loan to an individual in special cases, the approved loan docket, including any title evidence, will be sent through the State Office to OGC for preparation of closing instructions and any special legal documents required for closing. A certified copy of a required loan resolution or the original executed witnessed loan agreement must be supplied by the applicant in time to be included in the loan docket. No docket will be considered which fails to include such a required resolution or agreement. The OGC will route the docket, including closing instructions and any such legal documents, to the District Office through the State Office for review and for inclusion of any further instructions needed in closing the loan.

§ 1944.234 [Reserved].

§ 1944.235 Actions subsequent to loan approval.

(a) *Pre-commitment or closing actions.* After loan approval, the loan docket will be processed to the stage where a construction loan would normally be closed prior to the start of construction. During this processing, the following actions should be taken:

(1) Obligation of FmHA loan funds.

(2) Execution by the borrower of the appropriate loan agreement or loan resolution required in accordance with § 1944.215 (e) of this Subpart.

(3) Obtain closing instructions from OGC in accordance with the requirements of Part 1807 of this Chapter (FmHA Instruction 427.1), § 1944.233 (b)(4) and § 1944.236 (a) of this Subpart.

(4) Unless initial operating and maintenance capital is included in the loan in accordance with § 1944.212 (n) of this Subpart, the applicant will furnish evidence of the deposit of initial operating and maintenance capital into the general fund account of the project.

(5) The borrower will provide evidence indicating the terms and final arrangements for interim financing.

(b) *Financing during the construction period.*—(1) *Interim financing.* In all cases of RRH loans exceeding $50,000, when it is possible for funds to be borrowed at reasonable interest rates on an interim basis from commercial or public sources for the construction period, such interim financing will be obtained to preclude the necessity for multiple advances of FmHA funds. Interim financing will be used subject to the following:

(i) FmHA will assume the same responsibilities as if FmHA funds had been advanced from the standpoint of approving construction contracts, inspection of construction, and assuring compliance with applicable equal opportunity, nondiscrimination, and Davis-Bacon Act requirements, where Section 8 is involved.

(ii) The FmHA State Director or District Director will deliver a copy of Form FmHA 440–57 to the proposed interim lender as evidence of the FmHA commitment to the applicant. The guide letter shown as Exhibit D of this Subpart will be used by the State Director or District Director to inform a proposed interim lender that funds in specified amounts have been obligated and will be available to retire the interim financing if the applicant complies with the approval conditions, the builder's performance is acceptable and all construction bills are paid.

(iii) Since FmHA's commitment to the interim lender is contingent upon

acceptable performance by the builder and payment of all construction bills, the interim lender should be advised of the additional risk involved if the builder is unable to provide, or the interim lender does not require a payment and performance bond. Although partial payments to the builder constructing the project by the contract method of construction must be made in accordance with the approved construction contract, the interim lender should not be permitted to make disbursements of more than 90 percent of the value of acceptable work in place.

(iv) Any cash for land purchase or development that is to be furnished by the applicant in fulfillment of the applicant's contribution requirement in § 1944.213 (a)(2) of this Subpart must be placed on deposit with the interim lender and disbursed prior to any disbursement of interim loan funds. Obligations incurred prior to loan closing and the start of construction will be handled in accordance with § 1944.213 (c).

(v) A supervised bank account need not be established for funds obtained through interim financing. However, in order to assure that funds are requested and used for authorized purposes, requests for partial payment shall be submitted through the District Director on Form FmHA 424–18, "Partial Payment Estimate," or other professionally recognized form containing the certifications of the architect, applicant, and FmHA representative shown on Form FmHA 424–18. For recordkeeping purposes, Form FmHA 402–2, "Statement of Deposits and Withdrawals," should be used to record the deposit of applicant funds for construction with the interim lender, and FmHA approved disbursements of interim loan funds.

(vi) When the project is substantially complete, the FmHA loan may be scheduled for closing. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed.

(vii) The FmHA loan may be closed, permanent instruments issued to evidence the FmHA indebtedness, and FmHA loan funds used to retire the interim indebtedness when the project is substantially complete and all bills have been paid. As evidence of the fact that there are no unpaid obligations outstanding in connection with the project, the applicant will be required to submit to the District Director, at or prior to loan closing, signed statements from the contractor, architect, engineer, and attorney indicating that obligations for material, labor, or services have been paid in full, and have been paid in accordance with their contracts or other agreements, less any funds withheld for minor punch list items. Form FmHA 424–10, "Release by Claimants" or other similar form may be used for this purpose. If such statements cannot be obtained, the loan may be closed provided all of the following can be met:

(A) Statements to the extent possible are obtained;

(B) The interests of FmHA can be adequately protected and its security position is not impaired;

(C) Adequate provisions are made for paying the unpaid accounts by withholding or escrowing sufficient funds to pay such claims or obtaining a release bond.

(2) *Multiple advances of RRH loan funds.* In the event interim financing is not available, and applicant supplies such evidence, multiple advances will be used subject to the following:

(i) In those cases where relatively large amounts of funds are to be expended for purchases of real estate or for other reasons at the time of closing, separate checks for such purposes may be ordered and endorsed by the borrower to the seller or other appropriate party. This will preclude the necessity for depositing such loan funds in the supervised bank account and reduce the amount of required collateral.

(ii) Except as indicated in paragraph (b)(2)(i) of this Section, advances will be made only as needed to cover disbursements required by the borrower for a 30-day period. Normally, the advances should not exceed 24 in number or extend longer than 2 years beyond loan closing. The retained percentage withheld from the contract to assure that construction will be completed in accordance with the contract documents will ordinarily be included in the last advance. Advances will be requested in sufficient amounts to insure that ample funds will be on hand to pay costs of construction, land purchase, legal, engineering, or architectural costs, interest, and other expenses as needed. The borrower will prepare Form FmHA 440–11, "Estimate of Funds Needed for 30-day Period Commencing ," modified as needed, to show the amount of funds required during the 30-day period. This form will be approved by the District Director or the District Director's delegate. After it is determined that the estimate prepared by the borrower is adequate, the advance will be requested on Form FmHA 440–57 in accordance with the FMI and it will be forwarded to the Finance Office. As an example, for a loan of $100,000, the advances may be made as follows: Assuming that the loan will be closed on July 1, the borrower will complete Form FmHA 440–11 in sufficient time so that the funds will be available on the day of loan closing. The estimates should be broken down for the first advance in a manner similar to the following:

Construction	$30,000
Land Acquisition	5,000
Architectural	4,000
Legal	1,000
Total	40,000

An advance in the amount of $40,000 would then be available on July 1, the date of loan closing. The second advance will also be based on the borrower's estimate prepared on Form FmHA 440–11, and will be prepared in sufficient time so that the estimated amount of funds will be available on August 1. This estimate of funds might be broken as follows:

Construction	$20,000
Architectural	1,000
Total	21,000

A copy of Form FmHA 440–57 specifying the amount then will be forwarded to the Finance Office. The same routine will be followed for each advance until the project is completed.

(iii) When the project is substantially complete, final payment to the contractor may be scheduled for disbursement. A project is substantially complete when it is possible in accordance with any contract documents, applicable State or local codes or ordinances, and the FmHA approved drawings and specifications, to permit safe and convenient occupancy and use of the buildings. Upon substantial completion, the owner's architect must issue a dated and signed statement certifying to substantial completion. The owner's architect will, with FmHA's assistance, also prepare and verify a punch list of any minor items of development that need to be corrected and completed. More than adequate funds to cover the costs associated with correcting or completing the minor items identified will be withheld in accordance with the requirements of Subpart A to Part 1924

(FmHA Instruction 1924–A) from the contractor's final payment until full performance.

(iv) Any deviation from the multiple advance procedure must have the prior approval of the National Office.

(c) *Requesting check.* When loan approval conditions can be met, including any real estate lien required, and a date for FmHA loan closing has been agreed upon, the District Director will determine the amount of funds needed in accordance with either paragraph (b)(1) or (2) of this section. The District Director or the District Director's delegate will then order the loan check so that it will be available on or just before the date set for loan closing.

(d) *Increase or decrease in the amount of the loan.* If it becomes necessary for the amount of the loan to be *increased* within the *same fiscal year* but prior to loan closing, the loan approval official or District Director will request that all distributed docket forms be returned to the District Office. The loan docket will be revised accordingly and reprocessed. If it becomes necessary for the amount of the loan to be *increased after the fiscal year* of the loan obligation has passed, but prior to loan closing, the District Director will process a subsequent loan for the amount of increase. If it becomes necessary that the amount of the loan be *decreased* prior to loan closing, the District Director will notify the Finance Office of the decreased loan amount by memorandum. The District Director's memorandum will, at a minimum, contain the following:

(1) The applicant's name.

(2) The applicant's case number.

(3) The fund code.

(4) The nature of the request.

(5) The amount of decrease.

(6) The new amount of loan (after decrease).

(e) *Cancellation of loan.* Loans may be cancelled after approval and before loan closing as follows:

(1) The District Director will prepare Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation" in an original and two copies (3 copies if the check is received in the District County Office from the Regional Disbursing Office). The original and copies will be sent to the State Director with the reasons for requesting cancellation. If the State Director approves the request for cancellation, the original request will be forwarded to the Finance Office after making appropriate adjustments in the records to control loan allocations. A copy or copies of Form FmHA 440–10 will be returned to the District Office.

(2) If the loan check is received in the District Office, the District Director will return it to the Disbursing Center, U.S.Treasury Department, Post Office box 3329, Kansas City, Kansas 66103, with a copy of Form FmHA 440–10.

(3) All interested parties will be notified of the cancellation as provided in Part 1807 of this chapter (FmHA Instruction 427.1). Unless the cancellation of the loan is by mutual agreement, the applicant will be notified that the decision may be appealed in accordance with Subpart B to Part 1900 (FmHA Instruction 1900–B).

(f) *Handling loan check.* The loan check will be handled in accordance with paragraph IV of FmHA Instruction 102.1 (available in any FmHA office) and Subpart A of Part 1902 (FmHA Instruction 1902–A).

(g) *Property insurance.* Buildings will be insured in accordance with Subpart A of Part 1806 of this Chapter (FmHA Instruction 426.1).

(h) *Prerent–up conference.* To promote proper planning for initial rent up and occupancy, the District Director will convene with the applicant soon after loan approval to discuss the affirmative fair housing marketing plan or any other similar agreement approved for the project with the applicant and the applicant's management firm, if any.

(1) The District Director will review the applicant's marketing plan to determine that it is complete with all supplemental information provided. If it is determined that the plan should be modified before marketing activity begins, approval must be granted from the official authorized to approve the assistance requested prior to modification.

(2) The District Director should be assured that the applicant will sincerely direct marketing activity in an effort to attract applications for housing from all groups in the housing marketing area. If it is anticipated that applications for housing may result in a concentration of occupancy by race, color, religion, sex, or national origin, outreach efforts shall be extended to those persons who would not be expected to apply for the housing. Such efforts shall be conducted for a reasonable period of time prior to the normal period for receipt of applications and commencing not less than 90 days prior to project completion.

(3) Prior to initial occupancy of any tenant, the District Director and the applicant will reconvene to assess implemented marketing activity by thoroughly reviewing the marketing plan, anticipated occupancy results and the extent of achievement of plan objectives. If original marketing concepts prove to be less than effective, and/or if there are changes in the housing market, the applicant may be required to modify the marketing plan for the project. Should the District Director determine the applicant in noncompliance to the plan and a modification to the plan not warranted, the matter will be refered to the FmHA Administrator, attention Equal Opportunity Officer, through the State FmHA Compliance Officer.

§ 1944.236 Loan closing.

(a) *Applicable instructions.* RRH loans will be closed in accordance with applicable provisions of Part 1807 of this Chapter (FmHA Instruction 427.1) and any State Supplements. Loan dockets for an organization and loan dockets for an individual in special cases will be sent through the State Office to OGC for closing instructions. A profit or limited profit organization applicant may use any designated attorney or title insurance company to close the loan in accordance with the applicable loan closing instructions, provided the attorney or title insurance company and their principals or employees are not members, officers, directors, trustees, stockholders or partners of the applicant entity. Nonprofit origanizations may use a designated attorney who is a member of their organization provided the cost is in accordance with § 1944.212(k) of this Subpart.

(b) *Mortgage.* Unless OGC determines the form to be inappropriate, real estate mortgage Form FmHA 427–1 (State), "Real Estate Mortgage for ," will be used. For loans to organizations, Form FmHA 427–1 will be modified as prescribed by or with the advice of OGC with respect to the name, address, and other identification of the borrower, the style of execution, and the acknowledgment.

(1) The mortgage or other instrument will contain the following covenant:

> The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purpose for which financial assistance was extended or for so long as the purchaser owns it, whichever is longer.

(2) When a loan resolution or loan agreement is used, an additional paragraph will be included in the mortgage to read as follows:

> This instrument also secures the obligations and covenants of Borrower set forth in Borrower's Loan Resolution (Loan Agreement) of (*Date*), which is hereby incorporated herein by reference.

(3) In case of a loan to an individual where a loan agreement is not used, additional paragaphs will be included in the mortgage to read as follows:

Occupancy of the housing and related facilities on the property will be limited to eligible occupants as defined in the regulations of the Farmers Home Administration, unless the Government gives prior written approval to other Occupancy.

As required by the Government: Borrower will permit the Government to inspect and examine the operation of the housing and the books, records, and operations of Borrower; submit regular and special reports pertinent to the loan or the Government's financial interests; subject rents and charges and other terms of rental agreements with occupants of the housing, and compensation to employees connected with its operation, to prior approval by the Government, or to adjustment at the direction of the Government when necessary in its judgment to carry out the purpose of the loan or protect its financial interests; and comply with any other requirements which in the discretion of the Government are reasonably appropriate to the purpose of the loan or protection of the Government's interests. Revenue from the housing shall be first used to pay operation and maintenance costs of such housing and to make adequate provision to meet required payments as they become due on the FmHA rural rental housing loan.

(4) For all RRH Section 515 loans approved on or after December 21, 1979, the following language will be included in the mortgage:

The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this (15 years for unsubsidized and 20 years for subsidized loans) year period beginning (the date the last loan on the project is closed). No person occupying the housing shall be required to vacate prior to the close of such (15 years for unsubsidized and 20 years for subsidized loans) year period because of early repayment. The borrower understands that should an unsubsidized project be converted to subsidized within 15 years from the date the last loan on the project is closed, that the period will be increased by 5 years. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that Federal or other financial assistance provided to the residents of such housing will no longer be provided. A tenant may seek enforcement of this provision as well as the Government.

Any borrower whose loan was approved prior to December 21, 1979, and was closed on or after that date with the prospective restrictive prepayment language in the Mortgage, Loan Resolution or Agreement should be notified that they have the option of having these instruments modified if they so desire. The change would be solely deletion of the restrictive prepayment language. Any cost associated with the modification must, however, be borne by the borrower. Any action in this area should be approved by the Office of the General Counsel.

(c) *Promissory note.* (1) Form FmHA 440–16 will be used. Regular amortized payments for principal and interest will be scheduled on a monthly basis. Instructions for preparation in the FMI for the note will be followed.

(2) The amount to be shown in the note will be the same as shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in Part 1807 of this Chapter (FmHA Instruction 427.1).

(3) Payments on RRH loans will be scheduled on the note in accordance with the FMI. As provided in § 1944.215(c) of this Subpart, the principal installments during the first and second years after loan closing may be deferred.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this Chapter (FmHA Instruction 427.1).

(d) *Recorded mortgage.* When the real estate mortgage is returned by the recording official, the District Director will retain the original in the borrower's case folder. If the original is retained by the recording official for the county records, a conformed copy including the recording data showing the date and place of recordation and book and page number will be prepared and filed in the borrower's case folder. A copy of the mortgage, conformed as to all matters except the recording date, will be delivered to the borrower.

(e) *Date of closing—establishment of account.* (1) An RRH loan is considered closed when the security instrument is filed of record or, if no security instrument is filed of record, when the loan funds are deposited in the supervised bank account or otherwise made available to the borrower after the borrower executes and delivers the note and any other required instruments.

(2) After the loan is closed, the account and case folder will be established at the District Office following the requirements of FmHA Instructions 405.1 and 2033–A (available in any office), respectively.

§ 1944.237 Subsequent RRH loans.

A subsequent RRH loan is a loan made to an applicant or borrower to complete or repair the units planned with the initial loan.

§ 1944.238 Coding loans as to initial or subsequent.

A borrower may obtain financing for more than one project. Each project will be coded as an initial loan when the total number of units are built or purchased at one place at one time. A subsequent loan will be coded when an additional loan or loans are necessary to complete or repair the units planned with the initial loan. As an example, the borrower may obtain initial loans for more than one project in the same county, in different counties under the same District Office jurisdiction, or in more than one District Office jurisdiction. Codes to be used will be in accordance with the FMI for Forms FmHA 440–1, FmHA 440–57, and FmHA 444–5.

§ 1944.239 Complaints regarding discrimination in use and occupancy of RRH housing.

Any occupant or applicant for occupancy or use of RRH housing or related facilities who believes he or she has been discriminated against because of age, race, color, religion, sex, marital status, handicap or national origin should file a complaint with the Secretary of Agriculture (or with the Office of Equal Opportunity), U.S. Department of Agriculture, Washington, DC 20250. If a complaint is made to an FmHA county, district, or State office, the complaint should be directed to the Office of Equal Opportunity (USDA–OEO) by the FmHA employee in charge of that office. If the complaint is forwarded to USDA–OEO by a county or district office, the State Director will be made aware of the complaint.

(a) It is preferred that the complaint be in writing and signed by the complainant. The complaint may, however, be telephoned to the FmHA Districe Office. The complainant should provide the following information:

(1) The name and address (including telephone number) of the complainant.

(2) The name and address of the person committing the alleged discrimination.

(3) Date and place of the alleged discrimination.

(4) Any other pertinent information that will assist in the investigation and resolution of the complaint.

(b) If a complaint is received by an FmHA Office, the County Supervisor, District Director, or State Director will acknowledge receipt of the complaint and promptly forward it to the USDA Office of Equal Opportunity, Washington, DC 20250.

(c) Accompanying the complaint should be a statement from the District Director or State Director as to whether

the security instrument or other document executed by the borrower contains a nondiscrimination agreement. The statement also should include any other information which the State Director or District Director has pertaining to the complaint. The District Director or State Director should delay a comprehensive investigation of any complaint until requested to do so by the National Office.

(d) The USDA Office of Equal Opportunity will determine whether discrimination did in fact occur. Appropriate steps will be taken to ascertain the essential facts. The USDA Office of Equal Opportunity will handle complaints in accordance with Department regulations (which are found at 7 CFR 15.6).

(e) If it is found that the complaint is without substance, the parties concerned will be so notified.

(f) If it is found that the borrower's discrimination agreement in the security instrument or elsewhere was violated, FmHA will inform the parties of such finding and advise the violator to take the action necessary to correct the violation and to give appropriate assurance of future compliance.

(g) If the borrower should fail to take such action and assure future compliance, the Administrator may take further appropriate action.

§ 1944.240 Exception authority.

The Administrator of the Farmers Home Administration may, in individual cases, make an exception to any requirements of this Subpart not required by the authorizing statute if the Administrator finds that application of such requirement would adversely affect the interest of the Government, the immediate health or safety of the tenants or the community. The Administrator will exercise the authority only at the request of the State Director. The State Director will submit the request supported by data: Demonstrating the adverse impact; identifying the particular requirement involved; showing proper alternative courses of action; and, identify how the adverse impact will be eliminated.

§§ 1944.241–1944.249 [Reserved].

§ 1944.250 Prepayment of RRH loans approved prior to December 21, 1979.

The District Director will accept prepayment of any RRH loan approved prior to December 21, 1979, provided the following conditions are met:

(a) The borrower will:

(1) Provide written notice to each tenant sixty (60) days prior to submitting an offer to prepay. This notice should include information outlining the possible change of ownership and any resulting changes that would occur in rental rates or management practices as a result of prepayment. This information should also be posted within the building(s) at the same time each tenant is notified. The District Director will review such notification procedure and the information contained therein prior to approving the prepayment offer.

(2) When prepayment is approved, provide written notice of said approval and the anticipated future disposition of the units to each tenant. This notice should include a statement advising the tenants of their priority rights if they are displaced as a result of the prepayment. The tenants should be advised in the notice that they have six (6) months from the date of the prepayment to exercise their priority right by applying for a letter of priority from the District Director. The tenants then have thirty (30) days to submit this letter of priority to other FmHA projects within a reasonable commuting distance of the affected project. This information should be posted within the building(s) upon notification of approval.

(b) The District Director will: Upon application within six (6) months of the prepayment by a tenant displaced as a result of said prepayment, provide a letter of priority entitlement to such affected tenant to all other FmHA RRH projects in the area. This area includes FmHA projects which are within a reasonable commuting distance of the affected project. The letter of priority entitlement should include a statement that the affected tenant has thirty (30) days from the date of issuance of the letter of priority entitlement to apply with other FmHA RRH projects in the area. The letter of priority entitlement will enable such tenants to move to the top of any waiting list in those projects. A list of FmHA RRH projects in the area will be included as part of the letter of priority entitlement.

(c) The State Director will send a report on each prepayment case approved to the National Office to the Attention of the Multiple Housing Management and Servicing Division containing the following information:

(1) The number of units in the project.

(2) The number of eligible tenants presently occupying the units.

(3) The estimated replacement cost of the units.

(4) The estimate of the number of families that will be displaced as a result of prepayment.

(5) The estimate of the relocation cost of the families being displaced.

(6) An indication of the displaced families' ability to pay relocation costs.

(7) The income range of the tenants presently in the project.

(8) The number of elderly tenants in the project.

(9) The present and projected rents.

(10) The number of Section 8 or RA units and whether Section 8 will continue after prepayment.

(11) Any cause of displacement other than rent.

(12) The availability of other vacant units in the area.

Exhibit A—How to Bring Rental Housing To Your Town

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Introduction

Most areas in rural America need more adequate rental housing. The elderly with modest incomes often live in improvised flats or apartments that are cold in the winter and hot in the summer because adequate housing at a reasonable rent is not available. Others such as school teachers and the newly married often cannot find suitable rental housings of any kind in the rural community where they work. Other households who prefer to rent have the choice of either commuting many miles to work or living in the substandard rental housing that is available in small rural communities.

To help reduce this rental housing shortage, the Farmers Home Administration (FmHA) finances rental housing in rural communities. Nonprofit organizations, other types of organizations as well as individuals may qualify for loans. Information about these loans is available at the local office of the Farmers Home Administration.

This handbook has been written to assist interested persons and groups in completing an application and obtaining the information required for a loan docket. It also briefly explains

requirements regarding the construction and operation of the rental housing.

The basic guidelines in this handbook apply to all applicants; however, some requirements will vary depending on the size of the project and whether the applicant is a nonprofit organization, other type of organization, or an individual.

The objective of the Rural Rental Housing (RRH) loan program is to provide credit for good rental housing, designed for independent or congregate living, at rental rates that senior citizens, handicapped persons, and other people with low and moderate incomes can afford.

Successful rental housing depends on the existence of three important conditions; namely:

There must be a need for the rental housing to be built.

The housing must fit the needs of prospective occupants from the standpoint of design, location, and cost.

The applicant must provide good management.

An applicant for a loan will need to provide adequate information to FmHA to show that these basic conditions can be met.

Applying For a Loan

An individual, organization, or group organizing for this purpose may apply for an RRH loan to finance rental housing. The application should be made to the local FmHA County Supervisor, but also may be made to the FmHA District Director serving the area in which the housing is to be located.

The FmHA pamphlet on RRH loans should be read by the applicant before applying for a loan. The applicant also should discuss the proposed housing with the County Supervisor or District Director before completing an application.

Applying for a loan begins with a "Preapplication for Federal Assistance" on Form AD–621. Attached or included with the preapplication form should be the supporting material or information listed in Exhibit A–6. Together, this information will enable FmHA to determine:

Eligibility of the applicant,

Feasibility of the proposed housing, and

Whether the proposed housing can appropriately be financed by the FmHA.

This information usually can be furnished by the applicant without formally hiring professional services. It should be factual and specific based on objective investigations and realistic estimates. In addition to the information shown in Exhibit A–6, the following paragraphs will provide guidance concerning the subjects that need to be addressed in a preapplication:

1. *Identification of the applicant.*

The name, social security number, address, and occupation of individual applying for an insured RRH loan should be provided. The providing of the social security number will only be on a volunteer basis and a loan will not be denied for refusal to furnish the number. Organizations should attach a certified copy of their charter or articles of incorporation and bylaws, names of members of the board of directors, and a list of names and addresses of stockholders, partners, or members showing their percentage interest in ownership of the organization. Groups being organized should list the names and addresses of the organizers, their proposed percentage interest in ownership, and the type of organization they plan to form.

2. *Experience of applicant in operating rental housing.*

Describe any experience the applicant has had with rental housing, the location of the housing, and the applicant's duties in connection with the housing.

3. *Applicant's financial situation.*

A current, dated, and signed financial statement showing assets and liabilities, together with information on the repayment schedule and status of each debt, must be included in the preapplication. If the applicant is a closely held corporation, a financial statement should be provided by each director and by each member who holds an interest in excess of 10 percent in the corporation.

4. *Test for other credit.*

The key to the test for other credit is not merely an applicant's inability to obtain credit from other real estate lenders. The key is whether the credit that is available will enable the applicant to rent the rental units to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should contact other lenders making long-term loans for housing in the area in order to determine (a) the amount of the loan the lender is willing to provide, (b) the interest rate and terms at which the loan would be available, and (c) if credit is not available, the reasons why the lender is not willing to extend credit.

5. *General description of the housing planned.*

A brief narrative description of the housing planned would be helpful. It should include the following items:

The type of project and structures proposed, (such as garden apartments for senior citizens and handicapped persons, townhouses for low- and moderate-income persons, or congregate housing for senior citizens and handicapped persons).

The size of each type of living unit measured in square feet of living area. Square feet of living area will be measured from outside dimension to outside dimension.

In cases where apartments share a common wall, the dimension will be taken from the center line of the common wall. In the case of the common wall between an apartment and a public corridor or hall the dimension will be taken from the face of the wall on the corridor side.

The total number of units proposed, and the number of each type of living unit proposed.

The type of construction proposed.

The estimated total development cost, the cost per unit and the estimated loan amount.

Schematic design drawings should be included with this narrative description, and should include the proposed plot plan, unit plans, and typical elevation.

6. *Applicant's contribution.*

Applicants may contribute cash, free and clear title to the building site, or a combination of both as an equity contribution. In addition, applicants should show the amount of funds available to cover the cost of any furnishings and for initial operating expenses.

7. *Location of housing to be built.*

Describe the site and how it is located in relation to services occupants of the housing will require. A map of the community with the site, stores, churches, schools, pharmacies, doctors, and hospitals, is a convenient way to do this. The map also should show significant features such as main highways, railroads, rivers and lakes. The use of property surrounding the site also should be indicated.

8. *Why is the housing needed?*

An individual, organization, or group interested in applying for an RRH loan should investigate the need for more rental housing in the community and become acquainted with families who might be eligible for the kind of rental housing FmHA can finance. The application should include a summary of the information obtained by the applicant to show that there are enough people in the community and its trade area who are eligible to occupy the housing and are willing and able to pay the required rent.

Success of the project will depend on the need for the housing in the community, the rental levels, and the applicant's ability to properly manage the housing. The applicant's basis for conclusion that the proposed rental housing will be successful should be included in a brief statement.

Review of Application

The preapplication and supporting information may be sent to the FmHA County Supervisor or the FmHA District Director. The County Supervisor will forward the preapplication material to the FmHA District Director who in turn will notify the applicant when FmHA reaches a conclusion after it has reviewed the material submitted. If it appears a loan can be made, the District Director will explain to the applicant the additional steps that will be required. In case favorable action cannot be taken on the application, the District Director will explain the reasons and may be able to suggest changes to permit a loan to be made.

Developing the Loan Docket

When authorized to proceed with the loan docket and assemble a complete loan application, the District Director will review with the applicant each of the items listed in Exhibit A–7 with Form AD–625, "Application For Federal Assistance (Short Form)," to complete the docket. The amount of information required will vary based on the complexity and size of the proposed housing project. The District Director will also provide forms and guides to assist the applicant in recording required information. Some of the guides are included as Exhibits in this handbook. The applicant is responsible for providing the information required. The District Director will assemble this information and complete the docket.

The following are steps which may be followed in developing a loan docket. The first two steps are applicable only to nonprofit organizations. The other steps apply to any applicant.

1. *Getting organized if applicant is a nonprofit organization and has not adopted articles of incorporation and bylaws.*

Steering Committee. The groups may choose a steering committee to act for them. An attorney will usually be required to advise the organization on incorporation and assist in developing the loan application. The steering committee should select an attorney who is interested in the proposed housing and will render the necessary services promptly and for a reasonable fee.

Articles of Incorporation and Bylaws. FmHA has developed model articles of incorporation and bylaws for nonprofit organizations. The steering committee should arrange for the District Director to meet with the attorney. The District Director will give the attorney copies of the FmHA model articles of incorporation and bylaws and explain FmHA requirements.

Attorney's Fees. Reasonable attorney's fees may be included in the FmHA loan. A written agreement between the applicant and attorney is required. See Exhibit A–1 for a sample copy of such an agreement.

Board of Directors. The steering committee usually selects the incorporators for the corporation. The board of directors of the corporation is responsible for conducting the corporation's business, including not only obtaining the loan, but also providing overall management after the housing is completed.

2. *Obtaining broadly based membership.*

A nonprofit corporation applying for a loan must have and maintain a broadly based local membership representing a variety of interests in the community, including leaders in the community. The members may be both individuals and organizations, but each member is limited to one vote.

The purpose of the broadly based membership requirement is to obtain community support, provide enough members to be able to rotate officers and members of the board of directors, protect the Government's financial interest as mortgagee, and provide assurance that the housing will be a success and the purpose of the loan carried out.

In RRH loans made to nonprofit organizations and public bodies, there is no profit incentive. The term of the loan may be for as long as 50 years. Therefore, factors such as the prospect for continuous competent management and supervision, maintenance, and adequate community support of the housing project over the expected life of the loan are important.

A membership list showing the names and addresses of each member should be maintained by the secretary of the organization.

Number of members required. The number of members required to meet the "broadly based membership" requirement will vary, depending upon such facts as the applicant's experience and financial condition, the size of the housing project, the size of the community, and the ratio of loan to the appraised value of the security. The board of directors with the advice of FmHA should decide the number of members needed to assure their organization of sufficient community support.

Contributions by members. Nonprofit corporations may require a membership fee or ask prospective members for a contribution. This is the method often used by nonprofit corporation applicants to raise initial operating capital. However, no such fee or contribution can entitle a member or prospective member to a preference in occupancy of the housing.

3. *Initial Operating Capital.*

All applicants must have enough initial operating capital to get started. When justified, FmHA may include these funds in the loan when the loan is made to a nonprofit organization or public body. Initial operating capital should be sufficient to pay such costs as property and liability insurance premiums, fidelity bond premiums when applicant is an organization, utility hook-up charges and deposits, maintenance and other equipment, lease forms, furnishings, loan payments that may become due during construction, and other initial expenses.

The applicant can determine the amount required by working out a detailed budget of income and expenses for the period of time until the housing is ready for occupancy and rental income will be available. Two percent of the total cost of the proposed project will usually cover the costs of getting the housing started if the applicant does not intend to provide furniture or movable equipment for the units. The actual budget, however, may indicate that more than 2 percent is needed.

4. *Analysis of Market to Determine Demand for Rental Housing.*

Applicants should discuss with the District Director the type of market analysis that will be needed. This will vary with the community and the size of the project. Applicants who are interested in developing larger (10 units or more) projects will have to make a complete market analysis showing the need and demand for rural rental housing in the area. The market analysis will indicate the demand for rental housing from prospective eligible occupants in the community in which the housing will be located and the trade area around it.

Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, the economic justification for the size of the project and the type of units provided should be based primarily upon the need and demand from eligible prospective occupants who are permanent residents of the community. Demand from the more temporary residents of a town (such as college students), should be discounted in determining project size. The information needed in a rental market analysis includes:

a. Estimate of number of houses or apartments in the area currently for rent.

b. Characteristics of available rental housing, such as location, quality and size of units, type of building, age of structure, vacancy rate, reasons for vacancies, and rental levels.

c. Characteristics of the eligible occupants, such as single or couples, male or female, size and composition of household, number of senior citizens, number of nonsenior citizens, and number of handicapped.

d. Income and financial condition of the people in the area who would be eligible to occupy the housing as planned.

e. Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial conditions.

f. Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

In order to verify that the information presented in the market analysis is accurate, the applicant may also be requested to conduct a rental market survey to identify the number of tenants the applicant can expect for the kind of housing planned. The rental market survey will involve the identification of individuals who are both eligible to occupy the proposed housing and actually ready and financially able to occupy the proposed rental housing.

To assure full occupancy as soon as the housing is completed, about 50 percent more eligible prospective occupants than the number of units to be built should be identified in the market survey before the loan docket is submitted. Prospective occupants who are temporary residents of the community should not be included in the market survey.

People interested in becoming occupants can be identified by:

Personal solicitation by the applicant.

A public meeting. (The District Director can arrange to have someone from FmHA assist the applicant in conducting the meeting).

Newspapers, TV and radio. (Coupons that can be clipped from a newspaper and sent to the applicant to indicate interest have been used by some applicants. The applicant should contact each interested person to find out if he or she would be eligible, willing and able to move into the housing when it is completed. A list of the names of prospective occupants should be maintained in the order in which they indicated their interest. The possibility exists that the list could serve as a preliminary waiting list from which the first occupants of the housing may be selected.

Exhibits A–2, A–3, and A–4 are sample forms which may be modified as necessary by the applicant and used to assist in the assembly of the information for the rental market analysis and the rental market survey.

5. *List of prospective occupants.*

In order to assure that the proposed housing will be fully occupied shortly after completion of construction, the applicant should begin developing a waiting list of prospective eligible occupants early in the development of a loan docket. In order to promote proper planning for initial rent-up and occupancy, the District Director will convene with the applicant soon after loan approval to discuss the Affirmative Fair Housing Marketing Plan or any other similar agreement approved for the project.

6. *Planning to Fit the Market.*

Planning the housing to fit the market existing in the community involves more than obtaining a blueprint of the building. It requires a careful evaluation of conditions in the community and careful planning to assure that the result will be good rental housing designed for independent living at a cost senior citizens, handicapped persons, and other people with low to moderate incomes can afford. Well planned housing is:

Convenient, attractive, safe, and comfortable.

Easily maintained.

Located where its occupants can have easy access to the goods and services they require for daily living.

Planned to meet the local codes and regulations.

Designed to fit the market for the future as well as the present.

Priced to rent for no more than the prospective occupants believe they can afford.

Energy efficient and complies with any energy requirements of FmHA.

A word of caution: Do not build more units than needed in the area. Keep the rents down to the level prospective tenants are able and willing to pay. Start with a modest number and if experience demonstrates a need for more units, additional loans to create more rental units can be considered.

The District Director can provide information that will help the applicant in planning the housing.

7. *Selecting an Architect.*

The services of an architect are required for all rental housing projects unless they involve only a few units (usually not more than 4), standard type plans are used, and architectural services are not required by State law. The cost of an architect/engineer registered to perform architectural engineering services in the State may be included in the loan.

Before anything more than schematic drawings are prepared, the Architect, the FmHA Architect/Engineer, the applicant and the District Director should arrange a meeting. The purpose of this meeting will be to acquaint the applicant's architect with the purposes of the housing and the requirements of FmHA. This will be helpful in eliminating misunderstandings. Among the topics that should be discussed are:

Objectives of the rental housing program:

Services the architect will be expected to perform.

Agreement between architect and applicant.

Stages at which FmHA should review plans and specifications.

Design requirements that will produce good housing at a reasonable cost.

8. *Selecting a Site.*

The location of the housing is an important part of planning to fit the market. Tenants will require easy access to required services. A desirable residential setting within a rural community is essential. Cost also is important.

The total cost of the site, including the cost of site improvement as well as the price of the land, must be considered. Both may be included in the loan.

Before buying a site, it is essential that the applicant consult with the architect to determine the suitability of the site for the proposed housing. The structure to be placed on the site must not only take into consideration the needs of those that will be occupying it, but also the potential environmental impacts of this location and important contraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

The applicant should also consult with local authorities with regard to building restrictions, zoning, public utilities, taxes and any proposed public work in the area. The applicant should not enter into any firm agreement to buy a site with the expectation of receiving and FmHA loan without consulting with the FmHA District Director and prior to the Agency's completion of the environmental impact review.

Loan funds made available to purchase land may not exceed the present market value of the land in its present condition as determined by an FmHA appraisal.

9. *Plot Plan, Detailed Preliminary Plans and Specifications, and Cost Estimates.*

The size, complexity and cost of rental housing projects can vary from a duplex unit located on a residential building lot, to a complex of buildings located on a site containing several acres. The applicant is required to provide preliminary plans and

specifications in enough detail to enable FmHA officials to determine whether or not the proposed housing will be the kind of rental housing FmHA is authorized to finance. The District Director or other FmHA representative will explain to the applicant and the applicant's architect the kind of plot plan, preliminary plans, and specifications, cost estimates required for the loan docket. The docket also will contain a detailed trade-item cost breakdown showing such items as: land, building construction by trades, equipment, utility connections, site improvements, architectural services, interest during construction pro-rated share of any off site improvements, closing costs, and legal services. Items not being financed with loan funds should be shown separately.

The preliminary plans should include a plot plan showing the relationship of the proposed structures, the property lines, streets, utility lines, alleys, adjacent structures and their uses. It should also show proposed off-street parking for the occupants and their visitors. Other facilities such as private and public walks, private drives and recreation areas on and off the property, laundry drying areas, and garbage and refuse holding areas which are sufficient for the period between collections in the neighborhood should be shown.

10. *Financial Statement.*

A current financial statement will be required at the time the loan docket is submitted for approval. Individuals applying for an insured rental housing loan may obtain forms from the District Director to provide their financial statement. The financial statement should show all assets and liabilities in sufficient detail to permit a thorough evaluation of the applicant's financial position. The status of each debt and the repayment terms also should be shown.

11. *Budgets.*

The initial budget should cover the period from the date the first construction expenses are incurred until the end of the applicant's first fiscal year following completion of the housing. After the final cost estimate has been made and the amount of the loan needed has been determined, a budget for a typical year should be developed.

This budget should be based on a typical annual operation several years after the loan is made. Budgeting is an important part of the management. The applicant should spend enough time working on it to assure that the estimates are realistic. Budgets will be required each year until the FmHA loan is repaid in full. The budget serves several purposes namely it:

Helps determine rental rates.
Indicates financial soundness.
Serves as a guide for paying expenses.

Form FmHA 1930–7, "Statement of Budget, Income and Expense" and its accompanying Exhibit A–5 is a sample budget form and utility allowance form.

12. *Loan Resolution or Loan Agreement.*

When the applicant is a corporation, or an individual applying for a loan above certain amounts, a copy of the required loan resolution or loan agreement should be obtained from and discussed with the District Director before the loan docket is developed. Among other things, this document outlines how the income from the housing is to be used. These requirements should be understood at the time the budget is developed.

13. *Management Plan.*

A detailed management plan will be developed which will outline the basic policies and procedures to be followed, and the duties of the officers and employees. The applicant must manage the project in accordance with the requirements of this Subpart and of Subpart C to Part 1930 (FmHA Instruction 1930–C).

14. *Manager and Caretaker.*

The success of the housing will depend to a large extent on how well it is managed. A carefully written plan should be developed by the applicant outlining the proposed management of the housing and giving such information, if known, as who will be the manager, the manager's experience, any management training planned, and other facts about the manager's qualifications.

The manager should be readily available to the tenants. The manager might be one of the occupants, or a member of the board of directors of a nonprofit corporation. A caretaker may be needed for larger projects to:

Take care of minor repairs,
Mow the lawns and maintain the property, and
Remove garbage and trash.

The board of directors of a corporation is responsible for overall supervision and management of all its affairs. The board should delegate actual operating and management responsibility to committees or individuals and meet often enough to see that the job is being done right and the enterprise is being managed successfully.

15. *Occupancy Policies.*

Applicants should review carefully with the District Director the occupancy requirements. Particular attention should be given to the following requirements:

The housing must be open to all eligible occupants regardless of race, color, religion, sex, National origin, age, handicapped or marital status.

The incomes of tenants must be within the maximum income limits approved by FmHA, except for senior citizens or handicapped occupants of housing operated on a for profit basis.

Additional guidance concerning occupancy in congregate housing projects can be found in Exhibit B–10 to Subpart C to Part 1930 (FmHA Instruction 1930–C).

16. *Rules and Regulations.*

The rules and regulations for tenants should be developed by the applicant and a copy included in the loan docket.

17. *Lease.*

The applicant should develop a form of application for occupancy and lease agreement form in accordance with the requirements indicated in Subpart C to Part 1930 (FmHA Instruction 1930–C). Copies of these forms should be included in the loan docket.

Review of the Complete Docket

When the applicant has developed the information needed to complete the loan docket, the applicant should furnish the information and discuss it with the District Director. Form AD–625, the information and materials listed in Exhibit A–7 plus FmHA forms provided by the District Director become the loan docket.

The District Director will submit this docket to the FmHA State Director for consideration. The State Director will send dockets for projects in excess of the State Director's loan approval authority to the FmHA National Office in Washington, D.C., for review.

The docket will be reviewed and returned to the District Director. A letter from the State Director will indicate any special requirements that need to be met before loan approval or loan closing. Complete final plans and specifications and firm trade-item cost estimates will be obtained before the loan can be approved. In some cases competitive bidding will be required to determine actual construction cost. In the case of multiple advances of FmHA loan funds for construction, the note and mortgage will be signed by the applicant and the loan funds deposited in a joint bank account at loan closing. At this time the applicant becomes a borrower. The loan funds are disbursed from the bank account as needed, by checks signed jointly by the borrower and the District Director. Checks on the account must be signed by the borrower and countersigned by the FmHA District Director.

If interim financing is available during the construction period at reasonable rates and terms, FmHA can make a conditional commitment to the interim lender that will loan the funds to finance the construction of the project. The commitment will be conditioned upon acceptable performance by the builder and payment of all construction bills. After the conditions have been met, the FmHA loan will be closed to pay off the interim construction indebtedness. Draws of interim loan funds will be made only as needed, and will require the joint approval of the applicant and the FmHA District Director.

Construction

With the start of construction will come the first physical signs that the housing will become a reality. The construction period, however, is a most critical period of time.

1. *Starting Construction.*

Construction should not be started until after the FmHA loan is closed, or until the FmHA commitment has been made to the interim lender, as appropriate.

2. *Competitive Bidding.*

Competitive bidding is recommended and may be required by FmHA in some cases. If required, the State Director's letter received after the loan docket has been reviewed and the loan authorized, will instruct the District Director to have the applicant or the applicant's architect complete the necessary bid documents.

The applicant and the architect should invite competent contractors to bid on the housing. The architect should be sure contractors understand the plans and specifications, and other conditions.

If bids are within the estimates, the successful bidder will be selected and the contract for construction will be awarded. During construction the District Director, the applicant and the applicant's architect will inspect the work. Payment will be made from the FmHA loan funds, or interim loan funds, according to provisions in the contract.

3. *Construction Without Competitive Bidding.*

Where competitive bidding is not required, the loan docket will include reliable cost estimates or a firm offer to build from a builder selected by the applicant. A contract approved by FmHA will be executed by the applicant and the contractor. If full architectural services are obtained by the applicant, supervision and inspection of the work will be performed by the architect's staff. The applicant and FmHA will also inspect the construction, and will have sole responsibility for doing this when an architect is not involved. Payment will be made to the contractor in accordance with the terms of the contract.

Open House

The applicant may wish to create interest in the housing and build up the list of prospective occupants by having a dedication ceremony. This will attract attention and reacquaint the people of the locality with what the housing means to the community. This is especially recommended for housing developed by nonprofit corporations.

Exhibits

The following guides may be used when applicable and, if necessary, adopted to meet needs of application consideration.

Exhibit

A–1. Legal Services Agreement
A–2. Survey of Existing Rental Housing
A–3. Rental Housing Survey
A–4. Rental Housing Survey Summary
A–5. Housing Allowances for Utilities and Other Public Services
A–6. Information to be Submitted with Preapplication for Rural Rental Housing (RRH) Loan
A–7. Information to be Submitted with Application for Federal Assistance (Short Form)

Exhibit A–1—Legal Services Agreement (for Nonprofit Organizations)

Agreement made this ——— day of ———————, 19——

between the

_____

hereinafter called the owners, and

_____

hereinafter called the attorney, witnesseth:

Whereas the owners intend to form a nonprofit corporation, hereinafter called the corporation, to construct and operate a rural rental housing project in

_____

(Town) (County) (State)

and to obtain a loan from the Farmers Home Administration to finance the construction, and the attorney agrees to perform all legal services necessary to incorporate the Corporation, and to perform all other customary legal services necessary to the organization, financing, construction, and initial operation of the proposed rural rental housing project, such services to include but not to be restricted to the following:

1. Prepare and file necessary incorporating papers and supervise and assist in taking other necessary or incidental actions to create the Corporation and authorize it to finance, construct, and operate the proposed housing project.

2. Prepare for, and furnish advice and assistance to the owners, and to the Board of Directors and officers of the Corporation, in connection with (a) notices and conduct of meetings; (b) preparation of minutes of meetings; (c) preparation of adoption of necessary resolutions in connection with the authorization, financing, construction, and initial operation of a rural rental housing project; (d) necessary construction contracts; (e) preparation of adoption of bylaws and related documents; (f) any other action necessary for organizing the Corporation or financing, constructing, and initially operating the proposed housing project.

3. Review of construction contract, bid-letting procedure, and surety and performance bonds.

4. Examination of real estate titles and preparation, review and recording of deeds and any other instruments.

5. Cooperation with the architect employed by the owners or the Corporation in connection with preparation of survey sheets, easements, and any other necessary title documents, construction contracts, and other instruments.

6. Rendering of legal opinions as required by the owners or the Corporation or the Farmers Home Administration, United States Department of Agriculture.

7. Owners agree to pay to the attorney for professonal services in accordance with this agreement, as follows:

_____

_____

The fees to be payable in the following manner and at the following times:

_____

_____

The attorney states and agrees that of the above total fees, ———————— represents fees for services in connection with the organization and incorporation of the Corporation.

The owners and the attorney further covenant and agree that, if upon organization and incorporation, the Corporation fails or refuses to adopt and ratify this Agreement by appropriate resolution within —— days, this Agreement shall terminate and owners shall be liable only for payment for legal services rendered in connection with such organization and incorporation.

Signed this ——— day of ———————, 19——.

Attorney: ————————————

Owners: ————————————

_____

_____

_____

BILLING CODE 3410—07—M

SURVEY OF EXISTING RENTAL HOUSING

Name of town: _____ Date: _____

Listing of dwellings or Apartments for rent	Type of Dwelling or Apertment	Number of Bedrooms	Age of Unit	Central Heat		Is it Occupied		If vacant state no. of months	Monthly rental	Quality	Location
				Yes	No	Yes	No			Good Fair Poor	Good Fair Poor

Exhibit A-2

BILLING CODE 3410—07—C

Exhibit A–3—Rental Housing Survey

A rental housing project is being planned for this community. The project would provide comfortable living at reasonable rental rates. Your opinion on the following will help us to determine whether such a project is practical. This information does not obligate you in any way.

1. What age group are you in? 62 or over [ ] 50–61 [ ] 35–49 [ ] Under 35 [ ]

2. Are you or members of the household handicapped or impaired and in need of specially designed housing arrangements? Yes [ ] No [ ]

3. Number of person(s) in your household: 1 [ ] 2 [ ] 3 to 4 [ ] 5 to 6 [ ] 7 to 8 [ ] 9 or more [ ]

4. Annual income from all sources (including any social security, retirement pension, payments made on behalf of minor children, public assistance, etc.): Less than $3,410 [ ] $3,410–$4,925 [ ] $4,926–$6,440 [ ] $6,441–$7,960 [ ] $7,961–$9,475 [ ] $9,476–$10,990 [ ] $10,991–$12,505 [ ] $12,506–$14,020 [ ] $14,021–$15,540 [ ] $15,541–$17,055 [ ] Over $17,055 [ ]

5. Do you own ( ) or rent ( ) present residence? If you rent, what is your present rental rate? ———

6. Do you live in house ( ) Apartment ( ) Room ( ) On a farm ( ) In town ( )

7. Is your present housing modern ( ) Not modern, but adequate ( ) Inadequate ( ) If so, in what respect? ———

8. What amount of monthly rent do you pay with utilities included? Less than $55 [ ]; $55–85 [ ]; $86–115 [ ]; $116–145 [ ]; $146–175 [ ]; $176–205 [ ]; $206–235 [ ]; $236–265 [ ]; $266–295 [ ]; $296–325 [ ]; Over $325 [ ].

9. Would you want to maintain own yard ( ) Flower garden ( )

10. Would you be willing to move in if apartment was available ———, 19——? Yes ( ) No ( )

11. Name ——— Address ——— Telephone Number ——— Location of employment ———

12. Number of meals you would like prepared for you per day? ———

13. What other services would you like to have available to you?

a. Housekeeping services? Yes ( ) No ( )

b. Personal care services? Yes ( ) No ( )

c. Social and recreational activities services? Yes ( ) No ( )

d. Linen and laundry services? Yes ( ) No ( )

e. Health and medical related services? Yes ( ) No ( )

f. Beauty and barber services? Yes ( ) No ( )

g. Transportation or access services? Yes ( ) No ( )

h. Other (Specify) ———.

14. Type of building preferred

1-story ———

2-story ———

More than 2-storys ———

15. List any hobbies or organizational membership you have.

BILLING CODE 3410-07-M

Exhibit A-4
Page 1

RENTAL HOUSING SURVEY SUMMARY

Item	Age Head of Household			
	62 or over	50 to 61	35 to 49	Under 35
Handicapped:				
Yes				
No				
Household Size (Bedrooms Needed)				
1 or 2 persons (1 bedroom)				
3 to 4 persons (2 bedrooms)				
5 to 6 persons (3 bedrooms)				
7 to 8 persons (4 bedrooms)				
Annual Income:				
Less than $3,420				
$3,421 - 4,925				
$4,926 - 6,440				
$6,441 - 7,960				
$7,961 - 9,475				
$9,476 - 10,990				
$10,991 - 12,505				
$12,506 - 14,020				
$14,021 - 15,537				
$15,538 - 17,053				
Over $17,054				
Present Housing:				
House				
Apartment				
Room				
Rent				
Own				
Modern				
Not modern, but adequate				
Inadequate				

Exhibit A-4
Page 2

RENTAL HOUSING SURVEY SUMMARY

Item	Age - Head of Household			
	62 or over	50 to 61	35 to 49	Under 35
Rent:				
Less than $55				
$55-85				
$86-115				
$116-145				
$146-175				
$176-205				
$206-235				
$236-265				
$266-295				
$296-325				
Over $325				
Willing to move into Housing when completed:				
Yes				
No				

RENTAL HOUSING SURVEY GRAPHICAL DISPLAY

Annual Income
(Adjusted Annual Income with 2 minors)

Present Rent Paying	Less than $3,410 ($2,640)	$3,411 - 4,925 ($2,641 - 4,080)	$4,926 - 6,440 ($4,081 - 5,520)	$6,441 - 7,960 ($5,521 - 6,960)	$7,961 - 9,475 ($6,961 - 8,400)	$9,476 - 10,990 ($8,401 - 9,840)	$10,991 - 12,505 ($9,841 - 11,280)	$12,506 - 14,020 ($11,281 - 12,720)	$14,021 - 15,540 ($12,721 - 14,160)	$15,541 - 17,055 ($14,161 - 15,600)	Over $17,055 ($15,600)
Less than $55											
$56-85											
$86-115											
$116-145											
$146-175											
$176-205											
$206-235											
$236-265											
$266-295											
$296-325											
Over $325											

1. Respondents falling below and to the left of the heavy line could perhaps benefit from FmHA Rental Assistance or HUD Section 8 since they are willing to pay more than 25 percent of their adjusted monthly income for the costs of rent and utilities.

2. Respondents, in the middle boxes would be willing to pay 25 percent of their adjusted monthly income for the costs of rent and utilities.

3. Respondents above and to the right of the diagonal boxes are not willing to pay 25 percent of their adjusted months income for the cost of rent and utilities.

4. Respondents in the right column are not likely eligible for occupancy.

Exhibit A-5
Page 1

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

NAME OF BORROWER

LOCATION AND IDENTIFICATION OF PROJECT

Part I

UTILITY OR SERVICE	Monthly Dollar Allowances					
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
HEATING						
a. Natural Gas						
b. Bottle Gas						
c. Oil						
d. Electric						
AIR CONDITIONING						
COOKING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
OTHER ELECTRIC LIGHTING, REFRIGERATION, ETC.						
WATER HEATING						
a. Natural Gas						
b. Electric						
c. Bottle Gas						
d. Oil						
WATER						
SEWER						
TRASH COLLECTION						
OTHER (Specify)						
TOTAL ALLOWANCE (Round to next highest dollar)						

PREPARED BY: _____

Borrower or Agent Title Signature Date

APPROVED BY FARMERS HOME ADMINISTRATION

_____

Name Title Signature Date

Exhibit A-5
Page 2

HOUSING ALLOWANCES FOR UTILITIES AND OTHER PUBLIC SERVICES

PART II

BLOCK A	BLOCK B	
TO: _____ Name of Tenant	ALLOWANCE FOR UTILITIES AND SERVICES BILLED DIRECTLY TO AND PAID BY TENANT	Per Month
Address of Tenant	Heating.....	$ _____
No. of Bedrooms _____	Air Conditioning.....	_____
You will be billed directly for utilities and service charges. Block B sets forth the allowances credited in your rent for the payments of utilities. You may be billed for more or less than shown in Block B depending on your use of utilities.	Cooking.....	_____
	Other Electric.....	_____
	Water Heating.....	_____
	Water.....	_____
	Sewer.....	_____
	Trash Collection.....	_____
	Other (Specify).....	_____
	_____.....	_____
_____ Signature of Borrower or Agent	TOTAL (Round to next highest dollar)	$ _____
_____ Date		

BILLING CODE 3410-07-C

Instructions for Preparation and Use of Housing Allowances for Utilities and Other Public Services

I. *General.* These instructions are for completing Exhibit A–5 for the establishment and use of approved utility allowances for tenants. The objective shall be to establish allowances at levels that will apply to the majority of the households assigned to the proper size unit.

II. *Determining Allowances.*

A. *Existing Construction.* The borrower shall provide information which shows the utility bills and fees for public services which have been charged to units in the project in previous years. If possible, this historical data should cover a period of at least 24 months and should show billings to all types and sizes of units in the project. If data is not available on the specific project, data from similar projects may be substituted. Consideration should be given to making proper adjustments in the data caused by some tenants' excessive use of utilities. Current rate schedules and known rate increases shall be used to estimate utility allowances. The following local sources should be contacted as appropriate:

(1) Electric utility suppliers
(2) Natural gas utility suppliers
(3) Water and sewer suppliers
(4) Fuel oil and bottle gas suppliers
(5) Public service commissions
(6) Real estate and property management firms
(7) State and local agencies including public housing authorities.

In those cases where a project utilizes a single meter for more than one living unit or where a single fuel supply or heating or cooling plant is used for more than one unit, the following factors shall be used to determine the prorata share of utility costs or public service fees per living unit:

Size of Unit	Factor
0-BR	0.5
1-BR	0.7
2-BR	0.9
3-BR	1.1
4-BR	1.4
5-BR	1.6

Example: An eightplex structure containing four one-bedroom apartments and four two-bedroom apartments has an average annual consumption of 42,000 kilowatt-hours of electricity. Allowance per unit is calculated thus:

```
Four (one-bedroom)  @  .7 = 2.8
Four (two-bedroom)  @  .9 = 3.6
                    Total   6.4
```

total use / total of factors	x cost per kilowatt-hour (kwh) - average billing (assume $.04 per kwh)		
42,000 / 6.4	x .04	=	262.50
unit factor	x average billing	=	unit allowance
(one bedroom) .7	x 262.50	=	$183.75/yr.
(two bedroom) .9	x 262.50	=	$236.25/yr.

B. *New Construction.* The applicant with assistance from the applicant's architect, mechanical engineer or other heating and cooling system specialists shall provide heating and cooling load calculations for each type and size of unit. Heating and/or cooling costs shall be calculated from these load factors using current rate schedules and known rate increases. Procedures described in the American Society of Heating, Refrigeration and Air Conditioning Engineers "Handbook of Fundamentals," the National Association of Homebuilders "Insulation Manual Home, Apartments" or other recognized authority may be used.

General appliance and lighting loads and fees for public services should be estimated using data from the local utility companies and from other sources listed in paragraph II A above.

C. *Type of Allowances.*

1. Separate heating and cooling allowances shall be established for the various types of multiple family housing financed by FmHA in the project. For example, separate allowances may be needed for duplexes, row or townhouses, garden and low and medium rise apartments. In addition to establishing different heating and cooling allowances for various types of structures, attention should be given to different allowances for water depending on whether tenants will have responsibilities for lawn care.

2. Allowances for air-conditioning shall be established only for those projects in which the owner furnishes a central air-conditioning system or other type unit as a part of the permanent equipment.

3. The cost of gas and electricity varies according to amounts consumed as shown on the appropriate rate schedules of the supplier. It is not possible to compute exactly the cost of electricity for any given function without knowing the total electrical usage for a unit. However, because neither the borrower nor the families know beforehand just what will be the combination of utilities for any unit rented, it will be necessary to approximate the allowances for each function (e.g., heating, cooking, etc.) as follows: For electricity the rates used for lighting, refrigeration, and appliances should be from the top of the rate schedule or the higher unit costs. Allowances for electric cooling, water heating, and space heating should be computed from the middle or lower steps in the rate schedules. Similarly, allowances for gas used for water heating and cooking should be computed using rates from the top of the rate

schedule and for heating from the lower steps.

III. *Preparation By Borrower or Applicant.*

A. *Applicable Projects.* Except for projects operating on a profit basis, Exhibit A–5 will be completed in the original and three copies in all instances where the tenants pay utilities or authorized services directly. Where the borrower pays all utilities, Part I of Exhibit A–5 may also be required as part of the budget submitted for any new project if the loan approval official determines it is needed to properly evaluate projected utility costs. This form will establish the allowances for all size units in the project. The allowance shall be adequate for all utilities and any authorized services which are or will be payable directly by the tenants, except telephone and cable TV. The forms will be signed by the borrower. The original and two copies of the form will be submitted to FmHA. Back-up data and necessary documentation should be included with the submission.

B. *Submission of Supporting Data to FmHA.* The applicant will submit to FmHA adequate data to justify the utility allowance for the project. The data will include the following:

1. Completed Exhibit A–5.

2. List of local sources contacted for information and copies of any data provided by such sources.

3. Any data on allowances already established for the area.

4. Complete narrative statement and computations on method used in arriving at the allowances.

IV. *Actions by FmHA.* If FmHA finds the allowances acceptable, the approval portion of Part I will be completed on all copies and the original and one copy returned to the District Director. The District Director will keep a copy for the District Office file and return the original to the borrower. If the proposed utility allowance is unacceptable, the borrower will be requested to revise the data and resubmit it for further consideration.

V. *Subsequent Action by Borrower.* After approval by FmHA the borrower will complete Part II of the form and provide copies for each tenant paying utilities directly, by attaching it to the lease entered into by the borrower and tenant. The form will provide the household with the amount of allowance for each of the utilities and services which is to be paid by the tenant. If all utilities and services are paid by the borrower, Exhibit A–5 need not be attached to the lease.

Exhibit A–6—Information to be Submitted With Preapplication for Rural Rental Housing (RRH) Loan

The following information is to be submitted with Form AD–621, "Preapplication For Federal Assistance":

1. *Eligibility:*

(a) Financial Statement—Each applicant must submit a current, dated, and signed financial statement, showing assets and liabilities, with information on the status and repayment of each debt. If the applicant is a corporation other than a nonprofit corporation or a trust, a current financial statement will be required from each member, stockholder or beneficiary who holds an interest in the organization in excess of 10 percent. A dated and signed financial statement will be required of all general partners or trustees who hold an interest in a partnership or trust. A dated and signed certificate is required of each limited partner in a limited partnership, certifying to the approximate net worth of the limited partner. In any case in which a financial statement is required from an individual, it will also include the financial interests and signature of the spouse. The applicant must have initial operating capital and other assets needed for a sound loan. The initial operating capital required will amount to at least 2 percent of the total cost of the project to cover these costs. Loan funds may be included in the loan to pay the initial operating expense up to 2 percent of the development cost for nonprofit organizations and State and local public agencies. The applicant must also possess sufficient cash or land to meet any equity or development requirements. If the applicant is an organization which has not been formed at the time of filing the preapplication, the financial statements for the proposed general partners, stockholders, members, or beneficiaries must collectively (and in proportion to the proposed ownership interest of each) reflect sufficient cash or other liquid assets to meet any equity capital and initial operating capital requirement of the applicant organization. Prior to loan approval, however, the applicant must be legally organized and must submit a financial statement meeting these requirements. All financial statements and certificates of approximate net worth submitted in fulfillment of these requirements must contain the following statement immediately preceeding the signature line:

(I) or (we) certify the above statements contained herein are a true and accurate statement of (my) or (our) financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

(b) Evidence Concerning the Test for Other Credit—Applicants other than State or local public agencies are responsible for showing not only that they are credit worthy, but that other credit is not available at rates and terms that will enable the rental units to be rented to eligible tenants at rental rates within their payment ability. Applicants other than State or local public agencies should provide letter from other local real estate lenders evidencing the amount of loan funds they are willing to extend, the rates and terms at which the loans would be available, and if credit is not available, the reasons why other lenders are not willing to extend credit.

(c) Statement of applicant's experience in operating rental housing and related business—with a statement on the proposed method of operation and management.

(d) For an Organization Applicant—A copy of, or an accurate citation to, the specific provisions of State law under which the applicant is, or is to, be organized; a certified copy of the applicant's actual or a copy of the applicant's proposed charter, Articles of Incorporation, Bylaws, partnership agreement, certificate of limited partnership, or other basic authorizing documents; the names and addresses of the applicant's members, directors, and officers; and if a member of a subsidiary of another organization, its name, address, and principal business, if available.

(e) A written, dated, and signed statement from the applicant stating the following:

(I) or (we) understand and agree that the Farmers Home Administration (FmHA) will consider and identity of interest to exist between the loan applicant as the party of the first part and general contractors, architects, engineers, attorneys, interim lenders, subcontractors, material suppliers, or equipment lessors as parties of the second part under any of the following conditions: (1) When there is any financial interest of the party of the first part in the party of the second part; (2) when one or more of the officers, directors, stockholders, or partners of the party of the first part is also an officer, director, stockholder, or partner of the party of the second part; (3) when any officer, director, stockholder, or partner of the party of the first part has any financial interest whatsoever in the party of the second part; (4) when the party of the second part advances any funds to the party of the first part other than an interim lender advancing funds to enable the applicant to pay for construction and other authorized and legally eligible expenses during the construction period; (5) when the party of the second part

provides and pays on behalf of the party of the first part the cost of any legal services, architectural services, engineering services, or interim financing other than those of a survey, general superintendent, or engineer employed by a general contractor in connection with obligations under the construction contract; (6) when the party of the second part takes stock or any interest in the party of the first part as part of the consideration to be paid them; and (7) when there exists or comes into being any side deals, agreements, contracts, or undertakings entered into thereby altering, amending, or cancelling any of the required closing documents or approval conditions as approved by FmHA. (I) or (we) certify that there is not now, nor will there be an identity of interest between or among the applicant, contractor, architect, engineer, attorney, interim lender, subcontractors, material suppliers, equipment lessors, or any of their members, directors, officers, stockholders, partners, or beneficiaries without prior written identification to FmHA and written consent to such identity of interest by FmHA. This statement is given for the purpose of inducing the United States of America to make a loan as requested in the loan preapplication or application of which this statement is a part.

(f) The social security number will be requested of the following:

(i) In the case of an individual, the applicant's and that of the spouse, if applicable.

(ii) In the case of a partnership, of all the general partners and their spouses.

(iii) In the case of a limited partnership, of all the general partners and their spouses.

(iv) In the case of a company, corporation, or nonprofit organization the IRS number and the social security number of it's officers, if at all possible.

The request for the social security number is only on a voluntary basis. The loan will not be denied for refusal to furnish the number.

(g) The applicant, the proposed architect and contractor (if known at this time) will be required to submit HUD Form 2530, "Previous Participation Certificate" fully completed.

2. *Need and Demand:*

(a) A realistic estimate of need and demand for the number of living units of the type proposed, based on the availability of rental housing and the number of eligible tenants living in the community and its trade area willing and able to pay the proposed rental rates. Applicants for loans to provide congregate housing with central dining area or space for support services including housing involving a group living arrangement, must furnish a narrative statement from local, State, and government agencies supporting the current and long-range need for such facilities by the handicapped in the community and its trade area.

(b) A schedule of proposed rental rates, and in the care of congregate housing proposal, a separate schedule listing the proposed cost of any non-shelter services to be provided.

3. *Site:*

(a) Size of tract, and a plat map identifying its boundaries.

(b) A map showing the location and other supporting information on its neighborhood and existing facilities, such as distance to shopping area, neighborhood churches, schools, available transportation, drainage, sanitation facilities, water supply, and access to essential services such as doctors, dentists, pharmacies, and hospitals.

(c) The identification of potential environmental impacts of the site and important constraints, i.e., the presence of floodplains, wetlands, prime or unique farmlands or other sensitive environmental features.

(d) The applicant should provide evidence of having control of the proposed site either by ownership or by executing an option to buy.

(e) The applicant should submit a written statement as to the proposed method of construction, i.e., owner/builder, negotiated bid or public bid.

4. *General Description of the Housing Planned* including the following:

(a) Schematic design drawings showing the proposed plot plan, typical unit plans, and elevations. If available, the proposed preliminary drawings and specifications may be submitted. This would be of assistance if it is determined that the loan must receive National Office authorization.

(b) Type of construction.

(c) The total number of living units and the number of each type of living unit proposed.

(d) Type of utilities such as water, sewer, gas, and electricity and whether each is public, community, or individually owned.

5. *Form FmHA 449–10, "Applicant's Environmental Impact Evaluation."*

Exhibit A–7—Information To Be Submitted With Application for Federal Assistance (Short Form)

The following information is to be submitted with Form AD–625, "Application for Federal Assistance (Short Form)":

1. A plot plan, detailed preliminary plans and specifications and any special design features for senior citizens or handicapped persons.

2. A detailed trade-item cost breakdown of the project for such items as land and right-of-way, building construction, equipment, utility connections, architectural/engineering and legal fees, and both on- and off-site improvements. The cost breakdown also should show separately the items not included in the loan, such as furnishings and equipment. This trade-item cost breakdown should be updated just prior to loan approval.

3. Information on the method of construction, on the proposed contractor if a construction contract is to be negotiated and on the architectural, engineering, and legal services to be provided.

4. Satisfactory evidence of review and approval of the proposed housing by applicable State and local officials whose approval is required by State or local laws, ordinances, or regulations.

5. A market survey report which should be based on the number of eligible occupants in the area who are willing and financially able to occupy the housing at the proposed rental levels. The economic justification for the housing and the size of the project should be based primarily upon the housing need and demand from eligible prospective occupants who are permanent residents of the community and its surrounding trade area. Permanent residents include those eligible residents of the community that are year-round farm laborers, civilian employees or military personnel of any military installation that may be located within the trade area of the community. Since the intent of the program is to provide adequate housing for the eligible permanent residents of the community, demand from the more temporary residents of a community (such as college students in a college town) should be discounted in determining project size. A market survey report will include:

(a) For a proposed project which will contain 10 or fewer units and will be in a community where an effective demand for rental housing obviously exists, statements supported by statistical data describing and explaining the basis for expecting a continued effective demand for the rural rental housing over the period of the loan. Such information may be assembled from census reports, county market evaluations made by the Department of Housing and Urban Development and other published data that shows the number of occupants living in the town or trade area who are eligible to occupy the proposed housing and the condition of the housing they occupy. This information will be used to help determine the maximum number of rental units that may be financed.

(b) For a proposed project that will include more than 10 units and for any smaller project where there is any doubt concerning the demand, a complete

rental housing market analysis showing the need and demand for rural rental housing in the area based on the best information available. It will include:

(1) An estimate of number of houses or apartments in the area for rent or sale. Exhibit A–2 or a similar form should be used for this purpose.

(2) Characteristics of available rental housing such as location, quality and size of unit, type of building, age of structure, house value, tenure, vacancy rate, nature of vacancies, and price or rental levels.

(3) Characteristics of the persons eligible for occupancy of the proposed housing, such as single or couple, size of household, number of senior citizens, nonsenior citizens or handicapped persons, and income financial condition.

(4) Present living arrangements of eligible occupants in the area and the extent to which inadequate housing is associated with health or financial reasons.

(5) Estimate of the number of eligible occupants who are willing and financially able to occupy the proposed housing.

(6) In the case of a proposal involving congregate housing, with central dining area, space for support services, or housing involving a group living arrangement, a narrative statement from local, State, and/or Federal Government agencies supporting the current and long-range need for such facilities in the community and its trade area.

(c) If the housing is located in an area where there are relatively few eligible occupants, or for any other reason there is a question as to whether the housing will be fully occupied, signed expressions of interest in occupancy from a sufficient number of eligible occupants will be obtained so as to clearly indicate that full occupancy will occur soon after construction is completed. Exhibit A–3 or a similar form may be used for this purpose.

(d) The applicant will provide a written, signed certification that the information provided in the market study is true and accurate.

(e) For all projects containing over four units the applicant will submit an affirmative Fair Marketing Housing Plan for approval by FmHA.

6. A current dated and signed financial statement showing the debt structure of the applicant. (See item 1 a of Exhibit A–6)

7. Detailed operating budgets, showing a schedule of proposed rental rates, for the first year's operation and a typical year's operation. The first year's budget should show that the applicant has sufficient operating capital on hand or sufficient planned income to pay all operating costs and meet scheduled payments on debts during the planning and construction period prior to occupancy. The typical year's budget should show there will be ample income to pay essential operating costs, meet required debt payments, and permit accumulation of required reserves. Form FmHA 1930–7 "Statement of Budget, Income and Expense," and Exhibit A–5 (or similar forms) may be used for this purpose. The operating budgets should be updated if necessary just prior to loan approval.

(a) The initial budgets should include an allowance of 10 percent for vacancies, nonpayment of rent, and contingency expense. Projects being developed utilizing HUD's Section 8 Housing Assistance Payments program for new construction may use a lower rate; however, in no case should the allowance be less than 5 percent. The allowance in subsequent year budgets may be adjusted to be consistent with the actual past experience in vacancy, nonpayment of rent, and contingency needed for the project.

(b) The budgets should provide for accumulating a reserve at the rate of one percent per annum of the value of the loan amount until a reserve equal to 10 percent of the loan is reached. Budgets should not include an additional item for depreciation since the purpose of a reserve account is to provide funds for this purpose.

(c) All applicable taxes, including Federal and any State income taxes, should be included in the budgets and separately identified. If the applicant considers itself tax-exempt, evidence of exemption must be included in the loan docket before the loan is closed. In case of a nonprofit organization whose articles of incorporation and bylaws conform to Exhibits E and F of this Subpart, evidence of exemption from Federal income tax need not be obtained before the loan is closed if the applicant applies for a determination of exemption and agrees in writing to make any changes in its organizational documents that may be required by the Internal Revenue Service (IRS). Information as to Federal income tax exemption may be obtained from the District Office of the IRS. An eligible nonprofit organization should ordinarily be able to qualify for Federal income tax exemption under section 501(c)(4) of the Internal Revenue Code.

8. A description and justification of any related facilities (including but not limited to workshops, community buildings, recreation center, central cooking and dining facilities, or other similar facilities to meet essential needs) to be financed wholly or in part with loan funds.

9. A statement in narrative form outlining the proposed manner of management of the housing, such as whether by owner or by hired management firm or agent. Experience and other factors pertaining to be qualifications of the manager should be set forth and will be taken into consideration. If management will be performed by a hired management firm or agent a copy of the proposed management agreement should be submitted. It must contain the clause indicating that it is not in full force and effect unless and until approved by FmHA.

10. A management plan which sets forth clear and concise statements of policy concerning management and operation of the project and in accordance with the requirements of Section IV of Exhibit B to FmHA Instruction 1930–C. An acceptable management plan should be responsive in depth to each of the following applicable areas:

a. The relationship between owner and management agent (if applicable).

b. Personnel policy and staffing arrangements.

c. Publicizing and achieving early occupancy and affirmative marketing.

d. Tenant certification and vertification of income.

e. Tenant admissions policies and leasing policies.

f. Rent collection.

g. Rent increases.

h. Maintenance.

i. Records maintenance and reports.

j. Energy conservation measures.

k. Management-tenant relations.

l. Termination of leases and evictions.

m. Management agreement (if applicable).

In addition, attached to the management plan should be a copy of the proposed application for admission, waiting lists, lease or rental agreement, and rules and regulations governing administration and occupancy. The management plan must be submitted in writing and the applicant must certify that it is in compliance with the requirements of Subpart C to Part 1930 (FmHA Instruction 1930–C).

11. A schedule of any separate changes for the use of any related facilities, and in the case of congregate housing, a schedule of any separate charges for non-shelter services (such as meals, personal care, and housekeeping). These schedules should be supported by appropriate operating budgets for services to be provided.

12. When land is being purchased or a building site will be part of a tract

owned by the applicant, or in any other case when necessary to clearly identify the property, a satisfactory survey of the land to be given as security prepared by a licensed surveyor will be included in the loan docket. If necessary, a new survey will be obtained.

13. An affirmative fair housing market plan on Form HUD 935.2 or the applicant must provide evidence of being a signatory to a voluntary affirmative marketing agreement approved by the Department of Housing and Urban Development. (See § 1901.203 of Subpart E, to Part 1901 (FmHA Instruction 1901–E) specifically § 1901.203.) The affirmative fair housing marketing plan must be prepared in a complete, meaningful, responsive, and detailed manner.

Exhibit B—Interest Credits on Insured RRH and RCH Loans

I. *Purpose:* This Exhibit outlines the policies and conditions under which interest credits will be made on insured Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) loans.

II. *Definitions:* As used in this Exhibit.

A. *"Interest Credit"* means the amount of assistance the Farmers Home Administration (FmHA) may give a borrower toward making its payments on an insured RRH or RCH loan.

B. *"Interest Credit and Rental Assistance Agreement"* means an agreement between FmHA and the borrower providing for interest credits and/or rental assistance, RRH, or RCH loans. This agreement will be on Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement (RRH and RCH loans)."

C. *"Project"* means the housing and related facilities financed with the RRH or RCH loan.

D. *"Basic Rental"* means a unit rental charge determined on the basic of operating the project with payments of principal and interest on a loan to be repaid over a 40- or 50-year period at 1 percent per annum.

E. *"Market Rental"* means a unit rental charge determined on the basis of operating the project with the payments of interest which the borrower is obligated to pay under the terms of the promissory note.

F. *"Overage"* means the amount by which total rental payments paid by the tenants of a project exceed the total basic monthly charge. The amount of overage will be computed as interest in excess of a 1 percent rate.

III. *Eligibility:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 40 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

A. Plan I will be only to broadly based nonprofit corporations and consumer cooperatives. However, Plan I will no longer be available June 1, 1980. All RRH borrowers operating under Plan I as of that date may continue operating under it in accordance with the applicable requirements of this Exhibit and of this subpart.

B. Plan II will be available to broadly based nonprofit corporations, consumer cooperatives, State or local public agencies, or to profit organizations and individuals operating on a limited profit basis.

IV. *Options of Borrowers:* An eligible borrower operating under Plan I or Plan II, as described below, will determine interest credits on its loan in the respective manner indicated.

A. *Plan I.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to low-income nonsenior citizens and low- and moderate-income senior citizens or handicapped persons.

2. A borrower under Plan I generally must:

a. Determine that there is a firm market and continuing demand for rental housing by persons within the applicable income limits.

b. Prepare a budget on the basis of a 3 percent loan.

c. Determine rentals to be charged.

B. *Plan II.*

1. Borrowers operating under this plan must agree to limit occupancy of the housing to households, persons, and senior citizens and handicapped persons of low and moderate incomes. Under Plan II interest credits are based on the cost of operating the project and the size and income of the household.

2. A borrower under Plan II generally must:

a. Prepare two budgets, one on the basis of a 1 percent interest rate loan to determine basic rental, and a second budget on the basis of a loan at the interest rate shown in the promissory note to determine market rental.

b. Determine both basic rental and market rental for the different units based on the two budgets (See Exhibit B–1)

c. Determine adjusted personal income of each tenant and have each tenant complete Form FmHA 444–8, "Tenant Certification." Determine the monthly rent to be paid by each tenant household.

d. Determine the required monthly payment on the loan at one percent interest and overage month for the total units developed with any one loan. The amount of payment will be computed separately for each loan using Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance."

V. *Determining the Amount of Payment:*

A. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a three percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all surcharges.

B. *For Plan II.* The amount of payment will be determined by using the amortization factor for a payment at a one percent interest rate (use the same number of years that was used for computing the regular installment on the note) plus all overages.

VI. *Special Conditions.*

A. *Leases.*

1. Monthly or annual leases will be executed with each tenant occupying a rental unit in accordance with the requirements of Subpart C of Part 1930 (FmHA Instruction 1930–C). The State Director should issue State supplements covering any State laws, special conditions or local customs affecting leasing arrangements that may exist in the state. The lease form, for projects operating under Plan II, in addition to other statements outlining the conditions of the lease, should contain the following statement: "I understand and agree that the monthly rental payment under this lease will be $———. I also understand and agree that my monthly rental payment under this lease may be raised or lowered, based on changes in by income and changers in the number and age of persons living in my household. The rental payment will not, however, be less than $——— (Basic Rental) nor more than $——— (Market Rental) during the terms of this lease.

2. The lease agreement in congregate housing cases must include in the major provisions a statement that the tenant's ability to live independently in the project with the support services available will be evaluated on a continuous basis. The tenant may be requested to vacate if a determination is made that the tenant is no longer able to live in the project without additional assistance. This would involve cases where the tenant has progressed or regressed to a state of health that requires, in the opinion of the management, a level of care not available in the congregate housing facility.

3. Loans will be made on the basis of the units being rented to eligible tenants under Plan II as described in paragraph IV of this Exhibit. If in connection with the servicing of the loan it becomes necessary to permit ineligible persons to occupy the housing for temporary periods in order to protect the financial interest of the Government, the State Director may authorize the borrower in writing to rent units to ineligible persons subject to the State Director determining that:

a. The borrower has made a diligent but unsuccessful effort to rent the units to eligible tenants.

b. The borrower will continue to try to find eligible tenants.

c. The units will be rented on a monthly basis and only until they can be rented to eligible persons.

d. The ineligible tenants will be charged a rental surcharge as described in paragraph VI B of this Exhibit.

4. All lease agreements must include a statement indicating that the project is financed by the Farmers Home Administration and is subject to the Title VI nondiscrimination provisions, and that all complaints are to be directed to the Secretary of Agriculture or to the Office of Equal Opportunity, USDA.

B. *Rental Surcharges to Ineligible Tenants.* If a unit is rented in accordance with the provisions of paragraph VI A 3 to a tenant who is ineligible because the income exceeds the maximum income limits, the ineligible tenant will:

1. Under Plan I, be charged a 25 percent rental surcharge. To illustrate, if the unit normally rents for $60 per month, this ineligible tenant would pay $75 per month. The 25 percent surcharge or $15 in this illustration, would be paid on the account and would be included with, but in addition to, the regular payment on the loan.

2. Under Plan II, be charged the market rental.

C. *Vacancies.*

1. When construction is completed and all the units are ready for occupancy, vacant units will be assumed to be rented at the basic monthly rental in computing the amount of payment.

2. When all construction is not completed but all FmHA loan funds are outstanding, some of the units are ready for occupancy, and the contractor consents in writing to permit occupancy, the incompleted units will be assumed to be rented at the market monthly rentals in computing the amount of payment.

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD) Housing Assistance Payments Program or FmHA Rental Assistance.* When rental units in an RRH project are leased under the Section 8 program, Form FmHA 444–7 will be completed in accordance with Exhibit H for new construction and Exhibit G for existing units. Projects authorized to utilize rental assistance will complete Form FmHA 444–7 in accordance with Exhibit C.

E. *Special Cases.* Cases and situations not covered by this Exhibit or Exhibit C or H will be handled on an individual case basis with instructions from the National Office.

F. *Understanding Eligibility.* The borrower should understand the eligibility requirements for occupancy of the housing and that the housing is or will be rented only to eligible tenants unless authorized in writing by FmHA.

VII. *EXECUTION OF AGREEMENTS:*

A. *Interest Credit and Rental Assistance Agreement.* Interest credits may become effective at the beginning of the month in which construction is completed on a structure and the units are ready for occupancy. When the project consists of more than one structure, interest credits may become effective for each structure as it is completed and ready for occupancy. When the borrower knows the date the interest credit should become effective, the borrower should notify the District Director and execute Form FmHA 444–7. A separate Interest Credit and Rental Assistance Agreement will be executed for each loan the borrower receives.

B. *Change in Interest Credit Plan.* A borrower under Plan I may change, if it can meet the requirements of the other plan, by executing a new Interest Credit and Rental Assistance Agreement.

C. *Borrowers who are not Receiving Interest Credit.* If an eligible borrower did not execute an Interest Credit and Rental Assistance Agreement in accordance with paragraph VII A, it may do so at anytime during the year. Form FmHA 444–7 will be executed and should be effective prior to the next payment date.

VIII. *TENANT CERTIFICATION:* Tenant certification and recertification for interest credit borrowers will be in accordance with § 1944.215 (j) of Subpart E of Part 1944.

IX. *LOAN PAYMENTS:* With each payment made, the borrower will complete Form FmHA 444–29. The FmHA representative handling the transmittal to the Finance Office will complete Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal." The forms will be executed in accordance with the requirements of the Forms Manual Insert. The transmittal of these will be handled in accordance with FmHA Instruction 1951–B.

A. *Plan I.*

1. The borrower will make monthly payments in an amount necessary to repay the loan as if the loan carried a 3 percent interest rate. When a rental surcharge is collected as described in paragraph VI B of this Exhibit, the surcharge will be included and will be credited as interest to the account as a regular payment. The special handling of payments involving rental surcharges is explained in paragraph IX A 2 of this Exhibit.

2. When a payment is made for any month that involves a rental surcharge, Forms FmHA 444–29 and FmHA 444–9 will be completed with the amount of the surcharge being inserted in the spaces provided. These forms will be completed and the amount shown and transmitted regardless of whether the surcharge is actually collected by the borrower.

B. *Plan II.* The borrower will make monthly payments as though the note was written at a 1 percent interest note plus any overage due and payable whether or not collected from the tenant.

X. *SERVICING:* Any unusual case that cannot be serviced in accordance with this Exhibit should be submitted to the National Office with the facts involved and the State Director's recommendations.

Exhibit B–1—Example of Interest Credit Determination for RRH or RCH Projects (Plan II)

$100,000 RRH Loan—Approved During 1972 Fiscal Year—Project Contains Four 1-Bedroom Units (600 Sq. Ft. each) and Four 2-Bedroom Units (700 Sq. Ft. each)

Budget for Market Rent [1]

Operating, maintenance, vacancy, and contingency allowance, reserve and return to investor, if applicable, $5,277.

Loan repayment at 9% interest, $100 M × $91.23 [2], $9,123.

Total Annual Cost, $14,000.

One bedroom rent: 600/5200 = .11538 × 1,200 = $138.46.

Two bedroom rent: 700/5200 = .13462 × 1,200 = $161.54.

($138.46 × 4) + ($161.54 × 4) = $1,200 monthly income.

$14,440 ÷ 12 = $1,200 cost per month.

[1] Two complete and accurate budgets must be prepared. One for the Market Rent and one for the Basic Rent. (The expense items in the budgets shown in this illustration are only for illustration purposes and are not intemized).

[2] Factor for 50 years. If the regular installment on the note was amortized using a factor for less than 50 years, substitute the appropriate factor for a corresponding number of years.

Budget for Basic Rent ,

Operating, maintenance, vacancy, and contingency allowance, reserve and return to investor, if applicable, $5,277.

Loan repayment at 1% interest, $100 M×$25.52 [3], $2,552.

Total Annual Cost, $7,829.

One bedroom rent: 600/5200=.11538×652=$75.23.

Two bedroom rent: 700/5200=.13462×652=$87.77.

($75.23×4)+($87.77×4)=$652 monthly income.

$7,829÷12=$652 [3] cost per month.

Exhibit C—Rental Assistance Program

I. *General.* The objective of the rental assistance program is to reduce the rents paid by low-income households. This Exhibit sets forth the policies and procedures and delegates authority under which rental assistance (RA) will be extended to eligible tenants occupying eligible Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) projects financed by FmHA. This Exhibit also applies to Farm Labor Housing (LH) projects when the borrower is a broadly-based nonprofit organization, nonprofit organization of farmworkers, or a State or local public Agency. Rental assistance will supplement the benefits available to tenants under the interest credit program outlined in Exhibit B to this Subpart.

II. *Definitions.*

A. *Adjusted Annual Income.* This is the total planned income of the household for the next 12 months as defined in § 1822.3(n) of Part 1822 Subpart A (paragraph III N of FmHA Instruction 444.1), less 5 percent, thereof, and less an additional $300 for each minor person, excluding the tenant and co-tenant, who is a member of the household and lives in the rental unit. For RRH and RCH loans the fixed $400 maximum deduction for continued and extended health care of a member of the household will not apply in determining the rental payment amount. However, as to determining tenant eligibility it will remain at a maximum of $400 per month.

B. *Adjusted Monthly Income.*

This is the amount obtained by dividing the Adjusted Annual Income by 12 and rounded to the nearest dollar.

C. *Eligible Tenants.* Any low-income household, handicapped person, or senior citizen that is unable to pay the approved rental rate plus utility allowance for an eligible FmHA RA units within 25 percent of their adjusted monthly income and whose adjusted annual income does not exceed the limit established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1).

D. *Eligible Project.*

1. All projects must convert to Interest Credit Plan II before they are eligible to receive rental assistance except (a) LH loans and grants, and (b) direct RRH, and insured RRH loans approved prior to August 1, 1968. All new RRH projects must also operate under Plan II to receive rental assistance. For a borrower to have an eligible project, the loan must be a:

a. RRH insured or direct loan made to a broadly-based nonprofit organization, or State or local agency, or

b. RRH insured loan to an individual or organization who has or will execute a Loan Resolution or Loan Agreement agreeing to operate the housing on a limited profit basis as defined in § 1944.205(r) of this Subpart, or

c. RCH insured or direct loan, or

d. LH loan, or an LH loan and grant combination, made to a broadly-based nonprofit organization or nonprofit organization of farmworkers or a State or local public Agency.

2. Projects with all or a part of the rental units under contract with the Department of Housing and Urban Development (HUD) developed under the Section 8 program for new construction or rehabilitation by either the dual or single track processing procedures will not be considered an eligible project. This exemption does not prohibit the borrower from utilizing HUD's Section 8 Housing Assistance Payments Program for existing housing and FmHA rental assistance for other eligible households in the same project.

E. *Rental Assistance.* Rental assistance, as used in this Exhibit, is the difference between 25 percent of the household's adjusted monthly income and the approved rental rate (including costs of all utilities and services, when applicable) for the rental unit being occupied by the household. When the household's adjusted monthly income is less than the allowance established for utilities and services billed directly to and paid by the tenant, the owner will pay the household that difference in accordance with paragraph VII A of this Exhibit. Rental Assistance is further defined as:

1. For projects operating on Interest Credit Plan II, it is the difference between 25 percent of the household's adjusted monthly income and the basic rent including utilities for the rental unit.

2. For all direct RRH loans, insured RRH loans approved prior to August 1, 1968, and all eligible LH loans, it is the difference between 25 percent of the household's adjusted monthly income and the approved market rental rate including utilities for the rental unit.

F. *Approved Rental Rate.* The rental rates (basic and/or market rent) determined by the budget for the project and approved by FmHA. Rental rates will be considered approved if the budget for the year has been approved in accordance with § 1930.124 Part 1930 Subpart C (FmHA Instruction 1930–C) and utility allowances, when required, have been determined and approved in accordance with paragraph VIII B of this Exhibit. The rental rate includes the amortized principal and interest payments, operating and maintenance costs, required deposits to the reserve account and a return on the owner's initial investment when allowed by FmHA regulations. The cost of utilities and other public services when paid by the owner will be included in the operating and maintenance expenses to determine the approved rental rates.

G. *Utility Allowances.* The allowance approved by FmHA to cover the cost of utilities which are payable directly by the households.

III. *Eligibility of Borrower.* All borrowers who meet the eligible project definition in paragraph II D of this Exhibit are eligible and are encouraged to utilize the rental assistance program and receive rental assistance payments on behalf of low-income tenant as provided for in accordance with this Exhibit. Generally, the borrower will initiate the processing of a rental assistance application. A borrower who does not request rental assistance may be encouraged to do so by the District Director if rental assistance units are available and 20 percent or more of the households eligible for rental assistance in an eligible project petition the borrower to obtain rental assistance on their behalf. The petitions shall be in writing to the borrower and contain the signature of the head of each household who is paying more than 25 percent of their adjusted monthly income for rent including utilities and desiring rental assistance. A copy of the petition will be submitted to the District Director.

IV. *Eligibility of Tenants.* All tenants as defined in paragraph II C of this Exhibit are eligible to receive the benefits of rental assistance when occupying a rental unit in an eligible project provided the project owner has agreed to provide such assistance in accordance with this Exhibit and there are RA units available.

V. *Priority of Rental Assistance Applications.* The National Office may establish a State quota on the number of rental units that may receive rental assistance in any fiscal year. The State Director will limit the approval of rental

[3] Rounded to nearest dollar.

assistance to no more than the number of units allocated to the State. Unless otherwise stated by the National Office, the State allocation will indicate the number of Rental Assistance (RA) units for existing projects and the number of RA units to be used with the applications for loans. The priority in allocating RA units will be as follows:

A. *Allocation to Projects Within a State.* The State Director will distribute any RA units allocated to the State in accordance with any specific instructions from the National Office and approve requests for rental assistance to projects in accordance with the provisions of this Exhibit.

1. *Existing Housing:* The State Director will distribute any RA units allocated to the State for existing RRH, RCH, and LH projects by considering Forms FmHA 444–25, "Request for Rental Assistance," that have been submitted by eligible borrowers. The State Director shall authorize rental assistance to projects with priority given to projects based on the earliest date that Form FmHA 444–25 and other required information is submitted to FmHA in acceptable form. (Also see paragraph X). The number of RA units to be granted in any project will be based on the number of households in the project needing rental assistance up to the maximum allowed. The National Office shall notify the State Director each year of any specific date by which all requests for rental assistance must be submitted to FmHA for consideration.

2. *New Housing:* Any RA units allocated to the State for new construction (which includes substantial rehabilitation) shall be distributed on a priority basis in the following order:

a. RRH or RCH projects to be provided in areas where HUD Section 8 units under the FmHA set-aside are not available.

b. Applications for RRH and RCH loans where the market survey information indicates that without RA, a large percentage of the prospective tenants will be paying in excess of 25 percent of their adjusted monthly income for rent including utilities. When the number of RA units available is inadequate to cover all such applications, the units will be distributed giving priority to those projects located in areas identified as having the greatest housing needs and selected for funding in accordance with § 1944.231(d)(3) of this Subpart.

c. For LH projects, RA units will be allocated by the National Office on a case-by-case basis at the time the projects are considered for funding at the National Office level.

3. *Limitation on number of units of rental assistance in each project:* The maximum number of rental units in a project to obtain rental assistance is limited to the following:

a. No limitation for eligible labor housing loan and grant projects.

b. No limitation for RRH, RCH or SCH projects designed and limited to housing for the senior citizen or handicapped except that the State Director may limit the percentage of RA units granted to senior citizen or handicapped projects to no more than 40 percent of the number of rental units if it appears that the number of RA units distributed to the State will not be adequate to approve all requests for rental assistance.

c. An RCH or RRH project designed and/or primarily occupied by low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units in the project.

d. An RCH or RRH project planned and designed for a mix of senior citizen or handicapped persons and low- and moderate-income households will be limited to not more than 40 percent of the total number of rental units designed for low- and moderate-income households and no limitations on the rental units designed for and occupied by senior citizens or handicapped persons.

B. *Granting Exceptions.*

1. *State Directors Authority.* An exception to the 40 percent limitation indicated in paragraphs V A 3 a, c and d of this Exhibit may be granted by the State Director for up to 70 percent of the rental units in any particular project (fractional units will be rounded to the next higher whole number). However, the total number of units of rental assistance granted by the State Director including exceptions, cannot exceed the number of RA units allocated to that State. Exceptions will be granted only when RA units are or can be made available and the following conditions exist:

a. When more than 40 percent of the rental units are occupied by households who are paying more than 25 percent of their adjusted income for rent including utilities, and such units are no larger than needed to meet the household's need, or

b. The tenants in a project that is being assisted at the 40 percent level experience a hardship as a result of an income decrease or a rental increase and must obtain rental assistance to remain in the project, or

c. The project is being developed in an area of extremely low-income households and the majority of the proposed tenants will be paying in excess of 25 percent of their income for rent including utilities.

2. *National Office Authority.* If the project is located in or is being developed in an area of extremely low-income households and the majority of the tenants are, or will be, paying in excess of 25 percent of their income for rent including utilities, the National Office may authorize the State Director to grant approval for a greater number of RA units on a case-by-case basis for up to 100 percent of the rental units to receive rental assistance. Such requests will be submitted to and approved by the National Office prior to loan granting or requesting obligation of rental assistance for more than 70 percent of the rental units in the project.

C. *Processing Exception Requests.*

1. A request for an exception to the 40 percent limitation for existing projects will be submitted by the borrower to the District Director. After reviewing the request for completeness, accuracy, and sufficient documentation to fully support the request, the District Director will submit the request with supporting documentation and recommendations to the State Office by memorandum for approval. Included in the memorandum will be the number and percentage of rental units in excess of the 40 percent limit and justification for the approval. When National Office authorization is required to exceed the 70 percent limitation, the State Director will request this authorization by memorandum and will include the following:

a. For new projects, Form FmHA 444–25, complete data and documentation on the rental housing market situation, complete data and documentation on the income of the households likely to be served, the comments of the District Director, and the comments and recommendations of the State Director. If an applicant requests authority to exceed the 70 percent limitation for a new project after the loan is approved, such requests will not be approved until the project is completed, and at least partially occupied and it is apparent that full rentup will not occur unless the 70 percent limitation is exceeded.

b. for existing projects, Form FmHA 444–25, Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project, a copy of the project's waiting list for occupancy identifying eligible prospective tenants whose incomes have been verified and who are willing to occupy vacant units if an exception to the 70 percent limitation were made. A copy of any existing Rental Assistance Agreement and

modifications thereto which may be in effect on the project, the comments of the District Director, and the comments and recommendations of the State Director.

2. The State Director will maintain form FmHA 444–28, "Record of Rental Assistance Agreement." The record will include the borrower's case number, fund code, loan number, number of rental units in the project, number of units for rental assistance authorized and the effective date of each agreement and amendment. This information will be obtained from Form FmHA 444–25, Form FmHA 444–26, "Request for Obligation of Rental Assistance", and Form FmHA 444–27, "Rental Assistance Agreement." Any changes which are made in the number of rental units assisted will be recorded in the Record of Rental Assistance Agreements. Form FmHA 444–28 will be used for keeping this record.

VI. *Priority Among Eligible Households Within a Project Receiving Rental Assistance.* The borrower will determine priority for RA among tenants living in a project and among households applying for occupancy in accordance with this paragraph.

A. *In Existing Projects:*

1. If the project is fully occupied at the time the rental assistance is granted, priority will be given to households in residence paying the highest percentage of its annual adjusted income for rent including utilities. However, no eligible household occupying a rental unit in the project will be required to move from the project to allow a household applying for a rental unit who has a higher priority for rental assistance to move in.

2. If the project has vacancies or vacancies occur and rental assistance is available, priority will be given to households already living in the project who are eligible for rental assistance before any prospective tenants are considered for occupancy and rental assistance. Priority for occupancy by new tenants in congregate housing projects will be based upon the selection criteria set forth in the borrower's statement of policy regarding management and operation submitted in accordance with Exhibit A–7 to this Subpart and approved by FmHA. Priority for occupancy by new tenants in other projects will be based on the date of the household's application for occupancy. If more than one household applies for a rental unit on the same date, the application will be time dated. If the household with the earliest date of application for occupancy is unable or does not want to accept rental assistance, the rental unit will be offered to the next earliest application for occupancy. The occupancy application of a household who is unable for personal reasons or does not want to accept rental assistance when notified, will be returned and noted in the record as of the current date just in case the household wishes to be considered for occupancy at a later date.

3. If the project has vacancies or vacancies occur and rental assistance is not available, a household eligible for rental assistance may accept occupancy but cannot receive rental assistance. Such households will be considered for rental assistance in accordance with paragraph VI A 1. If such households elect not to accept occupancy because rental assistance is not available, their application for a unit will retain its original date for priority.

4. Tenants receiving the benefits of rental assistance shall continue receiving such benefits as long as they remain eligible tenants and there is a rental assistance agreement in effect.

B. *In New Projects.* Applications for occupancy should be accepted during the construction phase of the project. Priority in congregate housing projects will be given based on the selection criteria set forth in the borrower's FmHA approved statement of policy regarding management and operation. Priority in other projects will be given based on the date of the household's application for occupancy and in accordance with Section V D to Exhibit B to Subpart C to Part 1930 (FmHA Instruction 1930–C). If all or a percentage of the rental units are authorized to receive rental assistance, such number of units will not be rented to households whose adjusted annual income exceeds the limits established for the State as indicated in Exhibit C to Part 1822 Subpart A (FmHA Instruction 444.1) without the written approval of the District Director. The District Director will not grant such approval until a review has been made of the borrower's method of advertising the rental units and it has been determined that households eligible for rental assistance are not available or do not desire occupancy.

VII. *Responsibilities of Borrower in Administering the Rental Assistance Program.* Each borrower and management agent for each project that is to receive rental assistance should fully understand the responsibilities and requirements of carrying out the program. The borrower and management agent are the key to the successful operation of the program. The following guidelines will be followed:

A. Direct rental assistance payments will not be made to eligible tenants receiving rental assistance except in those instances when utilities are paid by the household and 25 percent of the household's monthly adjusted income is less than the allowance for utilities. In these cases, the borrower will pay the household that difference upon the household providing the borrower evidence that the utility bills are due or have been paid (See paragraph VIII A). The borrower will maintain an accurate accounting of each tenant's utility allowance and payments made to tenants.

B. The borrower must initially submit Form FmHA 444–8, "Tenant Certification," for each tenant. The initial tenant certification will be submitted to the FmHA District Office with the next monthly payment following the date that the tenant occupies the rental unit. Subsequent tenant certifications must be obtained annually and submitted to the District Office with the first monthly payment following the date of the certification. The borrower or management agent will establish an adequate recordkeeping system of tenant certifications to assure this responsibility is carried out.

C. The incomes reported by the tenants must be verified by the borrower in accordance with § 1944.215(j)(3) of this Subpart.

D. Borrowers utilizing RA must comply with § 1930.124 Part 1930 Subpart C (FmHA Instruction 1930–C). RA will not be approved for projects until the operating budgets have been approved by the FmHA State Office or the District Director. District Directors, with assistance from the State Office, must closely supervise and assist borrowers in complying with all accounting and management requirements.

E. A borrower participating in the RA program must have an FmHA approved lease with the assisted household.

1. Monthly or annual leases will be executed with each household occupying a rental unit. The State Director may issue State supplements covering any special conditions or local customs affecting leasing arrangements. In addition to other statements outlining the conditions of the lease, the lease form for tenants receiving RA should contain the following statements rather than those required in paragraph VI A of Exhibit B to this Subpart:

I understand and agree that as long as I receive rental assistance, my total monthly payment for rent and utilities will be $———— (25 percent of my adjusted monthly income). If I pay any or all utilities directly (not including telephone or cable TV), a

utility allowance of $——— will be deducted from my monthly payment for rental and utilities. If the utility allowance is in excess of 25 percent of my adjusted monthly income, the lessor will pay me this excess.

I further agree to notify the lessor of any permanent increase in adjusted monthly income or change in the number of members living in the household. I understand that should I receive rental assistance benefits to which I am not entitled that I may be required to make restitution and I agree to pay any amount of benefits received to which I was not entitled.

I also understand and agree that my monthly payment for rent under this lease may be raised or lowered, based on changes in household income and changes in the number and age of members living in my household. Should I no longer receive rental assistance as a result of these changes, I understand and agree that my monthly payment for rent may be adjusted to no less than $——— (basic rental) nor more than $——— (market rental) during the remaining term of this lease.

Eligible borrowers with LH loans and grants, direct RRH loans, or insured RRH loans approved before August 1, 1968, may omit the words "no less than $——— (basic rental) nor more than" from the last sentence of the above statement.

2. Lease clauses which fall within the classifications listed below shall not be included in any new lease or lease that must be renewed.

a. *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against the tenant in connection with the lease and to a judgment in favor of the landlord.

b. *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

d. *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

e. *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

g. *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenants right to appeal on the grounds of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

h. *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landford decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant, as a part to a lawsuit, may not be obligated to pay attorney's fees or other costs if the tenant loses the suit.)

3. A copy of a completed Exhibit A-5 of this Subpart when the tenants pay part or all of the utilities and a copy of the established rules and regulations for the project will be provided to the tenant as attachments to the lease.

VIII. *Handling Utility Allowances and Determining the Amount of Rent.*

A. *Payment of Utilities.* All units in projects to be constructed will be individually metered for utilities unless adequate justification is provided to show that it would be infeasible or excessively costly. In an existing project which is not individually metered, the project will be converted to individual meters if feasible and an energy savings can be achieved. In every case, the approved rents for the projects must include the cost of utilities (except telephone and charges for cable TV) paid by the owner. In a project where the tenant is billed directly for the utilities, the tenant receiving the benefit of rental assistance will pay the owner as rent the difference between the established allowance for utilities which the tenant pays and 25 percent of the household's adjusted monthly income. If, however, 25 percent of the household's adjusted monthly income is less than the monthly allowance for utilities, the owner will pay the tenant that difference as prescribed in paragraph VII A. In a project where the owner pays all the utilities, the tenant will pay the owner the full 25 percent of the adjusted monthly income toward the approved rent for the rental unit being occupied.

B. *Determining the Allowance.* The utility allowance will be determined and recorded by the use of Exhibit A-5 of this Subpart and submitted to FmHA for approval. The data will be analyzed by the FmHA State Office to determine the allowance that will be permitted. The utility allowance is to be approved on a project-by-project basis. If the allowances are reasonable for the project, the Exhibit A-5 will be approved. The allowable amounts will be indicated in each lease agreement between the owner and tenant.

C. *Changes in Allowances.* The utility allowance should be adjusted annually to reflect substantial changes in utility and public service rates. Normally, allowances will be adjusted on an annual basis if necessary when the owner submits a new budget for approval. Changes in utility allowance which will result in increasing the amount of the rent paid by tenants will be processed in accordance with Part 1930 Subpart C Exhibit C.

IX. *Terms of the Rental Assistance Agreement.*

A. *Effective Date.* The effective date of the Rental Assistance Agreement will be the first day of the month it is executed unless assistance is granted under appeal in accordance with paragraph XII of this Exhibit; then, the effective date will be retroactive to the first of the month in which assistance was denied.

B. *Term.*

1. *For New Construction.* The term of the agreement shall be for a period of twenty (20) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (A new construction project is one in which no unit has been occupied.) Upon expiration of the twenty year period, a new agreement may be executed. If a new agreement is considered, it will be made for a period not to exceed five (5) years.

2. *For Existing.* The term of the agreement shall be for a period of five (5) years from the effective date of the agreement, unless superceded by a modified agreement in accordance with Section 4 of the rental assistance agreement or terminated in accordance with conditions stated in Section 8 or 10 of the rental assistance agreement. Modified agreements will extend only for the remaining period of an original agreement. (An existing project is one in which one or more units have been occupied.) Prior to the termination date of any agreement a new Form FmHA 444–25 may be submitted. If a new agreement is consummated, it will be

made for a period not to exceed five (5) years.

X. *Processing of Rental Assistance Applications.* All requests for rental assistance will be processed in accordance with this paragraph and may be approved by the State Director.

A. *Existing Projects.*

1. A borrower with an eligible project in which there are tenants paying in excess of 25 percent of their adjusted income for rent is encouraged to file Form FmHA 444–25, with the District Director. A separate Form FmHA 444–25 will be submitted for each project. The borrower should include the following with each request.

a. Form FmHA 444–29, "Project Worksheet for Interest Credit and Rental Assistance," with columns 1 through 12 completed for each tenant in the project.

b. Approved or proposed budget for the year with Exhibit A–5 of this Subpart attached when applicable.

c. An energy audit for the project conducted in accordance with the procedures established for the Department of Energy (DOE) Resource Conservation Service (RCS) or other energy auditing procedures acceptable to the State Director. This audit will determine what improvements could be made to conserve energy in the project, how much energy would be saved and what the estimated costs of the improvements would be.

2. The District Director will review the budget, Exhibit A–5, and form FmHA 444–25 submitted by the borrower to assure that the items are complete and accurate. The District Director will complete Form FmHA 444–25 and submit all data provided by the borrower to the State Director.

B. *Projects to be Funded.*

1. Applicants requesting funding under the RRH or LH programs planning to utilize the rental assistance program should submit a completed Form FmHA 444–25 to the County Supervisor or District Director, as appropriate, when submitting a preapplication or application for funding.

2. The number of units of rental assistance requested should be based on the market data for the area, the proposed rental rates as reflected in a budget for the project, and the income levels of the prospective tenants.

C. *State Director Action on Requests for Rental Assistance.*

1. *Timing of Action.* If the State Director determines that rental assistance can be granted or a change in the number of rental assisted rental units is needed, Form FmHA 444–26 will be prepared. Form FmHA 444–26 will be prepared and distributed in accordance with the Forms Manual Insert. *Form FmHA 444–27 will not be executed until the request for Obligation of Rental Assistance has been returned from the Finance Office indicating that the requested number of RA units and funds have been obligated for the project.*

2. The State Director shall consider the amount of proposed rent increase attributable to increased energy costs and compare that to the amount of monthly payments necessary to amortize a subsequent loan for energy improvements which would yield utility cost savings equivalent to the proposed rent increase attributable to energy costs. Where the amortized loan payment is equal to or less than the cost of energy which would be saved the State Director shall approve the rent increase only if the cost effective energy conservation measures are taken.

3. *Initial Request.* Once the initial request for rental assistance has been obligated by the Finance Office, the State Director will prepare an original and three copies of Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement RRH and RCH Loans," and an original and two copies of Form FmHA 444–27. The State Director will keep one copy of the Forms in the State Office borrower file. The original and two copies of Form FmHA 444–7 and the original and one copy of Form FmHA 444–27 will be sent to the District Office with a covering memorandum authorizing the District Director to execute the agreements. Both originals and copies will be executed by the borrower and District Director. The District Director will retain the original of Form FmHA 444–27 in the borrower file and the executed copy will be given to the borrower. The District Director will send the original of Form FmHA 444–7 to the Finance Office, retain a copy in the borrowers file and an executed copy will be given to the borrower.

4. *Modification of an Existing Agreement.* When a change in the amount of rental assistance has been obligated by the Finance Office, the Form FmHA 444–27 will be prepared, signed and distributed in the same manner as provided for in paragraph X C 2 except a Form FmHA 444–7 is not required.

5. If rental assistance cannot be provided, the State Director will by letter, through the District Director, inform the borrower in writing of the reasons.

XI. *Method of Payment of Rental Assistance to Borrower.* The borrower will prepare a separate report for the project using Form FmHA 444–29. The worksheet will be prepared and distributed in accordance with the instructions for preparation or the Forms Manual Insert. This information will be used by the District Director in preparation of Form FmHA 444–9, "Multiple Housing Certification and Payment Transmittal." The form must be completed in accordance with the FMI. The required payment will be transmitted with the form to the Finance Office. The rental assistance payment will be mailed by the Finance Office directly to the borrower within 15 working days of receipt of a properly completed Form FmHA 444–9. Since the check will be sent directly to the borrower, the District Director must be sure that the borrower's address on Forms FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request," and 450–14, "Annual Statement of Loan Account," are correct. If the address shown on these forms is not correct, the District Director will complete Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," prior to any request for payment of rental assistance. However, when a borrower has more than one project within a county, all checks must be sent to the same address.

XII. *Rights for Appeal if Rental Assistance is not Granted by Farmers Home Administration.*

A. Tenants who have requested rental assistance in writing but have been denied such assistance (whether in whole or in part) by the borrower are to be notified in writing of the specific reasons why they have been denied rental assistance. The tenant will be notified that he or she can appeal the adverse decision in accordance with § 1944.555 (c) of Subpart L to Part 1944 (FmHA Instruction 1944–L) within 5 days of receipt of the notice of adverse action.

B. Borrowers who have requested rental assistance and are denied such assistance, in whole or in part by the Farmers Home Administration, will be notified in writing of the specific reasons why such assistance was denied. The letter informing the borrower of the denial will advise the borrower that the decision may be appealed in accordance with the provisions of Subpart B to Part 1900 (FmHA Instruction 1900–B). The letter informing the borrower of the denial of assistance and the reasons therefor must include:

1. In case the determination was made by the borrower, that the decision is subject to appeal to the FmHA District Director giving name and address.

2. In case the decision was made by the District Director, that an appeal may

be made to the State Director giving name and address.

3. In case the decision was made by the State Director, that an appeal may be made to the Administrator giving name and address.

4. A statement that "any appeal must be filed within 45 days of the date of this notice of denial of assistance."

D. If the State Director denies an appeal for assistance, the borrower may appeal that decision to the Administrator, Farmers Home Administration, Washington, DC 20250. The Administrator upon review of the appeal shall either affirm or reverse the decision.

E. If at any time, it is determined that a borrower or a household was eligible to receive assistance after the effective date of this Exhibit and assistance could have been made available in accordance with this Exhibit, the provision of the assistance will be retroactive to the first of the month in which assistance was initially denied.

F. All actions by FmHA officials must be within 30 days of receipt of an appeal.

XIII. *Forms and Exhibits.* Exhibits A–5 and Form FmHA 444–7 are to be utilized in determining amount of rental assistance to be provided.

Exhibit D—Guide Letter for Use in Informing Interm Lender of FmHA's Commitment

_____

(Name and Address of Private Lender)

_____

Dear Mr. _____

(For Organizations)

Reference is made to a request from the (Smith Housing Assoc.) through (John Smith) its President, for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

(For Individuals)

Reference is made to a request from (John Jones) for interim financing from your firm to construct a rental housing facility at the interest rate and terms and conditions agreed upon as reflected in the attached letter.

This letter is to confirm certain understandings on behalf of the Farmers Home Administration (FmHA).

Final Drawings, specifications, and all other contract documents have been prepared and approved, and the applicant is prepared to commence construction. It has been determined by the applicant and the Farmers Home Administration that the conditions of loan closing can be met. Funds have been obligated for the project, as evidenced by the attached copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

The applicant has been required by FmHA to deposit $ ——— with your firm to be utilized prior to any interim loan funds. The applicant has proposed and FmHA has agreed that you may first advance any applicant funds on deposit, and then advance the proceeds of the interim loan in accordance with the terms and conditions stated in your attached letter, as needed to pay for construction and other authorized and legally eligible expenses incurred by the applicant. It is understood, however, that advances of both the applicant's funds and the interim loan funds will be made only upon presentation of proper statements and partial payment estimates prepared by the builder, and approved for payment by the consulting architect, the applicant, and the FmHA District Director.

We have scheduled the Farmers Home Administration loan to be closed when construction to be financed with loan funds is substantially complete in accordance with the FmHA approved [contract documents,]* drawings and specifications, (except for minor punch list items), and the applicant provides evidence and a signed certification indicating that there are no unpaid obligations outstanding in connection with the project. At that time, funds not exceeding the FmHA loan amount will be available to pay off the amount of loan advances your lending institution has made for authorized approved purposes, including accrued interest to the date of closing.

FmHA cannot provide you with an unconditional letter of commitment guaranteeing FmHA loan closing. Factors such as noncompletion, default, unacceptable workmanship, and marked deviation from approved drawings and specifications could prevent the FmHA loan from being closed.

These problems can be minimized by making a thorough review of the [contract documents,]* drawings and specifications, evaluating the qualifications and past performance of the builder, and obtaining an adequate corporate surety bond guaranteeing both payment and performance. If the builder is unable to provide a surety bond, we suggest that your lending institution consider making advances for partial payments to the builder [in accordance with the provisions of the construction contract]* based upon no less than 60 percent and no more than 90 percent of the value of acceptable work in place, less the aggregate of previous payments.

The following are additional safeguards to help assure FmHA loan closing:

1. We invite you or your representatives to accompany FmHA personnel during construction inspections so that at least 3 or 4 joint inspections at critical points during construction, (including the final inspection), can be made to help assure that construction is proceeding in accordance with the FmHA approved drawings and specifications.

2. FmHA will maintain its commitment in the amount of the obligated loan funds for a reasonable period of time after the expiration of any specified completion dates, provided work on the project is progressing satisfactorily and any identified problems have been resolved.

3. FmHA will not arbitrarily abandon your lending institution in the event of default. Should the contractor default, FmHA will attempt to provide financial assistance to the applicant in accordance with our administrative procedures and lending requirements, provided a new contractor can complete the project for a total cost within the security value of the project. If this is not possible, or should the FmHA loan applicant become unable or unwilling to continue with the project, FmHA also will attempt to provide financial assistance to any eligible applicant (subject to the availability of funds, our administrative procedures, and our lending requirements), to purchase the completed project from your lending institution.

4. FmHA is aware that circumstances, such as subsurface ground conditions and change orders necessitated by required changes in the work to be performed, may cause cost increases after FmHA loan approval and the obligation of FmHA loan funds. When justified FmHA may make subsequent loans when necessary to help cover these eligible costs, provided additional loan funds are available the change orders were approved by FmHA, the increased costs are legitimate and are for authorized loan purposes, and the total cost of the project is within its security value.

Your assistance to the applicant is appreciated.

Sincerely,

_____

State Director.

*These words may be omitted for projects constructed by the owner-builder method of construction without a construction contract.

Exhibit E—Articles of Incorporation (Not for Profit)

We, the undersigned, incorporators, hereby associate ourselves together to form and establish a corporation not for profit under the laws of the State of _____.

First: The name of the corporation is _____.

Second: The location of its principal place of business in this State is _____, _____ County.

Third: The location of its registered office in this State is _____, _____, _____ County.

Fourth: The name and address of its resident agent in this State is _____, _____, _____, _____, _____ County.

Fifth: This corporation is organized not for profit under

and the objects and purposes to be transacted and carried on are to promote the general social welfare of the community and for that purpose:

to acquire, construct, provide, and operate rental housing and related facilities suited to the special needs and living requirements of eligible occupants as determined by Farmers Home Administration regulations, without regard to age, race, color, religion, sex, marital status, physical or mental handicap (must posses capacity to enter into a legal contract) or national origin;

to acquire, improve, and operate any real or personal property or interest or right therein or appurtenant thereto;

to sell, convey, assign, mortgage, lease any real and personal property;

to borrow money and to execute such evidence of indebtedness and such contracts, agreements, and instruments as may be necessary, and to execute and deliver any mortgage, deed of trust, assignment of income, or other security instrument in connection therewith; and to do all things necessary and appropriate for carrying out and exercising the foregoing purposes and powers.

Sixth: The number of directors shall be prescribed in the bylaws, but shall be not less than five nor more than nine.

Seventh: The corporation formed hereby shall have no capital stock. It shall be composed of members rather than shareholders. The conditions and regulations of membership and the rights or other privileges of the classes of members shall be determined and fixed by the bylaws.

Eighth: The corporation is not organized for precuniary profit and shall have no power to declare dividends. No part of its net earnings shall inure to the benefit of any member, director, or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all operating expenses, debts, and obligations of the corporation of whatsoever kind and nature as they become due, shall be used to make advance payments on a ———— owed by the corporation, to lower the lease-rental charge to occupants of the housing, to provide additional housing and related facilities, or for some related purpose.

Ninth: The name and place of residence (post office address) of each of the incorporators and initial directors until the first annual meeting:

Incorporators	Directors

Tenth: In the event of dissolution of this corporation, or in the event it shall cease to carry out the objectives and purposes herein set forth, all business, property, and assets of the corporation shall go and be distributed to one or more such nonprofit corporations or municipal corporations as may be selected by the board of directors of this corporation, to be used for, and devoted to the purpose of carrying on a nonprofit housing project for such rural residents or other purpose to promote the general social welfare of the community. In no event shall any of the assets or property, in the event of dissolution thereof, go or be distributed to members, either for the reimbursement of any sum subscribed, donated, or contributed by such members or for any other purposes, provided that nothing herein shall prohibit the corporation from paying its just debts.

Eleventh: The duration of the existence of this corporation shall be perpetual.[1]

In testimony whereof, We have here unto subscribed our names on ————, 19——.

———————————

———————————

———————————

(Insert acknowledgement or other form if required by State law.).

Exhibit F—Bylaws

Bylaws of

———————————

A nonprofit corporation.

Article I—Office.

Section 1.01. Principal Office.

The principal office of the corporation in the State of ———— shall be located at ————, County of ————.

Section 1.02. Registered Office and Agent.

The corporation shall have and continuously maintain in the State of ———— a registered office and a registered agent whose office is identical with such registered office.

[1] Duration should be perpetual, or long enough to cover the period of the loan plus five years, or for the longest period permitted by the State law.

Article II—Members.

Section 2.01. Eligibility for membership.

The corporation shall have one class of members. Members may be individuals or organizations. Any legally competent person of good reputation who resides in the Town of ———— or in the surrounding trade area, applies for membership, and pays the required membership fee shall be eligible.

Section 2.02. Approval of Applications for Membership.

All applications for membership shall be approved at (1) any special or regular meeting of the board of directors, when a quorum is present, by a majority vote of the board members or (2) by a majority vote of the exisitng membership present at any annual or special meeting held in accordance with Article III herein.

Section 2.03. Voting Rights.

Each member shall be entitled to one vote on each matter submitted to a vote of the members.

Section 2.04. Termination of Membership. A member may be suspended or expelled, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the member has been informed in writing of the charges preferred against the member at least ten days before such meeting. The members shall be given an opportunity to be heard at such meeting. The members of the board, by a majority vote of those present at any regularly constituted meeting, may terminate the membership of any member who becomes ineligible for membership and may suspend or expel any member who shall be in default with respect to any financial obligation to the corporation.

Section 2.05. Resignation. Any member may resign by filing a written resignation with the secretary.

Section 2.06. Reinstatement. Upon written request signed by a former member and filed with the secretary, the board may reinstate such former member to membership upon such terms as the board may deem appropriate.

Section 2.07. Transfer of Membership. Membership in this corporation is not transferable or assignable.

Section 2.08. Membership—Fees. The membership fee shall be $——— or such other amount as may be fixed by the members at any annual meeting or at any special meeting called for the purpose. No person shall attain

membership before paying the treasurer the membership fee.

Section 2.09. Membership—Liability for Corporation's Obligations. Fully paid members shall not be liable for any debts or obligations of the corporation and shall not be subject to any assessment; but the members at any annual meeting or at any special meeting called for the purpose, may fix reasonable annual dues to become effective after not less than 30 days' notice to all members of such action.

Section 2.10. Membership—Minimum Number. The board will make all reasonable efforts to maintain a broad community-wide membership of not less than 25 members at any time.[1]

Section 2.11. Membership—Residence. A majority of the members shall be residents of the community where the housing is or will be located.

Article III—Meetings of Members.

Section 3.01. Annual Meeting. An annual meeting of the members shall be held at ———— on the ———— of the month of ———— each year, beginning with the year 19—— at the hour of —— o'clock, ——. M., for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in said State, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the board shall cause the election to be held at a special meeting of the members as soon thereafter as convenient.

Section 3.02. Special Meetings. Special meetings of the members may be called by the president, the board, or not less than one-tenth of the members.

Section 3.03. Place of Meeting. The board of directors may designate any place within or not more than ———— miles from ———— as the place for an annual meeting or for any special meeting called by the board. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the corporation in said State.

Section 3.04. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, not less than seven or more than thirty days before the date of such meeting, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute of these bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at the address as it appears on the records of the corporation, with postage thereon prepaid.

Section 3.05. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of the members, may be taken without a meeting upon written consent or approval of all the members, setting forth the action so taken.

Section 3.06. Quorum. At such a meeting a quorum shall consist of 30 percent [2] of the members, or twice the number of directors, whichever is greater. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting from time to time without further notice.

Section 3.07. Proxies.

(a) At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after eleven months from the date of its execution. A proxy may be cancelled by notice executed by the member with like formality and delivered to the secretary.

(b) At each meeting of the members, every member shall be entitled to vote in person or by proxy and shall be entitled to cast one vote. The votes for directors shall be by ballot. Only the person in whose name membership is standing in the books of the corporation on the day such meeting shall be entitled to vote in person or by proxy.

(c) For any person to represent a member by proxy, such person must submit a power of attorney to the secretary of the board for examination at least one hour before the time of meeting. When the secretary has certified the power of attorney is in good order, the proxy holder shall have the right to do any and all things which might be done by the member were the member present in person, which right shall include the establishment of a quorum and the organizing of any meeting.

Article IV—Board of Directors.

Section 4.01. General Powers. The affairs of the corporation shall be managed by its board of directors.

Section 4.02. Number, Tenure, and Qualifications. The number of directors shall be ————.[3] The directors elected at the annual meeting to succeed the directors named in the Articles of Incorporation shall be elected for staggered terms of three, two, and one year. As the terms of such directors expire, their successors shall be elected for terms of three years and until their successors are elected and have qualified. Directors shall be members of the corporation and residents of the community where the housing is or will be located. Of the total number directors, at least five must be among the leaders in such community.

Section 4.03. Regular Meetings. A regular annual board shall be held, without other notice than these bylaws, immediately after and at the same place as the annual meeting of the members. The board may provide by resolution the time and place, within or not more than ———— miles from ————, for holding of additional regular meetings of the board without other notice than such resolution.

Section 4.04. Special Meetings. Special meetings of the board may be called by or at the request of the president and shall be called by the secretary at the request of any two directors. The authorized person or persons calling a special meeting of the board may fix any place within or not more than ———— miles from ———— as the place for holding such meeting.

Section 4.05. Notice. Notice of any special meeting of the board shall be given at least two days previously thereto by written notice delivered personally, or four days notice sent by mail or telegram, to each director at the directors address as shown by the records of the corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any director may waive notice of any meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction

[1] For projects exceeding $100,000, the minimum of members should be larger than 25, and should be at least one member per unit in the project.

[2] For large organizations, a smaller figure may be used if it will not result in a quorum of less than 20 members.

[3] Number of directors must be not less than 5 and must be selected by a procedure that insures that the interest of minorities and women are adequately represented.

of any business because the meeting is not lawfully called or convened. The business to be transacted at the meeting need not be specified in the notice or waiver of notice of such meeting, unless specifically required by law or these bylaws.

Section 4.06. Quorum. A majority of the board shall constitute a quorum for the transaction of business at any meeting of the board; but if less than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 4.07. Manner of Acting. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by law or by these bylaws. The board may also act by written consent of all the directors of the corporation setting forth the action taken.

Section 4.08. Vacancies. Any vacancy occurring in the board shall be filled by the board until the next meeting of the members and until a successor has been elected by the members to fill a vacancy. Such person shall be elected for the unexpired term of office of the predecessor in office.

Section 4.09. Compensation. Directors shall not receive any compensation for their services as directors.

Section 4.10. Directors—Absence from meetings. Any director who is absent from —— consecutive meetings without excuse satisfactory to the board shall be deemed to have surrendered the office as director.

Section 4.11. Directors—Residuary Powers. The board shall have the powers and duties necessary or appropriate for the administration of the affairs of the corporation. All powers of the corporation except the specifically granted or granted or reserved to the members by law, the articles of incorporation, or these bylaws shall be vested in the board.

Section 412. Directors—Removal from Office. A director may be removed from office, for cause, by the vote of not less than three-fourths of the members present at a meeting of the members, provided notice of such proposed action shall have been duly given in the notice of the meeting and provided the director has been informed in writing of the charges preferred against the director at least 10 days before such meeting. The director involved shall be given an opportunity to be heard at such meeting. Any vacancy created by the removal of a director shall be filled by a majority vote, which may be taken at the same meeting at which such removal takes place.

Article V—Officers

Section 5.01. Officers. The officers of the corporation shall be a president, a vice president, a secretary, and a treasurer. The board may elect or appoint such other officers as it shall deem desirable, such officers to have the authority and perform the duties prescribed, from time to time, by the board. The offices of secretary and treasurer may be combined and held by one person.

Section 5.02. Election and Term of Office

(a) The officers of the corporation specified in Section 5.01 shall be elected from the membership of the board by the board at its annual meeting or as soon thereafter as feasible. New offices may be created and filled at any meeting of the board. Each officer shall hold office until the next annual election of directors and until a successor shall have been duly elected and shall have qualified.

(b) The term of office shall be one year. Election of officers shall take place at the annual board meeting and shall be by ballot cast by qualified directors. A plurality of votes cast shall elect.

Section 5.03. Removal. Any officer elected or appointed by the board may be removed by the board by two-thirds vote of the remaining directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the officer so removed.

Section 5.04. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board by majority vote for the unexpired portion of the term.

Section 5.05. The president shall be the principal executive officer of the corporation and shall in general supervise and control all the business and affairs of the corporation. The President shall preside at all meetings of the members and of the board. The president may sign, with attestation of the secratary or any other proper officer of the corporation authorized by the board, any deeds, mortgages, bonds, contracts, or other instruments which the board authorizes to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board or these bylaws or statute to some other officer or agent of the corporation and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the board from time to time.

Section 5.06. Vice President. In the absence of the president or in the event of an inability or refusal to act, the vice president shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president shall perform such other duties as from time to time may be assigned by the President of the board.

Section 5.07. Treasurer. The treasurer shall give a bond for the faithful discharge of duties in such sum and with such surety or sureties as the board shall determine. The treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation, from any source whatsoever, deposit all such moneys in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article VIII of these bylaws; and in general perform all duties incident to the office of treasurer and such other duties as from time to time be assigned by the president or the board.

Section 5.08. Secretary. The secretary shall keep the minutes of the meeting of the members and the board in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of and see that the seal of the corporation is affixed to all documents the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws; keep a register of the post office address of each member, which shall be furnished to the secretary by such member; and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or the board.

Article VI—Order of Business

Section 6.01. Order of Business. The order of business at any regular or special meeting of the members or the board shall be:

(a) Reading and approval of any unapproved minutes.

(b) Reports of officers and committees.

(c) Unfinished business.

(d) New business.

(e) Adjournment.

Section 6.02. Parlimentary Prodcedure. On questions of parlimentary procedure not covered in these bylaws, a ruling by the president shall prevail.

Article VII—Committees

Section 7.01. Committee of Directors. The board of directors, by resolution adopted by majority of the directors in office, may designate one or more committees, each of which shall consist of one or more directors, which committees, to the extent provided in said resoluton shall have and exercise the authority of the board in the management of the corporation; but the designation of such committees and the delegation thereto of authority shall not operate to relieve the board, or any individual director, of any responsibility imposed upon the board or any individual director by law.

Section 7.02. Other committees. Other committees not having and exercising the authority of the board in the management of the corporation may be designated by a resolution adopted by a majority of the directors present at a meeting at which a quorum is present. Except as otherwise provided in such resolution, members of each such committee shall be members of the corporation, and the president of the corporation shall appoint the members thereof. Any member thereof may be removed by the person or persons authorized to appoint such member whenever in their judgment the best interest of the corporation shall be served by such removal.

Section 7.03. Term of Office. Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until a successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee, or unless such member shall cease to qualify as a member thereof.

Section 7.04. Chairman. One member of each committee shall be appointed chairman by the persons authorized to appoint the members thereof.

Section 7.05. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

Section 7.06. Quorum. Unless otherwise provided in the resolution of the board of directors designating a committee, a majority of the whole committee shall constitute a quorum and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee.

Section 7.07. Rules. Each committee may adopt rules for its own government not inconsistent with these bylaws or with rules adopted by the board of directors.

Article VIII—Contracts, Checks, Deposits, and Funds

Section 8.01. Contracts. The board may authorize any officer or officers, agent or agents of the corporation, in addition to the officers so authorized by these bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation; and such authority may be general or confined to specific instance.

Section 8.03. Deposits. All funds of the corporation shall be deposited from time to time to the credit of the corporation in such banks, trust companies or other depositories as the board may select.

Section 8.04. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest, or devise for the general purposes or for any special purpose of the corporation.

Article IX—Certificates of Membership

Section 9.01. Certificates of membership. The board may provide for the issuance, and determine the form of certificates evidencing membership in the corporation. Such certificates shall be signed by the president and the secretary, sealed with the seal of the corporation, and consecutively numbered. The name and address of each member and the date of issuance of the certificate shall be entered on the records of the corporation. If any certificate becomes lost, multilated, or destroyed, a new certificate may be issued upon such terms and conditions as the board may determine.

Section 9.02. Issuance of Certificates. When a member has been elected to membership and has paid any dues that may then be required, a certificate of membership shall be issued in his or her name and delivered to the member by the secretary.

Article X—Books and records

The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, the board, and committees having any of the authority of the board of directors, and shall keep at the registered or principal office a record giving the names and addresses of the members. All books and records of the corporation may be inspected by any member, or members agent or attorney, for any reasonable time. The board shall cause an audit of the records of the corporation to be made each year by a competent auditor.

Article XI—Fiscal Year

The fiscal year of the corporation shall begin on the first day of January and end on the last day of December in each year.

Article XII—Seal

The board shall provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words, "corporate seal."

Article XIII—Waiver of Notice

Whenever any notice is required to be given under the provisions of the statutes of said State or the articles of incorporation or the bylaws of the corporation, a waiver thereof in writing signed by the person or person entitled thereto, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Article XIV—Repeal or Amendment of Bylaws

Section 14.01. These bylaws may be repealed or amended by a majority vote of the members present at any annual meeting of the members, or at any special meeting of the members called for such purpose, at which a quorum is present: provided, however no such action shall change the purposes of the corporation so as to impair its rights and powers under the laws of said State, or to waive any requirements of bond or any provision for the safety and security of the property and funds of the corporation or its members or to deprive any member without an express assent of rights, privileges, or immunities then existing. Notice of any amendment to be offered at any meeting shall be given not less than 7 nor more than 30 days before such meeting and shall set forth such amendment.

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned secretary of the corporation identified in the foregoing bylaws does hereby certify that the foregoing bylaws were duly adopted by the members of said corporation, as bylaws of said corporation, on the ——— day of ——— 19—— at a duly called and constituted meeting of the members, and that they do now constitute the bylaws of said corporation.

———

Secretary

[Corporate Seal]

Exhibit G—RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)

I. *General.* The Exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of *existing Section 515 rural*

rental housing (RRH) units for leasing under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program.

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Section 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882, (as amended.) To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. District Directors should inform all RRH borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 25 percent of the tenant's income for rent. Therefore, RRH borrowers should advise tenants occupying a unit of a project who are paying more than 25 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. *Section 8 assistance for existing housing is administered by local housing agencies* authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. *FmHA policies concerning rental rates and payments.* A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 15–25 percent of the household's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) For borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit *Plan I,* the *contract rent will be the market rental rate* for the units as determined by the current approved annual budget *using a 3 percent amortization factor* for principal and interest payments, (2) for borrowers operating *without interest credit* the *contract rent will be the market rental rate* for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments, (3) for borrowers operating in accordance with interest credit *Plan II,* the *contract rent will be the basic rental rate* as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit B of this Subpart.

IV. *Responsibilities.* A. *Household.* A household must obtain a Certificate of Family Participation to obtain Section 8 assistance. A household receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Family Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Family Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.* 1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Subpart G of Part 1802 of this Chapter, (FmHA Instruction 430.2).

b. Review and approval of budgets and rental rates; and

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out all obligations under the contract.

V. *Special Conditions.* A. *Eligibility.* 1. The PHA will determine a household's eligibility before the Certificate of Family Participation is issued. To be eligible for Section 8 assistance, the household's income as determined by HUD may not exceed 80 percent of the median income for the area. The household's eligibility for housing assistance payments under the Section 8 program will continue until the amount payable by the household equals or is greater than the gross rental rate. However, when 25 percent of the household's income equals or is greater than the gross rental rate chargeable for the unit, the household may still be able to occupy a rental unit under FmHA interest credit programs if 25 percent of the family's income is greater than the lowest established rental rate for the unit.

2. *Form FmHA 444–8,* "Tenant Certification," *will not be required* for tenants who have obtained a Certificate of Household Participation from the PHA. A copy of the Certificate of Household Participation will, however, be provided to the FmHA District Director.

3. The tenant's adjusted household income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. *Security deposits.* According to HUD regulations, the owner may require a household to pay a security deposit, the maximum amount shall be the greater of the amount of rent payable by the household towards two month's gross rent or $50.00. Under HUD regulations, if a household vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. *Payment for vacated units.* According to HUD regulations, *If a household vacates the unit in violation of the provisions of the lease, the owner may receive the full housing assistance payments for the month in which the family vacates and then in the amount of 80 percent of the contract rent* for a vacancy period not exceeding *an additional month* or the expiration or other termination of the lease, whichever comes first.

D. *Limitation of owners participation in the program.* HUD's regulation provides that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular household or households with the approval of the HUD field office.

E. *Special problems.* Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

RRH Loans and the HUD Section 8 Housing Assistance Payments Program (New Construction)

I. *General.* The attached Exhibit H–1 is a Memorandum of Understanding between the Department of Housing and Urban Development (HUD) and the Department of Agriculture, Farmers Home Administration (FmHA), concerning the application processing and operation of rural rental projects involving HUD Section 8 housing assistance payments. The Memorandum provides for a set aside of contract authority under Section 8 of the U.S. Housing Act of 1937 for new construction projects financed by FmHA

under Section 515. Only units charged against this set aside are eligible under these procedures. This Exhibit and HUD's regulations published in 24 CFR Part 883 Subparts G and H contain the policies and procedures that will be followed by FmHA in implementing and carrying out the provisions of the Agreement.

II. *Establishment of Interest Rate for Section 8 Units.* FmHA will provide an interest reduction for all units under Section 8, except units in projects operated on a profit basis and approved after September 20, 1977. Since the advantage of this interest reduction must be passed through to the tenant in the form of lower rents, the budget for the Section 8 units should not reflect an excess of income over operating and maintenance expenses, debt repayment, reserve requirements, and for limited profit borrowers, a return on initial investment. If the borrower will operate the project on a nonprofit or limited profit basis, the payment of interest on the RRH loan will be based on at least a 1 percent interest reduction below the established interest rate for RRH loans for the units of a project under HUD's Housing Assistance Payments Contract (Contract). However, when the budget is prepared on the basis of a 1 percent reduction and the proposed Contract Rents exceed the applicable Fair Market Rents, the State Director may approve an interest reduction of 2 percent below the note rate of interest for the units utilizing the HUD Housing Assistance Payments Program. The State Director, in making this determination, must be sure that the budget is accurate and reflects reasonable and typical costs for the area and is necessary to make the project feasible. If the reduction of 2 percent below the interest rate of the note does not result in rental rates which are equal to or less than the Fair Market Rate, the State Director will submit a request including the budget, a narrative budget analysis, and other supporting data, to HUD's Field Office Director for approval of higher Contract Rents. HUD may approve increases of up to 20 percent above the Fair Market Rents. The interest rate shown on the note, however, will be in accordance with Exhibit B of Subpart A to Part 1810 (FmHA Instruction 440.1 available at any FmHA office). This reduction in interest or interest credit will be accomplished in the manner indicated for Plan I and Plan II in Exhibit B of this Subpart and in accordance with paragraph IV of this Exhibit.

III. *Section 8 Contract Rents.* The Section 8 Contract Rent rates will be determined by FmHA. The Contract Rents will be determined as outlined in paragraphs II and IV of this Exhibit. The State Director should contact the HUD field office to obtain the Fair Market Rents (including additional allowance for the elderly) in effect for the proposed project's location at the time the certification is made.

IV. *Budgets and Interest Credit Agreements.* Budgets and interest credit agreements must be prepared in accordance with Exhibit B and the following:

A. *Total Project Under Section 8.* If a project is developed with all units of the project covered by Section 8, one budget will be prepared. The budget will be based on an interest rate which has been set for the project in compliance with paragraph II of this Exhibit. When applicable, a Form FmHA 444–7, "Interest Credit and Rental Assistance Agreement" will be entered into with the borrower to show the amount of interest reduction. (RRH and RCH loans) Check Plan I S 8 of the agreement and show the amount of interest credit as the difference between the amortized payment at the note rate of interest and the amortized payment calculated at the effective interest rate.

B. *Mixed Project for Profit.* If a mixed project is developed (a project with only a part of the units covered by Section 8 contract) and the borrower is operating on a profit basis, one budget will be prepared based on market rent. The market rent and contract rent set must be the same. If the borrower agrees to operate on a limited profit or nonprofit basis, paragraph IV C of this Exhibit will apply.

C. *Mixed Project for Nonprofit and Limited Profit.* When a mixed project is developed (a project with only a part of the units of the project covered by HUD's contract and a part of the units to utilize interest credit Plan II) in accordance with paragraph IV B of Exhibit B of this Subpart, three budgets must be prepared. The budgets must be for basic rent, Section 8 contract rent, and market rent. An "Interest Credit and Rental Assistance Agreement", will be entered into with the borrower to allow interest credit on all units. Check Plan II of the agreement. The loan payments will be based on the amortized payment at 1 percent interest plus all overages. The amount of overage for those units under Section 8 contract will be the difference between the basic rent and the contract rent. The amount of overage for those units not under Contract will be in accordance with Exhibit B of this Subpart.

V. *Compliance and Certifications Required.* To comply with the provisions of the Memorandum of Understanding with HUD, certain requirements must be met and certifications made. These requirements and certifications are listed below:

A. *Minimum Property Standards.* 1. Since FmHA has adapted HUD's Minimum Property Standards (MPS) 4910.1, no additional requirement other than compliance with Subpart A of Part 1924 of this Chapter (FmHA Instruction 1924–A), shall be necessary to assure that the housing is planned in accordance with the MPS. However, appropriate state and local laws, codes, ordinances and regulations must also be met.

2. The borrower's architect engineer will provide a certification that the final drawings and specifications meet all MPS, state and local laws, codes, ordinances, and regulations.

B. *Rent Certification.* The State Director will certify for each project that the rental rates to be used in the contract for the units of the project are reasonable based on quality, location, amenities, management and maintenance services, and unless HUD has authorized higher rates, do not exceed the applicable Fair Market Rents for newly constructed Section 8 units as published in the **Federal Register** and in effect at the time the certification is made. Exhibit H–3 contains the necessary language for this certification.

C. *Site and Neighborhood Standards.* The State Director will certify that the location of each project is in compliance with § 1944.215(q) of this Subpart. Exhibit H–4 will be used to assist in determining compliance with this requirement. Exhibit H–3 contains the necessary language for this certification.

D. *Equal Opportunity.* 1. FmHA agrees to assure compliance with the requirements of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968 and Executive Order 11246 in accordance with FmHA Instruction 1901–E and the Rehabilitation Act of 1973. Obtaining properly executed Form FmHA 400–1 "Equal Opportunity Agreement," Form FmHA 400–4, "Assurance Agreement," and Form FmHA 400–6, "Compliance Statement," and completion and transmittal of Form FmHA 400–3, "Notice to Contractors and Applicants," will meet those requirements.

2. To comply with Executive Order 11063 and Title VIII of the Civil Rights Act of 1968, the applicant must complete HUD Form 935.2, "Affirmative Fair Housing Marketing Plan." The State Office will obtain the form and instructions for filing from the HUD area office and supply them to District Offices for distribution to applicants. The completed form will be reviewed for

adequacy and approved by the loan approval official. Marketing of the units must begin no later than 90 days before project completion. To further comply with Executive Order 11063 the mortgage must contain the covenants as required in § 1944.236(b) of this Subpart.

3. The applicant must agree to and sign a certification that there will be compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968 as it pertains to business opportunity, training, and employment of lower income residents. Exhibit H–5 may be used for this purpose.

4. The State Director will prepare a certificate for each project that all of the above equal opportunity requirements will be met. Exhibit H–3 contains the necessary language for this purpose.

E. *Environmental Standards.* 1. Subpart G to Part 1901 (FmHA Instruction 1901–G) outlines the program actions requiring environmental assessment and, if found necessary, an environmental impact statement. Subpart G to Part 1901 (FmHA Instruction 1901–G) sets generally a threshold for multiple housing projects at 50. The references to 50 will be disregarded in the case of section 8/515 loans and *a threshold of 5* will apply to conform with the Memorandum of Understanding with HUD. Consideration must also be given to the effects of the environment and neighborhood activity on the project. The proposal will be rejected if, after appropriate modifications, there would remain environmental impacts which are unacceptable under FmHA policies. All other requirements of Subpart G to Part 1901 (FmHA Instruction 1901–G) will be followed.

2. In compliance with paragraph VI C of the Memorandum of Understanding, the State Director will prepare a certification for each project that it complies with the National Environmental Policy Act and all rules, regulations, and requirements issued by FmHA pursuant thereto and that an environmental assessment on projects consisting of a total of 5 units or more has been made. Exhibit H–3 contains the necessary language for this purpose.

F. *Relocation.* Compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 applies to Public Housing Agency applicants only. It will be the responsibility of the applicant to provide any assistance required for relocation of occupants of the site on which the section 8/515 rural rental project will be located. The requirements of § 1944.215 (u) of this Subpart will be followed in cases involving relocation of individuals from the site to be acquired. Generally, sites will not be selected which are occupied if relocation is necessary.

G. *Davis-Bacon Wage Rates.* 1. The provisions of the Davis-Bacon Act apply to all section 8/515 projects with *9 or more Section 8 assisted units.* Subpart D to Part 1901 (FmHA Instruction 1901–D), outlines the procedures to follow to comply with this Act.

2. In compliance with paragraph VIII B of the Memorandum of Understanding, the State Director will prepare a certification for each project that there will be compliance with the Davis-Bacon Act. Exhibit H–3 contains the necessary language for this purpose.

H. *Other Federal Requirements.* 1. § 1944.215(r) of this Subpart outlines the requirements of the Clean Air Act and Federal Water Pollution Control Act.

2. Subpart F to Part 1901 (FmHA Instruction 1901–F) and § 1944.215(t) of this Subpart states that the applicant must comply with the requirements of the National Historic Preservation Act, the Archaeological and Historic Preservation Act of 1974, and Executive Order 11593.

I. *Previous Participation.* It will be the responsibility of all applicants and applicant principals holding an interest in the entity to complete HUD Form 2530, "Previous Participation Certificate." (The State Office will obtain the form and instructions for filing from HUD and supply them to District Offices for distribution to applicants.) The complete form will be transmitted to HUD at the same time as transmitting the Form AD–621 "Preapplication for Federal Assistance," for their review, clearance and comment.

J. *Project Completion.* 1. The borrower's inspecting architect will provide a certification as outlined in Exhibit H–6. This certification and other data required are a part of the backup material necessary for the State Director to provide HUD with the certification required to comply with paragraph XII B of the Memorandum of Understanding.

2. The State Director, after receipt of the borrower's inspecting architect's certification and compliance with other requirements, will prepare a certification similar to Exhibit H–7 for transmittal to HUD indicating that:

a. The project was completed in accordance with the requirements in the Agreement to Enter Into a Housing Assistance Payments Contract.

b. The project is in good and tenantable condition.

c. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

d. There has been no change in management capability.

VI. *Processing Application.* A. Applicants desiring to develop projects utilizing the Section 8/515 loan program should contact the County Supervisor or District Director before completion of the requirements of the Form AD–621. If the applicant desires to submit a preapplication, after couseling with FmHA personnel, the preapplication will be accepted and processed in accordance with existing regulations and this Exhibit. *In addition to items required in Exhibit A–6, the applicant will submit required copies of HUD Form 2530.* If obtainable, the applicant should also submit comments on the proposed project from the local governing body in which the project is to be located.

B. The District Director, upon receipt of Form AD–621 and required attachments, will review the preapplication for completion and accuracy. The District Director will then forward the completed preapplication to the State Director for submission of copies to HUD for review and comments. A letter of transmittal will be prepared by the State Director to HUD listing the data submitted for review.

C. Upon receipt of comments from HUD, Form AD–622, "Notice of Preapplication Review Action," will be completed and transmitted to the applicant outlining any further data required or conditions which must be met before or in completion of Form AD–625, "Application for Federal Assistance (Short Form)." The applicant should at this time be advised of the requirement for completion of Exhibit H–5.

D. Upon completion of the Form AD–625 and other requirements by the applicant, the District Director will review the information for completeness and accuracy, prepare comments and recommendations, and submit the docket to the State Director for review and approval in accordance with existing regulations. The State Director will prepare and submit the required certifications to HUD. The Agreement to Enter into a Housing Assistance Payments Contract will then be completed by HUD and the owner (applicant).

E. Construction of the project will not be permitted until (1) the Agreement to Enter Into a Housing Assistance Payments Contract has been executed, (2) the loan funds have been obligated, (3) interim financing has been arranged, or in case of multiple advances, the loan has been closed.

F. When the project is completed, the State Director will prepare the Certification of Project Completion (Exhibit H–7), and submit it to HUD. HUD will prepare the Housing Assistance Payments Contract for execution. Upon execution, the project will be considered to be in operation.

G. All borrowers will provide reports to FmHA in accordance with Subpart C of Part 1930 of this Chapter, (FmHA Instruction 1930–C), Subpart E to Part 1944 (FmHA Instructions 1944–E), and applicable loan agreements or loan resolutions. Borrowers will also be required to comply with HUD's reporting requirement for Housing Assistance Payments Contract. FmHA will inform HUD of any irregularities found upon review of the borrower's reports submitted to FmHA.

VII. *Tenant Certifications.* Form FmHA 448–8, "Tenant Certification," need not be required of tenants who have executed Form HUD 52659, "Application for Tenant Eligibility and Recertification." A copy of Form HUD 52659 will, however, be provided to the FmHA District Director.

Exhibit H–1.—Memorandum of Understanding on use of Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949

I. Introduction

For the purpose of encouraging and facilitating the use of assistance under Section 8 of the United States Housing Act of 1937 and Section 515 of the Housing Act of 1949, as amended, to provide newly constructed housing for lower-income families in rural areas, the Department of Agriculture [hereinafter referred to as the Farmers Home Administration (FmHA)] and the Department of Housing and Urban Development (HUD) hereby agree to the policies, procedures and joint working arrangements set forth in this Memorandum. The Secretary of each Department will expedite all necessary actions to implement this memorandum.

II. Property Standards

FmHA agrees that any Section 515 Rural Rental Housing Project to be assisted by the Section 8 Housing Assistance Payments Program pursuant to this Memorandum will be in accord with HUD Minimum Property Standards, (7 CFR 1804.3) and appropriate State and local laws, codes, ordinances and regulations.

III. Contract and Fair Market Rents

A. FmHA agrees to provide interest credit on any newly constructed Section 515 project to be assisted by Section 8 housing assistance payments. The effective interest rate applicable to the Section 8 units will be reduced by at least one percentage point below the FmHA interest rate in effect for Section 515 loans at the time of loan closing. The requirement that an interest credit be provided shall not apply to projects approved after the effective date of this paragraph and which are operated on a profit basis as defined by FmHA regulations.

B. HUD agrees to accept FmHA certifications on a project-by-project basis that Contract Rents are reasonable based on the quality, location, amenities and management and maintenance services to be provided and do not exceed the applicable Fair Market Rents for newly constructed Section 8 units. HUD will provide the FmHA State Directors on request with the current applicable Fair Market Rents for newly constructed Section 8 units as published in the **Federal Register** and in effect at the time the certification is made.

C. HUD agrees to provide the FmHA State Director on request with the current income limits for determining eligibility for the Section 8 program.

IV. Site and Neighborhood Standards

The site (location) and neighborhood standards to be set forth in the revised FmHA regulations which have been agreed to by HUD and FmHA shall be applicable to all newly constructed Section 515 projects to be assisted by Section 8 housing assistance payments. HUD agrees to accept FmHA's certification as to compliance with such standards on a project-by-project basis.

V. Equal Opportunity Requirements

A. FmHA agrees to assure compliance with Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968 and will issue regulations pursuant thereto.

B. HUD agrees to accept certification from FmHA that projects approved by FmHA will be developed and operated in accordance with the provisions of paragraph V (A) above.

VI. Environmental Standards

A. HUD and FmHA have issued regulations to implement the National Environmental Policy Act (NEPA) in accordance with guidelines issued by the Council on Environmental Quality (CEQ). HUD and FmHA agree to discuss their environmental regulations, procedures and forms to achieve uniform thresholds and forms.

B. FmHA shall comply with NEPA and all rules, regulations and requirements issued by FmHA pursuant thereto including:

1. Environmental assessments will be made for such projects with five or more units.

2. The suitability and effect of the existing environment will be considered for each project for which an assessment is required, as well as the impacts that would result from a project approval.

3. Proposals shall be rejected if, after appropriate modifications to a proposal, there would remain environmental impacts which are unacceptable under NEPA and FmHA policies.

C. HUD agrees to accept the certification that sites approved by FmHA are in accordance with the provisions of paragraph VI (B) above.

VII. Relocation

In the case of a Public Housing Agency (PHA)-Owner project which is to be constructed on a site which has occupants, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be met.

VIII. Davis-Bacon Wage Rates

A. FmHA agrees to assure that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), shall be paid to all laborers and mechanics employed in the development of any new construction projects with nine or more assisted units.

B. HUD agrees to accept a certification on a project-by-project basis from FmHA that there will be compliance with the provisions of paragraph VIII (A) above.

IX. Other Federal Requirements

FmHA agrees to comply with the following requirements:

1. Clean Air and Federal Water Pollution Control Act and all rules and regulations and requirements issued by FmHA pursuant thereto.

2. The National Historic Preservation Act (Pub. L. 93–291) and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

X. Distribution of Housing Assistance Funds

A. Housing assistance funds shall be allocated by HUD in accordance with the requirements of Section 213(d)(1) of the Housing and Community Development (HCD) Act of 1974 and HUD regulations pursuant thereto.

B. The HUD field office director, in planning the utilization of housing

assistance funds in accordance with the Section 213(d)(1) factors, shall consult with the appropriate FmHA State Director(s) in order that the use of the housing assistance funds be coordinated as nearly as possible with FmHA Section 515 activities.

C. HUD agrees to make a set-aside during Fiscal Year 1976, including the transition quarter, sufficient Section 8 contract authority to assist not less than 4,000 newly constructed dwelling units to be financed by the FmHA under the Section 515 rural rental housing program. Subject to congressional authorization of contract authority, HUD agrees to make a set-aside of such assistance for not less than 10,000 units in subsequent fiscal years.

D. To the extent any Section 8 housing assistance funds set-aside for use with Section 515 projects are not committed to such projects 45 days prior to the end of any fiscal year, HUD may withdraw and redistribute such funds except that HUD will not withdraw any Section 8 funds which FmHA advises HUD will be committed before the end of the fiscal year. Funds shall be deemed to be committed for such projects after receipt and review by HUD of the Form AD–621 (Preapplication for Federal Assistance) and the verification by HUD's Regional Accounting division of the availability of funds.

XI. Basic Processing

A. When FmHA has a completed Form AD–621 (Preapplication for Federal Assistance) for a Section 515 project for which a commitment for Section 8 assistance is desired, it shall transmit a copy of the completed form and all completed attachments with a covering letter stating that Section 8 is desired. Upon receipt thereof, the HUD field office director shall initiate reviews under Section 213 of the HUD Act, all reviews to establish acceptability under HUD's previous participation requirements, and any reviews necessary to establish consistency with the Section 8 requirements. HUD shall indicate to FmHA any negative information on the proposed project as submitted, the availability of funds and that funding is contingent upon compliance with Section 213 requirements and clearance under the previous participation requirements.

B. Such reports as may be deemed necessary by HUD and FmHA concerning Section 8/Section 515 projects will be provided to HUD.

XII. Execution of Agreement to Enter Into a Housing Assistance Payments Contract

A. HUD will prepare an Agreement to Enter Into a Housing Assistance Payments Contract for execution by the owner only after receipt of certifications on a project-by-project basis by FmHA. The certifications to be submitted by this time are as specified in paragraphs III(B), IV, V(B), VI(C) and VIII(B).

B. HUD will prepare a Housing Assistance Payments Contract for execution by HUD and the owner after the project is completed and FmHA submits on a project-by-project basis, certifications that:

1. The project was completed in accordance with the requirements of the Agreement to Enter Into Housing Assistance Payments Contract.

2. The project is in good and tenantable condition.

3. The project has been constructed in substantial compliance with drawings and specifications except for ordinary punchlist items or incomplete work awaiting seasonal opportunity.

4. There has been no change in management capability.

C. If HUD has any information or other substantial reason to question the correctness of any FmHA certification, HUD shall promptly bring the matter to the attention of FmHA and FmHA shall advise HUD of its final determination in the matter.

XIII. HUD Review Responsibilities

A. FmHA assumes no responsibility for assuring compliance by the owner with the terms of the Housing Assistance Payments (HAP) Contract. FmHA and HUD agree to attempt to work out procedures for FmHA to assume responsibility for Housing Assistance Payments Contract compliance for Private-Owner and Public Housing Agency Owner-projects.

B. It is understood that to carry out its responsibilities for the administration of the Section 8 program, HUD may audit and review FmHA Section 8 related activities for compliance with outstanding HUD requirements covered by the provisions of this Memorandum of Understanding.

XIV. Interdepartmental Task Force

FmHA and HUD agree to the establishment of an interdepartmental task force, consisting of Headquarters and field office personnel, which will periodically, and as needed, convene for the purpose of reviewing program issues and recommending solutions thereto to assure the effective coordination of the Section 8 and Section 515 in areas served by the FmHA.

XV. Training

FmHA and HUD agree to make available appropriate personnel to carry out any interdepartmental training that may be necessary to implement an effective combination of the Section 8 and Section 515 programs.

Secretary of Agriculture _____

Date _____

Secretary of Housing and Urban Development _____

Date _____

Exhibit H–2.—Section 8 Housing Assistance Payments Program: Information For New Construction

The Section 8 Housing Assistance Payments Program was authorized by the United States Housing Act of 1937 as amended by Section 201 of the Housing and Community Development Act of 1974.

Basic Concept

The Department of Housing Urban and Development (HUD) will provide housing assistance payments on behalf of eligible lower-income households (i.e. households whose income does not exceed 80 percent of median income for the locality) occupying newly constructed housing. This payment will make up the difference between the approved rent for the unit and the amount the household is required to pay which is not less than 15 percent nor more than 25 percent of the household's adjusted income.

New Construction and Substantial Rehabilitation

Who May Participate

Housing projects may be owned by private owners, both profit-motivated and nonprofit, and by public housing agencies.

How Do They Participate

Applicants will submit required data to Farmers Home Administration (FmHA) County or District Offices. If both the preliminary and final data submitted is acceptable to FmHA and HUD, HUD will enter into an agreement that upon completion of the project, it will enter into a Housing Assistance Payments Contract with the owner for a specified term. Under this Contract, HUD will make housing assistance payments with respect to units occupied by eligible households.

Initial Maximum Rents to Owners

The rents approved under the Contract (Contract Rents) may not exceed the HUD established Fair

Market Rents for new construction for the housing market area in which the project will be located, and must be reasonable in relation to the quality, location, amenities, and the management and maintenance services provided by the owner.

Rent Adjustments

Contract rents to the owner will be adjusted annually by the HUD established Automatic Annual Adjustment Factor. Special additional adjustments may be approved to reflect actual and necessary expenses of owning and maintaining the project whch have resulted from substantial general increases in real property taxes, utility rates or similar cost (i.e., assessments and utilities not covered by regulated rates), but only to the extent that such general increases are not compensated for by the Automatic Annual Adjustments.

Term of Housing Assistance Payments Contract

The maximum term for the Contract is 20 years, or 40 years in the case of a project owned by a State or local agency. The criteria for determining the actual term are stated in the respective HUD regulations.

Responsibilities of the Owner

The owner will be responsible for performance of all maintenance and management functions (including taking of applications, selection of households, collection of rents, termination of tenancies, reexamination of household income and compliance with equal opportunity requirements). In connection with selection of families, the owner is responsible for leasing at least 30 percent of the units to Very Low-Income Households (i.e., households whose income does not exceed 50 percent of the median income for the locality). The owner may contract with another entity to perform such services provided the management contract will not shift any of the owner's responsibilities or obligations. However, no entity which is responsible for administration of the Contract (i.e., a PHA in the case of a Private-Owner/PHA project) may contract to perform such services.

Exhibit H–3—Suggested Proposal Certification Format

(Section 8/515 Program)

(Date)

To: (HUD Field Office Manager)
(Address)

Subject: (Name of Project) (HUD Project Number) (Project Address: Street, Municipality, State) (Owner Name and Address)

This is to certify that:

(1) I have determined the Contract Rents to be reasonable based on the quality, location, amenities and management and maintenance services to be provided, and are based upon a — percent interest reduction(s) that would otherwise be applicable to the Contract Units:

Type of unit	Size	Number of contract units	Contract rent	Allowance for utilities	Gross rent
Detached, Semidetached, row, walk-up, elevator.	Number of bedrooms		$	$	$

If the Gross Rents are above the applicable Fair Market Rent, the cost and budget analysis and data are attached.

(2) I have determined that the site complies with the Farmers Home Administration site and neighborhood standards published at 7 CFR 1944.215 (q).

(3) I have determined that the Owner has certified that the project will be developed and operated in accordance with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Executive Orders 11063 and 11246; and Section 8 of the Housing and Urban Development Act of 1968.

(4) I have determined that the site is approved on the basis of the FmHA environmental rules, regulations and requirements, and the following additional procedures were used in determining the approvability of the site:

1. Environmental assessments were made for projects with 5 or more units;

2. The suitability and effect of the existing environment was considered for each project for which an assessment is required, as well as the impacts that would result from a project approval.

(5) I have determined that the Owner will pay not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011), to all laborers and mechanics employed in the development of any new construction project with nine or more assisted units.

(Signature of State Director)

Exhibit H–4—Equal Opportunity Site and Neighborhood Standards Checklist

1. Is the site located in an area of minority concentration?[1] ☐Yes ☐No

2. If answer to question 1 is Yes, do sufficient and comparable housing opportunities exist outside the minority area for minority households in the income range to be served by the proposed project? ☐Yes ☐No

3. If Yes, the project can be approved.

4. If no, has a fully documented justification acceptable to the reviewer been presented that the project at the proposed site is necessary to meet overriding housing needs which cannot otherwise be met in the market area? ☐Yes ☐No

5. If yes, the reviewer may approve the site, noting in writing the reasons for approval.

6. If answer to number 1 is No, is site located in a racially mixed area? ☐Yes ☐No

7. If answer to question number 6 is Yes, will the effect of locating the proposed project in this area be such as to increase significantly the number of minority to nonminority households by fostering a change to predominately minority residency in the area? ☐Yes ☐No

8. If answer to number 7 is Yes, disapprove the site.

9. If answer to number 7 is No, the site is acceptable.

Exhibit H–5.—Certification by the Applicant

"I/we, the undersigned, understand that as a condition of obtaining assistance under the HUD section 8 program in connection with a section 515 rural rental housing loan from the Farmers Home Administration, that I/We are required to carry out the applicable provisions of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701U, the Davis-Bacon Act, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and the requirements of the Clean Air and Water Pollution Control Acts. I/We hereby certify that these provisions will be carried out in accordance with applicable regulations.

Name of Applicant _____
Date: _____
By: _____

[1] An area of minority concentration is defined as any part of a community adjacent to or within the confines of a greater area such as a place, town, village or city, in which the majority of residents are minority.

Date: ———————————

By: ———————————

Exhibit H–6.—Guide Letter for Architect's Certification New Construction Inspecting Architect's Certification

This certification applies to the project developed for (name of owner) ————, (address of owner) ————, located at (street address) ————, (city) ————, (county) ————, (state) ————.

I, ————, Registered Architect, to the best of my knowledge, belief and professional judgment, do hereby certify, for the purpose of satisfying FmHA requirements with respect to the subject project, that:

(1) I was responsible for the inspection of construction of the subject project consisting principally of ————————;[1]

In accordance with Working Drawings and Specifications identified as ————,[2] which were the subject of a previous certification to FmHA by the Design Architect;

(2) Inspections were performed by me or under my supervision with frequency and thoroughness required by the generally accepted standards of professional care and judgment;

(3) The project has been completed in conformance with the certified Working Drawings and Specifications for the project or approved changes thereto;

(4) The project is in good and tenantable condition;

(5) There are no defects or deficiencies in the project except for ordinary punchlist items or incomplete work awaiting seasonal opportunity;

(6) The project has been constructed in accordance with applicable State and local laws, zoning, building, housing, and other codes, ordinances or regulations, as modified by any waivers obtained from appropriate officials.

Changes in the Working Drawings and Specifications were approved as listed in attachment: ———,[3]

Punchlist or incomplete items are listed in attachment ———.[3]

Waivers of codes, etc., were obtained as listed in attachment: ———.[3]

Signed ———————————

Architect ———————————

Business Address ———————————

Telephone ———————————

License Number ———————————

Date ———————————

Warning: Title 18 U.S.C. 1001, provides in part that whoever knowingly and willfully makes or uses a document containing any false, fictitious, or fraudulent statement or entry, in any matter in the jurisdiction of any department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years or both.

[1] List number and type of units, describe property, etc.

[2] Identify Drawings and Specificatons including information normally found in the Title Block of drawings.

[3] Identify attachment.

Exhibit H–7.—Suggested Project Completion Certification Format

(Section 8/515 Program)

(Date)————

To: (HUD Field Office Manager)
(Address)

Subject: (Project Name)
(HUD Project Number)

This to certify that:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenantable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in *management capability.*

———————————

(Signature of State Director)

Exhibit I.—Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

A. Introduction

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

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

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

B. Objectives

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

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

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

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

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

C. Relevant Programs Administered by FmHA

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

Under Section 515 of the Housing Act of 1949 as amended, loans for rental housing in rural areas are available to individuals and various types of organizations to provide living units for eligible persons, including the elderly. The Congregate Housing for the Elderly Program is a new use of the Section 515 Rural Rental Housing Loan Program.

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

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

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

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

D. Relevant Programs Administered by the Administration on Aging

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

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

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

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

E. *Joint Demonstration effort.*

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

F. *FmHA.*

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

G. *Criteria for Site Selection.*

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

1. Areas that provide a diversity of racial and ethnic composition or low-income elderly.

2. Areas with a significant number of persons 62 years of age and older who need and want to occupy rural housing.

3. Areas that are representative of diverse rural communities.

4. Areas known to have poor housing facilities for the elderly.

5. Areas where planning and service areas are or can be covered by Area Agencies on Aging.

6. Areas accessible to central services, that is, shopping, medical facilities, transportation assistance.

7. Areas where State and local officials understand and support the intent and objectives of the joint demonstration program.

8. Areas where there are no other resources to support such an effort.

9. Areas where water and sewer facilities are available.

H. *AOA.*

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

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

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

b. Initiating outreach efforts to identify potential residents.

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

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

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

(1) meal service-full or partial;

(2) housekeeping elements for those unable to perform these responsibilities;

(3) personal care and service for those who need assistance in daily care;

(4) transportation and other areas to essential services; and

(5) social and recreational activities.

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

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

I. *Modification/Cancellation Provision*

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

Signatures

Dated: January 22, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

Dated: January 23, 1979.

Alex P. Mercure,

Assistant Secretary for Rural Development.

Dated: January 26, 1979.

Bob Bergland,

Secretary of Agriculture.

Dated: January 26, 1979.

Robert Benedict,

Commissioner, Administration on Aging.

Dated: January 26, 1979.

Arabella Martinez,
Assistant Secretary for Human Development Services.

Dated: January 30, 1979.

Patricia Harris,
Secretary of Health, Education, and Welfare.

Exhibit J.—U.S. Department of Agriculture; Farmers Home Administration

Form FmHA 1944–33 (Rev. 4–1–80)
Loan Agreement for an:

☐ RRH Insured Loan to an Individual Operating on a Profit Basis;

or

☐ RRH Loan to an Individual Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This agreement dated of the Undersigned , herein called "Borrower" whether one or more, whose post office address is , with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Borrower in the amount of $ made or insured, or to be made or insured, by the Government pursuant to sections 515 (b) of the Housing Act of 1949 to build a RRH project. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of Borrower under the note evidencing the loan, the related security instrument and any related agreement are herein called the "loan obligations."

2. *Equal Opportunity and Nondiscrimination Provisions.* The Borrower will comply with (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscriminaton in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Assurance Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964), a copy of which is attached hereto and made a part thereof, and any other undertakings and agreements required by the Government pursuant to lawful authority.

3. *Borrower Contribution.* The amount of $ to be contributed from the borrower's own funds for land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursement of interim or FmHA loan funds which ever should occur first.

4. *Accounts for Housing Operations and Loan Servicing.* The individual shall establish on its books the following accounts, which shall be maintained so long as the loan obligations remain unsatisfied: a General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, whichever occurs first, the Borrower shall from the Borrower's own funds deposit in the General Operating Account the amount of $ in the form of cash.

b. *Reserve Account.* Transfers at a rate not less than $ annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $ and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR part 1930–C. With prior consent of the Government, funds in the Reserve Account may be used by the Borrower—

☐ For any purpose desired by the Borrower, provided the Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay in dividends to the Borrower of up to 8 percent per annum of the borrower's initial investment of $ provided Borrower determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 4b to be accumulated by that time, and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

5. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Borrower shall comply with all appropriate FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government or its representative to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the accounts herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C for prior review.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Do other things as may be required by the Government in connection with the operation of the housing, or with any

of the Borrower's operations or affairs which may affect the housing, the loan obligations, or the security.

☐ (h) If the return on investment for any year exceeds 8 percent per annum of Borrower's initial investment for $, the Government may require that the Borrower reduce the following year and/or refund the excess return on the investment to the tenants or use said excess in a manner that will best benefit the tenants.

6. *General Provisions.*

(a) It is understood and agreed by the Borrower that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) Borrower shall also comply with all covenants and agreements set forth in the note, security instrument, and any related agreements executed by Borrower in connection with the loan.

(c) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Borrower as aforesaid. If the Borrower should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment of amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(d) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Borrower, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(e) Any notice, consent, approval, waiver or agreement must be in writing.

(f) This resolution may be cited in the security instrument and any other instruments as the "Loan Agreement of ———, 19—.

Witness— ———
Borrower— ———
Witness— ———

———
Borrower

Exhibit K—U.S. Department of Agriculture; Farmers Home Administration

[Form FmHA 1944–34 (Rev. 4–1–80)]

Loan agreement for an:

☐ RRH Loan to a Partnership Operating on a Profit Basis

☐ RRH Loan to a Limited Partnership Operating on a Profit Basis

☐ RRH Loan to a Partnership Operating on a Limited Profit Basis

☐ RRH Loan to a Limited Partnership Operating on a Limited Profit Basis

1. *Parties and Terms Defined.* This agreement dated ——— of the ———, a Partnership, duly organized and operating under ———, herein called "Partnership," whose post office address is ———, with the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, herein called "the Government," is made in consideration of a loan, herein called "the loan," to Partnership in the amount of $——— made or insured, or to be made or insured, by the Government pursuant to sections 515(b) of the Housing Act of 1949 to build a ——— RRH project. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site as herein called "the housing." The indebtedness and other obligations of the Partnership under the note evidencing the loan, the related security instrument and related agreement are herein called the "loan obligations."

2. *Execution of Loan Instruments.* To evidence the loan the Partnership shall issue a promissory note (herein referred to as "the note"), signed by ——— for the amount of the loan, payable in installments over a period of ——— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, ——— are to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Partnership as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Partnership, and containing other terms and conditions prescribed by the Government. ——— are to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Partnership under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The Partnership will execute (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscrimination in the use and occupancy of housing, (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement," including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement (Under Title VI, Civil Rights Act of 1964)," a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Borrower Contribution.* The amount of $——— to be contributed by the Partnership from its own funds for the land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursement of interim loan funds or any FmHA loan funds.

5. *Accounts for Housing Operations and Loan Servicing.* The Partnership shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C so long as the loan obligations remain unsatisfied: A General Fund Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Partnership shall from its own funds deposit in the General Operating Account the amount of $———.

b. *Reserve Account.* Transfers at a rate not less than $——— annually shall be made to the Reserve

Account until the amount in the Reserve Account reaches the sum of $———— and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Partnership—

☐ To pay dividends to the partners of up to 8 percent per annum of the borrower's initial investment of $————, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay dividends to the partners or for any other purpose desired by the Partnership, provided the Partnership determines that after such disbursement (a) the amount in the Reserve Account will not be less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

6. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Partnership shall comply with all appropriate FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment of expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Agree that if any provisions of its organizational documents or any verbal understandings conflict with the terms of this loan agreement, the terms of the loan agreement shall prevail and govern.

(e) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not change the membership by either the admission or withdrawal of any partner(s) (16) *nor permit the general partner(s) to maintain less than a 5 percent fin in the organization* nor cause or permit voluntary dissolution of the Partnership nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(f) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C to the Government for prior review.

(g) If required by the Government, modify and adjust any matters covered by clause (f) of this section.

(h) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Partnership in connection with the loan.

(i) Not alter, amend, or repeal without the Government's consent this agreement or the Partnership Agreement, which shall constitute parts of the total contract between the Partnership and the Government relating to the loan obligations.

(j) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Partnership's operations or affairs which may affect the housing, the loan obligations, or the security.

☐ (k) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $————, the Government may require that the borrower reduce rents the following year and/or refund the excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

7. *General Provisions.*

(a) It is understood and agreed by the Partnership that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government in this agreement or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this agreement are representations to the Government, to induce the Government, to make or insure a loan to the Partnership as aforesaid. If the Partnership should fail to comply with or perform any provision of this agreement or any requirement made by the Government pursuant to this agreement, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this agreement may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Partnership, after this agreement becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This agreement may be cited in the security instrument and any other instruments as the "Loan Agreement of ————, 19— (date of this agreement).

———————————————

Partnership name

By: ———————————————

———————————————

———————————————

Exhibit L.—U.S. Department of Agriculture; Farmers Home Administration

[Form FmHA 1944–35 (Rev. 4–1–80)]

Loan Resolution for an:

☐ RRH Loan to a Broadly Based Nonprofit Corporation.

☐ RRH Loan to a Profit Type Corporation.

☐ RRH Loan to Profit Type Corporation Operating on a Limited Profit Basis.

Loan Resolution of ————, 19—. Resolution of the board of directors of ———— providing for borrowing $———— to finance rental housing and related facilities in a rural area for ————, the

collection, handling, and disposition of income, the issuance of installment promissory note and real estate security instrument, and related matters.

Whereas ———————— (herein referred to as the "Corporation") is a corporation duly organized and operating under ————————, the Board of Directors of the Corporation (herein referred to as the "board") has decided to provide certain rental housing and related facilities for eligible occupants in rural areas. The board has determined that the Corporation is unable to provide such housing and facilities with its own resources or to obtain from other sources for such purpose sufficient credit upon terms and conditions which the Corporation could reasonably be expected to fulfill:

Be it resolved:

1. *Application for Loan.* The Corporation shall apply for and obtain a loan (herein called "the loan") of $———— from the United States of America acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") pursuant to section 515(b) of the Housing Act of 1949. The loan may be sold and insured by the Government. The loan shall be used solely for the specific eligible purposes for which it is approved by the Government, in order to provide rental housing and related facilities for eligible occupants, as defined by the Government in rural areas. Such housing and facilities and the land constituting the site are herein called "the housing."

2. *Execution of Loan Instruments.* To evidence the loan the Corporation shall issue a promissory note (herein referred to as "the note"), signed by its President and attested by its Secretary, with its corporate seal affixed thereto, for the amount of the loan, payable in installments over a period of —— years, bearing interest at a rate, and containing other terms and conditions, prescribed by the Government. To secure the note or any indemnity or other agreement required by the Government, the President and the Secretary are hereby authorized to execute a real estate security instrument giving a lien upon the housing and upon such other real property of the Corporation as the Government shall require, including an assignment of the rents and profits as collateral security to be enforced in the event of any default by the Corporation, and containing other terms and conditions prescribed by the Government. The President and Secretary are further authorized to execute any other security instruments and other instruments and documents required by the Government in connection with the making or insuring of the loan. The indebtedness and other obligations of the Corporation under the note, the related security instrument, and any related agreement are herein called the "loan obligation."

3. *Equal Opportunity and Nondiscrimination Provisions.* The President and the Secretary are hereby authorized and directed to execute on behalf of the Corporation: (a) any undertakings and agreements required by the Government pursuant to Title VIII of the Civil Rights Act of 1968 related to Fair Housing and regarding nondiscrimination in the use of occupancy of housing; (b) Farmers Home Administration Form FmHA 400–1 entitled "Equal Opportunity Agreement" including an "Equal Opportunity Clause" to be incorporated in or attached as a rider to each construction contract the amount of which exceeds $10,000 and any part of which is paid for with funds from the loan, and (c) Farmers Home Administration Form FmHA 400–4, entitled "Assurance Agreement" (Under Title VI, Civil Rights Act of 1964) a copy of which is attached hereto and made a part thereof and any other undertakings and agreements required by the Government pursuant to lawful authority.

4. *Borrower Contribution.* The amount of $———— to be contributed from the corporation's own funds for the land purchase or development will be placed or deposited with the lender and dispersed prior to any disbursements of interim loan funds or FmHA loan funds which ever occurs first.

5. *Accounts for Housing Operations and Loan Servicing.* The Corporation shall establish on its books the following accounts, which shall be maintained in accordance with FmHA Regulation 7 CFR Part 1930–C so long as the loan obligations remain unsatisfied: A General Operating Account, a Tax and Insurance Escrow Account, a Security Deposit Account and a Reserve Account.

a. *General Operating Account.* By the time the Farmers Home Administration loan is closed or interim funds are obtained to preclude the necessity for multiple advances of Farmers Home Administration loan funds, which ever occurs first, the Corporation shall from its own funds deposit in the General Operating Account the amount of $————.

b. *Reserve Account.* Transfers at a rate not less than $———— annually shall be made to the Reserve Account until the amount in the Reserve Account reaches the sum of $———— and shall be resumed at any time when necessary, because of disbursements from the Reserve Account to restore it to said sum. Use of funds deposited to this account will be in accordance with FmHA Regulation 7 CFR Part 1930–C. With prior consent of the Government funds in the Reserve Account may be used by the Corporation—

☐ To pay dividends to stockholders or for any purpose duly authorized by the board, of up to 8 percent per annum of the borrower's initial investment of $———— provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by the time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

☐ To pay dividends to stockholders or for any other purpose duly authorized by the board, provided the board determines that after such disbursement (a) the amount in the Reserve Account will be not less than that required by subsection 5 b to be accumulated by that time and (b) during the next 12 months the amount in the Reserve Account will likely not fall below that required to be accumulated by the end of such period.

6. *Regulatory Covenants.* So long as the loan obligations remain unsatisfied, the Corporation shall comply with all applicable FmHA regulations and shall:

(a) Impose and collect such fees, assessments, rents, and charges that the income of the housing will be sufficient at all times for operation and maintenance of the housing, payments on the loan obligations, and maintenance of the accounts herein provided for.

(b) Maintain complete books and records relating to the housing's financial affairs, cause such books and records to be audited at the end of each fiscal year, promptly furnish the Government without request a copy of each audit report, and permit the Government to inspect such books and records at all reasonable times.

(c) If required or permitted by the Government, revise the account herein provided for, or establish new accounts, to cover handling and disposition of income from and payment to expenses attributable to the housing or to any other property securing the loan obligations, and submit regular and special reports concerning the housing or financial affairs.

(d) Unless the Government gives prior consent—

(1) Not use the housing for any purpose other than as rental housing

and related facilities for eligible occupants.

(2) Not enter into any contract or agreement for improvements or extensions to the housing or other property securing the loan obligations.

(3) Not cause or permit voluntary dissolution of the Corporation nor merge or consolidate with any other organization, nor cause or permit any transfer or encumbrance of title to the housing or any part thereof or interest therein, by sale, mortgage, lease, or otherwise.

(4) Not cause or permit the issue or transfer of stock, borrow any money, nor incur any liability aside from current expenses as defined in section 7 which would have a detrimental effect on the housing.

(e) Submit for the housing the required reports as per FmHA Regulation 7 CFR Part 1930–C to the Government for prior review.

(f) If required by the Government, modify and adjust any matters covered by clause (e) of this section.

(g) Comply with all its agreements and obligations in or under the note, security instrument, and any related agreement executed by the Corporation in connection with the loan.

(h) Not alter, amend, or repeal without the Government's consent this resolution or the bylaws or articles of incorporation of the Corporation, which shall constitute parts of the total contract between the Corporation and the Government relating to the loan obligations.

(i) Do other things as may be required by the Government in connection with the operation of the housing, or with any of the Corporation's operations or affairs which may affect the housing, the loan obligations, or the security.

(j) If return on investment for any year exceeds 8 percent per annum of borrower's initial investment of $————, the Government may require that the borrower reduce rents the following year and/or refund excess return on investment to the tenants or use said excess in a manner that will best benefit the tenants.

7. *General Provisions.*

(a) It is understood and agreed by the Corporation that any loan made or insured will be administered subject to the limitations of the authorizing act of Congress and related regulations, and that any rights granted to the Government herein or elsewhere may be exercised by it in its sole discretion.

(b) The provisions of this resolution are representations to the Government, to induce the Government, to make or insure a loan to the Corporation as aforesaid. If the Corporation should fail to comply with or perform any provisions of this resolution or any requirements made by the Government pursuant to this resolution, such failure shall constitute default as fully as default in payment or amounts due on the loan obligations. In the event of such failure, the Government at its option may declare the entire amount of the loan obligations immediately due and payable and, if such entire amount is not paid forthwith, may take possession of and operate the housing and proceed to foreclose its security and enforce all other available remedies.

(c) Any provisions of this resolution may be waived by the Government in its sole discretion, or changed by agreement between the Government and the Corporation, after this resolution becomes contractually binding, to any extent such provisions could legally have been foregone or agreed to in amended form, by the Government initially.

(d) Any notice, consent, approval, waiver, or agreement must be in writing.

(e) This resolution may be cited in the security instrument and any other instruments as the "Loan Resolution of ————————, 19—."

_____

_____

Certificate

The undersigned, ————————, the Secretary of the Corporation identified in the foregoing Loan Resolution, hereby certifies that the foregoing is a true copy of a resolution duly adopted by the board of directors on ————————, 19—, which has not been altered, amended, or repealed.

_____

(Date)

_____

(Secretary)

[SEAL]

BILLING CODE 3410-07-M

Exhibit M

FHA FORM NO. 2530
REV. 3/74

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION
PREVIOUS PARTICIPATION CERTIFICATE

Form Approved
OMB No. 63-R1406

HUD Area or Insuring Office _____ Project Number _____
Proposed Project Name _____ Location _____
Proposed Mortgage Amount $ _____ Number of Units _____

We, the undersigned, request consideration of the above identified project proposal to be financed with a mortgage insured under the National Housing Act. We, individually and collectively, represent that we are the sole Principals in the project (or that all other Principals have filed a similar certificate), that we have not been Principals or had an interest in any FHA insured or other HUD programs except as shown below, and that no project in which we have had any interest is, or ever was, in default or received mortgage relief except as shown below. We agree that any change of the Principals listed herein, or additions thereto, will be reported to FHA and we will inform them of the requirement to file a similar certificate.

Previous Project Name and Location	FHA or HUD No.	Name of Principal	Type of Participation	Default	Mortgage Relief

Employer Identification or Social Security Number

DATE _____ SIGNATURE _____ _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____ _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____ _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____ _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

DATE _____ SIGNATURE _____ _____

PLEASE TYPE NAME AND INTEREST IN PROPOSED PROJECT _____ CITY, STATE AND ZIP CODE _____

WARNING: Section 1010 of Title 18, U.S.C., "Department of Housing and Urban Development transactions," provides: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters, or publishes any statement, knowing the same to be false . . . shall be fined not more than $5,000 or imprisoned not more than two years, or both."

PART-S SEND TO DIRECTOR, PARTICIPATION AND COMPLIANCE REVIEW DIVISION, HPMC-FHA, WASHINGTON, D.C.

BILLING CODE 3410-07-C

BILLING CODE 3410-07-C

Environment Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1901–G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190 an Environmental Impact Statement is not required.

The reporting and/or record keeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

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

(FCDA 10.415, Rural Renting Housing Loans)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-33343 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1944

Housing; Tenant Grievance and Appeals Procedure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding tenant grievances and appeals. This action is taken to provide a means for resolving disputes between tenants and owners in FmHA-financed projects. This action is taken as a result of comments received on a previous publication.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Paul Conn, Division Director, Management and Support Division, FmHA, Rm. 5321 South Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: 202–447–7207. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346 South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant."

This instruction does not directly affect any FmHA programs or projects which are subject to A–95 clearinghouse review.

FmHA amends Subpart L of Part 1944, Subchapter H, Chapter XVIII, Title 7, Code of Federal Regulations. Section 503 of the Housing and Community Development Amendments of 1978, Pub. L. 95–57, dated October 31, 1978, amended Section 510 of the Housing Act of 1949 to expressly provide, among other things, for an appeals procedure for tenants in FmHA-financed dwelling units and persons denied admission as tenants. There is need for provision of such tenant grievance and appeals procedure to resolve problems and disputes between tenants and owners in FmHA financed projects.

The Farmers Home Administration (FmHA) published a regulation on September 24, 1979, prescribing a Tenant Grievance and Appeals Procedure. The regulation applies to project financed under the Rural Rental Housing Loan Program and Farm Labor Housing Loan and Grant Program to provide a grievance and appeals procedure for tenants and an appeal right for persons who have been denied admission as tenants. The intended effect of that action was to provide a means whereby a tenant can present a grievance against or appeal an FmHA borrower-landlord's proposed adverse action, such as termination of the lease and eviction. The appeal right would also extend to persons who have been denied admission to occupancy as tenants. This action was needed since previously the only grievance and appeals procedure in existence for tenants in FmHA-financed rental units and those denied admission to occupancy as tenants was the recourse available under the Fair Housing Act of Title VIII of the Civil Rights Act of 1968, which provides protection against discrimination because of race, color, religion, sex, marital status, or national origin. Public comments were received.

Major concerns reflected in the comments were as follows:

1. State Laws have set procedures to be followed for termination of leases and evictions.

The procedures are intended to discourage evictions for other than material noncompliance with the lease or other good cause. § 1944.554 has been amended to state that if the proposed eviction is due to the tenant's failure to make timely rental payments including any "grace period" under the lease, the tenant waives his/her rights under the Tenant Grievance and Appeals Procedure unless the past-due rent is paid and rental payments are made on a timely basis while the appeal is in process. The procedure has also been amended to state that the procedure does not apply to eviction situations where a tenant's continued occupancy constitutes a threat to the health or safety of other residents or management employees (normally involving a violent action such as the use of firearms, arson, etc.) and judicial process is undertaken.

2. Hearing Officers and panelists should be compensated.

This recommendation was not acted upon because a provision for such compensation is not feasible.

3. Increases in rents to cover administrative costs will be costly to good tenants and FmHA.

We believe that the amendment described under number 1 regarding rent payments will mitigate this concern.

4. The FmHA District Director should have more information than just the decision of the hearing officer or hearing panel before determining that it is contrary to FmHA regulations.

The procedure is intended to minimize the involvement of the FmHA District Director; therefore, the recommendation was not acted upon.

5. The coverage of the grievance rights should be expanded to include violation of state or local laws or ordinance by the borrower.

The intent of the procedure is to provide tenants with an opportunity to present a grievance relating to a borrower's actions or failure to act in accordance with the lease and/or FmHA regulations which results in a denial, significant reduction or termination of benefits. We have not expanded the scope of the procedure to include violations of state or local laws or ordinances.

6. Borrowers and applicants or tenants should be required to meet informally.

Paragraph 1944.555(a) has been amended so as to make an informal meeting between the borrower-landlord and the tenant a condition precedent to the hearing process.

7. An applicant or tenant should not be required to personally present a grievance or response to a borrower's notice of proposed adverse action but should be permitted to use a representative.

Since the tenant may make the presentation either orally or in writing, we believe that to permit a tenant representative in lieu of the tenant to

personally present the grievance or appeal at this stage would contradict the intent of the informal hearing requirement; i.e., to encourage borrowers, landlords, and tenants to settle disputes through informal meetings without resorting to the hearing process.

8. Procedures governing the hearing (§ 1944.557(d)) should be revised to put the burden of proof on the borrower.

Simple justice dictates that each party espousing a position should go forward with that position. Using such terms as "burden of proof," which is a judicial form, would tend to confuse both borrowers and tenants.

9. Tenants should have the right to repair and deduct and escrow only the balance of rent due.

The intent of the provision for an escrow deposit in the procedure is to permit the escrow of rent when there is a rent increase not authorized by FmHA or where the borrower fails to maintain the premises in a decent, safe, and sanitary manner. We did not amend the procedure to include a provision for a tenant to repair and deduct, since a provision is included for an escrow until a grievance regarding the borrower's failure to maintain the premises in a decent, safe, and sanitary manner, is resolved.

10. The decision of the hearing officer or hearing panel should not affect the rights of a tenant to a trial de novo.

§ 1944.558 has been revised to state that the decision of the hearing officer or hearing panel does not preclude either party's rights thereafter to seek relief through the courts.

Other changes made in the procedure are as follows:

1. Section 1944.551 has been amended to specify situations to which the procedure does not apply:

(a) rent increases authorized by FmHA

(b) Denials of Rental Assistance

(c) Discrimination complaints

2. Paragraph 1944.553(a) has been revised to clarify that a person who has been denied an application for admission has rights under the procedure except when applications are not being processed due to the fact that it will be a while before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph V C 1 of Exhibit B to Subpart C of Part 1930.

3. Paragraph 1944.553(d) has been revised to clarify that a tenant whose tenancy is to be terminated by the borrower at the end of the *lease term* also has rights under the procedures.

4. Paragraph 1944.555(b) has been amended to:

(a) change from 5 to 10 calendar days the length of time in which the applicant or tenant is required to respond to a borrower's Notice of Proposed Adverse Action.

(b) Provide that in those projects where there is a concentration of non-English speaking individuals, the notice must be in the non-English concentration language if necessary for the tenant's understanding.

5. Paragraph 1944.555(c) has been amended to:

(a) change from 5 to 10 calendar days the length of time the borrower has to prepare the summary of informal meeting with a tenant.

(b) Provide for the summary to be in a non-English concentration language if necessary for the tenant.

6. § 1944.556(d) has been amended to provide for the tenant to examine at a *reasonable time* before the hearing, documents, records, and regulations of the borrower which the borrower intends *to use at* the hearing. This provision is made in those cases where the borrower has provided the tenant or applicant with a Notice of Proposed Adverse Action.

7. § 1944.559 has been amended to insert a paragraph regarding the responsibilities of the District Director in assuring that borrowers and tenants are made aware of the procedure.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

(FCDA No. 10.405) (Farm Labor Housing Loans and Grants)

(FCDA No. 10.415) (Rural Rental Housing Loans)

Therefore as amended, Subpart L of Part 1944 reads as follows:

PART 1944—HOUSING

Subpart L—Farmers Home Administration Tenant Grievance and Appeals Procedure

Sec.

1944.551 Purpose.
1944.552 Objective.
1944.553 Definitions.
1944.554 Reasons for grievance and appeal.
1944.555 Informal settlement of grievances and appeals.
1944.556 Procedure for obtaining a hearing.
1944.557 Procedures governing the hearing.
1944.558 Decision of the hearing officer or hearing panel.
1944.559 Responsibilities of the FmHA District Director.
1944.560–1944.600 [Reserved]
Exhibit A—Summary of Meeting.

Subpart L—Farmers Home Administration Tenant Grievance and Appeals procedure

§ 1944.551 Purpose.

The purpose of this Subpart is to set forth uniform requirements for grievance and appeals procedures in all existing and future Rural Rental Housing (RRH) and Labor Housing (LH) projects financed by the Farmers Home Administration (FmHA) under Sections 514, 515, and 516 of the Housing Act of 1949. Borrowers will promptly implement these requirements. This Subpart is in addition to a tenant's rights and duties under a lease. This Subpart does not apply to:

(a) Rent increases authorized by FmHA in accordance with the requirements of Exhibit C of Subpart C of Part 1930, where tenants are provided an opportunity to provide comments to FmHA on a borrower's Notice of Proposed Rent Increase.

(b) Denials of rental assistance which will be handled in accordance with Exhibit C of Subpart E of Part 1944, where tenants are provided an opportunity to appeal to FmHA.

(c) Discrimination complaints, which will be handled in accordance with Subpart C of Part 1930.

§ 1944.552 Objective.

The objective of this Subpart is to ensure the fair treatment of tenants while providing for an equitable manner by which borrowers can operate, maintain, and safeguard rental projects. The right to appeal under this Subpart shall also extend to persons who seek admission as tenants.

§ 1944.553 Definitions.

(a) *Applicant.* For the purpose of this Subpart, applicant shall mean a person whose application for admission to occupancy in a RRH or LH project has been rejected. This includes persons who have been denied an application for admission except when applications are not being processed due to the fact that it will be awhile before additional applicants can be reached on a waiting list. In such cases, applicant inquiries will be handled in accordance with paragraph V C 1 of Exhibit B to Subpart C of Part 1930. An applicant is also one of the parties to the hearing.

(b) *Tenant.* A tenant is an eligible lessee occupant of an RRH or LH project and is one of the parties to the hearing.

(c) *Borrower.* The borrower (landlord) is the owner or the owner's authorized representative, of an RRH or LH project and is also one of the parties to the hearing.

(d) *Eviction.* Eviction means dispossession of the tenant from an RRH or LH unit as a result of termination of the tenancy, including a termination before or at the end of the lease term.

(e) *Grievance.* A dispute which a tenant may have with respect to a borrower's action or failure to act in accordance with the lease and/or FmHA regulations which result or may result in denial, significant reduction, or termination of benefits.

(f) *Hearing.* A hearing, as used in this Subpart, is an informal proceeding at which a tenant's grievance or appeal of a borrower's adverse action or decision or an applicant's appeal of a rejected application or denial of an application for admission is heard before an impartial hearing officer or hearing panel.

(g) *Lease.* A lease is the written agreement between the borrower and tenant, approved by FmHA.

§ 1944.554. Reasons for grievance and appeal.

(a) Grievance and appeal provide a means whereby a tenant in an FmHA financed rental project is afforded an opportunity to meet with a borrower and to obtain a hearing if the tenant has a grievance relating to a borrower's action or failure to act in accordance with the lease and/or FmHA regulations which results in a denial, significant reduction, termination of benefits, or when a tenant contests a borrower's notice of proposed adverse action as provided in accordance with § 1944.555(b) of this Subpart. This may include:

(1) Failure to maintain the premises in such manner that provides decent, safe, and sanitary housing.

(2) Violation of lease covenants and rules.

(3) Modification of lease.

(4) Rule changes.

(5) Rent increases not authorized by FmHA in accordance with Exhibit C of Subpart C of Part 1930.

(6) Eviction. However, if the proposed eviction is due to the tenant's failure to make timely rental payments including any "grace period" under the lease, the tenant waives his/her rights under the Tenant Grievance and Appeals Procedure. The past-due rent must be paid and rental payments must be made on a timely basis while the appeal is in process for this procedure to apply. Also, the procedure does not apply to eviction situations where a tenant's continued occupancy constitutes an imminent threat to the health or safety of other residents or management employees (normally, involving violent action such as the use of firearms, arson, etc.) and judicial process is undertaken.

(b) Grievance and appeal provide an appeal right for a person whose application for admission to occupancy in a RRH or LH project has been rejected, as well as for persons who have been denied an application for admission, except in those cases where applications are not being processed as provided for in paragraph V C 1 of Exhibit B to Subpart C of Part 1930. This appeal right does not apply to those persons who are clearly not eligible for occupancy under FmHA regulations.

(c) This Subpart shall not apply to disputes between tenants not involving the borrower.

§ 1944.555 Informal settlement of grievances and appeals.

(a) *General.* Borrowers and applicants or tenants are encouraged to attempt to settle disputes through informal meetings without resorting to the hearing process further described in this Subpart.

(b) *Notice to applicant or tenant.* In the case of a borrower's proposed adverse action which results or may result in a denial of admission to occupancy, or eviction, the borrower must notify the applicant or tenant in writing, by certified mail, giving specific reasons for the proposed action. The notice must also advise the applicant or tenant of his/her right to respond to the notice within 10 calendar days after receipt, in accordance with paragraph (c) of this Section and of the right to a hearing in accordance with § 1944.556 of this Subpart. In projects where there is a concentration of non-English speaking individuals, the notice must also be in the non-English concentration language if necessary for the tenant's understanding.

(c) *Presentations of grievances or responses to notice of proposed adverse actions.* Within 10 days after occurrence of the grievance or receipt of a notice of proposed adverse action, an applicant or tenant shall personally present to the borrower or borrower's designee, either orally or in writing, any grievance or response to a borrower's notice of proposed adverse action. The borrower shall prepare a summary of any discussion within 10 calendar days after the informal meeting and one copy shall be given to the tenant and one retained in the borrower's files. A copy of the summary shall be sent to the FmHA District Director. The summary shall specify the names of the participants, date of meeting, the nature of the proposed disposition of the grievance or response to the notice of proposed adverse action and the specific reasons therefor, and the procedures by which a hearing may be obtained if the applicant or tenant is not satisfied. Exhibit A should be used as a guide. In projects where there is a concentration of non-English speaking individuals, the notice must be in the non-English concentration language if necessary for the tenant's understanding.

§ 1944.556 Procedure for obtaining a hearing.

(a) *Request for hearing.* The applicant or the tenant shall submit to the borrower a written request for a hearing within 10 days after receipt of the summary of any informal meeting. The written request shall specify:

(1) The reasons for the grievance or contest of the borrower's proposed action, and

(2) The action or relief sought.

(b) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower shall have a hearing officer or hearing panel for each project. The hearing officer shall be an impartial, disinterested person selected jointly by the borrower and the tenant and who is willing to render his/her services without compensation. If the borrower and the tenant cannot agree on a hearing officer, they shall each appoint a member to a hearing panel and the members so selected shall select a third member. Members of the hearing panel must be willing to render their services without compensation. The hearing officer or hearing panel would have the authority to reverse the borrower's decision.

(c) *Standing hearing panel.* In lieu of the procedure set forth in paragraph (b) of this section for each grievance or appeal presented, a borrower may provide that a standing panel be organized for each project. Such a panel may be organized soon after initial rent-up or at any time in the case of existing projects. Such a panel will be selected and have a membership as follows:

(1) Permanent panelist(s) of the tenants would be elected by the tenants. Either two alternates could be elected or three panelists of the tenants could be elected with equal status. The tenant in this latter case would designate one of the three tenant panelists to participate in the hearing. All tenants would be notified of the time, date, and purpose of the meeting to elect permanent hearing panelists at least two weeks before the appointed date. The notice shall be conspicuously posted in the rental office and in each apartment building or structure and the meeting shall be held at a place which is convenient and accessible to the tenants.

(2) Permanent borrower panelist(s) selected by the borrower. One or two alternates may also be designated.

(3) A permanent mutual panelist, to serve as the chair, selected by the other two persons or groups, including alternates, in which case each "group" gets one vote.

(4) All standing hearing panel members serve one year and may be re-elected. They must be willing to render their services without compensation.

(5) A panel for a hearing shall consist of 3 members, one tenant panelist, one borrower panelist and the chair.

(d) *Examination of records.* When the borrower has provided the tenant or applicant with a notice of proposed adverse action, the tenant shall have the opportunity, at a reasonable time before the hearing and, at the expense of the tenant, to examine and/or copy all documents, records, and regulations of the borrower which the borrower intends to use at the hearing unless otherwise prohibited by law.

(e) *Scheduling of hearing.* A hearing shall be scheduled to be held within 15 days after receipt of the tenant's request for a hearing at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place or time.

(f) *Escrow deposit.* Provided the tenant's rental payments are otherwise current, an escrow deposit of rental payments may be used by tenants in the case of a grievance involving a rent increase not authorized by FmHA or failure of the borrower to maintain the property in a decent, safe, and sanitary manner. When an escrow deposit is used, the tenant must deposit into escrow the amount required by the lease when the rent is due, until the complaint is resolved through informal discussion or by the hearing officer or panel. The rent shall be deposited in a financial institution or with an independent agent. Failure to make timely escrow payments shall result in a termination of the tenant grievance and appeals procedure and all sums immediately will become due and payable under the lease.

(g) *Failure to request a hearing.* If the tenant or applicant does not request a hearing within the time provided by § 1944.556(a), the borrower's disposition of the grievance or appeal shall become final.

§ 1944.557 Procedures governing the hearing.

(a) Subject to paragraph (b) hereof, the hearing will be an informal proceeding before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be employed in judicial proceedings.

(b) The hearing shall be structured so as to provide the basic safeguards for both the borrower and the tenant, which shall include:

(1) The right of both parties to be represented by counsel or other person chosen as his or her representative.

(2) The right of the tenant or applicant to a private hearing unless he/she requests a public hearing.

(3) The right of the tenant or applicant to present evidence and arguments in support of his/her grievance or appeal and to refute the evidence of all witnesses on whose testimony or information the borrower relies.

(4) The right of the borrower to present evidence and arguments in support of his/her decision, to refute evidence relied upon by the tenant, and to confront and examine all witnesses on whose testimony or information the tenant relies.

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) At the hearing the tenant or applicant must present evidence that he/she is entitled to the relief sought and thereafter the borrower will present evidence showing the basis of its action or failure to act against that which the grievance or appeal is directed.

(d) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the grievance or notice of proposed adverse action may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require that the borrower, the tenant or applicant, counsel and other participants or spectators conduct themselves in an orderly manner. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(e) If the tenant or applicant (or his/her representative) fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his or her right to a hearing under this Subpart. Both the tenant and the borrower shall be notified of the determination of the hearing officer or hearing panel.

§ 1944.558 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within 10 calendar days after the hearing. The written decision must be specific as to the facts presented which were the basis upon which the decision was rendered. Copies of the decision shall be sent to the borrower, the tenant or applicant, and the FmHA District Director.

(b) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified by the District Director that the decision is contrary to FmHA regulations. However, the decision of the hearing officer or hearing panel does not preclude either party's right thereafter to seek relief through the courts. The notification of the District Director will specify the FmHA regulation that the decision is contrary to and the hearing officer or hearing panel shall amend the decision to comply with the regulation(s) within 10 days of receipt of the notice.

(c) Upon notification from the District Director that the decision is in compliance with FmHA regulations, the decision is binding upon the borrower and tenant, and the borrower and tenant shall take the necessary action, or refrain from any actions, necessary to carry out the decision.

§ 1944.559 Responsibilities of the FmHA District Director.

(a) The District Director will assure that a copy of this Subpart is sent to each borrower with a requirement that the regulations be permanently posted in a conspicuous place for the information of tenants, such as the rental offices, laundry area, activities room, or other such place where it will be noticed by tenants. The District Director will also require that the borrower maintain copies in his/her files available for inspection by the tenants and FmHA upon request. The District Director will assure that where there is a concentration of non-English speaking individuals, the regulation is made available to the tenants in both English and the non-English concentration language.

(b) The District Director will encourge the borrower and tenant or applicant to resolve grievances and appeals through informal discussion; however, upon receipt of a summary of informal discussion as required by § 1944.555(c) of this Subpart, the District Director will immediately review the summary to ascertain that the tenant or applicant has received a copy of the summary and

a copy of the procedures to obtain a hearing if matters could not be resolved through informal discussion.

(c) Upon receipt of the decision by the hearing officer or hearing panel in accordance with § 1944.558(a) of this Subpart, the District Director will immediately review the decision to determine its compliance with FmHA regulations.

(d) The District Director will notify the parties to the hearing within 5 working days after receipt of the copy of the decision whether:

(1) The decision is in compliance with FmHA regulations.

(2) The decision is contrary to FmHA regulations and is reversed.

§§ 1944.560–1944.600 [Reserved]

Exhibit A.—Summary of Meeting

Name and Address of Borrower:

Name and Address of Project:

Name and Address of Complainant:

Date of Meeting:

Participants in Meeting:

Decision and Specific Reasons Therefore:

Tenant's Acknowledgement:

I hereby acknowledge receipt of a copy of this summary and have been advised of my rights to use the attached procedures to obtain a hearing if I so choose.

Tenant

Procedures for Obtaining a Hearing:

The following procedures may be used to obtain a hearing if you are not satisfied with the decision made as a result of our discussion on (date) ———.

1. Request for a Hearing: Send a written request for a hearing within ten days after you receive this notice to the address shown in the summary. Indicate specifically (1) the reason for your grievance or your contest of our proposed action and (2) the action or relief you seek.

2. Selection of Hearing Officer or Hearing Panel. (Strike out paragraph not needed.)

(a) As you probably already know, a Standing Hearing Panel is available to conduct the hearing.

(b) We need to meet soon after your request for a hearing is received to select a hearing officer/hearing panel.

3. Scheduling of Hearing: The hearing will be scheduled to be within 15 days after we receive your request for a hearing. It will be held at a time and place convenient for both of us. If we cannot agree on a place, the hearing officer/hearing panel will designate the place.

Examination of Records: You have the opportunity before the hearing to examine and, at your own expense, to copy all documents, records, and regulations that are relevant to the hearing unless otherwise prohibited by law.

Procedures Governing Hearing:

1. The hearing will be an informal proceeding before a hearing officer or hearing panel at which both parties will have an opportunity to present their sides of the dispute.

2. Both parties may be represented by legal counsel or another person of one's choice.

3. You have a right to a private hearing, unless you request a public hearing.

4. Both parties have the right to present evidence, arguments, and witnesses to support their sides of the dispute, to refute evidence relied upon by the other party, and to confront and cross-examine all witnesses.

5. A decision will be based solely and exclusively upon the facts presented at the hearing.

This final rule has been reviewed in accordance with Subpart G of Part 1901 of this Chapter, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture 7 CFR 2.23)

Dated: September 30, 1980.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 80-33278 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-27-M

Animal and Plant Health Inspection Service

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined and Released

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion of Cabell County in West Virginia because of the existence of exotic Newcastle disease and to release a portion of Washington County in Oregon from the areas quarantined because of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Cabell County, West Virginia, on October 17, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected area. Further surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Cabell County in West Virginia, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined area.

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

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

1. In § 82.3 (a)(9)(i), is added to read:

§ 82.3 Areas quarantined.

(a) * * *

* * * * *

(9) *West Virginia.* (i) The premises of Vincent Perego, 3984 Beechwood Road, Ona, Cabell County.

* * * * *

2. In § 82.3(a)(17), relating to the State of Oregon, subdivision (ii) relating to the premises of Pet Kingdom, 1075 S.E. Baseline Road, Hillsboro, Washington County, is deleted.

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

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review on conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33368 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of Palm Beach County, portions of Broward County, and a portion of Dade County in Florida; and a portion of Lancaster County in Nebraska from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of Palm Beach County, portions of Broward County, and a portion of Dade County in Florida; and a portion of Lancaster County in Nebraska from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

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

§ 82.3 [Amended]

1. In § 82.3(a)(1) relating to the State of Florida, subdivisions (ii), (v), (vi), and (viii) relating to the following premises are deleted:

(a) * * *

(1) * * *

(ii) The premises of Pet Carousell, Inc., 7573 W. Oakland Park Blvd., Ft. Lauderdale, Broward County. [Deleted]

* * * * *

(v) The premises of Fernwood Gardens (Robert Wiener), 7800 S.W. 117th Avenue, Miami, Dade County. [Deleted]

(vi) The premises of House of Hamsters, 282 N.W. 2nd Street, Deerfield Beach, Broward County. [Deleted]

* * * * *

(viii) The premises of Ed Lundgren, 888 Auleria Street, Boca Raton, Palm Beach County. [Deleted]

* * * * *

2. In § 82.3(a)(16), relating to the State of Nebraska, subdivision (i) relating to the premises of Pet Ark, 3860 South Street, Lincoln, Lancaster County is deleted.

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

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloax,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-33367 Filed 10-24-80; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 82

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to release a portion of San Diego County in California and a portion of Du Page County in Illinois from areas quarantined because of

exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the areas quarantined.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION: These amendments exclude a portion of San Diego County in California and a portion of Du Page County in Illinois from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded areas.

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

§ 82.3 [Amended]

1. In § 82.3(a)(2), relating to the State of California, paragraph (iii) relating to the premises of Blue Pacific Pet Shop (Terry Kempf), 4828 Newport Avenue, San Diego, San Diego County is deleted.

2. In § 82.3(a)(7), relating to the State of Illinois, paragraph (i) relating to the premises of Bird Mart, 7701 South Grant Avenue, Burr Ridge, Du Page County is deleted.

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

These amendments relieve certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 21st day of October 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80–33366 Filed 10–24–80; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Parts 302, 303, 305, and 309

Public Works and Development Facilities Program; Miscellaneous Amendments—Correction

AGENCY: Economic Development Administration, Commerce.

ACTION: Rule; correction.

SUMMARY: This document corrects a rule primarily affecting EDA's Public Works and Development Facilities Program that was published at 45 FR 67062 on October 9, 1980.

DATES: Effective date: October 9, 1980.

FOR FURTHER INFORMATION CONTACT: Otto B. Bird, Office of Chief Counsel, (202) 377–5441.

SUPPLEMENTARY INFORMATION: EDA published amendments to several of its regulations on October 9, 1980 (45 FR 67062, FR Doc. 80–31467). The "Action" line to that publication stated that the action was a "final rule". As indicated in the "Supplementary Information" section to the October 9 publication, EDA intended the amendments to be published as an "interim rule". This rule modifies that publication by correcting the "Action" line to read "Action: Interim rule".

In addition, the "Summary" section to the October 9 publication contained an incorrect reference and may have been confusing to the reader. Accordingly, this document corrects the rule EDA published on October 9, 1980, by revising the "Action" line and by providing a more descriptive "Summary" section. These two items are corrected to read as follows:

ACTION: Interim rule.

SUMMARY: This rule (45 FR 67062) amends six regulations to make minor technical changes to clarify certain requirements. EDA is amending a seventh regulation, 13 CFR 305.5, to allow municipalities located in designated areas to become eligible to receive maximum grant rates on the basis of municipal statistical information. EDA is making this change to § 305.5 to improve the targeting of resources to areas of greatest need and to facilitate administration.

The other material of the October 9 publication remains unchanged and the reader is referred to that publication for a description of the changes made and the text of the amendments.

Since this rule makes a minor correction of a previously published rule, it does not constitute a "significant regulation" under the criteria of Executive Order 12044. As a result, this rule is not subject to the procedural requirements imposed on significant regulations by that order. The official "Catalogue of Federal Domestic Assistance" number and title for the Public Works and Development Facilities Program is "11.300, Economic Development—Grants and Loans for Public Works and Development Facilities". Projects under this program are subject to requirements imposed by Office of Management and Budget Circular No. A–95 as set forth in 13 CFR 309.17.

(Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211), Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended))

Dated: October 21, 1980.

Robert T. Hall,

Assistant Secretary for Economic Development.

[FR Doc. 80–33323 Filed 10–24–80; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-NE; Amdt. 39-3953]

Airworthiness Directives; UOP, Inc., Model 900 Series Aircraft Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the inspection and repair or replacement of cracked rear stretcher tubes found on UOP Model 900 series aircraft seats. The AD is prompted by reports of cracks in the rear stretcher tubes, which could result in failure of the seat and possible injury to passengers.

DATES: Effective date—November 25, 1980. Compliance schedule—As prescribed in body of AD.

ADDRESSES: The applicable service bulletin may be obtained from Aerospace Division, UOP, Inc., Bantam, Connecticut 06750.

A copy of the service bulletin is contained in the Rules Docket, Office of the Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bernard Schaffer, Systems and Equipment Section (ANE-213), Engineering and Manufacturing Branch, Flight Standards Division, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7332.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, requiring the inspection and repair or replacement of cracked rear stretcher tubes found on UOP Model 900 series aircraft seats, was published in the **Federal Register** at 45 FR 30448. The proposal was prompted by reports of cracks in the rear stretcher tubes, which could result in failure of the seat and possible injury to passengers.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Three comments were received from United Airlines. The Air Transportation Association of America also submitted a copy of the United Airlines comments.

The first comment suggested a minor change in wording of the note after paragraph 1 of the proposal. The FAA disagrees with this suggestion since it believes the language is clear, and is similar to the wording in the applicable UOP service bulletin. The second comment suggests a change to the second sentence in paragraph 2 to require the placarding only of the seat position adjacent to the cracked stretcher end. The FAA agrees with this suggestion since the possibility of failure of any cracked rear stretcher tubes would not be increased by passengers occupying the other seats of any seat assembly. The proposal is amended accordingly. The third comment concerns the method of measuring the crack length on the stretcher tube. Because of the chamfer at the botton of the tube ends, it would be possible to measure two different crack lengths depending on whether the measurement was made on the top or botton of the tube. The FAA agrees with the suggestion and the proposal is amended.

Adoption of the Amendment

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

UOP, INC.

Applies to Model 900 series aircraft seats. Compliance is required as indicated, unless already accomplished.

To prevent the possible failure of a passenger seat caused by a crack in the rear stretcher tube, accompish the following: 1. Within the next 90 days after the effective date of this AD, visually inspect all UOP, Inc., Model 900 series aircraft seats for cracks in the rear stretcher tube.

Note.—Direct particular attention to the aisle end of the tube at the side arm attaching bolt hole.

2. Except as provided in Paragraph 3 below, replace all cracked tubes with serviceable units. Until cracked tubes are replaced, placard or otherwise mark the seat position adjacent to the cracked stretcher tube end as unusable and not to be occupied.

3. Stretcher tubes with cracks less than 1.19 inches, measured along the tube longitudinal axis from the centerline of the attach hole, may be repaired with clamp P/N 81672-1, in accordance with installation instruction in UOP, Inc., Service Bulletin 25-634, dated April 3, 1980. this repair is not authorized for Model 900-200B-2L seats. An equivalent method may be approved bya the Chief, Engineering and Manufacturing Branch. If after installation of the clamp, the crack extends beyond the end of the clamp, the stretcher tube must be replaced.

This amendment becomes effective November 25, 1980.

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

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation prepared for this document is contained in the public docket, and a copy may be obtained by writing Federal Aviation Administration, New England Region, Office of Regional Counsel, Attention: Rules Docket (ANE-7), Docket No. 80-NE-18, 12 New England Executive Park, Burlington, Massachusetts 01803.

Issued in Burlington, Massachusetts, on October 10, 1980.

The incorporation by reference provisions in this document was approved by the Director of the **Federal Register** on June 19, 1967.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 80-33426 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 77-WE-18-AD; Amdt. 39-3952]

Airworthiness Directives; Hughes Helicopters Model 369D Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Hughes Helicopters Model 369D helicopters by deleting the reporting requirements and extending the repetitive inspection interval from 25 hours to 100 hours' time in service to helicopters equipped with certain main rotor strap pack assemblies, horizontal stabilizers, and main rotor dampers which have been developed subsequent to the issuance of the original AD. This amendment is needed to relieve an undue inspection burden on operators who have incorporated the improved design features.

DATE: Effective October 30, 1980. Compliance schedule—As prescribed in the body of the AD.

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

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-2978 (42 FR 37086) AD 77-15-09, which currently requires repetitive inspection at intervals of 25 hours' time in service on Hughes Helicopters Model 369D helicopter's main rotor retention straps in the area of and within the pitch housing.

After issuing Amendment 39-2978, the FAA has determined that the incorporation of certain design improvements in concept relieves the problem, which was the reason for the mandatory 25 hours' time in service inspection interval, to the degree that this interval may safely be increased to 100 hours. Additionally, the FAA has determined that the reporting requirements of the original AD have satisfied their purpose and no significant value is derived from continuance. Therefore, the FAA is amending Amendment 39-2978 (42 FR 37086) AD 77-15-09 by extending the repetitive inspection interval specified in the AD to 100 hours' time in service on those Hughes Helicopters Model 369D helicopters incorporating all three specific design features described in the body of this amendment, and by deleting the reporting requirements of the AD.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by amending Amendment 39-2978 by deleting the original text of paragraph (d) and adding a new paragraph (d) to read as follows:

§ 39.13 [Amended]

* * * * *

(d) For helicopters equipped with all three design features as listed below:

(1) Main Rotor Retention Straps, P/N 369D21210-501, S/N 7000, and subsequent; and,

(2) Horizontal Stabilizer, P/N 369D23601-503; and

(3) Main Rotor Dampers, P/N 369D21400-503, or M50452.

The repetitive inspections of paragraphs (a) and (b) of this AD may be accomplished at intervals not to exceed 100 hours' additional time in service since the last such inspection.

* * * * *

Amendment 39-2978 became effective July 28, 1977 for all persons, except those to whom it was made effective by airmail letter dated June 23, 1977.

This amendment becomes effective October 30, 1980.

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

Note.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Los Angeles, California on October 10, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-33195 Filed 10-23-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 80-ASW-28, Amdt. 39-3954]

Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 helicopters by adding a new paragraph to permit adjustment of the compliance times and inspection intervals. The amendment is needed because the FAA has determined that in some cases the magnetic particle inspection interval may be increased and still maintain airworthiness.

DATES: Effective November 24, 1980. Compliance schedule as prescribed in the AD.

ADDRESSES: Copies of the applicable service bulletins may be obtained from the Regional Counsel, Attention: Docket No. 80-ASW-28, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, Extension 517.

SUPPLEMENTARY INFORMATION: This amendment amends Amendment 39-3884, 45 FR 55707, AD 80-18-04, which currently requires repetitive magnetic particle inspections and replacement as necessary for certain main rotor trunnions on Bell Models 206A, 206B, 206A-1, 206B-1, 206L and 206L-1 helicopters. After issuing Amendment 39-3884, the FAA has determined that in some cases the magnetic particle inspection interval may be increased and still maintain airworthiness.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and good cause exists for making the amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3884, 45 FR 55707, AD 80-18-04, by adding the following new paragraph at the end thereof:

(j) Upon submission of substantiating data through an FAA Aviation Safety Inspector, the Chief, Engineering and Manufacturing Branch, Southwest Region, may adjust the inspection intervals. This amendment becomes effective November 24, 1980.

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

Issued in Fort Worth, Texas, on October 15, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 33345 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Airworthiness Docket No. 80-ASW-44, Amdt. 39-3950]

Bell Model 206 L-1 Helicopters; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a reduction in service life from 4,800 hours to 1,200 hours on certain serial numbered main rotor grips, P/N 206-011-132-009, installed on Bell Model 206 L-1 helicopters. The AO is needed to prevent possible in-flight failure of the main rotor grip, P/N 206-11-132-009,

which could result in loss of the helicopter.

DATE: Effective October 27, 1980. Compliance required as prescribed in the AD.

ADDRESSES: Copies of the applicable service bulletins may be obtained from the Regional Counsel, Attention: Docket No. 80-ASW-44, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. Bell service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Tom Dragset, Airframe Section, Engineering and Manufacturing Branch, ASW-212, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas, telephone number (817) 624-4911, extension 517.

SUPPLEMENTARY INFORMATION: The FAA has determined that certain serial number main rotor grips, P/N 206-011-132-009, installed on Bell Model 206 L-1 helicopters, were delivered from Bell Helicopter Textron without the shotpeen process being completed on the surface of the pitch horn attaching face. This reduces the grips' fatigue resistance thus reducing service life. Therefore, an airworthiness directive is being issued which requires a reduction in service life from 4,800 hours to 1,200 hours for the affected main rotor grips.

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

Adoption of the Amendment

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

Bell.—Applies to Model 206 L-1 helicopters, certificated in all categories (Airworthiness Docket No. 80-ASW-44). Compliance required as indicated.

To prevent possible fatigue failure of the main rotor grip, P/N 206-011-132-009, remove and replace as specified below, the main rotor grips having serial numbers: A1-00001, A1-00004 through A1-00007, A1-00009, A1-00010, A1-00014, A1-00016, A1-00017, A1-00019, A1-00021 through A1-00024, A1-00027 through A1-00029, A1-00031 through A1-000136, A1-00038 through A1-00040, A1-00042 through A1-00044, A1-00046 through A1-00050, A1-00053 through A1-00057, A1-00059, A1-00061, A1-00062, A1-00064, A1-00066 through A1-00068, A1-00071, A1-00073 through A1-00075, A1-00077, A1-00078, A1-00080, A1-00083 through A1-00093, A1-00095, A1-00096, A1-00098 through A1-00101, A1-00103 through A1-00106, A1-00111, A1-00113, A1-00115, A1-00116, A1-00118 through A1-00120, A1-00124, A1-00130 through A1-0036, A1-00192, A1-00222, A1-00248, A1-00287, A1-00300, A1-00305, and A1-00308.

a. Replace those grips with less than 1,150 hours' total time in service on the effective date of this AD, prior to accumulating 1,200 hours' total time in service.

b. Replace those grips with 1,150 or more hours' total time in service on the effective date of this AD, within 50 hours' time in service.

c. Compliance with Bell Helicopter Textron Alert Service Bulletin 206L-80-15, dated July 29, 1980, fulfills compliance with this AD.

d. The retirement time of those main rotor grips specified above is reduced from 4,800 hours to 1,200 hours by this AD.

e. The helicopter may be flown in accordance with FAR 21.197 to a base where repairs can be performed.

This amendment becomes effective October 27, 1980.

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

Issued in Fort Worth, Tex., on October 9, 1980.

F. E. Whitfield

Acting Director, Southwest Region.

[FR Doc. 80-33346 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-CE-26-AD; Amendment 39-3959]

Airworthiness Directives; Cessna Models 335, 340 and 340A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 80-21-04, applicable to all Cessna Model 335, 340 and 340A airplanes and codifies the corresponding emergency AD letter dated October 2, 1980, into the **Federal Register.** This AD requires, prior to further flight and, thereafter, repetitive visual inspections of the elevator balance weight attachment structure and outboard hinge areas of the stabilizer and elevators for cracks, loose joints and chafing in accordance with Cessna Multi-engine Customer Care Service Information Letter ME79-44, Revision 5. Any defective parts found during any such inspection must be replaced. This action will better ensure the integrity of the elevator outboard hinge and balance weight attachment structure, the failure of which may have been a contributing factor in a recent fatal accident.

EFFECTIVE DATE: November 3, 1980, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated October 2, 1980.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Cessna Multi-engine Customer Care Service Information Letter ME79-44, Revision 5, dated September 29, 1980, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; telephone (316) 685-9111. A copy of Service Information Letter is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106; and Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 942-4219.

SUPPLEMENTARY INFORMATION: Elevator balance weights of Cessna Model 335, 340 and 340A airplanes are secured by structure under a fiberglass tip cover. Cessna issued Service Information Letter ME79-44 on December 20, 1979, that specified a one-time inspection within 25 hours time-in-service on all 340A model airplanes with over 150 hours time-in-service of the various horizontal stabilizer components and of the elevator balance weight attach structure. Subsequent to the issuance of the aforementioned Servie Information Letter, there were reports concerning the integrity of the balance weight attachment structure and outboard hinge areas of the stabilizer and elevators installed on these airplanes, the failure of which may have been a contributing factor in a recent fatal accident. Accordingly, the manufacturer issued Cessna Multi-engine Customer Care Service Information Letter ME79-44, Revision 2, which recommended an initial visual inspection prior to further flight and repetitive visual inspections of the elevator balance weight attachment structure and outboard hinge areas of the stabilizer and elevators for cracks, loose joints on Cessna Model 335 and 340A airplanes that have 100 hours or more time-in-service, and on Model 340 airplanes that have accumulated 100 hours or more time-in-service since being modified by installing engines of more than 285 maximum continuous horsepower. Since the FAA determined that this was an unsafe condition that may exist in other airplanes of the same type design mandatory compliance with the aforementioned Service Letter was

required by issuance of an AD. It was also determined that an emergency condition existed, that immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by the AD by airmail letter dated August 23, 1980. The AD became effective as to these individuals upon receipt of that letter and was identified as AD 80–18–06. Specifically, AD 80–18–06 required the elevator balance weight covers to be removed and the P/N 0832250–4, –33 and –75 ribs, and the P/N 0832000–61, –62 gussets inspected at repetitive intervals for cracks and/or loose rivets. In addition, it required the outboard elevator hinges, the horizontal stabilizer, except Cessna Model 340A (S/N's 340A1036 through 340A1038) and the elevator to be repetitively inspected for cracks, loose rivets and/or signs of chafing. Due to the incorporation of FAA-approved production design changes on the horizontal stabilizer, the AD did not require that the aforementioned three serial numbered Cessna 340A aircraft undergo the horizontal stabilizer inspection specified in Cessna Service Information Letter ME79–44, Revision 2. In addition, due to the incorporation of FAA-approved production design changes of the elevator, S/N 340A1039 airplanes and higher were exempt from the requirements of this AD. Any discrepant parts were to be replaced.

At the time AD 80–18–06 was issued, there was no indication that elevator failure would occur on airplanes that had accumulated less than 100 hours time-in-service since new or last inspected. As a result of compliance with AD 80–18–06, reports were received which showed that components of the elevators on these airplanes failed at total times-in-service much less than the 100-hour intervals specified in the AD. In addition a review of the maintenance records of the aircraft involved in the fatal accident disclosed that it had been inspected approximately 20 hours prior to that accident. Consequently, since the condition described herein was likely to exist or develop in other aircraft of the same type design, an emergency letter AD was issued, superseding AD 80–18–06, applicable to Cessna Models 335, 340 (regardless of engine size) and 340A series airplanes. That AD, identified as AD 80–19–17 and dated September 12, 1980, required prior to further flight and at each 10 hours time-in-service intervals thereafter the visual inspections required by AD 80–18–06.

When emergency AD's 80–18–06 and 80–19–17 were issued, the manufacturer had developed and was installing an improved design horizontal stabilizer and elevators on new production Cessna Model 340A airplanes. Preliminary testing of these new designed components indicated they would not be subject to the same failures which had been reported on in-service airplanes. Therefore, airplane serial numbers with the new design were not included in these AD's. Subsequent thereto, ongoing testing of the new design revealed certain failures in the tail structure. Consequently, since the conditions described herein are likely to exist on other aircraft of the same type design, a new emergency AD letter, AD 80–21–04, has been issued dated October 2, 1980, which supersedes AD 80–19–17 and makes the initial and repetitive visual inspections of the horizontal stabilizer and elevators applicable to all Cessna Models 335, 340 and 340A airplanes.

Pending the receipt and analysis of additional data, the FAA may give consideration to changing the repetitive inspection intervals. In addition, since the unsafe condition described herein may still exist on other Cessna Models 335, 340A and 340 airplanes, AD 80–21–04 is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

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

Cessna.—Applies to Model 335 (S/N 335–0001 and up), Model 340 (S/N 340–0001 and up) and Model 340A (S/N 340A0001 and up) airplanes certificated in all categories.

Compliance: Required as indicated, unless already accomplished.

To ensure the integrity of the elevator balance weight support structure and specified components of the horizontal stabilizer, accomplish the following:

(A) Prior to further flight and at each 10 hours time-in-service interval thereafter, accomplish the following in accordance with Cessna Multi-engine Customer Care Service Information Leter ME79–44, Revision 5, dated September 29, 1980:

1. On all airplanes, remove the elevator tip cover and visually inspect the elevator balance weights for looseness.

a. On all Models 335 and 340 airplanes and on Model 340A (S/N's 340A0001 thru 340A1038) airplanes, visually inspect the P/N 0832250–4, –33 and –75 ribs, and P/N 0832000–61, –62 gussets for cracks and/or loose rivets.

b. On Model 340A (S/N's 340A1039 and up) airplanes, visually inspect the P/N 832250–100 and –33 ribs, P/N 5334108–2 channel, –3 spar extension and –4 gussets for cracks and/or loose rivets.

2. Visually inspect the horizontal stabilizer outboard hinge bracket assembly [on Models 340 (all S/N's) and 340A (S/N's 340A0001 through 340A1035) the P/N is 5132013–5; on Model 340A (S/N's 340A1036 and up) the P/N is 5132013–10; and on Model 335 (all S/N's) the P/N is 5132013–7], the outboard hinge bearing, the aft spar, and the tip ribs for cracks, loose rivets, or signs of chafing.

3. Replace any defective parts found during any inspection required by this AD with airworthy parts of the same part number.

(B) Within 24 hours following any inspection specified by paragraph (A) the owner/operator must submit a written report of any cracks, loose rivets, or signs of chafing discovered during any inspection required by this AD to the Federal Aviation Administration, Aircraft Certification Program, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209. (Reporting approved by the Office of Management and Budget Order OMB No. 04–R0174.)

(C) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Program, Federal Aviation Administration, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942–4285.

This AD, 80–21–04, supersedes emergency letter ADs on the same subject dated August 23, 1980, and September 12, 1980, which were identified as ADs 80–18–06 and 80–19–17 respectively.

This amendment becomes effective on November 3, 1980, to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated October 2, 1980, and is identified as AD 80–21–04.

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

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 17, 1980.

Paul J. Baker,

Director, Central Region.

[FR Doc. 80–33356 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 80-SO-42]

Alteration of Transition Area, Somerset, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule alters the Somerset, Kentucky, transition area and lowers the base of controlled airspace southwest of the Somerset Pulaski County Airport from 1,200 to 700 feet above the surface. New standard instrument approach procedures have been developed for the airport. Additional controlled airspace is required to protect aircraft executing the approach procedures. The airspace must be designated before the approach procedures can become effective.

EFFECTIVE DATE: 0901 G.m.t., November 30, 1980.

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

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

SUPPLEMENTARY INFORMATION: A Notice of proposed Rulemaking was published in the **Federal Register** on Thursday, August 21, 1980 (45 FR 55756), which proposed the alteration of the Somerset, Kentucky, transition area. This action adopts the proposal and thereby provides controlled airspace protection for aircraft executing new standard instrument approach procedures, NDB RWY 4 and SDF RWY 4, at the Somerset-Pulaski County Airport. The establishment of the nonfederal SDF facility and relocation of the nonfederal nondirectional radio beacon from on-airport to southwest of the airport, which will support the approach procedures, are presently being accomplished. No objections were received from this notice.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., November 30, 1980, as follows:

Somerset, Kentucky

All after "* * * within * * *" is deleted and "* * * 3.5 miles each side of the 222° bearing from the Cumberland River RBN (latitude 36°59'48"N., longitude 84°40'51.5"W.); extending from the 8.5-mile radius area to 8.5 miles southwest of the RBN, excluding the portion within the Monticello, Kentucky, transition area * * *" is substituted therefor.

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

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

Issued in East Point, Ga., on October 15, 1980

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33350 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket Number 80-CE-19]

Alteration of Transition Area—Joplin, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: The nature of this federal action is to alter the 700-foot transition area at Joplin, Missouri, by amending the NDB approach to the Joplin, Missouri, Municipal Airport, utilizing the Lunns NDB (Non-Directional Radio Beacon) as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION: The NDB approach procedure to the Joplin Municipal Airport, Joplin, Missouri, is being amended utilizing the Lunns Non-Directional Radio Beacon (NDB) as a navigational aid. The amendment of this instrument approach procedure based on this navigational aid entails the alterations of the transition area at Joplin, Missouri, at and above 700 feet above the ground (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the amended approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Discussion of Comments

On page 53163 of the **Federal Register** dated August 11, 1980, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Joplin, Missouri. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Accordingly, Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1980, (45 FR 445), is amended effective 0901 G.M.T., December 25, 1980, by altering the following transition area:

Joplin, Missouri

That airspace extending upward from 700' above the surface within an 8-mile radius of Joplin Municipal Airport (Latitude 37°09'05"N Longitude 94°29'55"W) within 3 miles each side of the Joplin NDB (LUNNS LOM, Latitude 37°12'11"N, Longitude 94°33'30"W) 306° bearing, extending from the 8-mile radius area to 8.5 miles northwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.69 of the Federal Aviation Regulations (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 Kansas City, Mo., on October 14, 1980.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 80-33351 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-SO-32]

Designation of Transition Area, Camden, Alabama

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule designates the Camden, Alabama, transition area. A standard instrument approach procedure, NDB RWY 36, has been developed for the Camden Municipal Airport. Additional controlled airspace is required to protect aircraft executing the approach procedure. The airspace must be designated before the approach procedure can become effective.

EFFECTIVE DATE: 0901 G.m.t., December 4, 1980.

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

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

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the **Federal Register** on Thursday, July 3, 1980 (45 FR 45308), which proposed the designation of the Camden, Alabama, transition area.

The transition area description contained an arrival extension north of the Camden Municipal Airport which would protect aircraft executing the NDB RWY 18 standard instrument approach procedure.

The Department of Air Force objected because the airspace associated with the approach procedure would conflict with military flight activities in the Camden Ridge Military Operations Area (MOA). On September 25, 1980, the Camden Airport Authority, FAA and Department of Air Force agreed to establishment of the NDB RWY 36 instrument approach procedure and adjustments to the MOA which permit simultaneous use of the MOA and approach procedure.

The establishment of the nonfederal nondirectional radio beacon on the ariport, which will support the approach procedure, is presently being accomplished.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., December 4, 1980, by adding the following:

Camden, Ala.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Camden Municipal Airport (latitude 31°58'49"N., longitude 87°20'13"W.); within 3 miles each side of the 186° bearing from the Wilcox County RBN (latitude 31°58'49"N., longtitude 87°20'13"W.), extending from the 6.5-mile radius area to 8.5 miles south of the RBN.

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

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

Issued in East Point, Ga. on October 10, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33352 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 18605/80-AWA-10]

Alteration of Group II Terminal Control Area, St. Louis, Mo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment reconfigures the Group II Terminal Control Area (TCA) at St. Louis, Mo., which first became effective on January 1, 1974. This action adds airspace to accommodate a new air traffic control arrival procedure to Runways 12 and 30 at St. Louis International Airport and removes from the TCA a large segment of airspace no longer essential to safety of flight operations. The changes adopted by this amendment are the products of discussions with a broad representation of the aviation community.

EFFECTIVE DATE: November 27, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. B. Keith Potts, Airspace and Air Traffic Rules Division (AAT-200), Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3731.

History

As part of a comprehensive program announced on December 27, 1978, in the FAA Administrator's Plan for Enhanced Safety in the National Airspace System, St. Louis was a candidate for Group I TCA designation and possible expansion of the designated TCA airspace. Consequently, the St. Louis TCA was reviewed in depth. The goal was to provide the most safe and efficient configuration for all airspace users. Aspects that were considered included noise abatement, costs to users, safety for passengers and aircraft, and the safe and efficient use of airspace.

The review disclosed that Group I designation would not be necessary. The analysis also disclosed that a high level of safety can be maintained in that area while at the same time reducing the amount of airspace in the TCA. Concurrently, the FAA was developing arrival procedures to increase airspace use capability.

This action reconfigures parts of the former TCA and reduces the overall TCA airspace. This reduction will provide greater flexibility to aircraft wishing to avoid TCA airspace. It was necessary to propose an expansion of portions of TCA airspace to accommodate new arrival procedures to Runways 12 and 30. This expansion will ensure that IFR and turbojet powered aircraft operations continue to be contained within TCA airspace and that the high level of safety provided by the TCA will not be reduced.

After experience is gained with the revised TCA configuration, consideration may be given to proposing any modifications that appear necessary. Any future modifications that may be proposed would be thoroughly coordinated with airspace users.

The action contained in this rule was preceded with broad and helpful public participation with the FAA in considering the development of an airspace description for a TCA that is responsive to the need to increase safety and to the needs of both transient and local aircraft operators who might be affected. An extensive publicity effort was made to invite all interested persons to participate in a meeting held on April 24, 1980. Invitations were extended to all fixed-base operators and pilots in the local area. Notice of the meeting was also given through radio, telephone, mail, and posting announcements. As a result of the meeting, adjustments to the TCA configurations were developed and were reflected in the notice. Another informal airspace meeting was held on Tuesday,

September 9, 1980, at 7 p.m. at Noah's Ark Restaurant, 1500 South 5th Street, St. Charles, Mo. The purpose of that meeting was to discuss the proposed alteration of the St. Louis, Mo., TCA.

Discussion of Comments

The FAA received eight written comments from individuals, citizen groups and aviation and trade industry associations in response to the proposed modification to the St. Louis TCA. The FAA has also had the benefit of discussions at user group meetings. The FAA appreciates the thoughtful and meaningful contributions and interest expressed by all of those who took time to participate in this rulemaking proceeding.

In reviewing the comments submitted verbally and in writing, the following categories of comments emerged:

A. Suggestions were made to raise the base altitude of the area between the 20 and 25 nautical mile (NM) circle southeast and northwest of the St. Louis International Airport from 4,000 feet MSL to 4,500 feet MSL. The Aircraft Owners and Pilots Association (AOPA) recommends raising the floors in the same areas from 4,000 feet MSL to 5,500 feet MSL.

The FAA reviewed local approach, departure and radar vectoring procedures with those changes in mind. It was found that by changing the normally used vectoring altitudes, the base of the TCA in those areas could be raised to 4,500 feet MSL without an adverse impact on Instrument Flight Rules (IFR) TCA operations. Raising the base altitude of those segments to a higher level would require radar vectoring arrivals at higher altitudes, disrupting the sequencing of arrivals and the separation of departures, and causing increased delays and increased fuel consumption.

B. The operators of Arrowhead and Creve Coeur Airports feel that changes to allow use of visually identifiable highways as the eastern boundaries for the airspace for VFR around those airports would be beneficial. Further, they stated that the 2-mile radius arc taken out of the TCA core area for their uncontrolled operations is inadequate when operating high performance aircraft in an out of either airport.

The airport traffic patterns at both airports were reanalyzed. The 2 mile area for operations at those airports is well within the airport traffic pattern specifications, and buffer zone, for category "A" type operations. The majority of all operations conducted at those airports are of category "A" or lesser category, lower performance aircraft. Few high performance or multi-engine aircraft use those airports. In addition, expansion of the uncontrolled area around the Creve Coeur and Arrowhead Airports would have an adverse impact on St. Louis International Airport Runway 6 approaches because there would be inadequate airspace for those arriving aircraft to be properly and efficiently sequenced. Aircraft executing a localizer backcourse approach to Runway 6 would exit the base of the TCA at approximately 4.5 NM from the runway and reenter the TCA at 3 miles from the runway on final approach. Southwesterly departures from Runways 24 or 30L would have to exceed a 700 feet per mile rate of climb to remain within the TCA (approximately 300 feet per mile is a normal rate of climb upon which many procedures are designed). Uncontrolled aircraft could operate within 3 NM of the St. Louis International Airport, possibly creating unsafe conditions. The current airspace configuration around Creve Coeur and Arrowhead Airports has existed since January 1974, without any reported safety problems or Federal Aviation Regulations (FARs) violations because of TCA infringement.

C. The Air Line Pilots Association (ALPA) does not concur in the portion of the proposal which would increase TCA airspace necessary to accommodate the "proposed new arrival procedure to Runways 12 and 30." The reason for their nonconcurrence is that ALPA thoroughly objects to the proposed LDA/DME arrival procedures for those runways. Since they do not agree with those approach procedures they believe that designation of airspace for that purpose is unnecessary and premature.

The new TCA airspace designated between the 20- and 25-mile radius arcs along the extended centerline of Runways 12 and 30 is the airspace in question. That airspace would encompass the proposed LDA/DME approach. That airspace is also required for efficient radar vectoring and for separation of departing and arriving aircraft. Designating that additional TCA airspace permits arriving aircraft to approach at higher rates of speed and higher altitudes (approximately 210 instead of 160 knots). Additional airspace is necessary to maneuver at higher airspeeds and this airspace provides the additional airspace needed for higher and faster vectoring. That results in significant fuel and time savings for high performance aircraft.

D. Four commenters, including AOPA, complimented the FAA on this rule, particularly as it relates to not expanding the TCA vertically.

E. It was suggested that the TCA floor in the Webster Groves area be raised from 3,000 feet MSL to 3,500 feet MSL. It would not be possible to raise the TCA floor in that area and still contain IFR arrivals and departures at St. Louis International Airport within TCA airspace. IFR arrivals to St. Louis International Airport Runway 30, particularly those using the ILS Runway 30L and RNAV Runway 30L approach procedures are often radar vectored to the final approach course at an altitude of 3,000 feet MSL. If the TCA floor were 3,500 feet MSL, those aircraft would either be outside of TCA airspace in an area where uncontrolled aircraft may operate in the St. Louis terminal area or they would have to be vectored at a higher altitude, probably 4,000 or 5,000 feet MSL, to a point further out on the final approach course in order to be able to descend safely for a landing. The latter choice would result in increased fuel consumption and more delays for arrivals to St. Louis International Airport Runways 30R and 30L. If the TCA floor were raised in the Webster Groves area, many southerly departures from Runways 24 and 30 would not be able to climb fast enough, particularly on high density altitude days, to remain within the TCA airspace. The current 3,000 feet MSL TCA floor has been in effect in the Webster Groves area since the St. Louis TCA was first designated without any apparent operational problems. After careful consideration, it is necessary to retain that TCA floor altitude.

Local Benefits

The modifications of the Group II TCA will: (1) Provide greater accessibility to aircraft wishing to avoid TCA airspace at the outer areas; and (2) accommodate sufficient airspace for higher altitude and airspeed vectoring and new arrival procedures, thereby reducing delays and consequently reducing fuel consumption. All IFR and turbine powered aircraft arrival and departure profiles will be contained within TCA airspace for air safety purposes, with the TCA having a minimum adverse impact on aircraft not required to be under Air Traffic Control (ATC) due to this action.

Economic Impacts

The costs of modifying the St. Louis TCA were considered as part of this regulatory decision being made. Since all turbine powered and IFR aircraft will continue to be contained in the TCA as reconfigured, there will be no change in economic effect for those flights. Uncontrolled aircraft will have a larger amount of airspace in which to conduct

their activities and therefore will have an increased degree of flexibility to plan their flights to use more economic routes or altitudes. Any adverse economic impact that may now exist will be the same or reduced as available airspace is increased for traffic not operating within the TCA.

The existing TCA configuration as compared to this configuration demonstrates no change in impacted airports, number of operations, the number of airports receiving diverted traffic, the distance in air miles or ground miles flown by diverted traffic, the number of aircraft expected to relocate or divert due to the TCA, the special use operations conducted within the core area of the TCA or other segments of the TCA and adjacent airspace, and no change in operational procedures at adjacent airports.

Environmental Impacts

An environmental assessment has been prepared which addresses the aircraft noise, aircraft emissions, and fuel consumption impacts of the altered TCA. It concludes that those impacts would not significantly affect the quality of the human environment. That assessment is in both the Regional and Washington dockets.

Adoption of the Amendment

Accordingly, § 71.401(b) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 669) is amended, effective November 27, 1980, by amending the St. Louis, Mo., TCA to read as follows:[1]

Subpart K-Terminal Control Areas

§ 71.401 Designation.

* * * * *

(b) Group II, Terminal Control Areas:

* * * * *

St. Louis, Mo., Terminal Control Area

Primary Airport

St. Louis International Airport (lat. 38°44'54"N., long. 90°21'47"W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a 6-mile radius arc of the St. Louis International Airport ASR Antenna (lat. 38°44'25"N., long. 90°22'14"W.), excluding that airspace within a 2-mile radius arc of the Creve Coeur Airport (lat. 38°43'35"N., long. 90°30'35"W.).

Area B. That airspace extending upward from 2,000 feet MSL to and including 8,000 feet MSL within a 10-mile radius arc of the St. Louis International Airport ASR Antenna, excluding Area A and excluding the area south of the Foristell VORTAC 093° radial.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the St. Louis International Airport ASR Antenna, and that area which lies south of the Foristell VORTAC 093° radial which is contained within the 10-mile radius arc of the St. Louis International Airport ASR Antenna, excluding Areas A and B, and excluding the area within and underlying Area E.

Area D. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL between the 15-mile and 20-mile radii arcs of the St. Louis International Airport ASR Antenna, excluding an area bounded on the east by a line 5 miles northwest of and parallel to the St. Louis International Airport Runway 24 ILS localizer northeasterly course, counterclockwise to a line 8 miles south of and parallel to the St. Louis International Airport Runway 12R ILS localizer northwesterly course, and excluding an area bounded on the south by a line 5 miles south of and parallel to the St. Louis International Airport Runway 6 localizer southwesterly course, counterclockwise to a line 8 miles north of and parallel to the St. Louis International Airport Runway 30L ILS localizer southeasterly course.

Area E. That airspace extending upward from 3,600 feet MSL to and including 8,000 feet MSL within a 15-mile radius arc of the St. Louis International Airport ASR Antenna, bounded on the northwest by the Troy VORTAC 229° radial, and on the west by a line extending from lat. 38°35'00"N., long. 90°12'00"W., to lat. 38°10'00"N., long. 90°07'00"W.

Area F. That airspace extending upward from 4,500 feet MSL to and including 8,000 feet MSL in two areas: (1) Within 6 miles of each side of the St. Louis International Airport Runway 12R ILS localizer northwesterly course extending outward from the 15-mile radius arc to the 25-mile radius arc of the St. Louis International Airport ASR Antenna; and (2) Within 8 miles of each side of the St. Louis International Airport Runway 30L ILS localizer southeasterly course extending outward from the 15-mile radius arc to the 25-mile radius arc of the St. Louis International Airport ASR Antenna.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 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). A copy of the regulatory evaluation prepared for this action is contained in the Washington and Regional dockets. A copy of it may be obtained by contacting the person identified above under the caption "for further information contact * * *."

Issued in Washington, D.C., October 20, 1980.

R.J. Van Vuren,

Director, Air Traffic Service.

[FR Doc. 80-33353 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[1] Map filed with the original document.

14 CFR Part 71

[Airspace Docket No. 80-SO-68]

Alteration of Control Zone and Transition Area, Greenville, Mississippi

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule alters the descriptions of the Greenville, Mississippi, control zone and transition area by changing the name of the Greenville International Airport to the Greenville Municipal Airport.

EFFECTIVE DATE: 0901 GMT, December 25, 1980.

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

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

SUPPLEMENTARY INFORMATION: In the Greenville, Mississippi, control zone described in § 71.171 (45 FR 356) and transition area described in § 71.181 (45 FR 445), the name of the airport is listed as "Greenville International Airport." On August 19, 1980, the City Council of Greenville changed the name to "Greenville Municipal Airport." Therefore, it is necessary to alter the descriptions to reflect the change. Since this amendment is editorial in nature, notice and public procedure hereon are unnecessary.

Adoption of the Amendment

Accordingly, Subpart F, § 71.171 (45 FR 356) and Subpart G, § 71.181 (45 FR 445) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) are amended, effective 0901 G.m.t., December 25, 1980, as follows:

Greenville, Mississippi

"* * * Greenville International Airport * * *" is deleted and "* * * Greenville Municipal Airport * * *" is substituted therefor.

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

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

action does not warrant preparation of a regulatory evaluation.

Issued in East Point, Ga., on October 17, 1980.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 80-33355 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ANE-33]

Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns VOR Federal Airway V-167 between Hartford, Conn., and Providence, R.I., by making it a direct route. The airway alteration will improve the air traffic control service and aid flight planning. Also, the shortened route will save fuel.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis Still, Airspace Regulations (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: On August 28, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-167 in the vicinity of the Hartford, Conn., area by making it a direct route (45 FR 57434). This airway alteration eliminates a dogleg thereby providing an airway in an area where aircraft are normally vectored. Also, some fuel savings will be realized. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in the **Federal Register** on January 2, 1980. (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) realigns VOR Federal Airway V-167 between Hartford, Conn., and Providence, R.I., by making the airway a direct route. This action improves air traffic control service by providing an airway where aircraft are usually vectored. Also, the shortened route conserves fuel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) and amended (45 FR 31973) is further amended, effective 0901 GMT, December 25, 1980, as follows:

Under V-167

"Hartford; INT Hartford 081° and Providence, R.I., 270° radials; Providence;" is deleted and "Hartford, Conn.; Providence, R.I.;" is substituted therefor.

(Secs. 307(a), 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a), 1510; Executive Order 10854 (24 FR 9565); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 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 October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33354 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[Airspace Docket No. 80-AWE-12]

14 CFR Part 71

Designation of VOR Federal Airways; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates new VOR Federal Airways V-332 from Friant, Calif., to Red Bluff, Calif., and V-338 from Linden, Calif., to Lake Tahoe, Calif. Designation of these airways provides bypass routes into the Sacramento, Calif., area and permits additional flexibility for arrival and departure traffic in the Sacramento terminal area.

EFFECTIVE DATE: December 25, 1980.

FOR FURTHER INFORMATION CONTACT: Lewis 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: On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate two new VOR Federal Airways in the vicinity of Sacramento, Calif., V-332, from Friant, Calif., direct to Hangtown, Calif., direct to Red Bluff, Calif., and V-338, from Linden, Calif., direct to Hangtown, direct to Lake Tahoe, Calif. These new airways enhance air traffic control by permitting traffic flow flexibility necessary to expedite arrival and departure operations in the Sacramento, Calif., area (45 FR 54072). Also, VOR/DME approaches for Placerville, Calif., Airport at Hangtown will be established. Interested persons were invited to participate in this 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. Section 71.123 was republished in the **Federal Register** on January 2, 1980 (45 FR 307).

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates VOR Federal Airway V-332 from Friant, Calif., via Hangtown, Calif., direct to Red Bluff, Calif., and V-338 from Linden, Calif., via Hangtown, direct to Lake Tahoe. This action enhances arrival and departure traffic flow in the Sacramento and Placerville airport terminal areas, thereby increasing air safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 G.m.t., December 25, 1980, as follows:

Under § 71.123

"V-332 From Friant, Calif., via Hangtown, Calif.; to Red Bluff, Calif." is added.

"V-338 From Linden, Calif., via Hangtown, Calif.; to Lake Tahoe, Calif." is added.

(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 October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33197 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34-17231]

Regulation of Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Extension of date by which clearing agencies are required to file Form CA-1 and related materials.

SUMMARY: On June 17, 1980 the Commission announced the publication of standards that the Division of Market Regulation will use in reviewing applications for registration as a clearing agency in accordance with Section 17A(b)(3) of the Securities Exchange Act of 1934. Notice of the standards was given by Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980). That release also requested that by October 31, 1980, each clearing agency currently temporarily registered with the Commission submit a new Form CA-1, 17 CFR 249b.200, amendments to its current rules to comply with the standards set forth in the release, and, if appropriate, alternative approaches to the standards that satisfy the statutory criteria contained in Section 17(A)(b)(3) or exemptive requests from such statutory criteria. Because several clearing agencies have indicated that they anticipate difficulty in submitting all of the requested material by the October 31, 1980 deadline, the Commission is extending the time for submitting the requested material until December 15, 1980.

EFFECTIVE DATE: October 20, 1980.

FOR FURTHER INFORMATION CONTACT: JoAnn Carpenter, Esq., Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 272-2902.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 20, 1980.

[FR Doc. 80-33393 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 80-255]

Foreign Discriminating Duties of Tonnage and Impost With Respect To Vessels of and Certain Imports From the Netherlands Antilles Suspended and Discontinued

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

ACTION: Final rule.

SUMMARY: This rule adds the Netherlands Antilles to the list of nations whose vessels are exempted from the payment of higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. Satisfactory evidence has been obtained by the Department of State that no discriminating duties of tonnage or impost are imposed in ports of the Netherlands Antilles upon vessels belonging to citizens of the United States or on their cargoes.

EFFECTIVE DATE: The exemption became effective December 5, 1957.

FOR FURTHER INFORMATION CONTACT: John Mathis, Carriers, Drawback and Bonds Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton, known as "light money," on all foreign vessels which enter United States ports (46 U.S.C. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of proof satisfactory to the President that no discriminatory duties of tonnage or imposts are imposed by that foreign nation on United States vessels or their cargoes (46 U.S.C. 141). The President has delegated the authority to grant this exemption to the Secretary of the Treasury. Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

On August 1, 1979, the Department of State advised the Department of the Treasury that under Article XIX of the Treaty of Friendship, Commerce and Navigation between the United States and the Kingdom of the Netherlands, signed March 27, 1956 (T.I.A.S. 3942), vessels of both parties are accorded national and most-favored-nation treatment within each other's ports and waters. Hence, the treaty precludes either party from imposing any charges on the other party's vessels which are any higher than those imposed on its own vessels or the vessels of any third nation which call at its ports.

This provision of the treaty was extended to the Netherlands Antilles, as from the date the treaty entered into force, by an exchange of notes in Washington on November 5, 1957, pursuant to the procedure set forth in Article XXIV of the treaty. Consequently, there is satisfactory evidence which would permit the Secretary of the Treasury to find that effective December 5, 1957, the date the treaty entered into force, vessels of the Netherlands Antilles are entitled to the exemption, and the Department of State has requested that such vessels be afforded the exemption.

Declaration

Therefore, by virtue of the authority vested in the President by section 4228 of the Revised Statutes, as amended (46 U.S.C. 141), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951, as amended by Executive Order No. 10882, July 18, 1960 (3 CFR, 1959-1963 Comp., Ch. II), and pursuant to the authorization provided by Treasury Department Order No. 101-5 (44 FR 31057), I declare that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, in respect to vessels of the Netherlands Antilles and the produce, manufactures, or merchandise imported into the United States in such vessels from the Netherlands Antilles or from any other foreign country.

This suspension and discontinuance shall take effect from December 5, 1957, in respect to vessels of the Netherlands Antilles and shall continue only for so long as the reciprocal exemptions of vessels wholly belonging to citizens of the United States and their cargoes shall be continued.

Amendment to the Regulations

In accordance with this declaration, § 4.22, Customs Regulations (19 CFR

4.22), is amended by adding "Netherlands Antilles" in the appropriate alphabetical sequence in the list of nations whose vessels are exempted from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

(R.S. 251, as amended, 4219, as amended, 4255, as amended, 4228, as amended, sec. 3, 23 Stat. 119, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624, 46 U.S.C. 5, 121, 128, 141))

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d).

Regulations Determined To Be Nonsignificant

In a directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations" the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant." However, regulations of this nature, which are nonsubstantive, are essentially procedural, do not materially change existing or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that this amendment does not meet the Treasury Department criteria in the directive for "significant" regulations.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other officers of the Customs Service and the Departments of State and the Treasury participated in its development.

Dated: October 6, 1980.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 80-33436 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

Referral of Persons Eligible for Supplemental Security Income to Other Agencies

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are revising and reorganizing our rules on referrals (Subpart Q) under the Supplemental Security Income (SSI) Program. These rules explain whom we refer to other agencies for vocational rehabilitation services, whom we refer for treatment for alcohol or drug abuse, and the consequences of refusing these services or treatments.

DATES: Effective date October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Dyer, Legal Assistant, Office of Regulations, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594–7454.

SUPPLEMENTARY INFORMATION: We published these regulations as a Notice of Proposed Rule Making (NPRM) in the **Federal Register** on April 24, 1980 (45 FR 27783), with a 60-day comment period.

Background

In order to receive or continue to receive SSI benefits due to disability the law requires that some individuals be referred to other agencies for services under a program of vocational rehabilitation or for treatment of alcoholism or drug addiction. This provision is designed to assist the person in recovering from his or her disability. This regulation describes who must participate in these programs and the consequences of not doing so.

Referral for Vocational Rehabilitation

These rules (§§ 416.1710 and 416.1715) explain that we will refer disabled or blind (but not aged) individuals to an appropriate vocational rehabilitation agency which determines if they should receive available services. These services are to assist the individuals to become able to work so that they will no longer need SSI benefits. We do this at the time we find them eligible for SSI benefits or at any other time we find that these services might help them earn a living. We also explain that these individuals are ineligible for SSI benefits if they reject these services without having good cause. Section 416.1715(b) gives examples of good cause.

Referrals for Treatment of Alcoholism or Drug Addiction

These rules (§§ 416.1720 and 416.1725) describe whom we refer for treatment of alcoholism or drug addiction and what happens if the individual does not accept this treatment. We refer for this particular type of treatment only those individuals who receive SSI benefits because they are disabled, and alcoholism or drug addiction is a contributing factor to their disability. We also explain that these individuals are ineligible for SSI benefits if they reject available treatment or do not comply with the conditions of the treatment.

Difference between the Final Regulations and the Current Regulations

The entire regulation has been rewritten in simpler language and has been organized in a way that it should be easier to understand.

We have added a new section (§ 416.1705) to define terms that are used throughout this subpart.

We have added two new examples of good cause for not accepting vocational rehabilitation services, namely when an individual will have to be away from home for a period long enough to endanger the health or welfare of his or her family and when an individual is working or expected to be working within 3 months. This is consistent with our present practice.

We are relocating the rule in § 416.1731 to Subparts K and L. This rule excludes certain income and resources of individuals who have an approved plan for achieving self support. These other subparts contain the rules for excluding income and resources.

Comments

We received comments as the result of the NPRM from two individuals. The comments concerned payment of SSI benefits, a subject which is dealt with in other subparts rather than to referrals for treatment or services.

One commenter suggested that this regulation should make it clear that we should continue payment of SSI benefits throughout a person's participation in a program of vocational rehabilitation. Recent changes in the law which will be

effective December, 1980 permit continuance of payments for people participating in a vocational rehabilitation program. We intend to publish proposed rules on this shortly.

The second comment dealt with the treatment of the property of SSI recipients and is not related to the subject matter contained in the subpart.

In light of the fact that we have received no comments directly relating to the rules in this subpart, we have adopted as the final regulation the language contained in the NPRM without change except for the addition of two more examples of good cause for not accepting vocational rehabilitation services and the correction of two typographical errors. The additional examples of good cause are consistent with present operating policy.

The proposed regulations are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13,807, Supplemental Security Income)

Dated: September 22, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 21, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart Q of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart Q—Referral of Persons Eligible for Supplemental Security Income to Other Agencies

General

Sec.

416.1701 Scope of subpart.
416.1705 Definitions.

Referral for Vocational Rehabilitation Services

416.1710 Whom we refer and when.
416.1715 Effect of your rejecting vocational rehabilitation services.

Referral for Treatment of Alcoholism or Drug Addiction

416.1720 Whom we refer.
416.1725 Effect on your rejecting treatment for alcoholism or drug addiction.

Authority: Secs. 1102, 1611(e)(3)(A), 1615 and 1631 of the Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466, 1474, and 1475 (42 U.S.C. 1302, 1382(e)(3)(A), 1382d, and 1383).

Subpart Q—Referral of Persons Eligible for Supplemental Security Income to Other Agencies

General

§ 416.1701 Scope of subpart.

This subpart describes whom we refer to agencies for (a) vocational rehabilitation services or (b) treatment for alcoholism or drug addiction. The purpose of these services or treatments is to restore your ability to work. This subpart also describes the conditions under which you can refuse these services or treatments after we have referred you. If these conditions are not met, this subpart describes how your benefits are effected when you refuse these services or treatments.

§ 416.1705 Definitions.

As used in this subpart—

"Vocational rehabilitation services" refers to services provided blind or disabled persons under the State plan approved under the Rehabilitation Act of 1973 (see 45 CFR 401.120ff for requirements of these State plans).

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" or "your" refers to the person who applies for or receives benefits or the person for whom an application is filed.

Referral for Vocational Rehabilitation Services

§ 416.1710 Whom we refer and when.

(a) *Whom we refer.* If you are 16 years of age or older and under 65 years old, and receiving supplemental security income (SSI) benefits, we will refer you to the State agency providing vocational rehabilitation services. If you are under age 16, we will refer you to an agency administering services under the State plan for crippled children's services. (See 42 CFR 51a.300ff)

(b) *When we refer.* We will make this referral when we find you eligible for benefits or at any other time that we find you might be helped by vocational rehabilitation services.

§ 416.1715 Effect of your rejecting vocational rehabilitation services.

(a) *Ineligible for benefits if you do not have good cause.* If we refer you to the State agency providing vocational rehabilitation services, you are not eligible for SSI benefits for any month that you refuse, without good cause, to accept services available to you (see § 416.1328(a) on suspension because of a refusal). If you believe good cause exists to refuse these services, you will be asked to submit proof showing this.

(b) *Examples of good cause.* If you can show good cause for not accepting vocational rehabilitation services offered to you, you will continue to be eligible for benefits. Examples of good cause include the following: (1) The services that are offered are not designed to restore your ability to work.

(2) You are already in a program (either governmental or private) that is expected to restore your ability to work.

(3) You are regularly attending a school, college, or university or are attending a course of vocational or technical training, and the program you are attending is designed to restore your ability to work.

(4) You are physically or mentally unable to participate in the services that are offered.

(5) The services offered would interfere with a medical program provided for you.

(6) The services would require you to be away from home and your absence would be harmful to the health and welfare of your family.

(7) You are working at the present time or you will be working within 3 months.

(8) You are a member or a follower of a recognized church or religious sect which teaches its members or followers to rely solely on prayer or other spiritual means for the treatment and care of any physical or mental illness, and you refuse to accept these services solely because of your belief in these teachings.

Referral for Treatment of Alcoholism or Drug Addiction

§ 416.1720 Whom we refer.

We will refer you to an approved facility for treatment of your alcoholism or drug addiction if—

(a) You are disabled;

(b) You are not blind;

(c) You are not 65 years old or older; and

(d) Alcoholism or drug addiction is a contributing factor to your disability.

§ 416.1725 Effect of your rejecting treatment for alcoholism or drug addiction.

You are not eligible for SSI benefits for any month if—

(a) We have referred you to an approved facility (defined in § 416.938) for treatment;

(b) Appropriate treatment (described in § 416.937) is available (see § 416.939); and

(c) You are not undergoing this treatment even though you are able, or you do not show that you are complying with the conditions of this treatment

(see § 416.1326 on suspension because of rejecting treatment).

[FR Doc. 80-33365 Filed 10-24-80; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 7727]

Excise Tax on Fuel Used in Commercial Waterway Transportation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rulemaking.

SUMMARY: This document provides final regulations relating to the new excise tax on the use of fuel in commercial waterway transportation. Changes to the applicable tax law were made by section 202 of the Inland Waterways Revenue Act of 1978. The regulations affect all operators of commercial vessels used on certain inland and intracoastal waterways.

EFFECTIVE DATE: These regulations apply to fuel consumed after September 30, 1980.

FOR FURTHER INFORMATION CONTACT: John R. Harman of the Legislation and Regulations Division, Office of the Chief Counsel Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, LR-175-78, 202-566-4351, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

Section 202 of the Inland Waterways Revenue Act of 1978 (the "Act"), Pub. L. 95-502, 92 Stat. 1996, imposes an excise tax on the use of liquid fuel in commercial waterway transportation. It taxes only fuel used by certain types of commercial vessels along particular inland and intracoastal waterways.

On June 9, 1980, the Federal Register published a proposed amendment to the Excise Tax Regulations (26 CFR 48) under section 4042 of the Internal Revenue Code of 1954 (Code) (45 FR 38411). The amendment was proposed to conform the regulations to the amendment of the Code made by the Act. A correction to the initially published proposal was published on July 29, 1980 (45 FR 50368). A public hearing on the proposed regulations was held on September 25, 1980. After consideration of all comments regarding the proposed amendment, final regulations are adopted by this Treasury decision.

These regulations meet the Treasury criteria for significant regulations.

Summary of Comments and Substantive Revisions

Twenty-two organizations submitted comments in response to the invitation in the notice. Several organizations objected to implementation of the Act on constitutional grounds, claiming the Act conflicts with the tax uniformity clause, the ports preference clause, and the due process clause. *See generally* U.S. Const. art. 1, § 8, cl. 1; U.S. Const. art. 1, § 9, cl. 6; U.S. Const. amend. V.

Several commentators expressed concern that the statement regarding the general purpose of the fuel tax, contained in the supplementary information to the proposal, might be misapplied. They were concerned that the statement could be construed to impose a restriction on the ultimate uses of the tax collected, a result which was not intended. The statement was not substantive. As a result of the comments, it has been deleted from the supplementary information to these final regulations.

The tax only applies to vessels used in commercial tranportation. Several commentators requested clarification of whether commercial transportation vessels will be subject to the tax while fleeting barges into a single tow and while used to dislodge a tow grounded on a sandbar. The final regulations clarify that they are, *see* § 48.4042-1(f)(1). Congress intended to tax fuel consumed in vessels used for commercial waterway transportation, but not to limit the tax to fuel consumed by vessels while actually transporting property. Vessel operators seeking a ruling as to whether other uses of vessels constitute commercial waterway transportation, within the meaning of § 48.4042-1(f)(1), should consult Rev. Proc. 80-20, 1980-26 I.R.B. 7.

Only fuel used on waterways specified in section 206 of the Act is taxable. Several comments pointed out ambiguities in the descriptions of three of the specified waterways; namely, the Atlantic Intracoastal Waterway, the Gulf Intracoastal Waterway, and the Illinois Waterway. Those descriptions are clarified by the final regulations to better apprise operations of where fuel consumption is taxable. *See* § 48.4042-1(g)(6), (g)(11), and (g)(12).

By imposing a tax on the use of liquid fuel, Congress intended to impose a tax similar to a preexisting tax on liquid fuel used in motor vehicles (Code section 4041), which had been interpreted to apply only to propulsion fuels. Accordingly, § 48.4042-2(a)(1), as proposed, provided that only fuel used in the propulsion system of the vessel is taxed. That section has been modified in response to several requests to define what constitutes a propulsion system. The final regulations clarify that a propulsion system means any engine generating movement of a vessel, including bow thrusters used for steering.

Several commentators expressed concern that § 48.4042-2(b) might be interpreted to require vessel operators to install fuel gauges and that § 48.4042-2(c) might be interpreted to require operators to maintain a second set of records duplicating records already contained in vessel logs and invoices of fuel purchases. Such expenditures are not required by the regulations.

Many comments pointed out situations where, because of an operator's circumstances, maintaining certain records listed in § 48.4042-2(c)(1) would serve little or no purpose—such as (1) requiring fuel refining firms operating barges to maintain records of fuel acquired for all purposes and (2) requiring records of arrival and departure times for a vessel used exclusively in taxable waterways. Section 48.4042-2(c)(1) has been changed to clarify that a vessel operator is only required to maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes.

Several comments pointed out the fact that many vessels do not have identification numbers, but rather are assigned names. Section 48.4042-2(c)(1) has been changed to allow operators to maintain records for each vessel under either a vessel name or identification number.

Several commentators requested clarification of whether interim deposits will be required and whether filing can be delayed until a later date when the operator is allowed until that later date to report another tax with the Form 720—such as the windfall profits tax. The final rules, §§ 48.4042-2(d) and 48.6302(c)-1(f), clarify that interim deposits are not required. *See* Rev. Proc. 80-23, 1980-26 I.R.B. 30, for the extension currently allowed taxpayers using Form 720 to report taxes subject to different reporting deadlines.

Many changes were requested which would be contrary to Congress' intent or the language of the statute itself and for that reason have not been made. Those requests include: Collecting the tax from persons selling fuel; making lessees and charterers pay the tax regardless of who operates the vessel; excluding fuel used in the propulsion engine to create energy for nonpropulsion purposes; excluding fuel used by private operators

transporting property destined for a State or local government's use; excluding fuel used by tugs to move LASH and SEABEE barges regardless of whether the tow is comprised exclusively of such barges.

Drafting Information

The principal author of these regulations is John R. Harman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly 26 CFR Part 48 is amended as follows:

Paragraph 1. There are added immediately after § 48.4041–14 the following new sections:

§ 48.4042–1 Tax on fuel used in commercial waterway transportation.

(a) *In general.* Section 4042(a) imposes an excise tax on the use of liquid fuel in the propulsion system of commercial transportation vessels while traveling on certain inland and intracoastal waterways (*see* § 48.4042–1 (f)). The tax applies generally to all types of vessels, including ships, barges, and tugboats. It is in addition to all other taxes imposed on the sale or use of fuel.

(b) *Amount of tax.* The tax imposed by section 4042(a) shall be determined from the following table:

If the use occurs:	The tax is:
After Sept. 30, 1980 and before Oct. 1, 1981.	4 cents a gallon.
After Sept. 30, 1981 and before Oct. 1, 1983.	6 cents a gallon.
After Sept. 30, 1983 and before Oct. 1, 1985.	8 cents a gallon.
After Sept. 30, 1985	10 cents a gallon.

(c) *Person liable for tax.* The person operating the vessel in which the propulsion fuel is consumed is the user of liquid fuel for purposes of section 4042(a). Thus, a person who operates (or whose employees operate) a vessel is responsibile for filing returns and paying the tax. If a vessel owner (or lessee) contracts with an independent contractor to operate the vessel, the independent contractor is the user of liquid fuel for purposes of section 4042(a), regardless of who purchases the fuel.

(d) *Time of use.* Fuel is not taxed by section 4042(a) when put into a vessel's tanks. For purposes of section 4042(a), fuel is used when it is actually consumed by a vessel's engine.

(e) *Liquid fuels.* For purposes of section 4042(a), liquid fuel includes any liquid fuel, including—

(1) Diesel fuel, or

(2) Bunker C residual fuel oil, or

(3) Special motor fuel as defined in paragraph (f) of § 48.4041–7, or

(4) Gasoline as defined in paragraph (b) of § 48.4082–1.

(f) *Commercial waterway transportation*—(1) *In general.* For purposes of section 4042(a) and § 48.4042–2(c)(1), the term "commercial waterway transportation" means the use of a vessel on the waterways specified in paragraphs (g) (1) through (26) of this section if—

(i) Use of the vessel is in the business of transporting property for compensation or hire, or

(ii) Use of the vessel is in transporting property in the business of the owner, lessee, or operator of the vessel (whether or not a fee is charged).

Except for the operation of certain fishing vessels, the operation of all vessels satisfying the requirements of paragraphs (f)(1)(i) or (1)(ii) of this section will be deemed "commercial waterway transportation," regardless of whether the vessel is actually engaged in the transportation of property on a particular voyage. Thus, "commercial waterway transportation" includes the operation of vessels while moving empty of cargo, while awaiting passage through locks, while dislodging vessels grounded on a sandbar, while moving to or from a repair facility, while maneuvering around loading and unloading docks, and while fleeting barges into a single tow.

(2) *Fishing vessels exception.* A vessel does not transport property in the business of the owner, lessee, or operator, for purposes of paragraph (f)(1)(ii) of this section, by merely transporting fish or other aquatic animal life caught on the voyage. The tax imposed by section 4042(a) does not apply to fuel used by a fishing vessel while traveling to a fishing site, while engaged in fishing, or while returning from the fishing site with its catch. However, the tax applies to fuel used by a commercial vessel along the taxable waterways while traveling to pick up aquatic animal life caught by another vessel and while transporting the catch of such other vessel.

(g) *Specified waterways.* Only fuel used on those waterways specified in section 206 of the Inland Waterways Revenue Act of 1978 (specified waterways) is taxable. The specified waterways are as follows:

(1) Alabama-Coosa Rivers: From junction with the Tombigbee River at river mile (hereinafter referred to as RM) 0 to junction with the Coosa River at RM 314.

(2) Allegheny River: From confluence with the Monongahela River to form the Ohio River at RM 0 to the head of the existing project at East Brady, Pennsylvania, RM 72.

(3) Apalachicola-Chattachoochee and Flint Rivers: Apalachicola River from mouth at Apalachicola Bay (intersection with the Gulf Intracoastal Waterway) RM 0 to junction with Chattachoochee and Flint Rivers at RM 107.8. Chattachoochee River from junction with Apalachicola and Flint Rivers at RM 0 to Columbus, Georgia, at RM 155 and Flint River, from junction with Apalachicola and Chattachoochee Rivers at RM 0 to Bainbridge, Georgia, at RM 28.

(4) Arkansas River (McClellan-Kerr Arkansas River Navigation System): From junction with Mississippi River at RM 0 to port of Catoosa, Oklahoma, at RM 448.2.

(5) Atchafalaya River: From RM 0 at its intersection with the Gulf Intracoastal Waterway at Morgan City, Louisiana, upstream to junction with Red River at RM 116.8.

(6) Atlantic Intracoastal Waterway (A.I.W.W.): Two inland water routes approximately paralleling the Atlantic coast between Norfolk, Virginia, and Miami, Florida, for 1,192 miles via both the Albermarle and Chesapeake Canal and Great Dismal Swamp Canal routes. For vessels traveling along the A.I.W.W. no matter how short the distance, the A.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the A.I.W.W. on route either to a coastal port or to a nonspecified waterway will not be treated as traveling on the A.I.W.W.

(7) Black Warrior-Tombigbee-Mobile Rivers: Black Warrior River System from RM 2.9, Mobile River (at Chickasaw Creek) to confluence with Tombigbee River at RM 45. Tombigbee River (to Demopolis at RM 215.4) to port of Birmingham, RM's 374—411 and upstream to head of navigation on Mulberry Fork (RM 429.6), Locust Fork (RM 407.8), and Sipsey Fork (RM 430.4).

(8) Columbia River (Columbia-Snake Rivers Inland Waterways): From The Dalles at RM 191.5 to Pasco, Washington (McNary Pool), at RM 330, Snake River from RM 0 at the mouth to RM 231.5 at Johnson Bar Landing, Idaho.

(9) Cumberland River: Junction with Ohio River at RM 0 to head of

navigation, upstream to Carthage, Tennessee, at RM 313.5.

(10) Green and Barren Rivers: Green River from junction with the Ohio River at RM 0 to head of navigation at RM 149.1.

(11) Gulf Intracoastal Waterway (G.I.W.W.): From the mouth of St. Mark's River, Florida, to Brownsville, Texas, 1,134.5 miles. For vessels traveling along the G.I.W.W. no matter how short the distance, the G.I.W.W. includes the main channel, all alternate channels, and all adjoining bays and sounds, regardless of depth. However, vessels merely crossing the G.I.W.W. on route either to a coastal port or to a nonspecified waterway will not be treated as traveling on the G.I.W.W.

(12) Illinois Waterway: Illinois River from junction with the Mississippi River at RM 0 to the Des Plaines River and along the Des Plaines River to Lockport Lock and Dam at RM 291. Chicago Sanitary and Ship Canal from Lockport Lock and Dam at RM 291 to the South Branch Chicago River and along the South Branch Chicago River to Lake Street, Chicago at RM 325.5 near Chicago Harbor. Calumet-Sag Channel from junction with the Chicago Sanitary and Ship Canal to the Little Calumet River and along the Little Calumet and Calumet Rivers to turning basin 5, near the entrance to Lake Calumet, an additional 23.8 RMS. Total waterway distance approximately 350 RMs.

(13) Kanawha River: From junction with Ohio River at RM 0 to RM 90.6 at Deepwater, West Virginia.

(14) Kaskaskia River: From junction with the Mississippi River at RM 0 to RM 36.2 at Fayetteville, Illinois.

(15) Kentucky River: From junction with Ohio River at RM 0 to confluence of Middle and North Forks at RM 258.6.

(16) Lower Mississippi River: From Baton Rouge, Louisiana, RM 233.9 to Cairo, Illinois, RM 953.8.

(17) Upper Mississippi River: From Cairo, Illinois, RM 953.8 to Minneapolis, Minnesota, RM 1,811.4.

(18) Missouri River: From junction with Mississippi River at RM 0 to Sioux City, Iowa, at RM 734.8.

(19) Monongahela River: From junction with Allegheny River to form the Ohio River at RM 0 to junction of the Tygart and West Fork Rivers, Fairmont, West Virginia, at RM 128.7.

(20) Ohio River: From junction with the Mississippi River at RM 0 to junction of the Allegheny and Monongahela Rivers at Pittsburgh, Pennsylvania, at RM 981.

(21) Ouachita-Black Rivers: From the mouth of the Black River at its junction with the Red River at RM 0 to RM 351 at Camden, Arkansas.

(22) Pearl River: From junction of West Pearl River with the Rigolets at RM 0 to Bogalusa, Louisana, RM 58.

(23) Red River: From RM 0 to the mouth of Cypress Bayou at RM 236.

(24) Tennessee River: From junction with Ohio River at RM 0 to confluence with Holstein and French Rivers at RM 652.

(25) White River: From RM 9.8 to RM 255 at Newport, Arkansas.

(26) Willamette River: From RM 21 upstream of Portland, Oregon, to Harrisburg, Oregon, at RM 194.

§ 48.4042-2 Special rules.

(a) *Dual use of liquid fuels*—(1) *Dual use by the propulsion engine.* The tax imposed by section 4042(a) applies to all taxable liquid used as a fuel in the propulsion system of the vessel, regardless of whether the engine (or other propulsion system) is used for a purpose other than propulsion of the vessel. For purposes of this section, any engines generating movement of a vessel (including bow thrusters used for steering) are part of the propulsion system. The tax does not apply to fuel consumed in engines which are not used to generate movement of a vessel. When the propulsion engine operates special equipment by means of a power take-off or power transfer, the tax applies to all liquid fuel consumed by that engine. For example, the tax applies to all fuel used in the engine operating an alternator, a generator, or pumps, if that engine is used to generate movement of a vessel.

(2) *Common tank.* If the liquid fuel consumed by a nonpropulsion engine is drawn from the same tank as fuel consumed by a propulsion engine, a reasonable determination of the quantity of fuel used in such a separate engine will be acceptable for purposes of excluding from taxation a portion of the fuel consumed by the vessel. The determination of the amount of fuel consumed by the nonpropulsion engine may be based primarily on the operating experience of the person using the fuel; however, in order to exclude fuel from taxation under the rule set out in this paragraph (a)(2), the taxpayer must maintain records which will support the allocation used.

(b) *Voyages crossing boundaries of the specified waterways.* Fuel consumed by a vessel traveling along the specified waterways is taxable only to the extent of fuel consumed for propulsion while on the specified waterways. Generally, the operator may calculate the amount of fuel consumed while on the specified waterways during a particular voyage by mulitplying total fuel consumed in the propulsion engine by a fraction. The numerator of the fraction is the time spent operating on the specified waterways; the denominator is the total time spent operating on the specified and nonspecified waterways during the voyage. This calculation may not be used when it is unreasonable. It may be determined to be unreasonable by:

(1) Better evidence of fuel consumed (*e.g.*, readings from an accurate fuel gauge or records from similar voyages); or

(2) The existence of factors causing a substantial discrepancy between the rate of fuel consumption on the specified and nonspecified waterways.

(c) *Records required.* (1) All operators of vessels used in commercial waterway transportation must maintain records sufficient to establish to the satisfaction of the district director the amount of fuel used for taxable purposes. Those records may include, when relevant to establish liability: (i) Quantity of fuel and date of acquisition of all liquid fuels acquired for both taxable and nontaxable purposes, whether delivered to storage tanks or tanks on a vessel;

(ii) Date and quantity of fuel pumped into tanks on each vessel;

(iii) Identification number or name of each vessel using fuel; and

(iv) Departure time, departure point, route traveled, destination, and arrival time for each vessel.

(2) Vessel operators seeking a tax exemption provided by section 4042(c) must maintain records which will support any exemption claimed. Where applicable, the records shall contain: (i) The draft of the vessel on each voyage (for exemption under section 4042(c)(1));

(ii) The type of vessel in which fuel is consumed and the type of vessel in which cargo is transported (for exemption under section 4042(c) (1), (2) or (4); and

(iii) The ultimate use of cargo transported (for exemption under section 4042(c)(3)).

(d) *Date for filing return.* In general, the return (Form 720, Quarterly Federal Excise Tax Return) must be filed and the tax paid by the last day of the first month following the quarter in which tax liability has accrued. Thus, for the first taxable quarter (October through December 1980) the return is due and the tax must be paid by January 31, 1981. Notwithstanding any provisions in this part to the contrary, the tax imposed by section 4042(a) need not be deposited with a government depository.

§ 48.4042-3 Certain types of commercial waterway transportation excluded.

(a) *Deep draft ocean-going vessels*—(1) *In general.* Under section 4042(c)(1), there is no tax imposed by section

4042(a) if: (i) The vessel was designed primarily for use on the high seas; and

(ii) The vessel has a draft of more than 12 feet on the voyage for which the fuel tax exclusion is sought (*e.g.* 12 feet 1 inch).

(2) *Meaning of "designed primarily for use on the high seas."* Section 4042(c)(1) requires a determination of the primacy of the design features rendering the vessel useful for service on the high seas, as opposed to the features which render the vessel useful for service on all less turbulent waters. Thus, whether a ship is "designed primarily for use on the high seas" must be determined from all the facts, including structural features and equipment. If the predominant use of a vessel is on the high seas, it shall be presumed to be "designed primarily for use on the high seas." If the predominant use of a vessel is on waters other than the high seas, it shall be presumed not to be "designed primarily for use on the high seas."

(3) *Meaning of "high seas."* For purposes of this section, "high seas" shall mean waters other than the territorial waters of the United States or any other country. Thus, the high seas shall not include the internal waters of any country, the Great Lakes, harbors, or narrow coastal indentations.

(4) *Twelve foot draft*—(i) *Definition.* For purposes of section 4042(c)(1), "draft" shall mean the maximum vertical distance between the mean water line and the bottom of the keel. In cases where a vessel has a skeg or other appendage extending locally below the line of the keel, the draft shall be measured from the deepest appendage. A separage determination of draft must be made for each voyage when the vessel has its greatest load of cargo and fuel. For purposes of this determination, the term "voyage" means a round trip voyage. Therefore, if a vessel travels into the specified waterway system to pick up cargo and has a draft sufficient to qualify for the exclusion when loaded, then for purposes of section 4042(c)(1) the vessel satisfies the 12 foot draft requirement for the entire voyage. Similarly, if a vessel loaded with cargo travels into the specified waterway system with a draft sufficient to qualify for the exclusion provided by section 4042(c)(1), then the fuel consumed on the entire voyage may be excluded, regardless of the vessel's draft after the cargo is unloaded.

(ii) *Example.* The following example illustrates the application of paragraph (a)(4)(i) of this section:

Example. A ship with a design draft of 20 feet (maximum certified draft when fully loaded) travels into a taxable waterway with only a partial load, such that the draft is 12 feet. The ship unloads and departs the waterway empty. The portion of the fuel consumed for propulsion of the vessel on the specified waterway is taxable because only vessels with a draft greater than 12 feet are eligible for the section 4042(c)(1) exemption from tax.

(b) *Commercial passenger vessels.* Under section 4042(c)(2), the tax imposed by section 4042(a) does not apply to fuel consumed by vessels used primarily for the transportation of persons. Thus, commercial passenger vessels while being operated as passenger vessels are not subject to tax, even if such vessels in fact transport property in addition to transporting passengers. Similarly, ferry boats carrying passengers are not subject to tax, even if such vessels carry the passengers' automobiles.

(c) *Exemption for State or local governments*—(1) *In general.* Under section 4042(c)(3), there is no tax imposed by section 4042(a) if: (i) The vessel is being used by a State or local government; and

(ii) The vessel is being used in transporting property in the State or local government's business.

(2) *State or local government.* For purposes of paragraph (c)(1)(i) of this section a "vessel is being used by a State or local government" if it is operated by any State, the District of Columbia, or any political subdivision of a State. If a private party is contracted to haul for a State or local government, the vessel is not "being used by a State or local government." Similarly, if a person other than a State or local government is contracted to supply vessel operators, the fuel consumed by the vessel is not used "by a State or local government," regardless of ownership of the vessel. However, when a local government leases barges and employees of the local government operate the barges, the vessel is being used by the local government.

(3) *Government business.* The test for whether a vessel is being used "in transporting in a State or local government's business," within the meaning of paragraph (c)(1)(ii) of this section, is whether the ultimate use of the cargo is for a function which is ordinarily carried out by governmental units. For example, when the cargo transported is salt to be spread on icy roads, the vessel is being used "in transporting in a State or local business" because the use to which the cargo will be put (road maintenance) is a function ordinarily performed by governmental units. Fuel consumed in a vessel transporting property for compensation or in furtherance of a business not ordinarily carried out by a governmental unit is not exempt from taxation by section 4042(c)(3).

(d) *Ocean-going barges.* Under section 4042(c)(4), the tax imposed by section 4042(a) does not apply to fuel consumed by tugs moving exclusively barges released by ocean-going carriers solely to pick up or deliver international cargos. The tax exemption provided by section 4042(c)(4) applies to LASH barges, SEABEE barges, and all other ocean-going barges carried aboard ocean-going vessels. There is no exemption under section 4042(c)(4) while: (1) One or more of the barges in the tow is not a LASH barge, SEABEE barge, or other ocean-going barge carried aboard on ocean-going vessel; or

(2) One or more of the barges in the tow is not on an international voyage; or

(3) Part of the cargo in the tow is not being transported internationally.

Par. 2. Section 48.6302(c)–1 is amended by adding a new paragraph (f) as set forth below.

§ 48.6302(c)–1 Use of Government depositaries.

* * * * *

(f) *Special rule for the tax imposed by section 4042(a).* For purposes of the computations provided by this section, the tax imposed by section 4042(a) shall be disregarded.

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)))

Approved: October 16, 1980.

Jerome Kurtz

Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-33339 Filed 10-22-80; 11:39 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations; Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation.

ACTION: Final rule.

SUMMARY: This rule corrects errors which appeared in the recent publication (August 7, 1980) of a Final Rule amending 33 CFR Part 401 in the **Federal Register.**

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:
Frederick A. Bush, General Counsel (315–764–0271, Ext. 245).

SUPPLEMENTARY INFORMATION: On August 7, 1980, the Seaway Corporation published in the **Federal Register** (45 FR 52376) a final rule amending existing Seaway Regulations. The amendments had been developed jointly with the Seaway Corporation's counterpart Canadian agency, the St. Lawrence Seaway Authority and had been published as a proposed rulemaking on June 19, 1979 (44 FR 35256). This final rule supplements that published on August 7, 1980 and corrections published on August 25, 1980 by supplying correct buoy numbers which were inadvertently given in the earlier publications. The changes and the reasons for them, are discussed in detail in the earlier publication.

As noted in the earlier publication, the Seaway Corporation has determined that the expected impact of this regulation is so minimal that it does not warrant either a Regulatory Analysis or a formal Evaluation as required by the Secretary of Transportation's Order concerning Regulatory Policies and Procedures (44 FR 11034). It is expected to result in negligible cost to a few vessel owners. There should be no added cost to or impact on consumers and/or Federal, state and local governments.

Since these amendments supplement regulations already in effect, good cause exists for making them effective upon publication.

1. Schedule II, "Table of Speeds*", is amended by revising entries to read as follows:

From	To	Maximum speed over the bottom (knots)	
		Col. III	Col. IV
3. Upper Entrance	Lake St. Francis	8.6 (10 mph upb)	8.6 (10 mph upb).
Beauharnois Lock	Buoy D3	10.4 (12 mph dnb)	10.4 (12 mph dnb).
4. Lake St. Francis	Lake St. Francis	15.5 (18 mph)	15.5 (18 mph).
Buoy D3	Buoy D49		
5. Lake St. Francis	Snell Lock	8.6 (10 mph upb)	7.7 (9 mph upb).
Buoy D49		10.4 (12 mph dnb)	10.4 (12 mph dnb).

(68 Stat. 93–96, 33 U.S.C. 981–990, as amended and secs. 4, 5, 6, 7, 8, 12, and 13 of sec. 2 of Pub. L. 95–474, 92 Stat. 1471)

Issued at Washington, D.C., on October 16, 1980.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 80–33211 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–61–M

33 CFR Part 402

Tariff of Tolls; Revision

AGENCY: Saint Lawrence Seaway Development Corporation, Department of Transportation.

ACTION: Final rule.

SUMMARY: This regulation revises the tariff of tolls which the Saint Lawrence Seaway Development Corporation publishes and administers jointly with the St. Lawrence Seaway Authority of Canada for the use of the St. Lawrence Seaway. The effect of this revision is to incorporate into the tariff of tolls the provisions for post-clearance date operational surcharges which were previously published as part of the Navigation Closing Procedures.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT:
Robert D. Kraft, 800 Independence Avenue, SW, Washington, D.C. 20591.

SUPPLEMENTARY INFORMATION: On June 11, 1979, the Saint Lawrence Seaway Development Corporation published in the **Federal Register** (44 FR 33 402) Navigation Season Closing Procedures for the Montreal-Lake Ontario section of the St. Lawrence Seaway. Included as a part of these procedures was a provision for the assessment of operational surcharges on those vessels which failed to report to designated call-in points by specified dates.

In developing the closing procedures which included the operational surcharges, the Seaway entities of both countries solicited and considered public comments as well as those of the affected industry. In view of the opportunity for public participation at that time and the fact that no material change in the substance of the regulation is being made; it was determined that a public hearing on the amendment was not practicable.

On October 25, 1979, the President of the St. Lawrence Seaway Authority of Canada and the Administrator of the Saint Lawrence Seaway Development Corporation of the United States agreed to recommend to their governments that the existing St. Lawrence Seaway Tariff of Tolls be amended to include these post-clearance date operational surcharges. On October 9, 1980, the Governments of the United States and Canada exchanged diplomatic notes formalizing the amendment to the Tariff of Tolls.

Since this regulation involves a foreign affairs function of the United States it is not subject to Executive Order 12044 or the Regulatory Policies and Procedures of the Department of Transportation and formal notice and public procedure thereon are unnecessary and it may be made effective upon publication in the **Federal Register.**

In consideration of the foregoing, Part 402 of Chapter IV of Title 33, Code of Federal Regulations is revised to include a new § 402.8 as appears below.

§ 402.8 Post-clearance date operational surcharges.

If the Authority and the Corporation so determine, they may establish a clearance date for the transit of the Montreal-Lake Ontario section. Each vessel which does not comply with the conditions announced by the Authority and the Corporation in establishing the clearance date may be required to pay in dollars an operational surcharge as follows:

(a) Vessels reporting during the 24 hour period immediately following the clearance date: $20,000.00.

(b) Vessels reporting more than 24 hours late, but less than 48 hours after the clearance date: $40,000.00

(c) Vessels reporting more than 48 hours late, but less than 72 hours after the clearance date: $60,000.00.

(d) Vessels reporting more than 72 hours late: $80,000.00.

Assessed operational surcharges will be prorated on a per lock basis. Surcharges representing transit through U.S. locks will be for the account of the Corporation and payable in U.S. funds and surcharges representing transit through Canadian locks will be for the account of the Authority and payable in Canadian funds.

(68 Stat. 92–96, 33 USC 981–990)

Issued at Washington, D.C. on October 17, 1980.

Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 80–33212 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–61–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

41 CFR Ch. 18, Parts 3, 7, 13 and 20

[Procurement Regulation Directive 80-7 (dated August 14, 1980)]

Procurement Regulations; Miscellaneous Amendments

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document amends the NASA Procurement Regulation [41 CFR Ch. 18]. It reflects amendments contained in Procurement Regulation Directive 80-7 concerning the following areas:

1. Competition Under Blanket Purchase Agreements
2. Government Property Furnished for Repair
3. Evaluation and Negotiation of Procurements Conducted in Accordance with the Source Evaluation Board Manual (NHB 5103.6A)
4. Non-Use of Foreign-Flag Vessels Engaged in Cuban and North Vietnam Trade
5. Limitation of Government's Obligation (LOGO)
6. Inspection Clauses
7. Government Property Clause (Short Form)
8. Submission of Master Buy Plan.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: James H. Wilson, Policy Division (Code HP-1, Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202-755-2237.

SUPPLEMENTARY INFORMATION:

(1) In Part 3, 3.605-4 is revised to indicate that the cumulative dollar value of awards to various vendors is an example of the factors that should be considered in connection with the equitable distribution of calls under concurrent blanket purchase agreements for similar items.

(2) In Part 3, 3.608-2 is revised to update the dollar thresholds for the use of Government property clauses in small purchases (not more than $10,000).

(3) In Part 3, 3.106-3(a)(ii), 3.804-2, 3.804-3 and 3.805-1(c) are revised to incorporate the coverage previously incorporated in NASA Procurement Regulation Directive 70-15 (Revised) (Title 41 of CFR, 1980 Edition, p. 472.) NASA Procurement Regulation Directive 70-15 (Revised), dated December 3, 1975, is hereby superseded.

(4) In Part 7, the clause in 7.104-59, 7.204-59, 7.303-59, 7.403-59 and 7.452-59 is deleted since it is no longer applicable as a result of actions previously taken by the Maritime Administration.

(5) In Part 7, 7.204-53 and 7.304-51 are revised to permit use of the LOGO clause where the total value of the contract including options (Part 1, Subpart 15) is $1 million or more even though the basic contract value is less than $1 million.

(6) In Part 7, 7.302-4 is revised to facilitate the incorporation of the desired Inspection clause into solicitations and contracts, by reference.

(7) In Part 13, 13.710 is revised to increase the acquisition cost of Government-furnished property which may be covered by the short form Government-Furnished Property clause in NASA contracts.

(8) In Part 20, 20.5103 is revised to—

(i) ensure that Master Buy Plan submissions include later phases of the same project to the Guidelines for Project Planning concept prescribed in NASA Handbook 7121.4 and/or Major System Acquisitions concept prescribed by NASA Management Instruction 7100.14A; and

(ii) Make it clear that the requirement to list prior procurements that were selected for Headquarters approval is applicable only to fiscal year Master Buy Plan.

Authority: The provisions of this document are issued under 42 U.S.C. 2473(c)(1).

L. E. Hopkins,

Acting Director of Procurement.

PART 3—PROCUREMENT BY NEGOTIATION

3.106-4 [Amended]

1. In Part 3, in the Table of Contents, the page number for "3.106-4 Disclosure of Information Prior to Selection of Contractor" is amended to read 3-1:6 in place of 3-1:5.

2. In Part 3, Table of Contents, 3.804-3 through 3.807-1 are revised to read as follows:

* * * * *

3.804-3 Evaluation and Negotiation of Procurements Conducted in Accordance with the Source Evaluation Board Manual (NHB 5103.6A)..... 3-8:15
3.804-4 Disclosure of Information Prior to Selection of Contractor..... 3-8:18B
3.805 Conduct of Negotiations..... 3-8:18C
3.805-1 General..... 3-8:18C
3.805-2 Cost-Reimbursement Type Contracts..... 3-8:18E
3.805-3 Use of Parallel Short-Term Contracts in Selecting System Design Concepts..... 3-8:18E
3.806 Cost, Profit, and Price Relationships..... 3-8:18E
3.807 Pricing of Negotiated Contracts..... 3-8:18F
3.807-1 General..... 3-8:18F

* * * * *

3. In Part 3, 3.106-3(a)(ii) is revised to read as follows:

3.106-3 Award Information to Unsuccessful Offers.

(a) * * *

(ii) in the case of procurements for which a Source Evaluation Board has been appointed and one or more than one offeror has been selected for negotiations, those offerors not selected for either preliminary negotiations or final negotiations will be notified in writing of the fact that the proposal is no longer considered for contract award, together with a general, reasonably brief explanation of the reason(s).

* * * * *

3.106-3 [Amended]

4. In Part 3, 3.106-3(d) is amended by adding at the end of the paragraph the following sentence: "(See also 3.804-3(b)(7)).."

3.216-4 [Amended]

5. In Part 3, 3.216-4 is amended by deleting the reference "16.901" and inserting "Part 21" at the end of the paragraph.

6. In Part 3, 3.605-4 is revised to read as follows:

3.605-4 Competition Under Blanket Purchase Agreement. Calls against blanket purchase agreements shall be placed only after compliance with 3.604. When concurrent agreements for similar items are in effect, calls not in excess of $500 shall be equitably distributed (e.g., the cumulative dollar value of awards to various vendors should be considered). In those instances where there are an insufficient number of BPA's for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

7. In Part 3, 3.608-2(b)(vi) is revised to read as follows:

3.608-2 Order for Supplies or Services (NASA Form 1379 or Standard Form 147; Standard Form 36; NASA Form 1379B and Standard Form 30).

* * * * *

(b) * * *

(vi) Where Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair),

the "Government Property (Fixed-Price)" clause in 13.702 shall be inserted in the Schedule. Where Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the "Government-Furnished Property (Short Form)" clause in 13.710 shall be inserted in the Schedule: *provided* that use of the clause shall be optional where the acquisition cost of property furnished for repair is not in excess of $10,000. Where a "Government Property" clause is inserted in the Schedule, the contractor's signature shall be obtained on NASA Form 1379B.

* * * * *

8. In Part 3, the introductory text in 3.804–2 is revised to read as follows:

3.804–2 Evaluation Procedures Not Involving Source Evaluation Board. The evaluation procedures set forth in (a) through (c) shall be utilized. However, the procedures set forth in 3.804–3 may be used to supplement those specified herein, provided they are not peculiar to the SEB process.

* * * * *

9. In Part 3, 3.804–3 is revised to read as follows:

3.804–3 Evaluation and Negotiation of Procurements Conducted in Accordance With the Source Evaluation Board Manual (NHB 5103.6A).

(a) *Applicability.*

(1) These procedures shall be used for all competitively negotiated procurements conducted in accordance with NHB 5103.6A (including those ADP procurements set forth in 3.1150(a) (i) through (iv), but excluding procurements for architect-engineer services, and procurements for which the procedures have been specifically waived), when:

(i) the estimated cost of the contract will exceed $5,000,000;

(ii) the estimated cost of the contract will not exceed $5,000,000, but it is likely that the source selected will receive other contracts for later phases of the same project which, cumulatively, would total more than $5,000,000 (Examples of this category: (A) options as defined in Part 1. Subpart 15: (B) agreements-to-agree, wherein the parties agree to negotiate for the extension of the supplies or services being procured; and (C) later phases of the same project subject to the Guidelines for Phase Project Planning concept prescribed by NHB 7121.1 and/or the Major Systems Acquisition concept prescribed by NMI 7100.14A.); or

(iii) a Source Selection Official determines that the use of the Source Evaluation Board procedures is desirable. Except where the relevance of this paragraph is peculiar to the SEB procedure, the principles expressed herein also apply to other negotiated procurements conducted in accordance with this Regulation. The requirements of this paragraph with respect to written or oral discussions need not be applied to procurements specified in 3.101(a) (i) and (ii).

(2) The detailed procedures regarding the designation and operation of Source Evaluation Boards are set forth in NHB 5103.6A.

(3) Evaluation of system design concepts resulting from requests for alternative system design concept proposals in support of a major system acquisition subject to NMI 7100.14A policies and procedures, should, in addition to proposed system function and performance capabilities to meet mission needs and program objectives, include an analysis of resources required and benefits to be derived by trade-offs, where feasible, among technical performance, acquisition costs, ownership costs, time to develop and procure, and the relevant accomplishment record of competitors.

(4) The detailed procedures with regard to the evaluation of contractor proposals for the purposes of preventing wage busting for professionals under service contracts, which augment the evaluation procedures specified herein, are set forth in 12.1053.

(b) *Evaluation and Selection Procedures.*

(1) *Responsibility of Source Selection Official.* In the final analysis, NASA judgment on the totality of the evaluation will be that of the Source Selection Official. This includes assessment of the procedures followed by the Board, the validity of its substantive evaluations, the relative significance of the several areas of evaluation, and the weightings previously assigned by the SEB, in the light of all the information produced by the source evaluation and selection process. The Source Selection Official will select the contractor (or contractors) which he considers can perform the contract in a manner most advantageous to the Government.

(2) *Evaluation Criteria and Weights.* The establishment of evaluation criteria and their weights requires the exercise of judgment on a case-by-case basis. Evaluation criteria and their weighting factors should be tailored to the requirements of each particular procurement. An SEB should not give scores for cost as such. Technical excellence, price or estimated cost, and contractor management capability are important factors in selection. Their relative importance depends on the nature of the products or services procured, with technical considerations having paramount importance in research and development. Any factor may tip the balance when competition is very close as to other factors. Evaluation criteria shall be described in each request for proposals fully enough to inform evaluators and prospective offerors of the significant matters to be addressed in the proposals. A general description of the relative weights of categories of evaluation criteria shall be furnished prospective offerors.

(3) *Initial Identification of Proposals Not Considered Acceptable.*

(i) Subsequent to the review of committee ratings and other information known to the committees or the Board and prior to ranking of proposals by the Board, the Board may discontinue the evaluation of any proposal which is unacceptable because:

(A) it does not represent a reasonable initial effort to address itself to the essential requirements of the RFP, or clearly demonstrates that the offeror does not understand the requirements of the RFP;

(B) in research or development procurement, a substantial design drawback inheres in the proposal, and sufficient correction or improvement to consider the proposal acceptable would require virtually an entirely new technical proposal; or

(C) it contains major technical or business deficiencies or omissions, or out-of-line costs, which discussions with the offeror could not reasonably be expected to cure. Simple technical nonresponsiveness in the sense in which the term is used in formal advertising is not alone sufficient to constitute unacceptability, if the proposal is otherwise competitive, and negotiations after selection reasonably offer the likelihood of resolution. When there is doubt as to whether a proposal should be rejected initially as unacceptable, that doubt shall be resolved by including it for further consideration.

(ii) Documentation must be prepared by the Board as to why the deficiencies of any proposal are believed to be of sufficient significance to warrant discontinuing the evaluation of a proposal at this point in the evaluation process.

(4) *Board Determinations of Competitive Range.* After initial identification of proposals not considered acceptable, the Board will tentatively rank the remaining proposals in accordance with the established scoring system. After this ranking is completed, the proposals will be reviewed with a view toward determining the proposals within

competitive range; namely, those which have a reasonable chance of being selected for final award. In making this determination, the Board will evaluate the potential for improving the competitive position of the proposals by written or oral discussions conducted in accordance with paragraph (5) below. The competitive range will consist of the best proposals, considering mission suitability, cost or price, experience and past performance, and other factors. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it. The initial number of offerors considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal initially included in the competitive range should not be rejected without giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range, unless the discussions relating to an ambiguity or omission makes it clear that the proposal should not have been in the competitive range initially.

(5) *Conduct of Written or Oral Discussions.*

(i) *General.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may warrant having more than one round of discussions with all or some of those firms considered in the competitive range. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

(ii) *Cost-Reimbursement Type Contracts and All Contracts for Research and Development.* The contracting officer, in concert with or on behalf of the SEB, will conduct written or oral discussions of the work to be done and the cost of the work with those concerns whose proposals are within the competitive range. The discussions are intended to assist the SEB or other evaluators (A) in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each offeror; (B) in assuring that the meanings and the points of emphasis of RFP provisions have been adequately conveyed to the offerors so that all are competing equally on the basis intended by the Government; (C) in evaluating the personnel proposed by each firm; and (D) in presenting a report to the selection official that makes the discriminations among proposals clear and visible. In this process, prior to contractor selection, the Government's interests are not served by its assuming the role of an information exchange or clearing-house.

In cost-reimbursement type contracts and all research and development contracts, the contracting officer shall point out instances in which the meaning of some aspect of a proposal is not clear, and instances in which some aspects of the proposal fails to include substantiation for a proposed approach, solution or cost estimate.

However, where the meaning of a proposal is clear, and where the Board has sufficient information to assess its validity, and the proposal contains a weakness which is inherent in an offeror's management, engineering, or scientific judgment, or which is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses. Discussions are useful in ascertaining the presence or absence of strengths and weaknesses. The possibility that such discussions may lead an offeror to discover that it has a weakness is not a reason for failing to inquire into a matter where the meaning is not clear or where insufficient information is available, since understanding of the meaning and validity of the proposed approaches, solutions, and cost estimates is essential to a sound selection. Offerors should not be informed of the relative strengths or weaknesses of their proposals in a relation to those of other offerors. To do so would be contrary to other regulations which prohibit the use of "auction techniques" (see 3.805–1(c)). In the course of discussions, Government participants should be careful not to transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas.

The foregoing guidelines are not all-inclusive. Careful judgment must be exercised in the light of all the circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while, at the same time, maintaining the fairness of the competitive process.

At the conclusion of discussions, the contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal. An offeror may, on its own initiative, revise its proposal and make corrections or improvements until the established cut-off date.

(iii) *Fixed-Price Contracts, Other Than for Research and Development.* In fixed-price type contracts, other than for research and development, the specifications ordinarily describe the Government's requirements with more particularity than is possible in cost reimbursement or research and development contracting, so that less emphasis is placed on an offeror's introduction of scientific, engineering, and management innovations. The contracting officer will conduct discussions in accordance with the provisions of paragraph (ii) above, except for the following difference:

The contracting officer in written or oral discussions shall point out instances in which some aspect of a proposal contains a weakness in relation to the Government's requirements. But, as provided in (5)(ii) above, he shall neither point out the relative strengths or weaknesses of a proposal in relation to those of other offerors, nor transmit information which could give leads to one offeror as to how its proposal may be improved or which could reveal a competitor's ideas. He shall point out price elements that do not appear to be justified and shall encourage offerors to put forward their most favorable price proposals; but in so doing shall not discuss, disclose, or compare price elements of any other offeror.

(6) *Conduct of Negotiations Prior to Selection.* If after conclusion of written or oral discussions it is considered by the SEB that the evaluation findings, thus far completed, are not sufficiently comprehensive for the selection official to make a decision, it may be prudent and necessary to conduct further discussions or final negotiations with those offerors remaining in the competitive range prior to presentation of the findings to the selection official. This course of action must be considered as an exception to the SEB process and therefore may be accomplished only with the approval of the Director of Procurement.

(7) *Notice and Debriefing.* When a proposal is no longer to be considered for contract award, the offeror will be promptly notified, in writing, together with a general, reasonably brief explanation of the reasons. If a concern requests, in writing, a debriefing as a result of such notice, the concern will be accorded a formal debriefing in accordance with NMI 5103.1 (see also 3.106–3(d)). Such a debriefing will be provided at the earliest feasible time which normally shall be after announcement of the selection decision and prior to award of the contract. However, where the exigency of the situation will not permit delaying the award in order to debrief unsuccessful

offerors, such debriefing may be conducted after award.

(8) *Report to Selection Official.* The SEB report, or similar memorandum in a procurement not involving an SEB, shall contain a summary of the primary points of discussion and will show the effect of the discussions on the evaluation of proposals. The report or memorandum shall set forth the strengths and weaknesses of each proposal, with an estimate of the potential for correction of the principal weaknesses identified. The report should state also the Board's estimate of the approximate impact on cost or price that will result from the elimination of correctible weaknesses during negotiations after selection.

10. In Part 3, 3.805–1(c) is revised to add two sentences at the end of the paragraph to read as follows:

3.805–1 General

* * * * *

(c) Whenever negotiations are conducted with more than one offeror, auction techniques are strictly prohibited. An example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to that of another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge (see 1.1050). Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see (a) above) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals must be submitted by that date. The notification establishing the cutoff date for receipt of proposal revisions shall also specify the period of time from that date within which the Government may accept the revised proposal, and shall request those offerors not submitting proposal revisions to indicate their consent to the acceptance period specified. All such offerors shall be informed that any revision received after such date shall be treated as a late proposal in accordance with the "Late Proposals" provisions of the request for proposals. All such offerors shall also be informed that after the specified date for the closing of negotiation no information other than notice of unacceptability of proposal, if applicable (see 3.106–3), will be furnished to any offeror until award has been made. Such notice of unacceptability of proposals shall include a general, brief explanation of the reasons for unacceptability. If a concern requests, in writing, a debriefing as the result of the notice of unacceptability, such debriefing shall be in accordance with 3.804–3(b)(7) and 3.106–3(d).

PART 7—CONTRACT CLAUSES

11. In Part 7, Table of Contents, the title "Non-use of Foreign-Flag Vessels Engaged in Cuban and North Vietnam Trade" in 7.104–59, 7.204–59, 7.303–59, 7.403–59 and 7.452–59 is deleted and the paragraphs are marked "Reserved." The page numbers for 7.302–5 through 7.302–16 and 7.303–2 through 7.303–5 are revised as follows:

* * * * *

7.302–5 Assignment of Claims.....7–3:2A
7.302–6 Examination of Records by Comptroller General.....7–3:2A
7.302–7 Federal, State, and Local Taxes.....7–3:2A
7.302–8 Utilization of Small Business and Small Disadvantaged Business Concerns.....7–3:2A
7.302–9 Default.....7–3:2A
7.302–10 Termination for the Convenience of the Government.....7–3:2A
7.302–11 Disputes.....7–3:2A
7.302–12 [Reserved].....7–3:2A
7.302–13 Buy American Act.....7–3:2A
7.302–14 Convict Labor.....7–3:2A
7.302–15 Walsh-Healey Public Contracts Act.....7–3:2A
7.302–16 Contract Work Hours Standards Act—Overtime Compensation.....7–3:3

* * * * *

7.303–2 Filing of Patent Applications.....7–3:4A
7.303–3 through 7.303–5 [Reserved].....7–3:4A

* * * * *

7.104–59, 7.204–59, 7.303–59, 7.403–59, 7.452–59 [Deleted and Reserved]

12. In Part 7, the text in 7.104–59, 7.204–59, 7.303–59, 7.403–59 and 7.452–59 is deleted and the paragraphs are marked "Reserved."

13. In Part 7, 7.204–53(i) is revised to read as follows:

7.204–53 Limitation of Government's Obligation

* * * * *

(i) the total value of the contract (including options as defined in Part 1, Subpart 15) is $1,000,000 or more;

* * * * *

14. In Part 7, 7.302–4 is revised to read as follows:

7.302–4 Inspection.

(a) *Short Form Clause.* The following clause shall be inserted in all contracts subject to this Subpart where the clause in (b) below is not used.

Inspection (September 1962)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(b) *Long Form Clause.* Where a more detailed provision covering inspection is desired, as where the primary contract objective is delivery of end items other than designs, drawings, or reports, the clause set forth below shall be used unless the contracting officer determines that use of the longer clause is impracticable.

Inspection (September 1962)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the

expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

15. In Part 7, 7.304–51(i) is revised to read as follows:

7.304–51 Limitation of Government's Obligation.

* * * * *

(i) the total fixed price of the contract (including options as defined in Part 1, Subpart 15) is $1,000,000 or more;

* * * * *

7.451–12 [Amended]

16. In Part 7, the text in 7.451–12 is deleted and the paragraph is marked "Reserved."

PART 13—GOVERNMENT PROPERTY

13.710 [Amended]

17. In Part 13, Table of Contents, the page number for 13.710 is revised to read 13–7:21.

18. In Part 13, 13.710, the introductory text in (a) is revised to read as follows:

13.710 Government-Furnished Property Clause (Short Form).

(a) The following short form clause and/or the clause in 13.311 may be used in contracts under which the Government is to furnish to the contractor Government property having an acquisition cost of $50,000 or less.

* * * * *

PART 20—ADMINISTRATIVE MATTERS

19. In Part 20, 20.5103–1 is revised to read as follows:

20.5103–1 Submission of Master Buy Plan. Prior to July 15th of every year, each installation will submit to the Director of Procurement (Code HS–1) a Master Buy Plan (original and eight copies) for the next fiscal year, listing therein every known procurement that meets the criteria set forth in 20.5102, and that (i) is expected to be initiated in that fiscal year, and (ii) has not been included in a previous Master Buy Plan or amendment to a Master Buy Plan. If applicable, the plan will include procurements that are for later phases of the same project (see 3.852–2(b)(iii)). The plans will be prepared in accordance with the format shown in 20.5106, and, for every procurement listed therein, an identification will be provided as to the individual procurement documents that are involved (20.5104). Procurement documents that require Headquarters approval (see 20.5104) will be held in abeyance until receipt of the notification required by 20.5103–3 (a) or (b). This is not to preclude the planning for or initiation of such actions up to that point where Headquarters approval may be required. The fiscal year Master Buy Plan shall include a listing of those procurements that were selected for Headquarters review and approval from prior fiscal year(s)' Master Buy Plans and amendments to Master Buy Plans that have not been completed. The procurements should be listed by the appropriate fiscal year Master Buy Plan and should show the current status of the individual procurement documents previously selected for Headquarters review and approval.

[FR Doc. 80–33315 Filed 10–24–80; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 193

[Amdts. 192–36 and 193–2; Docket OPSO–46]

Liquefied Natural Gas Facilities; Federal Safety Standards

Correction

In FR Doc. 80–33115 in the issue of Thursday, October 23, 1980, first column, under "EFFECTIVE DATES", eighth line from the bottom, "July 23, 1980" should read "July 23, 1981".

BILLING CODE 1505–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Eleventh Revised Service Order No. 1473]

Various Railroads Authorized To Use Tracks and/or Facilities of the Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Eleventh Revised Service Order No. 1473.

SUMMARY: Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254, this order authorizes various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 12:01 a.m., October 23, 1980, and continuing in effect until 11:59 p.m., November 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M. F. Clemens, Jr., (202) 275–7840.

Decided: October 21, 1980.

Pursuant to Section 122 of the Rock Island Transition and Employee Assistance Act, Public Law 96–254, the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for that operation.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Eleventh Revised Service Order No. 1473, modifies Appendix A of the previous order by adding Item 6. C., granting additional authority to the Fort Worth and Denver Railway Company from Amarillo, Texas, to Liberal, Kansas, via Etter and Morse Junction, Texas; between Morse Junction and Pringle, Texas, and including the trackage rights of the RI over The Atchison, Topeka and Santa Fe Railway Company between Amarillo and Etter, Texas. Appendix A is further modified

by adding Item 23., granting additional authority to the Keota Washington Transportation Company from Keota to Washington, Iowa, in order to effect interchange at Washington with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, and to serve any industries on the RI which are not being served presently. Appendix A is further modified by deleting the authority of the Chicago and North Western Transportation Company (CNW) between Purina and Des Moines, Iowa, and changing Item 7.D., to read: from Clear Lake Junction (milepost 191.1) to Purina, Iowa, (milepost 147.0). (The CNW has notified the Railroad Service Board of its withdrawal from this interim service, effective 12:01 a.m., October 22, 1980, because of its inability to provide such service without needed rehabilitation, due to existing track conditions.

The Federal Railroad Administration on October 15, 1980, certified the application of the CNW and the need for directed service between Purina and Des Moines, Iowa. Coincidental with this notice and certification, the Commission has issued Third Revised Service Order No 1482, effective 12:01 a.m., October 22, 1980, authorizing compensated directed service by the CNW between Purina and Des Moines, Iowa.)

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendix be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1473 Service Order No. 1473.

(a) Various railroads authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee). Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI), as listed in Appendix A to this order, in order to provide interim service over the RI.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service essential to these interim operations.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Public Law 96–254.

(1) The authority contained in Item 5(E) of Appendix A of this order, previously operated by the Union Pacific Railroad Company (UP) between Colby and Caruso, Kansas (milepost 387.8 to 429.3), is conditioned upon the assumption by Burlington Northern, Inc. (BN) of the negotiated agreement between UP and the Rock Island Trustee with regard to the compensation to be paid the Trustee for that line segment until a new agreement is reached between the Trustee and the BN.

(d) Interim operators authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations.

(e) Interim operations, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of these operations over the RI lines, interim operators shall be responsible for preserving the value of the lines, associated with each interim operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(g) Any operational or other difficulty, associated with the authorized operations shall be resolved through agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to the authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) *Rate applicable.* Inasmuch as this operation by interim operators over tracks previously operated by the RI is deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective. The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators involved shall proceed even through no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and betwen the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) In providing service under this order interim operators, to the maximum extent practicable, shall use the employees who normally would have performed work in connection with the traffic moving over the lines subject to this Order.

(m) *Effective date.* This order shall become effective at 12:01 a.m., October 23, 1980.

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., November 30, 1980, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304–10305 and Section 122, Public Law 96–254.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien. Joel E. Burns not participating.

Agatha L. Mergenovich,

Secretary.

Appendix A—RI Lines Authorized To Be Operated by Interim Operators

1. Louisiana and Arkansas Railway Company (L&A):

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of the Atchision, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. *Peoria and Pekin Union Railway Company (P&PU):* All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois.

3. *Union Pacific Railroad Company (UP):*

A. Beatrice, Nebraska

B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

C. Limon, Colorado

4. *Toledo, Peoria and Western Railroad Company (TP&W):*

A. Keokuk, Iowa

B. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. *Burlington Northern, Inc. (BN):*

A. Burlington, Iowa (milepost 0 to milepost 2.06)

B. Fairfield, Iowa (milepost 275.2 to milepost 274.7)

C. Henry, Illinois (milepost 126) to Peoria, Illinois (milepost 164.35) including the Keller Branch (milepost 1.55 to 8.62).

D. Phillipsburg, Kansas (milepost 282) to CBQ Junction, Kansas (milepost 325.9)

E. CBQ Junction, Kansas (milepost 325.9) to Seibert, Colorado (milepost 487).

6. *Fort Worth and Denver Railway Company (FW&D):*

A. Terminal trackage at Amarillo, Texas, including approximately (3) three miles northerly along the old Liberal Line, and at Bushland, Texas.

B. North Fort Worth, Texas (milepost 603.0 to milepost 611.4).

C. from Amarillo, Texas, to Liberal, Kansas (milepost 153.2) via Etter and Morse Junction, Texas, and between Morse Junction and Pringle, Texas; including the trackage rights of the former RI over The Atchison, Topeka and Santa Fe Railway Company between Amarillo and Etter, Texas.

7. *Chicago and North Western Transportation Company (C&NW):*

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota

*D. from Clear Lake Junction (milepost 191.1) to Purina, Iowa (milepost 147.0)

E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)

F. from Short Line Junction (milepost 73.6) to Carlisle, Iowa (milepost 64.7)

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9)

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)

J. from Iowa Falls (milepost 97.4) to Esterville, Iowa (milepost 206.9)

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and to serve all industry formerly served by the RI at Cedar Rapids

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle, Indianola, Iowa

T. Omaha, Nebraska, (between milepost 502 to milepost 504)

U. Earlham, (milepost 388.6) to Dexter, Iowa (milepost 393.5)

8. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee):*

A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland

B. Washington, Iowa

C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota.

9. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Davenport, Iowa

B. Moline, Illinois

C. Rock Island, Illinois, including 26th Street yard

D. from Rock Island through Milan, Illinois, to a point west of Milan sufficient to include service to the Rock Island Industrial complex

E. from East Moline to Silvis, Illinois

F. from Davenport to Iowa City, Iowa

G. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island arsenal

10. *Illinois Central Gulf Railroad Company (ICG):* Ruston, Louisiana.

11. *St. Louis Southwestern Railway Company (SSW):* operating the Tucumcari Line from Santa Rosa, NM, to St. Louis, MO (via Kansas City, KS/MO), a total distance of 965.2 miles. The line also includes the RI branch line from Bucklin to Dodge City, KS, a distance of 26.5 miles, and North Topeka, KS. Also between Brinkley and Briark, Arkansas, and at Stuttgart, Arkansas.

12. *Little Rock & Western Railway Company:* from Little Rock, Arkansas (milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

13. *Missouri Pacific Railroad Company:* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 141.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7

14. *Missouri-Kansas-Texas Railroad Company/Oklahoma, Kansas and Texas Railroad Company:*

A. Herington-Ft. Worth Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 439.5 miles to milepost 613.5 within the City of Ft. Worth, Texas, and use of Fort Worth and Denver trackage between Purina Junction and Tower 55 in Ft. Worth.

B. Ft. Worth-Dallas Line of Rock Island: beginning at milepost 611.9 within the City of Ft. Worth, Texas, and extending for a distance of 34 miles to milepost 646, within the City of Dallas, Texas.

C. El Reno-Oklahoma City Line of Rock Island: beginning at milepost 513.3 within the City of El Reno, Oklahoma, and extending for a distance of 16.9 miles to milepost 496.4 within the City of Oklahoma City, Oklahoma.

D. Salina Branch Line of Rock Island: beginning at milepost 171.4 within the City of Herington, Kansas, and extending for a distance of 27.4 miles to milepost 198.8 in the City of Abilene, Kansas, including RI trackage rights over the line of the Union Pacific Railroad Company to Salina, (including yard tracks) Kansas.

E. Right to use joint with other authorized carriers the Herington-Topeka Line of Rock Island: beginning at milepost 171.7 within the City of Herington, Kansas, and extending for a distance of 81.6 miles to milepost 89.9 within the City of Topeka, Kansas, as bridge rights only.

F. Rock Island rights of use on the Wichita Union Terminal Railway Company and the Wichita Terminal Association, all located in Wichita, Kansas.

G. Rock Island right to use interchange tracks to interchange with the Great Southwest Railroad Company located in Grand Prairie, Texas.

H. The Atchison Branch from Topeka, at milepost 90.5, to Atchison, Kansas, at milepost 519.4 via St. Joseph, Missouri, at milepost 0.0 and 498.3, including the use of interchange and yard facilities at Topeka, St. Joseph and Atchison, and the trackage rights used by the Rock Island to form a continuous service route, a distance of 111.6 miles.

I. The Ponca City Line at approximately milepost 26.1 at Billings, Oklahoma, to North Enid, Oklahoma, at milepost 339.5 on the Southern Division main line, a distance of 26.1 miles.

J. That part of the Mangum Branch Line from Chickasha, milepost 0.0 to Anadarko at milepost 18, thence south on the Anadarko Line at milepost 460.5 to milepost 485.3 at Richards Spur, a distance of 42.8 miles.

K. Oklahoma City-McAlester Line of Rock Island: Beginning at milepost 496.4 within the City of Oklahoma City, Oklahoma, and extending for a distance of 131.4 miles to milepost 365.0 within the City of McAlester, Oklahoma.

15. *The Denver and Rio Grande Western Railroad Company:*

A. From Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado, (milepost 602.8), all in the vicinity of Colorado Springs, Colorado.

16. *Norfolk and Western Railway Company:* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track; and running easterly from Pullman Junction approximately 1,000 feet into the lead to Clear-View Plastics, Inc., for the purpose of serving industries located adjacent to such tracks and connecting to the Chicago Regional Port District. Any trackage rights arrangements which existed between Chicago, Rock Island and Pacific Railroad

*Changed.

Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and routes regardless of which carrier performs switching services.

17. *St. Louis-San Francisco Railway Co.:*

A. At Okeene, Oklahoma.

B. At Lawton, Oklahoma.

18. *Southern Railway Company:*

A. At Memphis, Tennessee.

19. *Cadillac and Lake City Railroad:*

A. From Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 3.9) all in the vicinity of Denver, Colorado.

20. *Baltimore and Ohio Railroad Company:*

A. From Blue Island, Illinois (milepost 15.7) to Bureau, Illinois. (milepost 114.2), a distance of 98.5 miles.

21. *Louisiana Midland Railway Company:*

A. From Hodge, Louisiana (milepost 173.3) to Alexandria, Louisiana (milepost 247.8), which includes assumption of RI's trackage rights over the Louisiana and Arkansas Railway Company between Winnfield, Louisiana, and Alexandria, Louisiana, and the RI's track and yard in Alexandria, Louisiana.

22. *Ceder Rapids and Iowa City Railway Company (CIC):*

A. From the west intersection of Lafayette Street and South Capitol Street, Iowa City, Iowa, southward for approximately 2.2 miles, terminating at the intersection of the RI tracks and the southern line of Section 21, Township 79 North, Range 6 West, Johnson County, Iowa, including spurs of the main trackage to serve various industry; and to effect interchange with the Davenport, Rock Island and North Western Railway Company.

++23. *Keota Washington Transportation Company:*

A. From Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently.

[FR Doc. 80-33416 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

++Added.

Proposed Rules

Federal Register
Vol. 45, No. 209
Monday, October 27, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Section 22 Import Quotas; Certain Dairy Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Proposed rule.

SUMMARY: It is proposed to amend Import Regulation 1, which governs the administration of an import licensing system for certain dairy products subject to quota under the authority of Section 22 of the Agricultural Adjustment Act of 1933, as amended. The purpose of the proposed amendments is to: (1) assure that licensees holding a historical license for Italian-type cheese in original loaves (TSUS Appendix Item 950.10) from the European Community (EC) will receive their full basic annual allocation (BAA); (2) make the necessary changes in anticipation of a Presidential Proclamation, and (3) make several changes which are necessary for consistency and clarity of the regulation and ease of operation of the licensing program.

DATE: In order to assure consideration, written comments on this proposed rule must be received on or before November 26, 1980.

ADDRESS: Send or hand deliver written comments to: Carol M. Harvey, Head, Dairy and Import Group, Dairy, Livestock and Poultry Division, Commodity Programs, Foreign Agriculture Service, Room 6616, South Building, Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Carol M. Harvey, (202) 447-5270. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant".

Thomas Hughes, Administrator, Foreign Agricultural Service (FAS), has determined that an emergency situation exists which warrants less than a 60-day comment period on this proposed action because a timely adoption of the regulation is necessary in order to issue licenses for 1981 in accordance with these amendments.

This proposed rule is designed to make the following changes:

1. Effective as of the 1981 quota year, add 91 metric tons to the Argentine quota under Group IV(a) in Appendix 1, and remove 91 metric tons from Group IV(a) from that country under Appendix 2;

2. Add to Group V(c) in Appendix 2, 71 metric tons for "Other Countries" and stipulate that historical eligibility for this article from "Other Countries" be established only for importers not holding any Appendix 1 or Appendix 2 historical license for any article;

3. Redefine EC to include Greece;

4. Redefine the Licensing Authority as the Head of the Import Licensing Group;

5. Remove from paragraph (c)(2)(i) of § 6.26 the words "to the extent practicable, the difference between the applicant's Appendix 2 historical quota share for such article and", in order to make this paragraph more consistent with paragraph (c)(2)(ii) of § 6.26;

6. Insert a new paragraph (c)(4) to § 6.26 which will permit the Licensing Authority to grant a supplementary license at less than the minimum prescribed by the regulation if such smaller quantity is requested by the importer;

7. Revise § 6.26(d)(1) to provide a penalty where a historical license is not used in a given year or where a licensee uses less than 85 percent of the total of his or her original license amount and any reallocated quota granted to the licensee for the same article;

8. Insert in § 6.26(e)(2)(ii) reference to supplementary licenses in order to make all licensees eligible for reallocated quota shares for as given article from a given country if quota amounts for such article remain after reallocation according to § 6.26(e)(2)(ii) among the licensees already holding license for such article from such country; and

9. Change § 6.26(b)(3) to make the Director, Dairy, Livestock and Poultry Division, FAS the first level of appeal and the Administrator, FAS the final level of appeal.

The change in item 1 above rectifies an error in the distribution of the Argentine quotas for Italian-type cheese in original loaves (TSUS Appendix Item 950.10) (hereafter "Italian-type cheese") between Appendices 1 and 2 which was made at the time the current regulation (revision 7) was promulgated. Under the present distribution of Argentine quota for Italian-type cheese between Appendices 1 and 2, there is a risk that some historical licensees holding a license for this article from the EC under Appendix I would not be able to receive their full BAA in a given year. The change will ensure that those historical licensees for Italian-type cheese who have only an EC based historical license will receive an EC license of sufficient size to fill their BAA and that those holding mixed base EC historical licenses (Argentine and EC base) will receive a combination of EC and Argentine license of sufficient size to fill their BAA.

This will be accomplished by the Department first filling the BAA of those historical licensees who have entirely EC based licenses from the EC quota, then using the rest of the EC quota to fill on a pro rata basis the major portion of the BAA's of the mixed base (EC and Argentine) historical licenses and filling the remainder of the BAA of these mixed base licenses with Argentine quota. The Argentine based historical licenses for Italian-type cheese will also receive their full BAA.

The change in item 2 above is being made in anticipation of a Presidential Proclamation which will increase the amount of quota for Other Cheese-NSPF (TSUS Appendix Item 950.10D) for "Other Countries" from 130 to 201 metric tons. The increased amount of 71 tons will be administered under Appendix 2, with the stipulation that no holder of any historical licenses under Appendix 1 or 2 be eligible for a historical license from this new amount. This is being done in order to permit importers whose business was solely with "Other Countries" and who have had no imports during 1980 to obtain a license

for a reasonable amount from the small extra quota being made available. The addition of 71 metric tons to the overall quota established in the Presidential Proclamation 4708 (44 FR 72069) dated December 11, 1979 will not exceed the 111,000 metric ton limit on cheese imports imposed by Section 701 of the Trade Agreements Act of 1979. This change will not be incorporated in the final rule if the Presidential Proclamation is not issued.

The change in item 3 above is being made because Greece will join the EC on January 1, 1981.

The change in item 4 above will make the Head of the Import Licensing Group, Dairy, Livestock and Poultry Division, FAS, rather than the Director Dairy, Livestock and Poultry Division, FAS, the Licensing Authority. See also the explanation below of the change in item 9.

The change in item 5 above reconciles the parameters for the amount of a supplementary license for licensees who have Appendix 2 historical licenses set forth in paragraph (c)(2)(i) of § 6.26 with the procedure for allocating supplementary licenses in paragraph (c)(2)(ii) of § 6.26. As these paragraphs now read, an applicant may receive a minimum share for a supplementary license provided under paragraph (c)(2)(ii) which may be greater than the maximum share allowed under paragraph (c)(2)(i). This disparity will be corrected by providing that the maximum share shall be the larger of (1) an amount equal to the applicant's historical share or (2) the amount in the supplementary quota share allocated to applicants who have no Appendix 2 historical quota share.

The change in item 6 above is to correct an oversight by making the treatment of nonhistorical and supplementary licenses consistent with regard to the Department granting no more license than a licensee requests.

The change in item 7 above is being made to provide for penalties to a licensee in certain cases.

The change in item 8 above would implement the intent of the regulation regarding reallocation of returned quota shares, i.e., to allow all licensees to be eligible to obtain a share of the returned quantities once the requests of those licensees holding a license for a given article have been met.

The change in item 9 above is in line with the change in item 4. It creates a more logical appeal process in the case of license cancellation by first requiring an appeal to the Director of the Dairy, Livestock and Poultry Division, FAS, and then permitting a further appeal to the Administrator of FAS.

Proposed Rule

In consideration of the foregoing, it is proposed to amend 7 CFR Part 6, Subpart—Section 22 Import Quotas as follows:

Appendix 1 [Amended]

Group IV(a) is amended by changing the line for Argentina to read:

Argentina	3,191,000	7,084,878

Appendix 2 [Amended]

Group IV(a) is amended by changing the line for Argentina to read:

Argentina	659,000	1,452,832

Group V(c) is amended by adding the line:

Other Countries	71,000	156,526

§ 6.21 [Amended]

1. Paragraph (m) is amended by replacing the word "nine" with "ten" and adding the word "Greece," between the words "France," and "Ireland".

2. Paragraph (s) is ameneded to read as follows:

"Licensing Authority" means the Head, Import Licensing Group, Dairy, Livestock and Poultry Division, Foreign Agricultural Service U.S. Department of Agriculture, or in his or her absence the Assistant Import Control Manager, or any other officer or employee of the Department designated in writing as the Acting Head.

§ 6.25 [Amended]

Paragraph (a)(2) is amended by adding after the first sentence, the following sentence:

Further, eligibility for articles in Group V(c) from "Other Countries" in Appendix 2 may be established only by importers who hold no other historical license for any article under Appendix 1 or Appendix 2 as of *(the effective date of this regulation).*

§ 6.26 [Amended]

1. Paragraph (c)(2)(i) is amended by deleting the words "to the extent practicable, the difference between the applicant's Appendix 2 historical quota share for such article and".

2. § 6.26(c) is amended by adding a new paragraph (4) to read as follows:

(4) Supplementary quota shares for an article may not be smaller than the applicable minimum quantity set forth above unless requested in writing by the applicant, but in no case shall the quota share be greater than the quantity requested by the applicant.

3. Paragraph (d)(1) is amended as follows:

a. add after the second sentence the following new sentence: If a historical license is not used by its holder in a given year, then the amount allocated to the holder for the following quota year shall be one-quarter of the basic annual allocation of that license.

b. add the following sentences at the end thereof: This paragraph applies to a licensee who receives any extra quota shares from other reduced licenses or reallocated portions. If less than 85 percent of the combined total of the license amount and the reallocated amount is used, then the licensee will be ineligible for reallocated portions and in some cases for extra quota shares from other reduced licenses the following quota year whether or not the quota share in the following year is below the basic annual allocation for that license.

4. Paragraph (e)(2)(ii) is amended by deleting in the first sentence the words "historical or nonhistorical" and adding in lieu thereof the words "historical, nonhistorical or supplementary".

§ 6.29 [Amended]

Paragraph (b)(3) is amended as follows:

a. delete the word "Administrator," and substitute the words "Director, Dairy, Livestock and Poultry Division," wherever it occurs.

b. add after the last sentence, the following sentence: A further appeal may be made to the Administrator, FAS, within five working days of the notification of the decision.

(Sec. 3, Pub. L. 80–897, 62 Stat. 1248, as amended (7 U.S.C. 624); secs. 701, 703, Pub. L. 96–39, 93 Stat. 268, 272 (19 U.S.C. 1202 note). Part 3 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202))

Signed, this 21st of October 1980.

Thomas R. Hughes,

Administrator, Foreign Agricultural Service.

[FR Doc. 80-33347 Filed 10-24-80; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 32, 70, and 150

Exemption of Technetium-99 and Low-Enriched Uranium as Residual Contamination in Smelted Alloys

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its

regulations to exempt from licensing and regulatory requirements technetium-99 and low-enriched uranium as residual contamination in any smelted alloy. The Commission is also proposing requirements for issuing specific licenses to persons desiring to smelt scrap or to initially transfer smelted alloys containing technetium-99 or low-enriched uranium as a residual contamination. The Commission is proposing these rule changes in response to a Department of Energy request to amend the Commission's present specific licensing requirements that have the effect of inhibiting trade in metal scrap contaminated with small amounts of these two radioactive materials.

DATES: Comment period expires December 11, 1980. Comments received after December 11, 1980 will be considered if it is practical to do do, but assurance of consideration cannot be given except as to comments filed on or before.

ADDRESSES: All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendments and draft environmental impact statement should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 29555, Attention: Docketing and Service Branch. Copies of correspondence cited below and comments on the proposed amendments and draft environmental impact statement may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Henry, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (301–443–5946).

SUPPLEMENTARY INFORMATION: Under current NRC regulations, no person may possess, use, or transfer technetium-99 or low-enriched uranium (defined in 10 CFR 70.51(a)(2) as that uranium whose isotope content is less than 20 percent uranium-235 by weight) as contaminants in metals except as authorized in a specific license issued by the NRC pursuant to 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material," or 10 CFR Part 70, "Domestic Licensing of Special Nuclear Materials," as appropriate. The effect of the requirements for specific licenses has been to inhibit trade in metal scrap contaminated with small amounts of these two radioactive materials and prevent recycling by the secondary metals industry of smelted alloys containing these two radioactive materials as residual contamination.

Rulemaking Initiation

The Department of Energy has underway Cascade Improvement Programs and Cascade Upgrading Programs begun by the AEC at all three U.S. uranium enrichment plants—Oak Ridge, TN, Portsmouth, OH, and Paducah, KY. In the early 1970s, a market survey showed that no scrap dealers or processors would purchase any of the metal scrap generated by the programs if their customers would be required to hold specific licenses to possess or use recycled contaminated scrap.

Without relief from requirements for licenses, sizeable quantities of enrichment plant scrap—31,800 metric tons of iron and steel, 8,400 metric tons of nickel, and 1,600 metric tons of copper—would have to be treated as radioactive waste and buried by 1981 instead of being sold for tens of millions of dollars.

Based on these and other factors, the Director, Division of Waste Management and Transportation, AEC, by memorandum dated February 12, 1974, requested the assistance of the Director, Directorate of Regulatory Standards, AEC, in establishing a de minimis quantity for enriched uranium in scrap metal. The memorandum of response dated March 28, 1974, noted impending legislation to amend the Atomic Energy Act of 1954 to authorize AEC to exempt special nuclear material and suggested coordination so that language of any proposed exemption would be consistent with the legislation.

In the spring of 1974, L. Rogers, Director of Regulatory Standards, Atomic Energy Commission, presented a statement before the Joint Committee on Atomic Energy, U.S. Congress supporting an amendment of section 57 of the Atomic Energy Act of 1954 to give authority to exempt small quantities of special nuclear material to the former Atomic Energy Commission, the predecessor of the Nuclear Regulatory Commission. In his testimony, Mr. Rogers stated:

> . . . Equipment and materials in the nuclear industry are sometimes contaminated with levels of special nuclear material which cannot practically be removed but which are low enough that they do not constitute a radiation safety problem. An exemption from licensing of such special nuclear material would allow the reuse of recycling of the contaminated equipment and materials in an economic manner which would also conserve resources, rather than requiring the otherwise unnecessary controlled disposal of such contaminated equipment and materials as radioactive wastes.

After further consideration and data collection, the Energy Research and Development Administration (a successor of AEC) by letter dated September 8, 1976, transmitted to NRC an environmental impact assessment in which ERDA proposed: (1) An exemption of smelted metal contaminated with uranium enriched up to 20% uranium-235 providing the total uranium content in the metal does not exceed 17.5 parts per million; and (2) The addition of technetium-99 at a concentration of 8.6×10^{-2} microcuries/gram (equivalent to 5 parts per million) to Column II, Schedule A, 10 CFR 30.70, "Exempt Concentrations."

By letter dated July 9, 1979, the Department of Energy indicated the department's continued need or regulations to allow the sale of metal scrap contaminated with de minimis quantities of enriched uranium and technetium-99.

Proposed Action

The Commission is proposing to exempt from licensing and regulatory requirements any person who receives, possesses, uses, or transfers technetium-99 or low-enriched uranium as a residual contamination in any smelted alloys. The technetium-99 and low-enriched uranium would be minor constitutents less than 5 parts per million and 17.5 parts per million, respectively, of representative samples of smelted alloy products.

The proposed exemptions would not authorize the transfer of smelted alloy containing byproduct material other than technetium-99 as residual contamination, source material, other than low-enriched uranium as residendual contamination. In that event, the smelted alloy would also have to be exempt from the other applicable licensing and regulatory requirements of 10 CFR Parts 30–35, 40, and 70 to be transferred for use under the proposed exemptions.

Persons who smelt scrap contaminated with technetium-99 or low-enriched uranium or persons who initially transfer for sale or distribution smelted alloys containing technetium-99 or low-enriched uranium as residual contamination in the smelted alloys would not be exempt from requirements for specific licenses authorizing transfer to exempt persons. This means, among other things, that the slag produced by licensed smelters would be subject to specific licensing controls with regard to transfer of byproduct material (10 CFR 30.41) and special nuclear material (10 CFR 70.42). It is expected that slag from scrap generated at Department of Energy facilities would be returned to

the Department of Energy for ultimate disposal. Slag from scrap generated at NRC licensed facilities would be disposed of in a safe manner, for example by transfer to commercial firms to the extent specific services and volumes are available for disposal of such low-level radioactive waste.

Basis for Technetium-99 Limit

The major source of technetium compounds and mixtures stems from the fission of uranium-235. Among the most important of the technetium isotopes is technetium-99, which exhibits a high fission yield from uranium-235 of 6.2 percent and a long half-life of 210,000 years. The nature of technetium is such that in the presence of hydrogen fluoride it forms volatile compounds and thereby becomes a trace contaminant of uranium hexafluoride.

Feed material specifications, published by the U.S. Department of Energy for uranium hexafluoride delivered to uranium enrichment plants, control the content of technetium-99 in the feed material by a specification on maximum beta particle radiation which allows a maximum beta activity of only 10 percent of the beta activity of aged natural uranium.

During the enrichment process, technetium deposits on all materials that come in contact with uranium hexafluoride. In the case of scrap metal generated in the Cascade Improvement Program and Cascade Upgrading Program, the combination of feed material specification, deposition rates, and mechnical and chemical decontamination results in scrap metal contaminated with a maximum of 5 parts per million technetium-99.

There is essentially no removal of technetium from metal during smelting processes. Therefore, the Commission is proposing for technetium-99 a concentration limit of 5 parts per million which is achievable by mechanical and chemical decontamination techniques prior to smelting scrap metal.

Basis for Uranium Limit

Because the proposed amendments of Part 70 involve special nuclear material, the Commission is proposing to base the uranium element concentration limit on the concentration of the uranium-235 isotope in the smelted alloys. By specifying that the uranium be low-enriched uranium (uranium whose isotope content is less than 20 percent uranium-235 by weight) at a maximum concentration of 17.5 parts per million uranium element in smelted alloys, the Commission is proposing to place a maximum concentration limit of 3.5 parts per million for uranium-235 in smelted alloys. This is consistent with the uranium-235 concentration in any alloy that is exempt under paragraph (a) of 10 CFR 40.13, "Unimportant Quantities of Source Material." The alloy is exempt if it contains less than 0.05 percent by weight source material which includes uranium whose isotope content is 0.711 percent or less of uranium-235 by weight.

The Commission is proposing that the low-enriched uranium be residual contamination in smelted alloys. Based on this and the other factors set out above, the Commission considers the low-enriched uranium would be diluted in such a way that it would no longer be usable for any nuclear activity relevant from the point of view of safeguards and would be practicably irrecoverable.

Specific Licensing Conditions

The requirements for specific licenses to smelt scrap or to initially transfer smelted alloys containing technetium-99 or low-enriched uranium specify that the applicant must submit a description of decontamination and smelting procedures, sampling procedures, and analytical procedures.

The proposed amendments, in effect, will make the persons initially transferring smelted alloys responsible for assuring that such alloys meet the specifications set out in proposed 10 CFR 30.21 and/or 10 CFR 70.15. The specifically licensed person who smelts scrap or initially transfers smelted alloys must be able to certify to any interested person that the smelted alloy initially transferred has been smelted, sampled, and analyzed using procedures sufficient to provide reasonable assurance that the technetium-99 or low-enriched uranium is residual contamination in the smelted alloy in which the technetium-99 or low-enriched uranium are minor constituents less than 5 parts per million or 17.5 parts per million, respectively, of representative samples of billets, ingots, or other smelted alloy products. (The Department of Energy, and certain of its contractors, are exempt from licensing and could therefore make transfers to exempt persons without specific NRC authorization. The Commission relies upon the Department to establish internal control procedures that will assure that the contamination levels of smelted scrap which it transfers are within the limits set forth in these rules.)

The requirement for a specific license to smelt scrap is not intended to require a specific license to recycle any material from smelted alloys. Susbequent possession, use, transfer, and disposal of the technetium-99 and low-enriched uranium in resmelted alloys, the resulting slag, and new products by all other persons would be exempted from licensing and regulatory requirements of the Commission under 10 CFR Parts 30 and 70.

Benefits and Costs

The benefits of the proposed action come from the value added, costs saved, and energy saved by recycling contaminated metal scrap into salable smelted alloys.

If the total net benefits are expresed in dollars for building a smelter at Oak Ridge, TN, they would be (for enrichment plant scrap) $34.2 million from 8,400 metric tons of nickel, $2.3 million from 1,600 metric tons of copper, and $5.1 million from 31,800 metric tons of steel. Other alternatives (commercial smelter, Fernald, OH, smelter) yield similar total net dollar benefits.

The costs of the proposed action are primarily the radiological impacts from the smelting of scrap and the subsequent possession, use, and disposal of smelted alloys by exempt persons. The nonradiological impacts are similar for both contaminated and noncontaminated metal scrap.

If the radiological impacts are expressed in individual doses, collective doses, and health effects, they would be (for enrichment plant scrap):

Maximum Individual Total-Body Dose Rate (working 1000 hr/yr inside "vault").	0.01 rem/yr.
Maximum Individual Total-Body Dose Commitment (daily ingestion of iron tonic over 1 year).	0.002 rem.
Maximum Individual Local Skin Dose (dose to wrist from bracelet worn 50 years).	15 rems.
Maximum Individual Contact Bone Dose (dose from pin implanted 50 years).	20 rems.
Occupational (total scrap smelting)	0.01 person-rem.
General Population (total scrap)	80 person-rems.
Health Effects from Population Dose (incremental number of cancers in exposed population).	<1.

Proposed Findings

The Commission is considering a finding that exemption from licensing requirements for the receipt, possession, use, or transfer of technetium-99 as residual contamination in any smelted alloy under the conditions set forth below will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

The Commission is also considering a finding that exemption from licensing requirements for the receipt, possession, use, or transfer of low-enriched uranium as residual contamination in any smelted alloy under the conditions set forth below would not be inimical to the common defense and security and

would not constitute an unreasonable risk to the health and safety of the public.

The provisions of § 150.15(a)(6) of 10 CFR Part 150, "Exemptions and Continued Regulatory Authority in Agreement States Under Section 274," would be amended to cover any equipment, device, commodity, or other product containing special nuclear material. Accordingly, the transfer of possession or control by persons in Agreement States who produce smelted alloys for use by exempt persons would be subject to the Commission's licensing and regulatory requirements, even though the scrap is smelted under an Agreement State license. Such producers wishing to transfer possession or control of smelted alloys for use by exempt persons would be required to obtain a specific license issued by the Commission.

Availability of Draft Environmental Statement

Pursuant to the National Environmental Policy Act of 1969, and the Commission's regulations in 10 CFR Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," the Commission's Office of Standards Development has prepared a draft environmental impact statement using the enrichment plant scrap as an example source for smelted alloys. (The decommissioning of uranium enrichment plants, nuclear power reactors, uranium hexafluoride plants, and fuel facilities would, under present regulations, all be major Federal actions requiring the preparation of environmental impact statements to evaluate, among other things, the environmental, economic, and radiological health impacts of smelting scrap and transferring smelted alloy.) The statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. Single copies of the statement (NUREG–0518) may be obtained by request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Office of Standards Development.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Parts 30, 32, 70, and 150 is contemplated.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. In 10 CFR Part 30, a new § 30.21 is added to read as follows:

§ 30.21 Smelted alloys containing technetium-99 as residual contamination.

(a) Except as provided in paragraph (c) of this section, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in Parts 30–35 of this chapter to the extent that such person receives, possesses, uses, or transfers technetium–99 as residual contamination (1) in any smelted alloy in which the technetium–99 is a minor constituent less than 5 parts per million of a representative sample of the smelted alloy, or (2) in any material into which such smelted alloy or its constituents may have been converted.

(b) The exemption in paragraph (a) of this section does not authorize the transfer of smelted alloy containing:

(1) Byproduct material other than technetium–99 as residual contamination except in accordance with the requirements of this part and Parts 31–35 of this chapter; or

(2) Source material or special nuclear material except in accordance with the requirements of Parts 40 and 70 of this chapter.

(c) Any person who desires to smelt scrap contaminated with technetium-99 or who desires to initially transfer for sale or distribution smelted alloys containing technetium-99 as residual contamination in the smelted alloy to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State, should apply for a specific license issued pursuant to § 32.30 of this chapter, which license states that the technetium-99 as residual contamination in the smelted alloy may be transferred by the licensee to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

2. In 10 CFR Part 32, the authority statement immediately preceding § 32.1 is revised to read as follows

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, 42 U.S.C. 2111, 2201, 2232, 2233. For the purposes of sec. 223, 68 Stat. 958, as amended; 42 U.S.C. 2273, 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.30(b), 32.52, 32.56, 32.60, 32.63 issued under sec. 161, 68 Stat. 950, as amended; 42 U.S.C. 2201(o), unless otherwise noted.

3. In 10 CFR Part 32, a new § 32.30 is added to read as follows:

§ 32.30 Smelted alloys containing technetium-99 as residual contamination: requirements for license to smelt scrap or to initially transfer.

(a) An application for a specific license to smelt scrap contaminated with technetium-99 or to initially transfer for sale or distribution smelted alloys containing technetium-99 as residual contamination for use pursuant to § 30.21 of this chapter or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements of § 30.33 of this chapter: *Provided, however,* That the requirements of § 30.33(a)(2) and (3) of this chapter do not apply to an application for a license to transfer technetium-99 in any alloy smelted pursuant to a license issued by an Agreement State; and

(2) The applicant submits a description of:

(i) Procedures for prior decontamination of the scrap and smelting of the scrap sufficient to provide reasonable assurance that the technetium-99 will be residual contamination in the resulting billets, ingots, or other smelted alloy products in which the technetium-99 is a minor constituent less than 5 parts per million of representative samples of the billets, ingots, or other smelted alloy products;

(ii) Sampling procedures sufficient to demonstrate that the material taken for analysis is a representative sample of the billet, ingot, or other smelted alloy product being analyzed; and

(iii) Analytical procedures to estimate technetium-99 concentrations with sufficient precision and accuracy to provide reasonable assurance that the technetium-99 is less than 5 parts per million of representative samples of the billets, ingots, or other smelted alloy products being analyzed.

(b) Each person licensed under paragraph (a) of this section shall file an annual report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter, which shall identify the type and quantity of smelted alloy produced during the reporting period and the concentrations of technetium-99 in the smelted alloy billets, ingots, or other products at the time of transfer of the technetium-99 by the licensee. If no transfers of technetium-99 have been made pursuant to paragraph (a) of this section during the reporting period, the

report shall so indicate. The report shall cover the year ending June 30, and shall be filed within 30 days thereafter.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

4. In 10 CFR Part 70, the authority statement immediately preceding the undesignated center heading GENERAL PROVISIONS is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, as amended, 948, as amended, 953, as amended, 954 (42 U.S.C. 2071, 2073, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846) unless otherwise noted. For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), 70.32(a)(6) and 70.41(a) issued under sec. 161b., 68 Stat. 948; 42 U.S.C. 2201(b) and 70.38(b) and 70.51 to 70.55 issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)), unless otherwise noted

5. In 10 CFR Part 70, new §§ 70.15 and 70.38 are added to read as follows:

§ 70.15 Low-enriched uranium as residual contamination in smelted alloys.

(a) Except as provided in paragraph (c) of this section, any person is exempt from the requirements for a license set forth in section 53 of the Act and from the regulations in this part to the extent that such person receives, possesses, uses, or transfers low-enriched uranium as residual contamination (1) in any smelted alloy in which the uranium element is a minor constituent less than 17.5 parts per million of a representative sample of the smelted alloy, or (2) in any material into which such smelted alloy or its constituents may have been converted.

(b) The exemption in paragraph (a) of this section does not authorize the transfer of smelted alloy containing:

(1) Byproduct material or source material except in accordance with the requirements of Parts 30 or 40 of this chapter; or

(2) Special nuclear material other than low-enriched uranium as residual contamination except in accordance with the requirements of this part.

(c) Any person who desires to smelt scrap contaminated with low-enriched uranium or who desires to initially transfer for sale or distribution smelted alloys containing low-enriched uranium as residual contamination in the smelted alloy to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State, should apply for a specific license issued pursuant to § 70.38, which license states that the low-enriched uranium as residual contamination in the smelted alloy may be transferred by the licensee to persons exempt under paragraph (a) of this section or equivalent regulations of an Agreement State.

§ 70.38 Specific licenses to smelt scrap or to initially transfer smelted alloys containing low-enriched uranium as residual contamination.

(a) An application for a specific license to smelt scrap contaminated with low-enriched uranium or to initially transfer for sale or distribution smelted alloys containing low-enriched uranium as residual contamination for use pursuant to § 70.15 or equivalent regulations of an Agreement State, will be approved if:

(1) The applicant satisfies the general requirements of § 70.23: Provided, however, That the requirements of § 70.23(a)(3) and (4) do not apply to an application for a license to transfer low-enriched uranium in any alloy smelted pursuant to a license issued by an Agreement State.

(2) The applicant submits a description of:

(i) The history of the scrap, or the isotopic analyses performed, sufficient to provide reasonable assurance that the uranium element in or on the scrap is low-enriched uranium;

(ii) Procedures for prior decontamination of the scrap and smelting of the scrap sufficient to provide reasonable assurance that the low-enriched uranium will be residual contamination in the resulting billets, ingots, or other smelted alloy products in which the low-enriched uranium is a minor constituent less than 17.5 parts per million of representative samples of the billets, ingots, or other smelted alloy products;

(iii) Sampling procedures sufficient to demonstrate that the material taken for analysis is a representative sample of the billet, ingot, or other smelted alloy product being analyzed; and

(iv) Analytical procedures to estimate uranium concentrations with sufficient precision and accuracy to provide reasonable assurance that the uranium element is less than 17.5 parts per million of representative samples of the billets, ingots, or other smelted alloy products being analyzed.

(b) Each person licensed under paragraph (a) of this section shall file an annual report with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of Part 20 of this chapter, which shall identify the type and quantity of smelted alloy produced during the reporting period and the concentrations of low-enriched uranium in the smelted alloy billets, ingots, or other products at the time of transfer of the low-enriched uranium by the licensee. If no transfers of low-enriched uranium have been made pursuant to paragraph (a) of this section during the reporting period, the report shall so indicate. The report shall cover the year ending June 30, and shall be filed within 30 days thereafter.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 274

6. In 10 CFR Part 150, § 150.15(a)(6) is revised to read as follows:

§ 150.15 Persons not exempt.

(a) Persons in Agreement States are not exempt from the Commission's licensing and regulatory requirements with respect to the following activities:

* * * * *

(6) The transfer of possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing special nuclear material, source material, or byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from licensing and regulatory requirements of the Commission under Parts 30, 40, and 70 of this chapter.

* * * * *

(Secs. 53, 57d., 81, 161b., 274, Pub. L. 88–489, 78 Stat. 602 (42 U.S.C. 2073), Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077), Pub. L. 83–703, 68 Stat. 935, 948 (42 U.S.C. 2111, 2201(b)), Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); Sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). For the purposes of sec. 223, 68 Stat. 958, as amended, 42 U.S.C. 2273, 32.30(b) and 70.38(b) issued under sec. 161o., 68 Stat. 950, as amended (42 U.S.C. 2201(o))

Dated at Washington, D.C., this 20th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 33268 Filed 10-24-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 80-ASW-43]

Designation of Compulsory Reporting Point; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate TRIAD Intersection as a

compulsory reporting point. TRIAD is located on V–477, 28 miles south of Scurry, Tex., VORTAC. Designation of TRIAD as a compulsory reporting point would provide for a more efficient flow of traffic between Scurry and Houston and enhance air safety.

DATES: Comments must be received on or before November 26, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Southwest Region, Attention: Chief, Air Traffic Division, Docket No. 80–ASW–43, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–204), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Lewis 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:

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, Southwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Tex. 76101. All communications received on or before November 26, 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 § 71.203 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would designate TRIAD, Tex., Intersection as a compulsory reporting point. TRIAD Intersection, located 28 miles south of Scurry, Tex., on V–477 is currently depicted on charts as a noncompulsory reporting point. This action would enhance air traffic safety by requiring aircraft to report TRIAD. Section 71.203 of Part 71 was republished in the **Federal Register** on January 2, 1980, (45 FR 645).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.203 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 645) as follows: Under § 71.203 "TRIAD, Tex." is added.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

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

Issued in Washington, D.C., on October 20, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80–33196 Filed 10–24–80; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 80–EA–34]

Canadair CL–44D4 and CL–44J; Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to adopt an airworthiness directive applicable to Canadair CL–44D4 and CL–44J type airplanes. The proposal would require an alteration of a fuel swivel fitting with increased fire resistance, and to reposition all wiring aft to the nacelle firewall. The alterations will improve the fire resistance of both altered items.

DATES: Comments must be received on or before December 22, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Chief, Engineering and Manufacturing Branch, AEA–210, Eastern Region, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430. The docket may be examined at the following location: FAA, Office of Regional Counsel, AEA–7, Federal Building, J.F.K. International Airport, Jamaica, New York.

FOR FURTHER INFORMATION CONTACT:
A. T. Farrar, Propulsion Section, AEA–214, Flight Standards Division, Engineering and Manufacturing Branch, Federal Aviation Administration, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212–955–2894.

SUPPLEMENTARY INFORMATION:
Interested person may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Federal Building J.F.K. International Airport, Jamaica, New York 11430. All communications received on or before December 22, 1980, will be considered before action is taken on the proposed amendment. The proposals 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. A report summarizing each FAA public contact concerned with the substances of the proposed Ad will be filed in the docket. Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Chief, Engineering and Manufacturing Branch AEA–210, Eastern Region, Federal Aviation Administration, Federal Building, Jamaica, New York 11430, or by calling (212) 995–2842.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.13 of Part 13 of the Federal Aviation Regulations (14 CFR Part 39) as follows:

Canadair: Applies to CL-44D4 and CL-44J aircraft.

Compliance required within the next 1700 hours after the effective date of this Ad unless previously accomplished.

To provide a fuel swivel fitting with improved fire resistance and to ensure controlled separation between the electrical harness and the firewall, accomplish the following:

a. Modify the (engine) powerplant installation in accordance with the instructions shown in the section entitled, "Modification Data", of Canadair Service Bulletin No. CL44-488 dated April 26, 1979, or an equivalent procedure.

b. Equivalent procedures must be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration (FAA) Eastern Region.

c. As permitted by FAR Parts 21.197 and 21.199, aircraft may be flown to a base where maintenance required by this Airworthiness Directive can be accomplished.

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

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Jamaica, New York, on October 15, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33348 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR PART 39

[Docket No. 80-CE-36-AD]

Cessna 150, A150, 152 and A152 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rule making.

SUMMARY: The FAA is considering rule making action with respect to certain models of Cessna 150, A150, 152, and A152 series airplanes. The contemplated action would prevent accumulation and freezing of water at the fuel system's lowest point forward of the fuel selector valve. Accumulation and/or freezing of water at this location may restrict or prevent fuel flow to the engine and result in engine power loss or stoppage. Since the FAA recognizes that several possible alternative courses of action may achieve this objective, the agency is seeking comments and information from interested persons to aid the FAA in selecting the most appropriate action to correct this problem.

DATES: Comments must be received on or before December 27, 1980.

ADDRESSES: Send comments on the proposal to: FAA, Central Region, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 80-CE-36AD, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Leon Edwards, Aerospace Engineer, Aircraft Certification Program, Room 238, Terminal Building No. 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 942-7927.

SUPPLEMENTARY INFORMATION:

Invitation for Comments

This advance notice of proposed rule making is being issued in accordance with the FAA's policy for the early institution of public rule making proceedings. An "advance" notice is issued when it is found that the resources of the FAA and reasonable inquiry outside of the agency do not yield a sufficient basis to identify and select a tentative or alternate courses of action, or where it would be helpful to invite public participation in the identification and selection of a course or alternative courses of action with respect to a particular rule making problem. The subject matter of this notice involves a situation contemplated by that policy.

Interested persons are invited to participate in the formulation of the FAA action by submitting such written data, information, or comments as they may desire. Communications should identify the docket number and be submitted to the address of the Regional Counsel specified above. All commuications received on or before the date specified above will be considered by the Administrator before taking additional action. All communications will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. If it is determined to be in the public interest to proceed with regulatory action, after consideration of the available data and comments, a Notice of Proposed Rule Making will be issued.

Scope of Problem

The problem defined herein and any inquiry is confined to those airplanes having a fuel system configuration introduced on Cessna Model 150F (S/N 15061533) and subsequent manufactured Cessna 150, A150, 152 and A152 series airplanes. There have been several accidents/incidents involving loss of engine power or stoppage on certain of the above airplanes during cold weather operation. Investigation of these occurrences by the FAA discloses that in some cases water and/or ice was present at the tee fitting located at the lowest point in the fuel system forward of the fuel selector valve. A removable cap is installed on the leg of the tee which extends through the belly of the airplane fuselage for drainage purposes. It is accessible for removal at this location, but simple hand tools are required for this removal. The applicable manufacturer's Pilot's Operating Handbook and Aircraft Service Manual require that this fitting be drained whenever water is found during drainage of the fuel strainer and at each 100 hour/annual inspection or at 1-hour intervals on progressive inspections. Based on FAA's investigations, the agency has found that the presence of water or ice at this location may have contributed to the incidents specified above. Further, the FAA concludes that more frequent or possibly daily drainage of the fuel system at the tee fitting is necessary during cold weather operation to preclude accumulation and freezing of water and resultant engine power loss or stoppage. Notwithstanding the FAA's findings and conclusions, the manufacturer, based on its investigations, disagrees with the FAA and has refused the FAA's request to provide corrective action to resolve this problem. As a result of the manufacturer's refusal to provide a modification to facilitate easy drainage of the fuel system at this location, the FAA has no alternatives except to impose a drainage requirement which is burdensome or develop other action which will accomplish the desired objectives.

Topics of Inquiry

The FAA believes that action is necessary to eliminate the accumulation of water/ice at the tee fitting location. Notwithstanding the manufacturer's position, the FAA is considering the necessity for additional rule making or other action which would preclude the accumulation of water at this location. In this regard the agency is especially interested in comments and viewpoints on the questions set forth in Attachment A hereto which is incorporated herein by reference.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.85 of the Federal Aviation Regulations (14 CFR Sec. 11.85)).

Note.— The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 10, 1980.

John E. Shaw,

Acting Director, Central Region.

Attachment A

(1) Has water/ice been found at the tee fitting location when draining the fuel system?

(2) Does the airplane incorporate quick drains at the fuel tank sumps? If incorporated, are these drained daily, at each preflight or after refueling?

(3) Have you experienced engine power loss or stoppage attributed to water at the tee fitting location?

(4) What operational or maintenance procedures are followed in drainage of the fuel system at the tee location?

(a) How often?

(b) At what ambient air temperatures?

(5) Has the airplane been modified to incorporate quick drainage provisions at this location?

(6) Have you experienced or do you anticipate damage to the fuel system resulting from the daily removal of the tee fitting cap?

(7) If a quick drain is not installed, would the existing drainage provisions discourage daily drainage of the fuel system at this location?

(8) Irrespective of FAA action in this matter, would you install quick drainage provisions at the tee location if available?

(9) Do you have suggestions other than those addressed above for precluding accumulation of water at the tee fitting location in the fuel system?

[FR Doc. 80-33357 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-ASW-47]

Proposed Alteration of Transition Area: Clinton, Okla. (Clinton-Sherman Airport)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Clinton, Oklahoma (Clinton-Sherman). The intended effect of the proposed action is to reduce the controlled airspace designated for aircraft executing instrument approach procedures to the Clinton-Sherman Airport. The circumstance which created the need for this action is that a review of controlled airspace revealed that airspace designated is in excess of that needed for the protection of aircraft.

DATES: Comments must be received on or before November 26, 1980.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

A informal docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone: (817) 624-4911, extention 302.

SUPPLEMENTARY INFORMATION: Subpart G § 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Clinton, Oklahoma (Clinton-Sherman), will necessitate an amendment to this subpart.[1]

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before November 26, 1980, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. 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.

[1] Map filed as part of the original document.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Clinton, Oklahoma (Clinton-Sherman). The FAA believes this action will enhance IFR operations at the Clinton-Sherman Airport by providing controlled airspace for aircraft executing instrument approach procuedres. Subpart G of Part 71 was republished in the **Federal Register** on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by substituting the following for the present description:

Clinton, Okla. (Clinton-Sherman)

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Clinton-Sherman Airport (latitude 35°20'25"N., longitude 99°12'00"W.), excluding the portion within the Elk City, Oklahoma, transition area.

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

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

regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Forth Worth, Tex., on October 15, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-33849 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 9072]

Chrysler Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, would require Aurora Chrysler-Plymouth, Inc., a Seattle, Wash. automobile dealership, among other things, to adopt and adhere to the "Repossessed Vehicle Surplus' Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation. The firm would be further required to establish to the reasonable satisfaction of the Commission that it has paid all surpluses realized from February 10, 1973 from repossessed vehicles returned to the company; corrected all prior erroneous credit reports; and provided credit reporting agencies with corrected information.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580.

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

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

Agreement Containing Consent Order as to Aurora Chrysler-Plymouth, Inc.

In the matter of Chrysler Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., Corporations.

This agreement, between Aurora Chrysler-Plymouth, Inc. ("respondent"), a corporation, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules govering consent order procedures. Chrysler Corporation and Chrysler Credit Corporation are not party to this agreement.

The parties hereby agree that:

1. Respondent Aurora Chrysler-Plmouth, Inc. is a Delaware corporation with its office and principal place of business at 13733 Aurora Avenue North, Seattle, Washington 98133.

2. Respondent has been served with a copy of the Complaint issued by the Commission charging it and others with violation of Section 5 of the Federal Trade Commission Act, as amended, and has filed an Answer denying the violations of law alleged in the Complaint.

3. Respondent admits the jurisdictional facts set forth in the Complaint.

4. Respondent waives:

a. any further procedural steps;

b. the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty days and information in respect thereto will be publicly released. the Commission therearfter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the Complaint.

7. This agreement contemplates that if it is accepted by the Commission and such acceptance is not subsequently withdrawn by the Commission pursuant to Section 3.25(f) of the Commission's Rules of Practice, the Commission may, without further notice to respondent, issue its decision containing the following order "(Order)" in disposition of the proceeding as to respondent and make information public with respect thereto. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders of the Commission. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the Order, to respondent's address as stated in Paragraph 1 above, shall constitute service. Respondent waives any rights it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in this agreement may be used to vary or contradict the terms of the Order.

8. The relief set forth in Paragrph II.A of the Order satisfies any claim for restitution or other consumer redress the Commission may have against respondent under Sections 5(a)-(b) and 19(b) of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the Complaint which occurred prior to service of the Order. By its final acceptance of this agreement, with such modifications, if any, as the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action against respondent under Section 19(a)(2) of the Federal Trade Commission Act, as amended, with respect to those acts and practices.

9. Final acceptance of this agreement is contingent on issuance of a final order in Docket 9072 directing Chrysler Corporation to establish a system for determining surpluses and deficiencies on repossessed vehicles, and for accounting for surpluses and for any deficiencies sought.

10. Respondent has read the Complaint and Order and understands that after service of the Order (1) it will be required to file one or more compliance reports showing that it has complied fully with the order, and (2) it may be liable for civil penalties in the amount provided by law for each violation of the Order.

Order

I. It is ordered that resondent Aurora Chrysler-Plymouth, Inc., a coproration, and its successors, assigns, officers, agents, representatives and employees, and any corporation, subsidiary, division or device through which they act directly or indirectly, shall forthwith (A) adopt and adhere to the "Repossessed Vehicle Surplus/Deficiency" system established by Chrysler Corporation pursuant to the disposition of Docket 9072 as to Chrysler Corporation, and (B) deliver a copy of the Repossessed Vehicle Surplus/Deficiency system to all appropriate supervisory personnel.

II. It is further ordered that respondent shall, no later than 60 days after service of this Order:

A. Establish to the reasonable satisfaction of the Commission that (1) all surpluses generated from repossessed vehicles returned to respondent between February 10, 1973 and the date of service of this Order have been paid, and (2) for each such surplus, corrected information has bee provided to any credit reporting agency to which respondent had previously reported the existence of a deficiency.

B. File with the Commission a written report setting forth in detail the manner and form in which respondent has complied with this Order.

III. It is further ordered that respondent notify the Commission at least 30 days prior to any dissolution or other proposed change in the corporate respondent (such as assignment or sale resulting in the emergence of a successor corporation or corporations), or any other corporate change (including the creation or dissolution of subsidiaries) which may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Aurora Chrysler-Plymouth, Inc. ("Aurora"). The proposed consent order has been placed on the public record for 60 days. Interested persons may comment on the proposed order during this period. The comments will become part of the public record. After 60 days the Commission will review the agreement and any comments received, and will decide whether to withdraw from the agreement or make the order final.

Aurora is an automobile dealer. The Commission's complaint, issued in February 1976, charged that Aurora was withholding surpluses received when it resold repossessed cars and trucks. (A "surplus" is the money left over after the underlying debt is paid off and reasonable expenses of repossession and resale are met.) The failure to return a repossession surplus to the consumer/debtor was alleged to be in violation of state law and an unfair practice under the FTC Act.

The complaint also charged that many other Chrysler/Plymouth/Dodge dealers have engaged in the same practice, and that Chrysler's credit subsidiary (Chrysler Credit) shares responsibility for any dealer's withholding of a surplus on resale of a repossessed vehicle obtained from Chrysler Credit under a "repurchase" obligation. Chrysler and Chrysler Credit have agreed to a consent settlement providing for Chrysler's adoption of a "Repossessed Vehicle Surplus/Deficiency" system applicable to all dealers.

The proposed consent order as to Aurora would assure its payment of correctly calculated surpluses on future repossessions by requiring that Aurora follow Chrysler's new Repossessed Vehicle Surplus/Deficiency system. Under this system, Aurora will obtain the best available price in reselling each repossessed vehicle and will pay any resulting surplus to the consumer/debtor, with a prescribed written summary, within 45 days of the resale. The only expenses which may be deducted are reasonable, actual out-of-pocket costs incurred as a direct result of repossessing, holding, preparing for sale or reselling the vehicle.

In addition, Aurora must establish to the reasonable satisfaction of the Commission that all past surpluses back to February 10, 1973 (a date three years prior to issuance of the complaint) have been paid. Also, any prior erroneous reports to credit reporting agencies, that these transactions were deficiencies, must be corrected.

This analysis is intended to encourage public comment on the proposed order. It does not constitute an official interpretation of the agreement and proposed order nor a modification of their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 80-33437 Filed 10-24-80; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. 9072]

Chrysler Corp., et al.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, would require a Highland Park, Mich. motor vehicle manufacturer (Chrysler and its Troy, Mich. credit corporation subsidiary (Chrysler Credit)), to timely provide dealerships with a prescribed system, together with a standardized form, to be used in calculating and recording payment of surpluses realized on repossessed vehicles; and to make the "Repossessed Vehicle Surplus/Deficiency system" a part of Chrysler's Dealer Uniform Accounting System Manual. The companies would be required to conduct training programs designed to familiarize dealers with their obligations in handling repossessions; and follow up the programs with a series of audits to verify that surpluses are being correctly calculated and paid. The order would further require that Chrysler take specified measures with respect to repayment of surpluses realized by Chrysler-owned dealerships from May 1, 1974; send bulletins to dealers urging them to pay surpluses on vehicles returned to them by Chrysler Credit since May 1, 1974; and notify each customer whose vechicle is repossessed of the nature and duration of customer's rights to redemption or refund of surpluses. Additionally, Chrysler Credit would be required to develop revised retail installment contract forms that include a clear, concise statement advising customers that in the event of repossession, they are entitled to a refund of any surplus realized from the resale of the vehicle.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pennsylvania Ave., NW., Washington, D.C. 20580.

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

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

United States of America Before Federal Trade Commission

In the Matter of Chrysler Corporation, Chrysler Credit Corporation, and Aurora Chrysler-Plymouth, Inc., corporations. Docket No. 9072. Agreement Containing Consent Order.

This Agreement, by and between (1) Chrysler Corporation and Chrysler Credit Corporation, corporations, respondents in a proceeding initiated by the Federal Trade Commission, by their duly authorized officers and their counsel and (2) counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rules governing consent order procedures. Aurora Chrysler-Plymouth, Inc. is not a party to this Agreement.

The parties hereby agree that:

1. Respondents Chrysler Corporation and Chrysler Credit Corporation ("Chrysler respondents") are Delaware corporations with their offices and principal places of business at 12000 Lynn Townsend Drive, Highland Park, Michigan 48288 and 900 Tower Drive, Troy, Michigan 48084, respectively. Chrysler Credit Corporation is a wholly owned subsidiary of Chrysler Financial Corporation which is a wholly owned subsidiary of Chrysler Corporation.

2. The Chrysler respondents have been served with a copy of the Complaint issued by the Commission in this proceeding charging them with violations of Section 5 of the Federal Trade Commission Act, as amended, and have filed an Answer denying the violations of law alleged in the Complaint.

3. Solely for the purposes of the order to be issued pursuant to this Agreement (the "Order"), and any further proceedings in connection therewith, the Chrysler

respondents admit the jurisdictional facts set forth in Paragraph Three of the Complaint, and that the Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Chrysler respondents and has jurisdiction to issue the Order contained in this Agreement.

4. The Chrysler respondents waive:

a. any further procedural steps in connection with Docket 9072;

b. the requirement that the Commission's Decision contain a statement of findings of fact and conclusions of law; and

c. all rights to seek judicial review or otherwise to challenge or contest the validity of the Order, but do not waive the right to seek judicial review or otherwise to challenge or contest the validity of any order issued under Part VII of the Order or §§ 2.51 or 3.72 of the Commission's Rules of Practice.

Provided, however, that such waivers shall cease to be effective if the Commission rejects this Agreement or returns this proceeding to adjudication as to the Chrysler respondents. The waiver of procedural steps shall not apply to any procedural actions taken by the Commission (with respect to this Agreement, and prior to final acceptance) other than those actions described in Section 3.25 of the Commission's Rules of Practice.

5. This Agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto will be publicly released. It is recognized that the Commission may thereafter withdraw its acceptance of this Agreement and take further action in accordance with Rule 3.25(f). Any written press or news release announcing this Agreement shall contain the substance of Paragraph 6 hereof.

6. This Agreement is for settlement purposes only and does not constitute an admission by the Chrysler respondents that the law has been violated as alleged in the Complaint.

7. This Agreement contemplates that if it is accepted by the Commission and such acceptance is not subsequently withdrawn by the Commission pursuant to § 3.25(f) of the Rules of Practice, the Commission may, without further notice to the Chrysler respondents, issue its Decision containing the Order in disposition of the proceeding as to the Chrysler respondents and make information public with respect thereto. Any written press or news release announcing the Commission's Decision and Order in this proceeding shall contain the substance of Paragraph 6 hereof. When so issued, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders of the Commission. The Order shall become final upon service. Mailing the Decision and Order to the Chrysler respondents' addresses as stated in this Agreement shall constitute service. The Chrysler respondents waive any rights they may have to any other manner of service. The Initial Compliance Report referred to in Paragraph 9 below (and, to the extent it may be necessary and appropriate, the Complaint) may be used in construing the terms of the Order. No other agreement, understanding, representation, or interpretation not contained in the Order or in this Agreement may be used to construe, vary or contradict the terms of the Order.

8. By its final acceptance of this Agreement, the Commission waives its right to commence a proceeding against either of the Chrysler respondents seeking restitution or other consumer redress under Sections 5 or 19(a)(2) of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Complaint to be unfair or deceptive arising at any time prior to the filing of the final Annual Audit Summary required by Subparagraph IV.C of the Order, except with regard to acts, practices or omissions of the Chrysler respondents (a) which occur after the effective date of the Order and are violations of the Order, (b) which occur after the effective date of a Trade Regulation Rule and are violations of that Rule, or (c) which occur after entry of an order by the Commission setting aside the Order.

9. The Chrysler respondents submit with this Agreement an Initial Compliance Report setting forth details of the manner in which they will comply with the Order. Final acceptance of this Agreement shall constitute acceptance of the Initial Compliance Report and shall also constitute advice under § 2.41(d) of the Rules of Practice that implementation of the Initial Compliance Report will constitute compliance with applicable portions of the Order until such time as the Commission seeks additional evidence of compliance.

10. The Chrysler respondents have read the Complaint and Order and understand that after service of the Order (1) they may be required to file additional compliance reports showing that they have complied fully with the Order, and (2) they may be liable for a civil penalty in the amount provided by law for each violation of the Order, provided that a violation of this Order by either of the Chrysler respondents shall not subject any individual to personal liability.

Order

I

It is ordered that for purposes of this Order the following definitions shall apply:

A. "Chrysler Respondents" means Chrysler Corporation ("Chrysler") and Chrysler Credit Corporation ("Chrysler Credit"). It shall not refer to Aurora Chrysler-Plymouth, Inc. References to either or both of the Chrysler respondents shall include their successors, assignees of any of their business operations subject to this Order, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or other forms of business organization through which they may act in the United States. *Provided, however,* that references to Chrysler shall not include Chrysler Credit, and references to Chrysler Credit shall not include Chrysler, and references to either or both of the Chrysler respondents shall not include Dealerships.

B. "Vehicle" means a passenger car or a truck with a gross Vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "Dealer" or "Dealership" means a corporation, partnership or proprietorship that is a Chrysler, Plymouth or Dodge Vehicle Dealership pursuant to a Direct Dealer Agreement with Chrysler or any subsequent comparable agreement but excludes truck Dealerships whose principal business is the sale of trucks with a gross Vehicle weight of more than 8,000 pounds (3,629 kilograms).

D. "Retail Sale" means the installment credit sale of a Vehicle, other than for purposes of resale (*e.g.*, sale to Dealerships or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "Repurchase Financing" means the financing of a Retail Sale subject to an agreement between a finance company or institution and a Dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the Dealership is obligated to pay off the outstanding obligation to the finance company or institution after receiving a transfer of the repossessed Vehicle.

F. "Repurchase Dealer" or "Repurchase Dealership" means a Dealership that engages more than occasionally in Repurchase Financing transactions.

G. "Equity Dealership" means a Dealership in which Chrysler holds more than 50 percent of the voting stock or is entitled to elect more than 50 percent of the board of directors.

H. "Liquidating Dealership" means an Equity Dealership whose business has been or is being wound up by Chrysler or under Chrysler's supervision. It shall not mean a Dealership not previously an Equity Dealership whose assets come into the possession or control of either of the Chrysler Respondents by virtue of default on or compromise of a debt obligation.

I. "Financing Customer" means a purchaser of a Vehicle from a Dealership by means of a Retail Sale.

J. "Disposition" or "Dispose" refers to a Dealership's sale or initial lease of a repossessed Vehicle previously sold by that Dealership and returned to it by or for a finance company or institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the finance company or institution, the Dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed Vehicle. Disposition or Dispose shall not refer to the repurchase of a repossessed Vehicle by a Dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "Proceeds" means whatever is received upon Disposition in exchange for the repossessed Vehicle, but exclusive of sales taxes, service contracts or separately priced warranties.

L. "Allowable Expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for Disposition and Disposing of the Vehicle, and not otherwise reimbursed to the Dealership. They are limited to the following charges (if allowable under applicable state law):

1. Expenses paid to others, who are not employees of the Dealership or of the finance company or institution that financed the Vehicle, for repossessing, towing or transporting the Vehicle;

2. Filing fees, court costs, cost of bonds, fees paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of the Dealership or the finance company or institution for obtaining possession of or title to the Vehicle;

3. Fees paid to others to obtain title to the Vehicle, to obtain legally required inspection of the Vehicle, or to register the Vehicle;

4. Expenses paid to others for storage (excluding a charge for storage at facilities operated by the Dealership);

5. Labor and associated parts and supplies furnished by the Dealership for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition, computed at Dealership cost (as defined in the Initial Compliance Report);

6. Amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the Vehicle in preparation for Disposition;

7. Cost of sales commissions paid for actual participation in the Disposition of the particular Vehicle, computed at a rate no higher than for a similar nonrepossessed Vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. Expenses of advertisements that specifically mention the particular Vehicle, including a proportional share of any advertisement that also mentions other Vehicles;

9. Auctioneer expenses and fees paid;

10. Amounts paid to others for communication (including telephone calls, postage, and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning and Disposition of the Vehicle; and

11. Amounts paid to insure the particular Vehicle while holding it.

M. "Contract Balance" means (1) the unpaid balance as of the date of repossession less unearned finance charge and insurance premium rebates deducted by the finance company or institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession.

N. "Surplus" means the excess of (1) the Proceeds plus applicable insurance or warranty reimbursements received by the Dealership or finance company or institution plus any other applicable rebates or credits not deducted by the finance company or institution, over (2) the Contract Balance, Allowable Expenses, and amounts paid to discharge any security interest provided for by law.

O. "Pay" or "Paid," in reference to payment of a Surplus, means a reasonable attempt to pay in accordance with the standards set forth in the Initial Compliance Report.

II

It is further ordered that Chrysler shall provide to all existing Dealerships within sixty (60) days of the effective date of this Order, and to each new Dealership within thirty (30) days of entering into a Direct Dealer Agreement, a system for determining the existence of Surpluses and for accounting for Surpluses and for any deficiencies sought (hereinafter the "Repossessed Vehicle Surplus/Deficiency system").

A. The Direct Dealer Agreements presently in effect between Chrysler and Dealerships provide that the Dealership "will use and keep accurate and current at all times a uniform accounting system and will follow accounting practices, both satisfactory to Chrysler". Chrysler shall make the Repossessed Vehicle Surplus/Deficiency system part of the uniform accounting system and accounting practices referred to in the Direct Dealer Agreements and any subsequent comparable agreements. So long as the Direct Dealer Agreements or subsequent comparable agreements remain in effect, Chrysler shall not change them so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system without sixty (60) days notice to the Commission and shall not change those agreements so as to affect the status of the Repossessed Vehicle Surplus/Deficiency system if the Commission, within that time period, advises Chrysler that it objects to the change.

B. The Repossessed Vehicle Surplus/Deficiency system shall include a standardized form ("Record of Repossessed Vehicle Sale") for Dealerships' use in determining the existence and amount of Surpluses and of any deficiencies sought, and in recording payment of each Surplus in accordance with the provisions of Paragraph II.C below.

C. The Repossessed Vehicle Surplus/Deficiency system shall contain provisions that:

1. Each Surplus is to be determined according to Paragraphs I.J through I.N of this Order and Paid to the defaulting customer within forty-five (45) days of Disposition.

2. Expenses other than Allowable Expenses are not to be deducted in calculating Surpluses and deficiencies sought.

3. Dispositions are to be commercially reasonable, which in practice means that the Dealership should make the same efforts to Dispose of the repossessed Vehicle at the best available price as would be made for a comparable used Vehicle except that a Dealership is not required to offer a warranty without extra charge even though such warranties are provided on other used Vehicles.

4. If any rebate owing to the defaulting customer's account has not been received at the time the Record of Repossessed Vehicle Sale is completed, such rebate is to be applied for promptly.

5. If any rebate is received after completion of the Record of Repossessed Vehicle Sale, any Surplus or deficiency sought is to be redetermined, a new or amended Record of Repossessed Vehicle Sale is to be prepard, and any remaining Surplus Paid within forty-five (45) days of Disposition or within ten (10) days of receiving the rebate, whichever is later.

6. The Record of Repossessed Vehicle Sale is to be prepared by the Dealership for each Disposition of a repossessed Vehicle and:

a. Is to set forth the calculation of each Surplus, and of each deficiency sought;

b. Is to be certified by a person authorized to sign retail installment contracts on behalf of the Dealership;

c. A copy of the form is to be sent with the Surplus payment to each defaulting customer to whom a Surplus is Paid and to each defaulting customer from whom a deficiency is sought; and

d. Is to be retained by the Dealership, together with all relevant books and records, for at least two (2) years from the date of Disposition.

7. Dealerships are not to seek or obtain waivers of Surplus or redemption rights from Financing Customers, except in the precise manner and circumstances contemplated by the applicable 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 it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

8. The Dealership may seek a deficiency only to the extent allowed by state law.

9. The Dealership shall, in accordance with state law, permit redemption of a repossessed Vehicle at any time prior to a binding agreement for its Disposition, except as may otherwise be provided by the laws of the individual states.

D. The Repossessed Vehicle Surplus/Deficiency system shall state that:

1. The Repossessed Vehicle Surplus/Deficiency system is part of the uniform accounting system and accounting practices referred to in Paragraph 9 of the Direct Dealer Agreement between Chrysler and the Dealership.

2. Failure to adhere to the standards of Paragraph II.C or to account properly to customers for Surpluses may expose the Dealership to legal action by the Federal Trade Commission and/or consumers.

E. Chrysler shall give the Federal Trade Commission thirty (30)days advance notice of any change in its manner and form of carrying out the requirements of Part II of this Order.

F. The Repossessed Vehicle Surplus/Deficiency system shall not apply to sales of repossessed Vehicles subsequent to judicial sales in Louisiana.

G. The Federal Trade Commission has proposed a Trade Regulation Rule that defines duties involved in disposing of a repossessed Vehicle differently from the method described in Subparagraph II.C.3 above. Said Subparagraph is not to be considered a ratification or acceptance by the Commission of that method of Disposition except for purposes of this Order.

III

A. It is further ordered that Chrysler:

1. Shall, in the manner and in accordance with the schedule set forth in the Initial Compliance Report, develop and provide assistnce and detailed educational materials

to each Repurchase Dealership to carry out the purposes of Part II of this Order and of Part VI (insofar as it relates to reinstatement and redemption rights).

2. Shall, commencing no later than one hundred eighty (180) days after the effective date of this Order, include detailed information on all pertinent aspects of Part II of this Order and Part VI (insofar as it relates to reinstatement and redemption rights) in the "Dealership Accounting Conference" and in all comparable successor courses of instruction, and courses and training materials dealing with repossession accounting or the rights and duties of the parties with respect to Surpluses, deficiencies, redemption, and reinstatement which may be made available by Chrysler to Dealerships.

3. Shall provide no instructions to Dealerships inconsistent with this Order.

4. Shall, within ninety (90) days of the effective date of this Order, send to each Repurchase Dealership a letter which contains information to the following effect, with nothing to the contrary or in mitigation thereof:

a. State law requires that any surplus generated on the disposition of a repossessed Vehicle must be returned to the defaulting customer;

b. The duty to pay surpluses has existed for many years and the company urges Dealerships to pay all Surpluses on repossessed Vehicles disposed of prior to the date of the letter, as well as those arising later;

c. Except in California and Louisiana, state law provides that if a Dealership does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price";

d. If a customer to whom a Surplus is owed has been reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, the Dealership should promptly advise such agency of the correct facts; and

e. The Federal Trade Commission has issued complaints against three automobile Dealershps charging that their failure to pay past Surpluses violated federal law.

5. Shall include in the above mailing a copy of this Order and of the Commission's published Analysis of Consent Order, except those portions of the Analysis referring to the Order as a "proposed" Order open to public comment.

6. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Marketing Investment Department branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this Order, as described in the Initial Compliance Report.

7. Shall provide to authorized representatives of the Federal Trade Commission upon thirty (30) days written notice a set of mailing labels addressed to an apropriate officer or manager of each Dealership, together with a list containing the same information and a certification that the labels and list are complete and accurate. These materials need be provided only once and are to be used by the Commission solely in connection with the service on Dealerships of any final order issued in Docket Nos. 9072, 9073 or 9074, and related notices.

B. It is further ordered that Chrysler Credit:

1. Shall, within one hundred five (105) days of the effective date of this Order, send to each Dealership to which Chrysler Credit has returned a Vehicle, pursuant to a repurchase agreement, that was repossessed since May 1, 1974:

a. Chrysler Credit's endorsement of the statements in Subpargraphs III.A.4.a–e above; and

b. A list containing the following data for each Chrysler Credit repossession returned to the Dealership between May 1, 1974 and the effective date of this Order: name, address and account number of the Financing Customer, net payoff and date of repossession of the Vehicle.

2. Shall, within ninety (90) days of the effective date of this Order, develop and provide to all Chrysler Credit branch personnel involved in Repurchase Financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this Order, as described in the Initial Compliance Report.

3. Shall provide no instructions to Repurchase Dealerships inconsistent with this Order.

It is further ordered that:

A. To determine whether Dealerships are correctly calculating and Paying Surpluses after implementation of Part II of this Order, Chrysler shall conduct or cause to be conducted a series of audits of Repurchase Dealers as described below and in the Initial Compliance Report.

1. Four successive twelve-month periods shall be audited, as further described in the Initial Compliance Report.

2. One hundred ten (110) Repurchase Dealers and not more than three thousand (3,000) of their Repurchase Financing repossessions per twelve-month audit period shall be audited, selected pursuant to procedures established by the staff of the Federal Trade Commission and set forth in the Initial Compliance Report, plus not more than sixty (60) Dealerships found in the preceeding twelve-months' audit to require a further audit as set forth in the Initial Compliance Report.

3. The audit process shall consist of examination of the prescribed number of Repurchase Financing repossessions with resort to relevant books and records as set forth in the Initial Compliance Report. The audit shall include, for each Dealership audited, the preparation of a report ("Dealer Report") as described in the Initial Compliance Report. The Dealer Report shall contain a certification that it is accurate to the best of the knowledge of the person who performed the audit, and that such person has informed the Dealership in writing that it should retain the relevant books and records relating to any non-complying transaction for at least three (3) years after the audit. For each non-complying transaction, the person performing the audit shall attach to the Dealer Report (a) a Transactional Report Form completed in connection with the audit as described in the Initial Compliance Report, and (b) any worksheet he or she prepares in connection with such transaction.

B. Dealer Reports and documents prepared in the course of an audit pursuant to Paragraph IV.A. by the person who performed the audit, shall be maintained by Chrysler for four (4) years following the end of the twelve-month audit period for which they were prepared.

C. Chrysler shall file with the Commission an "Annual Audit Summary" within one (1) year after the end of each twelve-month audit period described in Subparagraph IV.A.1; *provided, however,* that the filing deadline for any such summary otherwise due between the 10th and 31st of December shall instead be January 31 of the following year. Each Annual Audit Summary shall contain the following information in aggregate form:

1. The period audited, the number of Repurchase Dealers audited, and the total number of Repurchase Financing repossessions returned to those dealerships during that period;

2. The number of Repurchase Financing repossessions audited and, with respect to those repossessions:

a. The number and total dollar amount of Surpluses properly calculated and Paid by the Dealers, and the number and total dollar amount of those Surpluses as to which the Dealers' attempts to pay were unsuccessful;

b. The number and total dollar amount of Surpluses which were properly calculated by the Dealers but not Paid, and the number of Dealerships involved;

c. The number of Surpluses not properly calculated by the Dealers, the number of Dealerships involved, and the total dollar amount which was not Paid;

d. The number of deficiencies sought in an amount in excess of the amount permitted by the Repossessed Vehicle Surplus/Deficiency system, the number of Dealerships involved, and the total excess dollar amount sought;

e. The number of repossession transactions in which a waiver of the customer's Surplus rights was sought or obtained, and the number of Dealerships involved;

f. The number of repossession transactions in which one or more entries on the Record of Repossessed Vehicle Sale were not substantiated by information contained in Dealership books and records and (i) as a result thereof the person performing the audit was unable to determine whether or not the disposition resulted in a Surplus or the correct amont thereof in accordance with the Repossessed Vehicle Surplus/Deficiency system, or (ii) the Dealership sought a deficiency in excess of the amount substantiated by information contained in its books and records; and the number of Dealerships involved;

g. The number of repossessed Vehicles disposed of other than to an independent third party, and the number of Dealerships involved;

h. The number of repossessed Vehicles sold at wholesale; and

3. A statement describing the action(s) taken by Chrysler, although none is required, to correct the non-compliance of Dealerships discovered during the audit to have failed to

follow the Repossessed Vehicle Surplus/Deficiency system in calculating or Paying Surpluses or in seeking deficiencies..

D. The audits described in Subparagraph IV.A shall be performed by qualified persons as defined in the Initial Compliance Report. The following conditions shall be observed:

1. The Chrysler respondents shall not inform Dealerships or other third parties of the details of the random selection process established by the staff of the Federal Trade Commission, except to the extent described in this Order and in the Initial Compliance Report.

2. The Chrysler respondents shall not inform Dealerships or other third parties (excluding third parties engaged to participate in the audit process) of the details of the audit procedure, the audit periods, or the identity of Dealerships selected for audit, except to the extent described in this Order and in the Initial Compliance Report.

3. Dealerships selected for audit under this Part IV shall not be given more than ten (10) business days advance notice of the scheduled audit.

V

It is further ordered that:

A. Chrysler shall, as a shareholder holding a majority of the voting stock of each Equity Dealership (or as it otherwise may become entitled to elect more than 50 percent of the board of directors pursuant to any change in its relationship with Equity Dealerships), exercise all of its lawful rights for the purpose of causing the directors thereof to vote for resolutions requiring that each such Dealership:

1. Within sixty (60) days of the effective date of this Order or within sixty (60) days of initiating operation as a Dealership, whichever is later, adopts and maintains the Repossessed Vehicle Surplus/Deficiency system described in Part II of this order;

2. Pays all Surpluses with respect to repossessed Vehicles returned to the Dealership after the effective date of this Order;

3. Shall not seek or obtain waivers of Surplus or redemption rights from Financing Customers except in strict conformity with Paragraph II.C.7 of this Order; and

4. Has an annual examination of its documents by a certified public accounting firm to determine whether the Dealership is following the Repossessed Vehicle Surplus/Deficiency system.

a. The first such examination after the effective date of this Order shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing repossessions returned to the Dealership by financing institutions since January 1, 1979; *provided, however,* that such examination need not include repossessions audited pursuant to Part IV of this Order or examined for these purposes in a prior examination by a certified public accounting firm and reported to the Dealership board of directors regarding any non-compliance.

b. Subsequent examinations in succeeding years shall include an inspection of the relevant books and records and the Record of Repossessed Vehicle Sale forms (described in Part II of this Order) for all Repurchase Financing repossessions returned to the Dealership by financing institutions since the period covered by the last annual examination pursuant to Subparagraph V.A.4 and not audited pursuant to Part IV of this Order.

c. Each such examination shall be followed by a report to the Dealership board of directors regarding any non-complying transactions.

B. If any examination required by Subparagraph V.A.4 or any audit conducted under Part IV reveals that an Equity Dealership has any non-complying transaction as defined in the Initial Compliance Report which has not been corrected by the Dealership, then Chrysler shall, as a shareholder holding a majority of the voting stock of that Equity Dealership, exercise all of its lawful rights for the purpose of causing the directors thereof to institute appropriate measures to correct the non-compliance.

C. Chrysler shall (1) ascertain, for each Equity Dealership which becomes a Liquidating Dealership after the effective date of this Order, whether any unpaid Surpluses have arisen since the effective date of the Order or the period covered by the last annual audit by an independent certified public accounting firm during which repossession transactions were examined pursuant to the standards set forth in Part IV of this Order and the Initial Compliance Report, whichever is later, and (2) cause each such Surplus to be paid. *Provided,* that the provisions of Paragraphs V.A.B, and C shall remain in effect for seventy-five (75) years from the effective date of this Order, at which time the provisions of said Paragraphs will be of no further force or effect.

D. Chrysler shall, within the one hundred eighty (180) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and December 31, 1978 to Dealerships which are Equity Dealerships as of the effective date of this Order, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. All Surpluses have been Paid; and

2. In each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.D.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

E. Chrysler shall, within three hundred sixty (360) days of the effective date of this Order, with respect to repossessed Vehicles returned between May 1, 1974 and the effective date of this Order to any Liquidating Dealership which began Operation as an Equity Dealership after July 30, 1978 or whose books and records, as of July 30, 1978, were located at the Kansas City, San Francisco or Troy liquidating centers or at the Dealership, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. All Surpluses have been Paid; and

2. In each instance where a defaulting customer entitled to receive a Surplus pursuant to Subparagraph V.E.1 above had been previously reported by the Dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently notified of the correct facts.

VI

It Is further ordered that Chrysler Credit:

A. Shall develop revised Chrysler Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. No expenses other than reasonable expenses incurred as a direct result of reposessing (including, where permitted, attorneys' fees and court costs), holding, preparing for Disposition and Disposing of the Vehicle may be deducted from the Proceeds in determining a Surplus or deficiency; and

2. Any Surplus realized on the resale or other Disposition of the Vehicle is to be Paid to the customer.

B. Shall distribute the revised retail installment contract forms to all Dealers who use Chrysler Credit installment contract forms, within one year after the Commission issues a final rule or final adjudicated order no less restrictive than the Paragraph VI.A statements concerning allowable expenses and the duty to pay surpluses. If the Commission's final rule or final adjudicated order is deemed by Chrysler Credit to be less restrictive than the said Paragraph VI.A statements, Chrysler Credit shall (1) within forty-five (45) days after written notice by Commission staff to the Secretary of Chrysler Credit that such rule or order has become final, request a reopening of this proceeding to conform the Paragraph VI.A statements to such rule or order; and (2) perform the above distribution of revised forms within one year after the Commission has acted on its request for conformance.

C. Shall, no later than twelve (12) months after the effective date of this Order, cease and desist the use of any Chrysler Credit retail installment contract form which represents that the debtor may be liable to pay a deficiency where Chrysler Credit knows or should know that it is not entitled under state or federal law to collect a deficiency.

D. Shall direct its branch offices that, commencing thirty (30) days after the distribution to a Dealership of revised Chrysler Credit retail installment contract forms pursuant to Paragraphs VI.B and/or C, they are not to purchase from that Dealership Chrysler Credit forms of retail installment contracts that are not on the revised forms. For a period of two (2) years thereafter, Chrysler Credit shall examine its branch office files at least every twelve (12) months in accordance with the procedures established in the Initial Compliance Report to determine whether prior retail installment contract forms are being used, and, if so, shall institute appropriate corrective action.

E. Shall, commencing seventy-five (75) days after the effective date of this Order, include the following information in clear lay language in a notice (which may be included in a notice of intent to repossess) sent prior to repossession to those Chrysler Credit Financing Customers to whom a notice of intent to repossess is sent:

1. The total amount past due as of the date stated in the notice, which shall be mailed within five (5) days of the date stated in the notice;

2. In transactions where the customer is entitled under state law to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the Vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by laws, or provided by contract and not prohibited by law;

That the customer will have an absolute righ to redeem the Vehicle at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law, and that this right can be exercised by paying the Contract Balance plus all reasonable expenses incurred as a direct result of repossessing the Vehicle (including, where permitted, attorneys' fees and court costs), holding it, and preparing it for Disposition;

4. The date prior to or interval of time during which the Vehicle will not be Disposed of;

5. That if the Vehicle is not redeemed (nor the contract reinstated) the customer will be entitled to a refund of any Surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

6. The failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalties as provided by state law; and

7. The statutory limitations and restrictions on the right of Chrysler Credit and the Dealership to collect a deficiency.

F. Shall, within sixty (60) days after the effective date of this Order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to each Chrysler Credit Financing Customer as soon as practicable after repossession. The post-repossession notice shall specify in clear, lay language:

1. The name, address and telephone number of the Dealership to which the Vehicle has been or will be returned for Disposition, if applicable, and the address and telephone number of the Chrysler Credit branch office to be contacted;

2. The date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;

3. The net amount necessary to redeem the Vehicle, and, in transactions where the customer is entitled to reinstatement, the amount necessary to reinstate the contract, at the time the notice is sent;

4. The date or interval of time prior to which the Vehicle will not be sold;

5. That the Vehicle can be redeemed at any time prior to a binding agreement for its Disposition, except as otherwise provided by state law;

6. That under the law the only expenses which need be paid upon redemption are reasonable expenses incurred as a direct result of repossessing the Vehicle, holding it, and preparing it for Disposition; and that these may increase in amount if redemption is delayed;

7. That Chrysler Credit should be contacted for further information about reinstatement of the contract, in states where the customer is entitled to reinstatement;

8. That Chrysler Credit should be contacted for further information about redemption including the procedure for redeeming the Vehicle;

9. That if the Vehicle is not redeemed (nor the contract reinstated) the customer is entitled to a refund of any surplus, and that where the Vehicle is returned to the Dealership such refund is to be made within forty-five (45) days after Disposition (the notice may also state that the refund should be made by the Dealer);

10. That in those instances where the Vehicle is returned to the Dealership, the Dealership is to send a copy of the Record of Repossessed Vehicle Sale to each defaulting customer to whom a Surplus is Paid or from whom a deficiency is sought;

11. That failure to account for and refund a Surplus will give the customer a right to sue for the amount of the Surplus and, except in California and Louisiana, for statutory penalities as provided by state law;

12. That the customer may be liable for a deficiency or that state law restricts or prohibits Chrysler Credit and the Dealership from collecting a deficiency (the notice is to include the applicable language only); and

13. That the customer has the right to direct the Dealership to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the Dealership has, on behalf of the customer, obtained a credit life, accident and health, or collision insurance policy.

G. Shall, for a period of two (2) years commencing seventy-five (75) days after the effective date of this Order, examine its branch files at least once every twelve (12) months in accordance with the procedures established in the Initial Compliance Report to determine whether the notices required by Paragraphs VI.E and F have been and are being sent, and shall institute appropriate actions to assure that this procedure is adhered to.

H. Shall take no action to obtain or attempt to obtain or bring about any waiver of a Financing Customer's redemption or Surplus rights, except in the precise manner and circumstances contemplated by the applicable 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 secured party intends to retain the collateral for its own use for the immediate future rather than to (1) resell it in the ordinary course of business or (2) return it to another party pursuant to a repurchase agreement. If a waiver is sought, Chrysler Credit shall not represent that it thereby proposes to forego its right to a deficiency judgment unless it intends to seek such a judgment should the waiver not be given.

I. Shall instruct it branch office personnel involved in Repurchase Financing transactions to cease and desist from making any representation, directly or by implication, contrary to the representations required by Paragraphs VI.E and F of this Order, and shall within sixty (60) days of the effective date of this Order establish procedures which reasonably assure strict adherence by branch personnel to these instructions.

J. Shall, within twelve (12) months after the effective date of this Order, revise all pertinent Chrysler Credit forms (including but not limited to repurchase agreement forms, form letters, and notices) and internal written procedures to be consistent with the provisions of this Order, as described in the Initial Compliance Report.

VII

It is further ordered that:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, finance companies or institutions, or Vehicle Dealerships than a provision or provisions of this Order relative to (1) the disposition of repossessed Vehicles, (2) the determination, calculation or communication of the existence of or the amount of Surpluses or deficiencies, including waivers of Surplus rights, or the time or manner of paying or accounting for surpluses or deficiencies, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this Order. The enumeration of the subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. *Provided, however,* that a Chrysler Respondent shall advise the Commission of its intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this Order thirty (30) days in advance of reliance thereon. *Provided further* that this Paragraph shall not be construed as exempting the Chrysler Respondents from any Trade Regulation Rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any Trade Regulation Rule.

B. In the event any of the proceedings bearing Docket Nos. 9072, 9073, or 9074 results in a final adjudicated or consent order applying standards less restrictive on any automobile manufacturer, finance company, or Vehicle Dealership than a provision or provisions of this Order relative to:

1. The disposition of repossessed Vehicles;

2. The determination, calculation or communication of the existence of or the amount of surpluses or deficiencies, including waivers of Surplus rights,or the time or manner of paying or accounting for Surpluses or deficiencies; or

3. The determination or communication of reinstatement or redemption rights (incuding their duration and/or the amount necessary to reinstate or redeem);

then the Commission shall, within one hundred twenty (120) days of a Chrysler Respondent's request pursuant to § 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this Order and/or other relief, as necessary and appropriate, to conform this Order to such less restrictive standards applied in the

other order(s). The enumeration of the subject matter contained in clauses B.1, 2, and 3 of this Paragraph is exclusive.

C. In the event a Chrylser Respondent is of the opinion that changed conditions of law or fact require that this Order be altered, modified, or set aside, or that the public interest so requires, the Chrysler Respondent may, pursuant to Section 2.51 of the Commission's Rules of Practice, file a request for reopening of this proceeding for that purpose.

VIII

It is further ordered that:

A. Each Chrysler Respondent shall, as described in the Initial Compliance report, maintain complete business records relative to the manner and form of its compliance with this Order and shall retain all such records for at least three (3) years, and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission. Except as provided in Paragraph III.A.7 of this Order, respondents will disclose the identity or identities of any individual Dealership or Dealerships to Commission representatives only upon service of a civil investigative demand issued under Section 2.7 of the Rules of Practice of the Federal Trade Commission.

B. Each of the Chrysler Respondents shall, within one hundred eighty (180) days after the effective date of this Order, file with the commission a written report setting forth in detail the manner and form in which it has complied with this Order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Chrysler shall, within four (4) weeks of the effective date of this Order, distribute a copy of this Order to its U.S. Automotive Sales Division, to each Zone Manager, and to its Marketing Investment Department and each of its branch offices. Chrysler Credit shall, within the same time frame, distribute a copy of this Order to each of its branch offices.

D. Each of the Chrysler Respondents shall notify the Commission at least thirty (30) days prior to any corporate change which may reasonably be expected to affect compliance obligations arising out of this Order such as those dissoultions, assignments or sales resulting in the emergence of a successor corporation or corporations, the creation of dissolution of subsidiaries, or any other change which may reasonably be expected to affect compliance with this Order. Chrysler shall notify the Commission at least thirty (30) days prior to effectuating any changes in its program for investing in Equity Dealerships, which may reasonably be expected to affect compliance with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Chrysler Corporation and its credit subsidiary, Chrysler Credit Corporation.

The proposed consent order and a proposed initial compliance report submitted by Chrysler and Chrysler Credit have been placed on the public record for 60 days. During this period all interested persons may comment on the proposed order and compliance report. Such comments will become part of the public record. After 60 days the Commission will review the agreement and comments, and will decide whether to withdraw from the agreement or make the order final.

This analysis is intended to encourage public comment on the proposed order. It does not constitute an official interpretation of the agreement and proposed order nor a modification of their terms.

Nature of the Case

The Commission's complaint was issued in February 1976. It made a number of allegations about repossession practices involving Chrysler Credit and Chrysler/Plymouth/Dodge dealers, including the following:

1. Each year Chrysler Credit repossesses numerous cars and trucks from credit customers. State law and "fairness" under the FTC Act require that on each resale of a repossessed vehicle, after paying off the underlying debt and meeting certain reasonable expenses of repossession and resale, any money left over (the "surplus") must be paid to the person from whom the vehicle was repossessed.

2. Chrysler Credit has arrangements with many Chrysler, Plymouth and Dodge dealers whereby it returns the repossessed car or truck to the dealer who had previously sold it. The *dealer* then handles the resale and becomes obligated (along with Chrysler Credit) to see that any surplus is paid. But many such transactions have resulted in surpluses which were not in fact paid by either Chrysler Credit or the dealer.

3. Chrysler Credit and dealers misrepresented their right to collect a deficiency in states where that right is limited.

4. Chrysler Credit and dealers have not provided defaulting customers with necessary information about their right to redeem (buy back) their repossessed car or truck under state law.

Another aspect of the case involves allegations of *Chrysler* Corporation responsibility for dealerships in which it owns all or part of the voting stock (about 4% of all Chrysler/Plymouth/Dodge dealers). The complaint charged that such "owned" dealerships have failed to pay surpluses and/or provide necessary redemption information on repossessed vehicles returned to them by various financing institutions (such as banks) under arrangements similar to those described above.

The complaint specifically named Aurora Chrysler-Plymouth, Inc., a Seattle dealer, as a participant in the challenged practices. Aurora has entered into a separate consent order agreement, accepted subject to public comment simultaneously with this one.

The Proposed Settlement

The proposed consent order with Chrysler and Chrysler Credit is designed to bring about correct calculation and prompt payment of all surpluses on repossessed vehicles resold by Chrysler dealers. It provides that Chrysler's Dealer Uniform Accounting System Manual (which is binding on all dealers) will be changed to include specific procedures for determining surpluses. The complete new "Repossessed Vehicle Surplus/Deficiency" system is on the public record as an attachment to the report of Chrysler's intended manner of compliance with the order.

Under the required procedure, each dealer will obtain the best available price in reselling any repossessed vehicle returned to it, and will pay any resulting surplus within 45 days of the resale. The only expenses which may be deducted are reasonable, actual out-of-pocket costs incurred as a direct result of repossessing, holding, preparing for sale or reselling the vehicle. A prescribed written summary will be prepared and sent by the dealer within the 45-day period to each customer entitled to a surplus or from whom an attempt is made to collect any further amount (a "deficiency").

The agreed-to order represents a significantly different approach from that of the "notice" version published with the complaint. That version would have held Chrysler Credit responsible for surpluses arising from Chrysler Credit respossessions, and Chrysler Corporation responsible for surpluses involving its "owned" dealerships. Although the settlement leaves open the questions of the Chrysler companies' responsibilities for payment of surpluses, the remedial technique of a Chrysler-wide accounting manual modification provides coverage of *all* repossessed vehicles returned to Chrysler/Plymouth/Dodge dealers (regardless of financing institution and regardless of who owns the dealership). Through this inclusion of bank-repossessed vehicles returned to non-owned dealerships, the number of repossession transactions affected by the order has been more than quadrupled (as compared to the "notice" version).

The consent order requires that Chrysler institute training programs to familiarize dealers with their obligations in handling repossessions. The training will be followed by a series of field audits conducted by Chrysler over a four-year period, to verify that dealers are in fact calculating and paying surpluses correctly. Any instances of noncompliance will be reported to the FTC and the dealers involved will be re-audited.

Other provisions of the proposed order would require:

1. Specialized measures with respect to surpluses realized by Chrysler's "owned" dealerships, including payment of surpluses on vehicles repossessed as far back as May 1974.

2. Bulletins to all dealers setting forth their longstanding duty to pay surpluses, urging them to pay surpluses on past repossessions and identifying all repossessed vehicles returned to them by Chrysler Credit since May 1, 1974.

3. A notice to each customer whose vehicle is hereafter repossessed by Chrysler Credit, stating the nature and duration of the customer's rights to get the vehicle back ("redeem" or "reinstate") and the amount needed to do so, and setting forth the customer's right to a refund of any surplus monies left over after resale.

4. Elimination of incorrect statements of deficiency rights from Chrysler Credit's retail installment contract forms.

5. Statements of customers' surplus and/or redemption rights to be included in the future in Chrysler Credit installment contracts and certain other documents provided to customers, and in Chrysler Credit's contractual arrangements with dealers.

6. Qualified prohibitions against obtaining waivers of customers' surplus or redemption rights.

Carol M. Thomas,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 33-6248; 34-17222; IC-11403; File No. S7-858]

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is reproposing for comment a revised rule under the Securities Exchange Act of 1934 to regulate purchase of certain classes of common stock and preferred stock by or for the issuer, any affiliate of the issuer, or any "affiliated purchaser," as that term is defined in the rule. If adopted, the rule would impose disclosure requirements and substantive purchasing limitations on an issuer and on any affiliated purchaser. It also would impose certain of the purchasing requirements on a broker-dealer or other person acting for the issuer or for an affiliated purchaser in connection with purchases of the issuer's common stock or preferred stock. In addition, the issuer, its affiliates and affiliated purchasers, as well as certain other persons, would be subject to a general antifraud provision in connection with their purchases of the issuer's common or preferred stock. The Commission also is reproposing for comment revised amendments to a rule that regulates purchases of securities during a distribution of those securities. If the amendments are adopted, that rule no longer will prohibit purchases of an issuer's securities by the issuer or by an affiliate where the issuer is engaged in certain distributions of the securities and the purchases are made in compliance with the proposed rule.

DATE: Comments should be submitted on or before January 15, 1981.

ADDRESSES: Interested persons should submit six copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, and should refer to File No. S7-858. All submissions will be available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary E. Chamberlin, Esq. (202-272-2880); or John B. Manning, Esq. (202-272-2874); Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Introduction

The Securities and Exchange Commission is publishing for comment a revised version of proposed Rule 13e-2 [§ 240.13e-2] pursuant to the Securities Exchange Act of 1934 (the "Act") to regulate purchases of the common and preferred stock of certain issuers by or on behalf of issuers and certain other persons.

It has been almost seven years since the Commission previously proposed Rule 13e-2 for comment. During that period, the Commission has devoted considerable attention to the need for a program of regulation pertaining to issuer repurchases. It has adopted Rules 13e-3 [§ 240.13e-3] [1] and 13e-4 [§ 240.13e-4] [2] to regulate going private transactions and issuer tender offers, respectively. In addition, the Commission has continued to regulate certain other issuer repurchases through a program of exemptions granted pursuant to Rule 10b-6 [§ 240.10b-6] under the Act. On the basis of its experience with those initiatives, and for the reasons discussed below, the Commission believes that it should adopt Rule 13e-2 as a rule of general applicability to issuer repurchases.

The regulatory predicate that underlies the Commission's proposed Rule 13e-2 is the need for a scheme of regulation that limits the ability of an issuer and persons whose purchases are closely related to those of the issuer to control the price of the issuer's securities. That predicate stems in part from the unique incentives that an issuer and those related persons have to control the price of the issuer's securities. It stems also from the fact that the antifraud and antimanipulative provisions of the Act are very general in language and may not provide adequate guidance. A rule such as Rule 13e-2 can curb the opportunity for abuse while at the same time providing greater clarity and certainty, both to issuers and to broker-dealers who assist in their repurchase programs, as to the permissible limits for such programs. In that way, it can assist issuers, broker-dealers and others in avoiding what might otherwise be a substantial and unpredictable risk of securities law liability. By providing that guidance, it can facilitate the operation of legitimate repurchase programs.

The issuer's special incentives to control the price of its securities may arise under varying circumstances. For example, the issuer may seek to raise capital through the issuance of additional securities in a manner that would minimize dilution of the ownership interest of existing shareholders. That desire to avoid dilution may provide an incentive to peg or even to raise the price of the issuer's stock. Similar incentives may arise from

[1] Securities Exchange Act Release No. 16075 (August 2, 1979), 44 FR 46736 (1979).

[2] Securities Exchange Act Release No. 16112 (August 16, 1979), 44 FR 49406 (1979).

the issuer's desire to use shares to purchase assets for the issuer or to engage in stock-for-stock acquisitions of other companies.

The insiders of a company, including those who agree to coordinate their purchases with those of the issuer or who control the issuer by virtue of their ownership of the issuer's securities, may have parallel incentives to varying degrees. For example, the controlling shareholders of a company may have an identity of interest with the issuer in connection with its desire to raise capital cheaply, to acquire other companies and other assets cheaply, and to preserve the value of their shareholdings. Incumbent management itself, of course, has an incentive to prevent the issuer's existing shareholders from becoming dissatified with it (as might be occasioned by a substantial drop in the price of the issuer's stock), and to preserve an appearance of prosperity and to prevent erosion in the market value of the issuer's securities. In that connection, management may be chronically dissatisfied with the performance of the issuer's stock and that dissatisfaction may present its own rationale for action.

During an actual distribution of the issuer's securities, and for a period of varying length preceding the distribution of securities to the public, purchases by the issuer or by those participating in the distribution are regulated under existing rules, particularly Rule 10b–6. Nevertheless, that rule does not prevent issuers from controlling the price during the period immediately preceding the time Rule 10b–6 becomes applicable, or during what may be a relatively unsettled or declining market following the completion of the distribution.

Rules 13e–2 would not impose any absolute prohibition such as the one Rule 10b–6 establishes. Instead, it would impose only those limitations that appear necessary to prevent the issuer from leading or dominating the market through its repurchase program. In fashioning those limitations, the Commission has balanced the need to curb the opportunity to engage in manipulative conduct against the need to avoid excessively burdensome restrictions. The Commission thereby has endeavored to tailor the restrictions imposed to the particular circumstances of the markets as they exist today. It also has attempted to exempt as many transactions as could be identified where the likelihood of manipulative abuse is not sufficient to justify imposing the restrictions of the rule. In addition, the Commission has provided for additional case-by-case exemptive authority for specific transactions to which application of some or all of the restrictions of the proposed rule would be inappropriate.

The Commission has not attempted to determine whether all transactions that exceed the specific limitations would be inherently fraudulent, deceptive, or manipulative. Instead, the Commission has relied upon it authority under Section 13(e) of the Act to define means reasonably designed to prevent fraudulent, deceptive and manipulative acts and practices in connection with issuer repurchases. Defining those means necessarily involves predictive judgments as to conduct that, on balance, is sufficiently likely to result in abuse that it should be prohibited.

Proposed Rule 13e–2 would codify a prohibition on certain kinds of conduct by issuers that the Commission has long viewed as inappropriate and that have been the subject of enforcement actions under the antifraud and anti-manipulative provisions of the Act [3] In particular, the purchasing restrictions found in the proposed rule, including limitations on the volume, timing, pricing and manner of purchases, reflect that effort to codify prior interpretations of the law and prior Commisson policy. The volume limitations are designed to prevent the issuer from dominating the market in its securities by purchasing large amounts of those securities relative to trading by independent parties. The time limitations are designed to prevent issuers from establishing either the opening price of the security or the closing price of the security, both of which are viewed by market professionals and investors as guides to the trend of the market in a security. Although not as stringent as the Commission's stabilizing rules,[4] the price limitations are designed to prevent an issuer from leading the market in its securities to new price levels or from maintaining the price at levels that would not be supported by independent buying interest. Finally, the requirement that the issuer purchase through only one broker or dealer on a given trading day is designed to prevent the use of several brokers to create a false appearance of widespread purchasing interest in the securities.

Limitations similar to those of the proposed rule have been imposed on certain issuers under Rule 10b–6, and the Commission understands that many issuers that are not subject to that rule comply with those limitations (or with those set forth in prior versions of proposed Rule 13e–2) in order to minimize the risk of incurring liability under the anti-manipulative provisions of the Act. The Commission believes that if the proposed rule is adopted it will eliminate the need to refer to those earlier interpretive and exemptive guidelines and in large measure clarify existing law and policy.

In addition to the purchasing limitations, and not as a substitute for them, the Commission has proposed specific disclosure requirements that pertain to issuer repurchase programs of substantial size. In certain circumstances, those requirements may exceed the requirements imposed on issuers under existing antifraud provisions. They are designed to give the market an opportunity to react to the fact that the issuer may account for a substantial amount of purchasing activity in its securities.

While the Commission believes that the required disclosures are necessary or appropriate to prevent fraud, deception and manipulaton, it does not believe that disclosure alone can take the place of the substantive regulation embodied elsewhere in the rule. Disclosure is unlikely to prevent manipulative conduct from having improper effects on the market since market manipulation is not solely a matter of deception and cannot be cured solely by preventing deception. For example, an issuer that every day participated in the opening and closing transactions in its securities could significantly and improperly affect the price of those securities despite the fact that its conduct was fully disclosed. Similarly, disclosure of an issuer repurchase program that involved purchases that dominated the market would not eliminate the effects of that domination. Disclosure of an issuer's efforts to drive the price of its securities up or to maintain it at artificial levels, by engaging several brokers to bid against one another or through other measures, would not cure the ill effects of such a manipulation. Moreover, given the often considerable fluctuations in market conditions and the rapid pace at which market transactions occur, it is questionable whether full and timely disclosure of certain practices could ever be made in a fashion that would protect the markets and investors as fully or efficiently as can more direct prohibitions on manipulative practices. For these reasons, the proposed rule would prohibit the practices proscribed by the purchasing limitations, instead of merely requiring their disclosure.

If adopted, proposed Rule 13e–2 would impose the purchasing

[3] *See* text at nn. 10–12, *infra*.

[4] *See* Rules 10b–7 and –8 under the Act, §§ 240.10b–7 and 240.10b–8.

restrictions described above, and certain disclosure requirements, on (i) any issuer with a class of equity securities registered under Section 12 of the Act, (ii) any closed-end investment company registered under the Investment Company Act of 1940, and (iii) any "affiliated purchaser" of such issuer, as that term would be defined in the rule, in connection with a bid for or purchase of the issuer's common stock or preferred stock.[5] The substantive purchasing restrictions would not apply to privately negotiate purchases (those not made from or through a broker or dealer). Broker-dealers and other persons acting for the issuer of affiliated purchaser also would be required to comply with certain provisions of the proposed rule. In addition, all of the foregoing persons, and any person affiliated with the issuer, would be subject to a general antifraud provision with respect to their purchases of the issuer's common stock or preferred stock. Finally, issuers that are required to file reports pursuant to Section 15(d) of the Act would be required to comply with the disclosure provisions of the proposed rule.

The Commission also is reproposing revised amendments to Rule 10b-6 [§ 240.10b–6] under the Act that are related to Rule 13e–2. If amended as proposed, Rule 10b–6 no longer would prohibit an issuer or any affiliate from bidding for or purchasing the issuer's securities if (i) the issuer would be deemed to be engaged in a distribution of the securities to be purchased solely because it had outstanding a class of securities convertible into or exchangeable for such securities and (ii) the bids or purchases were made in accordance with Rule 13e–2. In addition, the proposed amendments to Rule 10b–6 would incorporate into that rule certain of the staff's current interpretive positions regarding bids and purchases by independent agents for employee or shareholder plans sponsored by an issuer. During this rulemaking proceeding, however, the Commission's Office of Legal Policy and Trading Practices in the Division of Market Regulation will continue to consider requests for exemptive relief from, and interpretive advice under, Rule 10b–6 in connection with transactions that would be exempted from Rule 10b–6 under the proposed amendments.

The Commission has considered carefully the issues raised in connection with prior versions of proposed Rule 13e–2 that have been published for comment and in connection with the regulation of certain issuer repurchases under Rule 10b–6 under the Act.[6] Since the Commission already has devoted considerable attention to regulating such purchases, and since the regulatory approach reflected in the proposed rule remains largely consistent with the one taken in earlier proposed versions of the rule, the Commission expects to be able to conclude this rulemaking proceeding expeditiously after it has considered the comments received in response to this amended proposal.

In order to facilitate public comment, this release contains (i) a discussion of the administrative background of proposed Rule 13e–2; (ii) a description of the current regulation of purchases of an issuer's securities by the issuer or an affiliate; (iii) a summary of the background and purpose of Section 13(e); (iv) an overview of the coverage of proposed Rule 13e–2; (v) a section-by-section analysis of proposed Rule 13e–2; and (vi) a description of the proposed amendments to Rule 10b–6. In addition, the Commission solicits comments on the proposed rules generally and on certain specific issues.

I. Administrative Background

Purchases by an issuer of its own securities have been the subject of three previous public rule proposals. The first was a Commission draft of a proposed Rule 10b–10 published in 1967 by the United States Senate in connection with hearings on proposed legislation that became the Williams Act Amendments of 1968.[7] The Commission subsequently published for comment a revised proposal denominated Rule 13e–2 in 1970 (the "1970 Proposal")[8] and another in 1973 (the "1973 Proposal").[9] Those regulatory initiatives were directed at preventing abuses often associated with corporate repurchases, including

1. During mergers and acquisitions, purchases designed to support or raise the market price of the issuer's securities for the purpose of making exchange ratios appear more favorable to target company security holders;[10]

2. After mergers and acquisitions, purchasers designed to support or raise the market price of the issuer's securities for the purpose of reducing the number of shares required to be issued pursuant to contingent obligations owed to former shareholders of the target company;[11]

3. Purchases designed to support the price of the issuer's securities in order to assist insides in disposing of their holdings at or above the pegged price; and

4. Purchases designed to support the market price of the issuer's securities in order to maintain the value of securities pledged by insiders as collateral for bank loans.[12]

Draft Rule 10b–10 would have required an issuer to disclose certain information and to comply with specific restrictions in connection with purchases of its own securities. The 1970 and 1973 Proposals would not have imposed any independent disclosure obligations on issuers, but would have imposed substantive restrictions, similar to those contained in draft Rule 10b–10, on the time, manner, volume, and price of issuer repurchases. In its regulatory approach, Rule 13e–2 as proposed in this release is substantially consistent with these earlier proposals.

II. Current Indirect Regulation of Issuer Repurchases

The Commission has regulated indirectly certain issuer repurchases under Rule 10b–6. That rule prohibits, among other things, an issuer or any of its affiliates from bidding for a security or purchasing it outside a distribution if

[5] *See* text at subsection IV.C., *infra.*

[6] *See* text at Section II., *infra.*

[7] Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968). Proposed Rule 10b–10 was reprinted in *Hearings on S.510 before the Subcomm. on Securities of the Senate Comm. on Banking and Currency*, 90th Con., 1st Sess. 214–216 (1967) ("Senate Hearings"). That rule proposal should not be confused with a different (and wholly unrelated) Rule 10b–10 [§ 240.10b–10] that was adopted by the Commission in 1977 to regulate the confirmation of securities transactions.

[8] Securities Exchange Act Release No. 8930 (July 13, 1970), 35 FR 11410 (1970).

[9] Securities Exchange Act Release No. 10539 (December 6, 1973), 38 FR 34341 (1973).

[10] *See Genesco, Inc.*, [1964–66 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,354 (May 10, 1966) (excerpt of prospectus). Although formal action was not brought against Genesco, the Commission delayed the effective date of a registered public offering of Genesco common stock until additional disclosures had been made in the prospectus relating to substantial purchases of Genesco stock by certain of Genesco's employee plans and a retirement trust while the company was engaed in various acquisitions. In addition, Genesco agreed to restrict future repurchases in accordance with terms the Commission specified.

[11] *See, e.g., Georgia-Pacific Corporation* [1964–1966 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶91,680 (S.D.N.Y. 1966) (complaint); [1964–1966 Transefer Binder] Fed. Sec. L. Rep. (CCH) ¶91,692 (S.D.N.Y. 1966) (consent judgment). Under the terms of the consent judgment, Georgia-Pacific was required to comply with certain restrictions on purchases of its securities. Those restrictions were similar to the ones imposed upon Genesco, Inc., as discussed at n. 10, *supra.*

[12] *See, e.g.*, Securities Exchange Act Release No. 4657 (December 6, 1963), in which the Commission issued a stop order pursuant to Section 8(d) of the Securities Act of 1933 [15 U.S.C. 77h(d)] suspending the effectiveness of the registration statement of Atlantic Research Corporation upon a finding that the issuer had made extensive and undisclosed open market purchases of its securities through several of its subsidiaries for the purpose, among others, of supporting the market price of the registrant's stock in order to maintain the value of an insider's securities pledged as collateral on certain loans.

the security is the subject of a distribution that is conducted by, or is attributable to, the issuer.

A class of securities may be the subject of a distribution for purposes of Rule 10b–6 in a number of circumstances that do not involve an underwritten public offering. For example, for purposes of Rule 10b–6, a distribution is deemed to exist with respect to a class of securities if the issuer has outstanding securities immediately exchangeable or exercisable for, or convertible into, that class. Also, regardless of whether an underwriter is involved, a distribution may be deemed to exist if the issuer has registered a substantial amount of securities for resale from time to time by one or more persons whose sales would be attributable to the issuer. In many cases, the Division of Market Regulation, pursuant to delegated authority, has granted exemptions from Rule 10b–6 to permit an issuer, or another person whose purchases would be attributable to the issuer, to make purchases of a security that was the subject of the distribution.[13] Frequently, the exemptions from Rule 106b–6 have been conditioned on compliance with certain conditions similar to those of proposed Rule 13e–2.[14]

The development of exemptive conditions under Rule 10b–6 has provided the Commission and its staff with valuable regulatory oversight of issuer repurchases. The Commission believes, however, that proposed Rule 13e–2, if adopted, would protect more adequately and directly the issuer's shareholders, and the investing public in general, since it would regulate an issuer's purchases of its own stock regardless of whether there existed a distribution of the issuer's securities, for purposes of Rule 10b–6, that was conducted by, or was attributable to, the issuer. In addition, if Rule 13e–2 were adopted, it would substantially reduce the burden associated with filing written requests with the Commission for interpretive or other relief under Rule 10b–6.

III. Background and Purpose of Section 13(e)

The Commission's authority for adopting Rule 13e–2 under the Act would be based, in part, on Section 13(e).[15] That section expressly grants the Commission the authority to adopt rules that define, and prescribe means reasonably designed to prevent, acts and practices that are fraudulent, deceptive, or manipulative in connection with an issuer's purchases of its own securities.[16] Section 13(e) also specificaly authorizes the Commission to require an issuer to make appropriate disclosures to its shareholders concerning its repurchases.

Some commentators on the 1970 and 1973 Proposals questioned the Commission's authority to regulate substantively he manner in which issuer repurchases are made. Those commentators suggested, on the basis of the legislative history of Section 13(e), that the Commission's authority under that provision may be limited to promulgating disclosure requirements in connection with an issuer's purchases of its own securities.

The Commission does not believe that its authority under Section 13(e) is so limited. The Commission's authority in Section 13(e)(1) is a broad power that is similar to other rulemaking provisions of the Act under which the Commission has adopted extensive substantive requirements.[17] That authority is not restricted by the additional language in that Section that provides specifically that the Commission's rulemaking authority includes the power to require issuers to make appropriate disclosures concerning their repurchases.[18]

A narrow and constricted reading of the Section 13(e)(1) power would be inconsistent with the congressional purposes underlying the enactment of that section. Purchases by an issuer of its own securities had previously been (and today remain) fully subject to the general anti-fraud and anti-manipulative provisions of the federal securities laws, such as Sections 9(a)(2) and 10(b), and Rule 10b–5 [§ 240.10b–5]. At the same time, the enactment of Section 13(e) as part of the Williams Act Amendments of 1968 indicates that the specific concerns raised by those purchases were sufficient to prompt the Congress to grant the Commission more extensive and specific rulemaking authority, independent of Sections 9(a)(2) and 10(b), to regulate them.

The legislative history of Section 13(e) supports this conclusion. The Congress recognized the complex nature of the issues raised by issuer repurchases. The Senate Committee observed:

> Corporate repurchases of their own securities may serve a number of legitimate purposes. For example, they may result from a desire to reduce outstanding capital stock following the cash sale of operating divisions or subsidiaries, or to have shares available for options, acquisitions, employee or stock purchase plans, and the like, without increasing the total number of shares outstanding. Repurchase programs, however, may also be utilized by management to preserve or strengthen their control by counteracting tender offers or other attempted takeovers, or may be made in order to increase the market price of the company's shares. Whatever the motive behind a repurchase program, if the repurchases are substantial they will have a significant impact on the market.[19]

In view of the special considerations attendant to issuer repurchases, the Congress enacted Section 13(e) to provide the Commission with ample authority to regulate them. The Congress did so with full knowledge that the Commission might well use the authority in Section 13(e) to adopt a rule like the draft Rule 10b–10 it had furnished to the Senate (which, as noted above, is a close antecedent of the subsequent Rule 13e–2 proposals). As the Commission stated to the Congress during the hearings on the Williams Act:

> While the Commission has substantial authority under the antifraud provision[s] of existing legislation, under the rule-making authority provided in the bill, the Commission could adopt more specific rules designed to deal with a variety of problems arising out of corporations' repurchases of their own shares.[20]

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[13] Such exemptions are granted under paragraph (f) of Rule 10b–6 in circumstances where it appears that the proposed transactions do not present the potential for manipulative abuse that the Rule is designed to prohibit.

[14] These conditions are set forth in an appendix (denominated Appendix C) that is attached to, and made a part of, the staff's letter granting exemptive relief. Appendix C is reprinted in 2 Fed. Sec. L. Rep. (CCH) ¶22,727; Sec. Reg. & L. Rep. (BNA), No. 465 at F–1 (August 9, 1978).

[15] In addition to Section 13(e), Rule 13e–2 is being proposed under the Act generally and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 15(c) and 23(a).

[16] The Commission has adopted three rules under Section 13(e). Rule 13e–1 [§ 240.13e–1] prohibits an issuer from purchasing any of its equity securities after a third party has filed with the Commission a Schedule 14D–1 relating to a tender offer for any of those securities, unless the issuer complies with the filing and disclosure requirements of that Rule. *See* Securities Exchange Act Release Nos. 8370 (July 30, 1968); 8392 (August 30, 1968); and 8556 (March 24, 1969). Rule 13e–3 regulates going private transactions by issuers and their affiliates, and Rule 13e–4 regulates issuer tender and exchange offers. *See* nn. 1–2, *supra*.

[17] *Se, e.g.*, Section 15(c)(2) of the Act [15 U.S.C. 78o(c)(2)], and the rules thereunder, § 240.15c2–1 *et seq.*

[18] The frist sentence of subsection 13(e)(1), in essence, authorizes the Commisison to adopt rules designed to prevent fraudulent, deceptive, or manipulative acts and practices. This authorization would appear to contemplate regulatory rules that prohibit or restrict certain types of conduct. If the subsection had stopped there, it could habe been argued that it did not authorize rules requiring disclosure, particularly in view of the fact there where the Congress intended to authorize disclosure rules, it often did so explicitly, as in Section 12 and Section 13(a). Consequently, it appears that the second sentence of subsection 13(e)(1) was designed to make it clear that disclosure rules were also authorized, rather than to limit the authorization clearly granted in the first sentence.

[19] S. Rep. No. 550, 90th Cong., 1st Sess. at 5 (1967). *See also Senate Hearings, supra* n. 7, at 37.

[20] *Id.* at 212.

Section 13(e) explicitly grants the Commission authority to regulate more than an issuer's disclosure responsibilities in connection with purchases of its own securities. It does so by authorizing the Commission to adopt rules in the public interest or for the protection of investors [21] that define, and prescribe means reasonably designed to prevent acts and practices that are fraudulent, deceptive, or manipulative. Pursuant to the specific authority in Section 13(e)(1), and the more general authority in other provisions of the Act, the Commission has defined such acts in paragraph (b) of proposed Rule 13e–2, and has proposed certain other requirements intended to prevent such acts and practices.

Some commentators on the 1973 Proposal suggested that the rule should be drafted as a "safe harbor" from liability under the antifraud and anti-manipulative provisions of the federal securities laws such as Section 10(b) (and Rule 10b–5) and Section 9(a)(2) of the Act. Although these commentators discussed certain policy considerations for structuring the rule as a safe harbor, their suggestion appeared in large measure to be based on questions relating to the Commission's authority to adopt a rule that would prescribe specific requirements, such as the time and price limitations, as means designed to prevent fraudulent, deceptive, or manipulative acts and practices. As discussed above, the Commission believes that Section 13(e) provides the authority to adopt the rule as proposed. Moreover, as a policy matter, the Commission is concerned that the suggested "safe harbor" approach would not sufficiently deter improper issuer conduct. The standards embodied in the proposed rule, particularly the volume limitations, are likely to be the most confining in the cases where they may also be the most needed, *i.e.*, in their application to issuers whose securities are thinly-traded. Particularly in view of the difficulty in many instances of proving whether a manipulation has or has not in fact occurred, the purposes sought to be achieved by the proposed rule would likely not be achieved if the rule were only a safe harbor and the issuer were free to engage in transactions that exceeded the rule's limits.

[21] As discussed in the releases proposing and adopting Rule 13e–3 and the release adopting Rule 13e–4, the Commission believes it would be appropriate for the federal courts to imply a private right of action under Section 13(e). *See* Securities Exchange Act Release Nos. 14185 (November 27, 1977), 41 FR 60099–60100 (1977); 16075 (August 2, 1979), 44 FR 46136 (1979); 16112 (August 16, 1979), 44 FR 49406 (1979). The Commission adheres to this view in connection with proposed Rule 13e–2.

IV. Coverage of Proposed Rule 13e–2

Proposed Rule 13e–2 would apply to any bid or purchase that constituted a "Rule 13e–2 bid" or a "Rule 13e–2 purchase," as defined by the Rule, unless an exception for the particular bid or purchase were available. Paragraph (a)(5) would define a "Rule 13e–2 purchase" as a purchase of common stock or preferred stock of an issuer by or for the issuer or any affiliate or affiliated purchaser [22] of the issuer. Whether a particular bid or purchase (collectively referred to below as a "purchase") was a Rule 13e–2 bid [23] or a Rule 13e–2 purchase would depend on three factors:

(1) Whether the issuer of the security to be purchased was subject to the rule;

(2) Whether the class of securities to be purchased was a common stock or preferred stock subject to the rule; and

(3) Whether the person making the purchase was subject to the rule.

If a bid or a purchase were determined to be a Rule 13e–2 bid or a rule 13e–2 purchase, the remaining inquiry would be whether it fell within one or more of the enumerated exceptions to the rule.

A. Issuers Subjects to the Rule

Proposed Rule 13e–2 would apply to two defined classes of issuers. First, the proposed rule would apply to any "Section 13(e) issuer," which would be defined as any issuer that has a class of equity securities registered pursuant to Section 12 of the Act, or that is a closed-end investment company registered under the Investment Company Act of 1940.[24] Section 13(e) issuers would be subject to all the requirements of the rule.

Second, the proposed rule would apply to any "Section 15(d) issuer," which would be defined as any issuer that is required to file periodic reports pursuant to Section 15(d) of the Act.[25] Those issuers would be subject to the specific disclosure requirements of the proposed rule, but (unlike Section 13(e) issuers) they would not be subject to the antifraud provision in paragraph (b) or to the purchasing limitations in paragraph (e) of the proposed rule.[26] In light of the class of issuers with which the Congress was directly concerned in formulating Section 13(e), the Commission believes it appropriate to impose through Rule 13e–2 more limited requirements on Section 15(d) issuers. Nevertheless, Section 15(d) and other issuers are subject to other anti-manipulative provisions of the federal securities laws, such as Section 10(b) and Rule 10b–5. The Commission believes that issuers that made repurchases in a manner that was inconsistent with the kinds of limitations contained in the rule might incur liability under those provisions. In a manner consistent with other rules under the Act that regulate issuer repurchases, the proposed rule would impose disclosure obligations on Section 15(d) issuers.[27]

B. Securities Covered by the Rule

The second inquiry to determine the applicability of Rule 13e–2 would be whether the securities to be purchased were common or preferred stock of a class subject to the rule. It appears that most issuer repurchase programs are limited to securities of a class that is registered under Section 12 or that subjected the issuer to Section 15(d). For that reason, the Commission does not currently believe that the application of the proposed rule need be extended, in cases where a Section 13(e) issuer has more than one class of common or preferred stock, to purchases of a class of common stock or preferred stock if that class itself is not registered under Section 12 of the Act, or to purchases of common stock or preferred stock of a Section 15(d) issuer if that class (i) has not been the subject of a registration statement declared effective by the Commission under the Securities Act of 1933, or (ii) is held by fewer than 300 persons.

In addition, the Commission solicits comment on whether purchases of preferred stock generally present a potential for manipulative abuse that

[22] The concept of "affiliated purchaser" is discussed below. *See* text at subsection IV.C., *infra*.

[23] Paragraph (a)(6) would define the term "Rule 13e–2 bid" as (i) a bid for securities that, if accepted, or (ii) a limit order to purchase securities that, if executed, would result in a Rule 13e–2 purchase. Limit orders (*i.e.*, in this case orders to purchase a stated amount of the security at a price not exceeding a specified one) would be separately included in view of the rules of certain exchanges that are interpreted so as not to treat as bids purchase orders at prices away from the current price. *See, e.g.*, New York Stock Exchange Rules 70 and 71, 2 New York Stock Exchange Guide (CCH) ¶¶2070, 2071; American Stock Exchange Rule 126(c), (d) and (e), 2 American Stock Exchange Guide (CCH) ¶9276. Limit orders away from the market would be subject to the purchasing restrictions in view of the market impact they may have. That impact derives in part from the effects limit orders have on exchange specialists and other market participants whose own conduct in the markets may be substantially influenced by knowledge of those orders.

[24] Proposed rule 13e–2(a)(3).

[25] Proposed rule 13e–2(a)(4).

[26] The purchasing requirements are discussed below in text at subsection V.C., *infra*.

[27] Rule 13e–3 requires an issuer subject to Section 15(d) that proposes to engage in a going private transaction to comply with the filing, disclosure and dissemination requirements of that Rule. In addition, Rule 13e–4 governs any tender offer by a Section 15(d) issuer for its equity securities.

justifies the restrictions imposed under the proposed rule. The Commission also inquires whether it would be desirable or feasible to apply limitations similar to those contained in the proposed rule to purchases by an issuer of any other of its equity securities such as warrants, rights, and convertible debt securities. Specific comment is requested on whether purchases of listed call options or sales of listed put options by the issuer of the underlying stock should be regulated by limitations analogous to those contained in the proposed rule in view of the possible effects of such transactions on the market price of the underlying security.

C. Persons Subject to the Rule

Once it had been determined that the issuer of the securities to be purchased was subject to the proposed rule, and that the securities being purchased were of a class covered by the rule, the third inquiry would be whether the rule would apply to the person making the purchase. In addition to their application to the issuer itself, various provisions of the rule would apply to affiliates of the issuer, affiliated purchasers of the issuer, and to any broker, dealer, or other person acting for the issuer or affiliated purchaser in making purchases.

The question of whether, and to what extent, purchases by persons other than the issuer should be subject to restrictions similar to those imposed on purchases by the issuer itself is a complex one. Section 13(e)(2) of the Act provides that, for purposes of Section 13(e), a purchase by or for the issuer, or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to control of the issuer or any such person, shall be deemed a purchase by the issuer. Thus, the Act recognizes that purchases of an issuer's securities by affiliates of the issuer, and purchases otherwise controlled by the issuer, may give rise to the same abuses as purchases by the issuer itself. Nevertheless, the Act explicitly gives the Commission authority to promulgate exemptive rules covering situations in which it deems it unnecessary or inappropriate to attribute purchases described in Section 13(e)(2) to the issuer.

By operation of Section 13(e)(2), the 1973 Proposal would have applied to purchases by the persons described in that Section. The Commission specifically inquired, however, whether and to what extent such persons should be covered by the rule, and it received a substantial amount of commentary on this issue. Some commentators suggested that purchases by affiliates should be unconditionally exempted from the proposed rule. Others suggested that it should apply to such purchases only to the extent that affiliates act in concert with, or at the request of, the issuer. A third group of commentators indicated that purchases of insubstantial amounts of securities by affiliates, in terms of either trading volume or units of the security, should be permitted without requiring that such purchases be aggregated with purchases by the issuer.

The Commission believes that it may not be necessary to subject all purchases of an issuer's securities by affiliates of the issuer to the same restrictions as apply to the issuer, particularly where (i) the purchases are truly independent of any purchasing activity or control by the issuer, (ii) the affiliate does not control the issuer by means of his ownership of the issuer's stock, and (iii) the affiliate is a natural person. To the extent that officers, directors, or other natural persons who may be deemed to be in a control relationship with the issuer otherwise than by reason of their ownership of the issuer's securities independently determine to invest in the issuer's securities, a requirement that such persons comply with the time and price limitations applicable to the issuer, together with a requirement that purchases by such persons be aggregated with those by the issuer for purposes of the volume limitations, currently seems unnecessary. Such a requirement might result in a substantial burden on an issuer and its affiliates that would not be outweighed by regulatory benefits to be achieved. in view of that problem the Commission is proposing generally to subject an affiliate [28] of an issuer who is a natural person, and does not control the issuer by virtue of stock ownership, only to the general antifraud provisions of proposed Rule 13e–2(b)(1) unless that affiliate is also an "affiliated purchaser" described below. Of course, affiliates would remain fully subject to other provisions of the federal securities laws such as Rule 10b–5 and Section 16 of the Act in connection with their purchases of the issuer's securities.[29]

The Commission believes, however, that there are several classes of persons whose purchases present the same potential for manipulative abuse as purchases by the issuer. Purchases by such persons should be deemed to be purchases by the issuer and should be regulated co-extensively with issuer purchases. Proposed Rule 13e–2 would reach those purchasers through the definition of the term "affiliated purchaser" in paragraph (a)(2). The term would be defined as (i) a person acting with the issuer for the purpose of acquiring securities of the issuer,[30] (ii) a person who controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer,[31] (iii) a person who controls the issuer through stock ownership, or (iv) an affiliate that is not a natural person. All purchases by affiliated purchasers would be required to be aggregated with others made by or for the issuer for purposes of the volume test in paragraph (e)(4) of the proposed rule, and would have to be effected in accordance with the other purchasing requirements contained in paragraph (e).[32]

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[28]Paragraph (a)(1) of proposed Rule 13e–2 would define the term "affiliate" to mean a person that directly or indirectly controls, is controlled by, or is under common control with the issuer.

[29]Although the Commission currently believes that the treatment of affiliates is a sensible one, it is prepared to reverse course and subject purchases by affiliates to all the requirements that would apply to purchases by the issuer if persuaded that that result would be preferable. In this connection, the Commission notes that exemptions from Rule 10b–6 have been granted to permit issuers and their affiliates to make purchases of the issuer's securities, and have required that all such purchases be aggregated for purposes of determining the applicable volume limitations. Since experience under Rule 10b–6 may be significant in determining the appropriate parameters of proposed Rule 13e–2, the Commission believes that it would be helpful if commentators on the proposed rule referred to their experience with the aggregation requirement used in the administration of Rule 10b–6.

[30]Purchases by an affiliate that occurred at or about the same time as purchases by the issuer itself or by affiliated purchasers might well raise questions as to whether the affiliate was in fact an affiliated purchaser. In the absence of proof to the contrary, an affiliate might be deemed to be an affiliated purchaser in some circumstances of that kind, particularly if other facts were present that suggested an identity of purpose between the issuer and the affiliate in connection with the purchases, or a common purchasing plan, or consciously parallel purchasing behavior. In addition, if the issuer and another person or other group of persons acted together in acquiring the issuer's securities, the other person or group would be deemed to be acting with the issuer, and, accordingly, would be affiliated purchasers regardless of whether purchases for the account of the issuer itself were made.

[31]The term "affiliated purchaser" would not include a broker, a dealer, or another person acting on behalf of the issuer and for its account. Such persons independently would be subject to certain provisions of the proposed Rule. *See* text at nn. 33–36, *infra*. If the "affiliated purchaser" provisions were adopted, the determination as to whether a particular person was an affiliated purchaser would have to be made by the issuer and other persons involved in the transaction. The Commission's staff would not render interpretations or no-action advice concerning specific factual situations in which persons might be deemed to be affiliated purchasers.

[32]The issuer would be responsible for coordinating its purchases with those of its affiliated purchasers. The Commission expects that

Footnotes continued on next page

The limitations contained in paragraph (e) of the proposed rule relating to the time, price and volume of issuer repurchases also would apply to broker-dealers and to other persons who make Rule 13e–2 bids or effect Rule 13e–2 purchases by or on behalf of Section 13(e) issuers or their affiliated purchasers.[33] Because of their proximity to the marketplace, broker-dealers (and others similarly situated) generally would be in the best position to determine whether bids they made and purchases they effected were done in compliance with the time and price limitations under the rule.[34] For that reason, they would be liable for their own failures to comply with those limitations. If the issuer complied with the single broker limitation of the rule, the broker, dealer, or other person would be in a position also to ensure that purchases on behalf of the issuer did not exceed the volume limitation. The proviso to paragraph (b)(2)(i) states, however, that the issuer (or the affiliated purchaser) would not be liable for the conduct of brokers, dealers, or others acting for it in connection with transactions effected on its behalf solely by reason of that conduct if the issuer or the affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer had taken reasonable steps to assure that the broker, dealer, or other person would comply with the rule. The proviso in paragraph (b)(2)(ii) would state that a broker, dealer or other person acting for the issuer or affiliated purchaser would not be liable for the conduct of the issuer or affiliated purchaser if it did not know or have reason to know that the issuer or affiliated purchaser would engage in such conduct.

Brokers, dealers and others acting on behalf of the issuer or an affiliated purchaser would not be subject to direct liability for a failure by the issuer or an affiliated purchaser to comply with the single broker provision. The single broker requirement is designed to prevent issuers from exerting unusual and manipulative buying pressure on the market. For example, it would prevent an issuer from giving orders to several brokers for the purpose of creating a false impression of widespread demand for its stock. Where, however, the issuer engages a single coordinating broker-dealer to make its repurchases, it does not seem necessary or appropriate to prevent that broker-dealer from making appropriate and customary arrangements with other broker-dealers, including exchange specialists and "two-dollar" brokers on exchange floors, to execute repurchase transactions. The coordinating broker-dealer would remain subject to the antifraud provisions of the Act and paragraph (b) (1) of the rule in connection with all such transactions and arrangements.[35] The broker-dealer could be liable as an aider or abettor in cases where it knew or had reason to know that the issuer or affiliated purchaser was violating the single broker-dealer limitation.

In order to put broker-dealers in a better position to comply with the proposed rule, paragraph (d)(3) of the proposal would provide that a Section 13(e) issuer or affiliated purchaser that directed a broker-dealer to make purchases for its account would have to disclose to the broker-dealer that such purchases had to be made in compliance with the rule, and would be responsible for disclosing to the broker-dealer all facts necessary to enable it to comply with the rule. If the broker-dealer used another person (*e.g.*, a "two-dollar" broker) to make the purchases, it would have to disclose to that person that the purchases had to be made in compliance with the rule.

The fact, however, that an issuer had made the required disclosure to a broker-dealer concerning the application of the rule would not by itself insulate the issuer from liability if the broker-dealer did not make purchases in compliance with it. As reports concerning such purchases usually are furnished to the issuer by the broker-dealer effecting the repurchase program, the Commission expects that the issuer would examine such reports promptly and with due care, and that it would take appropriate measures to prevent any continuing or future violations of the rule.

The Commission solicits comment on whether the proposed requirement that issuers and affiliated purchasers disclose to a broker-dealer or other person acting on their behalf that purchases must be made in compliance with Rule 13e-2 would adequately facilitate compliance with the rule by such person, or whether further or different provisions should be adopted.

D. Exceptions

The final inquiry to determine the applicability of Rule 13e-2 would be whether the transaction was exempt under paragraph (f) of the rule. Paragraph (f) of the proposed rule would except certain bids for and purchases of an issuer's securities that either are regulated sufficiently under existing rules, or generally do not present the potential for the kind of abuse the proposed rule would be designed to prohibit.[36] In addition, paragraph (g) would authorize the Commission to exempt certain transactions upon written request or upon its own motion.

V. Section-by-Section Analysis of Proposed Rule 13e–2

A. Definitions

Paragraph (a) would define certain terms used in the proposed rule. The terms defined in paragraphs (a) (9) through (12) would reflect implementation of the consolidated transaction reporting system ("consolidated system") contemplated by Rule 11Aa3–1 [§ 240.11Aa3–1] under the Act for reporting last sale data and the consolidated quotation system contemplated by Rule 11Ac1–1 [§ 240.11Ac1–1] under the Act for reporting quotation information.

The proposed rule would define "reported," "exchange traded" and "NASDAQ" securities in paragraphs (a) (10), (a) (11), and (a)(12), respectively. A reported security would be defined as any security as to which last sale information is reported in the consolidated system. An exchange traded security would be defined as any security, other than a reported security, that is listed, or is admitted to unlisted trading privileges, on a national securities exchange. A NASDAQ security would be defined as any security, except a reported security, as to which quotation information is reported in NASDAQ.

The daily volume limitation on Rule 13e-2 purchases would be a percentage of trading volume. Paragraph (a) (13) would define "trading volume" as a daily average based upon the total daily

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Footnotes continued from last page
issuers would take whatever steps were reasonably necessary to inform affiliated purchasers of their responsibilities under the rule.

[33] Proposed Rule 13e–2(b)(2)(ii).

[34] For example, paragraph (a)(16) would exclude from the definition of "block" (which is used in conjunction with special provisions that apply to blocks) any quantity of a security that a broker-dealer had assembled or accumulated for the purpose of resale to the issuer or an affiliated purchaser. Thus, in a given transaction, the broker-dealer might be the only person practically capable of knowing whether the securities would qualify as a block under the proposed rule.

[35] In making such arrangements, the broker-dealer would have to ensure that it did not organize or facilitate a manipulative or deceptive purchasing program. For example, the use of more brokers or other intermediaries than would be customary for transactions or programs of like character that did not involve an issuer repurchase might well subject the coordinating broker-dealer to liability if a manipulation was being attempted. *See also* text at n. 48, *infra*.

[36] *See* text at subsection V.F., *infra*.

volume in all markets that made volume data available in the four calendar weeks preceding the week in which the Rule 13e-2 purchase was to be effected. Trading volume would exclude any Rule 13e-2 purchases by or for the issuer or any affiliated purchaser. That exclusion would be designed to assure that the trading volume figures used to calculate the permissible volume of issuer purchases reflected only transactions independent of the issuer.

The Commission is proposing two alternative definitions of the term "block" in paragraphs (a)(16A) and (a)(16B) of the proposed rule. That term is significant since the volume restrictions of the proposed rule would not prohibit the purchase of blocks.[37] A block would be defined in paragraph (a)(16A) on a sliding scale as any number of shares of a security with an aggregate purchase price equal to at least a specified minimum dollar amount that would vary according to the purchase price per share. This definition was contained in the 1973 proposal. Substantially all of the commentators supported the definition based on a sliding scale. The Commission, however, also is proposing as a possible substitute for the sliding scale a simpler formulation of the term "block." Paragraph (a)(16B) would define that term to mean a number of shares of a security that had an aggregate purchase price of not less than $50,000 and, if the aggregate purchase price was less than $200,000, a number of shares that was not less than $5,000. The Commission believes this second alternative may be preferable not only since it is simpler than the sliding scale but also since it eliminates the somewhat arbitrary distinctions drawn under the sliding scale near the "breakpoints."[38] In any event, the Commission solicits comment on which of the two definitions would be more appropriate.

Paragraphs (a)(16)(A) and (B) each contain a separate (and alternative) definition of the term "block" that would be designed to enable issuers to engage in exempted block transactions, even though the securities were not heavily traded, or consisted of a relatively small number of shares outstanding. Under this definition, at least twenty round lots of a security, if that quantity was equal to at least 150 percent of the trading volume in that security, would constitute a block under either paragraph (a)(16A)(ii) or paragraph (a)(16B)(iii). If trading volume data for the security were not available, twenty round lots would constitute a block if that amount equaled at least one-tenth of one percent of the outstanding shares of such security, exclusive of any shares owned by any affiliate.

Under any of the definitions of the term, however, a block would not include any amount that a broker-dealer assembled or accumulated for the purpose of sale or resale to the issuer or an affiliated purchaser,[39] or any amount that a broker or dealer sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knew or had reason to know that the short sale was made.[40]

The proposed definitions of the term "block" also would require that the issuer or affiliated purchaser exclude any shares of stock that it acquired upon its exercise of a listed call option. The Commission is concerned that exercises of calls by the issuer or affiliated purchaser may result in substantial purchasing activity by the call writers who are assigned exercise notices. For that reason, the Commission does not believe that stock acquired by the issuer or affiliated purchaser upon exercise of calls should be included in the block determination.[41]

B. Disclosure

The 1973 proposal did not contain any express disclosure requirements. The Commission solicited comment, however, on whether an issuer should be required to disclose specified information with respect to its repurchases and, if so, the manner and timing of such disclosure. Certain commentators suggested that, in light of an issuer's disclosure responsibilities under other provisions of the Federal securities laws, additional disclosure requirements in an issuer repurchase rule would be unnecessary. Other commentators suggested that a disclosure requirement in the proposed rule would be appropriate.

The Commission is proposing for comment the disclosure provisions contained in paragraph (d) of the rule. Those requirements would be intended to cover Rule 13e–2 purchases under a repurchase program that sought the acquisition of more than two percent of the outstanding class of securities during any twelve-month period, regardless of whether the program was undertaken pursuant to formal authorization by a corporation's board of directors.[42] Before engaging in any Rule 13e–2 purchase that was part of such a program, the issuer or affiliated purchaser would have to disclose the information required by paragraph (d)(1)(i)–(iv) in a manner reasonably calculated to inform investors.[43] Paragraph (d) would require disclosure of (i) the time period during which Rule 13e–2 purchases would be effected; (ii) the maximum number of shares that would be purchased or the maximum amount of funds that would be

[37] *See* text at subsection V.C.4, *infra*.

[38] For example, under the sliding scale a "block" might consist of only 3,948 shares of a $19 stock but would have to be at least 6,250 shares of a $20 stock.

[39] As a result, a repurchase would not qualify for the block exception to the extent that the broker-dealer had assembled or accumulated any portion of the block with the intention of selling to the issuer or to an affiliated purchaser the shares so assembled or accumulated. The Commission believes that the exception of blocks from the volume limitations should not apply in view of the likely market impact of the assembly or accumulation. In a case where a broker-dealer sold to the issuer or to an affiliated purchaser a block that contained shares so assembled or accumulated, the transaction would not qualify for the block exception unless the remaining shares would independently be large enough to meet the definition of the term "block." While the remaining portion, if it independently was a "block," would be exempt from the volume limitations, the part that was assembled or accumulated would not and would count against the issuer's permissible volume.

[40] This proviso to the definition of the term "block" would incorporate in the rule the position expressed by the Commission in the 1973 Proposal. *See* 1973 Proposal, 38 FR at 34345, nn. 9–10.

[41] Shares of stock acquired upon exercise of a call option would be included for purposes of the volume limitations. *See* text at n. 68, *infra*.

[42] Although the Commission believes that the disclosure obligations of paragraph (d) generally would arise upon formal action by a corporation's board of directors, there may be other instances where an issuer or affiliated purchaser would seek the acquisition of greater than two percent of the issuer's outstanding securities. Paragraph (d) would apply in any of those circumstances.

The Commission is aware that certain issuer repurchase programs might constitute tender offers under the definition proposed in November 1979. Proposed Rule 14d–1 would define the term to include one or more offers to purchase more than 5 percent of a class of securities during any 45-day period that are directed to more than ten persons. *See* Securities Act Release No. 6159 (November 29, 1979), 44 FR 70326 (1979). Pending adoption of any definition, however, the question whether a purchase program constitutes a tender offer must be evaluated on the basis of existing standards. *See, e.g., Securities and Exchange Comm'n v. Sun Co.*, reported sub nom., *Wellman v. Dickinson* [Current] Fed. Sec. L. Rep. (CCH) ¶96,918 (S.D.N.Y. 1979); *Cattlemen' Investment Co. v. Fears*, 343 F. Supp. 1248 (W.D. Okla. 1972).

[43] Although the proposed rule does not specify the time at which, or the manner in which, disclosure must be made before commencing Rule 13e–2 purchases, the requirement that disclosure be made "in a manner reasonably calculated to inform investors" would be intended to govern both the timeliness of disclosure and the method used. Depending on the particular facts and circumstances, disclosure in a press release shortly before the date of commencement of Rule 13e–2 purchases probably would satisfy this requirement. If any of the information required to be disclosed by the proposed rule was not known at the time disclosure was made, a statement to that effect would have to be included, and the information would have to be disclosed as soon as it became known.

expended; [44] (iii) the purpose or purposes to be achieved through acquisition of the shares; and (iv) any plan or proposal that related to, or would result in, the disposition of the shares. Paragraph (d)(2) also would require prior disclosure of such information to each national securities exchange where the security to be purchased was registered and listed for trading, or admitted to unlisted trading privileges, and to the NASD if the security was authorized for quotation in NASDAQ.[45]

An issuer's plan to engage in a repurchase program, regardless of the percentage of outstanding securities sought to be purchased, may involve the expenditure of a material amount of assets, or may otherwise involve an event of material importance to security holders. Under these circumstances, disclosure obligations independent of those under Rule 13e–2(d) arise. Paragraph (d), however, would be intended to assure that certain information concerning the repurchase program, whether or not material to the issuer itself under a particular set of circumstances, was disclosed publicly. That disclosure requirement is intended to insure that not only the parties to the issuer's transactions but also the marketplace in general would be on notice that an issuer or affiliated purchaser might account for a substantial percentage of purchasing activity in the subject securities. The specific disclosure requirements proposed would not be intended to affect existing obligations of an issuer or any person subject to the proposed rule under Rule 10b–5 and other antifraud provisions of the federal securities laws in the context of transactions by such person in securities of the issuer.

The Commission recognizes that there may be circumstances in which it would be impracticable for an issuer to make the disclosure required by paragraph (d) before effecting a purchase. For example, the issuer may receive an unsolicited offer to sell a block of its securities that equals more than two percent of that class of securities, and may be required to consider the offer within a short period of time. The Commission solicits comments on whether the rule should require disclosure of such a purchase as soon as practicable after it is consummated, or should entirely except from the disclosure requirements of paragraph (d) Rule 13e–2 purchases where it would be impracticable to make prior disclosure.

C. Purchasing Requirements

1. Single Broker-Dealer Limitation. Proposed Rule 13e–2(e)(1) would provide that all Rule 13e–2 purchases not specifically excepted from the requirements of that paragraph would have to be made exclusively from or through one broker on any given day. If no broker was used on that day, purchases could be made from one dealer. The issuer and any affiliated purchaser would have to use the same broker-dealer on any single day in effecting Rule 13e–2 purchases. As noted above, the single broker-dealer limitation would be designed to prevent the manipulative technique of creating the appearance of widespread interest and trading activity in the security through the use of several broker-dealers to acquire the issuer's securities.[46]

The rule would except all unsolicited Rule 13e–2 purchases from the single broker-dealer limitation regardless of whether other Rule 13e–2 purchases were solicited by or for the issuer or an affiliated purchaser on the same day.[47] This exception is a liberalization of the 1973 Proposal, which would have imposed the limitation on all purchases except block purchases, effected either on or off an exchange, that were not solicited by or for the issuer. In view of the abuse the single broker-dealer limitation would be designed to prevent, the Commission does not believe that the size of the purchase should determine the applicability of the limitation.

In addition, the proposed rule has been revised to delete the requirement contained in the 1973 Proposal that bids and purchases, otherwise than in privately negotiated transactions, be made by the issuer "under the supervision and control" of only one broker-dealer. Some commentators expressed concern that a "control" requirement would preclude the use a subagent, such as a "two-dollar" broker, to execute a purchase order on the floor of an exchange. Proposed Rule 13e–2 would permit the single broker-dealer to use such subagents under appropriate circumstances. The "supervision" requirement has been deleted in order to preclude any interpretation of the single broker-dealer limitation that would have permitted a single, supervising broker to engage several different brokers sumultaneously to bid for the issuer's securities in the same market or through the same quotation medium.[48]

2. Time Restrictions

The 1973 Proposal would have restricted the times during which Rule 13e–2 purchases in less than block size could be made by or for the issuer on a national securities exchange or through NASDAQ. The time restrictions would have applied on a market-by-market basis. The 1973 Proposal would have proscribed such purchases on an exchange before the entry of an independent opening transaction on the

[44] The proposed rule would not require that the issuer or affiliated purchaser disclose both the maximum number of shares and the maximum amount of funds. If both items were material, however, the antifraud provisions of the Federal securities laws would require that they be disclosed to the purchasers. *See Securities and Exchange Comm'n v. Texas Gulf Sulphur Co.*, 401 F.2d 833 (2d Cir. 1968), *cert. denied*, 404 U.S. 1005 (1971).

[45] Generally, telephonic notice to the exchanges and to the NASD would satisfy this requirement. The Commission understands that the exchanges generally require, and the NASD suggests, that an issuer notify the exchange or the NASD of material impending developments which may affect market activity in the issuer's securities prior to the public announcement of such developments. *See, e.g.*, NYSE Company Manual, Section A2, Part II, at A–23; American Stock Exchange Company Guide, Part 4, § 402, NASD Notice No. 1–79 (February 2, 1979).

[46] *See United States v. Stein*, 456 F.2d 844 (2d Cir.), *cert. denied*, 408 U.S. 922 (1972); *United States v. Dardi*, 330 F.2d 316 (2d Cir. 1964), *cert. denied*, 379 U.S. 845, and 869 (1965); *Charles C. Wright*, 3 SEC 190 (1938), *rev'd on other grounds sub nom. Wright v. Securities and Exchange Comm'n*, 112 F.2d 89 (2d Cir. 1940); *R. J. Koeppe & Co. v. Securities and Exchange Comm'n*, 95 F.2d 550 (7th Cir. 1938); *Securities and Exchange Comm'n v. Georgia Pacific Corp., supra*, n. 11; *Allessandrini & Co.*, Securities Exchange Act Release No. 10466 (October 31, 1973); and *Cohen Goven Equities Inc.*, Securities Exchange Act Release No. 10252 (June 28, 1973).

[47] Some commentators on the 1973 Proposal expressed the fear that, in circumstances where the issuer was obligated (by the disclosure provisions of the proposed rule or otherwise) to disclose its intent to engage in Rule 13e–2 purchases, the issuer might be deemed to have solicited all indications of interest it thereafter received. Nevertheless, disclosure of the information contained in paragraph (d)(1), or a general public announcement by an issuer of a repurchase program, would not necessarily cause all subsequent Rule 13e–2 purchases to be deemed to be solicited.

[48] Exchange rules such as NYSE Rule 122 and Amex Rule 157 independently preclude members, member organizations and allied members from maintaining with more than one broker, for execution on the exchange, market orders or orders at the same price for the purchase or sale of the same security, if such person knows that such orders are for the account of the same principal.

In order to permit a broker-dealer or other person that acted on behalf of the issuer or affiliated purchaser to accumulate the issuer's securities, paragraph (b)(2)(ii) would provide that the broker-dealer or other person would not be subject to the single broker-dealer limitation. That provision is designed to allow the broker-dealer to make appropriate and customary arrangements with executing brokers, such as "two-dollar" brokers and specialists. It is not intended to permit a broker-dealer to engage several different brokers sumultaneously to bid for the issuer's securities in the same market or through the same quotation medium. Even if the use by a broker-dealer of more than one broker to execute orders on behalf of the issuer would not independently be prohibited by exchange rules, it would be inconsistent with the rule for the broker-dealer to employ more than one floor broker at the same time on the same exchange to make bids or to execute purchases on behalf of the issuer.

exchange or within one-half hour of the close of trading on the exchange, or in NASDAQ until after an independent bid had been entered or within one-half hour of the termination of Level 1 service.[49] The prohibition on opening bids and purchases by or for the issuer was designed to prevent such transactions from setting the character of the day's trading. The prohibition on bids and purchases near the close of trading was designed to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close.[50]

As revised, the time restrictions contained in proposed Rule 13e–2(e)(2) would apply to all Rule 13e–2 purchases, including block purchases, except those that were not effected from or through a broker or dealer. Unlike the 1973 Proposal, the rule as now proposed would not restrict the times at which a dealer acting for the issuer or for an affiliated purchaser could effect Rule 13e–2 purchases in NASDAQ securities if an independent bid currently was reported in Level 2 [51] of NASDAQ.

In light of the implementation of the consolidated system, time restrictions would apply to Rule 13e–2 purchases in reported securities on a uniform basis. Accordingly, a Rule 13e–2 purchase in a reported security on a national securities exchange or in the over-the-counter market would be prohibited if the purchase would constitute all or part of the opening transaction reported in the consolidated system. Once an independent opening transaction had been reported (regardless of the market in which the transaction occurred), Rule 13e–2 purchases could be made by or for the issuer or affiliated purchaser. the proposed rule would prohibit Rule 13e–2 purchases of reported securities during the period commencing one-half hour before the close of trading in the principal market for the security,[52] and ending with the termination of the period in which last sale prices are reported in the consolidated system. The latter period would be the same for all United States markets in which a particular security was traded.[53]

The periods during which the proposed rule would prohibit Rule 13–2 bids for and purchases of exchange traded securities [54] would continue to be determined on a market-by-market basis. A Rule 13e–2 bid on a national securities exchange would be prohibited if it would constitute the opening bid for the security on that exchange. Rule 13e–2 bids and purchases also would be prohibited during the one-half hour before the scheduled close of trading on that exchange.

The absence of an independent opening transaction on a given trading day would preclude any bids or purchases by or for an issuer or an affiliated purchaser from being effected on that day, with the exception of bids and purchases that were not effected from or through a broker or dealer. Certain commentators suggested, and the Commission recognizes, that the operation of this requirement, together with the volume limitation, might prevent issuers of thinly-traded securities from acquiring those securities on a regular basis or in substantial amounts. Nevertheless, the Commission believes that the proposed requirement of an independent opening transaction is appropriate since the potential for issuer domination of such a market—even in the absence of deliberate manipulative abuse—may be greater in the context of trading in such securities.[55]

3. Price Limitations

The maximum price at which an issuer could purchase its securities under the 1973 Proposal would have been based on the prevailing price in the principal market for the security. If the principal market for the security was an exchange, the maximum permissible price for purchases in less than block size from or through a broker-dealer and in privately negotiated purchases, regardless of size, would have been the higher of the last sale price or the highest independent bid on that exchange. If the principal market was otherwise than on an exchange, the price limitation would have been the mean between the highest current independent bid and lowest independent ask quotations for the security.

Purchases of a block by the issuer from or through a broker-dealer would have been subject to more restrictive price limitations under the 1973 Proposal. If the principal market for a security was an exchange, the price limitation for a block of the security would have been limited to the lower of the last sale price or the highest independent bid on such exchange. The price limit on purchases of a block of a security for which the principal market was not an exchange would have been the highest current independent bid.

In light of the development of the consolidated system, the Commission has deleted the principal market standard for determining price limits on purchases of reported securities. In addition, the price limits for Rule 13e–2 purchases, whether or not of block size, would be the same.[56] Thus, the price limit for purchases of reported securities

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[49] *See* n. 51, *infra.*

[50] This trading practice, sometimes called "marking the close," is a variation of the technique known as "painting the tape." It is a potentially manipulative device because opening and closing transaction data receive wide coverage by the media and are disseminated daily to the investing public. Purchases of a reported or exchange traded security at the opening or close of a trading day generally are thought to be significant indicia of the current market value of the security inasmuch as they tend to forecast the direction of trading and to suggest the strength of demand. In Litigation Release No. 7850 (March 30, 1977), the Commission announced the filing of a civil complaint (in response to which the defendant consented to an entry of a permanent injunction) alleging violations of Sections 9(a)(2) and 10(b) of the Act and Rule 10b–5 by Chromalloy American Corporation and certain of its affiliates. The complaint alleged, among other things, that Chromalloy and those affiliates manipulated the price of Chromalloy common stock by repeatedly "upticking" the price of the stock at or near the close of trading on the New York Stock Exchange.

[51] As a result of the recent adoption of Rule 11Acl–2 under the Act [§ 240.11Acl–2], which governs the display of transaction reports, last sale data and quotation information, Level 1 service of NASDAQ now displays the best bid and offer made available by NASDAQ market makers rather than a "representative" bid and offer. It is the level generally used by registered representatives in retail trading. Level 2 displays the best bid and offer as well as a montage of the current quotations of individual NASDAQ market makers for a given security. Level 3 is the only level that accepts user input, allowing a market maker to enter, update, or remove its price quotations.

[52] The principal market for a security would be the market that reported the greatest volume of trading in the security.

[53] The purchasing restrictions of the rule would not apply to Rule 13e–2 purchases effected in foreign markets.

[54] As noted above, the term "exchange traded" securities, as used in the proposed rule, refers to those securities traded on a national securities exchange for which last sale data are not reported on the consolidated tape.

[55] One commentator recommended that the execution by a specialist of limit orders placed by the issuer should be excepted from the time restrictions since an issuer or other person subject to the rule might inadvertently violate it if a limit order entered within a permissible time period was executed later as an opening transaction or within the prohibited period near the close of trading. The Commission believes, however, that such an exception would be inconsistent with the purposes of the time restrictions of the proposed rule. *See* text at n. 50, *supra.* Accordingly, any limit order by or for the issuer or an affiliated purchaser for a reported security or an exchange traded security could be entered only after an independent opening transaction was reported in the consolidated system or on a particular exchange, respectively, and the order would be required to be canceled if it had not been executed before one-half hour preceding the close of trading.

[56] The rationale for the stricter price limit on block purchases in the 1973 Proposal primarily was based on the assumption that most blocks trade at a discount. *See* 4 Institutional Investor Study Report of the Securities and Exchange Commission at 1825, H.R. Doc. No. 92–64, 92d Cong., 1st Sess. (1971). While this assumption currently may be valid, the Commission does not believe that the purchase of a block presents any additional potential for manipulative abuse that would necessitate a more restrictive price limitation than purchases of less than block size.

would be the higher of the last sale price or highest independent published bid, regardless of the market reporting that figure.[57] The price limit applicable to purchases of exchange traded securities in transactions on an exchange would be the higher of the highest current independent bid quotation or the last sale price on such exchange.[58]

The 1973 Proposal would have limited the price at which purchases of securities for which the principal market was otherwise than on an exchange to a price no higher than the mean between the highest independent bid and the lowest independent offer, and no purchase of those securities could be made at a price above such mean price "plus a customary or negotiated commission." In view of the difficulty an issuer might encounter in determining the amount of any commission equivalent, mark-up, or differential paid to a dealer in the over-the-counter market,[59] the price limitations applicable to purchases of those securities have been revised to incorporate a pricing standard based on the net price (*i.e.*, a price that would include all dealer mark-ups and other transaction costs charged to the customer).[60] Purchases of a NASDAQ security otherwise than on an exchange could be made at a net price no higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ.[61] The price limit for purchases of securities that are not reported or NASDAQ securities otherwise than on an exchange would be the lowest current independent offer quotation ascertained on the basis of reasonable inquiry.[62] The purchase price under proposed Rule 13e–2(e)(3)(iii)–(iv) would include any commission equivalent, mark-up, or differential paid to a dealer.[63]

Commentators on the 1973 Proposal generally did not address the proposed price restrictions on purchases of securities in the over-the-counter market. Accordingly, the Commission specifically solicits comment on whether the proposed price restrictions, contained in paragraphs (e)(iii)–(iv) of the rule, on purchases of NASDAQ and other securities traded over-the-counter would be appropriate, or whether limitations similar to those contained in the 1973 Proposal would be preferable.

The 1973 Proposal would have imposed the price limitations on purchases that were solicited by the issuer even if they were not effected from or through a broker or a dealer. Although there might be some impact on the market for an issuer's stock if the issuer extensively solicited those purchases, the Commission does not believe that the potential for manipulative abuse in the context of such transactions is sufficient to warrant imposition of the price limitations particularly since applying the price limitations in that fashion might prevent an issuer from buying out a shareholder at a premium over market price in a privately negotiated transaction that had little if any destructive market impact. Accordingly, the price restrictions would not apply to Rule 13e–2 purchases that were not from or through a broker or a dealer, regardless of whether a solicitation was involved.[64]

4. Volume Limitations

The volume limits of the proposed rule would be designed to prevent an issuer or affiliated purchaser from dominating the market for the issuer's securities through substantial purchasing activity. Notwithstanding the other requirements of the rule that would prevent the issuer or affiliated purchaser from leading the market for the securities by establishing new high bids or from creating the appearance of widespread interest through the use of many brokers, the Commission believes that domination of the market in terms of the amount of securities purchased may mislead investors and deprive the public of a pricing mechanism free of issuer control. In addition, issuer domination of the market can be manipulative even in the absence of price leadership. As one commentator has noted:

> Moreover, the price of a security may be raised without raising the bid. Following the market too closely on a raise with either purchases or bids may be just as instrumental in creating a price rise. The obvious effect of promptly putting a new floor under the market each time it goes up as a result of an independent purchase or bid is to exhaust the supply of securities which may be offered at lower levels and thus to force others to raise their bids.[65]

As a means designed to prevent this form of manipulative abuse, paragraph (e)(4) of the proposed rule would restrict the aggregate amount of securities that could be purchased on any day by the issuer or affiliated purchaser to a percentage of the total trading volume, as that term would be defined by the rule.

The 1973 Proposal would have used a principal market standard to determine the permissible volume of an issuer's repurchases. If the principal market for a security was an exchange, the 1973 Proposal would have limited the daily volume of the issuer's purchases on any exchange to fifteen percent of the average daily trading volume on such exchange during the preceding four calendar weeks. The volume limitations would have applied separately to purchases in each market in which the security was traded, provided that volume data in each market were made available by the appropriate self-regulatory organization. If the principal market for a security was otherwise than on a national securities exchange, the 1973 Proposal would have limited the daily volume of issuer repurchases to fifteen percent of the average daily trading volume reported in NASDAQ in the four preceding calendar weeks, or, if the security was not quoted in NASDAQ, to 0.04 percent of the outstanding securities of the class per week. Any issuer would have been permitted to purchase at least one round lot per day. Block and privately negotiated purchases would not have been subject to any volume limitations.

The volume limitations of proposed Rule 13e–2 have been revised substantially in response to comments received on the 1973 Proposal and the implementation of the consolidated transaction reporting system. Proposed Rule 13e–2(a)(13) would define average daily trading volume ("trading volume") for reported securities, exchange traded

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[57] Proposed Rule 13e–2(e)(3)(i).

[58] Proposed Rule 13e–2(e)(3)(ii).

[59] Except in the case of "riskless" principal transactions, Rule 10b–10 under the Act [§ 240.10b–10] currently does not require disclosure on the customer confirmation of the amount of remuneration received from the customer by the broker-dealer acting as principal for its own account.

[60] Use of the net price standard would be limited to over-the-counter transactions in securities that are not reported. In the case of over-the-counter transactions in reported securities, the purchase price would be defined to exclude any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer. *See* Proposed Rule 13e–2(a)(14)(i). The requirement that such charges be excluded in connection with third market transactions should not, in the Commission's view, present any difficulties of computation since exclusion of such charges is currently required under NASD rules in computing the price at which third market trades are reported for inclusion in the consolidated system.

[61] Proposed Rule 13e—2(e)(3)(iii).

[62] Proposed Rule 13e–2(e)(3)(iv). Whether an inquiry was "reasonable" would depend upon customary practice within the securities industry as well as the circumstances surrounding a particular transaction, such as the number of dealers that submitted quotations for publication by the National Quotation Bureau, Inc. and the frequency with which such dealers submitted quotations.

[63] *See* proposed Rule 13e–2(a)(14), which defines the term "purchase price."

[64] A program of active solicitation, however, may suggest that the issuer is making a tender offer that must be conducted in compliance with applicable rules and regulations (*e.g.*, Rule 13e–4).

[65] 3 Loss, *Securities Regulation* at 1551 (1961). *Cf. Kidder, Peabody & Co.*, 18 SEC 559, 570 (1945); *Halsey, Stuart & Co., Inc.*, 30 SEC 106, 129 (1949) (over-the-counter manipulation).

securities and NASDAQ securities that are not exchange traded securities. In all instances, trading volume would be an average based upon the total daily volume, exclusive of Rule 13e–2 purchases, reported by all markets that made volume data available in the four weeks preceding the week in which the Rule 13e–2 purchases were to be effected. The daily volume limitation for all securities for which volume data were reported is set forth in paragraph (e)(4). That limitation would be the higher of one round lot or that number of round lots closest to fifteen percent of defined trading volume.[66] The volume limitation for other securities would be the higher of one round lot per day or, in any consecutive seven-day period, 0.05 percent of the shares of the class of securities. Block purchases and purchases that were not made from or through a broker or dealer would not be subject to the volume limitations.[67] As a general matter, the Commission believes that the market impact of a block purchase is likely to be less than that of a series of purchases of smaller amounts that in the aggregate are equal in size to the block but are accomplished over a period of time.

The exercise of listed call options to purchase the issuer's stock by the issuer or an affiliated purchaser may in turn require the persons who are assigned the exercise notices to purchase in the open market. In view of the potential market impact of these purchases, paragraph (e)(4) would require that any shares that the issuer or affiliated purchaser acquired upon its exercise of a listed call option be included in the volume limitations of the proposed rule. For example, if proposed Rule 13e–2 would permit an issuer to purchase 2,000 shares on any day, the issuer could purchase all the shares in the open market, exercise 20 options contracts,[68] or do a combination of those things, so long as the total amount acquired through exercises and market purchases did not exceed 2,000 shares.

D. Purchases on Behalf of Employee and Shareholder Plans

Sections 13(e) of the Act does not address purchases of an issuer's securities by an employee or shareholder plan ("plan") sponsored by the issuer or an affiliate. Rather, Section 13(e)(2) contains a control standard for determining whether purchases by a person other than the issuer shall be deemed to be purchases by the issuer for purposes of any rule promulgated by the Commission under Section 13(e)(1).[69] Proposed Rule 13e–2 would establish criteria for determining whether a purchase by a trustee or other purchasing agent ("agent") for a plan sponsored by an issuer or an affiliate was a purchase subject to the control of, and thereby attributable to, the issuer or an affiliate for purposes of Section 13(e)(2) of the Act.

With certain exceptions, noted below, the provisions of proposed Rule 13e–2 that would apply to purchases on behalf of plans would be substantially similar to those contained in the 1973 Proposal. The definition of a Rule 13e–2 purchase contained in paragraph (a) would exclude any purchase effected by or for an issuer plan [70] if the transaction were effected by an agent independent of the issuer. Paragraph (a)(8) of the proposed rule would define the term "agent independent of the issuer." In order to be independent, the agent for the issuer plan could not be an affiliate of the issuer [71] and would have to be independent of the issuer's control in effecting transactions. The criteria that would be used to satisfy these tests of independence would be designed to insulate the market in the issuer's securities from potentially manipulative influence by the issuer or an affiliate.[72]

The transactional independence test would contain five criteria. Under paragraph (a)(8)(ii), an agent would be independent if neither the issuer nor any affiliate, directly or indirectly, had any control or influence over the time, price, amount, and manner of purchases for the plan, or the selection of the broker-dealer through which purchases would be executed. Each of these factors is discussed below. Generally, however, any restrictions imposed by an issuer or affiliate on purchases by an agent, other than those attributable to the timing of the issuer's prescheduled payments of funds, might well preclude a determination that the agent was independent. The discretion of an issuer to elect to contribute cash or securities to a plan, which by definition must be exercised before any contribution to the plan, would not be deemed to constitute control over the agent, notwithstanding the fact that exercise of such discretion might determine the amount of any market purchases by the agent.

1. Timing of Purchases

In order for the agent to be deemed independent, the agent would have to retain full discretion with respect to the timing of purchases on behalf of a plan. For example, the issuer could not require the agent to make or refrain from making purchases during any particular part of the day, or that the agent commence or complete purchasing for a plan on any specified date or within any specified period of time after receipt of contributions from the issuer.[73]

[66] Where 15% of average daily volume equaled a multiple of round lots plus half or more of an additional round lot, the "closest to" language would permit maximum permissible purchases to be rounded up to the next higher number of round lots.

[67] *But see* n. 64, *supra*.

[68] Generally, one call option contract gives the holder the right to buy 100 shares of the underlying stock.

[69] *See* text at subsection IV.C, *supra*. As published by the Senate in 1967, the Commission's draft Rule 10b–10 would have treated purchases for any employee plan of the issuer, its parent or subsidiaries as purchases by the issuer. The Commission recommended that a comparable provision be included in S. 510. The bill originally passed by the Senate included an amendment that would have regulated all purchases of an issuer's securities by an employee plan of the issuer or an affiliate. In response to industry comment, the House proposed an amendment which subsequently was enacted as Section 13(e)(2) of the Act. That amendment deleted previous references to employee plans and substituted the control standard for determining whether purchases by persons other than the issuer should be deemed to be purchases by the issuer. *See* H.R. Rep. No. 1711, 90th Cong., 2d Sess. 18 (1968).

[70] The term "issuer plan" would be defined in paragraph (a)(7) to mean any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, dividend reinvestment, or similar plan for employees or security holders of the issuer or any affiliate.

[71] Certain commentators suggested incorporating in the rule the position that neither a common directorship between the issuer and the agent, nor the issuer's right to remove the agent, would itself constitute control over the agent. Although the Commission generally adheres to this view, it does not believe that a common directorship or the issuer's right to remove the agent should never be considered to be evidence of control. Since the determination of whether a control relationship exists between the issuer and the agent would be a factual one to be made on a case-by-case basis by the issuer, the Commission has determined not to delineate further indicia of that relationship in the rule.

[72] Even where purchases for a plan are made through an independent agent, the Commission believes that the magnitude of those purchases may have a significant impact on the market price of the issuer's securities. Given the proliferation of diverse plans in recent years, the aggregate amount of purchases of an issuer's securities by or for plans sponsored by the issuer or its affiliates in many instances may exceed the amount of purchases by the issuer and its affiliates. The Commission may consider whether to authorize its Directorate of Economic and Policy Analysis to conduct a voluntary survey to determine the approximate market share represented by purchases by independent agents to fund employee and shareholder plans relative to purchases by or attributable to the issuer. The survey would be designed to produce empirical data from which the Commission may draw inferences regarding the impact that plan purchases have on the market prices for issuers' securities.

[73] Certain timing limitations that were imposed otherwise than by the issuer would not compromise the independence of the agent. For example, the Commission's Division of Investment Management requires that purchases with contributions to dividend reinvestment plans be made within 30 days from the date contributions are received by the agent if the plan is not to be deemed to be an investment company. *See* Letter dated May 6, 1974

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The proviso to paragraph (a)(8)(ii) relating to the frequency of an issuer's contribution to a plan is intended to address an issuer's indirect control over the timing of purchases by an agent. If the issuer were permitted to change the frequency of its contribution more than once in any six-month period, the agent would not be deemed to be independent.

2. Price of Purchases

To satisfy this criterion of independence, the issuer could not control the price at which the agent made purchases for a plan. For example, the issuer could not set a minimum or maximum price per share to be paid for its securities, or require that purchases be made at a price not higher or lower than a particular current market price or closing price of the security.

The Commission understands that some plans contain a provision requiring the agent to purchase the issuer's securities at "fair market value" at the time purchases are made. Such a provision may be imposed by statute,[74] or in the absence of a statutory mandate may be intended to insure that the agent's purchases for the plan are consistent with the interests of the beneficiaries. In either case, the provision would not preclude a determination that the agent was independent.

3. Amount of Purchases

Under this test of independence, the issuer could not direct the agent to make purchases for a plan in specified amounts, or in transactions of a particular size (*e.g.*, block, round lot, or odd lot).[75] In addition, the issuer could not impose any restriction with respect to the volume of purchases made by the agent.

Paragraph (a)(8)(ii) also would provide that an agent would not be deemed to be independent of the issuer if the issuer revised the basis for determining the amount of its contributions to the plan more than once in any six-month period.[76] This provision would be intended to address the indirect control an issuer could exercise over the amount of purchases by an agent if permitted frequently to revise the formula used to determine the amount of its contributions.

4. Manner of Purchases

To satisfy this criterion, the issuer could not retain the discretion to direct the agent to make or refrain from making purchases in a particular market, or to make purchases by means of particular kinds of orders (*e.g.*, limit orders or market orders).

5. Selection of the Broker-Dealer

The 1973 Proposal provided that, in order for the agent to be independent of the issuer, the issuer could not select the broker-dealer through which purchases for a plan could be executed. The Commission was concerned that the issuer's retention of the power to direct brokerage for the plan could tend to undermine the regulatory objectives of insulating the plan from any control or influence of the issuer. This concern would be particularly significant where the agent acted merely as a conduit for funds between the issuer and the executing broker-dealer, even if the broker-dealer was not otherwise in a control relationship with the issuer.

Several commentators on the 1973 Proposal criticized the prohibitions on broker-dealer selection as a criterion of an agent's independence. They expressed concern that it would preclude brokerage firms from acting as both agent and executing broker for the plan as, for example, in the case of monthly investment plans currently operated by such firms on behalf of numerous issuers. In view of that concern, and the possibly anticompetitive consequences of the 1973 Proposal, the Commission has modified the requirement so that a broker-dealer would be permitted to act both as agent and as executing broker.

E. Broker-Dealer Issuers

The 1973 Proposal would have imposed special restrictions on repurchases by issuers that are registered as broker-dealers under Section 15 of the Act. Under that proposal, all such purchases would have had to be made through an agent independent of the issuer and the broker-dealer issuer could not execute purchases made on its behalf by the independent agent.

The Commission has deleted that proposed requirement. A broker-dealer enjoys the ability to gain access to the marketplace on terms that are not generally available to other issuers. Nevertheless, the Commission currently believes that the disclosure obligations and the purchasing restrictions of the rule, as well as the general antifraud provisions and the Commission's administrative jurisdiction over broker-dealers, make it unnecessary to require also that a broker-dealer use an independent agent for its repurchase transaction.

F. Exceptions

Paragraph (f) would contain eleven exceptions to the substantive purchasing restrictions of the proposed rule. The general antifraud provision of the proposed rule, however, would apply to excepted bids and purchases. The exceptions would be intended to cover purchases that either do not appear to present the potential for manipulative abuse the rule would be intended to prohibit, or that already are subject to other regulatory safeguards.

Exception (1) would apply to purchases of any security that are subject to, and made in compliance with, Rule 10b–7 under the Act.[77] New exception (2) would apply to any purchase made in connection with a tender offer by a third party for securities of the issuer if the issuer complied with Rule 13e–1 under the Act before making it. Exceptions (3) and (4) would except purchases pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e–4 under the Act, or with Section 14(d) of the Act and the rules applicable thereto, respectively.

Exception (5) would apply to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments. Exception (6) would except purchases of securities pursuant to a merger, acquisition or similar transaction involving a recapitalization. Exception (7) would apply to purchases of securities of dissenting shareholders who asserted rights of appraisal with respect to their shares.[78]

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from the Division of Investment Management Regulation to Lucky Stores, Inc. *See also* Rule 10b–10(d)(4), which defines the term "periodic plan."

[74] Trustees for plans subject to the Employeee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.*, generally are subject to the "fair market value" requirement.

[75] It would be permissable, however, for the issuer to establish at the beginning of a repurchase program an aggregate maximum number of shares to be purchased for the plan.

[76] The 1973 Proposal contained a priviso that would have attributed purchases by an otherwise independent agent to the issuer if the issuer revised the amount of its contributions to the plan more than once every six months. The commentators suggested that this provision was overly restrictive since the issuer would be unable to control fluctuations in the amount of contributions resulting from changes in the number of participating employees or shareholders, amounts of salaries and profits, or dividend rates. Accordingly, the proviso has been modified as described above.

[77] The 1973 Proposal containing an exception for purchases of equity securities by an issuer or affiliate made in compliance with Rule 10b–8 under the Act. [§ 240.10b–8.] In view of the fact that the rule as proposed would not apply to purchase of rights, which are the only securities subject to the purchasing restrictions of Rule 10b–8, that exception has been deleted.

[78] The 1973 Proposal contained a similar exception, but would have required that

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Several commentators of the 1973 Proposal suggested that the proposed rule should except an issuer's purchases of its securities if the purchases were made in order to satisfy sinking fund obligations. Those commentators stated that the exception would be appropriate since it might otherwise be difficult for an issuer subject to the purchasing restrictions to accumulate a sufficient amount of the security to satisfy its obligation, particularly if the security was not actively traded. The Commission understands that most sinking fund obligations arise in connection with debt securities and convertible debentures, which are not covered by the proposed rule. Nevertheless, in view of the concerns raised by the commentators, the Commission is proposing new exception (8), which would cover situations where the issuer was required to make purchases of preferred stock to satisfy sinking fund obligations. The exception would apply only in the context of mandatory sinking fund obligations that must be satisfied not more than one year from the time the purchases are made. The Commission does not believe that the exception should apply to purchases to satisfy sinking fund obligations that are not current or mandatory.

Exceptions (9) and (10) are substantially the same as exceptions proposed in 1973. Exception (9) would apply to purchases of fractional interests in a security, and exception (10) would apply to purchases of securities from employees pursuant to a pre-existing right or obligation.

The 1973 Proposal would have excepted purchases of any security not traded on a national securities exchange for which no dealer market existed. Several commentators suggested that the term "dealer market" should be defined. As revised, exception (11) would apply to purchases of any security not traded on a national securities exchange and with respect to which the issuer thereof did not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

Finally, paragraph (g) of the proposed rule would authorize the Commission to exempt any Rule 13e–2 purchase from one or more paragraphs of the rule as not comprehended within the intended meaning and purpose of such paragraph or paragraphs.

VI. Proposed Amendments to Rule 10b–6

As discussed earlier in this release,[79] the Commission has taken the position that, for purposes of Rule 10b–6, an issuer is deemed to be engaged in a distribution of a class of securities if it has outstanding a publicly held series of securities that are immediately convertible into, or exchangeable or exercisable for, that class of securities. Exemptions from Rule 10b–6 frequently have been granted to permit an issuer or an affiliate to make purchases of a security which is the subject of such a distribution. The exemptions generally have been conditioned on compliance with certain purchasing restrictions. If Rule 13e–2 were adopted, it would impose substantially similar limitations on all persons subject thereto. Accordingly, it would no longer be necessary to regulate under Rule 10b–6 purchases of a security that was the subject of a so-called "technical distribution."[80] The Commission, therefore, is proposing to amend paragraph (f) of Rule 10b–6 to provide that purchases of equity securities would not be subject to Rule 10b–6 if (i) they were subject to Rule 13e–2, and also subject to Rule 10b–6 solely because the issuer had outstanding securities convertible into, or exchangeable or exercisable for, such securities,[81] and (ii) the purchases were subject to and made in compliance with Rule 13e–2, to the extent the rule was applicable to the person making the purchases.[82]

Proposed paragraph (g) to Rule 10b–6 would codify the staff's position concerning purchases of an issuer's securities by or on behalf of issuer-sponsored plans.[83] Those purchases would be deemed to be purchases by the issuer unless effected by an agent independent of the issuer, as that term is proposed to be defined in Rule 13e–2(a)(8).

VII. Statutory Basis

Proposed Rule 13–e and the amendments to Rule 10b–6 would be promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 2, 3, 9(a)(6), 9(b), 10(b), 13(e), 15(c), and 23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78i(b), 78j(b), 78m(e), 78o(c), and 78w(a).

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows.

1. By adding 17 CFR § 240.13e–2 as follows:

§ 240.13e–2 Purchases of certain equity securities by the issuer and others.

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term "affilate" means any person that directly or indirectly controls, is controlled by, or is under common control with, the issued;

(2) The term "affiliated purchaser" means

(i) A person acting with the issuer for the purpose of acquiring the issuer's securities; or

(ii) A person who controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; or

(iii) A person who controls the issuer by means of his ownership of the issuer's securities; or

(iv) Any affiliate that is not a natural person; *Provided, however,* That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 13e–2 bids or effecting Rule 13e–2 purchases on behalf of the issuer and for its account;

(3) The term "Section 13(e) issuer" means an issuer that has a class of equity securities registered pursuant to section 12 of the Act or that is a closed-end investment company registered under the Investment Company Act of 1940;

(4) The term "Section 15(d) issuer" means an issuer that is required to file periodic reports pursuant to section 15(d) of the Act;

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shareholders exercise their appraisal rights "in accordance with statutory provisions." Since certain statutes do not provide for, or are unclear on the timing of, appraisal rights, that phrase has been deleted.

[79] *See* text at n. 13, *supra.*

[80] Rule 10b–6 would continue to apply if the issuer were engaged in any other distribution (*e.g.*, an underwritten offering) of the security to be purchased.

[81] Paragraph (f) of Rule 10b–6, was recently added to the rule to except purchases pursuant to tender offers by issuers and affiliates, subject to Rule 13e–4 or Section 14(d) of the Act, where Rule 10b–6 would apply only because of the kind of distribution described above. *See* Securities Act Release No. 6197 (March 13, 1980), 45 FR 18914 (1980).

[82] For example, if a Section 15(d) issuer would be subject to Rule 10b–6 solely because of outstanding securities convertible into its common stock, Rule 10b–6 would not prohibit its purchases of common stock if it complied with the disclosure requirements of paragraph (d). *See* text at nn. 25–27, *supra.*

[83] The Commission recently proposed to amend paragraph (e) of Rule 10b–6 to except from the operation of that rule distributions of securities by an issuer to its employees or shareholders pursuant to a plan, as that term is defined in paragraph (c)(4) of the rule. *See* Securities Act Release No. 6198 (March 13, 1980), 45 FR 18948 (1980). The Commission anticipates that it will take further action on these amendments in the near future.

(5) The term "Rule 13e–2 purchase" means a purchase of common stock or preferred stock of a Section 13(e) issuer, or a Section 15(d) issuer, by or for the issuer or any affilate or affiliated purchaser, but does not include

(i) Any purchase of common stock or preferred stock of a Section 13(e) issuer if the class of such stock is not registered pursuant to section 12 of the Act;

(ii) Any purchase of common stock or preferred stock of a Section 15(d) issuer if the class of such stock has not been the subject of a registration statement that has become effective pursuant to the Securities Act of 1933, or if the class is held of record by fewer than 300 persons; or

(iii) Any purchase of a security effected by or for an issuer plan if the transaction is effected by an agent independent of the issuer;

(6) The term "Rule 13e–2 bid" means

(i) A bid for securities that, if accepted, or

(ii) A limit order to purchase securities that if executed, would result in a Rule 13e–2 purchase;

(7) The term "issuer plan" means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, divident reinvestment or similar plan for employees or security holders of the issuer or any affiliate;

(8) The term "agent independent of the issuer" means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate has any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock or preferred stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or affiliate will not be deemed to have such control or influence solely because it has the power to revise not more than once in any six-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan;

(9) The term "consolidated system" means the consolidated transaction reporting system contemplated by Rule 11Aa3–1 [§ 240.11Aa3–1];

(10) The term "reported security" means any security as to which last sale information is reported in the consolidated system;

(11) The term "exchange traded security" means any security, except a reported security, that is listed, or admitted to unlisted trading privileges, on a national securities exchange;

(12) The term "NASDAQ security" means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD");

(13) The term "trading volume" means

(i) With respect to a reported security, the average daily trading volume for each security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made; and

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 13e–2 purchase is to be effected or the Rule 13e–2 bid is to be made;

Provided, however, that such trading volume under paragraph (a)(13) (i), (ii) and (iii) shall not include any Rule 13e–2 purchases by or for the issuer or any affiliated purchaser, and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(14) The term "purchase price" means the price paid per share

(i) For a reported security, or an exchange traded secuity on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(15) The term "round lot" means 100 shares or other customary unit of trading for a security;

(16A) The term "block" means a quantity of stock that either

(i) Has an aggregate purchase price of not less than (A) $50,000 if the purchase price per share is less than $10, (B) $75,000 if the purchase price per share is at least $10 but less than $20, (C) $125,000 if the purchase price per share is at least $20 but less than $35, (D) $175,000 if the purchase price per share is at least $35 but less than $50, or (E) $200,000 if the purchase price per share is $50 or more; or

(ii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraph (a)(16)(i) and (ii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated purchaser knows or has reason to know that the sale was a short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options;

(16B) The term "block" means a quantity of stock that either

(i) Has a purchase price of $200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, that a block under paragraph (a)(16) (i), (ii) and (iii) shall not include any amount that a broker or a dealer has assembled or accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser; or any amount that a broker or dealer has sold short to the issuer or affiliated purchaser if the issuer or affiliated

purchaser knows or has reason to know that the sale was a short sale; and shall not include any amount of shares acquired pursuant to the exercise by the issuer or affiliated purchaser of listed call options.

(b) *Application of section to Section 13(e) issuers and certain other persons.*

(1) It shall constitute a fraudulent, deceptive, or manipulative act or practice within the meaning of section 13(e) of the Act for a Section 13(e) issuer, for an affiliate or an affiliated purchaser of such issuer, or for a broker, a dealer, or any other person acting for such an issuer or affiliate or affiliated purchaser, in connection with a Rule 13e–2 purchase, or with a Rule 13e–2 bid, effected or made by or for such issuer or affiliate or affiliated purchaser

(i) To employ any device, scheme, or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice, or course of business which operates or would operate as a fraud or decit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices in connection with a Rule 13e–2 purchase, or with a Rule 13e–2 bid, it shall be unlawful, by the use of any means or instrumentality of interstate commerce or of the mails

(i) For any Section 13(e) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e–2 purchase or to make or cause to be made a Rule 13e–2 bid unless that issuer or affiliated purchaser complies with paragraphs (d) and (e) of this section; *Provided, however,* That the issuer or affiliated purchaser shall be deemed not to have violated paragraph (e)(2), (e)(3), or (e)(4) of this section if a violation occurred solely by reason of the conduct of a broker, dealer, or other person acting for it if the issuer or affiliated purchaser did not know or have reason to know that the broker, dealer, or other person was engaging or would engage in such conduct, and if the issuer or affiliated purchaser had taken reasonable steps to assure that the broker, dealer, or other person would comply with paragraphs (e)(2), (e)(3), and (e)(4) of this section.

(ii) For any broker, dealer, or other person acting for a Section 13(e) issuer, or for an affiliated purchaser of such an issuer, to effect any Rule 13e–2 purchase or to make or cause to be made any Rule 13e–2 bid that he knows or has reason to know is a Rule 13e–2 purchase or a Rule 13e–2 bid unless that broker, dealer, or other person complies with paragraphs (e)(2), (e)(3), and (e)(4) of this section; *Provided, however,* That the broker, dealer, or other person shall be deemed not to have violated paragraph (e)(2), (e)(3), and (e)(4) of this section if a violation occurred solely by reason of the conduct of the Section 13(e) issuer or affiliated purchaser if the broker, dealer, or other person did not know or have reason to know that such issuer or affiliated purchaser was engaging or would engage in such conduct.

(c) *Application of section to Section 15(d) issuer or any affiliated purchaser of such issuer.*

It shall be unlawful as a fraudulent, deceptive, or manipulative act or practice for any Section 15(d) issuer, or for any affiliated purchaser of such an issuer, to effect a Rule 13e–2 purchase or to make or cause to be made any Rule 13e–2 bid unless that issuer or affiliated purchaser complies with paragraph (d) of this section.

(d) *Disclosure of certain information.*

(1) A person who is required to comply with paragraph (d) shall not effect a Rule 13e–2 purchase, or a series of Rule 13e–2 purchases, that seeks the acquisition of more than two percent of the outstanding shares of any class of common stock or preferred stock within any 12-month period, unless disclosure is made of the following information in a manner reasonably calculated to inform investors before any such Rule 13e–2 purchase is effected, or any Rule 13e–2 bid that could result in any such Rule 13e–2 purchase is made:

(i) The estimated time at which, or time period during which, the purchase or purchases are proposed to be effected;

(ii) The maximum number of shares of the security proposed to be purchased or the maximum amount of funds or other consideration to be expended;

(iii) The purpose or purposes to be achieved through acquisition of the shares to be purchased; and

(iv) Any plan or proposal that relates to, or would result in, the disposition of the shares to be purchased.

(2) A person who is required by paragraph (d)(1) of this section to disclose the information described therein shall also disclose that information, before any Rule 13e–2 purchase is effected, or any Rule 13e–2 bid is made, to each national securities exchange on which the securities to be purchased are registered and listed for trading and to the NASD if the securities to be purchased are authorized for quotation in NASDAQ.

(3) A person who is required to comply with paragraph (e) of this section shall disclose to any broker, dealer, or other person acting on his behalf in connection with a Rule 13e–2 purchase that the transaction is a Rule 13e–2 purchase and that it must be effected in accordance with paragraph (e) of this section.

(e) *Purchasing requirements.*

(1) *One broker or dealer.* A person required to comply with paragraph (e)(1) shall not effect any Rule 13e–2 purchase or purchases with a dealer, or from or through more than one broker on any single day, nor shall such person make or cause to be made any Rule 13e–2 bid to any dealer, or through more than one broker on any single day; *Provided, however,* That

(i) If a broker is not used on a day, Rule 13e–2 purchases may be effected with, and Rule 13e–2 bids may be made to, a single dealer on that day;

(ii) This paragraph (e)(1) shall not apply to Rule 13e–2 purchases that are not solicited by or on behalf of that person; and

(iii) Where Rule 13e–2 purchases or Rule 13e–2 bids are made by or on behalf of more than one affiliated purchaser (or the issuer and one or more affiliated purchasers) on a single day, this paragraph (e)(1) shall apply to all such bids and purchases in the aggregate.

(2) *Time limitations.* A person required to comply with paragraph (e)(2) shall not effect any Rule 13e–2 purchase from or through a broker or dealer

(i) In a reported security for which the principal market is a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the period commencing one-half hour before the scheduled close of trading in the principal market for the security and ending with the termination of the period in which last sale prices are reported in the consolidated system;

(ii) In a reported security for which the principal market is not on a national securities exchange, (A) if such purchase would constitute the opening transaction in the security reported in the consolidated system; or (B) during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(iii) On a national securities exchange, in any exchange traded security, (A) if the Rule 13e–2 bid would constitute the opening bid for the security on such exchange; or (B) during the one-half hour before the scheduled close of trading on the exchange;

(iv) Otherwise than on a national securities exchange in any NASDAQ security unless a current independent

bid quotation for the security is reported in Level 2 of NASDAQ.

(3) *Price limitations.* A person required to comply with paragraph (e)(3) shall neither effect any Rule 13e–2 purchase from or through a broker or dealer at a purchase price, nor make nor cause to be made any Rule 13e–2 bid at a price

(i) For a reported security, higher than the published bid, as that term is defined in Rule 11Acl–1(a)(9) under the Act [§ 240.11Acl–1(a)(9)], that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, higher than the highest current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange, for a NASDAQ security, higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry.

(4) *Volume limitations.* A person required to comply with paragraph (e)(4) shall not effect from or through a broker or dealer any Rule 13e–2 purchase, other than a block purchase, or any purchase through the exercise of an exchange listed call option

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds the higher of (A) one round lot or (B) the number of round lots closest to 15 percent of the trading volume for the security;

(ii) Of any other security, in an amount that, (A) when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser on that day, exceeds one round lot and (B) when added to the amounts of all other Rule 13e–2 purchases and purchases through the exercise of an exchange listed call option effected by or for the issuer or any affiliated purchaser during that day and the preceding six calendar days, exceeds 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(f) Paragraph (e) of this section shall not apply to a bid or purchase that is:

(1) Subject to, and made in compliance with, Rule 10b–7 under the Act [§ 240.10b–7];

(2) By the issuer and is subject to, and made in compliance with, Rule 13e–1 under the Act [§ 240.13e–1];

(3) Pursuant to a tender offer that is subject to, and made in compliance with, Rule 13e–4 under the Act [240.13e–4];

(4) Pursuant to a tender offer that is subject to, and made in compliance with, section 14(d) of the Act and the rules and regulations thereunder;

(5) Pursuant to the call or redemption of any security in accordance with the terms and conditions of its governing instrument or instruments;

(6) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(7) A bid for or purchase of securities of a dissenting shareholder who has asserted rights of appraisal with respect to his shares;

(8) Made to satisfy mandatory sinking fund obligations that must be satisfied not more than one year from the time such bids or purchases are made;

(9) A bid for or purchase of any fractional interest in a security, evidenced by a scrip certificate, order form, or similar document;

(10) A bid for or purchase of securities from an employee upon termination of the employment relationship, or from a former employee of the issuer or of any wholly-owned subsidiary thereof, or from the estate of such employee, pursuant to any right or obligation to purchase such securities established in connection with the employment of, or the sale of such securities to, the employee; and

(11) A bid for or purchase of any security that is not traded on a national securities exchange and with respect to which the issuer thereof does not know or have reason to know that any dealer acts as market maker if neither the purchaser nor any person acting on his behalf has engaged in any solicitation in connection with the transaction.

(g) The Commission may, upon written request or upon its own motion, exempt any Rule 13e–2 bid or Rule 13e–2 purchase from one or more paragraphs of this section, either unconditionally or upon specified terms or conditions, as not comprehended within the intended meaning and purpose of this section or of such paragraph or paragraphs.

2. By amending paragraph (f) of § 240.10b–6, redesignating paragraph (g) thereof as paragraph (h) and adding a new paragraph (g), as follows (Attention—The text of the following proposed amendments uses ** to indicate additions and [ ] brackets to indicate deletions):

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(f) If [the provisions of] this section would apply to bids for or purchases of any equity security [pursuant to an issuer tender offer, as that term is defined in Rule 13e–4(a)(2) under the Act, or to a tender offer subject to section 14(d) of the act and the rules applicable thereto,] solely because the issuer [has] *had* outstanding securities [which are] immediately convertible into, or exchangeable or exercisable for, [the security for which the tender offer is to be made] *that security,* [such provisons] *this section* shall not apply to *any* such bid[s] [and] *or* purchase[s if such bids and purchases are subject to and made in accordance with the provisions of Rule 13e–4 or section 14(d) and the rules applicable thereto] *that is subject to, and is made or effected in accordance with (1) Rule 13e–2 under the Act, (2) Rule 13e–4 under the Act, or (3) section 14(d) of the Act and the rules and regulations thereunder.

(g) A bid for or purchase of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer, as that term is defined in Rule 13e–2(a)(8) under the Act.*

VIII. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should submit six copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than January 15, 1981. Reference should be made to File No. S7–858. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, NW, Washington, D.C.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 17, 1980.

[FR Doc. 80–33392 Filed 10–24–80; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18 and 112

Carriers, Cartmen, and Lightermen; Proposed Amendments to the Customs Regulations Relating to the Carriage of Bonded Merchandise by Private Carriers

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

ACTION: Proposed rule.

SUMMARY: This document proposes an amendment to the Customs Regulations to simplify the requirements that a private carrier must meet to be designated as a carrier of bonded merchandise. The proposed amendment would provide that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) transported is the property of the private carrier, and (2) the private carrier files a proper Customs bond. Conforming amendments are also proposed.

DATE: Comments must be received on or before December 26, 1980.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Donald F. Beach, Carriers, Drawback and Bonds Division (202–566–5856) Operational Aspects: Bradley Lund, Inspection and Control Division (202–566–5354) U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 551, Tariff Act of 1930, as amended (19 U.S.C. 1551), provides that in the discretion of the Secretary of the Treasury, a private carrier, upon application, may be designated as a carrier of bonded merchandise, subject to such regulations and, in the case of each applicant, to such special terms and conditions, as the Secretary may prescribe to safeguard the revenues of the United States with respect to the transportation of bonded merchandise by the applicant.

Section 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), provides that district directors may authorize a private carrier to receive and transport imported merchandise in bond if:

(i) The private carrier is the proprietor of a Customs bonded warehouse or bonded container station;

(ii) The merchandise (including containerized merchandise) to be transported is his property, having been imported by him or purchased from another importer; and

(iii) The merchandise is to be transported:

(A) From the port of importation, or port where entered for warehouse, to the private carrier's Customs bonded warehouse or bonded container station for physical deposit;

(B) From the private carrier's Customs bonded warehouse or bonded container station to another Customs bonded warehouse for physical deposit; or

(C) If for exportation, from the private carrier's Customs bonded warehouse or bonded container station to a Customs bonded warehouse at the port of exportation.

Customs is of the opinion that the present requirements in section 112.11(a)(4), which must be met by an applicant before being designated as a carrier of bonded merchandise, are needlessly restrictive. The goal of these requirements, as set out in 19 U.S.C. 1551, is to safeguard the revenue. Requiring a private carrier to be a proprietor of a Customs bonded warehouse or bonded container station and restricting a private carrier to transporting merchandise to or from the private carrier's bonded warehouse or bonded container station are not necessary to accomplish this goal and severely limit the number of carriers able to qualify as carriers of bonded merchandise. The carrier's bond and security requirements concerning container stations in sections 19.40–19.49, Customs Regulations (19 CFR 19.40–19.49), are considered adequate to protect the revenue if the private carrier is restricted to carrying property which it owns.

Accordingly, it is proposed to amend section 112.11(a)(4) by deleting the requirements in subparagraphs (i) and (iii), and by providing that a private carrier may be designated as a carrier of bonded merchandise if (1) the merchandise (including containerized merchandise) transported is the property of the private carrier (present subparagraph (ii)), and (2) the private carrier files Customs Form 3588, "Private Carrier's Bond".

The deletion of the requirements in subparagraphs (i) and (iii) would allow a private carrier's vehicles, which now return empty to company locations after delivering merchandise at ports of export, to load imported merchandise for transportation under the bond for exportation or transportation or for transportation and exportation (Customs Forms 7557, 7559). Private carriers also would be able to deliver their bonded merchandise by the most direct route.

On the basis of the requirement in present section 112.11(a)(4) that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise, section 112.12(b)(3) provides that if a private carrier is the proprietor of Customs bonded warehouses in two or more Customs districts to which imported merchandise will be transported, he shall file Customs Form 3588, the "Private Carrier's Bond", with the district director of Customs for one of the districts, accompanied by a statement showing the location of each warehouse and an additional copy of the bond for each additional district.

It is necessary to amend section 112.12(b)(3) to conform to the proposed amendment to section 112.11(a)(4) which would delete the requirement that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded mechandise. It is proposed to amend section 112.12(b)(3) to provide that the private carrier shall file Customs Form 3588 with the district director in the district where the private carrier intends to operate. If the private carrier intends to operate in two or more districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

It is also necessary to amend section 18.2(e), Customs Regulations (19 CFR 18.2(e)), to conform to the proposed amendment to section 112.11(a)(4). Section 18.2(e) provides that any entry for immediate transportation in bond by a private carrier shall be accompanied by a commercial invoice setting forth the particulars of the merchandise and a statement verified by the district director of the district in which the private carrier's warehouse is located requesting permission to transport the

merchandise to the private carrier's warehouse. The proposed amendment to section 112.11(a)(4) would delete the requirement that a private carrier must be the proprietor of a Customs bonded warehouse or bonded container station to be designated as a carrier of bonded merchandise.

Accordingly, it is proposed to amend section 18.2(e) to provide that the commercial invoice must contain a statement verified by the district director of the district to which the mechandise will be carried requesting permission to transport the merchandise under a carrier's bond for the purposes of either (1) transportation without prior placement in a warehouse under the bond for exportation or transportation or transportation and exportation (Customs Forms 7557 or 7559), or (2) direct entry at another port without placement in a warehouse, or (3) transporation to his warehouse or to a warehouse operated by others.

The proposed amendments do not affect Customs requirements relating to the transportation of merchandise in bond by bonded common carriers, contract carriers, or freight forwarders.

Proposed Amendments

It is proposed to amend Parts 18 and 112, Customs Regulations (19 CFR Parts 18, 112), in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

It is proposed to amend § 18.2(e), Customs Regulations (19 CFR 18.2(e)), to read as follows:

§ 18.2 Receipt by carrier, manifest

* * * * *

(e) In addition to the foregoing, any entry for immediate transportation presented at the port of arrival for merchandise to be transported in bond by a private carrier shall be accompanied by a commercial invoice setting forth the particulars of the merchandise and a statement in the following form verified by the district director of the district to which the merchandise will be carried:

The undersigned hereby requests permission to transport under the provisions of his carrier's bond, dated ———— on file at the port of ————, the merchandise described in the attached invoice from the port of ———— for the purposes of either (1) transportation to ———— without prior placement in a warehouse under the bond for exportation or transportation or transportation and exportation (Customs Forms 7557 or 7559), or (2) direct entry at the port of ———— without placement in a warehouse, or (3) transportation to his warehouse or to a warehouse operated by others located at ————.

Carrier ————————————

Date ————————————

* * * * *

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. It is proposed to amend § 112.11(a)(4), Customs Regulations (19 CFR 112.11(a)(4)), to read as follows:

§ 112.11 Carriers which maybe authorized

(a) *From port to port in the United States.* The district director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

* * * * *

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and (ii) the private carrier files Customs Form 3588, "Private Carriers Bond".

2. It is proposed to amend § 112.12(b)(3), Customs Regulations (19 CFR 112.12(b)(3)), to read as follows:

§ 112.12 Application for Authorization.

* * * * *

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the district director the following documents:

* * * * *

(3) *Private carriers.* The private carrier shall file the bond with the district director in the Customs district where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs districts, he shall file the bond with the district director for one of the districts, send a copy of the bond to the district director for each additional district, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse and container station.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), and sections 551, 565, 624, 46 Stat. 742, as amended, 747, as amended, 759 (19 U.S.C. 1551, 1565, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington D.C. 20229.

Regulation Determined To Be Nonsignificant

In a directive published in the **Federal Register** on November 8, 1978 (43 FR 52120), implementing Executive Order 12044, "Improving Government Regulations", the Treasury Department stated that it considers each regulation or amendment to an existing regulation published in the **Federal Register** and codified in the Code of Federal Regulations to be "significant".

However, regulations of this nature which are nonsubstantive, essentially procedural, do not materially change existing, or establish new policy, and do not impose substantial additional requirements or costs on, or substantially alter the legal rights or obligations of, those affected, may, with Secretarial approval, be determined not to be significant. Accordingly, it has been determined that these porposed amendments do not meet the Treasury Department criteria for "significant" regulations.

Drafting Information

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

William T. Archey,

Commissioner of Customs.

Approved: October 21, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33435 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 201

[Docket No. R-80-883]

Combination Mobile Home and Lot Loan Program; Waiver Request

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of congressional waiver request.

SUMMARY: Section 7(o)(4) of the Department of Housing and Urban Development Act permits the Secretary to request waiver of the legislation's requirements in appropriate instances. This notice lists and briefly summarizes for public information an interim rule with respect to which the Secretary is presently requesting waiver.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice the Secretary is forwarding to the Chairman and Ranking Minority members of both Congressional Banking Committees the interim rule listed below. The purpose of the transmittal is to request waiver of the 15 day pre-publication review and the 20 day delayed effective date requirements for the interim rule under Section 7(o) (2) and (3) of the Department of Housing and Urban Development Act. A summary of the rulemaking document for which waiver has been requested is set forth below:

Interim Rule—24 CFR 201-Subpart D—Combination Mobile Home and Lot Loan Program.

This rule provides for increased mortgage limits and terms as authorized by the Housing and Community Development Amendments of 1979. Other major provisions in the amendment are; (1) increased loan advances on the mobile home, (2) removing the condominum prohibition, and (3) permitting a one percent origination fee and, (4) clarification of the definition of a developed lot.

(Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); Section 324 of the Housing and Community Development Amendments of 1978)

Issued at Washington, D.C., October 16, 1980.

Victor Marrero,

Under Secretary, U.S. Department of Housing and Urban Development.

[FR Doc. 80-33332 Filed 10-24-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-232-78]

Revision of Rules on Tax Classification of Limited Partnerships in Light of Certain Recent Legislative Developments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the classification, for federal tax purposes, of limited partnerships. The proposed regulations provide that references in the classification rules to the Uniform Limited Partnership Act (ULPA) refer to that Act both as originally promulgated and as revised in 1976. The proposed regulations also clarify the significance, for classification purposes, of a power in the limited partners to remove a general partner.

DATES: Written comments and requests for a public hearing must be delivered or mailed by December 26, 1980. The amendments are proposed to be effective for taxable years beginning after 1953.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-232-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Paul A. Francis (202-566-6640).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 7701 of the Internal Revenue Code of 1954. These regulations are proposed to make clear the application of certain tax classification rules to limited partnerships and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

References to the ULPA

For federal tax purposes various entities may be classified as associations (which are taxable as corporations), partnerships, or trusts. Section 7701(a) (2) and (3) of the Code and §§ 301.7701-1 through 301.7701-4 of the Regulations on Procedure and Administration set forth the definitions and rules that control the tax classification of entities. Section 301.7701-2 provides that the classification of an entity depends upon the presence or absence of corporate characteristics. That section also includes certain special rules for determining whether an entity organized under a statute corresponding to the ULPA possesses or lacks the corporate characteristics of continuity of life, centralization of management, and limited liability.

The National Conference of Commissioners on Uniform State Laws revised the ULPA in 1976. The proposed regulations provide that references in § 301.7701-2 to the ULPA shall be deemed to refer to that Act both as originally promulgated and as revised in 1976. Thus, the same classification rules will apply to entities organized under a statute corresponding to the revised ULPA as apply to entities organized under a statute corresponding to the original ULPA.

Power to Remove General Partner

The proposed regulations provide that all the facts and circumstances must be taken into account in determining whether the characteristic of centralized management is found in a limited partnership whose limited partners may remove the general partner. The proposed regulations note that a substantially restricted removal power would not itself cause the partnership to possess centralized management.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed amendments to the regulations

For the reasons stated, it is proposed to amend § 301.7701–2 of the Regulations on Procedure and Administration (26 CFR Part 301) by adding a new subparagraph (5) at the end of paragraph (a) and by adding two new sentences at the end of paragraph (c) (4). These added provisions read as follows:

§ 301.7701–2 Associations.

(a) *Characteristics of corporations.*

* * *

(5) All references in this section to the Uniform Limited Partnership Act shall be deemed to refer both to the original Uniform Limited Partnership Act (adopted in 1916) and to the revised Uniform Limited Partnership Act (adopted by the National Conference of Commissioners on Uniform State Laws in 1976).

* * * * *

(c) *Centralization of management.*

* * *

(4) * * * Furthermore, if all or a specified group of the limited partners may remove a general partner, all the facts and circumstances must be taken into account in determining whether the partnership possesses centralized management. A substantially restricted right of the limited partners to remove the general partner (*e.g.*, in the event of the general partner's gross negligence, self-dealing, or embezzlement) will not itself cause the partnership to possess centralized management.

* * * * *

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc 80-33406 Filed 10-24-80; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 353]

The Fennville Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of the first viticultural area in the State of Michigan, to be known as "Fennville." This proposal is the result of a petition submitted by an industry member.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Norman P. Blake, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR for the listing of approved viticultural areas.

Section 9.11, Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received the first petition to establish a viticultural area within the State of Michigan to be known as "Fennville." The proposed area is primarily located in Allegan County with a small portion located in Van Buren County. This general area of Michigan is known as the "fruit belt" and is located in the southwestern portion of Michigan. This proposed area consists of approximately 75,000 acres.

The petitioner claims that the proposed viticultural area is historically known as a fruit growing area and more recently known for the distinctive French hybrids and vinifera grapes grown for the locally produced wine. In addition, the area is distinguished from the surrounding area by natural geographical boundaries and features. The petitioner bases these claims on:

(a) Fennville is the name of a small community of approximately 850 people which has been associated with the growing and processing of fruits since the late 1880's. In 1888 the Fruit Shippers Association was established, in 1897 the Fennville Fruit Company co-operative was organized. The community of Fennville has continued to be a major crossroad and trading center within the proposed appellation.

(b) The proposed area generally consists of sandy loam soil and rolling terrain which is well drained and ideal for growing peaches, apples, cherries, plums, pears, and grapes. The climate within the proposed area is distinguished from the surrounding area by a more moderate high and low temperature range which is attributed to its proximity to Lake Michigan and the protecting sand dunes. The majority of the proposed area consists of rolling terrain within a 650 to 700 foot elevation. The Lake Michigan shore has an elevation of 618 feet which rises to 650 feet and forms a natural barrier.

(c) The boundaries of the proposed area are distinguished on three sides by natural features; the Kalamazoo River on the north, the Black River and Middle Fork of the Black River on the south, and Lake Michigan's eastern shore on the west.

The boundaries of the proposed viticultural area, using landmarks and points of reference are as follows: starting at the most southwestern point,the intersection of the Black River as it empties into Lake Michigan at the City of South Haven; northward along the eastern shore of Lake Michigan approximately 20 miles to the

intersection of the Kalamazoo River; easterly along the course of the Kalamazoo River for approximately 11.25 miles (seven miles due east) to 86°5′ west longitude which is 1.25 miles east of the community of New Richmond; south along 86°5′ west longitude for 13.5 miles to the intersection of the Middle Fork of the Black River; westerly along the course of the twisting Middle Fork of the Black River until it joins the Black River, continuing west for a total of 12.5 miles (10 miles due west) to the starting point. The entire viticultural area comprises approximately 75,000 acres.

The exact boundaries of the proposed area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the proposed regulations.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Fennville viticultural area, suggestions concerning other alternative boundaries will be given consideration prior to any final decision.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Norman P. Blake, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.33. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.33 Fennville.

Par. 2. Subpart C is amended by adding § 9.33. As amended, Subpart C reads as follows:

§ 9.33 Fennville.

(a) *Name.* The name of the viticultural area described in this section is "Fennville."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fennville viticultural area are three U.S.G.S. maps. They are entitled:

(1) "Fennville Quadrangle, Michigan-Allegan County," 15 minute series;

(2) "Bangor Quadrangle, Michigan," 15 minute series; and

(3) "South Haven Quadrangle, Michigan," 15 minute series.

(c) *Boundaries.* The Fennville viticultural area is primarily located in the southwestern portion of Allegan County, Michigan, with a small finger extending into the northwest corner of Van Buren County, Michigan.

(1) The western boundary is the eastern shore of Lake Michigan, extending from the Black River, at the City of South Haven, north to the Kalamazoo River.

(2) The northern boundary is the Kalamazoo River, extending easterly from Lake Michigan to 86°5′ west longitude.

(3) The eastern boundary is the 86°5′ west longitude meridian, extending south from the Kalamazoo River to the intersection with the Middle Fork of the Black River.

(4) The southern boundary is the Middle Fork of the Black River extending westerly from 86°5′ west longitude until it joins the Black River, continuing west along the Black River to the eastern shore of Lake Michigan.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33459 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 350]

Guenoc Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California to be known as "Guenoc Valley." This proposal is the result of a petition submitted by an interested person.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an application of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally

and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.), which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in Lake County, California, as a viticultural area known as "Guenoc Valley." The proposed area consists of 4396.3 acres.

The petition claims that the proposed viticultural area is historically and currently known by that name and is distinguished from surrounding areas by soil classifications, physiographic characteristics, and climate. The petitioner bases these claims on the following:

(a) The valley was a portion of Rancho Guenoc, a land grant from the Mexican Government to George Rock in 1845. The United States surveyed the area in 1857. In the field notes of the surveyor, W. M. Denton, Deputy U.S. Surveyor, the name "Guenoc" was given this area. The names "Guenoc Rancho," "Guenoc Valley," and "Guenoc" continue to be associated with this property through their use in legal documents;

(b) In 1888, Lillie Langtry purchased a ranch of 4,000 acres which includes much of the proposed viticultural area. An admirer, Frederick Gebhard, purchased an adjacent ranch of approximately equal size. These two ranches comprise most of Guenoc Valley. There was a vineyard and winery in operation on Mrs. Langtry's property prior to her purchase of it. The winery operation continued until Prohibition;

(c) Mrs. Langtry published her autobiography, "The Days I knew," in 1925, in which she recounted her stay in Guenoc Valley;

(d) Guenoc Valley is located about 6 miles east of Middletown, California. During the growing season, generally days are warm with cool nights. Rainfall is less than that received in the Middletown area, and fog is generally less severe that that in Middletown;

(e) The valley floor elevation varies from 900 to 1000 feet above sea level. The soil consists largely of alluvial and younger terrace deposits, unconsolidated sand, gravel, silt, and clay, which forms a single continuous unit. Sand and gravel alluvial deposits, along Bucksnort Creek and other large drainages, are usually 5 to 15 feet thick. Thinner alluvium with silt and clay is common along the smaller drainages. Local clay, sand, and silt alluvial deposits, estimated at 5 to 10 feet in thickness, occur at the bases of steep slopes.

The boundaries of the proposed viticultural area, using landmarks and points of references are as follows: "Starting from the southwest end of Detert Reservoir Dam to just north of Foley Reservior No. 1, thence across McCreary Ridge and McCreary Lake to Jim Davis Peak thence to Goat Hill thence southwesterly to the foothills adjacent to the southern open areas of Guenoc Valley, thence back to Detert Reservoir Dam."

The proposed regulations describe this area through the use of angles and feet from one reference point to another. The exact boundaries of the proposed area and the appropriate U.S.G.S. maps used to determine the boundaries are listed in the proposed regulations.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Guenoc Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.26. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.26 Guenoc Valley.

Par. 2. Subpart C is amended by adding § 9.26. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.26 Guenoc Valley.

(a) *Name.* The name of the viticultural area described in this section is "Guenoc Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Guenoc Valley viticultural area are four U.S.G.S. maps. They are entitled:

(1) "Middletown Quadrangle, California-Lake Co.," 7.5 minute series;

(2) "Jericho Valley Quadrangle, California," 7.5 minute series;

(3) "Detert Reservoir Quadrangle, California," 7.5 minute series; and

(4) "Aetna Springs Quadrangle, California," 7.5 minute series.

(c) *Boundaries.* The Guenoc Valley viticultural area is located in Lake County, California.

(1) Beginning at Station 20 of Denton's Survey of said Guenoc Rancho, as said Station is shown on the United States General Land Office Plat for Township 11 North, Range 6 West, M.D.B. & M. filed for record and approved by the Surveyor General's Office, San Francisco, California, on February 12, 1890, said Station being designated by

said Denton as a post on the top of a Sugar Loaf Mountain (Jim Davis Peak), and is presently marked by 1½ inch galvanized pipe; and is herein noted as Point (1);

(2) Thence from said point of beginning S. 07° 49′ 34″ E., 9,822.57 feet to U.S.G.S. Triangulation Station "Guenoc," Point (2);

(3) Thence S. 29° 14′ 31″ W., 10,325.08 feet, Point (3);

(4) Thence S. 00° 00′ W., 2,100.00 feet, Point (4);

(5) Thence N. 90° 00′ W., 4,150.00 feet, Point (5);

(6) Thence N. 24° 23′ 11″ W., 16,469.36 feet, Point (6);

(7) Thence N. 75° 47′ 20″ E., 7,943.08 feet, Point (7); and

(8) Thence N. 60° 47′ 00″ E., 7,970.24 feet, to Point (1), the point of beginning, containing 4,396.3 acres.

Signed: September 24, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33359 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

27 CFR Part 9

[Notice No. 352]

Lime Kiln Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in San Benito County, California, to be known as "Lime Kiln Valley." This proposal is the result of a petition from an industry member.

DATE: Written comments must be received by December 26, 1980.

ADDRESSES: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044.

Copies of the petition, the proposed regulations, the appropriate map, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, D.C. 20226, (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. A petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the name specified in the petition.

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition.

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas.

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale.

(e) A copy of the appropriate U.S.G.S. map with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in San Benito County, California, as a viticultural area to be known as "Lime Kiln Valley." The proposed area is a valley consisting of approximately 9,472 acres.

The petitioner claims that the proposed viticultural area is distinguished from surrounding areas physically and historically. The petitioner bases these claims on the following:

(a) The valley is located about 19 miles from the San Joaquin Valley and approximately 18 miles from the Pacific Ocean.

(b) Rainfall averages over 40 inches per year in the upper western reaches of Lime Kiln Valley, and over sixteen inches per year in the lower eastern reaches. The valley receives over two inches more rainfall per year than Hollister, California, located approximately 11 miles northwest from Lime Kiln Valley.

(c) Winter temperatures are well below freezing. Summer temperatures average between 85–95 degrees Fahrenheit, while dropping at night to between 45–50 degrees. Usual morning fog during early summer is burned off by mid-morning. The prevailing winds are predominantly northwesterly from the ocean.

(d) The soil structure of the valley is basically a sandy and gravelly loam over bedrock of limestone and dolomite.

(e) The Coulter pine is the dominant vegetation. It grows in limited areas due to climatic conditions. In the area here, the pine grows only within the watershed boundary which very closely approximates the boundary of the viticultural area.

(f) Ground water is available in the form of natural springs and artesian wells.

(g) Historical and current usage is well established.

(1) The area has been a grape-growing area since 1887. San Benito County histories relate to vine cuttings brought from France and obtained by the Spanish padres.

(2) The general area has long been known as Limekiln. On September 6, 1977, the County Board of Supervisors unanimously adopted a resolution naming the valley surrounding Limekiln as Lime Kiln Valley.

(3) The area derived its name from a number of lime kilns built in the area. Many of the kilns were in operation prior to 1910.

The proposed boundaries closely approximate the watershed boundary. The proposed boundaries are based on features found on one U.S.G.S. map entitled "Gonzales Quadrangle, California." Begining at the intersection point of Thompson Creek and Cienega Road, the boundary proceeds in a southwest direction to the northwest corner of Section 33, then in a southwesterly direction to McPhails Peak, following the county line around to the northwest corner of Section 34, northward to Mt. Harlan, in a straight line to the southeast corner of Section 23, then proceeding in a line to the northwest corner of Section 19, then

northward to the southwest corner of Section 18, eastward to the Cienega School Building then along Cienega Road to the point of beginning. The regulations describe the boundary by using the summits of peaks as reference points. The petitioner believes this area adequately encompasses the land in the valley suitable for grape-growing.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for Lime Kiln Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material and comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.27. As amended, the title of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.27 Lime Kiln Valley.

Par. 2. Subpart C, is amended by adding § 9.27. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.27 Lime Kiln Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lime Kiln Valley."

(b) *Approved map.* The appropriate map for determining the bondaries of the Lime Kiln Valley viticultural area is one U.S.G.S. map. It is entitled:

"Gonzales Quadrangle, California", 15 minute series.

(c) *Boundaries.* The Lime Kiln Valley viticultural area is located in San Benito County, California. From the beginning point at the intersection of Thompson Creek and Cienega Road, the boundary proceeds, in a straight line to the summit of an unnamed peak (1270 feet) along the section line of Sections 21 and 28, T. 14 S./R. 6E.;

(1) Thence in a straight line to the summit of an unnamed peak (1375 feet) in the center of Section 28, T. 14 S./R. 6 E.;

(2) Thence in a straight line to the summit of an unnamed peak (1847 feet) in the northwest corner of Section 33, T. 14 S./R. 6 E.;

(3) Thence in a straight line to the summit of McPhails Peak (3335 feet) in the east ½ of Section 1, T. 15 S./R. 5 E.;

(4) Thence following the San Benito County and Monterey County line to the summit of an unnamed peak (2054 feet) along the section lines of Sections 33 and 34, T. 14 S./R. 5 E.;

(5) Thence in a straight line to the summit of an unnamed peak (2707 feet) in the northwest corner of Section 27, T. 14 S./R. 5 E.;

(6) Thence in a straight line to the summit of Mt. Harlan (3262 feet) in the center of Section 22, T. 14 S./R. 5 E.;

(7) Thence in a straight line to the summit of an unnamed peak (2768 feet) in the southern half of Section 23, T. 14 S./R. 5 E.;

(8) Thence in a straight line to the summit of an unnamed peak (1974 feet) in the northwest corner of Section 19, T. 14 S./R. 6 E.;

(9) Thence in a straight line to the summit of an unnamed peak (2240 feet) in the southwest corner of Section 18, T. 14 S./R. 6 E.;

(10) Thence in a straight line to the summit of an unnamed peak (1713 feet) in the southeast corner of Section 18, T. 14 S./R. 6 E.;

(11) Thence in a straight line to the Cienega School Building along Cienega Road;

(12) Thence following Cienega Road back to the point of beginning.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33362 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 351]

San Pasqual Valley Viticultural Area; Wine Labeling

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in San Diego County, California, to be known as "San Pasqual Valley." This proposal is the result of a petition from a representative of an industry member.

DATES: Written comments must be received by December 26, 1980.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044.

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tabacco and Firearms, 1200 Pennslyvania Avenue, NW., Washington, D.C. 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to

be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas to be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing an area in San Diego County, California, as a viticultural area to be known as "San Pasqual Valley." The proposed area is a natural valley consisting of approximately 9,000 acres.

The petitioner claims that the proposed viticultural area is distinguished from surrounding areas physically and historically. The petitioner bases these claims on the following:

(a) San Pasqual Valley is a natural, sheltered valley located about 10 miles inland from the Pacific Ocean in the Santa Ysabel watershed, south of Escondido and north of the City of San Diego.

(b) The valley is surrounded on three sides by low mountain ranges rising to 1,500 feet above sea level; the valley is fed by natural streams, culminating in the San Dieguito River which empties into Lake Hodges on the west (fourth) side.

(c) The elevation of the valley floor varies from 300 to 350 feet above sea level, while the sides of the alluvial plain rise to approximately 500 feet above sea level.

(d) The soil structure of the valley floor is alluvial fill, while the slopes are of a decomposed granite base.

(e) The climatic conditions of the area are basically uniform with a strong coastal influence. Summer temperatures are warm, rarely above 95 degrees, with cool nights, uniformly below 65 degrees, resulting from a prevailing ocean breeze. Any haze is burned off by the sun, however, due to its low elevation, freezes are fairly common in winter.

(f) Historical and current usage of "San Pasqual Valley" is well established—

(1) In December of 1846, the area was the scene of a battle between Californians led by Anres Pico and U.S. Army troops under General Kearney. This battle is known as the "Battle of San Pasqual." A monument is present denoting the battle and name.

(2) A book, published in 1887, entitled "Picturesque San Diego" described the agricultural and social aspects of San Pasqual Valley.

(3) A quadrangle map of the area is entitled "San Pasqual, California."

(4) Schools and government offices have included "San Pasqual" in their names.

(5) The portion of the valley lying within the city limits of San Diego is known as the "San Pasqual Agricultural Reserve."

(6) The portion of the valley used as an adjunct of the San Diego Zoo is called the "San Pasqual Wild Animal Park."

(7) Since 1973, a partnership under the name of San Pasqual Vineyards has been involved in planting and cultivating grapes for the production of wine.

The proposed area is delineated by the traversing of Interstate 15 across San Pasqual Valley on the west end and thereafter delineated by the 500 foot contour line. The petitioner believes this delineation adequately encompasses land in the valley suitable for grape-growing. The 500 foot contour line corresponds to the height above sea level of the alluvial plain.

The boundaries of the proposed San Pasqual Valley viticultural area may be found on two U.S.G.S. 7.5 minute quadrangle maps ("Escondido Quadrangle, California" and "San Pasqual Quadrangle, California").

The boundaries are as follows:

(1) From the beginning point at the intersection of Interstate 15 and the 500 foot contour line, north of intersection point between Interstate 15 and T.12 S./T.13 S., the boundary line follows the 500 foot contour line to;

(2) The point nearest the San Pasqual Road and the 500 foot contour line, the boundary follows the Escondido Corporate Boundary line to the 500 foot contour line on the hillock and circumnavigates the hillock back to the Escondido Corporate Boundary line returning to the 500 foot contour line at the point nearest the San Pasqual Road and;

(3) Continues following the 500 foot contour line around the San Pasqual Valley to a point were the 500 foot contour line intersects with the Pomerado Road, at this point the boundary line, in a straight, north-westerly direction, crosses over to;

(4) The 500 foot contour line of Battle Mountain, following the 500 contour line around Battle Mountain to a point nearest to Interstate 15, at which point the boundary crosses to Interstate 15 and;

(5) Continues northward along Interstate 15 to the point of beginning.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. Furthermore, while this document proposes possible boundaries for San Pasqual Valley viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments recieved after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting comments is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of the Bureau and of the

Treasury Department have participated in the preparation of this document, both in matters of substance and style.

Authority

Accordingly, under the authority in 27 U.S.C. 205, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.25. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.25 San Pasqual Valley.

Par. 2. Subpart C is amended by adding § 9.25. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.25 San Pasqual Valley.

(a) *Name.* The name of the viticultural area described in this section is "San Pasqual Valley."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the San Pasqual Valley viticultural area are two U.S.G.S. maps. They are titled:

(1) "Escondido Quadrangle, California—San Diego County," 7.5 minute series; and

(2) "San Pasqual Quadrangle, California—San Diego County," 7.5 minute series.

(c) *Boundaries.* The San Pasqual Valley viticultural area is located in San Diego County, California. From the beginning point at the intersection of Interstate 15 and the 500 foot contour line, north of intersection point between Interstate 15 and T. 12 S./T. 13 S., the boundary line follows the 500 foot contour line to:

(1) The point nearest the San Pasqual Road and the 500 foot contour line, the boundary follows the Escondido Corporate Boundary line to the 500 foot contour line on the hillock and circumnavigates said hillock to the Escondido Corporate Boundary line and returns to the 500 foot contour line at the point nearest to the San Pasqual Road and;

(2) Continues following the 500 foot contour line completely around San Pasqual Valley to a point where the 500 foot contour line intersects with the Pomerado Road, at this point the boundary line, in a straight, northwesterly direction crosses over to;

(3) The 500 foot contour line of Battle Mountain, following the 500 foot contour line around Battle Mountain to a point nearest to Interstate 15, at which point the boundary crosses to Interstate 15 and;

(4) Continues northward along Interstate 15 to the point of beginning.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 14, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-33361 Filed 10-24-80; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Grand Teton National Park; Proposed Rulemaking and Publication of Noise Abatement Plan for Jackson Hole Airport

Correction

In FR Doc. 80-32382 appearing at page 68687 in the issue of Thursday, October 16, 1980 and corrected on page 70287 in the issue of Thursday, October 23, 1980, first column, last two lines of the correction on page 70287, "November 17, 1980" should be corrected to read "November 14, 1980."

BILLING CODE 1505-01-M

POSTAL SERVICE

39 CFR Part 111

Second-Class Supplements

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend section 425.4 of the Domestic Mail Manual to relax the eligibility requirements for supplements in second-class publications. The proposal would delete a number of unnecessary and technical impediments to the use of supplements.

DATE: Comments must be received on or before November 10, 1980.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U. S. Postal Service, 475 L'Enfant Plaza, West, SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Office of Mail Classification, Room 1640, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT: Gordon S. Proud at 202/245-4659.

SUPPLEMENTARY INFORMATION: Supplements may be included as part of a second-class publication if they are germane to the issue with which they are mailed. Current postal regulations also provide that

(1) Publications which are distinct from and independent of the regular issue are not germane to the issue and are not acceptable as supplements,

(2) Advertising supplements must be specifically prepared for inclusion in second-class publications,

(3) If advertising supplements are produced primarily for distribution either through the mails or outside the mails as separate and independent advertising material, they are not permissible supplements in second-class publications,

(4) If a second-class publisher is furnished material to be carried as a preprinted advertising supplement, he must ascertain that more than 50 percent of the total number of copies which will be distributed by any means will be included in second-class publications,

(5) An advertising rate or charge must be paid for including preprinted advertising supplements, and

(6) Supplements must bear the title of the publication preceded by the words *Supplement to.*

Many second-class publishers have requested that these enumerated requirements be deleted because they impose unnecessary and technical impediments on the use of supplements. The Postal Service agrees and is proposing a simplified regulation to govern second-class supplements. If the proposed rule is adopted, a publisher could include any supplement in the regular issue of a publication entered as second-class mail provided the supplement is germane to the issue, having been omitted in the interest of space, time, or convenience. The supplement would also have to be folded and mailed with the regular issue of the publication.

The Postal Service finds good cause to publish this proposal with a shortened comment period. There is strong mailer interest in its adoption. Morever, the proposal, if adopted, would only remove current restrictions on supplements in second-class mail—no new restrictions would be imposed.

Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comment on the following proposed revision of the Domestic Mail Manual, which is incorporated by reference in the Federal Register. See 39 CFR 111.1

PART 425—WHAT MAY BE MAILED AT THE SECOND-CLASS RATES

In part 425, amend section 425.4 to read as follows: 425.4 Supplements. Publishers may include supplements in the regular issue of a publication entered as second-class mail subject to the following conditions:

a. The supplements must be germane to the issue, having been omitted in the interest of space, time or convenience.

b. The supplement must be folded and mailed with the regular issue.

An amendment to 39 CFR 111.3 will be published if this proposal is adopted.

(39 U.S.C. 401(2), 404(a)(2))

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 80-33415 Filed 10-24-80; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A5 FRL 1643-3]

Michigan State Implementation Plan; Extension of Comment Period

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking, notice of extension of comment period.

SUMMARY: The U.S. EPA is giving notice that the comment period for the notice of proposed rulemaking on the Michigan State Implementation Plan (SIP) revision to control particulate emissions from iron and steel process sources in the State of Michigan published September 9, 1980, (45 FR 59329) has been extended from October 9, 1980 to November 30, 1980.

DATE: Comments are now due on or before November 30, 1980.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Air Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 996-4254.

SUPPLEMENTARY INFORMATION: This notice extends the period for submitting comments on the notice published September 9, 1980 (45 FR 59329) proposing rulemaking on revisions to Michigan's SIP. These revisions pertain to the control of particulate emissions from iron and steel process sources in the State of Michigan.

Ford Motor Company on October 1, 1980, and Great Lakes Steel on October 3, 1980, requested thirty (30) day extensions of time for filing their comments regarding U.S. EPA's proposed action on the revisions. In addition, the State of Michigan, Department of Natural Resources, on October 7, 1980, requested a sixty (60) day extension of time for filing their comments.

U.S. EPA has decided that the extension of the public comment period is appropriate and the comment period is hereby extended to November 30, 1980.

Dated: October 9, 1980.

John McGuire,

Regional Administrator.

[FR Doc. 80-33414 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 81

[A4 1643-2]

Designation of Areas for Air Quality Planning Purposes; North Carolina: Proposed Redesignation of Spruce Pine Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: It is proposed to change the particulate attainment status designation of the Spruce Pine area to attainment from unclassifiable for the primary standards and nonattainment for the secondary standard. This change is based on eight consecutive quarters of air quality measurements showing no violation of any national standard. The public is invited to submit written comments on this proposal.

DATE: To be considered, comments must be received on or before November 26, 1980.

ADDRESSES: Copies of the materials submitted by North Carolina in support of the redisignation may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Library, EPA, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV, Air Programs Branch, 404/881-3043 (FTS 257-3043).

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962 at 9019), the Administrator designated portions of Avery, Mitchell and Yancey Counties, North Carolina, in and around Spruce Pine as nonattainment for particulate matter. On August 20, 1979 (44 FR 48679), the Administrator changed the designation for the primary particulate standards from nonattainment to unclassifiable, leaving the designation for the secondary standard as nonattainment. On September 3, 1980, the state submitted information showing that no ambient particulate standard had been violated in the area during the period April 1979 through March 1980, and requested that the designation for Spruce Pine be revised to attainment. EPA proposes to grant this request.

As mentioned in the notice of August 20, 1979, the improvement in air quality in Spruce Pine since 1976 and 1977 is attributable to the completion of road construction project in the vicinity (within 0.3 miles) of the City Hall monitoring site. In addition, local initiatives taken since the nonattainment designation have led to the paving of a number of unpaved streets and other open areas which emit fugitive dust, as well as to a continuing exchange among operators of local mines and mineral processing plants of information on a control techniques for fugitive dust and fugitive emissions. The annual geometric mean particulate concentration measured at the City Hall site has dropped from 102 $\mu g/m^3$ in calendar year 1977 to 63 $\mu g/m^3$ for 1979. A second monitor operated nearby since March 1979 has yielded consistently lower measurements (geometric mean of 50 $\mu g/m^3$ for the period April 1979–March 1980).

The public is invited to participate in this rulemaking by submitting written comments on the proposed redesignation. After considering all pertinent comments received, the Administrator will take final action on North Carolina's request.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: October 17, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-33413 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

40 CFR Part 81

[A4 FRL 1643-1]

Designation of Areas for Air Quality Planning Purposes; North Carolina: Proposed Redefinition of TSP and SO_2 Attainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule

SUMMARY: North Carolina has requested that the Section 107 designation of TSP and SO_2 attainment areas in 40 CFR 81.334 be changed from "Rest of State" and "Statewide" respectively to a list of the individual counties covered by those designations. The purpose of the propsoed change is to facilitate the tracking of increment consumption under EPA's regulations for the prevention of significant deterioration of air quality. EPA proposes to grant North Carolina's request. The public is invited to submit written comments on the proposed action.

DATE: To be considered, comments must be received on or before November 26, 1980.

ADDRESS: Copies of the North Carolina request may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Library, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Walter Bishop of the EPA Region IV, Air Programs Branch, 404/881-3043 or FTS 257-3043.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: October 17, 1980.

John A. Little,

Acting Regional Administrator.

[FR Doc. 80-33407 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 32

[CGD 78-121]

Tankships; Hatch Covers on Cargo Tanks

AGENCY: Coast Guard, DOT.

ACTION: Proposed rules.

SUMMARY: These proposed regulations would require U.S. Tankships that have aluminum hatch covers on cargo tanks, except vessels carrying liquefied or compressed gas in bulk, to be retrofitted with steel hatch covers. Based upon recent testing, and upon analysis of a 1974 tankship casualty involving the SS *Keytrader*, the Coast Guard has determined that aluminum hatch covers pose a serious safety hazard on most tankships carrying oil or other flammable or combustible liquids in bulk. Aluminum hatch covers on cargo tanks, when exposed to intense heat from a deck fire, melt quickly and expose any cargo in the tanks to a further fire and explosion hazard. Prohibiting the use of aluminum hatch covers would eliminate the fire and explosion hazard caused by these hatch covers.

DATE: Comments on these proposed rules must be received on or before December 11, 1980.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/TP24), (CGD 78-121), U.S. Coast Guard, Washington, D.C. 20593. The comments, Draft Evaluation, and materials referenced in this notice will be available for examination and copying between 7:30 a.m. and 4:30 p.m., Monday through Thursday, at the Marine Safety Council (G-CMC/TP 24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Randall Eberly, c/o Commandant (G-MMT/TP 12), U.S. Coast Guard, Washington, D.C. 20593, (202) 426-2205.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rule making by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 78-121), and the specific section to which their comments apply, and give reasons for the comments. The rules 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 these proposed rules.

Drafting Information

The principal persons involved in drafting these proposed rules are: Randall Eberly, Office of Merchant Marine Safety, and William R. Register, Office of the Chief Counsel.

Discussion of Proposed Rules

1. Part 32 of Title 46, Code of Federal Regulations, contains hull requirements and requirements for machinery and special equipment on tank vessels. These regulations include requirements that tank vessel hulls be of steel or iron construction or, in the case of wood hull vessels, that independent cargo tanks be of steel or iron construction. The Coast Guard has continually interpreted these requirements to apply also to hatch covers on most cargo tanks, which are considered to be an extension of, or a part of, a vessel's hull or cargo tank. Part 32 also includes requirements that materials used on tank vessels and their cargo tanks be at least equivalent to the requirements of the American Bureau of Shipping, or of some other recognized classification society. ABS requirements for oil tankers call for steel hatch covers.

2. Since 1965, use of aluminum hatch covers, except those of unusual size or application, has been allowed as an equivalent to steel construction required by Part 32. Use of equivalent construction is authorized under § 30.15-1 of Title 46. The determination to allow aluminum hatch covers was made based upon the safety benefits derived from their lighter weight and resulting ease of handling.

3. On January 18, 1974, a collision occurred in the Lower Mississippi River between the tanker SS *Keytrader* and the Norwegian vessel, SS *Baune*. The ensuing fire caused the deaths of six persons and the consumption of more than 840,000 gallons of gasoline. The force of the collision caused the breaching of two cargo tanks on the SS *Keytrader*. The heat from the fire, however, caused the melting of aluminum hatch covers which permitted the fire to spread to other cargo tanks not initially involved. The resulting fire was of such magnitude that more than 50 hours were spent in extinguishing the fire. As a result of this casualty, the National Transportation Safety Board recommended that the Coast Guard prohibit the use of aluminum and similar metals with low melting points as hatch covers on tankships. (See Recommendation M-77-5 of the NTSB action on the marine casualty involving the SS *Keytrader*.)

4. Subsequent to the SS *Keytrader* casualty, the Coast Guard conducted a survey of the U.S. tanker fleet to determine how many tankships are fitted with aluminum hatch covers. It was determined that between 10 and 20 percent are so equipped. A survey was also conducted of foreign governments to determine if aluminum hatch covers are permitted on foreign flag tankers. None of the administrations who replied stated that they permit the installation of such hatch covers. Subsequent to these surveys, fire tests were conducted at the Coast Guard's Fire and Safety Detachment in Mobile, Alabama. The results of these tests showed that under

typical conditions, aluminum hatch covers melted and fell into the cargo tanks after 15 to 17 minutes of test exposure while steel covers remained intact and in position for the duration of the 30 minute test. (See D. Beene, "Fire Endurance of Aluminum and Steel Hatch Covers", U.S. Coast Guard Research and Development Center Report CG–D–82–77, June 1977). Based upon these tests, and upon analysis of the NTSB recommendation, the Coast Guard has determined that aluminum hatch covers on board most tankships carrying oil or other flammable or combustible liquids in bulk constitute a serious safety hazard when exposed to fire. Also on the basis of the tests and analysis, the practice of granting equivalencies to install aluminum hatch covers has been stopped.

5. The proposed regulations would require most tankships with aluminum hatch covers to be retrofitted with steel hatch covers. The regulations further provide, however, that retrofitting could be postponed until the next inspection for certification so that replacement covers could be installed during a vessel's normal repair and drydocking schedule without causing any substantial disruption in operations.

6. The effective date for these regulations, when finalized, is currently planned to be 90 days after their publication in the Federal Register as final rules. Section 30.01–15(a) of Part 30 of this chapter provides that regulatory changes to the tank vessel regulations will normally be made effective 90 days after publication, and the 90 day period is necessary for these regulations in order to allow vessel owners sufficient time to obtain and install replacement covers on vessels due for inspection shortly after the regulations become effective.

7. These regulations would not apply to vessels carrying liquefied or compressed gas in bulk that meet the requirements of Part 38 or Part 154 of this chapter. Parts 28 and 154 already contain adequate fire protection requirements for cargo tanks on vessels that meet those requirements. These regulations would also not apply to tank barges. The Coast Guard is currently conducting a study to determine the extent and severity of the fire safety hazard posed by using aluminum hatch covers on tank barges. Depending upon the results of the study, proposed regulations for barges will be prepared.

8. The purpose of the regulations would be to alleviate the fire safety hazard documented in the recent Coast Guard fire tests and SS *Keytrader* casualty. The regulations would also have a secondary purpose of providing for effective functioning of a vessel's inert gas system during a deck fire. An inert gas system cannot function properly if cargo hatch covers have melted and fallen into the cargo tanks. Subpart 32.53 of Title 46 contains requirements for certain tank vessels to have an inert gas system. Also, as a part of the President's recent initiatives to upgrade the level of safety on tank vessels, the Coast Guard has recently adopted regulations that would require additional categories of tank vessels to have inert gas systems. These regulations were published in the Federal Register of November 19, 1979 (44 FR 66500).

Draft Evaluation

9. These proposed regulations are considered to be nonsignificant and, accordingly, a draft evaluation has been prepared and placed in the public docket as required by the Regulatory Policies and Procedures of the Department of Transportion (44 FR 11040–11045). The DOT Order requires that each draft evaluation include an economic analysis which quantities, the 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 impacts of the regulations.

10. The estimated costs of these regulations would be as follows:

(a) The minimum expected retrofitting costs based upon the known number of tankships would be: 26 vessels × 19 covers × $3,000 = $1,482,000.

(b) The maximum expected retrofitting costs, based upon the assumption that twice as many tankships would hve aluminum hatch covers and in larger numbers and cost, would be: 52 vessels × 30 covers × $4,000 = $6,240,000.

(c) Government costs of inspecting retrofitted covers would be absorbed within existing Coast Guard resources.

11. The anticipated benefits and impacts of the regulations would be a reduction in fire explosion hazards on tank vessels and a resulting increased level of safety.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 32 of Title 46, Code of Federal Regulations, as follows:

Subpart 32.60—Hull Requirements for Tank Vessels Constructed on or After July 1, 1951

1. By adding a new paragraph (c) to § 32.60–40 to read as follows:

§ 32.60–40 Construction and testing of cargo tanks and bulkheads.

* * * * *

(c) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Subpart 32.65—Hull Requirements for Tank Vessels Constructed on or After November 10, 1936, and Prior to July 1, 1951

2. By adding a new paragraph (d) to § 32.65–40 to read as follows:

§ 32.65–40 Construction and testing of cargo tanks and bulkheads.

* * * * *

(d) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Supart 32.70—Hull Requirements for Steel Hull Tank Vessels Constructed Prior to November 10, 1936

3. By designating the existing text in § 32.70–25 as paragraph (a) of that section, and by adding a new paragraph (b) to that section to read as follows:

§ 32.70–25 Cargo tanks.

(a) * * *

(b) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before it next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that comply with Parts 38 or 154 of this chapter.

Subpart 32.75—Hull Requirements for Wood Hull Tank Vessels Constructed Prior to November 10, 1936

4. By designating the existing text in § 32.75–10 as paragraph (a) of that section, and by adding a new paragraph (b) to that section to read as follows:

§ 32.75–10 Cargo tanks.

(a) * * *

(b) Each tankship that has aluminum hatch covers on cargo tanks must be retrofitted with steel hatch covers at or before its next inspection for certification occurring after [the effective date of this paragraph]. This paragraph does not apply to vessels that

comply with Parts 38 or 154 of this chapter.

(Sec. 5, Pub. L. 95–474 (46 U.S.C. 391a, as amended); 49 CFR 1.46)

Dated: October 21, 1980.

Henry H. Bell,

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

[FR Doc 80-33447 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Part 157

[CGD 78-027]

Manning of Vessels

AGENCY: Coast Guard, DOT.

ACTION: Proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend its regulations pertaining to the manning requirements for uninspected vessels of 200 gross tons or over navigating on the high seas. This action would remove from the regulations a currently existing affirmative requirement for the minimum manning of uninspected vessels that is not authorized by statute.

DATE: Comments must be received on or before December 11, 1980.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/24) (CGD 78–027), U.S. Coast Guard, Washington, D.C. 20593. Between the hours of 7:30 a.m. and 5:00 p.m., Monday through Thursday, comments may be delivered to, and will be available for inspection or copying at the Marine Safety Council (G–CMC/24), Room 2418, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593.

FOR FURTHER INFORMATION CONTACT: Commander Scott D. McCowen, Office of Merchant Marine Safety, Vessel Manning Branch (G–MVP–5/14), Room 1400 G, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593 (202-426-2240).

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons sumbitting comments should provide their name and address, identify this notice (CGD 78–027), indicate the specific section of the notice 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. 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 rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Commander Scott D. McCowen, Project Manager, Office of Merchant Marine Safety and Lt. Kenneth E. Johnson, Project Attorney, Office of the Chief Counsel.

Discussion of the Proposed Regulations

The Officer's Competency Certificates Convention, 46 U.S.C. 224a, applies to merchant vessels of 200 gross tons or over navigating on the high seas. It is the only statutory requirement for licensed officers on uninspected vessels. 46 CFR 157.30–10 implements the provisions of 46 U.S.C. 224a with respect to uninspected vessels.

The present phrasing of § 157.30–10(c) as an affirmative requirement for the minimum manning of uninspected vessels has led to the filing of improper reports of violation, actions to collect penalties, and actions to suspend or revoke licenses.

The wording of this section originally provided a rule of evidence. Over the years it has evolved into an affirmative manning requirement calling for two licensed deck officers and two licensed engineers on uninspected vessels subject to 46 U.S.C. 224a, when engaged on a voyage of more than twelve hours duration upon the high seas, and not equipped with pilothouse controls for the propulsion machinery. A Federal Court decision in *United States v. Silva*, 272 F. Supp. 46 (D.C.; S.D. Cal. 1967), however, has found that the requirements of this section are not authorized by statute. This proposed regulatory amendment would delete subsection (c) from section 157.30–10 in order to bring the regulation into compliance with statutory authority.

This proposal has been reviewed under the Department of Transportation "Regulatory Policies and Procedures" published on February 26, 1979 (44 FR 11034), and is not considered a significant rulemaking. A draft evaluation is not warranted since the expected impact upon all sectors concerned will be minimal.

§ 157.30–10 [Amended]

In consideration of the foregoing, the Coast Guard proposes to amend Part 157 of Title 46, Code of Federal Regulations by deleting subsection (c) of § 157.30–10.

(46 U.S.C. 224(a); 49 U.S.C. 1655(b), 46 CFR 1.46(b))

Dated: October 21, 1980.

Henry H. Bell,

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

[FR Doc. 80-33446 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 80–190; RM–3630]

Amendment of Form 324—Annual Financial Report of Broadcast Stations; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the comment and reply comment dates in the proceeding to revise FCC Form 324, the Annual Financial Report of Broadcast Stations (BC Docket No. 80–190). Metromedia, Inc. requested this extension in order that it be able to include any relevant information that may develop based on its participation in the Commission's pre-test of the proposed form.

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

DATE: Comments must be filed on or before November 17, 1980, and reply comments by December 17, 1980.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Broadcast Bureau, (202) 632–6302.

Adopted: October 7, 1980.

Released: October 17, 1980.

In the matter of amendment of Form 324 Annual Financial Repoort of Broadcast Stations, BC Docket No. 80–190, RM–3630.

1. On April 24, 1980, the Commission adopted a *Notice of Proposed Rulemaking* looking toward revision of FCC Form 324, the Annual Financial Report of Networks and Licensees of Broadcast Stations. Comments on this matter are presently due by October 9, 1980 and reply comments by November 28, 1980.

2. Metromedia, Inc. has asked the Commission to extend the time for filing comments in this proceeding to November 17, 1980. In requesting this extension, Metromedia states that one of its stations has been selected to

participate in the Commission's pre-test of the proposed form and that the additional time will allow them to include in their comments any information they may develop based on their participation. The proposed new date would extend slightly beyond the October 31, 1980 date for submission of the completed pre-test forms.

3. We believe that such an extension would make it easier for Metro-media and others participating in the pre-test to prepare comments in this matter and are therefore granting the additional time requested. In order to provide sufficient time for replies to all commenters, we are also extending the date for filing reply comments to December 17, 1980. As indicated in the Notice, we intend to issue a report on evidence gathered throught the pre-test and will provide an opportunity for comment at such time as the report is released.

4. Accordingly, it is ordered that the above request for an extension of filing time is granted, and the date for filing comments is extended to November 17, 1980 and for reply comments to December 17, 1980.

5. This action is taken pursuant to Section 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33429 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

47 CFR PART 73

[BC Docket No. 80-657; RM-3670]

TV Broadcast Station in Victoria, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: In response to a petition filed by Community Television of Victoria, this action proposes to assign UHF television Channel 31 to Victoria, Texas, as that community's third television channel assignment.

DATES: Comments must be filed on or before December 15, 1980, and reply comments must be filed or or before January 4, 1981.

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

FOR FURTHER INFORMATION CONTACT: Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 15, 1980.

Released: October 24, 1980.

In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (Victoria, Texas), BC Docket No. 80-657, RM-3670.

1. The Commission has before it a petition for rule making[1] filed by Community Television of Victoria ("CTV") on April 30, 1980. The petition seeks to have the Commission assign UHF television Channel 31 to Victoria, Texas, as that community's third television channel assignment.

2. Victoria (population 41,349) [2] seat of Victoria County (population 53,766), is located in south central Texas, approximately 195 kilometers (120 miles) southwest of Houston, Texas. Currently assigned to Victoria are UHF Channel 19 (KXIX) and Channel 25 (for which an application for a translator station, BPTT/80031311, is pending [3]).

3. Petitioner CTV submits that the proposed assignment of Channel 31 to Victoria is warranted since economic data gathered from the City and Chamber of Commerce records indicates a need for an additional assignment. CTV states that it will apply for the channel, if assigned.

4. Although not stated in the petition, CTV appears to be seeking an additional channel assignment so that it may operate a 1,000 watt television translator station. Petitioner refers to having filed an application for the use of Channel 25 in Victoria. On March 13, 1980, an educational translator application was also filed with the Commission requesting the use of Channel 25 at Victoria. On April 28, 1980, petitioner amended its application for Channel 25 to specify Channel 55, with a transmitter output power of 100 watts in place of the originally requested 1,000 watts. However, a request for 1,000 watts on Channel 55 would have required a waiver of the transmitter power rule since Channel 55 is not listed in the Television Table of Assignments for Victoria.

5. Channel 31 can, as petitioner asserts, be assigned to Victoria in full compliance with the Commission's minimum distance separation requirements. Indeed, there appears to be an abundance of UHF television channels available for assignment of the Victoria area. Therefore, based upon the information submitted by petitioner CTV and upon the Commission's own examination of the matter, we conclude that petitioner's proposal should be pursued as a means of allocating an additional 1,000 watt translator UHF station for Victoria. However, petitioner should decide whether it wishes to pursue the application for Channel 25. If so, it would not be permitted to also apply for Channel 31. Generally, a TV assignment will not be made without the existence of a potential applicant.

6. Mexican concurrence in the matter must be obtained.

7. Accordingly, it is proposed to amend § 73.606(b) of the Commission's Rules, the Television Table of Assignments, As follows:

City	Channel No.	
	Present	Proposed
Victoria, Texas	19+, 25	19+, 25, 31

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 15, 1980, and reply comments on or before January 4, 1981.

10. For futher information concerning this proceeding, contact Joaquin R. Cantu, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

[BC Docket No. 80-657 RM-3670]

1. Pursuant to authority found in Sections 4(i), 5(d)(l), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's

[1] The Commission published a Public Notice of the petition on May 28, 1980, Report No. 1230.

[2] Population figures are taken from the 1970 U.S. Census.

[3] CTV has submitted an application for a full broadcast station which has not yet been accepted.

rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-33428 Filed 10-24-80; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-520; RM-3558]

FM Broadcast Stations in Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, and Utuado, P.R.; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in the proceeding involving proposed FM channel assignments to cities in Puerto Rico. Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., request the additional time to prepare and submit engineering data.

DATE: COMMENTS MUST BE FILED ON OR BEFORE OCTOBER 31, 1980, AND REPLY COMMENTS ON OR BEFORE NOVEMBER 20, 1980.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Adopted: October 14, 1980.

Released: October 21, 1980.

In the matter of amendment of § 73.202(b) *Table of Assignments* FM Broadcast Stations (Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas and Utuado, Puerto Rico), BC Docket No. 80-520, RM-3558.

1. On August 15, 1980, the Commission adopted a *Notice of Proposed Rule Making*, proposing to change the FM Table of Assignments for several cities in Puerto Rico (45 FR 58624, published September 4, 1980), in response to a joint petition filed by Aurio Matos, Arzuaga and Davila Associates, Radio Musical, Inc., and Enrique Leon. Comments are presently due October 17, 1980, and reply comments November 6, 1980.

2. On October 7, 1980, counsel for Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., filed a joint request seeking an extension of time for filing comments and reply comments to and including October 31, 1980, and November 20, 1980, respectively. Counsels state that due to the complexity of this proceeding, additional time is needed for analysis and preparation of engineering data. They note that counsel for the petitioners have been apprised of their intent to file this request.

3. We belive that the public interest would be served by granting the extension so that Radio Americas Corporation, Guayama Broadcasting Company, Inc., and Arecibo Radio Corporation, Inc., may file any information which may be helpful to the Commission in resolving the issues in this proceeding.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in BC Docket No. 80-520 (RM-3558) are extended to and including October 31, and November 20, 1980, respectively.

5. This action is taken pursuant to Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 80-33427 Filed 10-24-80; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80-14; Notice 2]

Federal Motor Vehicle Safety Standards; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Proposed rule, extension of period for public comments.

SUMMARY: This notice responds to a petition for extension of the period for public comments on the notice of proposed rulemaking to delete the tire tables from Appendix A of Federal Motor Vehicle Safety Standard No. 109. The comment closing date is changed from October 27, 1980, to November 26, 1980.

DATE: Comments must be received on or before November 26, 1980.

ADDRESS: Comments on the proposed rule should be submitted to: Docket Section, Room 5108, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Steve Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: On August 28, 1980, at 45 FR 57466, the National Highway Traffic Safety Administration responded to a petition by Michelin Tire Corporation by proposing that Table I, relating to tire sizes and load factors, be deleted from Standard No. 109 (49 CFR § 571.109). This step would expedite the introduction of new tire sizes by the various tire manufacturers.

The Rubber Manufacturers Association, which represents most American tire manufacturers, has petitioned for a 30-day extension of the comment period. According to that group, "Many complex issues are raised which require careful detailed study by technical personnel of the various tire manufacturers and the appropriate RMA committees." This agency had originally established a 60-day comment period. After consideration of this petition, it has been determined that the extension of the comment period will aid in ensuring that the issues raised in the notice are adequately considered by all interested parties. Accordingly, the petition is granted and the comment period is hereby extended until November 26, 1980.

(Secs. 102, 119, and 202, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1422); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 23, 1980.

Carl Nash,

Acting Associate Administrator for Rulemaking.

[FR Doc. 80-33517 Filed 10-23-80; 3:35 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1005, 1056, 1310, and 1322

[Ex Parte No. MC 19 (Sub-36)]

Practices of Motor Common Carriers of Household Goods (Revision of Operational Regulations)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission intends to cancel the operational regulations now appearing in 49 CFR 1056 applicable to motor common carriers of household goods and to adopt new regulations in conformity with the Household Goods Transportation Act of 1980. It is intended to eliminate all regulation of household goods transportation cost estimating which pertains to the procedure or form of estimates or which require the final charges for the transportation of a shipment to be determined by an estimate. Also intended is the restructuring of the requirements for weighing household goods shipments to provide for more flexible requirements, including the permitting of backweighing. Further changes are intended in the form and content of pre-move information provided to shippers; in the procedures whereby carriers assume liability for the value of cargo while in possession of the carriers and the procedures and requirements relating to the collection of transportation charges from shippers. We also intend to consider requiring Class I and II household goods carriers to establish and maintain specific procedures for receiving and handling complaints and inquiries from shippers.

This proceeding is instituted in compliance with the Household Goods Transportation Act of 1980 which requires that, no later than 60 days after enactment, the Commission shall institute a rulemaking proceeding in which it shall review and revise all of its operational regulations pertaining to the transportation of household goods.

The purpose of the proposal is to reduce the paperwork burden on household goods carriers, to encourage innovative rate and service modifications, to provide performance standards where appropriate, to eliminate regulation to the maximum extent feasible, and to provide increased consumer protection in those areas where such protection is necessary.

DATES: Comments must be filed on or before November 26, 1980.

ADDRESS: An original and 15 copies, if possible, of comments should be sent to: Ex Parte No. MC-19 (Sub No. 36), Room 7205, Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: W. F. Sibbald, Jr. (202) 275-7148.

SUPPLEMENTARY INFORMATION: This proceeding provides for a complete review of all of the Commission's regulations for the protection of the rights of consumers who, collectively, employ the services of the household goods transportation industry to perform in excess of one million interstate moves each year.

The primary objective is to restructure the regulations appearing in 49 CFR 1056. In furtherance of this objective, amendments are also proposed with reference to other regulations appearing in 49 CFR 1003, *List of Forms,* 49 CFR 1005, *Principles and Practices For the Investigation and Voluntary Disposition of Loss and Damage Claims and Processing Salvage,* 49 CFR 1310, *Freight Rate Tariffs and Classifications of Motor Carriers* and 49 CFR 1322, *Extension of Credit to Shippers By Motor Carriers.*

Appendix A to this notice contains the regulations being proposed. Appendix B is a section-by-section discussion of the present and proposed regulations. Comment is solicited regarding the regulations proposed and additional or alternative regulations considered necessary.

Appendix C is a draft of the consumer information publication, Form OCP-100, *Your Rights and Responsibilities When You Move,* which will be distributed to prospective shippers under the requirements of proposed 49 CFR 1056.2(a)(1).

It will be further required that performance standards be developed whenever appropriate to apply to those regulations continued in effect or adopted for the protection of individual shippers. Comments and recommendations are solicited with respect to identifying those regulations to which performance standards should be applied; to establishing the guidelines or basis for such standards and to determining the most effective application of the standards once established. Comments are also solicited with respect to the establishing of performance standards in this rulemaking proceeding as opposed to instituting a separate rulemaking proceeding as opposed to instituting a separate rulemaking proceeding for that purpose.

In commenting on the development and implementation of performance standards, all parties are encouraged to take into account and provide comment on the following criteria in each regulatory area where the maintenance of performance standards is recommended:

"(A) the level of performance that can be achieved by a well-managed motor common carrier transporting household goods;

"(B) the degree of harm to individual shippers which could result from a violation of the regulation;

"(C) the need to set the level of performance at a level sufficient to deter abuses which result *in* harm to consumers and violations of regulations;

"(D) service requirements of the carriers;

"(E) the cost of compliance in relation to the consumer benefits to be achieved from such compliance; and

"(F) the need to set the level of performance at a level designed to encourage carriers to offer service responsive to shipper needs."

Implementation of the regulations as proposed will result in a substantial reduction and liberalization in the

number and scope of the regulations applying to household goods carriers. To the maximum extent feasible, the industry is being encouraged to regulate itself by responsible tariff publication and by observance of operating policies and practices which recognize the industry's obligation to provide a reasonable and adequate service to consumers.

We encourage innovation in the nature of the service provided to consumers and in the rate structure applicable to the service. Areas where such innovations should be explored are the expanded use of containers and intermodal transportation; the further reduction of paperwork; the development of new and improved estimating techniques, and the reduction of cargo loss and damage. We believe the current proposal is flexible enough not just to permit, but to encourage, a wide range of innovative behavior on the part of the carriers and their agents. We will look favorably on comments that point out any failure to achieve this goal.

This notice of proposed rulemaking is issued under the authority of 49 U.S.C. 10321, 11109 and 5 U.S.C. 553.

Decided: September 29, 1980.

By the Commission: Chairman Gaskings, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix A

Proposed Revisions of the Regulations Contained in Title 49, Code of Federal Regulations, Applicable to the Operations of Household Goods Motor Carriers.

Part 1056 of Title 49 would be revised to read as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Sec.

1056.1 Applicability and definitions.
1056.2 Information for shippers.
1056.3 Estimates of charges.
1056.4 Final charges on shipments subject to minimum weight or volume provisions.
1056.5 Order for service.
1056.6 Receipt or bill of lading.
1056.7 Determination of Weights.
1056.8 Reasonable dispatch.
1056.9 Notification of charges.
1056.10 Signed receipt for shipment.
1056.11 Selling of insurance to shippers.
1056.12 Liability of carriers.
1056.13 Complaint or inquiry handling.
1056.14 Responsibility of principal carriers for acts of agents.
1056.15 Reporting and disclosure requirements—agents.
1056.16 Collection of freight charges on household goods shipments involving loss or destruction in transit.
1056.17 Collection of freight charges on household goods shipments transported on more than one vehicle.
1056.18 Advertisements, false, deceptive and misleading practices.
1056.19 Preparation and filing of annual performance report.
1056.20 Use of charge card plans.

Authority: 49 U.S.C. 10321, 11109 and 5 U.S.C. 553.

§ 1056.1 Applicability and definitions.

(a) The regulations in this part are applicable to the operations of motor carriers engaged in the transportation of household goods as defined in paragraph (B)(1) in interstate or foreign commerce.

(b) *Definitions.* As used in this part:

(1) *Household Goods.* The term "household goods" means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling and such other similar property as the Commission may provide by regulation; except that this definition shall not be construed to include property moving from a factory or store except such property as a householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by, the householder. The regulations under this part do not apply to the transportation of property transportable under 49 USC 10102(10)(B) and (C).

(2) *Reasonable dispatch.* The term "reasonable dispatch" means the performance of transportation, excluding transportation provided under tariff provisions requiring guaranteed service dates, on the dates or during the period of time agreed upon by the carrier and the shipper and shown on the Order For Service/Bill of Lading, *Provided, however,* That the defenses of force majeure as construed by the courts shall not be denied the carrier.

(3) *Advertisement.* The term "advertisement" means any communication to the public, in written or printed form, in connection with an offer or sale of any interstate or foreign transportation service, but shall not be construed to include a listing of a carrier name, address, and telephone number in a telephone directory or similar publication.

(4) *Certified Scales.* As used in this part a certified scale is any scale designed for weighing motor vehicles, including trailers or semi-trailers not attached to a tractor, designed, installed and maintained in compliance with the minimum standards of Handbook 44 as published by the National Bureau of Standards and certified by an authorized scale inspection and licensing authority to meet those standards. A certified scale may also be a platform or warehouse type scale meeting the Handbook 44 standards and properly inspected and certified. The use of axle scales for the weighing of vehicles is prohibited.

(5) *Individual Shipper.* As used in this part, "individual shipper" refers to any person who is the consignor and/or consignee of a household goods shipment and who pays the transportation charges out of his or her own funds without the payment of the charges being guaranteed in the bill of lading contract by a third person, normally the employer of the consignor and/or consignee. Shipments for individual shippers may be transported on a prepaid, collect on delivery or credit basis at the discretion of the carrier.

(6) *Commercial Shipper.* As used in this part, "commercial shipper" refers to (i) any person who is the consignor and /or consignee of a household goods shipment which is transported under a bill of lading agreement that the transportation charges are guaranteed and/or paid by a third party, normally the employer of the consignor and/or consignee; or, (ii) any person, excluding the federal government, which is named as the consignor and/or consignee in a bill of lading contract who is not the owner of the goods being transported but who assumes the responsibility for payment of the transportation charges for the account of the beneficial owner of the goods normally an employee of the consignor and/or consignee or, (iii) a freight forwarder which tenders a shipment to a carrier in furtherance of authorized or exempt freight forwarder operations. Shipments for commercial shippers may be transported on a prepaid, collect on delivery or credit basis at the discretion of the carrier.

(7) *Government Bill of Lading Shipper.* As used in this part, "government bill of lading shipper" refers to any person whose property is transported under the terms and conditions of a government bill of lading issued by any department or agency of the federal government to the carrier responsible for the transportation of the shipment.

(8) *Other terms.* Where any other terms used in the regulations in this part are defined in 49 USC 10102, such definitions shall be controlling. Where terms are used in this part which are neither defined herein nor in 49 USC 10102, they shall have the ordinary practical meaning of such terms.

§ 1056.2 Information for shippers.

(a) Prior to the execution of an order for service relating to the proposed transportation for an individual shipper, of a shipment of household goods as defined in 49 CFR 1056.1(b)(1), every motor common carrier holding out to perform the service shall cause to be furnished to the prospective shipper the following publications.

(1) Publication OCP–100, *Your Rights and Responsibilities When You Move,* as prescribed in the appendix to this Section.

(2) A concise easy-to-read, accurate summary of any dispute settlement program, as provided in 49 USC 11711 and approved by the Commission, in which the carrier participates.

(b) Class I and II motor common carriers of household goods shall also furnish each prospective individual shipper:

(1) A copy of the Form OCP–101, *Annual Performance Report,* most recently filed with the Commission if the carrier is required by 49 CFR 1056.19 to prepare and file such report. In lieu of furnishing a copy of the actual report the carrier may reproduce and distribute the reported data appended to Publication OCP–100 provided the data is reproduced on a separate page in the same format as that of the Form OCP–101 without alteration or amendment and without any subjective evaluation or commentary appearing on the same page as the required performance information.

(2) A publication describing the customer complaint and inquiry handling procedures established and maintained by the carrier as required by 49 CFR 1056.13. Included in this publication there shall be a telephone number, either for a toll-free service or for a regular telephone service at which collect calls will be accepted, which the shipper may use to communicate with the principal office of the carrier.

Appendix—Requirements for Publication OCP–100, "Your Rights and Responsibilities When You Move"

General requirements

(1) The text, format and arrangement of the publication shall not be changed without the written approval of the Director, Office of Consumer Protection, Interstate Commerce Commission.

(2) The Director, Office of consumer Protection, Interstate Commerce Commission, shall, within 60 days following the effective date of a decision of the Interstate Commerce Commission changing any rule or regulation published at 49 CFR 1056, cause to be published in the **Federal Register** a notice of amendment to Publication OCP–100 reflecting such change or changes. Future amendments to Publication OCP–100 will become effective 60 days after publication in the **Federal Register.**

(3) The dimensions of the publication shall be optional, provided, however, the product of multiplying the length by the width shall be not less than 36 square inches.

(4) The color and design of the front and back cover of the publication shall be optional, providing, however, the only words printed or appearing on the front cover shall be *"Your Rights and Responsibilities When You Move."*

Text, Format or Arrangement of Publication OCP–100, "Your Rights and Responsibilities When You Move."

See Appendix C for Text and Format of Proposed Publication OCP–100.

§ 1056.3 Estimates of charges.

(a) *Binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may provide in their tariffs for the preparation and furnishing to shippers of binding estimates of the costs which the shippers will be required to pay for the services included in the estimates. Such estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is binding upon the carrier and that the charges shown are the maximum charges which will be assessed for the services identified in the estimate.

(b) *Non-binding estimates.* Motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) may without charge provide estimates of the approximate costs which will be assessed for the transportation of such shipments. Estimates of approximate costs shall not be binding on the carriers providing such estimates. The final charges on such estimated shipments shall be those appearing in the carriers' tariffs applicable to the transportation. Non-binding estimates must be furnished in writing to the shipper or other person responsible for payment of the freight charges and a copy of each such estimate must be retained by the carrier as an addendum to the bill of lading. All such estimates shall have clearly indicated on the face thereof that the estimate is not binding on the carrier and that the charges shown are the approximate charges which will be assessed for the services identified in the estimate. Non-binding estimates of approximate costs shall specify the units used in setting charges for all line-haul, accessorial and storage charges and valuation or insurance charges; the carrier's charge per unit; and the estimated units included in the estimate.

(c) *Estimated Charges Required to be Entered on the Order For Service and Bill of Lading.* Motor common carriers furnishing non-binding estimates of approximate cost under provisions of paragraph (b) of this section shall enter on the order for service, if an order for service is required to be prepared under the provisions of 49 CFR 1056.5, and the bill of lading relating to the shipment the amount of the approximate charges estimated and the maximum amount required to be paid at time of delivery as provided in paragraph (d) of this section.

(d) *Maximum Charges Required to be Paid At Time of Delivery on Collect on Delivery Shipments Subject to Non-binding Estimates of Approximate Costs.* At time of delivery of a collect on delivery shipment, except when such shipment is delivered to a warehouse for storage at the request of the shipper, on which a non-binding estimate of the approximate costs has been furnished by the carrier under the provisions of paragraph (b) of this section, the shipper or his or her representative may request delivery of the shipment upon payment, in a form acceptable to the carrier, of an amount not exceeding 110 percent of the estimated charges. The carrier shall relinquish possession of the shipment upon payment of not more than 110 percent of the estimated charges and shall defer demand for the payment of the balance of any final charges for a period of 30 days following the date of delivery. A carrier relinquishing possession of a collect on delivery shipment without payment of the total final charges under the provisions of this paragraph may require that the shipper or other person responsible for payment of the freight charges sign a 30-day non-interest bearing promissory note for the unpaid portion of the final charges as a condition precedent to relinquishing possession of the shipment. Any document used for this purpose must be clearly identified as a non-interest bearing promissory note requiring payment of a sum certain on a specific date and shall not be incorporated in or be part of any other document.

§ 1056.4 Final charges on shipments subject to minimum weight or volume provisions.

(a) Motor common carriers engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1), providing service for individual shippers on rates based on the transportation of a minimum weight or volume shall, prior to the execution of an order for service relating to shipments which appear to be subject to minimum weight or volume

based rates, advise the shipper of the minimum weight or volume based rates and the minimum line-haul charges applicable to the shipment.

(b) Failure to comply with the requirements of paragraph (a) of this section shall require and the governing tariff shall contain a rule providing that the final line-haul charges relating to such a shipment be computed based on the actual weight or volume of the shipment and the rate applicable to a minimum weight or volume shipment.

§ 1056.5 Order for service.

(a) *Order for service required.* Every motor common carrier shall, prior to the receipt of a shipment of household goods as defined in 49 CFR 1056.1(b)(1) to be moved for an individual shipper, prepare an order for service which contains the following minimum information:

(1) Shipper's name, address and telephone number.

(2) Consignee's name, address and telephone number.

(3) Name, address and telephone number of the delivering carrier's office or agent located at or nearest to the destination of the shipment.

(4) A toll-free telephone number, or the number of a telephone at which collect calls will be accepted, by which means the shipper/consignee may contact the carrier.

(5) Agreed pickup date and agreed delivery date, or in lieu of specific dates, the agreed period or periods of time within which pickup, delivery, or the entire move, will be accomplished. If the shipment is to be transported on a guaranteed service basis, the guaranteed dates or periods of time for pickup, transportation and delivery and the penalty or per diem requirements of the agreement shall be entered under this item.

(6) Complete description of any special or accessorial services ordered.

(7) Any identification or registration number assigned the shipment by the carrier.

(8) Amount of estimated approximate charges and method of payment of total charges and maximum amount required to be paid at time of delivery to obtain possession of the shipment by the consignee or his representative under the provisions of 49 CFR 1056.3(c).

(9) Amount of charges required to be paid based on a binding estimate and the terms of payment under that estimate.

(10) Whether the shipper requests notification of the charges prior to delivery and the telephone number or address at which such communications will be received.

(11) A statement concerning the shipper's right to request the reweighing of a shipment reading as follows:

Important Information About the Reweighing of Your Shipment

As the person responsible for paying the charges on a shipment of household goods, or a representative of that person, you have the right to request the reweigh of a shipment weighed at the origin at any time prior to the actual commencement of the unloading. The carrier is required to inform you of the total charges and the weight of the shipment before commencing unloading. The carrier and/or delivering driver must perform the reweigh as requested; you must be advised of the time and specific location where each weighing will be performed and you must be given a reasonable opportunity to be present to observe both weighings.

Should the weight of the shipment as determined by the reweigh be greater or less than the weight now shown on the freight bill, the carrier may recompute the total charges based on the reweigh net weight if the net weight is increased and must reduce charges if the net weight is decreased based on the reweigh net weight if both the gross and tare reweighs are performed on the same scale and are observed by the person responsible for paying the charges or a representative of that person or unless the right to observe the weighings is specifically waived.

(11) *Signatures required.* The order for service shall be signed by the shipper or his or her representative who is ordering the service, and by the carrier or its agent. A copy of the order for service shall be dated and furnished the shipper or his or her representative at the time it is executed.

(b) *Amendments to an Order For Service.* Following the preparation and signing of an Order For Service any change or amendment of the agreed service dates, as provided in paragraph (a)(6) of this section; or, the amount of the estimated charges or amount required to be paid at time of delivery, as provided in paragraph (a)(9) of this section, shall be in writing and must be signed by the shipper or his or her representative who is ordering the service, and by the carrier or its agent. A copy of the amendment shall be dated and furnished the shipper or his or her representative at the time it is executed.

§ 1056.6 Receipt or bill of lading.

(a) *Issuance of a recept or bill of lading.* Every motor common carrier engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1) shall issue a receipt or bill of lading at the time a shipment is received for transportation. The receipt or bill of lading containing the minimum information required by § 1056.6(b) and the terms and conditions of the contract, shall be furnished to the shipper, or his or her representative, prior to the commencement of the loading of a shipment, *Provided, however,* That the receipt or bill of lading when furnished to the shipper, or his or her representative, shall not impose on the carrier any liability for the property to be transported prior to the acceptance of the shipment for transportation as provided by § 1056.6(c).

(b) *Minimum information required on a receipt or bill of lading.* Whenever a receipt or bill of lading is issued in compliance with paragraph (a) of this section, the carrier shall cause to be included therein the following minimum information:

(1) The name and address of the motor carrier issuing the receipt or bill of lading.

(2) The names and addresses of any other motor carriers which will participate, through interline, in the transportation of the shipment.

(3) The name, address and telephone number of the office of the carrier issuing the receipt or bill of lading that should be contacted in relation to the transportation of the shipment.

(4) When the transportation is to be performed on a collect on delivery basis, the name, address and telephone number of a person to whom notification provided for in § 1056.7(b) of the regulations in this part shall be given.

(5) When the transportation is to be performed for an individual shipper, and except when the transportation is to be performed subject to tariff provisions providing for guaranteed service dates,the agreed date or period of time for pickup of the shipment and the agreed date or period of time for the delivery of the shipment. The agreed dates or periods of time for pickup and delivery entered on the receipt or bill of lading shall conform to the agreed dates or periods of time for pickup and delivery entered on the order for service or a proper amendment to the order for service.

(6) When the transportation is to be preformed subject to tariff provisions providing for guaranteed pickup, transportation and delivery service, the dates for pickup and delivery and the penalty or per diem entitlements due the shipper under the agreement.

(7) The actual date of pickup.

(8) The company or license numbers of the vehicle on which the shipment is loaded.

(9) The terms and conditions for payment of the total charges.

(10) When the transportation is to be performed on a collect on delivery basis and if a pre-move estimate of the charges is provided to the shipper, the maximum amount required to be paid at

the time of delivery to obtain delivery of the shipment.

(11) The released rates valuation statement required by 49 CFR 1307.201(c).

(12) Evidence of any insurance coverage sold to or procured for the shipper, including the amount of the premium for such insurance.

(c) *Requirements for an inventory of the items in a shipment.* Every motor common carrier of household goods as defined in 49 CFR 1056.1(b)(1) shall prepare an inventory of the individual items included in each shipment. The inventory shall either be incorporated in the format of the receipt or bill of lading issued at the time of tender and acceptance of the shipment for transportation or prepared on a separate inventory form. In the event a separate inventory form is used a true copy of the completed inventory form shall be appended to and become part of the receipt or bill lading. The inventory shall be signed by the carrier, or its representative. In the preparation of the inventory cartons, boxes and other similar shipping containers containing more than one item shall be listed on the inventory as one item. Items disassembled into their component parts for the purposes of transportation shall be listed on the inventory by a separate entry to identify each component part.

(d) *Copy of Receipt or Bill of Lading to accompany shipment.* A copy of the receipt or bill of lading, with a copy of the completed inventory appended thereto, shall accompany a shipment at all times while in the possession of a carrier. When the shipment is loaded on a vehicle for transportation the receipt or bill of lading shall be in possession of the driver responsible for the shipment.

§ 1056.7 Determinaton of weights.

(a) *Tare weight, gross weight and net weight.* (1) Every motor common carrier transporting household goods under this part shall determine the weight of each shipment transported prior to the assessment of any charges dependent on the shipment weight. Except as otherwise provided herein the weight shall be obtained on a scale meeting the definition of a certified scale as provided in 49 CFR 1056.1(b)(4).

(2) *Weighing procedure.* Except as otherwise provided herein the weight of each shipment shall be obtained by determining the difference between the tar weight of the vehicle on which the shipment is to be loaded prior to the loading and the gross weight of the same vehicle after the shipment is loaded thereon or, when suitable scales are not reasonably available at the point of loading, the gross weight of the vehicle with the shipment loaded thereon and the tare weight of the same vehicle after the shipment is unloaded.

(3) At the time of both weighings the vehicle shall have installed or loaded thereon all pads, dollies, handtrucks, ramps and other equipment required in the transportation of such shipments. No packing or crating materials or supplies shall be loaded on the vehicle at the time of the tare weighing. Neither the driver nor any other persons shall be on the vehicle at the time of either weighing.

(4) The fuel tanks on the vehicle shall be full at the time of each weighing or, in the alternative, no fuel may be added between the two weighings when the tare weighing is the first weighing performed.

(5) The trailer of a tractor-trailer vehicle combination may be detached from the tractor and weighed separately at each weighing providing the length of the scale platform is adequate to accommodate and support the entire trailer at one time. The use of axle scales is prohibited at all times.

(6) When an automobile is included in a shipment the manufacturer's shipping weight entered on the certificate of title or certificate of registration for the vehicle being transported may be used in lieu of a scale weight obtained at the time of transporation.

(7) Shipments weighing 1000 pounds or less may be weighed on a certified platform or warehouse scale prior to loading for transportion or subsequent to unloading.

(8) The net weight of shipments transported in containers shall be the difference between the tare weight of the container, including all pads, blocking and bracing used or to be used in the transportation of the shipment and the gross weight of the container with the shipment loaded therein. No packing or crating materials or supplies shall be loaded in the container at the time of the tare weighing.

(9) The shipper or any other person responsible for the payment of the freight charges or a representative thereof shall have the right to observe all weighings performed with respect to the determination of the weight of any shipment. The carrier must advise the shipper or any other person entitled to observe the weighings of the time and specific location where each weighing will be performed and must give that person a reasonable opportunity to be present to observe the weighings. Waiver by a shipper of the right to observe any weighing or reweighing is permitted and does not affect any rights of the shipper under these regulations or otherwise.

(b) *Weight tickets.* (1) The carrier shall obtain a separate weight ticket for each weighing required under this section except when both weighings are perfomed on the same scale one weight ticket may be used to record both weighings. Every weight ticket must be signed by the person performing the weighing and must contain the following minumum information:

(1) The complete name and address of the scale owner or operator.

(2) The date and time of each weighing.

(3) Identification of the weight entries thereon as being the tare, gross and/or net weights.

(4) The license number and State of registration of the vehicle. In the event of the weighing of a tractor-trailer unit the license numbers and State of registration of both the tractor and the trailer shall be entered.

(5) The last name of the shipper as it appears on the Bill of Lading.

(6) The carrier's shipment registration or Bill of Lading number.

(7) The original weight ticket or tickets relating to the determination of the weight of a shipment must be retained by the carrier as part of the file on the shipment. All freight bills presented to collect any shipment charges dependent on the weight transported must be accompanied by true copies of all weight tickets obtained in the determination of the shipment weight.

(c) *Reweighing of shipments.* Prior to the actual commencement of the unloading of a shipment, which shall not commence until the shipper or other person responsible for payment of the freight charges is informed in writing of the billing (net) weight and total charges due, the shipper, or his or her representative, may request a reweigh of a shipment which was weighed to determine the transportaion charges prior to the tender for delivery. Such request must be in writing on form furnished by the carrier with the following notice printed thereon in contrasting color in letters at least double the height of any other print on the form:

Important—Read Before Requesting Reweighing of Your Shipment

As the person responsible for paying the charges on a shipment of household goods, or a representative of that person, you have the right to request the reweigh of a shipment weighed at origin at any time prior to the actual commencement of the unloading. The carrier is required to inform you of the total charges and the weight of the shipment before commencing unloading. The carrier and/or delivering driver must perform the reweigh as requested; you must be advised of

the time and specific location where each weighing will be performed and you must be given a reasonable opportunity to be present to observe both weighings.

Should the weight of the shipment as determined by the reweigh be greater or less than the weight now shown on the freight bill, the carrier may recompute the total charges based on the reweigh net weight if the net weight is increased and must reduce charges if the net weight is decreased based on the reweigh net weight if both the gross and tare reweighs are performed on the same scale and are observed by the person responsible for paying the charges or a representative of that person or unless the right to observe the weighings is specifically waived.

Do Not Sign This Request for Reweigh Until You Have Thoroughly Read and Understand the Above Notice

A copy of the written request for reweigh must be given to the shipper, or his or her representative, at the time the request is made. The original request for reweigh must be retained by the carrier as part of the file on the shipment.

§ 1056.8 Reasonable dispatch.

(a) Except when accepted for transportation subject to tariff provisions providing for guaranteed pickup, transportation and delivery service on agreed dates;

(1) *Reasonable dispatch required.* Each motor common carrier accepting shipments of household goods as defined in 49 CFR 1056.1(a) for transportation for the account of individual shippers shall cause such shipments to be transported with reasonable dispatch as defined in 49 CFR 1056.1(b). The carrier may publish tariffs which provide for the payment of per diem to the shipper when pickup or delivery does not fall on the dates or during the periods of time specified in the order for service. Incentive tariffs for expedited delivery may also be published.

(2) *Notification of delay in providing service with reasonable dispatch.* Whenever a carrier is unable to perform either or both the pickup and delivery of a shipment being transported for an individual shipper on the dates or during the periods of time specified in the order for service, the carrier shall notify the shipper or his or her representative by telephone or in person, at the carrier's expense, of the delay. Such notification shall be given as soon as it becomes apparent to the carrier that it will be unable to provide the service in compliance with the terms of the order for service.

(3) *Carrier-shipper agreement on extended dates or periods of time for the providing of service.* At the time of notification of delay the carrier shall advise the shipper of the dates or periods of time that pickup and/or delivery can be made and obtain the consent of the shipper to the amended dates or periods of time. If the notification of delay occurs prior to the pickup of the shipment, the amendment shall be in writing as required by 49 CFR 1056.4(b). If the notification of delay occurs subsequent to the pickup of the shipment, the carrier representative notifying the shipper of the delay shall prepare a written record of the date, time and manner of notification and the amended date or period of time for delivery agreed to by the carrier and shipper, which record shall be retained by the carrier as part of its file on the shipment and a true copy thereof shall be furnished, by first class mail or in person, to the shipper.

(b) *False or misleading information.* No carrier or carrier agent, employee or representative shall knowingly and willfully give false or misleading information as to the reasons for delay in picking up and delivering shipments.

(c) *Tendering for delivery.* Except upon the request or concurrence of the shipper, or his representative, a shipment being transported for an individual shipper shall not be tendered for delivery prior to the agreed delivery date or period of the time specified on the bill of lading: *Provided, however,* That whenever a carrier is able to tender such a shipment for final delivery more than 24 hours prior to such specified date or the first day of such specified period of time, and the shipper or his representative has not requested or concurred in such early delivery, the carrier may, at its option, place the shipment in storage for its own account and at its own expense in a warehouse located in close proximity to the destination point of the shipment. Whenever a carrier shall exercise such option it shall immediately notify the shipper of the name and address of the warehouse in which the shipment has been placed, and shall make and keep a record of such notification as a part of its record of shipment. The carrier's responsibility for the shipment under the terms and conditions of the bill of lading and its responsibility for the charges for redelivery handling and storage thereof shall continue until final delivery: *Provided, however,* That the carrier's responsibility under the bill of lading shall not extend beyond the agreed delivery date or the first day of the period within which delivery was to have been accomplished as specified in the bill of lading.

§ 1056.9 Notification of charges.

(a) Whenever an individual shipper of a shipment being transported on a collect on delivery basis specifically requests notification of the actual weight or volume and charges on a shipment, and supplies the carrier with an address or telephone number at which the communication will be received, the carrier shall comply with such a request immediately upon determining the actual weight and charges.

(b) Such notification shall be made by telephone, telegraph, or in person at the carrier's expense unless the carrier provides in its tariff that the actual cost of such notification shall be collected from the shipper.

(c) Whenever a shipper, or his or her representative, requests notification of the weight or volume and charges on a shipment as provided in paragraph (a) of this section, the notification must be received by the shipper, or his or her representative, at least one full 24-hour day, excluding Saturdays, Sundays and legal holidays, prior to any tender of the shipment for delivery. The 24-hour notification requirement shall not apply on a shipment which, with the agreement of the shipper, or his or her representative, is to be picked up and delivered within a time period encompassing two consecutive weekdays, or on a shipment on which the charges have been estimated and the maximum amount required to be paid at time of delivery is 110 percent of the estimated charges.

§ 1056.10 Signed receipt for shipment-release prohibited.

No delivery acknowledgment on any shipping document to be signed by the consignee at time of delivery shall contain any language which purports to release or discharge the carrier or its agents from liability, other than a statement that the property has been received in apparent good condition except as noted on the shipping documents.

§ 1056.11 Selling of insurance to shippers.

(a) When a shipment is released for transportation at a value not exceeding 60 cents per pound per article, and the shipper does not declare a valuation of $1.25 or more per pound and pay or agree to pay the carrier for assuming liability for the shipment equal to the declared value, any common carrier of household goods as defined in 49 CFR 1056.1(b)(1), or any employee, agent, or representative thereof, may sell, or offer to sell or procure for any shipper, any kind of insurance, under any type of policy, covering loss or damage in excess of the specified carrier liability to a shipment or shipments of household goods to be transported in interstate or

foreign commerce by such carrier; PROVIDED, that the shipper is issued a policy or other appropriate evidence of the insurance purchased, and a copy therof be furnished to the shipper at the time the insurance is sold or procured. Carrier issued policies shall be written in plain English and shall clearly specify the nature and extent of coverage. Failure to issue a policy or other appropriate evidence of insurance purchased shall subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

(b) Any carrier offering or selling or procuring insurance as provided in (a) shall provide in its tariff for the provision of such service. The tariff shall also provide for the base transportation charge to include assumption by the carrier for full liability for the value of the shipment in the event a policy or other appropriate evidence of the insurance purchased by the shipper is not issued to the shipper at the time of purchase.

§ 1056.12 Liability of carriers.

(a) *Liability restricted.* Except as provided in Section 1056.11(a), common carriers by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall not assume any liability in excess of that for which they are legally liable under their lawful bills of lading and published tariffs.

(b) *Limitations of liability.* A common carrier by motor vehicle of household goods shall be liable for loss of or damage to any articles caused by it while being transported or while being held for storage-in-transit, including incidental pickup or delivery, and including liability for loss or damage to any article or appliance resulting from the servicing of such article or appliance by a third person engaged by the carrier to perform such service, to the extent provided in the outstanding released rates order; except that the carrier may exempt its liability in the following instance:

(1) No liability need be assumed for perishable articles included in the shipment without the knowledge of the carrier; and a carrier accepting for shipment perishable articles may impose reasonable conditions necessary to insure the safe transportation of such commodities.

(c) *Storage-in-transit.* A common carrier by motor vehicle of household goods holding goods for storage-in-transit (S.I.T.) shall, no less than 10 days prior to the expiration of either the specified period of time during which the goods are to be held in such storage or the maximum period of time provided in the carrier's tariff for storage-in-transit, notify the shipper in writing (1) of the date of conversion to permanent storage, (2) of the existence of a nine-month period subsequent to the date of conversion to permanent storage during which shipper may file claims against the carrier for loss and/or damage which occurred to the goods in transit or during the S.I.T. period, and (3) of the fact that on the date of conversion, the liability of the carrier shall terminate and the property shall be subject to the rules, regulations, and charges of the warehouseman. Notification shall be by certified mail, return receipt requested. A common carrier by motor vehicle of household goods holding goods for storage-in-transit for a period of time less than 10 days shall, no less than one day prior to the expiration of the specified time during which the goods are to be held in such storage, give notification to the shipper of the information specified in paragraph (d) (1), (2), and (3) of this section, and maintain a record thereof as part of its record of the shipment. Failure or refusal of a carrier to notify the shipper in accordance with the foregoing shall automatically effect a continuance of carrier liability pursuant to the applicable tariff provisions with respect to S.I.T., until the end of the day following the date upon which notice is given.

§ 1056.13 Complaint and inquiry handling.

(a) Class I and II motor common carriers engaged in the transportation of household goods as defined in 49 CFR 1056.1(a) shall establish and maintain a procedure for responding to complaints and inquiries from shippers for which such transportation is provided. As a minimum the procedure shall provide:

(1) A means whereby shippers may communicate with the principal office of the carrier by telephone without expense to the shipper during the period of time commencing with the date of the signing of an order for service and ending with the date of final settlement of all claims arising out of the transportation as provided in 49 CFR 1005 or, if no claims is filed, the expiration of the period provided for the filing of claims.

(2) The carrier shall retain and make part of the file relating to a shipment a written record of all complaints and inquiries received from a shipper by any means of communication. The record shall include, as a minimum, the date of the complaint or inquiry; the nature or description of the complaint or inquiry; the date of resolution or final handling of the complaint or inquiry and the full name of the carrier or employee responsible for the handling or resolution.

(b) The carriers shall publish in their tariffs applicable to the transportation a full description of the complaint and inquiry handling procedure and shall not amend or otherwise change the published procedure in any manner which will result in the providing of a diminished complaint and inquiry handling procedure without filing notice of the amendment or change by appropriate amendment of the applicable tariffs.

§ 1056.14 Responsibility of principal carriers for acts of agents.

(a) Each principal carrier shall be absolutely responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services (including accessorial or terminal services) in interstate or foreign commerce when those services are held out or performed for the principal carrier or when the shipper is led to believe that those transportation services would be performed by the principal carrier.

(b) Each principal carrier shall use due diligence and reasonable care in selecting and maintaining agents who are sufficiently knowledgeable, fit, willing, and able to provide adequate household goods transportation services (including accessorial and terminal services), and to fulfill the obligations imposed upon them by the Commission and by their principal.

§ 1056.15 Reporting and disclosure requirements.

(a) For the purpose of § 1056.14 agents employed by or providing transportation services for any principal carrier shall be defined as follows:

(1) Prime agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide any transportation service for or on behalf of the principal carrier, including the selling of or arranging for any transportation service, and who perform such services on other than an emergency or temporary basis.

(2) Military agents are defined as all agents who are permitted or required under the terms of any agreement or arrangement with a principal carrier to provide origin and/or destination services only on shipments transported on Government bills of lading issued by the Department of Defense, and who perform such services on other than an emergency or temporary basis.

(3) Temporary agents are defined as all agents who are permitted or required under the terms of any agreement or

arrangment with a principal carrier to provide origin and/or destination services on behalf of the principal carrier, excluding the selling of or arranging for any transportation service, and who perform such services on an emergency or temporary basis .

(b) Each principal carrier must disclose the following information to each prospective prime agent and to each prospective military agent:

(1) The names under which the principal will do business.

(2) Official names and addresses and principal places of business of the principal carrier and any affiliated carriers that will engage in business with the prospective agent.

(3) A balance sheet and profit and loss statement for each year of the most recent three-year period of the principal carrier's operations.

(4) A statement of the standards (if any) by which the principal carrier determines whether the agency should be terminated. If no such standards are generally applicable, the principal carrier must state either that the agency may be terminated at will or that standards governing termination are subject to negotiation between the principal carrier and the prospective retained agent.

(5) A complete statement of the rights and obligations of the principal and the agent, including rights and obligations with respect to training, advertising, claims handling, and frequency and method of payment. The principal carrier also must furnish a copy of its most recent performance report (as described in 49 CFR 1056.19); state the number of vehicles in its vehicle fleet; and list the tariffs under which it operates.

(6) The names, addresses, and telephone numbers of the five agencies whose principal offices are in the closest geographic proximity to the prospective agent. If the principal maintains fewer than five agencies, it shall furnish a statement that it maintains fewer than five agencies.

(7) A statement of the territorial protection offered by the principal carrier or a statement that no such territorial protection is offered.

(8) A statement of the training required of the agent and its employees and the rules and regulations with which the agent and its employees must be familiar and for which they must be responsible.

(9) A statement concerning the methods (if any) by which disputes between the principal and its agents are settled.

(c) The information required by § 1056.15(b) must be received in writing by a prospective prime or military agent prior to the signing of an agency agreement, and the principal must obtain a receipt for that written information, signed by the prospective agent on the date of its receipt.

(d) Agreements between principal carriers and their prime or military agents must be reduced to writing and signed by the principal and the retained agent, and copies of any such agreements must be retained in the files of the principal carrier for a period of not less than 24 months following the date of termination of each agreement.

§ 1056.16 Collection of freight charges on household goods shipments involving loss or destruction in transit.

(a) No motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, any published freight charges (including any charges for accessorial or terminal services) when that shipment is totally lost or destroyed in transit. The provisions of this subsection shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, any specific valuation charge that may be due. This subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper.

(b) In the event that any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, no motor common carrier of household goods in interstate or foreign commerce shall collect, or shall require a shipper thereof to pay, at the time of delivery, that proportion of its published freight charges (including any charges for accessorial or terminal services) corresponding to that portion of the shipment which is lost or destroyed in transit. In order to calculate the charges applicable to the shipment as delivered, the carrier shall multiply the percentage corresponding to the portion of the shipment delivered by the total charges (including accessorial and terminal charges) applicable to the shipment as tendered by the shipper. If the charges computed in the manner set forth above exceed the charges otherwise applicable to the weight or volume corresponding to the weight or volume of the shipment as delivered, the lesser of those charges shall apply. The provisions of this paragraph shall apply only to the transportation of household goods as defined in § 1056.1(b)(1) of these rules. Notwithstanding any other provisions of this subsection, a carrier shall collect, and the shipper shall be required to pay, that proportion of any accessorial or teminal services rendered which corresponds to the proportion of the shipment not lost or destroyed in transit and any specific valuation charge that may be due. In the event that any shipment of household goods to which this subsection applies shall sustain loss or destruction in transit amounting to 10 percent or less of that shipment, by weight or volume, notwithstanding any other provisions of this subsection, the carrier may collect freight charges (including charges for accessorial or terminal services) for that portion of the shipment lost or destroyed in transit; Provided, that such charges shall not be considered due or owing to the carrier, and provided further that the carrier must, within 90 days of the date of delivery of any portion of that shipment, refund to the shipper any charges (including charges for accessorial or terminal services) assessed for that portion of the shipment lost or destroyed in transit. The provisions of this subsection shall not be applicable to the extent that any such loss or destruction is due to the act or omission of the shipper. Carriers shall determine, at their own expense, the weight or volume of that part of the shipment not lost or destroyed in transit.

(c) The rights provided by this section are in addition to, and not in lieu of, any other rights which the shipper of household goods may have with respect to a shipment of household goods which is lost or destroyed, or partially lost or destroyed, in transit, whether or not that shipper has exercised the rights provided in paragraphs (a) and (b) of this section.

§ 1056.17 Collection of freight charges on shipments transported on more than one vehicle.

(a) Whenever a shipment of household goods, as defined in 49 CFR 1056.1(b)(1), is transported on more than one vehicle on a collect on delivery basis, the carrier delivering such split or divided shipment shall observe the requirements of subparagraphs (1), (2) and (3) in the collection of the charges.

(1) The collection of the charges attributable to the transportation of the portion of the shipment transported on each vehicle may be deferred until all portions of the shipment are delivered, or,

(2) Providing that all portions of the shipment have been weighed or that the total volume of the shipment has been determined and the final charges determined as if the entire shipment was transported on one vehicle, the carrier may collect at the time of delivery of

any portion of the shipment that percentage of the final charges represented by the portion of the shipment tendered for delivery, or,

(3) In the event that the combined weight or volume of all portions of the shipment and the final charges due the carrier for the transportation of the entire shipment can not be reasonably determined at the time any portion of the shipment is tendered for delivery, the carrier shall determine the weight or volume of the portion of the shipment being delivered and collect the charges due the carrier for the transportation of a shipment of that weight or volume: Provided, That at the time of tender of delivery of the final portion of the shipment the total charges due the carrier for the transportation of the entire shipment shall be determined and the charges required to be paid at the time of delivery of the final portion of the shipment shall be not more than the difference between the total of the charges paid at the time of delivery of previously delivered portions of the shipment and the total charges due from the transportation of the entire shipment.

(b) In the event of the loss or destruction of any part of a portion of a shipment being transported on more than one vehicle the collection of charges as provided in paragraph (a) of this section shall also be in conformity with the requirements of 49 CFR 1056.16.

§ 1056.18 Advertising by motor common carriers of household goods.

(a) Every motor common carrier engaged in the transportation of household goods in interstate or foreign commerce, including any carriers providing any accessorial service incidental to or part of such interstate or foreign transportation, shall include, and shall require each of its agents to include, in every advertisement as defined in Section 1056.1(d), the name or trade name of the motor carrier under whose operating authority the advertised service will originate, and the certificate or docket number assigned to such operating authority by the Interstate Commerce Commission.

(b) Such certificate or docket number shall be in the following form in every advertisement: "I.C.C. No. MC ———" but shall not include any sub numbers which may have been assigned.

(c) No motor common carrier engaged in the transportation of household goods, as defined in 49 CFR 1056.1(a), or any agent or other representative of such a carrier, shall publish or cause to be published or use any advertisement as defined in 1056.1(c), which is false, misleading or deceptive.

(d) No agent of a motor common carrier engaged in the transportation of household goods, as defined in 49 CFR 1056.1(b)(1) which is also a motor common carrier of household goods under authority issued by the Interstate Commerce Commission shall in the solicitation of the sale of transportation or transportation related services to be performed under the authority of the agent employ, use or distribute to a prospective shipper any sales literature, brochure, form, document or advertisement bearing the name, emblem, logo, certificate or docket number or any other written or printed matter, picture or color scheme which, regardless of intent, might cause the prospective shipper to assume or believe that the transportation or transportation services will be performed by any motor common carrier other than the agent.

(e) No motor common carrier engaged in the transportation of household goods as defined in 49 CFR 1056.1(b)(1), shall in the performance of such transportation employ, use or distribute any forms, documents or other written or printed material bearing a name, emblem, logo, certificate or docket number or any other written or printed matter, picture or color scheme which might cause the shipper, or his representative, to assume or believe that the transportation is being performed by any motor common carrier other than the carrier responsible for the issuance of the bill of lading, provided, however, the names and addresses of connecting carriers and agents employed in the performance of the service may appear on the bill of lading and other documents when required.

§ 1056.19 Preparation and Filing of Annual Performance Report.

(a) *Minimum filing requirement.* Each motor common carrier for household goods as defined in 49 CFR 1056(b)(1), which delivers 100 or more interstate shipments for individual shippers as defined in 49 CFR 1056.1(b)(5), during any calendar year shall, on or before March 31 of the following year cause to be filed with the Office of Consumer Protection, Interstate Commerce Commission, Washington, D.C. 20423, a report of the service performed during the report year. The report shall be submitted on Form OCP–101.

(b) *Prescribed Annual Performance Report Form.*

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION OFFICE OF CONSUMER PROTECTION ANNUAL PERFORMANCE REPORT	FOR YEAR ENDED DECEMBER 31, 19____	
CARRIER'S NAME	CARRIER'S ADDRESS	
ICC NUMBER		

PART A

During the year the total number of shipments delivered for each type of shipper was:

1. Individual shipper ..... _____
2. Government Bill of Lading shipper..... _____
3. Commercial shipper..... _____

PART B

With reference to shipments delivered for individual shippers as defined in 49 CFR 1056.1(b)(5):

1. The number of shipments delivered upon payment of the amount of a binding estimate (49 CFR 1056.3(a))..... _____
2. Percent of the shipments on which a non-binding estimate was furnished for which the final charges for the services included in the estimate did not exceed the amount of the estimate..... _____
3. Percent of shipments delivered which were picked up on or before the last date for pickup specified in the order for service/bill of lading..... _____
4. Percent of shipments delivered which were delivered on or before the last date for delivery as specified in the bill of lading contract..... _____
5. Percent of shipments delivered which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $50..... _____
6. Percent of shipments delivered which did not result in the filing of a claim in excess of $50 by the shipper within 60 days following the date of delivery for damages and expenses arising out of the delayed pickup or delivery of the shipment.... _____
7. The average number of days between the date of filing of a claim for property loss or damage or delay in excess of $50 and the date of final settlement of such a claim.. _____
8. The percent of all claims for amounts in excess of $50 filed for property loss or damage or for damages or expenses incurred as result of delayed pickup or delivery.
   a. Which were resolved through the use of a dispute settlement (arbitration) program maintained or participated in by the carrier..... _____
   b. Which were not referred to a dispute settlement program and which were concluded after the carrier received legal notice of suit by claimant to recover..... _____

OCP-101 (5/80)

BILLING CODE 7035-01-C

(c) *Instructions for Preparation of Annual Performance Report, Form OCP–101.*

Instructions for Preparaton

Part A

1. Enter the total number of shipments delivered which were transported for individual shippers.
2. Enter the total number of shipments delivered on government Bills of Lading. Do not include shipments transported for a freight forwarder.
3. Enter the total of all other shipments transported for commercial shippers as defined in 49 CFR 1056.1(b)(6). Include shipments transported for freight forwarders in this total.

Part B

1. Enter the number of shipments delivered on which a binding estimate was furnished and on which the final charges were the same as the estimated charges.
2. Enter the percent of the shipments on which a non-binding estimate of approximated costs was furnished which were delivered upon payment of an amount not exceeding the estimated approximated costs.
3. Enter the percent of the shipments entered under Part A item 1 which were picked up or before the last date for pickup as specified in the order for service. *Include in the computation of the percent all shipments picked up late, regardless of the reason or the party responsible for the delay.*
4. Enter the percent of all shipments entered under Part A item 1 which were delivered on or before the last date for delivery as specified in the bill of lading. *Include the computation of the percent all shipments delivered late regardless of the reason or the party responsible for the delay.*
5. Enter the percent of the shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for property loss or damage in excess of $50. For the purposes of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for an apparent loss in excess of $50.
6. Enter the percent of shipments entered under Part A item 1 which did not result in the filing of a claim by the shipper within 60 days following the date of delivery for damages or expenses in excess of $50 incurred as a result of the delayed pickup and/or delivery of the shipment. For the purpose of this report, a "claim filed" shall be considered as any claim otherwise meeting the minimum requirements of 49 CFR 1005.2(b) and for apparent damages or expenses in excess of $50.
7. Enter the average number of days required to reach a final settlement of all claims for $50 or more relating to the transportation of shipments entered under Part A item 1 arising out of property loss or damage or the delayed pickup and/or delivery of shipments during the report year. For the purposes of this report a claim shall be considered to be a "claim filed" if it meets the criteria set forth in (7) and (8) and shall be considered as being finally settled on the 60th day following the date on which a written offer of settlement is mailed or delivered in person to a claimant unless the offer of settlement is accepted prior to the 60th day or on the 60th day following the date on which denial of liability is mailed or delivered in person to the claimant unless the claimant assents to the denial prior to the 60th day.

8a. Enter the percent of the loss and damage or delay claim for $50 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

8b. Enter the percent of loss and damage or delay claims for $50 or more arising out of the transportation of shipments entered under Part A item 1 which were settled during the year on a date subsequent to the date on which legal notice of suit to recover was received by the carrier.

General Instructions

1. Date for the completion of Form OCP–101 may be obtained by random sampling providing that in every instance the universe sampled is all shipments delivered for individual shippers during the report year or all claims arising out of the transportation of individual shipper shipments which were received or settled, as appropriate, during the report year.
2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.
3. Carriers submitting Form OCP–101 shall retain and make available for review by an authorized Commission employee all working papers, notes and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

§ 1056.20 Use of charge card plans.

Motor common carriers of household goods, as defined in 49 CFR 1056(b)(1), may provide in their tariffs for the acceptance of charge cards for the payment of freight charges whenever shipments are transported under agreements and tariffs requiring payment by cash, certified check or money order payment by charge card shall be considered the same as payment by cash, certified check or money order. Any tariff rule or item permitting the acceptance of charge cards shall identify the charge card plans participated in by the carrier.

PART 1322—EXTENSION OF CREDIT TO SHIPPERS BY MOTOR CARRRIERS

It is proposed to revise § 1322.6 to read as follows:

§ 1322.6 Charge card plans not included (under credit regulations).

The provisions of this Part shall not apply to the payment of interstate transportation charges by use of charge cards as provided in 49 CFR 1059.19 and when the shipper of household goods does not force an involuntary extension of credit by the carrier by causing the charge card issuer to reverse the charge transaction and charge payments back to the carrier's account.

PART 1003—LIST OF FORMS

§ 1003.1 Motor carrier and broker forms [Amended].

It is proposed to eliminate from the list of prescribed forms Form BOp–101, *Quarterly Report of Underestimates and Overestimates* and Form BOp–103, *Summary of Information For Shippers of Household Goods* and to add to the list of prescribed forms Publication OCP–100, *Your Rights and Reponsibilities When You Move* and Form OCP–101, *Annual Performance Report.*

PART 1005—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

It is proposed to amend 49 CFR 1005.1 by deleting that portion of the section following the words *Interstate Commerce Act* and by removing the semi-colon following *Act* and inserting instead a period. As revised section will read:

§ 1005.1 Applicability of regulations.

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each railroad, express company, motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to the Interstate Commerce Act.

And to amend 49 CFR 1005.5 by identifying the present paragraph under that section as paragraph (a) and adding paragraph (b) to read:

§ 1005.5 Disposition of claims.

* * * * *

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in 49 CFR 1056.1(b)(1) shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item: *Provided,* That where an

item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATIONS OF MOTOR CARRIERS

It is proposed to amend 49 CFR 1310.15 by adding an additional sub-paragraph to paragraph (a) to read:

§ 1310.15 Terminal and Other Services—Charges and Allowances (Rule 15).

(a) * * *

(3) Tariffs containing line-haul rates for the transportation of household goods shall not provide for the inclusion in the line-haul rates of any accessorial services normally associated with or required in the transportation of household goods. Tariffs establishing such accessorial charges shall separately state each such service to be rendered and the charge therefor. The separate tariff charges so established for containers, for packing and for unpacking are to be stated in amounts per container. Charges for other services shall be separately stated on a unit or hourly basis, whichever is appropriate. Tariffs may state an hourly labor charge applicable to miscellaneous labor service performed at the request of a shipper in connection with the transportation, when a rate is not separately stated for the service so requested. Except as otherwise provided by orders of the Commission tariffs containing rates for the line-haul transportation of household goods or charges for accessorial services incidental to the transportation of household goods shall not provide for the providing of such transportation or services "free" or "without charge" unless such terms are published to apply on transportation which is authorized to be performed free by the Interstate Commerce Act.

* * * * *

Appendix B

Section-by-Section Discussion of Proposed Revisions of the Regulations Contained in Title 49, Code of Federal Regulations, Applicable to the Operations of Household Goods Motor Carriers.

Section 1056.1—*Applicability and Definitions.*

Section 1056.1(b)(1) provides a definition of household goods which includes only those household goods as described in 49 USC 10102(10)(A). The transportation of household goods as described in 49 USC 10102(10)(B) and (C) is specifically excluded from the application of the 49 CFR 1056 rules.

Shippers of household goods moving under 49 USC 10102(10)(B) and (C) are usually commercial or professional enterprises which do not require the degree of protection required for the shipper of household goods moving under the description in 49 USC 10102(10)(A).

The definition of reasonable dispatch in 49 CFR 1056.1(b)(2) is unchanged from the definition of that term as it appears in the present regulations.

Section 1056.1(b)(3) providing a definition of what constitutes an advertisement is the same as appears in the present regulations with the addition of the phrase, "in a telephone directory or similar publication" to complete the last sentence and to make clear what is intended.

Section 1056.1(b)(4) has been added to the definitions section to make clear what is intended when reference is made elsewhere in Part 1056 to certified scales. Even though the first Ex Parte No. MC–19 proceeding, which was concluded in 1939, made references to "certified scales" and in other decisions and regulations since that date that term has appeared, the meaning of the term has never previously been explained or defined.

A definition is provided for each of the three types or classes of shippers which employ the services of household goods carriers for the transportation of household goods as defined in 49 CFR 1056.1(b)(1).

The term "individual shippers" is used to identify those shippers who have in the past been identified as "COD shippers." The proposed redefinition removes any implication that individual shippers are entitled only to have their property transported on a prepaid or collect on delivery basis and makes clear that individual shippers may be extended credit at the discretion of the carrier.

The proposed definition of a "commercial shipper" is intended to overcome certain deficiencies which exist when such persons are identified as "national account shippers." In the majority of the so-called national account shipments the consignor named in the bill of lading contract is actually the owner of the goods being transported and the "national account," normally the employer of the party being moved, is identified in the contract only as being the party who is to be billed for the transportation charges. Under such circumstances the degree to which the national account is actually involved in the transportation transaction varies. In some instances the national account does not participate at all in the transaction beyond paying the transportation charges. More frequently the national account participates in or directs the selection of a carrier, negotiates the terms and conditions of the transportation with the carrier, and assists the owner of the goods transported to recover for any loss or damage resulting from the transaction.

A minority of the shipments in this class are transported on bill of lading contracts which identify the so-called national account as the consignor and/or consignee. When this occurs the national account functions as a bailee for the purposes of transporting the goods an is clearly a commercial shipper in such instances. A freight forwarder also functions in the same capacity in its routine operations.

The proposed definition of government bill of lading shipper is intended to group all shipments moved on government bills of lading in one class and to erase the distinction beween GBL shipments transported on bills of lading issued by the Department of Defense and GBL shopments tendered by other departments and agencies of the federal government.

Section 1056.2—*Information for Shippers.*

The proposed Section 1056.2 is intended to supercede and cancel the requirements now appearing in 49 CFR 1056.7.

Proposed Section 1056.2 provides for every individual shipper to be provided with specified minimum information which experience has shown a novice shipper requires to successfully represent his or her own best interest in transactions with the carriers.

Carriers engaged in the moving of household goods customarily provide a variety of publications to customers regarding such matters as claim free packing, arranging for utility service and other suggestions on how to make a move successful. The present BOp–103 *Summary of Information For Shippers of Household Goods,* also contains material of this nature.

It is proposed in the future to include in the publications required to be given shippers only information about the specific rights and responsibilities of the shipper, and indirectly of the carrier. It is believed that this approach will result in a better informed consumer in those areas where the absence of critical information or knowledge can lead to unnecessary cost and inconvenience for both the shipper and carrier.

The requirement that carriers furnish each shipper a copy of Public Advisory No. 4 relating to the prevention and

settlement of claims for loss, damage or inconvenience is being discontinued. It is intended to continue to publish the Public Advisory No. 4 and to furnish copies of the publication to consumers who contact the Commission for information about moving. Discontinuance of the requirement that the Public Advisory No. 4 be furnished should encourage the moving industry to voluntarily provide information such as that contained in the Advisory to their customers.

The requirement that a shipper be informed of the procedure established by a Class I or II carrier for receiving and handling shipper complaints and inquiries is intended to make it easier for shippers to communicate directly with the carriers and to make less frequent the need for the Commission to intercede on behalf of a shipper in obtaining information or assistance from a carrier. Presumably the fact that Class I and II carriers will be required to provide information about their complaint and inquiry handling procedures to each shipper will also encourage better performance by the carriers in that area of their operations.

Discontinuance of the present requirement that a receipt be obtained for the pre-move information should not adversely affect the distribution of the required materials to prospective shippers. Carriers will be expected to comply with the requirement that the material be furnished to every prospective shipper and it is within the abilities of the Commission to assure that this is done.

Section 1056.3—*Estimates of Charges.*

The regulations proposed in this section are intended to cancel and supercede the regulations presently appearing in 49 CFR 1056.8.

The regulations proposed in Section 1056.3 take into consideration the intent of the legislation recently enacted to prohibit the adoption of any regulations relating to the form or manner in which household goods carriers prepare estimates of the costs of their services. It is also noted that the intent of the legislation is to prohibit the adoption by the Commission of any regulations which will determine the final cost of a household goods transportation service based on an estimate. Further, the legislation requires the Commission to permit carriers to publish tariff rules providing for the furnishing of binding estimates.

Section 1056.3(a) is concerned with the proposition of binding estimates. This section provides that carriers may publish appropriate rules in their tariffs relating to the preparation and furnishing of binding estimates of costs. Presumably some carriers may elect to provide in their tariffs for the furnishing of binding estimates with a proviso that if the tariff charges on a shipment are less than the estimated charges the shipper will be given the benefit of the lower of the two charges.

To discourage disputes or misunderstanding arising out of the use of binding estimates, the requirement is made that such estimates shall be in writing, that the shipper shall be furnished a copy of the estimate and that a copy of the estimate must be appended to the bill of lading.

Section 1056.3(b) relates to the preparation and funishing of non-binding estimates. The proposed section requires that such estimates of approximate costs must be furnished in writing and may be prepared in any manner suitable to the carrier and shipper subject to a minimum requirement that the estimate must specify the units, i.e., per hundred pounds or per cubic foot, hours or other unit of measurement, used in determining the estimated charges for line haul transportation, accessorial and storage charges and valuation or insurance charges; the carrier's charges per unit, and the estimated number of units included in the estimate.

Section 1056.3(c) requires that carriers, when non-binding estimates of approximate costs are furnished, enter on the order for service and the bill of lading the total amount of the estimated approximate costs and the maximum charges required to be paid at the time of delivery as set forth in Section 1056.3(d).

Section 1056.3(d) provides for the continuation of the so-called 110% rule now provided by Section 1056.8(b). However, there are two modifications of the present rule which are intended to overcome two problems encountered with the present rule.

First, it is made clear that the 110% rule does not apply when shipments are placed in storage at the request of a shipper. From the outset the intent of the present 110% rule has been to prevent shipments being placed in storage at the expense of the shipper when at the time of delivery the shipper is unprepared to pay the tariff charges due to being misinformed as result of an underestimate. However, at times shippers have taken the position that they may place their goods in storage and then require the carrier to make delivery on the payment of only 110% of the estimated charges when there is an underestimate. The inclusion of the phrase, "except when such shipment is delivered to a warehouse for storage at the request of the shipper," is to make clear that when a shipper elects to place a shipment in storage the 110% rule no longer applies.

Second, certain shippers have refused to voluntarily pay the balance of the final charges at the conclusion of the 15-day grace period. The sum involved may not be of sufficient consequence to encourage the carrier to go to court to collect the balance and as a result such shippers have obtained the transportation of their goods at less than the tariff charges.

To overcome this problem, provision is made in the proposed rule for an extension of the grace period for credit from 15 to 30 days and for the carrier to obtain from the shipper a signed non-interest bearing 30-day promissory note for the amount of the balance of the charges. Extension of the credit period from 15 to 30 days may improve the shipper's ability to acquire the funds required to pay the balance of the charges. The creation of a specific 30-day promissory note should serve to impress on the shipper that the balance of the final charges cannot be ignored and make it easier for carriers to enforce collection through local courts. To prevent novice shippers from being required or induced to sign promissory notes without being aware of the nature of the instrument being signed or to sign a blank promissory note prior to any determination being made, as result of weighing the shipment and properly computing the charges, that an underestimate has occurred, it is proposed to require that the promissory note be a separate document, i.e., it may not be incorporated in an estimate, order for service, bill of lading or other document, and, at the time the shipper signs the promissory note, it must have entered thereon a sum certain due, which shall be the difference between the total charges due at time of delivery and the charges actually paid at time of delivery, and a specific date when due, which shall be 30 calendar days following the date of delivery.

The proposed regulation also does away with the Report of Underestimates and Overestimates required to be filed under the provisions of the present 49 CFR 1056.8(e). The value of this report or of a similar report relating to the estimating experience of carriers under the proposed regulations is questionable when compared to the time and expense involved in the preparation of such reports. The Commission's improved abilities to monitor the operations of carriers by means of complaint data also serves to lessen the need for such reports.

Section 1056.4—*Final Charges on Shipments Subject to Minimum Weight or Volume Provisions.*

Under the requirements of present 49 CFR 1056.6(c) a carrier which publishes rates based on a minimum weight provision is required to advise a shipper whose shipment appears to be subject to those provisions of the minimum weight requirements prior to the acceptance of such a shipment for transportation. As a general rule it is believed that most responsible carriers are now complying with this requirement.

However, as line-haul rates on minimum weight shipments approach $50 per hundred pounds, the failure of a carrier sales representative to fully advise a novice shipper of the minimum weight provisions can have seriously adverse consequences on the shipper. In most instances the shipper who tenders a minimum weight shipment to a carrier is the type of consumer most incapable of paying unanticipated charges.

The purpose of proposed Section 1056.4 is to require that shippers be informed fully of the consequences of the minimum weight provisions and to provide an equitable means for determining the final charges when the required notice is not given.

It is not proposed to require that a specific record be kept regarding giving of the notice. It will be incumbent on a carrier under such circumstances to create some form of definite record of such notice, such as a notation on the shipper and carrier copies of the order for service, to assure that the notice requirement is complied with in the event of disputes.

Should a carrier elect to publish rates on the basis of volume instead of on weight the proposed requirement for notice to the shipper of a specified minimum volume would be the same as if the rates applicable were based on weight.

Section 1056.5—*Order for Service.*

The proposed regulation requiring the preparation and use of an order for service is in most respects a restatement of the present regulations appearing in Section 1056.9. There are, however, several significant modifications or amendments being proposed.

First, in Section 1056.5(a) the requirement for an order for service is made applicable only to shipments to be transported for an individual shipper.

A significant percent of the shipments moved for commercial shippers are transported subject to the terms, conditions or requirements of a purchase order or letter or authorization issued by a business enterprise. When this occurs, the order for service becomes nothing more than a restatement of the requirements or agreements contained in the purchase order or letter of authorization and serves no useful purpose. Approval of the proposed regulation will in no way prevent a carrier from preparing and using an order for service in the event that a commercial shipper does not issue a purchase order or letter of authorization prior to the movement of a shipment.

With respect to shipments moving on government bills of lading the combination of the terms and conditions of the government bill of lading and the provisions of the carrier's tender under 49 U.S.C. 10721, formerly Section 22 of Part I of the Interstate Commerce Act, makes the requirement for an order for service on government shipments unnecessary.

Under Section 1056.5 (a)(4) it is proposed that carriers be required to insert on the order for the service a telephone number the shipper may use to contact the principal office of the carrier during the period of time commencing with the date of the signing of an order for service and ending with the date of final settlement of all claims arising out of the transportation. If no claims are filed, the expiration of the period will be that provided by the terms and conditions of the bill of lading contract for the filing of claims.

Whenever an order for service is issued by a Class I or II carrier the telephone number entered on the order for service should be the same as the number used to contact the carrier regarding complaints and inquiries as required by proposed Section 1056.13.

It is not considered that the imposition of this requirement will place an unreasonable burden, financially or otherwise, on any carrier and the ability of the shipper to deal directly with the carrier in the event of a service inquiry or complaint will be enhanced. Many major carriers already provide such a communications service to shippers and it is considered likely that the existing rate structure includes the costs of this service. Experience has shown, however, that there are carriers which do not voluntarily provide such a service and shippers employing such carriers are required to bear the expense of contracting the carrier when shipments are delayed or when questions arise as result of loss or damage and the handling of the resultant claims.

The requirement in the present regulations that the location of the certified scale to be used in weighing the shipment be inserted in the order for service is proposed to be eliminated. This is in the recognition of the fact that the carrier representative at the time of the preparation of the order for service usually cannot, with any degree of certainty, identify the scale which will be used. In lieu of this order for service requirement provision is made in the weighing regulation being proposed, under Section 1056.7 (a)(9), for the shipper to be advised of the specific location of the scales to be used in all weighings.

Under proposed Section 1056.5(a)(5), it is required that if the shipment is to be transported under the regular reasonable dispatch requirements the agreed dates or periods of time for pickup and delivery must be entered. If the carrier has in effect tariff provisions for a guaranteed pickup and delivery service, with predetermined penalties or per diem for non-performance, the guaranteed service dates and the amount or method of determination of the penalty or per diem payments to which the shippers will be entitled in the event of non-performance must be entered.

Under proposed Section 1056.5(a)(8), it is required that there be entered on the order for service the amount of the charges estimated under the provisions of Section 1056.3(b) and the amount of the maximum charges required to be paid at time of delivery as provided in Section 1056.3(d). It is also proposed to require that the amount of the charges estimated under the binding estimates provisions of Section 1056.3(a) be entered on the order for service.

Proposed Section 1056.5(b) provides for the amending of an order for service and requires that any amendment to the agreed service dates or amount of the non-binding estimated approximate costs be in writing, signed by the carrier and shipper and appended to the order for service. These are normally the two most significant elements of a pre-move agreement between a carrier and shipper and experience with shipper complaints indicates that any change of either the agreed service dates or the estimated costs should be confirmed in writing and made part of the original written agreement. It is anticipated that provision for amendments to binding estimates or guaranteed service dates will be included in the tariff rules or items relating to those services.

Section 1056.6—*Receipt or Bill of Lading.*

The proposed regulations under Section 1056.6 incorporates to a large degree the present receipt or bill of lading requirements under 49 CFR 1056.10. However, there are significant differences between the present and proposed requirements.

All motor common carriers are required to issue a receipt or bill of lading at the time a shipment is tendered and accepted for transportation. It is intended that the requirement set forth in Section 1056.6(a) be applicable to the transportation of all shipments of houshold goods as defined in 49 CFR 1056.1(b)(1). In the Transportation of household goods under the descriptions provided in 49 USC 10102(10)(B) and (C), carriers will be subject to the receipt or bill of lading requirements appearing in 49 CFR 1051.1(a) since that transportation is beyond the intended application of the 49 CFR 1056 regulations.

The requirement that the receipt or bill of lading containing the enumerated minimum entries be furnished to the shipper prior to the commencement of the loading of the shipment is intended to improve the shipper's position in the transaction with the carrier. At the present time it is not customary for a carrier to provide a shipper with a copy of the bill of lading contract until after a shipment is loaded. If it is at that time that the shipper discovers that the entries on the document, such as the dates for delivery, do not correspond with the dates agreed upon at the time an Order For Service was prepared the shipper is put at a severe disadvantage in any attempt to require the carrier to amend the bill of lading entries to correspond with the previously agreed dates.

The receipt or bill of lading entries enumerated under Section 1056.6(b), paragraphs (1) through (12) will be required to be completed with respect to all shipments of household goods as defined in 49 CFR 1056.1(b)(1) which are transported for individual shippers. The information required in paragraphs (4), (5) and (10) will not be required with respect to shipments moved for commercial or GBL shippers. The "maximum amount required to be paid at time of delivery" required by paragraph (10) will be either the maximum final charges determined by a binding estimate of costs or the amount of the non-binding estimated approximate costs plus 10 percent of that amount, depending on the type of estimate furnished the shipper. The information required in paragraph (12) will only be required when insurance is sold to or procured for a shipper.

No requirement that entries relating to the tare, gross or net weight of the shipment be made on the bill of lading is included in the enumeration of the minimum information required. This is in recognition of the amended weighing procedures proposed in Section 1056.7. Under the amended procedures, backweighing is permissible when the weighing cannot reasonably be performed at the time of the pickup of the shipment. When a shipment is backweighed, no weight information will be available until after the shipment is unloaded. Whenever the bill of lading is also used as a freight bill for the assessment of the charges under the provisions of 49 CFR 1051.1(b), the net weight of the shipment will be required to be entered on the document. Also, under proposed Section 1056.7 true copies of the weight tickets will be required to be attached to the freight bill.

Proposed Section 1056.6(c) relates to the preparation of an inventory of the items included in a shipment. This is a new requirement as the preparation and use of an inventory has not been required previously by regulation. However, it is customary for all carriers to prepare inventories on household goods shipments and the imposition of the regulatory requirement will not serve to increase the documentation required of a carrier. The purpose in proposing an inventory as part of the bill of lading is to improve the degree of protection provided the shipper in transactions with the carrier. In those instances when an inventory is not prepared at the time of pickup of a shipment, the shipper can be harmed when all or a portion of the shipment is lost or damaged while in the possession of the carrier. Further, requiring that an inventory be prepared and retained as part of the file on a shipment should enhance the abilities of carriers and the Commission in efforts to assure the accuracy of shipment weights as there is a statistically predictable relationship between the number of items listed on an inventory and the weight of a shipment.

Section 1056.6(d) is intended to put into regulation form a decision of the Commission in Ex Parte No. MC–19 (Sub-No. 8), served April 13, 1978 to interpret the regulations as regards the requirement that a receipt or bill of lading accompany a shipment while in the possession of a carrier.

The Statement presently required to be printed at the bottom of every household goods bill of lading warning about the knowing and willful falsification, destruction, mutilation or alteration of a bill of lading will no longer be required under the proposed regulation. As a practical matter, the requirement that this notice be on every bill of lading has served no useful purpose and has caused some shippers to assume that any addition to or alteration of the entries made on a bill of lading at the time of issue will automatically result in the carrier, agent or driver being fined $5000. As a result, complaints of questionable validity have been made against the carriers over the years because of this one item.

The penalties stated in the notice are intended to be applied in only those instances when a person alters or falsifies a bill of lading contract for such purposes as fraudulently converting an order notify bill to a straight bill of lading or to provide for the conversion of the possession of the goods to other than the lawful holder of title. As such, the requirement that the notice apear on every bill of lading is misleading and serves no useful purpose.

Section 1056.7—*Determination of weights.*

The regulations applying to the determination of shipment weights now appearing in the present 49 CFR 1056.6 have been restructured in the proposed Section 1056.7 to reflect the thrust of the recently enacted legislation. The proposed requirements are more liberal in several major areas and at the same time the interests of the consumer are better protected.

The key points of the proposed Section 1056.7 requirements are:

(1) It is required that the weight of every shipment which is transported on the basis of weight be determined by the use of certified scales prior to the assessment of any charges based on the shipment weight.

(2) The use of constructive weights will no longer be permitted. Only a minute fraction of all shipments move on constructive weights at the present time and with the more liberal weighing procedures being permitted by the proposed regulations there should be no reason why every shipment should not be weighed when the charges are dependent on the shipment weight.

(3) Reverse or back weighing would be permitted in those instances when a regular weighing cannot be reasonably obtained at origin.

(4) The present requirement that the driver be on the vehicle at the time of each weighing is eliminated. Under the proposed regulation no persons will be permitted to be on the vehicle at the time of weighing. This amendment will bring the Commission's regulation into line with the weighing procedures enforced by most of the States and will encourage more accurate weighing by eliminating the inconsistencies brought about by "body bumps" of the vehicle and shipment weight.

(5) The fuel tanks of a vehicle will be required to be full at the time of each weighing or, as an alternative, there can

be no fuel added to the tanks between the tare and gross weighing when the tare weighing is the first weighing performed.

(6) Provision is made for detaching a trailer from a tractor and weighing the trailer separately when scales long enough to accommodate a combination vehicle are not available. The determination of weights by the use of axle scales would be specifically prohibited.

(7) When an automobile is included in a shipment the carrier will have the option of using the manufacturers shipping weight entered on the Certificate of Title or State registration receipt for the vehicle in lieu of actually weighing the vehicle.

(8) The provision for weighing shipments of 1000 pounds or less on a warehouse or platform scale will be continued.

(9) The provisions for weighing shipments being transported in containers will be continued.

(10) The right of a shipper or his or her representative to observe all weighings performed to determine the weight of a shipment will be made definite. A requirement that the carrier inform the shipper or any other person entitled to observe a weighing of the specific location of the scales to be used and to allow the shipper or his or her representative a reasonable opportunity to be present is imposed. The shipper may, however, waive the right to observe any weighing or reweighing.

(11) The requirements for entries on weight tickets are expanded. The identity of the scale used will be made more definite. In addition to the date of each weighing it will also be required that the time of day of each weighing be entered on the weight ticket.

(12) The use of one weight ticket for recording both weighings when both weighings are performed on the same scale will be permitted.

(13) The requirement that the weight tickets be signed by a "certified weighmaster" or the driver will be amended to require only that the tickets be signed by the person performing the weighing. Only a minority of the States have laws providing for "certified weighmasters" and this requrement has been inconsistent.

(14) The requirement that the tare and gross weights be entered on the receipt or bill of lading is eliminated and instead a specific requirement that all weight tickets relating to the weighing of a shipment be attached to any freight bill presented for the collection of charges is imposed.

(15) The requirement for the preparation and use of a Drivers Weight Certificate presently required under 49 CFR 1056.11 is elimiated.

(16) With respect to the reweighing of shipments, specific requirements are imposed. Carriers will not be permitted to require shippers to pay for reweighings since the final charges on a shipment can be increased in the event the reweigh net weight is greater than the original billing weight.

(17) It will be required that at the time of requesting a reweigh the shipper be specifically advised that the reweigh can result in increased final charges. All requests for reweighs will be required to be confirmed in writing over the signature of the shipper or his or her representative. A copy of the written request will be required to be retained by the carrier as part of the file on the shipment.

Section 1056.8—*Reasonable dispatch.*

The reasonable dispatch requirements now appearing in 49 CFR 1056.12 are proposed to be substantially amended in the interests of providing improved service and protection to those shippers who require such protection and to eliminate from the reasonable dispatch requirements shipments tendered by commercial and government bill of lading shippers, who do not appear to require such protection. This change is based on continuing review of annual performance reports filed by household goods carriers which disclose that the commercial and government bill of lading shippers appear to receive a more adequate service in the area of reasonable dispatch than do the individual shippers and, therefore, do not need the same degree of regulatory protection.

Eliminating the commercial and government bill of lading shipments from the specific reasonable dispatch requirement does not preclude the statutory requirements that the carriers provide a safe and adequate service on such shipments, 49 U.S.C. 11101(a). Further, there would appear to be no prohibition against carriers publishing an appropriate tariff rule to permit the furnishing of service with reasonable dispatch as defined in 49 CFR 1056.1 (b)(2) on shipments transported for commercial or government bill of lading shippers.

With respect to the Section 1056.8 regulation being proposed the requirement set forth in paragraph (a) is essentially the same as in 49 CFR 1056.12 (a) at present with an amendment to limit the application of the requirement to the transportation of shipments for individual shippers.

Paragraph (b) of proposed Section 1056.8 requires that shippers be given timely notification when a carrier is unable to provide service as agreed. The providing of such notice by telegram has been eliminated to eliminate the practice of providing such notifications by mailgram. Experience has shown that the use of mailgrams for this purpose is unsatisfactory due to the frequently delayed delivery of such communications. In addition, any provision for giving notification by mailgram, straight telegram or by letter would serve to deny the shipper the opportunity to consent or concur in an alternate date or period of time for the service to be provided.

The requirement that the carrier retain a separate written record of notification of delay in pickup is eliminated as it will be required under paragraph (c) that the carrier obtain the shipper's consent to any amended dates or periods of time for providing service and the amendment to the agreed service dates will be required to be reflected by a written or printed amendment to the order for service. If the delay becomes apparent after the pickup of the shipment the carrier will be required to prepare and retain as part of the shipment file a written record of the notification and the amended service dates consented to by the shipper and to immediately provide to the shipper, in person or by first class mail, a copy of the written record of amendment.

Shipments accepted for transportation under tariff provisions for guaranteed service will be excluded from the application of the reasonable dispatch requirements since it is anticipated that the shipper will be protected from the adverse consequences of untimely performance by the terms of the bill of lading contract which incorporates the applicable tariff provisions.

The proposal is to apply the reasonable dispatch requirements to, at most, only approximately 40 percent of all household goods shipments. The carriers should, after being relieved of the reasonable dispatch requirements represented by the commercial and government bill of lading shipments, be able to better control the dispatching of vehicles and use of other resources with a resultant significant improvement in their ability to meet reasonable dispatch agreements on individual shipper shipments. We do not believe that any shippers will be adversely affected to any significant degree by this amended regulatory approach.

Experience has shown that at those times when the demands for service are at their peak there is a tendency on the part of some carriers to fail to provide factual information to shippers as to the reasons for delayed service or the location of the shipments. For that

reason paragraph (d) is proposed to be included in proposed Section 1056.8 to make it the carriers' obligation to provide truthful information on delays.

The requirement that carriers obtain a shipper's consent to any amendment to the agreed service dates is intended to overcome two significant problems that have existed in the application of the present regulations.

Under the present regulations, it is possible for a carrier to induce shippers to sign an order for service by promising to provide service on whatever dates or periods of time the shipper desires. Responsible carriers send frequent communications to their offices and agents establishing specific time frames for the providing of service on shipments of varying descriptions. Experience indicates, however, that some industry sales representatives ignore those restraints in their commitments made to prospective shippers. Under the unilateral situation at present, a shipper often receives notification, as late at the date of pickup, from the carrier that the anticipated service will not be performed until some future date which the carrier determined without any consultation with the shipper. The requirement that a carrier obtain a shipper's consent to amended dates should serve to make industry sales representatives more aware to the carriers' responsibilities in this respect.

In addition to encouraging more responsible sales representations, the requirement that carriers obtain a shipper's consent to the amending of service dates should overcome the problem which arises when a shipment is delayed on delivery and the carrier unilaterally sets a new delivery date or period of time without consulting with the shipper to determine if the shipment can be received on the amended dates or periods of times. Often for valid reasons shippers or their representatives cannot accept delivery on the dates set by the carrier. Under such circumstances shipments can be placed in storage at the shipper's expense or, in the alternative, the carrier may hold a shipment on a line-haul vehicle for several days, a practice which is disruptive to the carrier's operations and wasteful of energy and other resources.

It is proposed to recodify the present 49 CFR 1056.12 as Section 1056.8(e) with amending language to make the new paragraph applicable only to shipments transported for individual shippers. The intent of the paragraph is to avoid having shippers be made subject to storage charges when a shipment is placed in storage at destination when the shipper is unable or unwilling to accept early delivery. The protection provided by the requirements of this paragraph are reasonable and should be continued.

Section 1056.9—*Notification of charges.*

The requirement existing throughout the industry that collect on delivery shippers pay shipment charges in cash or by certified check or money order often creates problems for shippers moving into locations where they do not have established banking connections. Responsible carriers recognize that the imposition of this requirement places on them an obligation to assure that the shipper is given timely notification of the charges in order to make it possible for the shipper to obtain the required cash, certified check or money order, prior to the arrival of the shipment at destination. However, shippers are disadvantaged when carrier, agents and drivers fail to comply with shipper's request that notice of the shipment weight or volume and charges be given prior to delivery.

Proposed Section 1056.9 is intended to make it a regulatory requirement that those shippers who request to be notified of the weight or volume and charges be given such notice immediately upon the determination of the weight or volume and charges by the carrier. Under paragraph (c) the notice will be required to be received by the shipper, or his or her representative, at least one 24-hour week day prior to the intended date of delivery. The only exceptions to the 24-hour before delivery requirement will be when a shipment is picked up and delivered on two consecutive week days or whenever the shipper has been given an estimate and has been advised that at the time of delivery the maximum charges which will be required to be paid to obtain delivery will not exceed 110 percent of the estimated charges.

Assuring that the shipper has at least one full week day prior to the delivery of the shipment to obtain the necessary cash, certified check or money order while the banks and other financial institutions in a community are usually open should relieve disadvantages imposed on a shipper by the customary payment requirements.

Section 1056.10—Signed receipt for shipment—Release prohibited.

Proposed Section 1056.10 is a verbatim reproduction of the present 49 CFR 1056.14. The purpose of the requirement of this section is to prevent carriers from evading liability for loss and damage by the use of any delivery receipt which, when signed by a shipper or his representative, will relieve the carrier of any further liability.

Section 1056.11—Selling of insurance to shippers.

Proposed Section 1056.11 provides for a reversal of the present prohibition against the selling of insurance to shippers and instead permits carriers, their agents and representatives to sell or procure insurance if requested by the shipper.

To protect the shippers against the possibility that they may pay for insurance at the time of making their transportation arrangements and then finding later, presumably after experiencing loss or damage, that the desired insurance was not made effective, for whatever reason, it is proposed that a record of the insurance purchase be required on the bill of lading (proposed Section 1056.6(b)(12)) and that a policy or other appropriate evidence of the insurance purchase be issued with a copy being furnished to the shipper. Failure to comply with this requirement will subject the carrier to full liability for any claims to recover for loss or damage attributed to the carrier.

It will also be required that a shipper release a shipment for transportation at a value not exceeding 60 cents per pound per article as a condition precedent to the carrier being permitted to sell or procure insurance on the shipment. Further, insurance can only be sold or procured when a shipper does not declare a lump-sum valuation on the shipment and pay or agree to pay the carrier for assuming the liability expressed by the lump-sum declaration. The imposition of this latter requirement removes the possibility that a shipper might be induced to declare a specific value on a shipment and pay the carrier to assume that liability and also be induced to purchase insurance to apply to the same liability.

Section 1056.12—*Liability of Carriers.*

The proposed Section 1056.12 is a reproduction of the present 49 CFR 1056.16 with paragraphs (b) and (d) eliminated and paragraphs (c) and (e) redesignated as paragraphs (b) and (c). Also, to make clear the intent that the proposed section apply only to household goods shipments for individual householders the words "as defined in 49 CFR 1056.1(b)(1),"; are inserted following "household goods" in the first sentence of paragraph (a).

Paragraph (b) of the present 49 CFR 1056.16 is made unnecessary by the requirements of proposed Section 1056.17 and will be discussed in reference to that proposed section.

Paragraph (d) of the present 49 CFR 1056.16 is proposed to be recodified under 49 CFR 1005.5(b) as the subject matter of that paragraph relates directly

to the settlement of loss and damage claims.

Section 1056.13—*Complaint and Inquiry Handling.*

Proposed Section 1056.13 provides for the establishing and maintaining of specific programs and procedures for the receipt, handling and recording of complaints and inquiries originating with individual shippers being served by Class I and II motor common carriers of household goods as defined in 49 CFR 1056.1(b)(1). An essential element of any such program established by a carrier will be the providing of a means whereby a shipper may communicate with the principal office of the carrier without cost to the shipper during a specified period of time commencing with the signing of an order for service and concluding with either the date of resolution of all claims arising out of the transportation service or, if no claims are filed, the last date on which a claim may be filed and not be denied solely because of the running of the statute of limitations imposed by the carrier's bill of lading contract.

Many household goods carriers already have in effect complaint and inquiry handling programs and procedures substantially in conformity with the proposed requirement. Adoption of the proposed Section 1056.13 will not have any substantial impact on their present operations or operating costs. For those carriers which have not already established such programs and procedures, the affirmative results of compliance with the requirements should more than offset the costs involved.

The ultimate objective of the proposed requirement is to assure that a shipper receives a better quantum of service in the transaction with the carrier. Other affirmative results which should come about with compliance with the proposed requirement will be the accumulation of data which will enable a carrier to better evaluate and control the day-to-day operations of agents and owner-operators, an increased degree of control by the carrier of its operations and a reduction in the number of complaints and inquiries directed to the commission by shippers who are unable to obtain the cooperation of the carriers in the resolution of complaints and inquiries.

The intended overall thrust of the proposed requirement is to assure that the shipper who contracts with a mover for the performance of a service is provided with a cost-free and convenient means of communicating directly with the mover instead of being required to rely on the carrier's agents, owner-operators and other third parties to respond on behalf of the carrier to requests for information or the resolution of complaints.

Section 1056.14—*Responsibility of Principal Carriers for Acts of Agents.*

Proposed Section 1056.14 is a verbatim reproduction of the present 49 CFR 1056.20

Paragraph (a) of proposed Section 1056.14 is essentially a restatement of the law of agency and in some quarters the inclusion of this paragraph in the 49 CFR 1056 regulations is considered to be redundant. While there is merit to that position there are two reasons why the paragraph shuld be retained in the regulations. First, many persons subject to or affected by the 49 CFR 1056 regulations are not adequately familiar with the requirements or intent of the law of agency and the inclusion of paragraph (a) assures that carriers, agents and others are informed in that regard.

Second, the inclusion of paragraph (a) in 49 CFR 1056.14 assures that in those instances when a carrier attempts to disavow or ignore its responsibilities for the acts of an agent the Commission will be enabled to take action for non-compliance with a specific regulatory requirement instead of being required to rely on what could be a rather uncertain position under the law of agency.

Inclusion of paragraph (a) will in no manner limit or infringe on a shipper's right to hold a carrier responsible under civil law for the acts of an agent.

Section 1056.15—*Agent Recruiting and Retention Requirements.*

The regulations now appearing in 49 CFR 1056.19 are proposed to be amended and recodified in proposed Section 1056.15.

Paragraph (a) of proposed Section 1056.15 is a verbatim reproduction of paragraph (a) of the present 49 CFR 1056.19. Paragraph (b) of the proposed section is the same as the present paragraph (b) of 49 CFR 1056.19 with the deletion of the requirement in the present subparagraph (3) that a prospective agent be provided a copy of schedule 10 (organization) to the carrier's most recent motor carrier annual report form M–1 or M–2 (as appropriate). Considering the nature of the other information required to be furnished to a prospective agent under the remaining numbered sub-paragraphs of paragraph (b) the requirement imposed by the present sub-paragraph (3) appears to be unneccessary. Further, the annual report schedule referred to is now identified as schedule 100 and the report forms are now MH–1 and MH–2. With the deletion of the present sub-paragraph (3) the present sub-paragraphs (4) through (10) are redesignated as sub-paragraphs (3) through (9) in proposed Section 1056.13 (b).

The present paragraphs (c) and (d) in 49 CFR 1056.19 are repeated verbatim in the proposed section with an amendment of the reference to Section 1056.19 (b) to read Section 1056.15(b) and the addition of the words "for a period of not less than 24 months following the date of termination of each agreement" at the end of the sentence in paragraph (d).

It is proposed to delete in their entirety paragraphs (e) and (f) of the present 49 CFR 1056.19 and thereby discontinue the requirement that notices of agency agreements and the termination of agency agreements be filed with the Commission. Experience has shown that the use made of the information required to be filed with the Commission is miniscule when compared to the expense imposed on the industry and the commission in the preparation, submission and processing of the filings. The requirement in paragraph (d) that a principal carrier retain copies of all agency agreements on file for a period of time extending 24 months beyond the date of terminaton assures that the Commission will have access to the information now provided by paragraphs (e) and (f) without the unnecessary expense incurred in filing and processing the notices of agreements and terminations.

Section 1056.16—*Collection of Freight Charges on Household Goods Shipment Involving Loss or Destruction in Transit.*

Proposed Section 1056.16 is essentially a restatement of the requirements now presented in 49 CFR 1056.26. Everywhere in the present regulation where reference is made to Section 1056.1(a)(1) the reference has been amended to read Section 1056.1 (b)(1).

The major amendment is the deletion of paragraph (c) in the present regulation and the renumbering of the present paragraph (d) as paragraph (c). Also, the wording of the section has been amended where necessary to make the requirements of the section applicable to shipments moved on either weight or volume based rates.

The present paragraph (c) is being recodified as proposed Section 1056.17 to make the requirements of the paragraph as amended apply to all shipments of household goods as defined in 49 CFR 1056.1(b)(1) instead of limiting the intent of the paragraph to just those shipments involving loss or destruction in transit. This will be discussed further in the commentary relating to proposed Section 1056.17.

Section 1056.17—*Collection of Freight Charges on Shipments Transported on More Than One Vehicle.*

In the routine operations of household goods carriers it is at times required that a shipment be split or divided in two or more portions with each portion being transported on a separate vehicle. Over the years the Commission has received complaints from shippers concerning the manner in which different carriers assess the charges on such split shipments. Generally these complaints involve a situation wherein the carrier is demanding payment of the final charges for the entire shipment at the time of tender of delivery of the first portion of the shipment. When the shipper refuses to pay the entire final charges under such circumstances the reaction of the carrier may be to place the portion of the shipment offered for delivery in storage at the expense of the shipper.

Proposed Section 1056.17 is intended to impose specific procedures to apply to the collection of freight charges on split shipments under the varying circumstances which are known to exist in the handling of such shipments. The proposed procedures are reasonable and attainable and should work to the advantage of both the shipper and carrier and reduce future complaints to the Commission relating to the subject matter of the proposed section.

Section 1056.18—*Advertising—False, Misleading or Deceptive Advertisements or Operating Procedures Prohibited.*

Proposed Section 1056.18 is intended to continue in effect the requirements of present Section 1056.30 (a) and (b). In addition paragraphs (c) through (e) have been added to deal with misrepresentations frequently encountered in the operations of the industry.

Paragraph (c) as proposed will, if adopted, eliminate the need for paragraph (b) in present 49 CFR 1056.16 and paragraph (d) in 49 CFR 1056.15 since both of those paragraphs relate to false, misleading or deceptive advertising regarding insurance. Paragraph (c) will also make unlawful the practice of carriers advertising that they provide services beyond the geographical scope of their operating authority without identifying those locations or areas which require the concurrence of a connecting carrier to provide the advertised service. Also made unlawful will be the misleading advertisements such as an advertisement stating that a shipment of a certain size will be transported between two named points or locations for a specified price without stating that the price advertised includes only the line-haul transportation charges and does not include the various surcharges, valuation and accessorial charges which will normally be required to be paid. Paragraph (c) is intended to apply only to factual misrepresentations which are false, misleading or deceptive. It is not intended that the thrust of the paragraph be directed toward making unlawful the "puffing" of a service or product such as is normally encountered in a responsible marketing effort.

Proposed paragraph (d) is directed toward the practice of some carriers, which are also agents of another, usually larger, carrier, of employing the sales literature, forms, documents and other printed or written material intended to be used in the solicitation of customers on behalf of the principal carrier, in the sales solicitation efforts made to attract shippers to be moved under the authority of the agent. Such a practice can be misleading to a shipper to the extent that he or she may be unware of the identity of the carrier actually responsible for the move. In the atmosphere of increased competition which it appears will exist in the future, the need for reasonable guidelines or restraints to prevent false, misleading or deceptive advertisements, or carrier operating procedures appears desirable.

Proposed paragraph (e) is intended primarily to deal with the problem of small carriers, which may or may not be an agent for another carrier, using forms carrying the name, logo, emblem or other identification of another carrier in the transportation of shipments under their own authority. This practice is misleading and frequently results in complaints about claims, services or charges being directed to the Commission with the wrong carrier being identified as being responsible.

Section 1056.19—*Preparation and Filing of Annual Performance Report.*

The proposed revision of the annual performance report required of household goods carriers is intended to retain the affirmative portions of the present report, with modifications, and to eliminate those portions or features of the present report which are of no benefit or consequence to consumers and the Commission.

The present requirement is that every household goods carrier file an annual performance report. Experience has shown that those carriers which deliver less than 100 shipments for individual shippers a year are frequently unable to present data that is correctly representative of the overall quality of the carriers' service and frequently results in a misleading and inaccurate portrayal of a carrier's abilities to provide reasonable and adequate service.

Requiring that the annual performance report requirements apply only to those carriers which deliver 100 or more shipments for individual shippers per year will result in only 100 to 125 carriers being required to comply with the reporting requirement. However, the reports that are filed will relate to in excess of over 90 percent of all such shipments delivered. There will be no prohibition against carriers delivering less than 100 shipments preparing and filing annual performance reports if they desire to do so on a voluntary basis.

Adoption of the proposed minimum filing requirement will eliminate about 90 percent of the reports now required with a substantial reduction in the expense now imposed on the industry and the Commission. Further, the reduction in the number of the reports will improve the abilities of the Commission to assure that the reports which are filed accurately describe a reporting carrier's performance.

Elimination of the present requirement that service performance with respect to those shipments transported for commercial or government bill of lading shippers be reported will have no adverse effect on those consumers most in need of the data presented in such reports, the novice shippers who move on a collect on delivery basis. Those shippers which are in position to tender their shipments to carriers on a credit basis are generally knowledgeable commercial or government shippers who do not require such a report to evaluate a carrier's ability to provide the service they require.

It is proposed to require that the annual performance data be filed on a standard form to improve the abilities of the Commission to evaluate the data and to compile industry performance statistics. This same affirmative result will also benefit consumers who make use of the reported data in their evaluations of individual carriers.

The proposed annual performance report has been designed to provide for the presentation of a carrier's performance data in an affirmative manner as compared to the present report format which requires that the data be presented in a negative manner. This modification should overcome many of the objections to the reporting requirement which have been raised by the industry in the past and should have no adverse effect on the value of the report to consumers.

It is proposed to provide specific instructions for the preparation of the report and to permit the use of random sampling within prescribed guidelines.

This is intended to remove uncertainty regarding the proper compilation of the data presented in the report and should result in more accurate reports in the future.

Section 1056.20—*Use of Charge Card Plans.*

The proposed regulation is intended to make possible the use of charge cards at the option of the carriers to collect freight charges which would otherwise be required to be paid by cash, certified check or money order. The proposed rule is intended to cancel and supersede the present charge card regulations appearing in 49 CFR 1056.25(f). The requirement for quarterly reports during the first year following approval would also be discontinued.

For the purpose of the regulations under Part 1056 shipments on which the charges are paid by the use of charge card plans will be considered as collect on delivery shipments and the regulations pertaining to the extension of credit now appearing in Part 1322 will have no application except under the provisions of the proposed amendment to 49 CFR 1322.6.

Approval of the proposed Section 1056.20 and the amendment to 49 CFR 1322.6 will enable those consumers who are financially able to qualify under the requirements of the various charge card plans to use a charge card for the purposes of paying the costs of having their household goods moved to realize the convenience and other advantages offered by this method of payment. Relaxation of the regulatory restraints in this area should offer increased competitive options to the industry with a resulting affirmative effect on the industry's ability to provide reasonable and adequate service to consumers.

Proposed Amendment to Part 1005 and Deletion of Present Part 1056.17.

Section 1005.1—*Applicability of Regulations.*

It is proposed to amend the applicability section of Part 1005 to delete reference to the regulations presently in 49 CFR 1056.17 (a) and (b) by changing the semi-colon following Interstate Commerce Act in Section 1005.1 to a period and deleting the remainder of the section. This will make the remaining sections of Part 1005 applicable as appropriate to household goods carriers and will eliminate the necessity for continuing 49 CFR 1056.17 (a) and (b) in effect.

It is proposed to eliminate the requirement for retention of a freight claims register now appearing in 49 CFR 1056.17(c). Under the provisions of Part 1005 all carriers are required to set up and maintain specified minimum files relating to each claim received and the need for requiring a register in addition to those files does not appear warranted. Discontinuing the requirements in present 49 CFR 1056.17 (c) will reduce the paperwork required of the carriers and should have no substantial adverse impact on the Commission's actions to require compliance with Part 1005.

It is also proposed to recodify the present paragraph (d) of 49 CFR 1056.16, which relates to the determination of the current actual value of lost or damaged household goods items, under 49 CFR 1005.5(b) as there is a direct relationship between the requirements of this paragraph and the other requirements under Part 1005.

Section 1310.15—*Terminal and Other Services—Changes and Allowances (Rule 15).*

The proposed addition of paragraph 1310.15(a)(3) to Section 1310.15 is intended to incorporate in Part 1300 the tariff construction requirements now appearing in 49 CFR 1056.3 (a), (b) and (c). This proposal is in keeping with the intended objective to place all requirments relating to tariff construction under Part 1300.

It is proposed to discontinue the prohibition against space reservation now contained in 49 CFR 1056.3(d) and to cancel that sub-paragraph in its entirety.

Recommended Disposition of Part 1056 Regulations not Incorporated in Proposed Revisions of Parts 1056, 1005 and 1310.

Section 1056.2—*Establishment of Rates Stated in Amounts Per Hundred Pounds and Not Upon Any Other Basis; Cancellation of Rates Otherwise Established.*

It is recommended that the present Section 1056.2 be cancelled in its entirety. The requirements of the section appear to discourage competitive, innovative ratemaking, such as the publication of rates on a volume basis. Concurrent with the cancellation of Section 1056.2 household goods carriers would become fully subject to the tariff publication requirements of 49 CFR 1310.

Section 1056.4—*Discounts Prohibited; Rates Based on Prepayment of Charges Prohibited.*

It is recommended that the present Section 1056.4 be cancelled in its entirety. The prohibitions contained in the section appear to be inconsistent with any objective looking toward encouraging competitive, innovative ratemaking.

Section 1056.5—*Absorption or Advancement of Dock Charges.*

It is recommended that the present Section 1056.5 be cancelled in its entirety. The use of a warehouseman's dock appears to be a "service" as contemplated by the use of that term in 49 CFR 1310.15(b)(3) and, as result, the present Section 1056.5 is redundant and imposes restraints also provided for in Section 1310.15(b)(3).

Section 1056.18—*Prohibition Against Carrier Action as Agent For Another Carrier.*

It is recommended that the present Section 1056.8 be cancelled in its entirety. The requirements of the Section appear to be violative of the intent of the "Household Goods Transportation Act of 1980" to the extent that future compliance with Section 1056.18 would be contrary to the anti-trust provisions of the Act.

Section 1056.21—*Uniform Rates For Identical Services.*

It is recommended that the present Section 1056.21 be cancelled in its entirety. The requirements of the Section appear to be anti-competitive and intended to discourage innovative ratemaking. Adequate safeguards exist otherwise to prevent discriminatory or predatory rates and the restraints imposed by the present Section appear to be unnecessary.

Appendix C

COVER—DIMENSIONS OPTIONAL PROVIDING LENGTH X WIDTH EQUALS OR EXCEEDS 36 SQUARE INCHES. COLOR OPTIONAL. NO PRINTING EXCEPT AS BELOW

YOUR RIGHTS AND RESPONSIBILITIES

WHEN YOU MOVE

YOUR RIGHTS AND RESPONSIBILITIES

WHEN YOU MOVE

Prepared by the

INTERSTATE COMMERCE COMMISSION, OFFICE OF CONSUME PROTECTION

Furnished by

Your Mover

Note.—The name of the carrier distributing the publication may be substituted for "Your Mover"

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Introduction

Every interstate motor common carrier of household goods providing service to consumers to move the furniture and other items of personal property used in and around a residence is subject to regulations of the Interstate Commerce Commission. The purpose of the regulations is to protect the interests of consumers and to make definite the rights and responsibilities of the movers which provide the services and of the consumers who employ the services of interstate moving companies.

This publication is furnished to you by the mover to provide information about your rights and responsibilities as a shipper of household goods. While every effort has been made to provide all information possible you should not hesitate to discuss with the sales representative of the mover who furnished you this publication any additional information which you require. Also, if the mover has annual revenues in excess of one million dollars the sales representative will furnish you with a publication describing the procedure which the mover has in effect to assist you if you have a complaint or inquiry concerning the mover's services or charges. Included in that publication will be a telephone number which you may use to communicate with the principal office of the moving company without expense to you. If information is desired which cannot be satisfactorily furnished by the sales representative, you should call the mover's principal office for assistance. You may also obtain assistance or information about moving by calling the American Movers' Conference, 1117 North 19th Street, Arlington, Va. 22209. The toll-free telephone number is 800–336–3094 (in the Washington, D.C. dialing area call (703) 524–5440).

If after discussing your move with the sales representative, a service representative at the mover's principal office and the American Movers Conference, you are still in need of information or assistance, you may obtain help from the National Consumer Assistance Center, Interstate Commerce Commission, Washington, D.C. 20423, or by calling the Center using the toll-free number (800) 424–9312 (275–0660 within the District of Columbia).

Moving Service Questionnaire

Included with this publication is a brief questionnaire which you may complete and mail, postage free, to the Interstate Commerce Commission's National Consumer Assistance Center. The information which you provide will assist the Commission to evaluate the effectiveness of its regulations and the quality of the service being provided by the moving industry.

Please provide a response to every question if possible. The name and ICC number of the moving company responsible for your move will be found at the top of the bill of lading. The shipment registration or identification number will be found on the order for service and the bill of lading relating to your shipment.

Please do not attempt to use the Service Questionnaire as a complaint or inquiry form. If you have a complaint or inquiry concerning the mover's services which requires assistance from the Commission either call or write to the National Consumer Assistance Center as explained further in this booklet.

Estimates

The Interstate Commerce Commission is not permitted by law to require that moving companies provide estimates of the costs of their services. However, it is customary for movers to provide estimates and when you are furnished an estimate you have certain rights and responsibilities. Movers often offer two types of estimates. It is important that you understand the type of estimate which you are furnished and the effect these estimate has on the charges you will be required to pay the mover.

* Binding Estimates

When a mover provides a binding estimate the mover cannot require you to pay total charges in excess of the amount estimated for performing the services included in the estimate. The mover is required to furnish binding estimates in writing, to furnish you a copy of the estimate at the time it is prepared and to attach a copy to the bill of lading relating to your shipment. The mover may assess a nominal charge for providing a binding estimate.

If you receive a binding estimate you are responsible for having available at the time of delivery, funds usually in the form of cash, certified check or money order, adequate to pay the estimated costs unless the mover has agreed to extend credit or to accept payment by charge card. If you are unable to pay the amount required at the time the shipment is offered for delivery, the mover may place your shipment in storage at your expense until the maximum charges are paid.

*Non-Binding Estimates of Approximate Cost

When a mover provides a non-binding estimate of approximate cost the final charges which you will be required to pay will depend on the distance your shipment is transported, the weight or volume of the shipment and the accessorial services performed in the transportation of the shipment. An estimate of approximate cost is not binding in the mover and, even though the mover's sales representative preparing such an estimate is expected to use expertise and good judgment in estimating the approximate cost, there is no guarantee that the final charges will not be greater than estimated.

Non-binding estimates of approximate cost must be in writing and must specify: the unit of measurement used in setting charges for transportation, accessorial and storage services and valuation or insurance; the carrier's charge per unit; and the estimated units included in the estimate. Any time a mover provides such an estimate it is required that the amount of the charges estimated must be entered on the order for service and bill of lading relating to your shipment. If you are furnished a non-binding estimate of approximate cost, do not sign or accept the order for service or bill of lading unless the amount estimated is entered on each form when prepared by the mover. The mover is not permitted to charge for providing a non-binding estimate.

Household Goods Moving Service Questionnaire

To: Interstate Commerce Commission

1. Name of the moving company ———
2. Mover's ICC number ———
3. Your shipment registration or identification number ———

4. Moved from ——— Moved to ———
(State) (State)
5. Date your shipment was picked up ——— delivered ———
6. Did you receive an estimate [ ] Yes [ ] No
7. Were the final charges [ ] More [ ] Less [ ] The Same As the estimated charges? (Check One)
8. Was your shipment picked up [ ] Before [ ] On [ ] After the agreed pickup date? (Check One)
9. Was your shipment delivered [ ] Before [ ] On [ ] After the agreed delivery date? (Check One)
10. Have you or do you intend to file a claim with the mover for property loss or damage in excess of $50? [ ] Yes [ ] No
11. Would you use the same mover again? [ ] Yes [ ] No
12. Was the Your Rights and Responsibilities When you Move booklet helpful to you in your move? [ ] Yes [ ] No
13. Your Name ———

Note.— This questionnaire will be printed on a franked post card addressed to the Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423. This card is to be inserted between pages 2 and 3 of the booklet and should be perforated to permit easy removal. The carrier's name and ICC number may be preprinted on the questionnaire.

If you are furnished a non-binding estimate of approximate cost you may required the mover to deliver your shipment upon payment by you at the time of delivery of an amount not exceeding 110 percent of the amount of the estimated charges if the actual charge due the mover for performing the services included in the estimate exceed the 110 percent amount. *This does not relieve you of the responsibility for paying the mover*

the balance of the charges due for the transportation of the shipment. Also, If the *mover is required to provide services in excess of those included in the estimate the mover may require payment in full for those excess services at time of delivery.*

Following the date of delivery you have 30 days to pay the remaining charges. Before delivering a shipment to you upon payment of 110 percent of the estimated costs, the mover may require you to sign a 30-day non-interest hearing promissory note for the balance of the charges.

Order for Service

Moving companies are required to prepare an order for service on every shipment transported for an individual shipper. You are entitled to a copy of the order for service when it is prepared.

The order for service is not a contract. Should for any reason your move be cancelled or delayed or if you decide to not use the services of the mover issuing an order for service, you should promptly notify the mover of any changes in your plans but you are not required to permit a mover to move your property simply because an order for service was prepared.

The purpose of the order for service is to provide a written record of your agreement with the mover, and the mover's agreement to provide service on agreed dates and under agreed conditions, prior to the issuance of a receipt or bill of lading contract.

Should there be any change in the dates on which you and the mover agreed that your shipment will be picked up and delivery, or if a non-binding estimate is furnished, in the amount of charges estimated, the mover may prepare a written amendment to the order for service if the change occurs prior to the pickup of your shipment. The written amendment should be attached to the order for service and when this is done the amendment supersedes that portion of the original order for service which it amends.

Bill of Lading Contract

The bill of lading is the contract between you and the mover relating to the transportation service provided by the mover. The mover is required by law to prepare a bill of lading with reference to every shipment transported.

The information entered on a bill of lading is required to be in agreement with the information about your move shown on the order for service. The driver who loads your shipment is required to furnish to you a copy of the bill of lading contract prior to commencing to load your shipment and to obtain your signature to show agreement with the terms of the contract.

It is your responsibility to read carefully the entries on the bill of lading before you sign it. If for any reason you do not agree with any entry on the form do not sign it until the discrepancy is explained to your satisfaction or changed to correspond with your agreement with the mover at the time the order for service was prepared.

Under the terms of the bill of lading the mover becomes obligated to provide the transportation service you have requested and you become obligated to pay the mover the charges due for the service. *The bill of lading is an important document. Do not lose or misplace your copy.* Have it available for reference until your shipment is delivered, all charges are paid and all claims, if any, are settled.

Inventory

At the time the mover's driver loads your shipment he or she is required to prepare an inventory of the items loaded. The inventory should list any damage or unusual wear he or she observes at time of inspection The purpose of this is to make a record of the condition of each item at the time it was accepted by the mover for transportation.

After completing the inventory the driver will sign each page and will ask that you also sign each page. Before signing make sure that the inventory lists every item in your shipment and that the entries regarding the condition of each item are correct. If when your shipment is delivered an item is missing or damaged your ability to recover from the mover or the insurance company for the loss or damage may depend on what is shown by the inventory.

The driver will give you a copy of each page of the inventory. Attach the complete inventory to your copy of the bill of lading. It is your receipt for the goods which you have tendered to the mover for transportation.

At the time your shipment is delivered it is your responsibility to check the items delivered against the items listed on your inventory. Customarily the driver will have placed a small numbered tag on each item as he prepared the inventory at origin. The numbers will correspond to the numbered lines on the inventory form and facilitate checking the items off as they are brought into your new residence. Check each item for damage or wear that did not exist when the shipment was loaded. If new damage is discovered make a record of it in the space provided on the inventory form and call the damage to the attention of the driver and request that he make record of the damage on this copy of the inventory.

After the complete shipment is unloaded the driver will request that you sign his copy of the inventory to signify that you received the items listed. Do no sign the inventory until you have assured yourself that it is accurate and that proper notations are entered on the form regarding any missing or damaged items. When you sign the inventory at the time of unloading you are giving the driver a receipt for your goods. Make sure all entries on the inventory are correct before you sign.

Shipments Subject to Minimum Weight or Volume Charges

Movers customarily provide in their tariffs for a minimum weight or volume charge for transporting a shipment. Usually the minimum is the charge for transporting a shipment weighing at least 500 pounds.

If your shipment appears to weigh less than the minimum weight provided in the tariff the mover is required to advise you of the minimum charges which you will be required to pay before agreeing to transport the shipment. Should the mover's representative fail to advise you of the minimum charge and, after weighing your shipment is found that it is less than the minimum weight, the trasportation charge must be based on the actual weight instead of the minimum weight.

Determining the Weight of Your Shipment

Before assessing any charges relating to the transportation of your shipment which are dependent on the weight of the shipment the mover is required to weigh the shipment. Unless your shipment weights less than 1,000 pounds and can be weighed on a warehouse platform scale, the mover is required to determine the weight of your shipment by one of the following processes.

Origin Weighing—If suitable scales are reasonably available in the city or area you are moving from the driver is required to weigh the truck on which your shipment is to be transported before coming to your residence to load your shipment. At the time of this first weighing the truck may already be partially loaded with one or more other shipments. This will not affect the weight of your shipment. The truck will also contain pads, dollies, handtrucks, ramps and other equipment normally used in the transportation of household goods shipments.

After obtaining the empty weight, called the tare weight, the driver will come to your residence and load the shipment. After loading, the truck will be weighed again to obtain the loaded weight, called the gross weight. The net weight of your shipment is then obtained by subtracting the tare weight from the gross weight.

Destination Weighing—Occasionally scales suitable for weighing moving vans are not reasonably available at or near the point where your shipment is loaded. When this situation exists the mover is permitted to detertmine the weight of your shipment at the destination at the time of unloading. The

fact that a shipment is weighed at the destination instead of at the origin will not affect the accuracy of the weight of your shipment. The most important difference is that the mover can not require you to pay any charges relating to the transportation which are dependent on the weight transported before the actual weight of the shipment is determined.

Destination weighing is done in the reverse to the origin weighing. After arriving in the city or area you are moving to the driver will weigh the truck, with your shipment loaded on it, before coming to your new residence to unload. After unloading your shipment he or she will again weigh the truck and the weight of your shipment will be the difference between the two weights.

Each time a weighing is performed the driver is required to obtain a weight ticket showing the time, date and place of weighing and the weight obtained. The ticket is also required to have your name and shipment number entered on it along with the license numbers of the truck. The ticket must be signed by the person who performed the weighing. If both the empty (tare) and loaded (gross) weighings are performed on the same scale, the record of both weighings may be entered on one weight ticket.

At the time the mover presents a freight bill to collect the charges for transporting your shipment a copy of every weight ticket obtained in the determination of the weight of your shipment must accompany your copy of the freight bill.

If your shipment includes an automobile the mover may, instead of performing a separate weighing at origin or destination to determine the weight of the automobile, use the manufacture's weight shown on your certificate of title or on the license tag receipt for the automobile.

You have the right to observe every weighing performed to determine the weight of your shipment. The mover is required to inform you of the specific location of each scale that will be used and to allow you a reasonable oportunity to be present. If you desire to observe either or both of the weighings you should advise the representative of the mover at the time the order for service is prepared if possible or, in any event, before the day of your move. This will enable the mover to contact you before the weighing to advise you of the time and location of the scale.

Reweighing of Shipments

If your shipment is moved under an agreement with the mover that you will pay the charges at time of delivery, the mover is required to provide you with written notice of the weight and charges on your shipment before commencing to unload at your destination residence. If your shipment was weighed at origin and you are of the opinion that the weight is not accurate, you have the right to request that the shipment be reweighed. This request must be made before the unloading commences. If you request reweighing the mover is required to make available a form which you must complete and sign to make record of the request. You will be given a copy of the signed form.

The mover is not permitted to charge for the reweighing. However, if you observe both the gross and tare reweighings and if the weight of your shipment at the time of the reweigh is found to be greater than the weight determined at the origin weighing, the mover may recompute the charges which you must pay for the transportation based on the increased weight. If the weight of your shipment at the time of the reweigh is found to be less than the weight determined at the origin weighing, the mover must recompute the charges based on the lesser weight.

The decision to request that your shipment be reweighed is one which you must make. Before requesting a reweigh you may find it to your advantage to estimate the weight of your shipment using the following method:

(1) Count the number of items listed on the inventory of your shipment. Usually there will be either 30 or 40 items listed on each page of the inventory. For example, if there are 30 items per page and your inventory consists of four complete pages and a fifth page with 15 items listed, the total number of items will be 135. *If an automobile is listed on the inventory do not include that item in the count of the total items.*

(2) If the weight of an automobile was included in the weight of your shipment at the time of the origin weighing, subtract the manufacturer's weight of the automobile, which may be obtained from the certificate of title or license receipt in most instances, from the weight of the shipment. For example, if the charges on your shipment are based on a weight of 8,600 pounds and included in the shipment is an automobile which weighs 3,200 pounds, subtract 3,200 from 8,600.

(3) After subtracting the weight of the automobile, if one is included in your shipment, divide the number of items in your shipment into the weight. If the average weight resulting from this exercise is in the range between 35 and 45 pounds per article, it is unlikely that a reweigh will prove beneficial to you and could result in your payment of higher total charges.

Experience has shown that the average shipment of household goods will weigh about 40 pounds per item listed on the inventory. If a shipment contains a large number of heavy items, such as cartons of books, boxes of tools or heavier than average furniture, the average weight per item may be 45 pounds or more. However, the higher the average weight per item above 45 pounds per item in the above calculation the better are the chances that if your shipment is reweighed the results will be less than the first weight. On the other hand, the lower the average weight per item below 35 pounds per item the greater are the chances that if the shipment is reweighed the results may exceed the origin weight and the charges which you are required to pay for the transportation of your shipment can be increased accordingly.

No representative of the mover or of the Interstate Commerce Commission can tell you whether you should or should not request that your shipment be reweighed. Neither can anyone tell you with certainty what the reweigh weight will be. That is a decision which you, as the person responsible for paying for the transportation, must make yourself.

Picking Up and Delivering Shipments on the Agreed Dates

At the time you make the arrangements for the transportation of your household goods it is required that the mover's representative reach an agreement with you on when your shipment is to be picked up and delivered. It is your responsibility to determine on what date, or between what dates, you need to have the shipment picked up and on what date or between what dates, you required delivery. It is the mover's responsibility to tell you if the service can be provided on or between those dates or, if not, on what dates the service can be provided.

In the process of reaching an agreement with the mover's representative on when your shipment will be picked up and delivered it may be necessary for you to alter your moving and travel plans if the mover cannot provide service on the specific dates you desire. On the other hand, there may be days, such as your sabbath, that you cannot have your shipment picked up or delivered and the mover may be required to exclude such days as dates on which pickup or delivery services will be provided.

Do not agree to have your shipment picked up or delivered "as soon as possible." The dates or periods of time

you and the mover's representative agree on must be definite.

Once an agreement is reached on the dates service is to be provided the mover's representative is required to enter those dates on the order for service. Do not sign or accept an order for service that does not have the agreed dates for service entered on the form. Do not sign or accept an order for service which has dates for the pickup or delivery entered on it which are different from those dates you have agreed to based on an oral representation by the mover's representative that he or she will "guarantee" that the pickup or delivery will actually be performed on the date or dates you require. Once the dates entered on an order for service are entered on a bill of lading those dates become part of your contract with the mover and there is no obligation on the mover to provide service on other dates based on an oral representation by a salesperson that service will be provided on different dates.

Do not agree to have your shipment picked up and delivered between a spread of dates, such as pickup between the first and fifth of the month and delivery between the tenth and fifteenth of the month when your circumstances absolutely require that your shipment be picked up on the fourth and delivered on the twelfth days of the month. If you do agree to such a spread of dates, the mover may legally insist on picking up your shipment on the second day of the month and making delivery on the fifteenth day of the month, for example. In such a case the mover has complied with its contractual agreement and you will have no basis for a claim to recover any damages for any inconvenience which results. If a mover is unable or unwilling to agree at the time of the preparation of an order for service, to provide the specific service you require, you should contact other movers until you find one that can agree to provide the specific service you require.

Once a mover issues a bill of lading providing for the performance of a specific service the mover is contractually bound to provide that service. The only defense for non-performance is called the defense of force majeure. This is a legal term which means that if circumstances which could not have been foreseen and which are beyond the control of the mover prevent the performance of the service as agreed in the bill of lading contract the mover is not responsible for damages resulting from the non-performance.

If, subsequent to the preparation of the order for service, the mover is for any reason unable to make the pickup or delivery on the dates or between the dates agreed to, the mover is required to contact you by telephone or in person and advise you of the delay and the date or between what dates your shipment can be picked up or delivered. If for any reason you are unable or unwilling to accept pickup or delivery on the dates or between the dates named by the mover you should attempt to reach agreement with the mover on mutually agreeable dates. The mover must obtain your consent to the dates or between what dates the shipment will be picked up or delivered.

Your consent to a delayed pickup or delivery date does not relieve the mover from liability for damages resulting from the failure to provide service as agreed under the bill of lading contract. The mover continues to have the defense of force majeure. When you consent to delivery on dates other than as specified to in the bill of lading contract, it is your responsibility to be available to accept delivery on the dates consented to. If you, or your representative, are not available and willing to accept delivery, the mover has the right to place your shipment in storage at your expense or hold the shipment on its truck and impose waiting charges if this can be done without causing delay to other shipments.

If, subsequent to the pickup of your shipment, you request the mover to amend the delivery date, most movers will agree to do so providing the request will not result in unreasonable delay to their equipment or interfere with their commitments to provide service to other shippers. However, the mover is not required to consent to amended delivery dates and has the right to place your shipment in storage if you are unwilling or unable to accept delivery on the date or between the dates agreed to in the bill of lading contract.

If the mover fails to pick up and deliver your shipment on the dates or between the dates entered on the bill of lading contract and damages result, such as you being subjected to expenses you would not have incurred otherwise, you may be able to recover those damages from the carrier. This is what is called an inconvenience or delay claim. Should a mover refuse to honor such a claim and you continue to believe that you are entitled to be paid damages, your recourse is then to sue the mover to recover. *The Commission has no authority to order the mover to pay such claims.*

Most movers recognize that there will be times through the fault of the mover that a shipment will not be picked up and delivered as agreed. This occurs in only a small percentage of the shipments moved.

At the time you make the arrangements for your move, you should ask the mover's representative what the mover's policy is with respect to inconvenience or delay claims. You will find that some movers have an established policy on what expenses they will compensate you for and what expenses they will not voluntarily pay. It is possible that the mover may provide for an automatic payment of a set penalty or per diem amount for each day that service is delayed. While it is hoped that your shipment will not be delayed, you should consider this possibility and find out before you agree for a mover to transport your shipment what you can expect if the service is delayed through the fault of the mover.

If a shipment is delayed for some reason which is your fault, such as not being ready to move on the day the shipment is supposed to be picked up, the mover will ordinarily not have any responsibility for any extra expenses which you incur.

Space Reservations, Expedited Service, Exclusive Use of a Vehicle and Guaranteed Pickup and Delivery

It is customary for movers to offer service options which are intended to accommodate the specific needs of their customers.

The total cost of your move may be substantially increased if you select one of these options. Before you agree to have your shipment transported under a bill of lading contract providing for one of the service options, you should have a clear understanding with the mover what the additional cost will be. You should always consider that you may find that other movers can provide the service you require without requiring that you pay the additional charges.

One of the usual service options is space reservation. If you agree to have your shipment transported under a space reservation agreement you are required to pay for a minimum number of cubic feet of space in the moving van regardless of how much space in the van is actually occupied by your shipment. If the mover's charges are based on weight, the number of cubic feet which you reserve are converted into a weight figure by multiplying the number of cubic feet reserved by the weight of an average cubic foot of household goods, which is 7 pounds. For example, if you agree to reserve 1,000 cubic feet of van space you will be required to pay for the transportation of 7,000 pounds even though your shipment may weigh only 5,000 pounds.

Another service option is expedited service to accommodate shippers who must have their shipments transported on or between specific dates which the mover could not ordinarily agree to do in its normal operations. If you require expedited service, the charges on your shipment will be based on a predetermined minimum weight even though the weight of your shipment is less than that minimum weight. Should you agree to pay for expedited service and for any reason, except through your fault, the mover fails to pick up and deliver the shipment as agreed, the charges will be adjusted to what they would have been had you not requested expedited service. To recover for any damages resulting from the mover's failure to perform as agreed in the bill of lading contract you would have to file an inconvenience or delay claim with the mover. If the claim cannot be voluntarily settled to your satisfaction, your recourse would be to sue the mover to recover.

The third customary service option is exclusive use of a vehicle. If for any reason you desire or require that your shipment be moved by itself on the mover's truck or trailer, most movers will provide such service. However, the charges which you pay will be based on the cubic capacity of the truck or trailer convered to a weight figure using the 7 pounds per cubic foot factor. For example, if your shipment weights 8,000 pounds and you request the exclusive use of a truck with an 1,800 cubic feet capacity, the charges for your shipment will be based on a weight of $7 \times 1,800$ or 12,600 pounds.

Another service option is guaranteed service on or between agreed dates. If you elect to take this service option you enter into an agreement with the mover that provides for your shipment to be picked up, transported to destination, and delivered on specific guaranteed dates. If the mover fails to provide the service as agreed, you are entitled to be compensated at a predetermined penalty or per diem rate regardless of the amount of any expense you actually might have incurred as result of the mover's failure to perform as agreed.

Before requesting or agreeing to any of the described service options, be sure to question the mover's representative about the final costs you will be required to pay and consider all possible alternatives if you feel that the charges will be more than you can pay.

Notification of Charges

If, prior to the time of delivery, you require being notified of the weight or volume and charges on your shipment, you should advise the mover's representative at the time you make the arrangements for the move.

You are required to provide the mover with a telephone number or address at which the notification will be received and, if the mover assesses a charge for the notification, to pay the charge at the time you pay the transportation charges.

The mover is required to provide you the notification of charges at least one 24-hour week day prior to the delivery except when the shipment is picked up one day for delivery on the next day. The 24-hour requirement does not apply when you obtain an estimate of the costs prior to the move.

Receipt for Delivery of the Shipment

At the time of delivery the mover will expect you to sign a receipt for your shipment. This is usually accomplished by having you sign each page of the mover's copy of the inventory.

Movers are prohibited from having you to sign a receipt which relieves the mover from all liability for loss or damage to the shipment. Do not sign any receipt which does not provide that you are signing for your shipment *in apparent good condition except as noted on the shipping documents.*

The Mover's Liability for Loss or Damage

All property transportation companies are required to assume liability for the value of the goods which they transport. Normally the amount charged for the transportation includes the amount required to compensate the transportation company for assuming the risk of loss or damage.

Since no two household goods shipments have exactly the same value in relation to their weight, it is not possible for movers to include in their charges a specific amount for the assumption of liability without charging some customers too much and other customers too little.

To overcome this problem movers publish what are known as released value rates. The rate per hundred pounds which the mover charges for transporting your shipment requires that the liability assumed by the mover will not exceed 60 cents per pound per article in your shipment. For example, if your shipment includes a lamp that is worth $100 and weighs 12 pounds, the mover's liability if the lamp is lost or damaged is 60 cents per pound or $7.20.

Probably you will require more liability protection than is provided by the base per hundred weight transportation charge. You may obtain the amount of protection you require in one of several ways.

First, unless you sign a specific statement on the bill of lading releasing your goods to the mover for transportation at a value of 60 cents per pound per article, the mover is required to assume liability for the entire shipment at an amount equal to $1.25 per pound for the entire shipment. For example, if the shipment weighs 4,000 pounds the mover will be liable to you for loss or damage up to $5,000. In return for assuming this liability the mover is entitled to charge you $5.00 for each $1,000 of liability assumed. *This is not insurance.* In the event of loss or damage the mover is required to pay you, if it is responsible for the loss or damage, out of its own funds.

Second, if the value of your shipment exceeds $1.25 per pound you may obtain additional liability protection from the mover in the amount you require by declaring a specific lump sum dollar value for your shipment. The amount you declare must exceed $1.25 per pound. The mover will charge you $5.00 for each $1,000 of declared value. For example, if you declare the value of your shipment to be $10,000 the charge will be $50,000. Again, *this is not insurance.*

Third, the mover can sell you or procure for you liability insurance in the amount you require if you release your shipment for transportation at a value of 60 cents per pound per article. In the event of loss or damage which is the responsibility of the mover the mover would be liable only for an amount not exceeding 60 cents per pound per article and the balance of the loss would be recoverable from the insurance company subject to the amount of insurance purchased. The mover's representative can advise you of the availability of such liability insurance and the cost per $1,000 of coverage.

Fourth, you can release your goods for transportation at a value of 60 cents per pound per article and obtain insurance yourself direct from an insurance company. The homeowner liability policies issued by some insurance companies include provision for insuring goods while being transported by a mover. Unless you are sure that you already have this protection you should check with your insurance agent to determine if you are covered against this type of liability.

If you purchase liability insurance from or through the mover, it is required that the mover issue a policy or other written record of the purchase and to provide you with a copy of the policy or other document at the time of purchase. If the mover fails to comply with this requirement, it becomes fully liable for any claim for loss or damage attributed to its negligence.

Complaints and Inquiries About the Mover's Service

All movers are expected promptly to respond to complaints or inquiries from their customers. Movers with gross revenues in excess of one million dollars per year are required to establish a definite procedure for receiving and handling complaints and inquiries. If the mover which transports your shipment is subject to this requirement the mover's representative will, at the time you make the arrangements for your move, furnish to you a publication describing the mover's complaint and inquiry procedure. In this publication you will find a toll-free or collect telephone number which you can use to contact the mover's principal office at any time throughout your move.

Should you have a complaint or question about your move you should first attempt to obtain a satisfactory response from the mover's local agent, the sales representative who handled the arrangements for your move, or the driver assigned to your shipment.

If for any reason you are unable to obtain a satisfactory response from one of the persons mentioned you should then contact the mover's principal offices using the toll-free telephone number. When you make such a call be sure to have available your copies of all the documents relating to the move. Particularly important is the number assigned to your shipment by the mover.

You may also call the American Movers Conference's Consumer Assistance Office, toll-free, telephone 800–336–3094, for assistance.

If you are still unable to obtain a satisfactory response you may contact the Interstate Commerce Commission's National Consumer Assistance Center. The toll-free telephone number is 800–424–9312 (in the Washington, D.C. dialing area call 275–0860) and the mailing address is:

Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423.

Anytime you contact the National Consumer Assistance Center regarding your shipment please have available the number assigned to your shipment by the mover. If you write to the Center be sure to include that number in your correspondence.

Many of the moving companies that, because of the amount of their annual revenues are not required to maintain a complaint and inquiry procedure, may voluntarily provide procedures to assist their customers with complaints or inquiries. At the time you make the arrangements for your move, you should ask the mover's representative what you should do if you have a complaint or inquiry.

Payment of the Transportation Charges

At the time of payment of the transportation charges, the mover is required to present a freight bill identifying the services provided and the charge for each service. It is customary for most overs to use a copy of the bill of lading as a freight bill, however, some movers use an entirely separate document for this purpose.

Regardless of the form used, the freight bill must specifically identify each service performed, the rate per unit for each service and the total charges for each service. Do not accept or pay a freight bill which does not contain this information.

If your shipment was transported on a collect on delivery basis you will be expected to pay the total charges appearing on the freight bill at the time of delivery unless the mover provided an estimate of approximate cost and the total charges *for the services included in the estimate* exceed 110% of the estimated charges. See page 2 for information about your rights and responsibilities when this occurs.

It is customary for movers to provide in their tariffs that freight charges must be paid in cash or by certified check or money order. When this requirement exists the mover will not accept personal checks. At the time you make arrangements for your move you should question the mover's representative about what form of payment is acceptable to the mover.

Some movers permit payment of freight charges by use of a charge card providing that approval for the use of a charge card is obtained from the mover prior to the move. Do not assume that because you have a nationally recognized charge or credit card that it will be acceptable for payment of the transportation charges. Check with the mover's representative at the time the arrangements are made for the move.

If you do not pay the transportation charges at the time the freight bill is presented, the mover has the right under the bill of lading contract to refuse to release your goods to you and to place them in storage at your expense until the charges are paid.

If prior to payment of the transportation charges you discover an error in the charges, you should attempt to reconcile the error with the driver, the mover's local agent; or, by contacting the carrier's principal office, before paying the charges. If an error is discovered subsequent to the payment, you should advise the mover in writing at the mover's principal office (the address will be on the freight bill) of the error and request a refund.

Movers customarily audit all shipment files and freight bills subsequent to a move to assure that the charges collected were accurate. If an overcharge is found you will be notified and a refund made. If an undercharge occurred you will be billed for the additional charges due.

Payment of the Transportation Charges on Shipments Transported on Two or More Vehicles

Although all movers try to move each shipment on one truck it becomes necessary at times to divide a shipment between two or more trucks. This frequently occurs when an automobile is included in the shipment and the automobile is transported on a vehicle specially designed to transport automobiles instead of being loaded on the same van as the remainder of your shipment. When this occurs your transportation charges are the same as if the entire shipment was moved on one truck.

If your shipment is divided for transportation on two or more trucks you are not required to pay the *total* charges until all portions of the shipment have been delivered. As each portion of the shipment is delivered, the mover can require payment of the percentage of the total charges represented by the percentage of the shipment offered for delivery. Or, if the total charges for the entire shipment are not known, the mover can compute the charges for the first portion delivered as if it was an separate shipment. At the time of delivery of the remainder of the shipment the mover must adjust the balance of the charges due to reflect any amount you were overcharged or undercharged at the time of delivery of the first portion.

Movers are also permitted, but not required, to delay the collection of the charges until all portions of the shipment are delivered. At the time you make the arrangements for your move you should question the mover's representative about the policies of the mover in this respect.

Payment of Transportation Charges on Shipments Lost or Destroyed in Transit

Movers customarily use a large amount of skill and care to assure that while your shipment is in their possession for transportation, no items are lost, damaged or destroyed.

However, despite the precautions taken, articles may be lost or destroyed while in the custody of the mover.

In addition to any amounts you may recover from the mover or an insurance company to compensate for lost or destroyed articles you are also entitled to recover that portion of the transportation charges represented by the portion of the shipment lost or destroyed.

Should your entire shipment be lost or destroyed while in the mover's possession the mover is not entitled to require that you pay any of the transportation charges except the amount you have paid or agreed to pay for liability protection or insurance as described in *The Movers Liability for Loss or Damage* section of this publication. The fact that you do not pay any transportation charges does not affect any right you may have to recover compensation for the lost or destroyed articles providing you pay the charges for liability protection or insurance.

If a portion of your shipment is lost or destroyed in transit the mover must, if the portion of the shipment exceeds 10 percent of the entire shipment by weight or volume, deduct from the total charges that portion of the charges represented by the articles lost or destroyed.

If less than 10 percent of the shipment by weight or volume is lost or destroyed in transit the mover can require that you pay the total charges at time of delivery. However, at the time you file a claim to recover compensation for the lost or destroyed articles you are entitled to include in your claim the charges paid for transporting the lost or destroyed articles and the mover is required to refund those charges.

Filing of Claims for Loss and Damage or Delay; Dispute Resolution Programs

Most of the items included in the average household goods shipment are subject to being easily damaged while being moved. Despite this the majority of all household goods shipments are transported with little or no loss or damage.

Should your move result in the loss of or damage to any of your property you have the right to file a claim with the carrier to recover compensation for the loss or damage which came about through negligence by the mover, its agents, drivers or other representatives.

By law you have a period of nine months following either the date of delivery or the date on which the shipment should have been delivered to file a claim. You should endeavor to file the claim as promptly as possible. If you fail to file a claim within 120 days following delivery and later bring a legal action against the mover to recover the damages you may find that you can not recover attorney fees under certain circumstances even though you win the court action.

The Interstate Commerce Commission has no authority to adjudicate cargo loss and damage claims. Should it not be possible to arrive at a satisfactory voluntary settlement of a claim you can file a civil action to seek recovery in court or, if the mover participates in a dispute resolution program you may find submitting your claim to arbitration under such a program a less expensive and more convenient way to seek recovery. Movers which participate in dispute resolution program are required to advise all shippers of the existence and details of the program before they accept a shipment to be transported. If the mover's sales representative does not provide information about a dispute resolution program at the time an order for service is prepared you should not hesitate to ask if the mover participates in such a program.

In Conclusion

The Commissioners and staff of the Interstate Commerce Commission realize that moving your household goods and personal belongings can often be a difficult and trying situation, even under the best of conditions. The owners and employees of the moving companies are also aware that moving is not an easy proposition regardless of how much they may try to smooth out the problems presented by each move.

This booklet has been prepared by the staff of the Interstate Commerce Commission and furnished to you by the mover to provide all the information possible about your rights and responsibilities before, during and after your move.

Should you have any questions about your move, which are not answered in this publication, do not hesitate to ask the mover's representative who handled the arrangements for your move, the driver who transports your shipment or contact the mover's principal office for additional information.

If after contacting those sources you still require advice or assistance, call or write the Interstate Commerce Commission, National Consumer Assistance Center, Washington, D.C. 20423. The toll-free telephone number is 800–424–9312 (in the Washington, D.C. dialing area 275–0860).

[FR Doc. 80-33411 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Paronychia Argyrocoma var. Albimontana (Silverling), To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine a plant, *Paronychia argyrocoma* var. *albimontana* (silverling), to be a threatened species under the authority contained in the endangered Species Act of 1973. The silverling occurs in Maine, New Hampshire and Massachusetts on State, private, and U.S. Forest Service lands. The plant is threatened due to taking, vandalism, and trampling by hikers, and due to its highly restricted range and small population sizes. A determination of *Paronychia argyrocoma* var. *albimontana* to be a Threatened species would implement the protection provided by the Endangered Species Act of 1973 as amended.

DATES: Comments from the public must be received on or before December 26, 1980. Comments from the Governors of Maine, New Hampshire, and Massachusetts must be received on or before January 26, 1980.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. (703)235–1975.

SUPPLEMENTARY INFORMATION: *Paronychia argyrocoma* var. *albimontana* was first collected by Edward Tuckerman in the 1800's from a slide on Mt. Clinton in the White Mountains, Coos County, NH. In 1906, the botanist Merritt L. Fernald recognized the plant, by then collected from several sites in Maine, New Hampshire, and Massachusetts, as distinct from *Paronychia argyrocoma*

var. *argyrocoma* growing on mountains in the southeast. Fernald named this distinct variety "var. *albimontana*" ("of the White Mountains").

This small perennial herb of the carnation family forms branched tufts several inches in height. Small flowers are densely aggregated at the tops of the stems, and are surrounded by conspicuous silvery bracts, which give the plant its silvery appearance.

Paronychia argyrocoma var. *albimontana* occurs on the tops of mid-elevation mountains and ledges (generally below 4000'), and in several cases along rocky stream shores or on riverside ledges. Those plants which occupy ledge habitats generally grow in rock crevices in thin, gravelly soil. Occasionally species such as the three-toothed cinquefoil *(Potentilla tridentata)* and purple crowberry *(Empetrum atropurpureum)* are found in association with the silverling. The plants and habitat are exposed to harsh weather conditions and often to heavy hiker traffic, as several populations occur at the tops of frequently-visited mountains or alongside trails.

This rule porposes to determine *Paronychia argyrocoma* var. *albimontana* to be Threatened, which would implement the protection provided by the Endangered Species Act of 1973. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the **Federal Register** [40 FR 27823–27924] of his acceptance of the report of the Smithsonian Institution as a petition within the context of Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. *Paronychia argyrocoma* var. *albimontana* was included in the July 1, 1975 notice of review. At this time the Service has sufficient information to warrant proposing *Paronychia argyrocoma* var. *albimontana*. Comments which are received during the comment period for this proposal will be summarized in the final rule.

Summary of Factors Affecting the Species

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Paronychia argyrocoma* (Michx.) Nutt. var. *albimontana* Fernald (silverling) are as follows:

Paronychia Argyrocoma var. *Albimontana*

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* The taxon has been documented from a total of approximately 27 locations in New England since its first collection in the early 1800's. Thirteen of these sites have been verified in recent years. Nine of the existing sites occur in Carroll and Coos counties, New Hampshire; three occur in Oxford County, Maine; and one occurs in Essex County, Massachusetts. Five sites formerly occupied by the species in New Hampshire were examined and no plants were found. Poor locality information from herbarium specimens has precluded surveys of other reported sites.

The majority of the sites in New Hampshire occur in the White Mountain National Forest and are heavily used by hikers. Damage to plants occurring near trails is evident in several locations. In addition, all of the New Hampshire populations are quite small, ranging in size from 1–60 colonies per population, and occupy small areas. These sites could be seriously damaged or eliminated by trampling or natural factors. An additional threat to a population in Carter Notch, Coos County, New Hampshire consisted of a proposal for the construction of a helicopter pad in the area occupied by the plants. It was decided that approval for construction would not be requested, partly in consideration of the existence of *Paronychia* on the site. This does, however, illustrate the nature of threats to these populations in mountainous areas, as well as the necessity of protecting the areas from future threats.

Other recently documented sites in New Hampshire occur on State and privately owned lands. Several of these populations also occur on mountain tops or ledge areas which receive fairly heavy recreational use. One population, in an area used by rock climbers, consisted of a single individual in 1977. Another site receiving frequent use by hikers contained plants evidently killed by trampling, although healthy colonies were present in a relatively inaccessible area nearby.

The single Massachusetts population has fluctuated in size since an early description of the site in 1945. At that time, 196 colonies of the plant were reported on a small ledge on an island in the Merrimack River, Essex County. In 1978, 56 colonies were reported at the site. A census taken in 1980 revealed 104 mature colonies, 93 seedlings, and 10 dead or nearly dead colonies. The cause of this fluctuation is unknown, although it may be due to human disturbance, or to natural population fluctuations. The area is maintained as a State Wildlife Sanctuary, and regulations prohibit the picking of plants, in addition to prohibiting use by overnight campers. These regulations are difficult to enforce, however.

Little is known about the status of *Paronychia* in Maine. A total of seven sites have been reported by herbarium specimens. Only three of these have been rediscovered in recent years. The remainder of the sites have not been examined recently due to scanty location information on herbarium specimen labels. Of the three known sites in Maine, two occur on U.S. Forest Service land (White Mountain National Forest), and the third site is state-owned.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Collecting for scientific specimens has removed a significant number of plants from the wild. Collecting poses a serious threat to the smallest populations, several of which consist of only one plant. No commercial activities are known to involve this plant.

(3) *Disease or predation* [including grazing]. Not applicable to this species.

(4) *Inadequacy of existing regulatory mechanisms.* Although *Paronychia argyrocoma* var. *albimontana* appears on State lists which were developed by botanists in Maine, New Hampshire, and Massachusetts, no State legislation currently offers it specific protection in any of these three States. The Forest Service's regulations governing the land on which several of the New Hampshire and Maine populations occur prohibit removing, destroying, or damaging any plant that is classified as a threatened, endangered, rare, or unique species (36 CFR 261.9)

In Maine, several land use planning laws provide protection to rare plants indirectly through zoning regulations. Title 12 of the Maine Revised Statutes, Chapter 10, designates zoning rules and regulations administered by the Land Use Regulatory Commission. These regulations provide for zoning in specific "resource protection districts" within unorganized territories in Maine. Resource protection districts include shorelands, wetlands, floodplains, high

elevation areas (above 2700'), historically, archeological areas and the like. Zoning regulations and a permit system would be implemented if an activity would adversely impact these areas (Title 12 Section 4811–14). Since *Paronychia* occurs in some of these areas protected by zoning laws, as well as on U.S. Forest Service lands, portions of the habitat of the plant are offered some protection under Maine law.

The Maine Critical Areas Program (Title 5, Chapter 312, Section 3310–3314), though non-regulatory, provides protection to unique areas through consultation with private landowners.

Two Massachusetts State laws protect certain plant species, but no legal protection is presently offered to Federally Endangered or Threatened species. Protected plant species are *Epigaea repens* (Mayflower) [Massachusetts General Laws Chapter 2 Section 7]; and all wild azaleas, orchids, and the cardinal flower [Massachusetts General Laws Chapter 266 Section 116a].

The Endangered Species Act will provide additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence.* Taking poses a significant threat to the species. Collection of *Paronychia* by wildflower enthusiasts for rock gardens is also known to have occurred. Since these plants occur in open, exposed areas near hiking trails, there is a very real threat of increased taking or vandalism should these areas be publicized through Critical Habitat proposal.

The species is threatened due to its small number of populations and small population sizes in addition to taking and vandalism threats. This combination of restricted range and small population sizes makes the taxon vulnerable to changes in climate, to predation or disease, or to changes in human behavior (such as increased recreational pressure). Each of these populations is of major importance to the survival of the taxon, and loss of any population would constitute a serious threat to the survival of the taxon.

Critical Habitat

Critical Habitat is not being proposed at this time. It is felt that designation of Critical Habitat would not be in the best interest of the species, but would, in fact cause the species to be in greater jeopardy. This is due to the occurrence of the plant in recreational areas receiving great amounts of use. Human trampling and taking are primary threats to the taxon. The habitat in which the species occurs in fragile and easily disturbed by hikers. Designation of Critical Habitat would only serve to attract public attention to these fragile areas and to the small but attractive plants. At present, trampling in most of these areas is inadvertent. The increase in attention that certain sites would derive from Critical Habitat designation would cause an increase in trampling from curiosity seekers and would expose the plants to increased taking and vandalism pressures.

Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977 **Federal Register** set forth in series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise.

The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Paronychia argyrocoma* var. *albimontana* all prohibitions of Section 9(a)(2) of the Act, as implemented by Sections 17.61 and 17.71 would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR Section 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances.

Section 7(a) of the Act provides that each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under Section 4.

Section 7(a) of the Act also requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection would accrue to *Paronychia argyrocoma* var. *albimontana* if it is later determined to be Threatened as a result of this proposal.

Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of *Paronychia argyrocoma* var. *albimontana.*

This rule would have no effect on private landowners in areas where *Paronychia argyrocoma* var. *albimontana* occurs, other than those mentioned in the above paragraphs. The U.S. Forest Service, however, would be required to insure that their activities are not likely to jeopardize the continued existence of the species. This may require the Forest Service to conduct a monitoring program to determine how best to protect this species. Steps such as trail relocation, building of small barriers to keep hikers on trails, and posting of signs to alert hikers of the fragility of the vegetation may be necessary to give the populations adequate protection.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of final rulemaking whether this is a major Federal action which would significant affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

The Director intends that the rules finally adopted will be as accurate and effective as possible in the conservation of an Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited.

Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to the species included in this proposal;

(2) Additional information concerning the range and distribution of this species; and

(3) Current or planned activities in the subject area.

Final promulgation of the regulations on *Paronychia argyrocoma* var. *albimontana* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final regulation that differs from this proposal.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884). The primary author of this proposed rule is Ms. Irene M. Storks, Washington Office of Endangered Species (703/235–1975).

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

Regulations Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Caryophyllaceae—Pink family:						
Paronychia argyrocoma var. *albimontana.*	Silverling, Silver whitlow-wort.	USA: ME, NH, MA....	T	.....	NA	NA

Dated: October 17, 1980.

Robert S. Cook,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 80–33324 Filed 10–24–80; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 45, No. 209
Monday, October 27, 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 Decisional Processes, Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Committee on Agency Decisional Processes of the Administrative Conference of the United States, to be held at 10:00 a.m., Monday, November 10, 1980 at the office of Ginsburg, Feldman, Weil & Bress, 1700 Pennsylvania Avenue, N.W., Suite 300, Washington, D.C.

The Committee will meet to reconsider its proposed recommendation based on Dean Paul Verkuil's report on intragovernmental communications in informal rulemaking proceedings and to review comments received on the proposed recommendation. The proposed recommendation appears at 45 FR 68948 (October 17, 1980).

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting contact Charles R. Pouncy at the Office of the Chairman of the Administrative Conference, 2120 L Street, N.W., Suite 500, Washington, D.C. 20037 (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Secretary.
October 22, 1980.
[FR Doc. 80-33430 Filed 10-24-80; 8:45 am]
BILLING CODE 6110-01-M

Select Committee on Ex Parte Communications; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the Select Committee on Ex Parte Communications of the Administrative Conference of the United States, to be held at 10:00 a.m., Friday, November 7, 1980 in the library of the Administrative Conference, Suite 500, 2120 L Street, N.W., Washington, D.C.

The Committee will meet for the second time to discuss Professor Michael Asimow's study of separation of functions in administrative proceedings and to consider comments received on the Committee's tentative recommendation, published 45 FR 68949.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days in advance. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Jeffrey Lubbers (202–254–7065). Minutes of the meeting will be available on request.

Richard K. Berg,
Executive Secretary.
October 22, 1980.
[FR Doc. 80-33431 Filed 10-24-80; 8:45 am]
BILLING CODE 6110-01-M

CIVIL AERONAUTICS BOARD

[Order 80-10-120]

Air International Fitness Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–10–120 Instituting Hearing.

SUMMARY: The Board is instituting the *Air International Fitness Proceeding* and a hearing on the issue of Air International's fitness to receive a section 401 certificate authorizing service to 25 Erie, Pennsylvania markets and on whether we should approve or exempt certain relationships under Section 408/409 of the Act. The complete text of this order is available as noted below.

DATES: All interested persons who wish to request additional evidence should file their responses by November 3, 1980. In addition, petitions for leave to intervene should be filed by November 3, 1980.

ADDRESSES: Responses should be filed in the Dockets Section, Civil Aeronautics Board, Washington, D.C., 20428, Docket 38866, Air International Fitness Proceeding.

In addition, copies of such filing should be served on Air International, all certificated carriers, the mayors of Philadelphia, Pa., Chicago, Ill., South Bend, Ind., Tampa, Fla., Denver, Colo., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., Binghamton, N.Y., Johnson City, N.Y., Pittsburgh, Pa., Ft. Wayne, Ind., Akron, Ohio, Canton, Ohio, Harrisburg, Pa., Kansas City, Mo., Allentown, Pa., Bethlehem, Pa., Easton, Pa., Little Rock, Ark., Oklahoma City, Ok., Tulsa, Ok., Memphis, Tenn., Erie, Pa., Toledo, Ohio; the managers of the airports in Philadelphia, Pa., Chicago, Ill., South Bend, Ill., Tampa, Fla., Denver, Colo., Atlanta, Ga., Baltimore, Md., Cleveland, Ohio, Detroit, Mich., Washington, D.C., Newark, N.J., New York, N.Y., Endicott, N.Y., Binghamton, N.Y., Johnson City, N.Y., Pittsburgh, Pa., Ft. Wayne, Ind., Kansas City, Mo., Allentown, Pa., Little Rock, Ark., Oklahoma City, Ok., Toledo, Ohio, Tulsa, Ok., Memphis, Tenn., Erie, Pa.; the manager of Chemung County Airport, Horseheads, N.Y., Akron-Canton Regional Airport, North Canton, Ohio, Capital City Airport, New Cumberland, Pa., Toledo-Lucas County Port Authority, Colorado Department of Highways, Aviation Transportation Section, Georgia Department of Transportation, Bureau of Aeronautics, Illinois Division of Aeronautics, Indiana Aeronautics Commission, Maryland Department of Transportation, Michigan Department of Transportation, Ohio Department of Transportation, Pennsylvania Department of Transportation, New Jersey Department of Transportation, Arkansas Division of Aeronautics, Oklahoma Aeronautics Commission, Tennessee Department of Transportation, and the Port Authority of New York and New Jersey.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; (202) 673–5009.

SUPPLEMENTARY INFORMATION: The complete text of Order 80–10–120 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80–10–120 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 21, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33394 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket 38733]

Continental-Western Merger Case; Hearing

Notice is hereby given, pursuant to the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on November 24, 1980, at 9:30 A.M. (local time), in Room 1003, Hearing Room "D", Universal North Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington, D.C., October 22, 1980.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 80–33396 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Docket No. 38851, et al.]

Flying Tiger Line, et al.; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended October 17, 1980 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

SUBPART Q APPLICATIONS

Date filed	Docket No.	description
Oct. 16, 1980	38851	The Flying Tiger Line Inc., 7401 World Way West, International Airport, Los Angeles, California 90009. Application of The Flying Tiger Line Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority (a) to provide foreign air transportation of property and mail as follows: Between a point or points in the United States, and points in Argentina, Barbados, Brazil, Columbia, the Dominican Republic, Ecuador, Haiti, Jamaica, the Netherlands Antilles, Nicaragua, Mexico, Panama, Peru, and Venezuela; and, (b) to transport, at the expense of the shipper, one or more attendants with any shipment, provided that such attendant or attandants may be transported only when actually accompanying the shipment and may not be transported from the destination of the shipment to its origin or otherwise. Conforming Applications are due November 13, 1980.
Oct. 17, 1980	38857	Republic Airlines, Inc., Hartsfield-Atlanta International Airport, Atlanta, Georgia 30320. Application of Republic Airlines, Inc. pursuant to Section 401(e)(7)(B) of the Act and Subpart Q of the Board's Procedural Regulations, requests amendment of its certificate of public convenience and necessity for Route 86 so as to remove the restriction on its authority which prohibits nonstop service in the Chicago, Illinois (O'Hare)-Sioux Falls, South Dakota market. Republic requests that this be accomplished in time for it to inaugurate nonstop Chicago (O'Hare)-Sioux Falls service on January 1, 1981. Conforming Applications and Answers may be filed by October 31, 1980.
Oct. 17, 1980	38858	Societe Antillaise De Transports Aeriens, d.b.a. Air Guadeloupe, c/o V. Michael Straus, Suite 401, 1001 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Air Guadeloupe pursuant to Section 402 of the Act and Subpart Q of the Board's Procedural Regulations, requests a foreign air carrier permit authorizing it to carry persons, property and mail between St. Maarten, Netherlands Antilles and San Juan, Puerto Rico, using F-27J aircraft. San Juan will be the only U.S. point served, and there will be no non-traffic stops. Answers may be filed by November 14, 1980.

Phillis T. Kaylor,

Secretary.

[FR Doc. 80–33395 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

[Order 80–10–117; Docket 38803]

Sun Pacific Airlines; Application for Certificate Authority Under Subpart Q and Request for Approval of Section 408 and 409 Relationships

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 80–10–117, Application of Sun Pacific Airlines under Subpart Q for a Certificate of Public Convenience and Necessity for authority between and among San Francisco, Fresno, Bakersfield, Las Vegas, Los Angeles and Ontario (Docket 38803). Sun Pacific has also requested, to the extent required, approval of section 408 and 409 relationships.

SUMMARY: The Board is instituting an investigation to determine (a) whether Sun Pacific Airlines is fit to operate the authority it requests and (b) whether certain relationships should be approved under sections 408 and 409. The Board is waiving the 28-day answer period set forth in 14 CFR 320.1720(d) with regard to the fitness, 408 and 409 issues. Interested persons will have ample opportunity to deal with these issues in the formal proceeding. The Board will deal with the public convenience and necessity issues in accordance with its expedited procedures.

DATES: Evidence Requests and Requests to Intervene: Interested persons shall file, and serve upon all persons listed below no later than November 3, 1980, requests for additional evidence and requests to intervene.

ADDRESSES: Requests for Additional Evidence and Requests to Intervene

should be filed in Docket 38803, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673–5340.

SUPPLEMENTARY INFORMATION: Requests for Additional Evidence and Requests to Intervene should be served upon the persons listed in Ordering Paragraph 5 of Order 80–10–117.

The complete text of Order 80–10–117 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for the order to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: October 21, 1980.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80–33397 Filed 10–24–80; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Distributors Stocks of Canned Foods; Determination

In conformity with title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published October 2, 1980 (45 FR 65268), I have determined that year-end data on stocks of 30 canned and bottled products, including vegetables, fruits, juices, and fish, are needed to aid the effieicnt performance of essential government functions, that the data have significant application to the needs of the public and industry, and that they are not publicly available from nongovernmental or other governmental sources. This is a continuation of the survey conducted in previous years.

All respondents will be required to submit information covering their December 31, 1980 inventories of 30 canned and bottled vegetables, fruits, juices, and fish. Reports will not be required from all firms, but will be limited to a scientifically selected sample of wholesalers and retail multiunit organizations handling canned foods in order to provide, with measurable reliability, year-end inventories of the specified canned food items. These stocks will be measured in terms of actual cases, with separate data requested for "all sizes smaller than No. 10" and for "sizes No. 10 or larger." (In addition, multiunit firms reporting separately by establishment will be requested to update the list of their establishments maintaining canned food stocks.)

Report forms will be furnished to firms covered by the survey. Copies of the forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that this annual survey be conducted for the purpose of collecting these data.

Dated: October 22, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80–33341 Filed 10–24–80; 8:45 am]

BILLING CODE 3510–07–M

Natonal Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit

On September 10, 1980, Notice was published in the **Federal Register** (45 FR 59608), that an application had been filed with the National Maine Fisheries Service by Dr. Daniel P. Costa, Physiological Research Laboratory, Scripps Institution of Oceanography, La Jolla, California 92093, for a permit to take 30 northern elephant seals (*Mirounga angustirostris*) for the purpose of scientific research.

Notice is hereby given that on October 21, 1980, and as authorized by provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Pemit for the above taking to conduct physiological studies on 30 northern elephant seals subject to certain conditions set forth therein.

This permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Maine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 21, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80–33423 Filed 10–24–80; 8:45 am]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Notice of agency recommendation on claims filed under title IV, Outer Continental Shelf Lands Act Amendments of 1978 (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the matters, that Title IV Claim Numbers FCF–44–79 and FCF–56–79 be denied because claimants have not met their burdens of proof that the losses to their shrimp trawling rigs either occurred in an area affected by oil or gas energy activities on the Outer Continental Shelf (OCS) or were caused by an item associated with such activities. Interested persons have 15 days to request the Administative law Judge (ALJ) to conduct an oral hearing concerning the claims or to request to be admitted as parties to any hearing on the claims.

DATES: Requests for oral hearing or to be admitted as a party must be received by November 12, 1980.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or M. Timothy Conner (address above). Telephone: (202) 254–8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 USC 1841, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil or gas energy activities on the Outer Continental Shelf (OCS). On April 27, 1979, Claim Number FCF–44–79 was filed. The claim seeks compensation from the Fund of $12,320.64 for loss of and damage to a shrimp trawling rig and accessories ($4,998.22), lost profits ($7,112.42), and claim documentation expenses ($210.00) caused by claimant's catching his gear on an obstruction on April 14, 1979, at coordinates 27°31.2'N and 97°13.2'W. On June 22, 1979, Claim Number FCF–56–79 was filed. The claim seeks compensation from the Fund of $10,021.97 for loss of a complete shrimp trawling rig and damage to accessories ($2,983.22) and lost profits (47,038.75) caused by claimant's catching his gear on an obstruction on June 10, 1979, at coordinates 28°37.5'N and 94°36.7'W.

As required by the 50 CFR Part 296 regulations implementing Title IV, notice of the claims were published on April 28, 1980 (45 FR 28179). That notice gave interested persons, as defined in 50 CFR 296.2, 30 days to advise the Chief of the National Marine Fisheries Service's Financial Services Division (FSD) that they wished to submit evidence concerning the claims or be admitted as parties at any hearing held in respect to the claims. No responses have been received.

That notice also advised that FSD may forward to NOAA General Counsel proposed agency recommendations concerning the claims. FSD has done so in this case, with the proposal that the Agency recommend to the ALJ that the claims be denied in full.

As provided by 50 CFR 296.8(d)(3), notice is given that NOAA General Counsel has determined that the proposal set out above will be the official agency recommendation in these cases. A claim filed under Title IV is entitled to a presumption of validity if claimant establishes, among other things, that the loss occurred in an area affected by Outer Continental Shelf activities, and that the claimant filed a timely 5-day report of the loss in accordance with 50 CFR 296.7(a). Claim number FCF–44–79 arises from a loss which did not occur on the OCS, but in State of Texas waters, and the file does not establish that the area in question was affected by OCS oil or gas energy activities, as that term is defined in 50 CFR 296.2. Claim number FCF–56–79 also does not establish that the area in question was affected by OCS oil or gas activities and claimant failed to file a timely 5-day report. In the absence of a presumption of validity, a claim may be paid only if claimant meets his burden of proving by a preponderance of the evidence that the item causing the damage was associated with OCS oil or gas activity. The claimants in these cases have failed to do so.

Any interested person who objects to these recommendations, or the claimants, may request that the ALJ who will be assigned to the case conduct an oral hearing concerning either claim. Any interested person may also request to be admitted as a party to any hearing concerning the claims. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is for an oral hearing, the request must state the reasons why an oral hearing should be held. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The ALJ will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the claims as are disclosable by law by writing General Counsel at the above address.

At the close of the 15-day period referred to at the beginning of this notice, General Counsel will refer the claims, together with the agency recommendations and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for adjudication. It is the present intention of General Counsel to request the ALJ to decide these claims without oral hearing.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980 (45 FR 44942).

Signed at Washington, D.C., this 21st day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33318 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-22-M

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration/ Department of Commerce.

ACTION: Notice of agency recommendation on claims filed under Title IV, Outer Continental Shelf Lands Act Amendments of 1978 (Title IV).

SUMMARY: Notice is given that the Agency intends to recommend to the NOAA Office of Administrative Law Judges, which will decide the cases, that the following claims be approved for payment from the Fishermen's Contingency Fund:

Claim Number and Approved Amount

FCF–07–79—$721.50 (Actual damage: $550.00; Economic loss: $171.50).

FCF–16–79—$4,647.12 (Actual damage: $3,082.20; Economic loss: $1,564.92).

FCF–24–79—$2,466.969 (Actual damage: $2,110.20; Economic loss: $356.49).

FCF–29–79—$10,787.44 (Actual damage: $10,150.53; Economic loss: $636.91).

FCF–52–79—$1,438.00 (Actual damage: $1,133.00; Economic loss: $305.00).

FCF–58–79—$1,471.15 (Actual damage: $913.15; Economic loss: $558.00).

FCF–63–79—$9,334.88 (Actual damage: $6,164.00; Economic loss: $3,170.88).

FCF–69–79—$3,718.54 (Actual damage: $1,316.71; Economic loss: $2,391.31, Claim Documentation, Expenses: $10.52).

Interested persons have 15 days to request that the Administrative Law Judge (ALJ) conduct an oral hearing concerning the claims or to request to be admitted as parties to any hearing on the claims.

DATE: Requests for oral hearing or to be admitted as a party must be received by November 12, 1980.

ADDRESS: Send requests to: NOAA Office of General Counsel (GCEL), Room 275, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell or M. Timothy Conner (address above). Telephone: (202) 254–8350.

SUPPLEMENTARY INFORMATION: Title IV, 43 U.S.C. 1841, established the Fishermen's Contingency Fund (Fund) to compensate commercial fishermen for gear damage and lost profits caused by items associated with oil and gas activities on the Outer Continental Shelf. On January 31, 1979, Claim No. FCF–07–79 was filed. The claim seeks compensation from the Fund of $1,590.00 for damage to a shrimp trawl ($550) and lost profits ($1,040) caused by claimant's catching a heavy iron flange in his net on December 11, 1978, at coordinates 29°18.5'N, and 92°31.5'W..

Claim number FCF–16–79 was filed on February 28, 1979 and seeks compensation in the amount of $14,891.51 for the loss of a complete shrimp rig ($3,141.51), lost profits ($11,270.00) and expenses ($480.00) caused by claimant's hanging his rig on an underwater obstruction on February 20, 1979, at coordinates 28°41.1'N and 91°29.1'W.

Claim number FCF–24–79 was filed on March 16, 1979, and seeks compensation in the amount of $8,966.20 for the loss of two shrimp trawls and related equipment ($2,470.20) and loss profits ($6,496.00) caused when claimant hung both trawls on an underwater obstruction on February 24, 1979, at coordinates 28°29.4'N and 91°21.2'W.

Claim number FCF–29–79 was filed on May 21, 1979, and seeks compensation in the amount of $16,350.53 for damage to a shrimp trawler ($10,150.53), lost profits ($5,700) and consequential expenses ($500.00) caused by the claimant's hanging her rigging on an underwater obstruction on March 24, 1979, at coordinates 28°44.9'N and 92°32.4'W.

Claim number FCF–58–79 was filed on July 30, 1979, and seeks compensation in the amount of $1,471.15 for loss of a shrimp trawl ($913.15) and lost profits ($558.00) caused by claimant's hanging one of his trawls on an underwater

obstruction on June 29, 1979, at coordinates 28°48.5'N and 90°25.4'W.

Claim number FCF–63–79 was filed on July 23, 1979, and seeks compensation in the amount of $20,420.60 for loss of two shrimp trawls and related equipment ($6,146.60) and lost profits ($14,256.00) caused when claimant hung both trawls on an underwater obstruction on July 17, 1979, at coordinates 28°44.4'N and 91°37.6'W.

Claim number FCF–69–79 was filed on July 17, 1979, and seeks compensation in the amount of $13,612.30 for loss of a shrimp rig ($1,601.78), lost profits ($12,000) and claim documentation expenses ($10.52) caused when the claimant hung his rig on an underwater obstruction on July 5, 1979, at coordinates 29°05.3'N and 92°47.9'W.

As required by the 50 CFR Part 296 regulations implementing Title IV, notice of claims FCF–07, 16, 24, 29, 52, 58–79 were published on April 28, 1980 (45 FR 28179) and notice of claims FCF–63, and 69–79 were published on June 16, 1980 (45 FR 40632). These notices gave interested persons, as defined in 50 CFR 296.2, 30 days to advise the Chief of the National Marine Fisheries Service's Financial Services Division (FSD) that they wished to submit evidence concerning the claims or be admitted as parties at any hearings held in respect to the claims. No responses have been received.

These notices also advised that FSD may negotiate with the claimants proposed settlements of their claims. As indicated in the "Approved Amount" column set out earlier in this notice, FSD has either approved the claims as submitted or negotiated settlements.

As provided by 50 CFR 296.8(d)(3), notice is given that NOAA General Counsel has determined that the proposed settlements set out above will be the official agency recommendations in these cases. Any interested person or a claimant who objects to any of these recommendations, may request that the ALJ who will be assigned to a case conduct an oral hearing concerning the claim. Any interested person may also request to be admitted as a party to any hearing concerning any claim. In either event, the request must be in writing and must be filed with General Counsel at the address and by the date set out above. If the request is to be admitted as a party, the request must state why it was not filed in a timely manner under 50 CFR 296.8(a)(3)(v). The ALJ will rule on all such requests under 50 CFR 296.10(a)(3). Any interested person may obtain a copy of such portions of the claim as are disclosable by law by writing General Counsel at the above address.

At the close of the 15-day period referred to at the beginning of this notice, General Counsel will refer the claims, together with the agency recommendations and any requests received in response to this notice, to the NOAA Office of Administrative Law Judges for adjudication. It is the present intention of General Counsel to request the ALJ to decide these claims without oral hearing.

Final regulations governing the Title IV Program were published on January 24, 1980 (45 FR 6062), and July 2, 1980, (45 FR 44942).

Signed at Washington, D.C. this 21st day of October, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33319 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

U.S. Department of the Air Force, AF/JACP, 1900 Half Street, S.W., Washington, D.C. 20324

Patent application 6–149,792: Mixed Flow Augmentor Incorporating a Fuel/Air Tube; filed May 14, 1980.

Patent application 6–152,232: Interferometric Distance Measurement Method; filed May 22, 1980.

Patent application 6–152,234: Intruder Detection System having Multiple Discrete RF Sensor Elements Illuminated by a Remote RF Transmitter; filed May 22, 1980.

Patent application 6–160,259: Aerial Refueling Boom Control Apparatus; filed June 17, 1980.

Patent application 4–207,520: Multiple Frequency Digital Eddy Current Inspection System; filed April 6, 1978, patented June 10, 1980. Not available NTIS.

U.S. Department of Agriculture, Program Agreements and Patent Branch, Administrative Service Division, Federal Building, Science and Education Administration, Hyattsville, Md. 20782

Patent application 6–150,550: Encapsulation by Entrapment; filed May 16, 1980.

Patent application 4–207,068: Process for Producing Chambray and Other Dyed Fabrics Through Phosphorylation; filed October 16, 1978, patented June 10, 1980. Not available NTIS.

U.S. Department of Energy, Assistant General Counsel for Patents, Washington, D.C. 20545

Patent application 6–005,264: Thermochemical Cycles for the Production of Hydrogen; filed January 22, 1979.

Patent application 6–005,942: Process for Purifying Geothermal Steam; filed January 24, 2979.

Patent application 6–033,088: Process for Treating Weldments; filed April 25, 1979.

Patent application 6–050,379: Thermochemical Cyclic System for Splitting Water and/or Carbon Dioxide by Means of Cerium Compounds and Reactions Useful Therein; filed June 20, 1979.

Patent application 6–068,359: Method for Storing Spent Nuclear Fuel in Repositories; filed August 21, 1979.

Patent application 6–070,548: Method for Storing Nuclear Fuel in Repositories; filed August 28, 1979.

Patent application 4–164,373: Spectrometer Employing Optical Fiber Time Delays for Frequency Resolution; filed January 12, 1978, patented August 14, 1979. Not available NTIS.

Patent application 4–179,608: Right/Left Assignment in Drift Chambers and Proportional Multiwire Chambers (PWC's) Using Induced Signals; filed May 10, 1978, patented December 18, 1979. Not available NTIS.

U.S. Department of Health and Human Services, National Institutes of Health, Chief, Patent Branch, Westwood Building, Bethesda, Md. 20205

Patent application 6–092,102: Polymer Alloy Blood Compatible Surface and Method of Making Same; filed November 7, 1979.

Patent application 6–094,814: Homocysteine Thiolactone Perchlorate and a Method of Making Same; filed November 16, 1979.

Patent application 6–100,496: N-Acetyl-Cysteine Protects Against Cardiac Damage from Subsequently-Administered Cardio-Toxic Anthracycline in Cancer Therapy; filed December 5, 1979.

Patent application 6–104,806: L-Acetyl Carnitine Infusion to Prevent Glucose and Fatty Acid Oxidation during Myocardial Ischemia, Anoxia, and Other Diseases; filed December 18, 1979.
Patent application 6–126,108 Absorbed Dose Water calorimeter; filed February 29, 1980.
Patent application 6–139,236: Hepatitis B Immune Globulin Used to Inactivate Hepatitis B Virus in Injectable Biological Products; filed April 11, 1980.
Patent application 6–141,764: Illuminated Surgical Instrument; filed April 21, 1980.
Patent application 6–144,043: Optical Sensor of Plasma Constituents; filed April 28, 1980.
Patent application 6–145,350: Irreversible Anti-Glucocorticoids; filed April 30, 1980.
Patent application 6–148,491: Apparatus and Method for Continuous Countercurrent Extraction and Particle Separation; filed May 9, 1980.
Patent application 6–165,690: A Short Total Synthesis of Dihydrothebainone, Dihydrocodeinone, and Nordihydrocodeinone; filed July 3, 1980.
Patent application 4–200,110: Fiber Optic pH Probe; filed November 28, 1977, patented April 29, 1980. Not available NTIS.
Patent application 4–200,689: Method of Cell Culture Using a Dual Circuit, Woven Artificial Capillary Bundle; filed August 29, 1978, patented April 29, 1980. Not available NTIS.
Patent application 4–203,971: Neisseria Gonorrhoeae Vaccine. Filed March 23, 1978, patented May 20, 1980. Not available NTIS.
Patent application 4–205,057: Cerebrospinal Fluid Protein Fragments; filed January 17, 1978, patented May 27, 1980. Not available NTIS.
Patent application 4–206,015: Method of Simulation of Lymphatic Drainage Utilizing a Dual Circuit, Woven Artificial Capillary Bundle: filed August 29, 1978, patented June 3, 1980. Not available NTIS.
Patent application 4–207,308: Process for Purifying Iodinated Bile Acid Conjugates; filed June 13, 1977, patented June 10, 1980. Not available NTIS.
Patent application 4–209,300: Hemoglobin-Oxygen Equilibrium Curve Analyzer; filed September 25, 1978, patented June 24, 1980. Not available NTIS.
Patent application 4–210,639: 5'-Deoxy-5'-(Isobutylthio)-3-Deazaadenosine, Method of Making Same and Its Antiviral Effect on Rous Sarcoma Virus and Gross Murine Leukemia Virus; filed August 29, 1978, patented July 1, 1980. Not available NTIS.

U.S. Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Code 302, Arlington, Va. 22217

Patent application 6–142,796: Bow Dock; filed April 22 1980.
Patent application 6–147,440: Self-Contained Backflush/Start System for Suction LFC Undersea Vehicle; filed May 7, 1980.
Patent application 4–187,676: Bi-Metallic Thermal Compensator for Mounting and a Solid Propellant Grain; filed March 13, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–187,760: Inflight, Stores, Forces and Moments Measuring Device; filed September 19, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–187,761: Variable Force Control System for Weapon Ejection Mechanisms; filed September 19, 1978, patented February 12, 1980. Not available NTIS.
Patent application 4–192,908: Mass-Transport Separator for Alkaline Nickel-Zinc Cells and Cell; filed June 15, 1979, patented March 11, 1980. Not available NTIS.
Patent application 4–193,952: Extrusion of Solid Propellant Including Ammonium Perchlorate Whiskers; filed May 4, 1972, patented March 18, 1980. Not available NTIS.
Patent application 4–196,895: Ring-Loaded Flexural Disc Spring; filed July 21, 1978, patented April 8, 1980. Not available NTIS.
Patent application 4–198,474: Seawater Battery; filed February 26, 1979, patented April 15, 1980. Not available NTIS.
Patent application 4–199,003: Flow Control System with Density Compensation; filed December 15, 1978, patented April 22, 1980. Not available NTIS.
Patent application 4–204,475: Arming-Safing System for Airborne Weapons; filed April 29, 1969, patented May 27, 1980. Not available NTIS.
Patent application 4–204,552: Dual Speed Fluid Control Apparatus; filed October 24, 1978, patented May 27, 1980. Not available NTIS.
Patent application 4–205,396: Automatic Difar Cardioid Former; filed March 25, 1975, patented May 27, 1980. Not available NTIS.
Patent application 4–206,510: Automatic Detection and Classification Device; filed June 27, 1955, patented June 3, 1980. Not available NTIS.
Patent application 4–212,084: Beam-Former for FFT-Based Signal Processor; filed November 20, 1978, patented July 8, 1980. Not available NTIS.

National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, NASA Code GP–2, Washington, D.C. 20546

Patent application 6–145,208: Heating and Cooling System; filed April 30, 1980.
Patent application 6–154,725: Hermetic Seal for a Shaft; filed May 30, 1980.
Patent application 6–154,726: Stark Effect Spectrophone for Continuous Absorption Spectra Monitoring; filed May 30, 1980.
Patent application 6–157,150: Diesel Engine Catalytic Combustor System; filed June 6, 1980.
Patent application 6–158,183: Frequency Tracked Pulse Technique for Ultrasonic Analysis; filed June 10, 1980.
Patent application 6–163,837: Cloud Cover Sensor; filed June 27, 1980.
Patent application 6–163,840: An Improved Head for High Speed Spinner Having a Vacuum Chuck; filed June 27, 1980.
Patent application 4–199,650. Modification of the Electrical and Optical Properties of Polymers; filed November 7, 1978, patented April 22, 1980. Not available NTIS.

[FR Doc. 80-33360 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-04-M

Office of the Secretary

[Dept. Organization Order 25–5B, Amdt. 1]

National Oceanic and Atmospheric Administration; Statement of Organization and Functions and Delegations of Authority

Effective Date: October 1, 1980.

This order effective October 1, 1980 amends the material appearing at 45 FR 64616 of September 30, 1980.

Department Organization Order 25–5B, dated August 18, 1980 is hereby amended as shown below. The purpose of this amendment is to (1) abolish the Office of Ocean Engineering (OOE) and to transfer its functions (except those functions relating to undersea research), and the NOAA Diving Program, to the Assistant Administrator for Oceanic and Atmospheric Services; and (2) transfer the Ocean Dumping Program from the Assistant Administrator for Oceanic and Atmospheric Services to the Assistant Administrator for Research and Development.

1. In *Section 10. Assistant Administrator for Research and Development:* a. The introductory paragraph is revised to read as follows:

"The *Assistant Administrator for Research and Development* shall administer an integrated program of research and technology development related to the oceans, the Great Lakes, the United States' coastal waters, the lower and upper atmosphere and the space environment, so as to increase understanding of the environment, human influences thereon, and thus, provide the scientific basis for improved services. The Assistant Administrator for Research shall serve as the principal advisor to the Administrator on all research and special research technology matters. To carry out these responsibilities the Assistant Administrator shall have and direct the following units."

b. In pen and ink, delete paragraph .03, and renumber paragraphs .04 and .05, as .03 and .04.

2. In *Section 11. Assistant Administrator for Oceanic and Atmospheric Services:* a. The introductory paragraph is revised to read as follows:

"The *Assistant Administrator for Oceanic and Atmospheric Services* shall administer programs which entail monitoring and predicting the state of the physical environment to provide a wide variety of meteorologic, hydrologic, climatologic, map and chart, geodetic, and oceanographic data and services to government, industry, the scientific and engineering communities, and the general public. In addition, the

Assistant Administrator shall administer programs dealing with NOAA diving safety activities and with ocean technology, engineering and development services to NOAA components. To carry out these responsibilities, the Assistant Administrator shall have and direct the following units."

b. Paragraph .01 line seven, in pen and ink after *Organization,* insert "Ocean Engineering and Technology Council," and in line fourteen after *surveys,* insert "ocean engineering and advanced technology development services,."

c. Paragraph .02 line six, in pen and ink delete *including those from ocean dumping;* and insert "manage the NOAA diver safety program; conduct studies relevant to the evaluation, certification and efficiency of diving procedures and equipment;."

d. A new paragraph .05 is added to read as follows:

".05 The *Ocean Technology and Engineering Services (OTES)* shall provide ocean engineering and development services to NOAA components and serve as the NOAA focal point for interaction with other Federal agencies and scientific and technical groups in ocean engineering and related technology. OTES shall have responsibility for: Planning and budget integration for NOAA ocean engineering activities; systems analysis to support scientific and technology program needs; advanced technology development to meet future program requirements; systems design and development to support NOAA services; metrology standards calibration, and procedures to assure data quality; data buoy and marine systems support to meet NOAA's operational needs for marine environmental data; support to selected national programs for other Federal agencies such as ocean energy development, when this is consistent with NOAA's objectives; and for the Ocean Engineering and Technology Council review of long-range plans to meet NOAA's ocean engineering requirements."

3. The organization chart, Exhibit 1, attached to this amendment, supersedes the organization chart dated August 18, 1980. A copy of the organization chart is filed with the original of this document in the Office of the Federal Register.

David Farber,

Deputy Assistant Secretary for Operations.

[FR Doc. 80-33363 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel Products From Taiwan

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the levels of restraint for cotton and man-made fiber textile products in Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) by the agreement year which began on January 1, 1980 by the application of swing and, where applicable, carryforward. Overshipment charges are being applied to Category 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000).

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), and August 12, 1980 (45 FR 53506).)

SUMMARY: The bilateral agreement of June 8, 1978, as amended, concerning cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, provides, among other things, for percentage increases in certain levels of restraint during an agreement year (swing) and for the borrowing of designated percentages of yardage from the succeeding year's levels with the amounts used deducted from the ceilings in the succeeding year (carryforward). In accordance with the terms of the agreement, the levels for Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) are being increased for the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: October 27, 1980.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 28, 1979, there was published in the Federal Register (44 FR 76839) a letter dated December 21, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1980 and extends through December 31, 1980. In accordance with the terms of the bilateral agreement, the letter published below from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton and man-made fiber textile products in Categories 340, 341, 333/334/335, 338/339, 638, 639, 645/646 and 659pt. (only T.S.U.S.A. numbers 703.0500 and 703.1000) in excess of the increased levels of restraint.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements,

October 22, 1980.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 21, 1979 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Cotton, Wool and Man-Made Fiber Textile Agreement of June 8, 1978, as amended, concerning textile products from Taiwan, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed further to amend, effective on October 27, 1980, the twelve-month levels of restraint established for Categories 333/334/335,338/339, 340, 341, 638, 639, 645/646 and 659pt. to the following:

Category	Amended 12-mo level of restraint[1]
333/334/335	106,652 dozen of which not more than 55,855 dozen shall be in Cat. 333/334 and not more than 66,795 dozen shall be in Cat. 335.
338/339	569,000 dozen.
340	656,737 dozen.
341	373,251 dozen.
638	1,575,556 dozen.
639	5,205,207 dozen.
645/646	3,947,021 dozen.
659pt.[2]	3,010,925 pounds.

[1] The levels of restraint have not been adjusted to account for any imports after December 31, 1979.
[2] In Category 659, only T.S.U.S.A. numbers 703.0500 and 703.1000.

The actions taken with respect to the authorities in Taiwan and with respect to imports of cotton and man-made fiber textile products from Taiwan have been determined

by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33410 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-25-M

Increasing Import Restraint Level for Certain Man-Made Fiber Apparel Product Imports From Mexico

October 22, 1980.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing to 281,020 dozen the import restraint level established for man-made fiber woven blouses in Category 641, exported from Mexico during the year which began on January 1, 1980 by the application of swing and carryover.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463) and August 12, 1980 (45 FR 53506).)

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico, provides, that specific ceilings may be increased by designated percentages (swing); and for the carryover of shortfalls in certain categories from the previous agreement year (carryover). Pursuant to the terms of the bilateral agreement, and at the request of the Government of Mexico, the import restraint level for Category 641 is being increased to 281,020 dozen during the agreement year which began on January 1, 1980 and extends through December 31, 1980.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377-5423).

SUPPLEMENTARY INFORMATION: On December 26, 1979, a letter dated December 18, 1979 was published in the **Federal Register** (44 FR 76383) from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established the levels of restraint applicable to certain specified categories of cotton and man-made fiber textile products, including Category 641, which have been produced or manufactured in Mexico and exported to the United States during the twelve-month period which began on January 1, 1980. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry for consumption, or withdrawal from warehouse for consumption, of man-made fiber textile products in Category 641 at the increased level of restraint of 281, 020 dozen during the agreement year which began on January 1, 1980.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

October 22, 1980.

Committee for the Implementation of Textile Agreements,
Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: On December 18, 1979, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning on January 1, 1980 and extending through December 31, 1980 of cotton, and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment. [1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972 as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on October 22, 1980, to increase the twelve-month level of restraint for Category 641 to 281,020 dozen. [2]

The action taken with respect to the Government of Mexico and with respect to imports of man-made fiber textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33409 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

[1] The terms "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended between the Governments of the United States and Mexico which provide, in part, that: (1) specific limits or specific sublimits may be exceeded by not more than seven percent in any agreement period; (2) these same limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1979.

Soliciting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China To Include a Review of Trade in Categories 445 and 446 (Wool Sweaters)

October 22, 1980.

Pursuant to the bilateral textile agreement of September 17, 1980 between the Governments of the United States and the People's Republic of China, the United States has requested, and anticipates holding, consultations in the near future with the Government of the People's Republic of China.

Any party wishing to comment or provide data or information regarding the treatment of Categories 445 and 446 (wool sweaters) under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textiles and apparel affected by the agreement, is invited to submit such comments or information in ten copies to Mr. Paul O'Day, Chairman, Committee for the Implementation of Textile Agreements and Deputy Assistant Secretary of Commerce for Textiles, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultatons is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 2808, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, and may be obtained upon written request. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreements or the implementation thereof is not a waiver in any respect of the exemption

contained in 5 U.S.C. 553(a)(1) and 554(a)(4) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 80-33408 Filed 10-24-80; 8:45 am]

BILLING CODE 3510-25-M

COMMODITY FUTURES TRADING COMMISSION

Publication of and Request for Comment on Proposed Rules Having Major Economic Significance; Amendments to the GNMA-CD Futures Contract of the Chicago Board of Trade; Correction

In FR Doc. 80-31125 appearing on page 66493 in the issue of Tuesday, October 7, 1980, make the following correction: In the second column, second paragraph, thirteenth line, delete the word "or".

Issued in Washington, D.C., on October 21, 1980.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 80-33443 Filed 10-24-80; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[Petition CP 80-2]

Portable Kerosene Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Denial of petition.

SUMMARY: A petition to prohibit the sale of portable kerosene heaters because of their potential fire hazard is denied by the Commission since there is not sufficient information to show that a ban is needed at this time to address the low frequency of fire incidents from these heaters. Available information shows that a more stringent voluntary standard now under development may be adequate to address any fire hazard that may be associated with portable kerosene heaters where such heaters may be permitted in residences by local laws.

FOR FURTHER INFORMATION CONTACT: Elaine A. Tyrrell, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453.

SUPPLEMENTARY INFORMATION: Under section 10 of the Consumer Product Safety Act (15 U.S.C. 2059), any interested person may petition the Commission to begin a proceeding to issue, amend or revoke a consumer product safety rule (standard or ban). Section 10 also provides that if the petition is denied the Commission must publish its reasons for denial in the Federal Register.

Background

On October 1, 1979, the Commission was petitioned by John P. Caufield, the Director of the Fire Department of Newark, New Jersey, to declare that portable kerosene heaters are banned hazardous products because of the fire hazards they present. Mr. Caufield's petition, CP 80-2, describes nine fire-related deaths attributed to portable kerosene heaters that occurred in Newark during 1961-62. He notes that large numbers of these heaters have recently appeared in retail stores, possibly because of rising energy costs. He also states that these heaters are being advertised as suitable sources of heat, despite the fact that the City of Newark prohibits their use in residences. The petitioner believes that many of these heaters are not approved by nationally-recognized testing laboratories and are not safe.

The Commission considered the matter of liquid-fueled space heaters several years ago. Based on information available at that time, the Commission concluded that only gas-fired space heaters appeared to present an unreasonable risk of injury to the public (40 FR 41172, Sept. 5, 1975).

In evaluating the information included in this petition, the Commission reviewed economic, engineering and injury information concerning portable kerosene heaters, state/local regulation of these products, and technical analyses of the current proposed voluntary industry standard of Underwriters Laboratories (UL), "Proposed First Edition of the Standard for Unvented Kerosene-Fired Heaters and Portable Heaters, UL 647."

Description of the Product

A portable kerosene heater generally consists of a cabinet enclosing a burner, a fire chamber, and a fuel storage container. The burner serves as a means of transport for fuel; combustion takes place in the fire chamber. From reviewing available information and from observation of a limited sample of representative portable kerosene heaters under laboratory conditions, Commission engineers identified the following potential flammability hazards associated with these products: (1) contact burns—because the cabinet generally houses the fire chamber, surface temperatures of the heater are high; (2) fuel fires—these can occur when a heater is tipped over since kerosene is a combustible liquid. The potential for tipover is present because most portable kerosene heaters are small, light in weight, and are generally placed on the floor where people can walk into them and knock them over.

Commission engineers believe that certain design features now available could lead to safer products. For example, some heaters now on the market are not easy to tip over. Some heaters include a device that extinguishes the flame if the heater is knocked over; little fuel is spilled should tipover occur. Other heaters provide for battery-operated ignition rather than ignition by match. However, not all heaters currently being marketed in this country have such features.

The Commission staff reports that in Japan and parts of Europe and Asia, the portable kerosene heater is the primary source of heat for a majority of homes. However, in the U.S., with the possible exception of mild-climate sections of the south, portable kerosene heaters are generally used only as a supplemental heat source. Approximately 2 to 2.5 million portable kerosene heaters for consumer use may exist in the U.S. today; approximately 600,000 are sold annually, the majority of which are imported from Japan and England. Portable kerosene heaters are generally used in nonliving areas such as workshops and garages, in living areas to supplement central heat, or occasionally for emergency backup heat. In addition, an undetermined number of portable kerosene heaters are used for commercial and industrial purposes, primarily in the construction trades. Approximate retail prices of portable kerosene heaters used in and around the home range from $30 to $220; most models cost between $50 and $150. Commission staff projects that as energy prices increase, the use of portable kerosene heaters for supplemental heat could also increase. Therefore, manufacturers of portable kerosene heaters consider that the U.S. market for these heaters is an expanding one and some manufacturers have increased advertising of their heaters.

Evaluation of Petition

Commission statisticians report that U.S. Fire Administration data from 15 states show 92 fires, 21 injuries and 7 deaths during 1978 from portable heaters using kerosene and other liquid fuels. An estimated 500 injuries associated with kerosene/oil burning devices are treated annually in hospital emergency rooms (this figure includes both fixed and portable heaters as well as

kerosene grills). Approximately 52% of these injuries are thermal burns; the hospitalization rate for these injuries was 13% during 1976–79 compared to a hospitalization rate of 3 to 4% for injuries associated with all consumer products.

The exact circumstances surrounding fire-related incidents associated with kerosene/oil heaters are often difficult to reconstruct because of the destructive nature of these incidents. However, the major causative factors—identified from Commission data sources including in-depth investigations, newspaper clippings, consumer complaints and U.S. Fire Administration data—include mechanical failure, overturning, explosion, placing combustible materials too close to the heater, and accidents related to refueling.

Based on currently available information, Commission staff indicate that the number of portable kerosene heaters in use is relatively small; for example, they estimate that there are at least 10 times more electric heaters than kerosene heaters in use. The incidence of fires and injuries associated with kerosene heaters compared with other kinds of heaters also appears to be relatively small. However the data tend to show that the relative risk of fire from kerosene heaters is higher than for other heaters and, given a fire, the risk of death or injury is higher for portable kerosene heaters than for other heaters.

To help determine whether portable kerosene heaters are thought to present a hazard in areas of the south where their use in residences may not be prohibited by local ordinances, CPSC staff conducted an informal survey of 25 fire service officials in southern communities of various sizes. Most of the fire chiefs could not recall a single fire from these heaters within recent memory. The officials reported infrequent use of portable kerosene heaters apparently as a matter of consumer preference for other kinds of heating, although the fire chiefs generally perceived portable kerosene heaters as presenting potential hazards. In summary, the survey suggests that portable kerosene heaters do not appear to be a frequent source of fires in southern communities.

In addition to the survey of fire service officials in the south, Commission staff also contacted appropriate authorities throughout the country concerning state and local regulation of portable kerosene heaters. Of the 352 state and local jurisdictions contacted, 107 jurisdictions, primarily in the north central, northeastern and southeastern sections of the country, reported some form of regulation of liquid-fueled portable heaters. These regulations range from requiring installation only of heaters that bear an approval certification by a nationally recognized testing laboratory to bans against the installation of portable kerosene heaters. All except two jurisdictions reported enforcement of their regulations, although information regarding the level of enforcement was not available.

Underwriters Laboratories (UL) is the major facility for testing portable kerosene heaters in the U.S. A UL proposed voluntary standard that is currently in use by manufacturers and importers was issued in 1958. A new proposed standard is currently being written to apply to portable kerosene heaters up to 20,000 BTU per hour capacity. The standard is to provide stringent endurance tests for any shutoff device that may be part of a heater and will also provide for an increased number of tipover tests. Also to be included are provisions concerning maximum surface temperatures and cautionary labeling requirements.

Commission technical staff have analyzed the newly-developed provisions of the UL standard and believe the new voluntary standard will be a significant improvement over the earlier 1958 edition. Based on CPSC laboratory tests of three wick-type portable kerosene heaters and a review of foreign standards, Commission engineers have forwarded several additional suggested changes to UL technical personnel which Commission staff believe would further improve the UL voluntary standard. These suggested changes deal with flame extinction on tipover, fuel leakage on tipover and protection from hot surfaces. The CPSC technical staff suggestions are being considered by UL; should these changes be incorporated into the UL standard, they could exert a positive influence favoring voluntary action in any continuing Commission consideration of portable kerosene heaters.

Conclusion

Information on fire hazards associated with portable kerosene heaters indicates a relatively low incidence of injuries at this time. The extent of consumer use of portable kerosene heaters whether due to lack of interest, state/local regulations concerning residential use, or otherwise, also appears at this time to be relatively low. In addition, the Commission expects that the new UL voluntary standard will have substantially more stringent requirements to address fire hazards of portable kerosene heaters. Therefore, from the information now available, four of the five members of the Commission conclude that it is not reasonably necessary at this time to address, by mandatory regulation, any risks of injury from fire hazards that may be associated with portable kerosene heaters. A dissenting opinion by Commissioner Edith Barksdale Sloan, dated July 30, 1980 is part of the public record of the Commission's deliberations in this matter; it may be seen in or obtained from the Office of the Secretary of the Commission, Washington, D.C. 20207, (202) 634–7700.

Accordingly, petition CP 80–2, requesting the Commission to ban portable kerosene heaters is denied. Should the factors discussed above on which the Commission based this conclusion indicate that the fire hazard potential of this product has increased, the Commission would consider what further steps may be necessary.

Dated: October 20, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 80-33424 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

[CPSC Docket No. 80–8]

State Fair of Texas, et al.; Publication of Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaint in the matter of State Fair of Texas; Steck and Stapf Attractions, Inc.; Wayne Gallagher, and individual and officer of State Fair of Texas; and Charles Noland, and individual and officer of Steck and Stapf Attractions Inc.

Dated: October 16, 1980.

Sadye E. Dunn,

Secretary, consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC Docket No. 80–8]

In the Matter of *State Fair of Texas,* a corporation, *Steck and Stapf Attractions, Inc.,* a corporation, *Wayne Gallagher,* an individual and officer of State Fair of Texas, and *Charles Noland,* an individual and officer of Steck and Stapf Attractions, Inc.

Complaint

Jurisdiction

1. This proceeding is instituted pursuant to the authority contained in sections 15 (b), (d), (e), and (f), 19 and 20 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064 (b), (d), (e), and (f); 2068 and 2069.

Parties

2. Respondent State Fair of Texas (State Fair) is a non-profit corporation organized under the laws of the State of Texas with its principal place of business at State Fair Grounds, Post Office Box 26010, Dallas, Texas. Respondent State Fair of Texas is the owner of an aerial tramway known as a "Swiss Skyride" (herein referred to as Skyride) located on the respondent's preises, the fair grounds of the State Fair of Texas.

3. Respondent Steck and Stapf Attractions, Inc. (Steck and Stapf) is a corporation organized and existing under the laws of the State of Texas with its principal corporate offices at 1810 Hinton Street, Dallas, Texas 75226. Steck and Stapf Attractions, Inc. have operated and maintained the "Swiss Skyride" since 1972.

4. Respondent Charles Noland is President of Steck and Stapf Attractions, Inc., Fair Park, Dallas, Texas 75226 and as such is responsible for its acts, operations, and policies.

5. Respondent Wayne Gallagher is Executive Vice President and General Manager of State Fair of Texas, Fair Park, Dallas, Texas and, as such, is responsible for its acts, operations, and policies.

The Consumer Product

6. "Swiss Skyride" is an amusement park ride, specifically an aerial tramway that consists of substantial permanent structure on which passengers are given rides in gondola cars along a cable route suspended in the air. The tramway is approximately 1 mile long.

7. The Skyride was partially manufactured by von Roll Ltd., Berne, Switzerland. It was imported into the United States and erected on the grounds of the State Fair of Texas prior to October 1, 1964 by Rogers and Gulledge, Inc., a corporation organized and existing under the laws of the State of Texas with its principal corporate office at 212 East Mimosa Circle, San Marcos, Texas, 78666. The State Fair of Texas purchased the Swiss Skyride in December 1971 from Rogers and Gulledge, Inc. and since this purchase the Skyride has been operated and maintained for the State Fair by Steck and Stapf Attractions, Inc.

8. The Skyride is a ride which was produced and distributed for the personal use, consumption, or enjoyment of consumers in recreation or otherwise and is a consumer product within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1)

9. The Skyride was open to public ridership during two periods each year—on weekends April 1 through September 1 and during the State Fair in October. Since the date of the accident October 21, 1979, the ride has not reopened. The ride was distributed in commerce within the meaning of sections 3(a)(11) and (12) of the CPSA, 15 U.S.C. 2052(a)(11) and (12), and sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d).

10. State Fair of Texas has manufactured, produced or assembled the Skyride and is thereby a manufacturer within the meaning of section 3(a)(4) of the CPSA, 15 U.S.C. 2052(a)(4). In the alternative State Fair of Texas as owner of the Skyride has contracted with Steck and Stapf to open and operate the Skyride for the public's recreational use. State Fair is thereby a distributor within the meaning of section 3(a)(5) of the CPSA, 15 U.S.C. 2052(a)(5).

11. Steck and Stapf Attractions, Inc. sells tickets to the public to ride on the Skyride for their enjoyment in recreation and operates the ride. Steck and Stapf is thereby a retailer within the meaning of section 3(a)(6) of the CPSA, 15 U.S.C. 2052(a)(6).

12. The Skyride consists of machine drive systems, cable support towers, and other equipment manufactured and sold by von Roll, Ltd., a Swiss manufacturer, under the name of "von Roll Sky Way," as well as passenger gondolas, terminal stations, foundations and other ancillary structures which have been procured or constructed by the State Fair of Texas.

13. The ride has eight towers supporting a haul rope cable that runs between two stations. Passengers may be loaded and unloaded onto the gondolas (cars) at either station.

14. The gondolas are attached to a single wirerope cable (hereinafter referred to as a cable) by a cable grip or cable coupling assembly. Roller batteries support the cable atop each tower and the roller batteries, by pivoting a few degrees, allow the cable grip to pass over the tower.

15. The ride has two electrical circuits: a high voltage circuit which runs the Skyride's main drive system and a lower voltage circuit which operates the various safety switches. The ride has a variety of such safety switches that are designed to shut down the ride instantly. There are safety switches at each station that determine whether the cable grip of each gondola is properly clamped to the cable. In addition, there are upper and lower limit switches on the counterweight that should shut down the ride in the event of changes in cable tension. There are also derailment switches on each roller battery that are designed to shut down the ride in the event the cable comes off the roller battery sheaves. Manual emergency shutdown switches are located at each station. In the event of an opening of the safety circuit, the ride is designed to shut down immediately.

Count I

The Substantial Product Hazard

16. Paragraphs 1–15 are realleged.

17. On October 21, 1979 a fatal accident occurred at the State Fair of Texas, Fair Park, Dallas, Texas when two gondolas on the Swiss Skyride fell to the ground. Besides the one death, there was also one person paralyzed, two persons incapacitated for over a month and, in all, eighteen persons injured as a result of this incident.

18. At the time of the accident, winds in the vicinity of the State Fair were blowing in excess of 21 mph with gusting in excess of 31 mph. Witness reports indicated that the gondolas were swaying from west to east (the Skyride runs north to south) and in some cases hitting the ride's towers. The side-to-side swaying of a gondola caused a dislocation of the cable out of the sheaves on the roller battery of the fourth tower.

19. While the cable remained suspended on the roler battery, a gondola became hung up on the roller battery. As the cable continued to pass through the gondola's cable grip, the other gondolas were pulled into the fourth tower's roller battery where they piled into one another. When the fourth gondola struck the three stationary gondolas at the tower, the cable came off the roller battery entirely and became free of the tower. This caused two gondolas (the second and third in the pileup) to come off the cable and plummet to the ground.

20. Although the Skyride was equipped with a derailment switch on the roller battery, emergency stop buttons in the stations, and counterweight limit switches, none of these functioned during the accident sequence. The Skyride continued to operate for approximately one minute after the gondolas fell, and the ride had to be shut down at the main engine.

21. Prior to or during the accident sequence a break occurred in the electrical wiring to the roller battery derailment switch and the wiring between the secondary safety circuit in one or both of the stations. A break in the wiring is supposed to open the circuit and shut down the ride. The tripping of the derailment or counterweight switches, or the emergency switch should have shut down the ride. It appears, however, that the safety circuit had been bypassed at some time prior to the accident.

22. There was no functioning electrical safety system and this lack of a functioning electrical safety system constitutes a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

23. The ride was not equipped with a device to measure the wind velocity. Such a device would inform the operator of the ride that it would be unsafe to continue operation and necessary to shut the ride down. This lack of a wind detection device is a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

24. The ride was not equipped with cable catchers to retain the cable on the roller batery. Cable catchers are recommended by the manufacturer as an integral safety device. This lack of cable catchers is a defect in the ride within the meaning of section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2).

25. The defects in the ride arise from the ride's design and/or operation.

26. The defects have and will manifest themselves during normal use of the ride by consumers.

27. The Skyride contains defects which because of the pattern of defects, the seriousness of the injury that can occur, and the population exposed to the risk of injury create a substantial risk of injury within the meaning of section 15(a)(2) and (d) of the CPSA, 15 U.S.C. 2064(a)(2), and (d).

28. The Skyride creates a "substantial product hazard" to the public within the meaning of sections 15(a)(2), and (d) of the CPSA, 15 U.S.C. 2064(a)(2), and (d).

Count II

The Failure To Inform the Commission

29. Paragraphs 1–28 are hereby realleged.

30. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires every manufacturer, distributor or retailer of a consumer product distributed in commerce to immediately notify the Commission upon receipt of information which reasonably supports the conclusion that such product contains a defect(s) which could create a substantial product hazard, unless such party has actual knowledge that the Commission is adequately informed.

31. Violations of the requirements of section 15(b) of the CPSA are prohibited acts under sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4).

32. After the October 21, 1979 accident on the Skyride, respondents refused to permit Commission investigators complete access to the ride and to provide information concerning the ride, its operation and the accident.

33. Respondents knowingly failed to immediately and adequately inform the Commission upon having obtained information which reasonably supported the conclusion that the Skyride contained a defect or defects which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). This information includes the fact that the Skyride had no functioning electrical safety system, no device to measure wind velocity, and insufficient cable catchers.

Relief Sought

Wherefore in the public interest the staff of the Consumer Product Safety Commission requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that the Skyride is a consumer product within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1) as produced "for the personal use . . . or enjoyment" of consumers "in recreation".

2. Determine that the product is distributed in commerce within the meaning of section 3(a) (11) and (12) of the CPSA, 15 U.S.C. 2052(a) (11) and (12) when the riders occupy Skyride cars and are exposed to whatever dangers they may present.

3. Determine that the Skyride presents a "substantial product hazard" and that an action under section 15(d) of the CPSA, 15 U.S.C. 2064(d), be determined to be in the public interest.

4. Order respondents to:

(a) repair the Skyride to eliminate the defects in a manner satisfactory to the Commission;

(b) after the ride has been repaired, conduct tests on it acceptable to the Commission that are designed to show that the hazard has been eliminated.

(c) provide proof, acceptable to the Commission, of the safe operation of the ride after it has been repaired.

5. Prohibit respondents from distributing the ride until they have complied with the provisions of paragraph 4(a) through (c) above.

6. Order respondents to:

(a) keep records of any and all repairs and modifications of the rides and any and all tests of the ride;

(b) provide all of the records in paragraph (a) above and/or extracts of information from them to the Commission on request;

(c) file reports with the Commission containing information that may be requested by the staff to determine compliance with any order issued in this proceeding at thirty (30) day intervals until the actions required in paragraph 4 above is completed and the Commission agrees that reports are no longer necessary;

(d) permit inspections at respondents' ride and other places of business to verify data in reports submitted and ascertain compliance with any order issued in this proceeding.

7. Order the respondents to notify the Commission at least thirty (30) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or declaration of bankruptcy) that results in the emergence of a successor corporation, the creation or dissolution of subsidiaries, the dissolution of the corporation, or any other change that might affect compliance obligations under any Commission order.

8. Assess an appropriate civil penalty pursuant to section 20 of the CPSA against State Fair and Steck & Stapf for knowingly violating sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4).

9. Grant such other and further relief as the Commission deems necessary to protect the public health and safety and to implement the Consumer Product Safety Act.

Dated: August 28, 1980.

David Schmeltzer,

Associate Executive Director for Compliance & Enforcement.

[FR Doc. 80-33422 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

CONSUMER PRODUCT SAFETY ACT

[CPSC Docket No. 80-7]

Marriott Corp.; Publication of Complaint

AGENCY: Consumer Product Safety Act.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceedings (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues under the Consumer Product Safety Act. Printed below is a Complaint in the matter of the Marriott Corporation.

Dated: October 16, 1980.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission

[CPSC Docket No. 80-7]

In the Matter of Marriott Corporation, a corporation.

Complaint

Jurisdiction

1. This is an adjudicative proceeding governed by 16 CFR Part 1025 (Rules of Practice for Adjudicative Proceedings) to assess a civil penalty against Marriott Corporation and is instituted pursuant to the authority contained in sections 15(b), 19 and 20 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), 2068 and 2069.

Parties

2. Respondent Marriott Corporation is a corporation organized and existing under the laws of the State of Delaware with its principal corporate offices at Marriott Drive, Bethesda, Maryland (mailing address Washington, D.C. 20058). Respondent owns and operates amusement rides.

3. Through its wholly owned division or subsidiary J.J.G. Construction Company, respondent Marriott Manufactured, i.e., produced or assembled within the meaning of sections 3(a)(4) and (8) of the CPSA, 15 U.S.C. 2052(a)(4) and (8), a roller coaster amusement ride known as the "Willard's Whizzer," manufactured under the name "Speedracer."

4. Between 1976 and March 29, 1980, respondent Marriott "distributed" the rides in commerce as that term is defined in section 3(a)(11), 15 U.S.C. 2052(a)(11).

5. Respondent Marriott is a manufacturer and retailer of the rides within the meaning of sections 3(a)(4) and (8) of the CPSA, 15 U.S.C. 2052(a)(4) and (8).

6. Whenever this Complaint refers to any act of the respondent, the reference shall be deemed to mean that the act was authorized by respondent or by directors, officers, employees or agents of respondent and that at the time of the authorization these persons were actively engaged in the management, direction, control, or central management, direction, or control of the affairs of respondent and were acting within the scope of their employment.

The Consumer Product

7. The "Willard's Whizzer," is an amusement park ride, specifically a steel roller coaster powered by electricity.

8. Respondent owns and operates two Willard's Whizzer rides of the same design and construction, one at each of its "Great America" theme parks in Santa Clara, California and Gurnee, Illinois.

9. The Willard's Whizzer has a metal track on which up to five "trains" of four "cars" each can run at one time. Each car has three seats and can carry six persons. Each train weighs approximately 9,200 pounds empty and up to approximately 12,000 pounds when loaded. The trains reach speeds of up to approximately 42 mph.

10. Between 1976 and March 29, 1980 the rides were equipped with three brakes in the station area: the first or "trim brake" consisting of four sets of caliper brakes which is intended to slow incoming trains from about 20 to 28 mph to about 2.0 mph (1 meter per second); the second or "station brake" consisting of one set of caliper brakes which is intended to stop or slow trains coming out of the trim brakes too quickly; and the third or "transfer brake" which is a manually applied brake intended to stop a slow moving train and prevent it from traveling into the loading platform area.

11. Until March 29, 1980, the station brake was manually activated by an operator unless a train were located in the area just ahead of the station brake in which case it engaged automatically.

12. The Willard's Whizzer rides were produced and distributed for the personal use, consumption, or enjoyment of consumers in recreation or otherwise and are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

13. The rides were distributed in commerce, within the meaning of sections 3(a) (11) and (12), and sections 15 (c) and (d) of the CPSA, 15 U.S.C. 2064 (c) and (d).

Reportable Information

14. Section 15(b) requires every manufacturer, distributor, or retailer of a consumer product distributed in commerce to immediately inform the Commission on obtaining information that such product contains a defect which could create a substantial product hazard unless it has actual knowledge that the Commission is adequately informed of such defect.

15. On July 24, 1976, thirteen persons were injured during an accident on respondent's Willard's Whizzer ride in Gurnee, Illinois, and required medical attention. The accident occurred when one train was detained in the brake on the approach to the station area, and a second train collided into it.

16. On August 18, 1976, eighteen persons were injured on respondent's Willard's Whizzer ride in Gurnee, Illinois, when a train rolled back to the station area and collided with another train.

17. On information and belief, respondent knew of other incidents occurring between 1976 and 1979, on the Willard's Whizzer ride in Gurnee, Illinois, involving collision in the station area, and/or brake failures, and/or injuries to guests on the ride.

18. Between 1976 and 1979, respondent knew of at least 11 incidents on the Willard's Whizzer ride in Santa Clara, California, involving collisions in the station area, and/or brake failures, and/or injuries to guests on the ride.

19. On March 29, 1980, a thirteen-year-old boy was killed on respondent's ride in Santa Clara, California, when a train collided with the train he was boarding. He fell onto the track and was crushed under the on-coming train. Eight other persons were injured in that accident.

20. In 1976, respondent had actual knowledge of its obligation to report to the Commission pursuant to section 15(b) of the CPSA.

21. On July 24, 1976, and in any event no later than September 1979, respondent had obtained information that collisions occurred between the trains of its Willard's Whizzer ride in the station area, and/or that the ride's brakes failed, and/or that the ride's brakes were not sufficient to prevent collisions.

22. On July 24, 1976, and in any event no later than September, 1979, respondent had obtained information which reasonably supported the conclusion that the Willard's Whizzer ride contained a defect or defects which could create a substantial product hazard or hazards, within the meaning of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

23. Respondent failed to immediately report this information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

24. Respondent knowingly committed a prohibited act or acts under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4) by failing to immediately inform the Commission that its Willard's Whizzer ride contained a defect or defects which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

Relief Sought

The staff of the Consumer Product Safety Commission believes that the following relief is in the public interest and requests that the Commission, after affording interested persons an opportunity for a hearing:

1. Determine that the respondent knew or reasonably should have known that its Willard's Whizzer rides contained a defect or defects which could create a substantial product hazard.

2. Determine that the respondent failed to immediately report the existence of a defect which could create a substantial product hazard, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), which failure is a prohibited act under section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

3. Assess an appropriate civil penalty pursuant to section 20(a) of the CPSA, 15 U.S.C. 2069(a), for knowingly violating sections 19(a)(3) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(3) and 2068(a)(4), by failing to inform the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

4. Grant such other and further relief as the Commission deems necessary and proper to protect the public health and safety and to implement the Consumer Product Safety Act.

Dated: August 28, 1980.

David Schmeltzer,

Associate Executive Director for Compliance and Enforcement Consumer Product Safety Commission.

[FR Doc. 80-33425 Filed 10-24-80; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF THE DEFENSE

Corps of Enginers, Department of the Army

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) Considering Potential Solutions to the Flooding Problems in the Island Creek Basin, Logan County, W. Va.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The alternatives to be considered and presented in a draft feasibility report (Survey Report) and DEIS are formulated to alleviate the flood problems and other water resource related problems in the Island Creek Basin of Logan County, West Virginia.

2. The alternatives presently being considered as a part of the Island Creek study are:

a. No action—Do nothing to alleviate the water resource problems in the basin.

b. Channel Plan 1—Sixteen stream miles would be modified. Concrete channels totaling 6.6 miles would be needed in congested areas. The channel widths are the minimum necessary to achieve some degree of flood reduction without major relocations of structures. Relocation of 38 families, 11 commercial establishments, and 1 institutional structure would be required; as well as replacement or modification of 20 bridges. A redevelopment site would be considered for those who would be relocated.

c. Channel Plan 2—This plan is similar to the previous plan, although some channel reaches have been increased in width to improve flow characteristics. Concrete channel length would be increased to 6.9 miles. The plan would require relocation of 87 families, 19 commercial establishments, and 2 institutional structures; as well as replacement or modification of 25 bridges. Provision of a redevelopment site would be considered.

d. Channel Plan 3—This is the largest channel plan in width. The concrete channel length would be increased to 8⅓ miles. Replacement or modification of 26 bridges would be required. 123 families, 24 commercial establishments, and 2 institutional structures would be relocated. Provision of a redevelopment site would be considered.

e. Channel Plan 1A—This plan generally follows the alignment of the

above alternatives. However, concrete channel was eliminated or replaced by concrete retaining walls. A total of 1¼ miles of roads would require relocation. Twenty-five bridges would be replaced and 13 would be removed. The plan would require relocation of 148 homes, 28 commercial establishments, and one other structure. Provision of a redevelopment site will be considered.

f. Channel Plan 1B—This plan is the same as Plan 1A with nonstructural components integrated into it to provide 100-year flood protection. An additional 431 homes in the floodway would be acquired, and those in the fringe area (807) would be raised. Nonresidental structures would be acquired, and a redevelopment site would be provided.

g. Nonstructural Plan—The only effective nonstructural technique to reduce or eliminate flood damages is to remove or raise the affected structures. Approximately 554 homes in the fringe area of the 100-year floodplain would be raised in place, and 1084 homes within the floodway would be removed. All nonresidential structures would be removed from the 100-year floodplain. Redevelopment sites would be provided for those homes and businesses which would be removed from the floodway.

3. Public meetings, workshops, widely distributed public announcements, and close cooperation with local agencies and persons, and State and Federal agencies were and will continue to be significant to the scoping process. The most recent public involvement includes a public workshop on 24 January 1980 and a public meeting scheduled for 6 November 1980. Following the development of the draft report and DEIS and distribution for public review, a final public meeting will be scheduled for mid-1982 to review the evaluation of the alternatives and the tentative selected plan. Additional public involvement activities will be held as the need develops during the study.

a. In addition to the Corps of Engineers other agencies known to have an active interest in the studies are the U.S. Fish and Wildlife Service, the West Virginia Department of Natural Resources, the Office of Surface Mining Reclamation and Enforcement, and the U.S. Environmental Protection Agency. Other affected Federal, State, and local agencies and other interested private organizations and parties are invited to provide suggestions, reviews, and comments during the study process.

b. Issues to be considered in the DEIS include: (1) environmental impacts upon the aquatic and terrestrial quality; (2) socio-economic impacts upon community cohesion and growth, recreation, transportation, housing, aesthetics, and noise; and (3) regional development impacts upon property values, tax revenues, facilities and services, and land use.

c. In addition to information obtained from other agencies, the U.S. Fish and Wildlife Service is preparing Planning Aid Reports which provide evaluations and recommendations to preserve, mitigate, and/or enhance natural resources.

d. In addition to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 (NEPA), the following environmental review and consultation requirements are applicable: (1) Clean Water Act; (2) Endangered Species Act of 1973; (3) Federal Water Projects Recreation Action Act; (4) Fish and Wildlife Coordination Act; (5) Historic Sites Act of 1935; (6) National Historic Preservation Act of 1966; (7) Preservation of Historic and Archaeological Data Act of 1974; (8) River and Harbor Act of 1899; (9) Executive Order 11514, Protection and Enhancement of Environmental quality; (10) Executive Order 11593, Protection and Enchancement of the Cultural Environment; and (11) Advisory Council on Historic Preservation regulations on protection of historic and cultural properties.

4. The scoping process, which invites public and agency contributions, is to be discussed at a public meeting on 6 November 1980 at Logan High School, Logan, West Virginia. A public workshop will be held in 1981 as alternative plans and impacts become more clearly defined.

5. The DEIS is scheduled for distribution to the public in the latter part of 1982.

ADDRESS: Questions about the potential actions and DEIS can be answered by: Raymond Gesling, Study Manager, Huntington District, Corps of Engineers, Huntington, WV 25721, 304–529–5639.

Dated: October 22, 1980.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 80-33405 Filed 10-24-80; 8:45 am]

BILLING CODE 3710-GM-M

DEPARTMENT OF EDUCATION

Community Education Advisory Council; Meeting

AGENCY: Department of Education, Community Education Advisory Council.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: November 12, and 13, 1980.

ADDRESS: The Executive Inn, 978 Phillips Lane, Louisville, Kentucky 40213.

FOR FURTHER INFORMATION CONTACT: Margaret Beavan, Department of Education, Community Education Program, 7th and D Streets, SW., Regional Office Building Three, Room 5622, Washington, D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Public Law 95–561. The Council is established to advise on policy matters relating to the interest of community schools.

All sessions of this meeting are open to the public. The meeting will begin at 9:00 a.m. on Wednesday, November 12, 1980, and end at 4:30 p.m. On Thursday, November 13, 1980, the meeting will begin at 9:00 a.m. and end at 3:00 p.m.

At the last meeting held in San Diego, California on July 28, and 29, 1980, the Council reviewed the concept paper on the School-Community-Home National Forum; discussed and approved its revised management plan; and examined the inter-intra agency and state advisory council on-going inititatives.

Proposed agenda items for this meeting include:

(1) Update on the Council's interagency and state advisory council initiatives;

(2) Report on the national evaluation;

(3) Review and discussion of the assessment process;

(4) Examination of future Council roles, functions, and projects; and

(5) Discussion of other administrative matters and related business.

Records shall be kept of all Council proceedings and shall be available for public inspection in Regional Office Building Three, Room 5622, 7th and D Streets SW., Washington, D.C. 20202.

Signed at Washington, D.C. on October 20, 1980.

Ron Castaldi,

Acting Director, Community Education Program.

[FR Doc. 80-33288 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the meeting of the Intergovernmental Advisory Council on Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: November 12, 1980 from 1:00 p.m. to 5:00 p.m. and November 13, 1980 from 8:00 a.m. to 12:00 noon.

ADDRESS: Auraria College, 301 Central Classroom Building, 3rd Floor, (Metro-Administration Building), Arapahoe Walk and Auraria Mall, 1006—11th Street, Denver, Colorado 80204.

FOR FURTHER INFORMATION CONTACT: Donna Rhodes, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202 (202) 245–7904.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act. The Council advises the Secretary of the Department of Education and the President concerning intergovernmental policies relating to education.

The meeting of the Council is open to the public. The proposed agenda includes reports from the following subcommittees:

1. Search for Executive Director.
2. Council Priorities and Work Agenda.
3. Administration, Rules, and Budget.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Deputy Under Secretary for Intergovernmental Affairs between the hours of 8:30 a.m. and 3:00 p.m. at the Department of Education, 400 Maryland Avenue, SW, Washington, D.C. 20202.

Signed at Washington, D.C. on October 20, 1980.

Michael J. Bakalis,

Deputy Under Secretary for Intergovernmental Affairs.

[FR Doc. 80-33329 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

Intergovernmental Advisory Council on Education; Search Subcommittee, Council Priorities and Work Agenda Subcommittee, and Administrative, Rule, and Budget Subcommittee; Meeting

AGENCY: Intergovernmental Advisory Council on Education.

ACTION: Notice of Search Subcommittee, Council Priorities and Work Agenda Subcommittee, and Administration, Rules, and Budget Subcommittee Meetings.

DATE: November 12, 1980 from 9:00 am to 12:00 noon.

ADDRESS: Plaza Cosmopolitan Hotel, 1780 Broadway, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Donna Rhodes, Office of the Deputy Under Secretary for Intergovernmental Affairs, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202) 245–7904.

SUPPLEMENTARY INFORMATION: The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act. The Council Advises the Secretary of the Department of Education and the President concerning intergovernmental policies relating to education.

The meeting of the Council Subcommittees are open to the public.

The proposed agenda of the Search Subcommittee includes developing criteria and procedures for evaluating applications for the position of Executive Director.

The proposed agenda for the Subcommittee on Priorities and Work Agenda includes identification of major priorities to present the Council and work plan.

The proposed agenda of the Subcommittee on Administration Rules and Budget includes discussion of draft procedures for council operation.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Deputy Under Secretary for Intergovernmental affairs between the hours of 8:30 am and 3:00 pm at the Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

Signed at Washington, D.C., on October 20, 1980.

Michael J. Bakalis,

Deputy Under Secretary for Intergovernmental Affairs.

[FR Doc. 80-33330 Filed 10-24-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Fuel Economy for Motor Vehicles; Availability of First Edition of the 1981 Gas Mileage Guide

The Department of Energy (DOE) hereby gives notice of the availability of the First Edition of the 1981 *Gas Mileage Guide*. The Environmental Protection Agency (EPA) has issued regulations on Fuel Economy, Testing, Labeling and Information Disclosure Procedures and Requirements (40 CFR Part 600) which, among other things, contain requirements for dealers of 1981 and later model year automobiles and light trucks to have copies of a booklet, the *Gas Mileage Guide*, available on display in their showrooms and to keep an adequate stock on hand to meet public demand. In this booklet prospective purchasers will be able to find the fuel economies of the various model vehicles certified as of September 9, 1980 for sale in the United States. DOE is required by Section 506(b)(1) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended by Section 301 of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*), to publish and distribute this booklet. Section 600.405–77 of the EPA regulations states that dealers will be expected to make these booklets available as soon as they are received by them, but in no case later than 15 working days after notification is given of booklet availability. The publication today of this notice constitutes such notification.

The First Edition of the 1981 *Gas Mileage Guide* is available for display and distribution by dealers in their showrooms. Any dealer who has not already received *Guides* from DOE or requires additional copies should request copies by writing to the following address, specifying the quantity desired of the 49-State and/or the California version:

For bulk copies, write: Fuel Economy Distribution, Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830.

Issued in Washington, D.C. October 20, 1980.

Frank DeGeorge,

Principal Deputy Assistant Secretary Conservation and Solar Energy.

[FR Doc. 80-33306 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-R-80-33]

Report to the Department of Energy on "Designing Methods for Distributing Petroleum During a Shortage and Selecting Standby Distribution Mechanisms"

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of additional public hearing date.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby gives notice that an additional public hearing has been scheduled in Washington, D.C. on the Report to the Department of Energy on "Designing Methods for Distributing Petroleum During A Shortage and Selecting Standby Distribution Mechanisms" (45 FR 63909, September 26, 1980). In addition to the hearing date in Washington, D.C. of November 13, 1980, which remains as scheduled, a second public hearing has been scheduled for December 2, 1980, to accommodate the schedules of interested parties wishing to present oral testimony. Both the November 13, 1980, and the December 2, 1980, public hearings on this matter will be held in Room 2105, 2000 M Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Lorraine Hall (Office of Public Hearing Management), Economic Regulatory Administration, Room B-210, 2000 M Street N.W., Washington, D.C. 20461 (202) 653-3971

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street N.W., Washington, D.C. 20461 (202) 653-4055

William E. Caldwell (Office of Regulatory Policy), Economic Regulatory Administration, Room 7202, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3256

Joel Yudson (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6744

Issued at Washington, D.C., on October 21, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33305 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Bob's Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy,

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: October 2, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226.

FOR FURTHER INFORMATION CONTACT: Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado, 80226. PHONE: (303) 234-3195.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the Office of Enforcement of the ERA executed a Consent Order with Bob's Oil Company (Bob's) of Martin, South Dakota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of les than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Bob's with its home office located in Martin, South Dakota, is a firm engaged in the business of purchasing covered products and reselling them to wholesale purchasers and ultimate consumers, without substantially changing their form, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Bob's, the Office of Enforcement of ERA, and Bob's entered into a Consent Order, the significant terms of which are as follows:

1. Total alleged overcharge during the audit period (September 1, 1979, through November 30, 1979) on all sales of gasoline, plus interest through June 30, 1980, was: $2,389.88.

2. The Office of Enforcement alleged that Bob's violated the gasoline price regulations contained in 10 CFR 212.93(a)(1) of the Mandatory Petroleum Price regulations by exceeding its "maximum legal selling price" for gasoline sold by Bob's during the audit period.

3. Bob's has agreed to refund the total overcharge, plus interest accrued through June 30, 1980.

4. Bob's has agreed to pay a civil penalty of $500.00.

5. The provisions of 10 CFR 205.199J, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Bob's agrees to refund, in full settlement of any civil liability (except civil penalties) with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $2,389.88 which includes interest. Refund of those overcharges will be in the form of a cetified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA.

These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount specified in I.1. above, should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may

result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of the Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the same address or by calling (303) 234–3195.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Bob's Oil Company Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on or before November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colorado, on the 7th day of October, 1980.

Kenneth E. Merica,

District Manager of Enforcement, Rocky Mountain District.

[FR Doc. 80-33420 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Mountain Fuel Supply Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and an opportunity for comment on Consent Order.

SUMMARY: The economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: September 25, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, CO 80226: (303) 234–3195.

SUPPLEMENTARY INFORMATION: On September 25, 1980, the Office of Enforcement of the ERA executed a Consent Order with Mountain Fuel Supply Company (Mountain) of Salt Lake City, Utah. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less that $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Mountain, with its home office located in Salt Lake City, Utah, is a firm engaged in the recovery and sale of pipeline condensate (crude oil) from assorted gathering points and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Mountain, the Office of Enforcement of the ERA and Mountain have entered into a Consent Order, the significant terms of which are as follows:

1. Mountain is a crude oil producer as currently defined by 10 CFR 212.31 and as formerly defined at 6 CFR 150.352.

2. During the period September 1973 through December 1979, pricing of domestic crude oil was controlled under Cost of Living Council regulations (6 CFR 150.1, *et seq.*) and successor regulations thereto (10 CFR 212.1, *et seq.*), hereinafter collectively referred to as the "DOE regulations").

3. The DOE has alleged that during the period September 1, 1973 through December 31, 1979, certain sales of pipeline condensate (crude oil) were made by Mountain at prices in excess of the maximum allowable prices in violation of 10 CFR 212.73 and formerly 6 CFR 150.354,. since Mountain improperly characterized certain volumes of crude oil as "new" or "upper tier" crude oil exempt from the "old" oil or "lower tier" ceiling price rule.

4. Mountain, without admission of any facts or of any violation of DOE rules or regulations, desiring to resolve all civil disputes arising from the ERA's audit concerning compliance with all applicable pricing rules and regulations of the DOE pertaining to the recovery and sale of crude oil from the identified gathering points without any further formal compliance proceeding has agreed to refund $275,000.

5. The provisions of 10 CFR 205.199J are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In the Consent Order, Mountain agrees to refund, in full settlement of any and all civil liability within the jurisdiction of the Department of Energy in regard to actions that might be bought by the DOE arising out of the specified transactions, the sum of $275,000.00 within ten (10) business days from the date this Consent Order becomes effective. Refund shall be by certified check made payable to the United States Department of Energy and delivered to the Assistant Adminstrator for Enforcement, Economic Regulatory Administration. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system it is likely that overcharges have been passed through as higher prices to subsequent purchasers. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossiblity to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount held by DOE should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Kenneth E. Merica, District Manager of Enforcement, Rocky Mountain District, Department of Energy, P.O. Box 26247, Belmar Branch, Lakewood, Colorado 80226. You may obtain a free copy of this Consent Order by writing to the

same address or by calling (303) 234–3195.

You should identify you comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Mountain Fuel Supply Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Lakewood, Colo. on the 8th day of October 1980.

Robert Templeton,

Acting District Manager, Office of Enforcement Rocky Mountain District, Economic Regulatory Administration.

[FR Doc. 80-33417 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Mesa Petroleum Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on consent order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: October 20, 1980. Comments by: November 26, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767–7745.

SUPPLEMENTARY INFORMATION: On October 20, 1980, the Office of Enforcement of the ERA executed a Consent Order with Mesa Petroleum Company (Mesa) of Amarillo, Texas. Under 10 CFR 205.199J(b), the Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Mesa Petroleum Company, with its office located in Amarillo, Texas, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211 and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and Mesa entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the audit was September 1, 1973 through November 30, 1979 and it included all sales of crude oil from certain properties operated by the firm during that period.

2. Mesa allegedly misapplied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consquence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and Mesa have agreed to a settlement in the amount of $340,000.00. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and Mesa.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with the Consent Order.

5 The provisions of 10 CFR § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Mesa agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $340,000.00 within ninety (90) days of the effective date of the Consent Order. Refunded overcharges will in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to Mary Johnson at the same address or by calling 214/767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Mesa Petroleum Company Consent Oder." We will consider all comments we received by 4:30 p.m., local time, on November 26, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 20th day of October, 1980.

Wayne I. Tucker,

District Manager, Southwest District Enforcement Economic Regulatory Administration.

[FR Doc. 80-33441 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 80-CERT-036]

Yale University; Application for Certification of the Use of Natural Gas to Displace Fuel Oil

On October 14, 1980, Yale University (Yale), Central P.O. Box 1501-A, New Haven, Connecticut 06520, filed an application with the Administrator of the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at the Yale University Campus located in New Haven, Connecticut, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Yale states that the volume of natural gas for which it requests certification is up to 450,000 Mcf anticipated to be used between November 1, 1980, and May 31, 1981. This volume is estimated to displace the use of approximately 73,000 barrels of No. 6 fuel oil (0.5 percent maximum sulfur) between November 1, 1980 and May 31, 1981.

The eligible seller is the National Fuel Gas Distribution Corporation, 10 LaFayette Square, Buffalo, New York 14203. The gas will be transported by the Tennessee Gas Pipeline Company (interstate pipeline), P.O. Box 2511, Houston, Texas 77001; and the Southern Connecticut Gas Company (local distribution company), 55 Church Street, New Haven, Connecticut.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Mr. Albert F. Bass, on or before November 6, 1980.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such as interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Yale and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on October 22, 1980.

F. Scott Bush,

Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-33445 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

Proposed remedial Orders

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. On or before November 12, 1980, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR § 205.193.

Issued in Washington, D.C., on the 20th day of October, 1980.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Northeast District				
Buster's Cove Marina	3100 Whaleneck Drive, Merrick, NY 11566	8-26-80	$799.05	23.4
Sunshine Marina	23 Rampasture Road, Hampton Bays, NY 11946.	8-15-80	274.74	16.6
Glen Cove Yacht Service	88 Shore Road, Glen Cove, NY 11542	8-15-80	603.87	17.2
Proposed Remedial Order—Central District				
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	9-30-80	$4,249.22	3.9

[FR Doc. 80-33421 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY—FEDERAL REGISTER NOTICE

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. Within 15 days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 20th day of October 1980.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Northeast District				
Matty's Service Station	538 South Broadway, Yonkers NY 10705	3-25-80	$1,034.05	5.8
Post Road Chevron, Inc	529 Boston Post Road, Marlboro, MA 01752.	8-12-80	823.58	10.1
Proposed Remedial Orders—Washington, D.C., Metro Area				
New York Avenue Sunoco	101 New York Ave., NE, Washington, DC 20002.	10-6-80	$1,811.35	1.4
Proposed Remedial Orders—Central District				
Skokie & Main Shell	8356 Skokie Blvd., Skokie, IL 60077	7-7-80	$1,842.89	15.7
Indian Point Boat Dock	SR 1 Box 538, Branson, MO 65616	7-31-80	387.76	2.1
Baxter Boat Dock, Inc	Lampe, MO 65681	7-28-80	1,119.94	14.6
Cape Fair Boat Dock	P.O. Box 6, Cape Fair, MO 65624	7-29-80	797.14	8.3
Sun and Ski Marina	3981 Cass Elizabeth, Lake Road, Pontiac, MI 48054.	7-31-80	228.13	24.8
Zinner's Marina	32895 South River Road, Mt. Clemens, MI 48095.	7-30-80	1,075.74	16.6
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	7-31-80	3,841.42	3.9
Lake Perry Marina	Lake Perry, KS 66073	6-19-80	690.54	16.0
Webbs Boat Service & Marina	25837 W. Rt. 173, Antioch, IL 60002	5-30-80	1,075.64	15.8
Korpan's Landing	112 E. Lake View Ave., Fox Lake, IL	6-2-8-0	3,077.32	16.7
Ben Watts Marine, Inc	116 South Rt. 12, Fox Lake, IL 60020	6-4-80	904.94	13.3
John's North Lake Service	1218 N. Lake St., Aurora, IL 60506	6-4-80	1,109.92	2.1
Gordy's Lake Front Marina	147 Avenue, Fontana, WI 53125	6-11-80	5,649.87	66.8
The Abbey	One Lake Geneva, Fontana, WI 53125	6-18-80	4,242.21	30.5
Geneva Boat Co	523 S. Lake Shore Dr., Fontana, WI 53125	6-19-80	2,227.83	27.7
D.J.'s Rock Creek Marina	Route 1, Ozawkie, KS 66070	6-19-80	1,398.50	24.0
Proposed Remedial Orders—Southwest District				
Dave's Fina	1520 N. MacArthus, Oklahoma City, OK 73127.	7-18-80	$1,124.14	7.3
Hilliard's Chevron	511 E. Santa Fe, Grants, New Mexico	6-16-80	205.60	3.9
Proposed Remedial Orders—Western District				
Village Parkway Mobil	7197 Village Parkway, Dublin, CA 94566	6-12-80	$488.28	3.2
Fred Hartmann Chevron	505 A Street, Hayward, CA 94541	6-12-80	802.21	3.1
Peterson & Hill	3157 Danville Blvd., Alamo, CA 94507	6-27-80	2,565.47	5.0
Walt's Danville Chevron	530 San Ramon Valley Rd., Danville, CA 94526.	6-27-80	12,134.16	10.3
Gary Pfister's Mobile	2298 Appian Way, Pinole, CA 94564	6-27-80	4,029.11	2.4
Crow Canyon Shell	2735 Crow Canyon Rd., San Ramon, CA 94583.	6-27-80	535.55	3.9
Pete Algian Chevron	3005 Grove Way, Castro Valley, CA 94546	6-27-80	6,725.78	8.4
De Cota's Redhill Union 76	930 Sir Francis Drake Blvd., San Anselmo, CA 94960.	6-12-80	3,379.63	8.4
Gene's Chevron	101 Redhill Avenue, San Anselmo, CA 94960.	6-12-80	809.43	4.2
Art Gordon Chevron	2009 El Camino Real, San Mateo, CA	6-12-80	2,163.63	5.1
Buchanan Shell, Inc	1315 Buchanan Rd., Pittsburg, CA 94565	6-12-80	2,588.37	7.5
Wolfe's Union Service	28250 Hesperian Blvd., Hayward, CA 94541	6-12-80	686.65	6.5
Bob Daylamy Texaco	910 Baywood Dr., Petaluma, CA	6-12-80	1,327.64	7.6
Willow Pass Chevron Service	3400 Willow Pass Road, Concord, CA 94519	6-27-80	867.76	7.6
Davidson's Service	224 E. First Street, Santa Ana, CA 92701	7-09-80	2,307.23	14.3
Doug Myers Chevron Service	734 E. Main Street, Santa Maria, CA 93454	7-08-80	9,412.76	8.2
Proposed Remedial Orders—Northeast District				
Matty's Service Station	538 South Broadway, Yonkers, NY 10705	3-25-80	$1,034.05	5.8
Post Road Chevron, Inc	529 Boston Post Road, Marlboro, MA 01752.	8-12-80	823.58	10.1
Proposed Remedial Orders—Washington, D.C., Metro Area				
New York Avenue Sunoco	101 New York Ave., NE, Washington, DC 20002.	10-6-80	$1,811.35	1.4
Proposed Remedial Orders—Central District				
Skokie & Main Shell	8356 Skokie Blvd., Skokie, IL 60077	7-7-80	$1,842.89	15.7
Indian Point Boat Dock	SR 1 Box 538, Branson, MO 65616	7-31-80	387.76	2.1
Baxter Boat Dock, Inc	Lampe, MO 65681	7-28-80	1,119.94	14.6
Cape Fair Boat Dock	P.O. Box 6, Cape Fair, MO 65624	7-29-80	797.14	8.3
Sun and Ski Marina	3981 Cass Elizabeth, Lake Road, Pontiac, MI 48054.	7-31-80	228.18	24.8
Zinner's Marina	32895 South River Road, Mt. Clemens, MI 48095.	7-30-80	1,075.74	16.6

Station	Address	Date	Violation amount	Cents per gallon in violation
Proposed Remedial Orders—Central District—Continued				
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	7-31-80	3,841.42	3.9
Lake Perry Marina	Lake Perry, KS 66073	6-19-80	690.54	16.0
Webbs Boat Service & Marina	25837 W. Rt. 173, Antioch, IL 60002	5-30-80	1,075.64	15.8
Korpan's Landing	112 E. Lake View Ave., Fox Lake, IL	6-2-8-0	3,077.32	16.7
Ben Watts Marine, Inc	116 South Rt. 12, Fox Lake, IL 60020	6-4-80	904.94	13.3
John's North Lake Service	1218 N. Lake St., Aurora, IL 60506	6-4-80	1,109.92	2.1
Gordy's Lake Front Marina	147 Avenue, Fontana, WI 53125	6-11-80	5,649.87	66.8
The Abbey	One Lake Geneva, Fontana, WI 53125	6-18-80	4,242.21	30.5
Geneva Boat Co	523 S. Lake Shore Dr., Fontana, WI 53125	6-19-80	2,227.83	27.7
D.J.'s Rock Creek Marina	Route 1, Ozawkie, KS 66070	6-19-80	1,398.50	24.0
Proposed Remedial Orders—Southwest District				
Dave's Fina	1520 N. MacArthur, Oklahoma City, OK 73127.	7-18-80	$1,124.14	7.3
Hilliard's Chevron	511 E. Santa Fe, Grants, New Mexico	6-16-80	205.60	3.9
Proposed Remedial Orders—Western District				
Village Parkway Mobil	7197 Village Parkway, Dublin, CA 94566	6-12-80	$488.28	3.2
Fred Hartmann Chevron	505 A Street, Hayward, CA 94541	6-12-80	802.21	3.1
Peterson & Hill	3157 Danville Blvd., Alamo, CA 94507	6-27-80	2,565.47	5.0
Walts Danville Chevron	530 San Ramon Valley Rd., Danville, CA 94526.	6-27-80	12,134.16	10.3
Gary Pfister's Mobile	2298 Appian Way, Pinnole, CA 94564	6-27-80	4,029.11	2.4
Crow Canyon Shell	2735 Crow Canyon Rd., San Ramon, CA 94583.	6-27-80	535.55	3.9
Pete Algian Chevron	3005 Grove Way, Castro Valley, CA 94546	6-27-80	6,725.78	8.4
De Cota's Redhill Union 76	930 Sir Francis Drake Blvd., San Anselmo, CA 94960.	6-12-80	3,379.63	8.4
Gene's Chevron	101 Redhill Avenue, San Anselmo, CA 94960.	6-12-80	809.43	4.2
Art Gordon Chevron	2009 El Camino Real, San Mateo, CA	6-12-80	2,163.63	5.1
Buchanan Shell, Inc	1315 Buchanan Rd., Pittsburg, CA 94565	6-12-80	2,588.37	7.5
Wolfe's Union Service	28250 Hesperian Blvd., Hayward, CA 94541	6-12-80	686.65	6.5
Bob Daylamy Texaco	910 Baywood Dr., Petaluma, CA	6-12-80	1,327.64	7.6
Willow Pass Chevron Service	3400 Willow Pass Road, Concord, CA 94519	6-27-80	867.76	7.6
Davidson's Service	224 E. First Street, Santa Ana, CA 92701	7-09-80	2,307.23	14.3
Doug Myers Chevron Service	734 E. Main Street, Santa Maria, CA 93454	7-08-80	8,412.76	8.2

[FR Doc. 80-33442 Filed 10-24-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER FRL 1642-8]

Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the East Texas Lignite and Gasification Project.

PURPOSE: To fulfill the requirements of Section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Clinton B. Spotts, Regional EIS Coordinator, USEPA, Region 6, 1201 Elm Street, Dallas, Texas 75270, Telephone: (Commercial) 214-767-2716 (FTS) 729-2716.

SUMMARY:

1. Description of Proposed Action

The East Texas Lignite Mining and Gasification Project proposed by Exxon Coal USA, Inc. and Exxon Company, U.S.A. would be located in portions of Rusk, Smith, and Cherokee Counties, Texas. Fifteen million tons/year of lignite would be mined from an area covering approximately 35,000 surface acres. The plant would produce about 800 million cubic feet per day of intermediate BTU gas to be pipelined to industrial fuel users or chemical manufacturers. The proposed lignite mine has been determined a "New Source" as defined in Section 306 of the Clean Water Act. Therefore, the issuance of a National Pollutant Discharge Elimination System (NPDES) permit for the mine discharge is to be subject to the requirements of the National Environmental Policy Act.

2. Alternatives

- EPA issues New Source NPDES permit for lignite mine as proposed.
- EPA issues New Source NPDES permit for modified project.
- EPA denies New Source NPDES permit.
- Exxon operates gasification plant and lignite mine as proposed.
- Exxon operates gasification plant and lignite mine as modified by EPA.
- Exxon takes no action.

3. Public and Private Participation in EIS Process

The issues and concerns identified during the scoping process will help determine the nature and extent of the impact analysis in the EIS. EPA invites full participation by individuals, private organizations, and local, State and Federal agencies. EPA will involve and encourage the public to participate in the planning and EIS process to the maximum extent possible.

4. Scoping

EPA, Region 6, has initiated the scoping process and will conduct a public meeting for the purpose of identifying issues for consideration in the preparation of the Environmental Impact Statement. The "scoping meeting" will be held at 7:30 p.m. on Thursday, November 20, 1980 in the R. C. Buckner Chapel at Jacksonville College, Pine and Patton Streets, Jacksonville, Texas.

5. Timing

EPA estimates the draft EIS will be available for public review and comment around September 1981. Time limits have been set for completion of the environmental review at the following milestones:

- Developing the scope of the EIS—January 15, 1981.
- Availability of the Draft EIS—October 1, 1981.
- Completion of the Record of Decision—June 1, 1982.

6. Request for Copies of Draft EIS

For a copy of the Draft Environmental Impact Statement, getting on the mailing list, or for other NEPA related information, please submit your name and address to Clinton Spotts at the above address.

Dated: October 20, 1980.

William N. Hedeman, Jr.,

Director, Office of Environmental Review (A-104).

[FR Doc. 80-33340 Filed 10-24-80; 8:45 am]

BILLING CODE 6560-37-M

FEDERAL COMMUNICATIONS COMMISSION

FM and TV Translator Applications Ready and Available for Processing and Notification of Cutoff Date

Released: October 28, 1980.

Cutoff Date: November 25, 1980.

Notice is hereby given that the TV and FM translator applications listed in the attached Appendix will be considered ready and available for processing after November 25, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on November 25, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on November 25, 1980.

Petitions to deny any application on this list must be on file with the Commission no later than the close of business on ?

Federal Communications Commission.

William J. Tricarico,

Secretary.

UHF TV Translator Applications

BPTT–800305IE (K71BH), Mulford & Rural, etc., Utah, University of Utah. Req: Change frequency to Channel 63, 764–770 MHz.,

BPTT–800305IF (K82BA), Rural Juab, et al., Utah, University of Utah. Req: Change frequency to Channel 49, 680–686 MHz.

BPTT–800310ID (K72DT), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 46, 662–668 MHz, Change primary TV Station to KDLH, Channel 3, Duluth, Minnesota.

BPTT–800310IF (K80CK), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 50, 686–692 MHz.

BPTT–800604ID (new), Camp Verde, Texas, Via Cable Incorporated. Req: Channel 59, 740–746 MHz, 20 watts. Primary: KSAT–TV, San Antonio, Texas.

BPTT–800710IA (new), Minneapolis, Minnesota, Antoinette C. & David M. Gibbons. Req: Channel 57, 728–734 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800723IC (new), Sacramento, California, Arike Logan, M.D. Req: Channel 61, 752–758 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800721IC (new), Dennis, Massachusetts, Bogner Broadcast Equipment Corporation. Req: Channel 67, 752–758 MHz, 100 watts. Primary: WQTV–TV, Boston, Massachusetts.

BPTT–800724IA (new), Reno, Nevada, Leslie Alan Williams. Req: Channel 55, 716–722 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800724IV (new), Nashville, Tennessee, Talley Television, Corporation. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IB (new), Jacksonville, Florida, Trans America Television, Corporation. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IC (new), Birmingham, Alabama, Trans America Television, Corporation. Req: Channel 52, 698–704 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IF (new), Charlotte, North Carolina, Trans America Television, Corporation. Req: Channel 24, 530–536 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800728IG (new), Buffalo, New York, Trans American Television, Corporation. Req: Channel 58, 734–740 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800729IE (new), Durham, North Carolina, James K. & Hope S. Smith. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800730IB (new), Las Vegas, Nevada, Leslie Williams. Req: Channel 69, 800–806 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800807IB (new), Dennis, Massachusetts, Bogner Broadcast Equipment Corporation. Req: Channel 58, 734–740 MHz, 100 watts. Primary: WSMW–TV, Worcester, Massachusetts.

BPTT–800807IC (new), Westbury, Carle Place, Mineola, Hempstead, East Meadow, Hicksville, New York, Bogner Broadcast Equipment Corporation. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WVIA–TV, Scranton, Pennsylvania.

BPTT–800815IA (new), Shreveport, Louisiana, Antoinette C. & David M. Gibbons. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800815IB (new), Tacoma, Washington, Jackie R. Brown. Req: Channel 39, 620–626 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800821ID (new), Norfolk-Portsmouth, Virginia, Barbara J. & Horace Ward, Jr. Req: Channel 65, 776–782 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800822IA (new), High Point, North Carolina, Barbara J. & Horace Ward, Jr. Req: Channel 67, 788–794 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800822IC (new), Phoenix, Arizona, Sunburst Broadcasting Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800822ID (new), Austin, Texas, Gwendolyn May. Req: Channel 68, 794–800 MHz, 1000 watts. Primary: KSTS–TV, San Jose, California.

BPTT–800825IA (new), Jackson, Mississippi, Leslie Alan Williams. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827ID (new), Chicago, Illinois, Gwendolyn May. Req: Channel 62, 758–764 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800828IB (new), Mobile, Alabama, Barbara J. & Horace Ward, Jr. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800813IA (new), Southampton, L.I., New York, Bogner Broadcast Equipment Corporation. Req: Channel 23, 524–530 MHz, 100 watts. Primary: WVIA–TV, Scranton, Pennsylvania.

BPTT–800602ID (new), Santa Maria, Orcutt, Guadalupe, Nipomo, California, Central Coast Good News, Incorporated. Req: Channel 65, 776–782 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800602IE (new), Poplar Bluff, Missouri, Turner-Farrah, Incorporated. Req: Channel 15, 476–482 MHz, 1000 watts. Primary: WSIL–TV, Harrisburg, Illinois.

BPTT–800604IB (new), Camp Verde, Texas, Cable, Incorporated. Req: Channel 55, 716–722 MHz, 20 watts. Primary: KMOL–TV, San Antonio, Texas.

BPTT–800604IC (new), Camp Verde, Texas, Cable, Incorporated. Req: Channel 57, 728–734 MHz, 20 watts. Primary: KENS–TV, San Antonio, Texas.

BPTT–800702IJ (new), Madison, Wisconsin, Lloyd Hearing Aid Corporation. Req: Channel 47, 668–674 MHz, 1000 watts. Primary: WORF–TV, Rockford, Illinois.

BPTT–800815IC (new), Knoxville, Tennessee, Titilola Payne. Req: Channel 43, 644–650 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800818IB (new), Charleston, South Carolina, Barbara Smith. Req: Channel 69, 800–806 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800821IC (new), Chattanooga, Tennessee, Talley Television, Corporation. Req: Channel 67, 788–794 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827IE (new), Pittsburgh, Pennsylvania, Barbara Smith. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800827IF (new), Columbia, South Carolina, Barbara Smith. Req: Channel 63, 764–770 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800904IA (new), Baton Rouge, Louisiana, Panorama Broadcasting Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800903IE (new), Atlanta, Georgia, Corporation For Black Television Of Atlanta. Req: Channel 14, 470–476 MHz, 100 watts. Primary: WRBV–TV, Vineland, New Jersey.

BPTT–800926IA (new), Syracuse, New York, Bogner Broadcast Equipment Corporation. Req: Channel 68, 794–800 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IB (new), Granada Hills, California, Bogner Broadcast Equipment Corporation. Req: Channel 60, 746–752 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IC (new), Falmouth, Maine, Bogner Broadcast Equipment Corporation. Req: Channel 57, 728–734 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926ID (new), Thousand Oaks, California, Bogner Broadcast Equipment Corporation. Req: Channel 66, 782–788 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IE (new), Cedar Hills, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 55, 716–722 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

BPTT–800926IF (new), Houston, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 56, 722–728 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.
BPTT–800926IG (new), Santa Ana, California, Bogner Broadcast Equipment Corporation. Req: Channel 62, 758–764 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.
BPTT–800926IH (new), Coral City, Florida, Bogner Broadcast Equipment Corporation. Req: Channel 64, 770–776 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.
BPTT–800926II (new), Union Park, Florida, Bogner Broadcast Equipment Corporation. Req: Channel 61, 752–758 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.
BPTT–800926IJ (new), Haltom City, Texas, Bogner Broadcast Equipment Corporation. Req: Channel 63, 764–770 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.
BPTT–800926IK (new), Driver, Virginia, Bogner Broadcast Equipment Corporation. Req: Channel 68, 794–800 MHz, 100 watts. Primary: KTBN–TV, Fontana, California.

VHF TV Translator Applications

BPTTV–800822IF (new), Rock River, Wyoming, Town of Rock River. Req: Channel 4, 66–72 MHz, 10 watts. Primary: KCA–TV, Denver, Colorado.

FM Translator Applications

BPFT–800408IC (new), Galena, Alaska, City of Galena. Req: Channel 261, 100.1 MHz, 10 watts. Primary: KSKA–TV, Anchorage, Alaska.
BPFT–800625ID (new), Kamiah, Grangeville, Kooskia & Cottonwood, Idaho, Alacca Bible Conference. Req: Channel 215, 90.9 MHz, 10 watts. Primary: KMBI–FM, Spokane, Washington.
BPFT–800707ID (new), Joplin, Missouri, Stahl Incorporated. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KRFG–FM, Greenfield, Missouri.
BPFT–800724 (new), Fort Dodge, Iowa, The Sonshine Foundation. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KRGS–FM, Spencer, Iowa.
BPFT–800812IB (new), Jacksonville & Ashland, Oregon, Hill Radio, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KRWQ–FM, Gold Hill, Oregon.
BPFT–800821IB (new), Richfield, Utah, Sanpete County Broadcasting Company. Req: Channel 237, 95.3 MHz, 10 watts. Primary: KMXU–FM, Manti, Utah.
BPFT–800421IC (new), Gold Beach, Oregon, KURY Radio, Inc. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KURY–FM, Brookings, Oregon.
BPFT–800422IA (new), Bullhead City, River, Arizona & Needles, California, Trinity Temple Church DBA Tri-State Translators. Req: Channel 285, 104.9 MHz, 10 watts. Primary: KILA–FM, Henderson, Nevada.
BPFT–800623IG (new), Big Bend & Bush Bar, California, Indian Springs School District. Req: Channel 282, 104.3 MHz, 1 watt. Primary: KOIT–FM, San Francisco, California.
BPFT–800623IF (new), Big Bend & Bush Bar, California, Indian Springs School District. Req: Channel 295, 106.9 MHz, 1 watt. Primary: K101–FM, San Francisco, California.
BPFT–800908JM (new), Yakima, Washington, Thomas W. Read. Req: Channel 240, 95.9 MHz, 10 watts.
BPFT–800909IQ (new), Gold Beach, Oregon, BER–TEC Broadcasting, Inc. Req: Channel 240, 95.9 MHz, 10 watts. Primary: KCRE–FM, Crescent City, California.
BPFT–800909IS (new), Kennwick, Pasco, Richland & West Richland, Washington, Thomas W. Read. Req: Channel 265, 100.9 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.
BPFT–800912IS (new), Traverse City, Michigan, Jack G. Martin d/b/a Martin TV Sales & Service; also, Northern Tower Erection Company. Req: Channel 232, 94.3 MHz, 1000 watts. Primary: WITW–FM, Cadillac, Michigan.
BPFT–800905IE (new), Junction, Texas, Sonora Broadcasting, Inc. Req: Channel 272, 102.3 MHz, 10 watts. Primary: KVRN–FM, Sonora, Texas.
BPFT–800903IF (new), Ithaca, New York, Cornell University. Req: Channel 238, 95.5 MHz, 1 watt. Primary: WHCU–FM, Ithaca, New York.
BPFT–800825IS (new), Union, Oregon, First National Broadcasting, Corporation. Req: Channel 240, 95.9 MHz, 10 watts. Primary: KUUZ–FM, Boise, Idaho.
BPFT–800812IA (new), Grants Pass, Oregon, YILL Radio, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KRWQ–FM, Gold Hill, Oregon.
BPFT–800804IA (new), Rifle, Colorado, West Broadcasting, Inc. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KMTS–FM, Glenwood Springs, Colorado.
BPFT–800428IC (new), Ephrata, Soap Lake, Wilson Creek, Moses Lake, Washington. Peoples TV Association, Inc. Req: Channel 232, 94.3 MHz, 10 watts. Primary: KREM–FM, Spokane, Washington.
BPFT–800428ID (new), Ephrata, Soap Lake, Wilson Creek, Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KHQ–FM, Spokane, Washington.
BPFT–800428IE (new), Ephrata, Soap Lake, Wilson Creek & Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KXLY–FM, Spokane, Washington.
BPFT–800428IF (new), Ephrata, Soap Lake, Wilson Creek & Moses Lake, Washington, Peoples TV Association, Inc. Req: Channel 296, 107.1 MHz, 10 watts. Primary: KPQ–FM, Wenatchee, Washington.
BPFT–800425IF (new), Houghton, Michigan, Michigan Technological University. Req: Channel 269, 101.7 MHz, 10 watts. Primary: WGGL–FM, Houghton, Michigan.
BPFT–800512IE (new), Sutherlin, Oregon, W.R.R. Incorporated. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KRSB–FM, Roseburg, Oregon.
BPFT–800509IC (new), Emery Town, Utah, Emery Town, A Municipal Corporation. Req: Channel 292, 106.3 MHz, 10 watts. Primary: KSFI–FM, Salt Lake City, Utah.
BPFT–800512ID (new), Riddle, Oregon, W.R.R. Incorporated. Req: Channel 280, 103.9 MHz, 10 watts. Primary: KRSB–FM, Roseburg, Oregon.
BPFT–800519IM (new), Wenatchee, Ellensburg, & Quincy, Washington, Wenatchee FM Translator Council. Req: Channel 208, 89.5 MHz, 10 watts. Primary: KGTS–FM, Walla Walla, Washington.
BPFT–800527IG (new), Lovelock, Nevada, Pershing County Television Tax District. Req: Channel 221, 92.1 MHz, 10 watts. Primary: KSRN–FM, Reno, Nevada.
BPFT–800529IB (new), Sebring, Florida, The Moody Bible Institute of Chicago. Req: Channel 240, 95.9 MHz, 1 watt. Primary: WKES–FM, St. Petersburg, Florida.
BPFT–800603IC (new), Weed, California, Shasta Cascade Broadcasting Corporation. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KEDY–FM, Mt. Shasta, California.
BPFT–800603ID (new), Steamboat Springs, Colorado, Yampa Valley TV Association. Req: Channel 249, 97.7 MHz, 10 watts. Primary: KRDO–FM, Colorado Springs, Colorado.
BPFT–800620IF (new), Clifton, Duncan, Morenci, Sheldon, & York, Arizona, York Sheldon Television Association. Req: Channel 282, 104.9 MHz, 10 watts. Primary: KQYT–FM, Phoenix, Arizona.
BPFT–800624IB (new), Battle Mountain, Nevada, Argenta TV Maintenance District. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KSRN–FM, Reno, Nevada.
BPFT–800624IC (new), Babbitt, Minnesota, Iron Range Broadcasting, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: WEVE–FM, Eveleth, Minnesota.
BPFT–800624ID (new), Ely, Minnesota, Iron Range Broadcasting, Inc. Req: Channel 288, 105.5 MHz, 10 watts. Primary: WEVE–FM, Eveleth, Minnesota.
BPFT–800625IC (new), Lewiston, Idaho & Clarkston, Washington, Alacca Bible Conference. Req: Channel 265 100.9 MHz, 10 watts. Primary: KMBI–FM, Spokane, Washington.

UHF TV Translator Applications

BMPTT–800305ID (K66BJ), Smoky Valley, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KOLC-TV, Channel 8, Reno, Nevada.
BMPTT–800310IE (K75AM), Bemidji, Minnesota, Headwaters TV Translator Corporation. Req: Change frequency to Channel 48, 674–680 MHz, Primary TV Station to KBJR–TV, Channel 6.

VHF TV Translator Applications

BPTTV–800325IH (K08AA), Wyodak, Wyoming, Wyodak TV Association. Req: Add Gillette and Rural Campbell County area to present principal community increase output power to 10 watts.
BPTTV–800825IU (new), Dixon, Embudo & Rinconada, New Mexico, Dixon Social Action Committee. Req: Channel 2, 54–60 MHz, 5 watts. Primary: KGGM–TV, Albuquerque, New Mexico.
BMPTTV–800305IA (K09OG), Round Mountain, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KTVN–TV, Channel 2, Reno, Nevada.
BMPTTV–800305IB (K11OT), Round Mountain, Nevada, Smoky Valley TV District. Req: Change primary TV Station to KCRL–TV, Channel 4, Reno, Nevada.

FM Translator Applications

BPFT–800304IB (new), Eureka Springs, Arkansas, Earldun Broadcasting, Inc. Req:

Channel 265, 100.9 MHz, 10 watts. Primary: KSCC–FM, Berryville, Arkansas.
BPFT–800407IC (new), Santa Cruz, California, Christian Broadcasting Fellowship. Req: Channel 292, 106.3 MHz, 1 watt. Primary: KAMB–FM, Merced, California.
BPFT–800804IB (K249AP), Johnstonville, Etc., California, Lloyd E. Pochop. Req: Change frequency to Channel 272, 102.3 MHz.
BPFT–800902IX (W288AD), Wausau, Wisconsin, Wisconsin Valley Christian Radio, Inc. Req: Change frequency to Channel 261, 100.1 MHz.
BPFT–800930IA (new), Petersburg (Southern Extremity) St. John's Harbor, Summer, Strait, Alaska, Narrows Broadcasting, Corporation. Req: Channel 280, 103.9 MHz, 1 watt. Primary: KFSK–FM, Petersburg, Alaska.
BPFT–800930IC (new), Petersburg (Scow Bay to Papkes' Landing, Alaska, Narrows Broadcasting Corporation. Req: Channel 276, 103.1 MHz, 1 watt. Primary: KFSK–FM, Petersburg, Alaska.
BPFTB–800924IA (new), Twin Peaks, Blue Jay, Lake Arrowhead, California, Southwest Broadcasting Company, Inc. Req: Channel 244, 96.7 MHz, 10 watts. Primary: KCAL–FM, Redlands, California.
BPFTB–800805IA (new), West Hollywood, California, KPPC, Inc. Req: Channel 296, 107.1 MHz, 10 watts. Primary: KMAX–FM, Arcadia, California.
BPFTB–800807IA (new), Concord, California, American Broadcasting Companies, Inc. Req: Channel 279, 103.7 MHz, 10 watts. Primary: KSFX-FM, San Francisco, California.
BMPFT–800327IA (W228AC), Winter Park, Etc., Florida, Moody Bible Institute of Chicago. Req: Change freqency to Channel 255, 98.9 MHz.
BPFT–800701II (new), Rockford, Illinois, First Evangelical Free Church. Req: Channel 292, 106.3 MHz, 1 watt. Primary: WMBI–FM, Chicago, Illinois.
BPFT–800702IK (new), Wenatchee & East Wenatchee, Washington, Thomas W. Read. Req: Channel 276, 103.1 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.
BPFT–800708IB (new), Casper, Wyoming, John C. Learned. Req: Channel 257, 99.3 MHz, 10 watts. Primary: KLEN–FM, Cheyenne, Wyoming.
BPFT–800710IB (new), Santa Barbara, Goleta, California, University of Southern California. Req: Channel 204, 88.7 MHz, 10 watts. Primary: KUSC–FM, Los Angeles, Californai.
BPFT–800711IH (new), Pleasanton, California, King Radio Broadcasting, Company. Req: Channel 228, 93.5 MHz, 10 watts. Primary: KYA–FM, San Francisco, California.
BPFT–800717IA (new), Ephrata, Moses Lake & Soap Lake, Washington, Thomas W. Read. Req: Channel 249, 97.7 MHz, 10 watts. Primary: KDRK–FM, Spokane, Washington.
BPFT–800722IB (new), Bozeman, Montana, Christian Enterprises, Incorporated. Req: Channel 252, 98.3 MHz, 10 watts. Primary: KGVW–FM, Belgrade, Montana.
BPFT–800728IK (new), Carlin, Elko, Lamoille & Jiggs, Nevada, Elko Television, District. Req: Channel 288, 105.5 MHz, 10 watts. Primary: KSFI–FM, Salt Lake City, Utah.
BPFT–800701IH (new), Saratoga, California, United Broadcasting, Company. Req: Channel 261, 100.1 MHz, 1 watt. Primary: KBAY–FM, San Jose, California.
BPFTB–800703IA (new), Saratoga, California, United Broadcasting, Company. Req: Channel 262, 100.3 MHz, 10 watts. Primary: KBAY–FM, San Jose, California.
BPFTB–800725IA (new), Walnut Creek, Pleasant Hill and Concord, California, Metromedia, Inc. Req: Channel 235, 94.9 MHz, 10 watts. Primary: KSAN–FM, San Francisco, California.
BMPFT–800701IG (W276AE), Birmingham, Alabama, Briarwood Continuing Presbyterian Church. Req: Change frequency to Channel 237, 95.3 MHz.
BMPFT–800709ID (K249AS), Minturn, Avon, Colorado, Vail Mountain Broadcasters, Inc. Req: Change frequency to Channel 257, 99.3 MHz.
BMPFT–800709IE (K257AS), Silverthorne, Colorado, Vail Mountain Broadcasters, Inc. Req: Change frequency to Channel 249, 97.7 MHz.

[FR Doc. 80-33311 Filed 10-24-80; 8:45 am]
BILLING CODE 6712-01-M

[Report No. A-18]

TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Released: October 24, 1980.
Cut-Off Date: December 8, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted from filing. They will be considered to be ready and available for processing after December 8, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 8, 1980 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than the close of business on December 8, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 8, 1980.

Applications for new stations may not be filed against any application on the attached list which is designated by an asterisk (*).

Federal Communications Commission.
William J. Tricarico,
Secretary.

BPCT–800926KE (New), Oklahoma City, Oklahoma, Satellite Broadcasting Co., Channel 52. ERP: Vis. 820 kW; HAAT: 340 feet.
BPCT–800910KF (New), Saginaw, Michigan, Saginaw Communications, Inc. Channel 49. ERP: Vis. 1000 kW; HAAT: 1023 feet.
BPCT–800918KE (New), Burlington, North Carolina, Carolina Christian Broadcasting, Inc., Channel 16. ERP: Vis. 210 kW; HAAT: 506 feet.
*BMLCT–800917KE, WPTA(TV), Fort Wayne, Indiana, WPTA, Inc., Channel 21. Change city of license from Roanoke, Indiana.
*BPCT–800915KF, WCPT–TV, Crossville, Tennessee, WCPT–TV, Inc., Channel 20. Change site; increase ERP Vis. to 2818 kW; increase HAAT to 2772 feet.
BPCT–800625KG (New), Victoria, Texas, Community Television of Victoria, Channel 25. ERP: Vis. 14 kW; HAAT: 514 feet.
*BPET–800811KI, WUNF–TV, Asheville, North Carolina, University of North Carolina, Channel 33. Increase ERP Vis. to 1472 kW.
*BPCT–800702KG, (New Major Amendment), Gary, Indiana, Great Lakes Broadcasting, Inc., Channel 56. Transfer of control and change of applicant from GWWX–TV, Inc.

[FR Doc. 80-33310 Filed 10-24-80; 8:45 am]
BILLING CODE 6712-01-M

Advisory Committee on Radio Broadcasting and Its Technical and Allocations Subgroups; Meeting

October 16, 1980.

The following open meetings will be held on Thursday, November 13, 1980, at the times stated below, in Room A–110 of the FCC Annex, 1229–20th Street, N.W., Washington, D.C.

A. The ninth meeting of the Advisory Committee on Radio Broadcasting, starting at 9:30 a.m. The agenda will be:

1. Call to order by the Chairman;
2. Approval of minutes of previous meeting;
3. Recess for conduct of meetings of the Subgroups on Allocations and Technical Matters;
4. Reconvening of meeting of the Advisory Committee;
5. Receipt of reports by Allocations Subgroup;
6. Receipt of reports by Technical Subgroup;
7. Other business;
8. Future meeting dates;
9. Adjournment.

B. The second meeting of the Subgroup on Radio Spectrum Allocations, starting after Item No. 3 of the Advisory Committee Agenda. The agenda for the subgroup will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on status of tasks performed by members of the Subgroup;
4. Assignment of tasks to be performed and reported by designated persons;
5. Other business;
6. Next meeting date;
7. Adjournment.

C. The second meeting of the Subgroup on Technical Matters, starting

upon conclusion of the second meeting of the Subgroup on Radio Spectrum Allocations. The agenda will be:

1. Call to order;
2. Approval of minutes of previous meeting;
3. Reports on status of tasks performed by members of the Subgroup;
4. Assignment of tasks to be performed and reported to the Subgroup;
5. Other business;
6. Next meeting date;
7. Adjournment.

Additional open meetings of the Advisory Committee on Radio Broadcasting and of its Allocations and Technical Subgroups will be held on December 17, 1980, at the same place and times, and on the same agendas as announced above for their November 13, 1980, meetings.

If it should not be possible to complete consideration of an entire agenda on the scheduled date, that meeting will be continued at an announced date and time.

All interested parties are invited to participate and may submit comments, addressed to Mr. Henry L. Baumann, Chairman, Advisory Committee on Radio Broadcasting, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33312 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 80-637, File No. 20615-CD-P-4-80; Docket No. 80-638, File No. 21089-CD-P-80]

Airsignal International, Inc., and Mobile Tel & Pager, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Memorandum Opinion and Order

Adopted October 8, 1980.

Released October 17, 1980.

In re applications of AIRSIGNAL INTERNATIONAL, INC. For construction permit for new two-way station on 454.025 MHz in the Domestic Public Land Mobile Radio Service at Atlanta, Georgia and MOBILE TEL & PAGER, INC. For construction permit to change antenna system for two-way station KUS219 on 454.025 MHz in the Domestic Public Land Mobile Radio Service at Griffin, Georgia.

By the Common Carrier Bureau:

1. Presently before the Chief, Common Carrier Bureau, pursuant to delegated authority, are the captioned applications of Airsignal International, Inc., and Mobile Tel & Pager, Inc. These applications are electrically mutually exclusive; [1] therefore, a comparative hearing will be held to determine which applicant would better serve the public interest. We find the applicants to be otherwise qualified.

2. Accordingly, it is ordered, pursuant to Section 309 of the Communications Act of 1934, as amended, that the applications of Airsignal International, Inc., File No. 20615-CD-P-4-80, and Mobile Tel & Pager, Inc., File No. 21089-CD-P-80, are designated for hearing in a consolidated proceeding upon the following issues:

(a) to determine on a comparative basis, the naure and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) to determine on a comparative basis, the areas and populations that each applicant will serve within the prospective 39 dBu contours, based upon the standards set forth in Section 22.504(a) of the Commission's Rules, [2] and to determine the need for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

3. It is further ordered, That the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

4. It is further ordered, That the Chief, Common Carrier Bureau, is made a party to the proceeding.

5. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to Section 1.221(c) of the Rules within 20 days of the release date hereof, a written notice stating an intention to appear on the date for the hearing and present evidence on the issues specified in this Memorandum Opinion and Order.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

Philip L. Verveer,

Chief, Common Carrier Bureau.

[FR Doc. 80-33399 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[1] We note that while Airsignal is applying to construct a new facility, Mobile Tel & Pager is seeking to improve its antenna system for its existing station, KUS219. A grant of either application would preclude a grant of the other.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 39 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in two-way communications service on frequencies in the 450 MHz band. Propagation data set forth in Section 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding.

[FCC 80-576; Gen Docket No. 80-619]

ATS Mobile Telephone, Inc. v. General Communications, Inc.; Instituting Investigation

Memorandum Opinion and Order

Adopted: October 3, 1980.

Released: October 3, 1980.

In the Matter of Petition for Issuance of a Cease and Desist Order and an Order to Show Cause filed by ATS Mobile Telephone, Inc. against General Communications Company, Inc., a licensee in the Business Radio Service.

By the Commission:

1. The Commission has under consideration the above-captioned matter on remand from the United States Court of Appeals for the District of Columbia Circuit.

2. By way of background, ATS Mobile Telephone, Inc. (ATS) filed a petition for the issuance of a cease and desist order and an order to show cause why the license for station KWW-288 issued to General Communications Company, Inc., (GCC) in the Business Radio Service should not be revoked pursuant to Section 312 of the Communications Act of 1934, as amended. The petition was denied by the Chief of the Safety and Special Radio Services Bureau by letter dated December 16, 1978, under delegated authority contained in Section 0.331 of our rules. [1] ATS then petitioned for reconsideration. That petition was treated as an application for review and was considered by the Commission *en banc*. The Commission denied it, and affirmed the decision by the Chief of the Bureau. [2] ATS then filed a Petition for Review in the United States Court of Appeals for the District of Columbia (Case No. 79-1925). We asked the court to remand the case to us for further consideration in view of the more expanded arguments advanced by the Petitioner and Intervenor [3] in their brief. By order issued on August 5, 1980, the court remanded the case to us.

[1] The Safety and Special Radio Services Bureau is now named the Private Radio Bureau, and it will be referred to as such.

[2] *ATS Mobile Telephone, Inc., Memorandum Opinion and Order*, FCC 79-342, released June 21, 1979, 72 FCC 2nd 309 (1979).

[3] By order entred October 11, 1979, Telocator Network of America (Telocator) was granted leave to intrvene in this case.

3. ATS Mobile Telephone, Inc., (ATS) is a radio common carrier providing paging and two-way service in the Omaha, Nebraska area. It is licensed in the Domestic Public Land Mobile Radio Service. General Communications Corporation, Inc. (GCC) is in the business of selling and servicing radio equipment for two-way and one-way (paging) radio communications systems also in the Omaha, Nebraska area. The radio transmitting facility under consideration is owned by GCC and it is used by GCC to transmit one-way messages to its own employees and to demonstrate equipment to potential customers. In addition, GCC rents the use of this facility to others for joint or shared use. Users of this facility obtain their own radio station authorizations from the Commission. The joint use of the GCC base station facility has been authorized to the various licensees under our longstanding policies in the private land mobile services, under which we allow more than one licensee, eligible in the same radio service, to operate the same transmitting facility. See *Multiple Licensing—Safety and Special Radio Services, Memorandum Opinion and Order and Notice of Proposed Rule Making*, Docket 18921, 24 FCC 2d 510 (1970). Under this procedure each user is licensed separately for the base transmitter, for his or her control point, and, in two-way communications systems, for the mobile radio units.

4. It is the joint use of the GCC facility which is the cause of ATS' complaint. As we understand its argument, ATS alleges that GCC is using this facility for purposes which are, in its view, essentially "common carrier" in nature, contrary to "traditional business radio operations," "wholly illegal," and "* * * at odds with the FCC regulatory scheme." ATS argues that GCC "masquerades" as a private radio system, when, in fact, it is a "pseudo common carrier," and provides an "unregulated" and "unauthorized" "common carrier service" in competition with a "legitimate common carrier," and urged that GCC should be ordered to cease and desist from its "* * * unauthorized conduct * * *" and that its license should be revoked for "failure of requisite licensee qualifications."

5. We have reconsidered the case in its entirety, *de novo*, and have examined the record before us and we believe that, while ATS' allegations are serious and should be given further consideration, we do not have sufficient information to determine whether to institute proceedings looking toward imposition of the serious sanctions requested by the petitioner. Moreover, in view of the history of this case, we believe that a public investigatory proceeding would be the appropriate vehicle for obtaining the additional information we need to make our decision in this case.

6. Accordingly, it is ordered, pursuant to Section 403 of the Communications Act of 1934, as amended, that an inquiry is hereby instituted to determine the full facts and circumstances concerning the operation and use of the radio paging facility owned by GCC which is the subject of ATS' petition, and to determine whether a sufficiently substantial basis exists warranting the institution of the revocation and cease and desist proceedings ATS has requested. The place and date of the hearing will be specified by subsequent order. And while we do not want to impose limits on the precise scope of the inquiry, we wish to develop as complete a record as possible on the following matters:

A. The nature and configuration of the GCC physical paging facility, including the method used to interconnect the facility with the public telephone system.

B. The methods used by General Communications Company (GCC) to market the radio equipment associated with the paging facility, as well as the facility itself.

C. The arrangement between GCC and each of GCC's customers (which are licensees of the Commission and others, if any) concerning the use of the paging facility and of any associated equipment, such as paging receivers, control points, and telephone facilities, if any.

D. The precise manner in which each licensee or user gains access to and operates the facility for the transmission of messages.

E. Information indicating whether or not GCC has used its own license, call sign KWW–288, to provide communication service to persons or entities other than its own employees.

F. Information indicating whether GCC misrepresented to this Commission material facts concerning this operation.

7. It is further ordered, That ATS Mobile Telephone, Inc., General Communications Company, and the Chief, Private Radio Bureau ARE MADE PARTIES to this proceeding. While we are not making the users of the facility parties, we would expect that the presiding Administrative Law Judge would entertain favorably any petitions for intervention from any such user.

8. It is further ordered, That the inquiry shall be a public proceeding and that the provisions of Section 1.27 of the Commission's Rules shall apply to the production of oral and documentary evidence under subpoena.

9. It is further ordered, That pursuant to Section 5(d)(1) of the Communications Act of 1934, as amended, for the purpose of this inquiry authority is hereby delegated to the Chief Administrative Law Judge of the Commission to require by subpoena the production of books, papers, correspondence, memoranda and other records deemed relevant to the inquiry; to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and to perform such other duties in connection therewith as may be necessary or appropriate to the compilation of a complete record concerning the subject matter of this inquiry.

10. It is further ordered, That the Chief Administrative Law Judge is specifically authorized to designate a Commission Administrative Law Judge to exercise the authority conferred by this Order; and to require witnesses to testify and produce evidence under authority of, and in the manner provided in, Section 409 of the Communications Act of 1934, as amended, when requested to do so by Commission Counsel.

11. It is further ordered, That the subpoena powers delegated by this Order shall be exercised in accordance with Sections 1.331 through 1.340 of the Commission's Rules. Motions to quash or limit subpoena shall be directed to the presiding Administrative Law Judge in accordance with Section 1.334 of the Rules. Applications for review of the presiding Administrative Law Judge's rulings on such motions may be filed with the Commission within ten (10) days after the issuance by the presiding Administrative Law Judge of such rulings.

12. It is further ordered, That upon conclusion of the inquiry ordered herein, the presiding Administrative Law Judge shall certify the record to the Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-33401 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80-640, File No. BPH-790829AA, et al.]

Composite Communications, Inc., et al.; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: October 10, 1980.

Released: October 21, 1980.

In re Applications of Composite Communications, Inc. Belpre, Ohio, BC Docket No. 80–640 File No. BPH–790829AA, Req: 107.1 MHZ, Channel

296A 1.81 KW (H&V) 370 feet; Family Broadcasting Services, Inc. Belpre, Ohio, BC Docket No. 80–641 File No. BPH–800516AD, Req: 107.1 MHZ, Channel 296A 2.2 KW (H&V) 346 feet; Tillis Communications of Mid Ohio Valley, Inc. Belpre, Ohio BC Docket No. 80–642 File No. BPH–800519AG, Req: 107.1 MHZ, Channel 296A 2.25 KW (H&V) 348.5 feet; and Wm. Gerald Willis and Charles A Preston d/b/a, Belpre Broadcasting Company Belpre, Ohio, BC Docket No. 80–643 File No. BPH–800519AH, Req: 107.1 MHz, Channel 296A 1.3 KW (H&V) 430 feet. For Construction Permits for a New FM Station.

By the Chief, Broadcast Bureau:

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority has under consideration the above-captioned mutually exclusive applications.

2. *Belpre.* Applicants for new broadcast stations are required by § 73.3580(f) of the Commission's Rules to give local notice of the filing of their applications. They must then file with the Commission the statement described in § 73.3580 (h) of the Rules.We have no evidence that Belpre published the required notice. To remedy this deficiency, Belpre will be required to publish local notice of this application, if it has not already done so, and to file a statement of publication with the presiding Administrative Law Judge.

3. Belpre indicates in its application that it will require five full-time and five part-time employees to operate the proposed station. Section VI of Form 301 and Section 73.2080 of the Rules require that an Equal Employment Opportunity Plan detailing the applicant's hiring and promotion policies be submitted if there will be five or more full-time station employees. Belpre did not submit such a statement. Accordingly, an issue will be specified.

4. Analysis of the financial portion of Belpre's application reveals that Belpre will require $32,025.00 to construct its proposed facility and operate for three months, without revenue, itemized as follows:

Building	$4,200.00
Miscellaneous	4,300.00
Three Months Operating Expenses	23,525.00
Total	32,025.00

To meet these requirements, Belpre intends to rely on existing capital of $22,000 and a loan of $60,000 from First National Bank of Louisville, Kentucky. The applicant did not submit a loan commitment letter from the bank to show that these funds are available. Accordingly, a limited financial issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Belpre has complied with Section 73.2080 of the Rules regarding equal employment opportunity.

2. To determine with respect to Belpre the availability of funds in addition to the $22,000 indicated, and, in light thereof, whether Belpre is financially qualified to construct and operate the proposed station.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, That Belpre publish local notice of the filing of its application with the Commission in accordance with § 73.3580(h) of the Rules and file a statement of publication with the presiding Administrative Law Judge.

8. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

9. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-33398 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Docket No. 80–635, File No. BPH–11094; Docket No. 80–636, File No. BPH–800317AH]

W.H.A.B. Radio, Inc., and Appling County Broadcaster; Designating Applications for Consolidated Hearing on Stated Issues

Hearing Designation Order

Adopted: October 7, 1980.

Released: October 20, 1980.

In re Application of W.H.A.B. RADIO, INCORPORATED, Baxley, Georgia Req: 94.5 MHz, Channel 233, 100 KW (H&V), 411 feet, and APPLING COUNTY BROADCASTER, Baxley, Georgia Req: 94.5 MHz, Channel 233, 100 KW (H&V), 432 feet. For Construction Permits for a New FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (i) the above-captioned mutually exclusive applications filed by W.H.A.B. Radio, Incorporated (WHAB) and Appling County Broadcaster (Appling); (ii) a petition to deny filed by WHAB;[1] and (iii) petitions for extension of time, leave to amend, and related pleadings, filed by Appling.[2]

2. *WHAB.* WHAB has failed to comply with the requirements of the *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has failed to survey

[1] The petition to deny is essentially a petition to specify issues. WHAB's application was tendered for filing on April 18, 1978 and appeared on public notice of cut-off effective July 30, 1980. Appling's application was tendered for filing on March 17, 1980. Accordingly, the amendment and predesignation issue pleadings procedures of former §§ 1.522 and 1.584 of the Rules were applicable. However, pursuant to the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcast Applications; Amendments of Part 1 of the Commission's Rules,* 72 FCC 2d 202, 45 RR 2d 1220 (1979), which directed the deletion of all issue pleadings in pending cases, the matters sought to be raised by the parties in issue pleadings and amendments have been considered herein only to the extent they relate to qualifications issues specifically included in this order. Accordingly an opportunity to raise any allegations contained in the issue pleadings which have not been discussed herein will be afforded the parties post designation pursuant to § 1.229.

[2] Appling's petition for extention of time and petition for leave to amend in answer to W.H.A.B.'s petition to deny will be granted.

leaders of several significant population groups set forth in its demographic study, as required by Questions and Answers 10, 13(a) & 16 of the *Primer*. For example, WHAB has omitted representatives of women, blacks, labor, military, charities, culture, environment and planning. Accordingly, a limited ascertainment issue will be specified.

3. WHAB has failed to specify a non-short-spaced site in compliance with Section 73.207 of the Rules. The Commission has consistently afforded a competing applicant specifying a short-space site, even upon designation for hearing, a period within which to amend to specify a non-short-spaced site or in the alternative be dismissed and denied comparative hearing with other non-short-spaced applicants. *Nelson County Broadcasting Co., Inc.*, 64 FCC 2d 932 (1977). In this instance, affording WHAB thirty days to amend to a site in compliance with Section 73.207 would serve the public interest. If WHAB does not exercise this opportunity to amend and comply with Section 73.207, its application will be dismissed.[3]

4. *Appling.* Appling has failed to comply with the requirement of the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). From the information before us, it appears that the applicant has merely copied the WHAB's Exhibit P–1 and submitted it as Appling's own demographic study. The applicant has stated he is personally familiar with Baxley and the information in the WHAB study is accurate. Therefore, we will not prohibit this showing as a part of Appling's application. However, Appling has failed to survey leaders of the significant population groups, as required by Questions and Answers 10, 13(a) and 16 of the *Primer*. For example, Appling has omitted representatives of women, blacks, elderly, charities, consumer services, culture, labor and military. In addition, Question and Answer 6 of the *Primer* requires an applicant to ascertain the problems of major communities which are outside the city of license and which the applicant undertakes to serve. Question and Answer 7 provides that ascertainment in such communities consist of consultations with leaders who can be expected to have a broad overview of community problems. In the alternative, if an applicant chooses not to serve such a community, it must explain why. Appling's application indicates that Hazlehurst (pop. 4,065); Jesup (9,091); Glennville (2,965) and Reidsville (1,806) are within the proposed 1.0 mV/m contour. Considering the size of the proposed city of license (3,503 in 1970), Hazlehurst, Jesup, Glennville and Reidsville are major communities as contemplated by Questions and Answers 6 and 7. Appling has neither consulted leaders of these communities nor explained why it does not intend to serve these communities. A limited ascertainment issue will be specified.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applicants are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine whether W.H.A.B. Radio, Incorporated interviewed leaders of women, blacks, labor, military, charities, culture, environment and planning in connection with its ascertainment effort.

2. To determine with respect to the efforts of appling to ascertain the needs of its proposed service area:

(a) Whether the applicant interviewed leaders of women, blacks, elderly, charities consumer services, culture, labor and the military in Baxley;

(b) Whether the applicant has complied with Questions and Answers 6 and 7 of the *Primer* with respect to the communities of Hazlehurst, Jesup, Glennville and Reidsville.

3. To determine which of the proposals would on a comparative basis, better serve the public interest.

4. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

7. It is further ordered, That the petition filed by WHAB is granted to the extent indicated and is denied in all other respects.

8. It is further ordered, That Appling County Broadcaster's petition for extension of time and petition for leave to amend are granted.

9. It is further ordered, That the application of W.H.A.B. Radio, Incorporated shall be retained for a period of thirty (30) days to permit amendment to a non-short-spaced site.

10. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

11. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Jerold L. Jacobs,

Chief, Broadcast Facilities Division.

[FR Doc. 80-33400 Filed 10-24-80; 8:45 am]

BILLING CODE 6712-01-M

[3] The Chief, Broadcast Bureau, granted WHAB's Section 73.207 waiver request based upon economic factors for the purpose of accepting the application as the first filed proposal and placing it on an "A" cutoff list. However, Commission policy requires amendment to a non-short-spaced site when comparative consideration is sought with another mutually exclusive application specifying a non-short-spaced site.

FEDERAL MARITIME COMMISSION

[Agreement No. T-3927]

Availability of Finding of No Significant Impact; City of Los Angeles and Overseas Terminal Co., Inc.

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreement do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreement No. T–3927, between the City of Los Angeles (City) and Overseas Terminal Company, Inc. (Overseas), provides for the nonexclusive preferential assignment by City to Overseas of Berths 228–230 at Los Angeles Harbor. As compensation, Overseas will pay City a minimum of $705,700 per annum, as well as a percentage of annual tariff charges in excess of $705,700. The term of the agreement is for five years. The agreement further provides that Overseas shall not solicit and serve any customer which is a tenant or is regularly served by a tenant of the Port

of Los Angeles without the prior approval of the City's Port General Manager. The OEA's major environmental concern was whether the agreement would significantly increase energy usage and/or affect the quality of the air, water, noise and biological environment.

The OEA has determined that the Commission's final resolution of Agreement No. T-3927 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment by November 17, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33301 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. T-3926]

Availability of Finding of No Significant Impact; Virginia Port Authority and Port Authority Terminals

Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Environmental Analysis (OEA) has determined that the environmental issues relative to the referenced agreement do not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* and that preparation of an environmental impact statement is not required under section 4332(2)(c) of NEPA.

Agreement No. T-3926, between the Virginia Port Authority (VPA) and Port Authority Terminals, Inc. (PAT), provides that VPA will lease to PAT the Newport News Marine Terminal to be operated by PAT as a public marine facility. PAT will compensate VPA according to a mutually agreed formula as set forth in the agreement. The term of the lease is five years with provisions for extension periods. The lease is the basic document to be used to support a $10.3 million bond issue with the proceeds of the bond issue being used to lengthen a container berth and to pave 30 acres of storage. The OEA's major environmental concern was whether the improvements to be made by VPA would significantly increase energy usage and/or affect the quality of the air, water, noise and biological environment.

The OEA has determined that the Commission's final resolution of Agreement No. T-3926 will cause no significant adverse environmental effects in excess of those created by existing uses.

The environmental assessment is available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725. Interested parties may comment on the environmental assessment by November 6, 1980. Such comments are to be filed with the Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573. If a party fails to comment within this period, it will be presumed that the party has no comment to make.

Francis C. Hurney,

Secretary.

[FR Doc. 80-33302 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1607R]

Norma E. Sanchez; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4 further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Norma E. Sanchez, Room 302, Grosch Bldg., No. 402, Comercio St., Old San Juan, Puerto Rico 00901, FMC No. 1607R, was cancelled effective October 17, 1980.

An attempt was made by the Federal Maritime Commission to advise Norma E. Sanchez, by letter dated September 22, 1980, that Independent Ocean Freight Forwarder License No. 1607R would be automatically revoked or suspended unless a valid surety bond was filed with the Commission. That letter, addressed to Norma E. Sanchez at her last known address, was returned to the Federal Maritime Commission as unclaimed by the Post Office.

Norma E. Sanchez has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(d) dated August 8, 1977;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1607R be and is hereby revoked effective October 17, 1980.

It is ordered, that Independent Ocean Freight Forwarder License No. 1607R, issued to Norma E. Sanchez, be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Norma E. Sanchez.

Robert G. Drew, *Director,*

Bureau of Certification and Licensing.

[FR Doc. 80-33303 Filed 10-24-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First United Bancshares, Inc., Formation of Bank Holding Company

First United Bancshares, Inc., El Dorado, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to The First National Bank of El Dorado, El Dorado, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 17, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33328 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

F.N.B. Stinnett Bancshares, Inc.; Formation of Bank Holding Company

F.N.B. Stinnett Bancshares, Inc., Stinnett, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares less directors' qualifying shares, of First National Bank of Stinnett, Stinnett, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board

[FR Doc. 80-33327 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than November 20, 1980.

A. *Federal Reserve Bank of Richmond* (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

Southern Bancorporation, Inc., Greenville, South Carolina (consumer finance; South Carolina): to engage through its subsidiary, World Acceptance Corporation, in making extensions of credit as a licensed consumer finance lender. These activities would be conducted from an office in Muskogee, Oklahoma, serving Muskogee, Oklahoma.

B. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

C.S.B. Co., Cozad, Nebraska (insurance activities; Nebraska): to engage in general insurance agency activities in a town with a population of less than 5,000, including the provision of life, auto, fire, marine (and allied lines), hail, and health and accident insurance and fidelity bonds. These activities would be conducted from an office in Cozad, Nebraska, serving an area within a nine-mile radius of Cozad.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33391 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

First National Boston Corp.; Acquisition of Bank

First National Boston Corporation, Boston, Massachusetts, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of The Haverhill National Bank, Haverhill, Massachusetts. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than November 20, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 20, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33388 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

M.B. Group, Inc.; Formation of Bank Holding Company

M.B. Group, Inc., Marathon, Florida, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The Marathon Bank, Marathon, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33390 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Platte Valley Bancorp; Proposed Acquisition of Valley Bancorp, Inc.

Platte Valley Bancorp, Brighton, Colorado, has applied, pursuant to

section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Valley Bancorp, Inc., and thereby of its subsidiary, Yampa Valley Industrial Bank ("Industrial Bank"), both of Steamboat Springs, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of industrial banking and act as an insurance agent with respect to insurance directly related to extensions of credit or the provision of other financial services by Industrial Bank. These activities would be performed from offices of Industrial Bank in Steamboat Springs, Colorado, and the geographic area to be served is within a 40-mile radius of Steamboat Springs, Colorado. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as geater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 20, 1980.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33386 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

Raymond Bancshares, Inc.; Formation of Bank Holding Company

Raymond Bancshares, Inc., Raymond, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88 percent or more of the voting shares of Farmers State Bank, Raymond, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33389 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

West Bancshares, Inc.; Formation of Bank Holding Company

West Bancshares, Inc., West, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of West Bank & Trust, West, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 21, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 21, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33387 Filed 10-24-80; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

Subcommittee on Data Concepts and Methodology of the National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Act (Pub. L. 92-463), notice is hereby given that the Subcommittee on Data Concepts and Methodology of the National Committee on Vital and Health Statistics, pursuant to functions established by Section 306(k), Paragraph (4) of the Public Health Service Act (42 U.S.C. 242(k)), will convene on Monday, November 10, 1980, at 9:00 a.m., in Room 337A-339A of the Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201.

Principal consideration and discussion will be devoted to the report on program plans for the Subcommittee for submission to the National Committee on Vital and Health Statistics. Agenda items subject to change as priorities dictate.

Further information regarding this meeting of the Subcommittee or other matters pertaining to the National Committee on Vital and Health Statistics may be obtained by contacting Samuel P. Korper, Ph.D., M.P.H., Executive Secretary, National Committee on Vital and Health Statistics, Room 17A-55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301-443-2660.

Dated: October 22, 1980.

Wayne C. Richey, Jr.,

Associate Director for Program Support, Office of Health Research, Statistics, and Technology.

[FR Doc. 80-33449 Filed 10-24-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-80-1036]

Privacy Act of 1974; New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of System of Records.

SUMMARY: The Department is giving notice of a system of records that it maintains which is subject to the Privacy Act of 1974.

EFFECTIVE DATE: This notice shall become effective November 26, 1980, unless comments are received on or before that date which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Robert English, Departmental Privacy Act Officer, Telephone 202–557–0605. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The system is IDEAS Program Case Files. It consists of records used to process HUD employee suggestions under the HUD Ideas Program. The purpose for maintaining the records is to process recommendations for improving the efficiency and effectiveness of the Department's operations. Ideas that are adopted and implemented may result in cash payments to the suggester or honorary recognition. For ideas that have been adopted, the name of the suggester will be reported and published in Governmental or Departmental publications and may be released to news media. Appendix A, which lists the addresses of HUD's field offices, was published at 45 FR 67626 (October 10, 1980). A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on September 16, 1980.

HUD/DEPT–65

SYSTEM NAME:

IDEAS Program Case Files.

SYSTEM LOCATION:

Headquarters and Field Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Federal employees who submit Ideas for improving Departmental efficiency and effectiveness.

CATEGORIES OF RECORDS IN THE SYSTEM:

Idea subject, suggester name, Idea number, position title of suggester, title of organization to which suggester is assigned, location of suggester's organization, suggester's room number, suggester's phone number, statement of organization responsible for implementing ideas, statement of current use, statement of anonymity, statement of cash award waiver, agreement to waive further rights, description of Idea, Social Security Number, disposition of Idea, cash award amount.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Government Employees Incentive Awards Act (45 U.S.C. 5).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To news media to publicize awards; to other Government agencies for evaluation and possible adoption; in the case of cash awards, to Treasury to issue check; to printing firms to produce award certificates.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

In file folders and on magnetic media.

RETRIEVABILITY:

Subject, name, number, originating organization, evaluating organization, disposition.

SAFEGUARDS:

Paper files are kept in lockable cabinets in secured areas. Magnetic files will be maintained in a separate secured area. Access to either type of file is limited to authorized personnel.

RETENTION AND DISPOSAL:

Manual and automated records are retained in accordance with officially approved mandatory standards contained in HUD Handbooks 2225.6 and 2228.2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Management Systems and Organization Division, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A, (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Suggesting individual, processing organization, evaluating organization.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., October 16, 1980.

Vincent J. Hearing,

Deputy Assistant Secretary for Administration.

[FR Doc. 80–33333 Filed 10–24–80; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14844–A]

Alaska Native Claims Selection; Cantwell Yedatene Na Corp.

Correction

In FR Doc. 80–30308 appearing on page 64723 in the issue Tuesday, September 30, 1980, make the following correction:

On page 64725, third column, the 22nd line from the top of the page now reading "Those portions of Tract A more particularly described as protracted:" should have read "Those portions of Tract D more particularly described as protracted:".

BILLING CODE 1505–01–M

[F–19573–A and F–19573–B]

Alaska Native Claims Selections; King Island Native Corp.

Correction

In FR Doc. 80–30445 appearing on page 64742 in the issue of Tuesday, September 30, 1980, make the following correction:

(1) In the middle column of page 64742, under *Kateel River Meridian, Alaska, (Unsurveyed), State Selection*

F–44526, the line reading "Containing approximately 9,525 acres" should have read "Containing approximately 9,524 acres".

BILLING CODE 1505-01-M

[F-14946-A and F-14946-B]

Alaska Native Claims Selection; Teller Native Corp.

Correction

In FR Doc. 80–30315 appearing on page 64755 in the issue of Tuesday, September 30, 1980, make the following changes:

1. On page 64755, first column, **"Kateel River Meridian, Alaska, (Unsurveyed)"** should have read **"Kateel River Meridian, Alaska, (Surveyed)".**

2. In the third column of page 64755, under T.3S., R. 37W., "Sec. 6, lots 1, 2, 3, all 4, all;" should have read "Sec. 6, lots 1, 2, 3, and 4, all,".

3. On page 64756, first column, under T.3S., R. 36 W., "Sec. 26, lot 1, excluding Native allotments F–16510 Parcel A and F–18396" should have read "Sec. 26, excluding Native Allotments F–16510 Parcel A and F–18396".

BILLING CODE 1501-01-M

National Park Service

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with Pub. L. 92–464 that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, November 14, 1980, at 1:30 pm at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Massachusetts.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Advisory Commission are as follows:

Dexter M. Keezer, Truro
Francis R. King, Wellfleet
Sally H. Lunt, Weston
Nathan Malchmam, Provincetown
Barbara S. Mayo, Provincetown
Joshua A. Nickerson, Chatham
David F. Ryder, Chatham
Sherrill B. Smith, Jr., Orleans
Clifford H. White, Wrentham
Elizabeth F. Worthing, Eastham

The Commission will have a field trip at 10:30 am to view the Atwood-Higgins historic complex in Wellfleet.

At the meeting at 1:30 pm the Commission will consider the following matter: Review of Analysis of Management Alternatives, Off-Road Vehicle Use.

The meeting is open to the public. It is expected that 15 persons will be able to attend the session in addition to Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663, Telephone 617–349–3785. Minutes of the meeting will be available for public information and copying four weeks after the meeting at the Office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts.

Dated: October 16, 1980.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

[FR Doc. 80–33385 Filed 10–24–80; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Advisory Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Advisory Committee will be held at 1:30 p.m. on Wednesday, November 19, 1980, in Room 234 at the National Capital Region Headquarters, 1100 Ohio Drive, SW., Washington, D.C.

The Committee was established for the purpose of preparing and recommending to the Secretary broad criteria, guidelines and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended) through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary with respect to site location on Federal land in the National Capital Region and to serve as an information focal point for those seeking to erect memorials on Federal land in the National Capital Region.

The members of the Committee are as follows:

Mr. Russell E. Dickenson (Chairman), Director, National Park Service, Washington, D.C.
Mr. David Childs, Chairman, National Capital Planning Commission, 1325 G Street, NW., Washington, D.C.
Mr. George M. White, Architect of the Capitol, Washington, D.C.
General Mark W. Clark, Chairman, American Battle Monuments Commission, Washington, D.C.
Mr. J. Carter Brown, Chaiman, Commission of Fine Arts, Washington, D.C.
Honorable Marion S. Barry, Mayor of the Disrict of Columbia, Washington, D.C.
Mr. A. R. Marshall, Commissioner, Public Buildings Service, Washington, D.C.

The purpose of the meeting will be to review final designs for the Memorial to the 56 Signers of the Declaration of Independence and site plans for the Maine Lobsterman Memorial. The meeting will conclude with a field trip to review examples of methods to clean outdoor bronze memorials.

The meeting will be open to the public. Any person may file with the Committee a written statement concerning the matters to be discussed. Persons who wish to file a written statement or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at (202) 426–7750. Minutes of the meeting will be available for public inspection 2 weeks after the meeting at the National Capital Region Headquarters, Room 208, 1100 Ohio Drive, SW., Washington, D.C.

Dated: October 17, 1980.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 80–33384 Filed 10–24–80; 8:45 am]

BILLING CODE 4310-70-M

Ozark National Scenic Riverways, Missouri; Availability and of Public Hearings, Environmental Assessment, General Management Plan

Notice is hereby given of the availability of an Environmental Assessment for the General Management Plan, Ozark National Scenic Riverways, which the National Park Service has prepared in accordance with 40 CFR 1508.9 in the implementation of the National Environmental Policy Act of 1970, as amended, 42 U.S.C. 4321 et seq.

Notice is further given of public meetings to be conducted as follows:

November 10, 1980—Eminence, Missouri, West Eminence Elementary School Auditorium, 7 p.m.
November 11, 1980—Van Buren, Missouri, High School Auditorium, 7 p.m.
November 12, 1980—St. Louis, Missouri, Jefferson National Expansion Memorial National Historic Site Auditorium, 7 p.m.

November 13, 1980—Columbia, Missouri, Physics Building, Rooms 114 and 126, University of Missouri Campus, 7 p.m.
November 14, 1980—Independence, Missouri, Heart of America 4–H Youth Center, 2820 South Highway 291, 7 p.m.

Copies of the Environmental Assessment, including components on Natural Resources Management and Cross-Country Trail Rides, are available from or may be inspected at the following locations:

Superintendent, Ozark National Scenic Riverways, P.O. Box 490, Van Buren, Missouri 63965.
Regional Director, Midwest Regional Office, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102.

Written comments should be submitted to the Superintendent, Ozark National Scenic Riverways, at the above address by December 12, 1980.

Dated: October 14, 1980.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 80-33383 Filed 10-24-80; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the following objects in the exhibit of Edvard Munch paintings:

1. The Voice (1893),
2. Dagny Juell (1893),
3. Red and White (1894),
4. Red Vine (1898),
5. Melancholy (1899),
6. The Death of Marat (1907),
7. Workers on Their Way Home (1913),
8. Model by Wicker Chair (1919/21),
9. Starry Night (1923/24), and
10. Between the Clock and the Bed (1940),

imported from abroad for the temporary, consecutive exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the National Gallery of Art and the Munch Museum, Oslo, Norway. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about October 27, 1980, to on or about October 1, 1985, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 21, 1980.

Charles W. Bray III,

Acting Director, International Communication Agency.

[FR Doc. 80-33300 Filed 10-24-80; 8:45 am]

BILLING CODE 8230-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-19 (Sub-42F)]

Baltimore & Ohio Railroad Co., Allegheny & Western Railway Co., Buffalo, Rochester & Pittsburgh Railway Co. and the Pittsburgh and Western Railroad Co., Abandonment and Discontinuance of Service Between New Castle Branch, Big Run Branch and Marquis Spur, Pa.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided September 4, 1980, a finding, which is administratively final, was made by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Allegheny and Western Railway Company and Buffalo, Rochester and Pittsburgh Railway Company of the Big Run Branch, a distance of 5.18 miles, and Marquis Spur, a distance of 1.01 miles and the discontinuance of service thereover by the Baltimore and Ohio Railroad Company; abandonment by the Pittsburgh and Western Railroad Company of the New Castle Branch, a distance of 2.17 miles, and service thereover by the Baltimore and Ohio Railroad Company; and abandonment by the Baltimore and Ohio Railroad Company of trackage rights over Consolidated Rail Corporation between mileposts 2.21 and 2.26 of the New Castle Branch; all in Lawrence County, PA, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co., Abandonment Goshen,* 360 I.C.C. 91 (1979), and further that applicants shall keep intact all of the right-of-way underlying the track including all the bridges and culverts for a period of 120 days from October 1, 1980, to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Baltimore and Ohio Railroad Company, Allegheny and Western Railway Company, and Buffalo, Rochester & Pittsburgh Railway Company and the Pittsburgh and Western Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicants, with copies to Ms. Ellen Hanson, room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published (December 16, 1980). Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33377 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-59F)]

Burlington Northern, Inc.—Abandonment—Near Aledo and Joy in Mercer County, Ill.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision entered on December 27, 1979, and the decision of the Commission, Division 2, acting as an Appellate Division, served July 16, 1980, adopted the decision of the Commission, Review Board Number 5, which is administratively final, stating that, the public convenience and necessity permit the abandonment by the Burlington Northern, Inc. of its line of railroad between milepost 39.40 near Aledo, IL, and milepost 45.18 at the end of the line near Joy, IL, a distance of 5.78 miles in Mercer County, IL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Burlington Northern, Inc. based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission Building, Washington, D.C. 20423, no later than 10 days from publication of this Notice.

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and.the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33375 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[AB 6 (SDM)]

Burlington Northern, Inc., Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23 that the Burlington Northern, Inc. has filed with the Commission its amended color-coded system diagram map in docket No. AB 6 (SDM). The Commission on June 2, 1980, received a certificate of publication as required by said regulation which is considered the effective date on which the system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each state in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the commission, Section of Dockets, by requesting docket No. AB 6 (SDM).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33374 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: October 21, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.2-percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surchare on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators, the 1.3-percent surcharge for United Parcel Service, nor in the 4.9-percent surcharge authorized for the bus carriers.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy of the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the **Federal Register** for publication therein.

It is ordered:

This decision shall become effective Friday 12:01 a.m., October 24, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Gilliam absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix—*Fuel Surcharge*

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

October 20, 1980 ..... 113.2¢

	Transportation performed by—Owner operator [1]	Other [2]	Bus carrier	UPS
	(1)	(2)	(3)	(4)
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	13.2	2.3	4.9	[3] 2.1
Percent surcharge allowed	13.0	2.3	4.9	[4] 1.3

[1] Apply to all truckload rated traffic.

[2] Including less-than-truckload traffic.

[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).

[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increase already included in UPS rates.

[FR Doc. 80-33373 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-102 (Sub-8F)]

Missouri-Kansas-Texas Railroad Co.—Abandonment—at Burkburnett, Tex., and Altus, Okla. in Wichita County, Tex., and Cotton, Tillman, and Jackson Counties, Okla.; Notice of Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided February 8, 1980, a finding, which is administratively final, was by the Administrative Law Judge, stating that, the present and future public convenience and necessity permit the abandonment by the Missouri-Kansas-Texas Railroad Company of those portions of the line of railroad, and operations thereof, extending northwestwardly from milepost 14.0–B at Burkburnett, TX, to milepost 78.560–B at Altus, OK, a distance of about 64.5 miles, in the County of Wichita, TX, and the Counties of Cotton, Tillman and Jackson, OK, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979), and further that applicant shall keep intact all of the right-of-way underlying the track, including all the bridges and culverts for a period of 120 days from the date of first publication of this notice to permit any state or local government agency or other interested aprty to negotiate the acquisition for public use of all or any portion of the right-of-way. A certificate of abandonment will be issued to the Missouri-Kansas-Texas Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (November 26, 1980), unless within 15 days from the date of publication (November 12, 1980), the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) it is likely that such proffered assistance would:

(a) cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published (December 16, 1980). Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the **Federal Register** on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decisions.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 80-33378 Filed 10-24-80; 8:45 am]
BILLING CODE 7035-01-M

Policy and Procedures Relating to Proceedings Involving Compliance by Household Goods Agents of Certain Statutory Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Interstate Commerce Commission has the responsibility under the Household Goods Transportation Act of 1980 to require compliance of various statutory provisions by Household Goods Agents. The Interstate Commerce Commission's policy will be to pursue that responsibility vigorously and in that regard this statement is intended to identify the guidelines that will be followed.

FOR FURTHER INFORMATION CONTACT: Richard S. Lewis, (202) 275–7811.

Policy Statement

The Household Goods Transportation Act of 1980 increases the Commission's authority to regulate household goods agents. The legislative history, however, clearly shows that Congress does not expect the Interstate Commerce Commission to create a new regulatory structure for household goods agents. Rather, the Congress' concern is with the limited number of household goods agents who disproportionately account for a high percentage of complaints. The Act has vested the Commission with authority to move directly against household goods agents by initially requiring compliance after an oral hearing and subsequently after a second hearing (on the modified procedure) limiting, conditioning or prohibiting transportation or services incidental to the transportation of household goods in interstate commerce.

This statement is intended to convey the Commission's proposed policy concerning the increased authority over household goods agents. In accord with Congressional intent to protect consumers against serious abuses by household goods agents, the Commission believes that this objective can best be achieved by establishing certain guidelines rather than to adopt regulations specifically designed for household goods agents. These general procedures comply with the existing Rules of Practice.

Section 10934(a) of the Act provides that a household goods carrier is responsible for the acts or omissions of its agents and the accompanying legislative history clearly comments on that obligation of the carrier. The Interstate Commerce Commission has always and will continue to hold household goods carriers operating under our jurisdiction responsible for the actions of their agents. We expect each carrier to engage in self-regulation of its agents and we will not hesitate to seek redress and compliance from a carrier for the acts of its agents.

Section 10934(c)(1), however, authorizes the Commission to move directly against household goods agents who allegedly violate Section 11901(j) or 11917 [1] of the Act or are found to be

[1] Section 11901(j)—

Any person that knowingly engages in or knowingly authorizes an agent or other person (1) to falsify documents used in the transportation of household goods subject to the jurisdiction of the Commission under subchapter II of chapter 15 of this title which evidence the weight of a shipment, or (2) to charge for accessorial services which are not performed or for which the carrier is not entitled to be compensated in any case in which such services are not reasonably necessary in the safe and adequate movement of the shipment, is liable to the United States for a civil penalty of not more than $2,000 for each violation and of not more than $5,000 for each subsequent violation. Any state may bring a civil action in the United States district

Footnotes continued on next page

consistently not fit, willing and able to provide adequate household goods transportation service (including accessorial and terminal services). The Commission's Office of Consumer Protection (OCP) has the responsibility of conducting field investigations of household goods agents either as part of a regular compliance monitoring program or because of complaints from shippers which request OCP's assistance. In instances where OCP concludes that the facts developed in the field investigations support the issuance of a complaint against a household goods agent, OCP will prepare and submit a complaint [2] to the Commission's Chief Administrative Law Judge. The complaint will be forwarded to the Office of the Secretary for service of the complaint on the household goods agent, the household goods carrier who serves as the agent's principal carrier, and the OCP. The complaint will be accompanied by a notice designating the Administrative Law Judge assigned to the case and setting the location and date of hearing. As required by Section 10934(c)(1) of the Act, the hearing will be held no later than 60 days after service of the complaint to the agent. The agent has a statutory right under Section 10934(c)(2) of the Act to appear at the oral hearing and rebut the charges in the complaint.

The Act further provides at Section 10934(c)(3) that in the event the agent does not appear at the oral hearing or upon a finding of the Administrative Law Judge that the agent has violated Section 11901(j) or 11917 or is consistently not fit, willing and able to provide adequate service, an order may be issued compelling compliance by the agent.

An appeal from the order may be filed within the time limits provided for in 49 CFR 1100.97. The Commission will expeditiously review and decide any administrative appeal.

If the Commission upholds a compliance order, OCP will monitor subsequent performance by the household goods agent. If, a field investigation develops information showing willful failure by the agent to comply with the order issued at least 30 days earlier, the Commission, based on information supplied by OCP alleging failure will issue an order to show cause why it should not limit, condition, or prohibit the household goods agent from the transportation or services incidental to the transportation of household goods.

After reviewing the record submitted by the agent and the OCP, the Commission will issue a decision either finding the agent in compliance or finding non-compliance. If an agent is found not to be in compliance, an order will be issued to limit, condition or prohibit a household goods agent from any involvement in the transportation or services incidental to the transportation of household goods. This order will be considered a final action of the Commission. Compliance with this order must be immediate.

An agent subject to a final Commission order may at any time file a petition to rescind the order. The Commission will refer the petition to the Chief Administrative Law Judge for immediate assignment of the case for oral hearing by an Administrative Law Judge other than the one who conducted the initial hearing. The Judge will issue a notice to the agent and OCP designating the location and date of the hearing.

At the conclusion of the hearings, the Administrative Law Judge will issue an initial decision which will be subject to a right of appeal to the Commission pursuant to 49 CFR 1100.97.

These procedures are also available to any party without the OCP's participation in the process. The notable difference is that the party filing the complaint has the burden of proving that the household goods agent violated the particular statutory provisions of concern here, or that the agent is consistently not fit, willing and able to provide adequate service. Complaints should be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Dated: October 14, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam. Commissioner Trantum was absent and did not participate in the disposition of this proceeding.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33378 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP4-098]

Motor Carriers; Decision-Notice

Decided: October 20, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where 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 the absence of legally sufficient protests in the form of verified statements filed by December 11, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon

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Footnotes continued from last page

courts to compel a person to pay a civil penalty assessed under this subsection.

Section 11917(a)—

(a) For the purpose of this section, "weight-bumping" means the knowing and willful making or securing of a fraudulent weight on a shipment of household goods which is subject to the jurisdiction of the Commission under subchapter II of chapter 15 of this title.

(b) Any individual who has been found to have committed weight-bumping shall, for each offense, be fined at least $1,000 but not more than $10,000, imprisoned for not more than 2 years, or both.

The analysis for chapter 119 of title 49, United States Code, is amended by inserting "11917. Weight-bumping in household goods transportation.

[2] The Commission Rules of Practice, 49 CFR 1100.24 as to the number of copies and 1100.26 as to form and allegations apply to complaints discussed above.

compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. On or before December 26, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman. Member Chandler not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 149486F, filed October 10, 1980. Applicant: RANGEN TRANSPORTATION, INC., P.O. Box 706, Buhl, ID 83316. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

[FR Doc. 80-33369 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. OP4-097]

Motor Carriers; Decision-Notice

Decided: October 20, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication 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, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where 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 the absence of legally sufficient protests in the form of verified statements filed on or before December 11, 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 notice that the decision-notice is effective. On or before December 26, 1980 an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 2, Members: Chandler, Eaton, and Liberman. Member Chandler not participating.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 1977 (Sub-49), filed October 14, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *such commodities* as are dealt in or used by a manufacturer of containers and packaging materials between points in Canyon County, ID, on the one hand, and, on the other, points in Box Elder and Sanpete Counties, UT.

MC 5987 (Sub-5F), filed October 14, 1980. Applicant: KULB TRUCKING, INC., 789 Rambler Rd., Warminster, PA 18974. Representative: Albert Kulb (address same as applicant). Transporting *iron and steel articles,* between Philadelphia, PA, on the one hand, and, on the other points in MI, IN, KY, TN, MS, OH, AL, WV, VA, NC, SC, GA, FL, PA, NY, VT, NH, ME, MA, CT, NJ, DE, MD, and DC. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, if its certificates in MC 5987 (Sub-Nos. 1 and 3).

MC 59856 (Sub-91F), filed, September 29, 1980. Applicant: SALT CREEK FREIGHTWAYS, a corporation, 3333 West Yellowstone, Casper, WY 82601. Representative: John R. Davidson, 805 First Bank Bldg., Billings, WY 82601. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, and household goods as defined by the Commission), (1) between Minneapolis, MN, and Billings, MT, over Interstate Hwy 94, serving no intermediate points; (2) Between Minneapolis, MN, and Casper WY, from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 90, then over Interstate Hwy 90 to junction WY Hwy 59, then over WY Hwy 59 to junction WY Hwy 387, then over WY Hwy 387 to junction Interstate Hwy 25, and then over Interstate Hwy 25 to Casper, and return over the same routes, serving the intermediate points of Rapid City, SD, and Gillette, WY; (3) Between Minneapolis, MN, and Denver, CO, from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 76, and then over Interstate Hwy 76 to Denver, and return over the same route, serving no intermediate points; (4) Between Minneapolis, MN, and Cheyenne, WY; from Minneapolis over Interstate Hwy 35 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Cheyenne, and return over the same route, serving no intermediate points; (5) Between Salt Lake City, UT, and Butte, MT, over Interstate Hwy 15, serving the intermediate points of Clearfield and Ogden, UT, and Pocatello and Idaho Falls, ID; and (6) Between Salt Lake City, UT, and Cheyenne, WY: (a) from Salt Lake City over Interstate Hwy 80 to Cheyenne, and return over the same route, serving all intermediate points in WY, and (b) from Salt Lake City over Interstate Hwy 15 to junction Interstate Hwy 80N, then over Interstate Hwy 80N to junction Interstate Hwy 80, and then over Interstate Hwy 80 to Cheyenne, and return over the same route, serving the intermediate points of Clearfield and Ogden, UT, and all intermediate points on Interstate Hwy 80 in WY.

Note.—applicant intends to tack this authority with its existing regular-route authority.

MC 70557 (Sub-35F), filed, October 14, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S LaSalle St., Chicago, IL 60603. Transporting (1) *carbonated beverages and soft drinks and* (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, between points in AL, FL, GA, LA, MS, OK, SC, TN, and TX.

MC 95876 (Sub-369F), filed, October 14, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave., No., St. Cloud, MN 56301. Representative: William L. Libby (same as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of prefabricated metal buildings (except commodities in bulk), between points in Andrew and Buchanan Counties, MO, on the one hand, and, on the other, points in the U.S.

MC 102567 (Sub-254TA), filed October 16, 1980. Applicant: McNAIR TRANSPORT, INC., 4295 Meadow Lane, P.O. Drawer 5357, Bossier City, LA 71111. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001. Transporting *commodities in bulk,* (1) between points in AR, LA, and TX, on the one hand, on the other, points in the U.S., and (2) from points in the U.S. to points in AL, MS, TN, OK, and NM.

MC 108207 (Sub-561TA), filed October 15, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). Transporting *tires, tubes, and wheels,* from points in Shelby County, TN, Adams County, MS, Stephenson County, IL, and Marion County, IN, to points in TX.

MC 117686 (Sub-292TA), filed October 14, 1980. Applicant: HIRSCHBACH MOTOR LINES, INC., 920 W. 21st St., P.O. Box 155, S. Sioux City, NE 68776. Representative: George L. Hirschbach (same address as applicant). Transporting *food or kindred products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, from points in FL to points in KS, NE, ND, SD, MN, WI, and IA.

MC 120636 (Sub-10TA), filed October 10, 1980. Applicant: BRUNTON STORAGE & VAN CO., INC., Sixth and Locust St., Chatsworth, IL 60921. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting (1) such commodities as are dealt in by manufacturers and distributors of glass containers, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) above, between Streater, IL, Lawrenceburg, IN, Elmira, NY, and Wharton, NJ, on the one hand, and, on the other, points in IL, IA, KY, MI, MN, MO, IN, NJ, NY, NC, OH, PA, TN, and WI.

MC 124117 (Sub-43TA), filed October 16, 1980. Applicant: EARL FREEMAN AND MARIE FREEMAN, d.b.a. MID-TENN EXPRESS, P.O. Box 101, Eagleville, TN 37060. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting (1) *metal and plastic castings* and *component parts* for fuel dispensing equipment, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between the facilities used by Middle Tennessee Plastics, at Lewisburg, 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.

MC 136786 (Sub-236F), filed October 15, 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 55434. Transporting *foodstuffs,* between points in Shelby County, TN, on the one hand, and, on the other, points in the U.S.

MC 138956 (Sub-18F), filed October 15, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *liquid caustic soda,* in bulk, from points in Mobile County, AL, to points in Santa Rosa County, FL.

MC 138956 (Sub-19F), filed October 15, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. Transporting *cement and mineral filler,* between points in Orleans Parish, LA, on the one hand, and, on the other, points in AL, FL, MS, and TX.

MC 139006 (Sub-18F), filed October 15, 1980. Applicant: RAPIER SMITH, R.R. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 W. Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *alcoholic beverages,* from points in KY, MI, IL, NY, and MO, to Indianapolis, IN.

MC 143356 (Sub-4F), filed October 16, 1980. Applicant: MIRACL MOTOR SERVICE LTD., 1825 N. California Ave., Chicago, IL 60647. Representative: Stanley Phillips, 5527 N. Central Ave., Chicago, IL 60630. Transporting *composition board,* and *materials, equipment, and supplies* used in the manufacture and distribution of composition board, between the facilities of Abitibi-Price Corporation, at or near Toledo, OH, on the one hand, and, on the other, points in IN, IA, IL, and WI.

MC 143956 (Sub-19F), filed October 15, 1980. Applicant: GARDNER TRUCKING CO., INC., P.O. Drawer 493, Walterboro, SC 29488. Representative: Steven W. Gardner, 3574 Piedmont Rd., Atlanta, GA 30305. (1) *Electronic calculators and cash registers,* and (2) *parts* for the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities used by Victor Business Products.

MC 146226 (Sub-6F), filed October 15, 1980. Applicant: J & P TRUCKING CO., INC., P.O. Box 457, Lincolnton, NC 28092. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. 2nd St., Clearfield, PA 16830. Transporting (1) *textiles and textile products,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Lincolnton, NC, and LeMoyne, AL, 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.

MC 147316 (Sub-1F), filed October 14, 1980. Applicant: CRESTON TRANSPORTATION, INCORPORATED, East Highway 34, Creston, IA 50801. Representative: David L. Charles, 2600 Ruan Center, Des Moines, IA 50309. Transporting *petroleum products* and *liquefied natural gas,* between points in NE, KS, MO, OK and MN, on the one hand, and, on the other, points in IA. Condition: To the extent any certificate issued in this proceeding authorizes the transportation of liquefied natural gas it shall be limited in point of time to a period expiring five (5) years from its date of issuance.

MC 148647 (Sub-4F), filed October 14, 1980. Applicant: HI-CUBE CONTRACT CARRIER CORP., 5501 West 79th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Dayco Corporation, of Dayton, OH.

MC 148647 (Sub-5F), filed October 15, 1980. Applicant: HI-CUBE CONTRACT

CARRIER CORP., 5501 W. 79th St., Burbank, IL 60459. Representative: Arnold L. Burke, 180 No. LaSalle St., Chicago, IL 60601. Transporting *malt beverages,* and *materials, equipment, and supplies* used in the manufacture and distribution of malt beverages, between points in the U.S., under continuing contract(s), with Pabst Brewing Company, of Milwaukee, WI.

MC 149546F, filed September 29, 1980. Applicant: D & T TRUCKING CO., INC., 498 First St., N.W., New Brighton, MN 55112. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. 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), between Minneapolis, MN, on the one hand, and, on the other, points in ND, SD, NE, KS, AR, LA, MO, MN, WI, MI, IA, IL, IN, OH, PA, NY, NJ, CT, VT, NH, ME, MA, MD, TN, AL, GA, FL, NC, SC, VA, DE, WV, WI, KY, MS, and DC.

MC 149577F, filed October 10, 1980. Applicant: O. W. SMITH TRANSPORT, INC., Hwy 71 No., Rt. 1, Box 112, DeQueen, AR 71832. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR. 72201. Transporting *such commodities* as are dealt in or used by manufacturers of (a) forest products, (b) lumber and lumber products, (c) paper products, and (d) building materials, (except commodities in bulk, in tank vehicles), between points in the U.S., under continuing contract(s) with the Weyerhaeuser Company.

MC 150147 (Sub-1F), filed October 14, 1980. Applicant: CLYDE YORK AND RONALD YORK, d.b.a. YORK FARMS, R.R. No. 4, Jacksonville, IL 62650. Representative: Michael W. O'Hara, 300 Reisch Bldg., Springfield, IL 62701. Transporting *fertilizer and anhydrous ammonia,* between points in IL, IN, IA, KY, MO and WI.

MC 150567 (Sub-7F), filed October 14, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tensoro Dr., Suite 515, San Antonio, TX 78217. Transporting (1) *foodstuffs* (except in bulk), and (2) *materials, equipment and supplies* used in the manufacture of foodstuffs (except commodities in bulk), between points in the U.S., under continuing contract(s) with Right Away Foods Corporation at McAllen, TX.

[FR Doc. 80-33371 Filed 10-24-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; 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 November 17, 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 on or before November 26, 1980, 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, Williams and Taylor.

MC–FC–78679. By decision of July 19, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to SHAKER MOUNTAIN TRANSPORT, INC., of Burbank, CA, of Permit No. MC–141368 issued February 17, 1977 to BASE TRANSPORTATION, INC., of Montclair, CA, authorizing the transportation of *paint, and paint thinners and solvents* (except in bulk), from the facilities of Perro Paint Co. at Los Angeles, CA, to points in Arizona, Idaho, Nevada, New Mexico, and Utah, under contract with Perro Paint Company. Applicant's representative is: Donald R. Hedrick, P.O. Box 88, Norwalk, CA 90650. Transferee is not a carrier. TA lease is not sought.

MC–FC–78720. By decision of September 26, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132 Review Board Number 5 approved the transfer to K. G. CONSTRUCTION CO., Gillette, Wyoming of Certificate No. MC–112575 issued August 6, 1980 to YOUNG TRUCKING COMPANY, Gillette, Wyoming authorizing common carrier transportation of *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, not including the stringing or picking up of pipe in connection with pipelines; *machinery, equipment, materials, and supplies,* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipelines, including the stringing and picking up of pipe in connection with main or truck pipelines; and *commodities* (not including those specified above), which, because of size or weight, require the use of special equipment, subject to the following conditions: Applicant's representative is: Ward A. White (307) 634–2184, P.O. Box 568, Cheyenne, Wyoming 82001.

MC–FC–78751. By decision of September 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to FOE TRUCKING, INC. of Roanoke, VA, of Certificate No. MC–107544 (Sub-No. 82) issued September 26, 1969 to LEMMON TRANSPORT COMPANY, Incorporated of Marion, VA, authorizing the transportation of *asphalt* and *asphalt products,* in bulk, from the plant site and storage facilities of the Shell Oil Company and Asphalt Terminal, Inc., at Bristol, VA, to points in Tennessee, North Carolina, Virginia, and those in Bell, Harlan, Letcher, Knott, Floyd, and Pike Counties, KY, and Raleigh, Wyoming, McDowell, Summers, Mercer, and Monroe Counties, WV, with no transportation for compensation on return except as otherwise authorized. Applicants' representative: Calvin F.

Major, Attorney, 200 W. Grace Street, Suite 415, Richmond, VA 23220.

Notes.—(1) TA has not been filed.

MC–FC–78755. By decision of September 24, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132. Review Board Number 5 approved the transfer to JOY M. GEARY, d.b.a. WESTERFELD TOURS, of Dallas, TX, of License No. MC–12781 issued July 14, 1965 to MARY MASSEY McELREE, d.b.a. WESTERFELD TOURS, of Dallas, TX, authorizing a brokerage service at Dallas, TX, as follows: Passengers and their baggage, beginning and ending at Dallas, TX, and extending to points in the U.S., including AK and HI. Applicants' representative is: Merl H. Scheffey, 4209 McKinney Ave., Dallas, TX 75205. Transferee holds no authority.

MC–FC–78759. By decision of September 22, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to GRAY LINE TRANSFER CORPORATION portions of Certificate No. MC–69394 issued November 20, 1956 and No. MC–69394 (Sub-No. 8) issued January 14, 1970 both of which were issued to the GRAY LINE INC., authorizing the transportation, over irregular routes, of (1) *passengers and their baggage* in round to trip or one-way charter operations, with no seasonal restriction, beginning and ending at Boston, MA, and extending to points in Gaine, New Hampshire, Rhode Island, Connecticut, New York, The District of Columbia, and ports of entry on the International Boundary line between the United States and Canada in Vermont and (2) *passengers and their baggage*, restricted to traffic originating at the points indicated in round trip or one-way charter operation, beginning and ending at Boston, MA, and extending to points in Connecticut, New Hampshire, New York, Pennsylvania, Rhode Island and and Vermont. Applicants' representative: Daniel D. Sullivan, 10. S. LaSalle Street, Suite 1600, Chicago, IL 60603.

MC-FC-78762. By decision of September 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 Review Board Number 5 approved the transfer to NEW LEASING, INC., of New Jersey, of Trenton, NJ, of Certificate No. MC-36734 and subs thereunder to FLEMING's EXPRESS, INC., of Plainville, MA, authorizing the transportation of *Flowers, shrubs,* and *greenhouse and plant nursery products,* from Yardley and Morrisville, PA, to New York, NY: From Yardley across the Delaware River, thence over New Jersey Highway 29 to Trenton, NJ, thence over U. S. Highway 1 to New York. From Yardley to Trenton as specified above, thence over New Jersey Highway 27 to Elizabeth, NJ, and thence over U.S. Highway 1 to New York; from Morrisville, PA, across the Delaware River to Trenton, thence to New York as specified above. *Seeds, plant bulbs, florists' supplies,* and *materials, supplies,* and *equipment,* used or useful in the operation of greenhouses and plant nurseries, from New York, NY to Morrisville and Yardley, PA: From New York over the above-specified routes to Morrisville and Yardley. Service is authorized to and from all intermediate points and off-route points in New Jersey within ten miles of the above-specified routes and those in Pennsylvania south of a line extending from Yardley to Doylestown, PA, thence to Hatfield, PA, and east of a line extending from Hatfield to Philadelphia, including the points specified. *General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Philadelphia, PA, and Trenton, NJ, serving no intermediate points: From Philadelphia over U.S. Highway 1 to Trenton, and return over the same route. From Philadelphia across the Delaware River to Camden, NJ, thence over U.S. Highway 130 to Yardsville, NJ, and thence over New Jersey Highway 37 to Trenton, and return over the same route. Irregular routes: *Flowers, shrubs,* and *greenhouse and plant nursery products,* between Madison, NJ, on the one hand, and, on the other Cranbury, NJ, and points in the above-specified Pennsylvania territory. *Seeds, plant bulbs, florists' supplies,* and *materials, supplies* and *equipment* used or useful in the operation of greenhouses and plant nurseries, from New York, NY, and Cranbury, NJ, to Madison, NJ, with no transportation for compensation on return except as otherwise authorized. *Fruits, farm produce, sea food, poultry, groceries,* and *empty containers* therefor, between Philadelphia, PA, on the one hand, and, on the other, Camden, NJ, and New York, NY. In MC–36734 (Sub. No. 3) *Antimony lead, waste and scrap materials, crude rubber, lubricating oil* in containers, and *groceries,* between Boston, MA, on the one hand, and, on the other, Newark, Perth Amboy, Carteret, and Butler, NJ, and points in Connecticut, Massachusetts, Rhode Island, and New York, NY, Commerical Zone, as defined by the Commission. *Oil,* in containers, and *empty oil containers,* between Boston, MA, on the one hand, and, on the other, points in New Hampshire. In MC–36734 (Sub No. 4) *Groceries, packing-house products,* and *dairy products,* from Boston, MA, to Manchester and Nashua, NH, and points in Massachusetts within 60 miles of Boston, with no transportation for compensation on return except as otherwise authorized. Between Boston, MA, on the one hand, and, on the other, Pawtucket and Providence, RI and a portion in MC–26734 (Sub. No. 5) *Such commodities* as are dealt in by retail furniture and department stores when transported on the delivery instructions of such stores, from Boston, MA, to points in Vermont, New Hampshire, Maine, Rhode Island, and Connecticut; and *uncrated new furniture* when transported on the delivery instructions of a retail furniture or department store, from Portland, Maine, to points in Massachusetts, Connecticut, Rhode Island, Vermont, and New Hampshire; and *rejected, returned, or refuse shipments* of the next two above specified commodities, from the next two above-specified destination points to Boston, MA, and Portland, ME. *Refrigerators, refrigerating units, ranges, washing machine, water coolers, water-cooling equipment, electrical applicances, air-conditioning units,* and *display and show materials* pertaining to such commodities, between Boston, MA, and points within 25 miles of Boston, on the one hand, and, on the other, points in Connecticut, Maine, Massachusetts, Rhode Island, and Vermont. *Commodities specified immediately above,* or *materials pertaining thereto* when solely for display and show purposes, between Boston, MA, and points within 25 miles of Boston, on the one hand, and, on the other, points in New Hampshire. *New furniture,* crated and uncrated, other than new furniture included in household goods description as defined by the Commission, from Boston, MA, to points in Massachusetts and New Hampshire, with no transportation for compensation on return except as otherwise authorized. *New furniture,* between Nashua, NH, and Boston, MA, and points within five miles of Boston, on the one hand, and, on the other, Baltimore, MD, Washington, DC, Richmond, VA, points in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, and Vermont those in Pennsylvania within 25 miles of Philadelphia, PA, including Philadelphia, and those in New York within 20 miles

of New York, NY, including New York, NY. *General commodities,* except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Boston, MA, on the one hand, and, on the other, points in Massachusetts within 25 miles of Boston. Application for TA has not yet been filed. Transferee presently holds no authority from the Commission. Applicant's representative is: Andrew C. Schultz, Attorney, One State Street, Boston, MA 02109.

MC–FC–78763. By decision of September 17, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1132, Review Board Number 5 approved the transfer to RAMON R. BIONE, of Christopher, IL, of Certificate MC–1445, issued to ANGELO BIONE, d.b.a. BIONE TRUCK SERVICE, of Christopher, IL, authorizing the transportation of *drugs* and *such drug store supplies as ice cream, magazines, newspapers,* and *small machinery parts,* between St. Louis, MO, and Christopher, IL, as follows: From St. Louis across the Mississippi River to East St. Louis, IL, thence over Illinois Highway 15 to Mt. Vernon, IL, thence over Illinois Highway 37 to Marion, IL, thence over Illinois Highway 13 to Harrisburg, IL, thence over U.S. Highway 45 to Eldorado, IL thence over country road to Raleigh, IL thence over Illinois Highway 143 to Benton, IL, and thence over Illinois Highway 14 to Christopher. All intermediate points; and from Christopher over Illinois Highway 14 to junction U.S. Highway 51, thence over U.S. Highway 51 to Du Quoin, IL, thence over Illinois Highway 152 to junction Illinois Highway 13, thence over Illinois Highway 13 to East St. Louis, IL, and thence across the Mississippi River to St. Louis. Between Ashley, IL and Merrin, IL, as follows: From Ashley over U.S. Highway 51 to junction Illinois Highway 14, thence over Illinois Highway 14 to junction Illinois Highway 148, thence over Illinois Highway 148 to junction Illinois Highway 149, thence over Illinois Highway 149 to junction unmarked highway, thence over unmarked highways via Carterville and Colp, IL, to Herrin. All intermediate points; and from Herrin over Illinois Highway 148 to Christopher, IL, thence over Illinois Highway 14 to junction U.S. Highway 51, and thence over U.S. Highway 51 to Ashley. Applicant's representative is Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. TA application has not been filed. Transferee holds no authority.

MC–FC–78768. By decision of September 19, 1980 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 Review Board Number 5 approved the transfer to MARIANNA COACH LINES INC., of Paducah, KY, of Certificate Nos. MC–116248 and MC–116248 (Sub. No. 10) issued July 10, 1974, and June 9, 1977, respectively, to TRI-STATE BUS LINES, INC., of Paducah, KY, authorizing the transportation in MC–116248 of *Passengers and their baggage,* and *newspapers,* in the same vehicle with passengers, between Popular Bluff, MO, and Willow Springs, MO, serving all intermediate points: From Popular Bluff over U.S. Highway 60 to Willow Springs, and return over the same route. Restriction: The operations authorized above are subject to such further limitations, restrictions, or modifications as the Commission may hereafter find it necessary to impose in order to insure that the service shall not unduly restrain competition. *Passengers and their baggage,* and *express and newspapers,* in the same vehicle with passengers, between Popular Bluff, MO, and Cairo, IL, serving all intermediate points: From Popular Bluff over U.S. Highway 60 to Cairo, and return over the same route. Between Cairo, IL, and Wickliffe, KY, serving all intermediate points: From Cairo over U.S. Highway 62 to Wickliffe, and return over the same route. Between Wickliffe, KY, and Paducah, KY, serving all intermediate points: From Wickliffe over U.S. Highway 60 to Paducah, and return over the same route. In *MC–116248 Sub-10 Passengers and their baggage* and *express and newspapers,* in the same vehicle with passengers: Between Paducah and Louisville, KY, serving all intermediate points; from Paducah over U.S. Highway 62 to its junction with Interstate Highway 65, thence over Interstate Highway 65 to Louisville and return over the same route. Restriction: The authority granted herein above is restricted against service between Elizabethtown and Louisville. Between St. Charles and Nortonville, KY, serving all intermediate points: From St. Charles over Kentucky Highway 112 to its junction with Alternate U.S. Highway 41, thence over Alternate U.S. Highway 41 to Nortonville, and return over the same route. Between Madisonville, and Nortonville, KY, serving all intermediate points: From Madisonville over Alternate U.S. Highway 41, to Nortonville, and return over the same route. Irregular routes: *Passengers and their baggage,* in charter operations, beginning and ending at Viola, Paducah, and Princeton, KY, and extending to points in the United States, except those in Kentucky, Alaska, and Hawaii. Applicant's representative is: George M. Catlett, Attorney at Law, Suite 708—McClure Building, Frankfort, KY 40601. Application for TA has been filed. Transferee presently holds no authority from the Commission.

MC–FC–78773. By decision of September 23, 1980, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1132 The Motor Carrier Board approved the transfer to WESTERN TURF EXPRESS INC. of certificate No. MC–129156 (Sub-No. 1) issued April 7, 1975 to GIDDI-UP-GO HORSE TRANSPORTATION, INC. authorizing the transportation of *horses, other than ordinary, mascots, personal effects of attendants, trainers, and exhibitors,* and *supplies and equpment used in the care and exhibition of such animals* between points in Arizona, Arkansas, California, Illinois, Kentucky, Louisiana, Michigan, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington. Applicant's representative is: Earl Brown, 1316 Southwest 16th, Renton, WA 98055. TA application has not been filed.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–33372 Filed 10–24–80; 8:45 am]

BILLING CODE 7035–01–M

[Section 5b Application No. 2[1]]

Western Railroads; Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of postponement of compliance date, and request for additional comments.

SUMMARY: The November 1, 1980 compliance date in this proceeding is post-poned to January 15, 1981. The interim approval of the proposed rate bureau agreements, entered October 26, 1976, in Ex Parte No. 297 (Sub-No. 1), is also extended to this date. The Commission requests comments regarding the new statutory provisions governing rate bureaus contained in the Staggers Rail Act of 1980, as they may affect the issues in this proceeding.

DATES: Comments should be filed on or before November 26, 1980.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Room 5340, Interstate Commerce Commission, Washington, D.C. 20423.

[1] This proceeding also embraces Section 5b Application No. 3, Eastern Railroads—Agreement, and Section 5b Application No. 6, Southern Railroads—Agreement.

FOR FURTHER INFORMATION CONTACT:
Richard B. Felder or Jane F. Mackall, (202) 275–7656.

SUPPLEMENTARY INFORMATION: In a decision served August 13, 1980, 364 I.C.C. 1, the Commission ordered the interim approval of these rate bureau agreements terminated October 14, 1980, or upon the filing by the railroads of amended agreements. The proceeding was held open for a period of 45 days to allow parties to file comments on: (1) the definitions of "practicably participate", and "broad tariff changes; (2) the proposal to prohibit the docketing of independent rate actions, and (3) the findings with respect to general rate increases (or decreases) and broad tariff changes. On September 26, 1980, the October 14, 1980 compliance date was extended to November 1, 1980.

After these decisions were made, the Staggers Rail Act of 1980 was enacted. Our final decision in this case must be consistent with the new law. Therefore, comments are invited concerning the need for any changes in our decision required by the new law.

Interim antitrust immunity for current agreements is extended until January 15, 1981. The November 1, 1980 compliance date in this proceeding is postponed to January 15, 1981.

By separate notice, we are scheduling oral argument to be held December 11, 1980.

This action does not affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10706)

Decided: October 17, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-33279 Filed 10-24-80; 8:45 am]

BILLING CODED 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F–67

The following applications were filed in region 1. Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 28536 (Sub-1–1TA), filed September 23, 1980. Applicant: FOX & GINN, INC., 207 Perry Road, Bangor, ME 04401. Representative: Elliot Bunce, Suite 1301, 1600 Wison Blvd., Arlington, VA 22209. *Common carrier:* regular route: *General commodities (except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (1) between Milford, ME, and the International Boundary line between the US and CD near Fort Kent, ME, from Milford over US Hwy 2 to junction US Hwy 1 to the International Boundary line, and return over the same route, serving all intermediate points; (2) between junction US Hwy 2 and Maine Hwy 157 and junction Maine Hwy 11 and US Hwy 1, near Fort Kent, ME from junction US Hwy 2 and Maine Hwy 157 over Maine Hwy 157 to junction Maine Hwy 11, and then over Maine Hwy 11 to junction US Hwy 1, and return over the same route, serving all intermediate points; (3) between Houlton, ME, and the International Boundary line between the US and CD, over US Hwy 2, serving all intermeditate points; (4) between Mars Hill, ME, and the International Boundary line between the US and CD, near Fort Fairfield, ME, from Mars Hill over US Hwy 1A to Fort Fairfield, and then over Maine Hwy 167 to the International Boundary line, and return over the same route, serving all intermediate points; (5) between junction US Hwy 1A and unnumbered highway approximately 5 miles north of Mars Hill, ME, and the International Boundary line between the US and CD, over unnumbered highway, serving all intermediate points; (6) between Presque Isle and Fort Fairfield, ME, over Maine Hwy 167, serving all intermediate points; (7) between Caribou and Fort Fairfield, ME, over US Hwy 1A, serving all intermediate points; (8) between Caribou, ME, and the International Boundary line between the US and CD, near Limestone, ME, from Caribou over Maine Hwy 89 to junction Maine Hwy 229, and then over Maine Hwy 229 to the International Boundary line, and return over the same route, serving all intermediate points; (9) between Van Buren, ME, and the International Boundary line between the US and CD near Van Buren, over unnumbered highway, serving all intermediate points; and (10) between Madawaska, ME, and the International Boundary line between the US and CD near Madawaska, over unnumbered highway, serving all intermediate points. Authority is requested at all other points in Aroostook County, ME, and Millinockett, East Millinockett, Medway, Orrington, and Bucksport, ME, as off-route points in connection with the above-described routes. Authority is requested to serve all points. Supporting shippers: There are 55 statements in support of this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 123063 (Sub-1–1TA), filed October 14, 1980. Applicant: KIRBERY TRANSPORTATION, INC., 425 Main Street, Woodbridge, NJ 07095. Representative: Michael R. Werner, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Water base asphalt emulsion products,* from Clark, NJ to Rockland, MA and their respective commercial zones. Supporting shipper: Karnak Chemical Co., 330 Central Ave., Clark, NJ 07066.

MC 134806 (Sub-1–7TA), filed October 14, 1980. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Drive, Brattleboro, VT 05301. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, D.C. 20014. *Contract carrier:* irregular routes, *cast iron wood-burning stoves,* from Bethel, VT to Sparks, NV. Supporting shipper: Vermont Castins, Inc., Prince Street, Randolph, VT 05060.

MC 113843 (Sub-1–16TA), filed October 14, 1980. Applicant:

REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, 5th Floor, Boston, MA 02210. Representative: Lawrence T. Sheils, 316 Summer Street, 5th FLoor, Boston, MA 02210. *(1) Such commodities as are dealt in by grocery and food business houses, and empty containers (except commodities in bulk) and (2) materials, supplies and equipment used in the manufacture and distribution of commodities in (1) above (except commodites in bulk)* between points in CT, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI, and DC. Supporting shipper(s): There are statements from twenty-nine supporting shippers attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 124328 (Sub-1–7TA), filed October 15, 1980. Applicant: BRINK'S INCORPORATED, Thorndal Circle, Darien, CT 06820. Representative: Richard H. Streeter, Wheeler & Wheeler, 1729 H Street, NW., Washington, DC 20006. *Contract carrier:* irregular routes: *Silver and gold bullion and sweeps* from Jackson, OH to all points in the continental U.S. under continuing contract with Jackson Precious Metals, Inc., 305 Water St., Jackson, OH 45640.

MC 151211 (Sub-1–2TA), filed October 15, 1980. Applicant: TABLOID SHIPPERS, INC., 1101 Tonnele Avenue, North Bergen, NJ 07047. Representative: William J. Augello, Esq., Augello, Pezold & Hirschmann, P.C., 120 Main Street, P.O. Box Z, Huntington, NY 11743. *Contract carrier:* irregular routes: *Printed matter* from Spartanburg, SC to Warsaw, IN. Supporting shipper: R. R. Donnelly & Sons Co., 2223 So. Martin Luther King Drive, Chicago, IL 60616.

MC 152189 (Sub-1–1TA), filed October 14, 1980. Applicant: GARY LEE EDWARDS, d.b.a., EDWARDS TRUCKING COMPANY, 145 Bellevue Avenue, Rutland, VT 05701. Representative: James M. Burns, 1383 Main Street, Suite 413, Springfield, MA 01103. Contract carrier: irregular routes: Building materials and equipment, materials and supplies used in the manufacture, sale and distribution of such commodities, between points in Rutland County, VT, and points in the contiguous 48 states, under a continuing contract(s) with STO Energy Conservation, Inc., Rutland, VT 05701. Supporting shipper: STO Energy Conservation, Inc., Rutland, VT 05701.

MC 11504 (Sub-1–1TA), filed October 15, 1980. Applicant: STARR TRANSIT CO., INC., 2531 E. State Street, Trenton, NJ 08619. Representative: Alan R. Squires, Esq., Steinberg, Greenstein, Gorelick & Price, 818 Widener Building, 1339 Chestnut Street, Philadelphia, PA 19107. *Common carrier:* regular routes: (A) *Passengers and their baggage in the same vehicle with passengers* over regular routes between Levittown, PA and Atlantic City, NJ, serving all intermediate points, beginning in Levittown, PA on the corner of Olds Boulevard and Queene Anne Drive to Oxford Valley Road north to Route 1 south to the intersection of Route 95, south to Route 132, west to the intersection of Hulmeville Road and Route 132 in Bensalem, PA; thence, reversing on Route 132 going south to Route 95, south to the Walt Whitman Bridge to the Atlantic City Expressway to Atlantic City, NJ, and return over the same route; (B) *Passengers and their baggage in the same vehicle with passengers* between Richboro, PA, and Atlantic City, NJ, serving all intermediate points, beginning in Richboro, PA on Route 532, thence south on Route 532 to the intersection of Route 132 and Route 532 in Feasterville, PA; thence south on Route 132 to the intersection of Route 132 and Hulmeville Road in Bensalem; thence, south on Route 132 to Route 95 south to the Walt Whitman Bridge to the Atlantic City Expressway to Atlantic City, NJ, and return over the same route. This application is supported by 36 witnesses whose affidavits can be reviewed at the Regional Office of the ICC in Boston, MA.

MC 152163 (Sub-1–1TA), filed October 15, 1980. Applicant: DARTMOUTH CONTRACT CARRIERS, INC., 438 Dartmouth Street, New Bedford, MA 02742. Representative: Thomas N. Willess, 1000 Sixteenth Street, NW., Suite 502, Solar Building, Washington, DC 20036. *Contract carrier:* irregular routes: *Such commodities as are dealt in or used by manufacturers of paint, chemicals, and related articles,* between the facilities of The Sherwin Williams Company located in Essex County, NJ, on the one hand, and, on the other, Woburn, Medford, and Somerville, MA, and Portland and Scarborough, ME, under continuing contract(s) with The Sherwin Williams Company, P.O. Box 6875, Cleveland, OH 44101. Supporting shipper: The Sherwin Williams Company, P.O. Box 6875, Cleveland, OH 44101.

MC 152162 (Sub-1–1TA), filed October 10, 1980. Applicant: MANHATTAN COACH LINES, Route 46, Elmwood Park, NJ 07407. Representative: Robert E. Goldstein, 370 Lexington Avenue, New York, NY 10017. *Contract carrier:* irregular routes: *Passengers and their baggage, in the same vehicle with passengers, in charter operations,* between points in the US under continuing contract with Consolidated Terminal & Travel Bureau, Inc. Supporting shipper: Consolidated Terminal & Travel Bureau, Inc., 46 W. 43rd St., New York, NY 10036.

MC 152174 (Sub-1–1TA), filed October 15, 1980. Applicant: IBI SECURITY SERVICE, INC., 29–19 39th Avenue, Long Island City, NY 11101. Representative: Bruce J. Robbins, Esq., Robbins & Newman, P.C., 118–21 Queens Boulevard, Forest Hills, NY 11375. *Contract carrier:* irregular routes: *Coin, currency and negotiable securities,* between the New York, NY Commercial Zone, on the one hand, and, on the other, points in the States of CT and NJ. Supporting shipper: Consumers Distributing Co., Ltd., 205 Campus Plaza, Edison, NJ 08817.

MC 143127 (Sub-1–25TA), filed October 14, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *Such commodities as are dealt in or used by retail and variety department stores (except foodstuffs and commodities in bulk),* between MI and NY, on the one hand, and, on the other, points in the US. Supporting shipper: Naums Catalog Sales, 2373 W. Ridge Road, Rochester, NY 14626.

MC 152191 (Sub-1–1TA), filed October 14, 1980. Applicant: ELIZABETH FREIGHT FORWARDING CORP., 120 South 20th Street, Irvington, NJ 07111. Representative: Edward F. Bowes, Esq., 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *Bakery products,* from Weymouth, MA to points in NJ, NY, RI, CT and MD. SUPPORTING SHIPPER: S. B. Thomas, Inc. 930 North Riverview Drive, Totowa, NJ 07511.

MC 134806 (Sub-1–8TA), filed October 14, 1980. Applicant: B-D-R TRANSPORT, INC., P.O. Box 1277, Vernon Drive, Brattleboro, VT 05301.Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC 20014 *Contract carrier:* irregular routes: *Boot and shoe parts and materials,* from Windsor, VT to Denver, CO, Salt Lake City, UT, Reno, NV, Seattle, WA, Portland and Eugene, OR, and points in CA. Supporting shipper: The Goodyear Tire and Rubber Company, 1144 E. Market Street, Akron, OH 44316.

MC 151893 (Sub-1–1TA), filed October 14, 1980. Applicant: B & Q DISTRIBUTION SERVICE, INC., R.D. #4 Baldwinsville, NY 13027. Representative: C. Andrew Pappas, Ali, Pappas, & Cox, P.C., Gridley Building, Syracuse, NY 13200. *Such commodities that are dealt in by grocery and food business houses (except commodities in*

bulk) in vehicles equipped with mechanical refrigeration devices, between points in the NY State counties of Broome, Cayuga, Chemung, Chenango, Cortland, Jefferson, Madison, Oneida, Onondaga, Ontario, Oswego, Seneca, Tioga, Thompkins, Wayne, and all points in PA. Supporting shippers: There are 5 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA

MC 58852 (Sub-1–2TA), filed October 10, 1980. Applicant: SALEM MOTOR TRANS. INC., 121 Webster Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. *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 the Boston, MA Commerical Zone, on the one hand, and, on the other, points in NH. Supporting shipper: Wilmington Warehousing Corp., 121 Webster Avenue, Chelsea, MA 02150.

MC 152120 (Sub-1–2TA), filed October 14, 1980. Applicant: CLEAN HARBORS, INC. 436 West Street, West Bridgewater, MA 02379. Representative: Alan S. McKim, 436 West Street, West Bridgewater, MA 02379. *Hazardous waste, in bulk and in drums,* between states east of the Mississipi River. Supporting shipper: Interex Corporation, 3 Strathmore Road, Natick, MA 01760.

MC 150987 (Sub-1–3TA), filed October 14, 1980. Applicant: DOWN EAST TRUCKING, INC., MRC 156, Bangor, ME 04401. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth St. NW., Washington, DC 20005. *Building supplies and materials (except commodities in bulk),* from points in PA, NJ, MD, DE, MA, NY, IL, and OH to points in ME. Supporting shipper(s): Bangor Roofing, Bangor, ME 04401; J. K. Sales, Inc., New Lewiston Road, Topsham, ME 04086; Gagne & Sone, Route 27, Belgrade, ME 04917.

MC 117676 (Sub-1–2TA), filed October 14, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear Street, Trenton, NJ 08648. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Plastic and plastic products, and materials, equipment and supplies used in the manufacture and distribution of the foregoing commodities (except in bulk),* from the facilities of Cosden Oil & Chemical Company, in NJ, to Atlanta, GA, Middlefield, OH, and points in FL. Supporting shipper: Cosden Oil & Chemical Company, P.O. Box 410, Dallas, TX 75221.

MC 3753 (Sub-1–4TA), filed October 15, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *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 Hagerstown, MD and Martinsburg, WV serving all intermediate points and off route points located in Berkley, Jefferson and Morgan Counties, WV, from Hagerstown, MD to Martinsburg, WV over Interstate Hwy 81 and return over the same route. Supporting shipper(s): There are 57 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 150447 (Sub-1–3TA), filed October 14, 1980. Applicant: GSC TRANSPORT, INC., 1050 State Street, Perth Amboy, NJ 08861. Representative: John L. Alfano, Esq., Alfano & Alfano, P.C., 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carrier:* irregular routes: *Containers, container closures, glassware, packaging products, container components and scrap materials and material, equipment, and supplies used in the manufacture, sale, and distribution of the foregoing commodities (except commodities in bulk, in tank vehicles, and those which because of size and weight require the use of special equipment),* between New Orleans, LA, Boston, MA, Baltimore, MD, New York, NY, and points in PA, on the one hand, and, on the other, points in CT, IL, IN, KY, MD, MA, MI, NJ, NY, OH, PA, VA, and WV, under continuing contract(s) with Owen-Illinois, Inc. of Toledo, OH. Supporting shipper: Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666.

MC 150451 (Sub-1–3TA), filed October 14, 1980. Applicant: G & L TRANSPORT, Route 9, Troy, ME 04987. Representative: George Cole, Route 9, Troy, ME 04987. *Contract carrier:* irregular routes: *Tanning materials, animal skins and parts thereof,* from points in ND, SD, WY, CO, NE, KS, OK, TX, MD, IA, MO, AR, LA, WI, MI, IL, IN, MS, KY, TN, AL, OH, GA, FL, SC, NC, VA, WV, MD, DE, NJ, PA, NY, CT, RI, MA, VT, NH, to Hartland ME, under a continuing contract(s) with Irving Tanning Company of Hartland, ME. Supporting shipper: Irving Tanning Co., Hartland, ME 04943.

MC 99569 (Sub-1–1TA), filed October 14, 1980. Applicant: STOTT & DAVIS MOTOR EXPRESS, INC., 18 Garfield Street, Auburn, NY 13021. Representative: Michael R. Werner, Esq., P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *General commodities (except classes A & B explosives and household goods as defined by the Commission)* between points in Erie, Niagara, Genesee, Orleans, Monroe, Ontario, Wayne, Seneca, Oswego, Jefferson, St. Lawrence, Franklin, Lewis, Madison, Oneida, Cayuga and Onondaga Counties, NY. Supporting shippers: There are 34 statements in support of this application which may be examined at the ICC Regional Office in Boston, MA.

MC 152196 (Sub-1–1TA), filed October 14, 1980. Applicant: M.G.A. LEASING & TRUCKING CORP., P.O. Box CC, Port Richmond, S.I. NY 10303. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Candy and confectionery, and materials and supplies used in the manufacturing, sales and distribution thereof, (except in bulk)* from New York, NY, Commercial Zone to points in the US, (except AK and HI). Supporting shipper: Leader Candy Company, 132 Harrison Place, Brooklyn, NY 11237.

MC 228 (Sub-1–1TA), filed October 7, 1980. Applicant: HUDSON TRANSIT LINES, INC., 17 Franklin Turnpike, Mahway, NJ 10021. Representative: Samuel B. Zinder, P.C., 98 Cutter Mill Road, Great Neck, NY 11020. *Common carrier:* regular routes: *Passengers and their baggage and express and newspapers, in the same vehicle with passengers,* between New York, NY and Freeport, NY from New York, NY over NY Hwy 27 to junction Main Street in Freeport, NY, thence over Main Street, Federal Plaza West, to NY Hwy 27 and return over the same route serving all intermediate points, between Hempstead, NY and Freeport, NY from junction Clinton Street and Fulton Street in Hempstead, NY over Clinton Street to junction Henry Street, thence over Henry Street to junction Greenwich Street, thence over Main Street to Sunrise Hwy in Freeport and return over the same route serving all intermediate points. Applicant requests tacking with existing authorities at New York, NY. Supporting shippers: Monroe, NY Bus Terminal, 9 Mill Pond Parkway, Monroe, NY; Suffem, NY Bus Terminal, 40 Lafayette Ave., Suffem, NY; Newburgh, NY Bus Terminal, 351 Broadway, Newburgh, NY.

MC 3753 (Sub-1–5TA), filed October 15, 1980. Applicant: AAA TRUCKING

CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartmen & Burstein, Suite 2373, One World Trade Center, New York, NY 10048. *Common carrier:* regular route: *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 Hagerstown, MD and Winchester, VA serving all intermediate points and the off-route points located in Clarke, Frederick and Warren Counties, VA. From Hagerstown, MD to Winchester, VA over Interstate Hwy 81 and return over the same route. Supporting shipper(s): There are 69 statements in support attached to this application which may be examined at the ICC Regional Office in Boston, MA.

MC 138510 (Sub-1–3TA), filed October 15, 1980. Applicant: RICCI TRANS. CO., INC., Odessa Ave. and Aloe St., Pomona, NJ 08240. Representative: Joseph A. Keating, Jr., 121 S. Main Street, Taylor, PA 18517. *Contract carrier:* irregular routes: *Malt beverages, in containers,* from Albany, GA to Pleasantville and Wildwood, NJ. Supporting shipper: South Jersey Distributors Co., Inc., Canal Dr. and Delilah Rd., Pleasantville, NJ 08232.

MC 129995 (Sub-1–1TA), filed October 9, 1980. Applicant: CONSOLIDATED TRUCK SERVICE, INC., One Scout Avenue, S. Kearny, NJ 07032. Representative: Janis Pulton, One Scout Avenue, S. Kearny, NJ 07032. *Contract carrier:* irregular routes: *Equipment or raw material used in the manufacture of small electric kitchen appliances and small electric kitchen appliances,* between points in NY, NJ, CT, and PA under a continuing contract with Van Wyck International, Inc. Supporting shipper: Van Wyck International, Inc., 49 Windsor Avenue, Minneola, NY 11501.

MC 127905 (Sub-1–1TA), filed October 14, 1980. Applicant: LYNN H. SCOTT, 8532 Blossvale Road, Blossvale, NY 13308. Representative: John D. Shannon, John A. Shannon & Son, Accountants, 326 Stone Street, Oneida, NY 13421. *Copper wire on reels or spools, copper rod, copper scrape in bales, drums, or bulk, empty reels, or rejects, and other copper products* from all points in the counties of Oneida, Oswego, Onondaga, and Cayuga, NY on the one hand, and, on the other, all points in the US, except AK and HI; from all points in the US, except AK and HI, to the counties of Oneida, Oswego, Onondaga, and Cayuga, NY. Supporting shipper: Omega Wire, Inc.; Williamstown, NY 13493; Laribee Wire Manufactuing Co., Inc., 29 Harden Boulevard, Camden, NY 13316; Camden Wire Co., Camden, NY 13316.

MC 22425 (Sub-1–2TA), filed October 8, 1980. Applicant: MALFIN EXPRESS, INC., d.b.a. LOVEJOY'S EXPRESS, INC., 155 Lenox Street, Norwood, MA 02062. Representative: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. *(1) Fabric piece goods, adhesives, cleaning compounds, synthetic fibers and tricot,* and *(2) equipment, material and supplies* used in the manufacture, processing and distribution of the commodities named in (1), above, between points in MA, on the one hand, and, on the other, points in the US. Supporting shipper: American London of New England, 930 Washington Street, Norwood, MA 02062.

MC 87451 (Sub-1–3TA), filed October 14, 1980. Applicant: CARGO TRANSPORT, INC., 100 Garfield Avenue, P.O. Box 268, Somerville, MA 02143. Representative: William F. Mix, 153 Grove Street, Lexington, MA 02173. *Meats, meat products, meat by-products, and articles distributed by meat-packing houses as described in Sections A & C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 & 766 (except hides and commodities in bulk),* between points in the US in and East of the States of ND, SD, NE, CO, OK, and TX. Supporting shipper: Colonial Provisions Co., Inc., 1100 Mass. Ave., Roxbury, MA 02119.

MC 90373 (Sub-1–1TA), filed October 10, 1980. Applicant: R L S TRUCKING CORPORATION, Inman Avenue, Ivenel, NJ 07001. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Asphalt in bulk in tank vehicles* from Linden, Kearny, and Petty's Island, NJ to points in CT, and parts of NY on and south of US Hwy 20 and on east of US Hwy 11, and that part of PA on and east of US Hwy 15, under a continuing contract with West Bank Oil, Inc., P.O. Box 638, Pennsauken, NJ 08110. Supporting shipper: West Bank Oil, Inc., P.O. Box 638, Pennsauken, NJ 08110.

MC 134349 (Sub-1–3TA), filed October 8, 1980. Applicant: B.L.T. CORPORATION, 405 Third Avenue, Brooklyn, NY 11215. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Paint drying catalysts; toxic and or corrosive pesticides and fungicides; paint additives; ketoximes; and mercury, cobalt and lead compounds (except in bulk),* from Newark, NJ, to points in the US (except AK, FL, GA, HI, LA, MS, NC, TN, TX and VA) under a continuing contract(s) with Troy Chemical Corporation of Newark, NJ. Supporting shipper: Troy Chemical Corporation, One Avenue L, Newark, NJ 07105.

MC 133841 (Sub-1–7TA), filed October 15, 1980. Applicant: DAN BARCLAY, INC., 362 Main Street, P.O. Box 426, Lincoln Park, NJ 07035. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. *(1) Machinery and machinery parts; and (2) Materials, equipment, and supplies used in the manufacture, sale, and distribution of the commodities named in (1) above (except commodities in bulk in tank vehicles),* between Bridgeport, CT, on the one hand, and, on the other, Los Angeles, CA; Lafayette and Muncie, IN; Waterloo, IA; Shreveport, LA; North Berwick, ME; Hagerstown, MD; Everett and Lynn, MA; Portsmouth, NH; Akron, Dayton, Evansdale, and Toledo, OH; Allentown, PA; Cameron and Ironton, TX; LaCrosse and Racine, WI; and the piers in the New York, NY harbor. Supporting shipper: The Bullard Co., 286 Caufield Ave., Bridgeport, CT 06609.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 2. SEND PROTEST TO: ICC, FEDERAL RESERVE BANK BLDG., 101 N. 7TH ST., ROOM 620, PHILADEPHIA, PA 19106.

MC 115703 (Sub-II–7TA), filed October 9, 1980. Applicant: KREITZ MOTOR EXPRESS, INC., P.O. Box 6331, Wyomissing, PA 19610. Representative: Bernard L. Quaglia (same as applicant). *Contractor's equipment, heavy and bulky articles, machinery and machine parts, and articles requiring special handling or rigging,* between points in Cuyahoga and Seneca Counties, OH on the one hand, and, on the other, points in the U.S. (except AK and HI) for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Machinery Company, Greenfield St., Tiffin, OH 44883; Industrial Applications International, Inc., 32915 Aurora Rd., Solon, OH 44139; George R. Hall, Inc., 24400 Sperry Dr., Westlake, OH 44145; Boehm & Klein Packaging, 10750 Berea Rd., Cleveland, OH 44102; Domestic & International Transportation Services, 1944 Scranton Rd., Cleveland, OH 44113.

MC 150432 (Sub-II–6TA), filed October 9, 1980. Applicant: H & M TRANSPORTATION, INC., U.S. 42 and 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L Street, N.W., Suite 1111, Washington, DC 20036. Contract—irregular: *Steel Strapping,* from Columbus, OH, to points in the US (except AK and HI), under a continuing

contract with Samuel Strapping Systems, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Samuel Strapping Systems, Inc., 3900 Groves Road, Columbus, OH 43227.

MC 143394 (Sub-II–14TA), filed October 7, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd., P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop, (same address as applicant). Contract: Irregular: *Foodstuffs, Health and Beauty Aids, Cleaning Compounds, Kitchen Gadgets, Dog and Cat Food, Beverages (except alcoholic beverages), Plastic and Paper Products and Light Bulbs and Equipment and Supplies* used in the preservation, display and storage of the above listed commodities *and Meat and Meat Products.* Between points in the US under continuing contract(s) with Autry Greer and Sons, Inc., Mobile, AL, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Autry Greer & Sons, Inc., W. Main at Greer Avenue, P.O. Box 13190, Mobile, AL 36613.

MC 152133 (Sub-II–1TA), filed October 9, 1980. Applicant: THE JOHN R. TRUCKING CO., INC., 321 E. Wyoming Ave., Lockland, OH 45219. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. *Roofing materials, including asphalt and asphalt products* (except in bulk, between Cincinnati, OH, and its commercial zone, on the one hand, and, on the other, points in KY and IN, for 270 days. Supporting shipper(s): Koch Asphalt Co., P.O. Box 2256, Wichita, KS 67201.

MC 142703 (Sub-II–5TA), filed October 9, 1980. Applicant: INTERMODAL TRANSPORTATION SERVICES, INC., 750 W. Third St., Cincinnati, OH 45203. Representative: Robert E. Tucker, (same address as applicant). *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 Memphis, TN, and its commercial zone, on the one hand, and, on the other, points in Calhoun, Etowah, Jefferson, Lauderdale, Mobile, Montgomery, Morgan, Tuscaloosa, and Winston Counties, AL, for 270 days. Restricted to the transportation of shipments having a prior or subsequent movement by rail. Carrier intends to interline with rail carriers at Memphis, TN. Supporting shipper(s): There are six supporting shippers' statement to this application which statements may be examined at the Phila. Regional office.

MC 2780 (Sub-II–1TA), filed October 7, 1980. Applicant: HORN'S MOTOR EXPRESS, INC., 115 Spring Valley Rd., Chambersburg, PA 17201. Representative: Edgard N. Jacobs (same address as applicant). *General commodities, except those of unusual value, Class A and B explosives, livestork, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* between points in the States of DE, DC, MD, NJ, PA, VA and WV, for 270 days. Applicant intends to tack authority sought with authority now held under docket MC–2780 and all subs thereunder. Applicant intends to interline at Baltimore and Hagerstown, MD; Chambersburg and Harrisbury, PA, as well as other points. Supporting shipper(s): There are eight supporting shippers' statement attached to this application which may be examined at the Phila. Regional office.

MC 115181 (Sub-II–10TA), filed October 8, 1980. Applicant: HAROLD M. FELTY, INC., R. D. #1, Box 148, Pine Grove, PA 17963. Representative: Lee E. High, 541 Penn St., Reading, PA 19601. *Metallic waste material,* in bulk, in dump vehicles, from points in Decatur Township, Mifflin County, PA to Old Bridge, NJ, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Sitkin Smelting & Refining, Inc., RD #3, Lewistown, PA 17044.

MC 152104 (Sub-II–1TA), filed October 6, 1980. Applicant: HOME RUN, INC., 1299 Lavelle Dr., Xenia, OH 45385. Representative: Boyd B. Ferris, 50 West Broad St., Columbus, OH 43215. *Building and component parts, materials, supplies and fixtures used in the erection or assembly of buildings,* from the facilities of Best Lumber Co., Inc. at or near Indianapolis, IN, on the one hand, and, on the other, points in OH and KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Best Lumber Co., Inc., 1002 East 42nd St., Indianapolis, IN 46205.

MC 134082 (Sub-II–1TA), filed October 6, 1980. Applicant: K. H. TRANSPORT, INC., 4796 Linthicum Rd., Dayton, MD 21036. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, DC 20005. *Decorated laminated plastic sheets and materials and supplies used in the manufacture and distribution of the aforementioned commodities (except in bulk),* between Odenton, MD, on the one hand, and, on the other, points in the U.S. (except MD, AK and HI), for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Nevamar Corporation, Odenton, MD 21113.

MC 121420 (Sub-II–4TA), filed October 10, 1980. Applicant: DART TRUCKING, CO., INC., 61 Railroad St., Canfield, OH 44406. Representative: David J. Best (same as applicant). *Fluorspar,* in bulk, in dump vehicles, from Allegheny County, PA to Boyd County, KY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Cametco, Inc., 201 Penn Center Blvd., Pittsburg, PA 15235.

The following applications were filed in Region 3. Send protests to ICC, Regional Authority Center, P.O. Box 7600, Atlanta, GA 30357.

MC 120368 (Sub-3–1TA), filed October 8, 1980. Applicant: DIXIE TRUCKING COMPANY, INC., 4901 Sunset Road, Charlotte, NC 28213. Representative: K. D. Shaver, Sr. (address same as above). *General commodities (except household goods as defined by the Commission and classes A and B explosives),* (1) Between points in the following NC counties: Alamance, Anson, Beaufort, Bladen, Cabarrus, Catawba, Chowan, Cleveland, Columbus, Craven, Cumberland, Durham, Edgecombe, Forsyth, Gaston, Granville, Guilford, Halifax, Harnett, Hertford, Hoke, Lee, Mecklenburg, Montgomery, Moore, New Hanover, Pasquotank, Randolph, Richmond, Robeson, Rockingham, Scotland, Stanly, Union, Vance, Wake, Wayne and Wilson. (2) Between points in the following SC counties, and between points in these counties, on the one hand, and, on the other, points in counties named in Paragraphs (1) and (3): Cherokee, Chester, Chesterfield, Fairfield, Greenville, Kershaw, Lancaster, Laurens, Newberry, Richland, Spartanburg, Union and York. (3) Between points in the following NC counties, and between points in these counties, on the one hand, and, on the other, points in counties named in Paragraphs (1) and (2): Alexander, Brunswick, Davidson, Davie, Iredell, Lincoln, Nash, Rowan and Yadkin. Interchange: Traffic will be interchanged at Charlotte, NC. Certificates of support: There are attached fifty-two (52) shipper Certifications of Support of Application for Temporary Motor Carrier Authority which may be examined at the ICC Regional Office in Atlanta, GA.

MC 124887, (Sub-3–9TA), filed October 8, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Chemicals and equipment, materials and supplies* used in the manufacture and distribution of

chemicals. (Except comodities in bulk), between Bay County and Gulf County, FL on the one hand and on the other, points in the United States. (Except AL and HI). Supporting shipper: Sylvachem Corporation, P.O. Box 389, Jacksonville, FL 32201.

MC 2934 (Sub-3–14TA), filed October 9, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same address as above). *Metal office furniture,* from Youngstown, OH, to points and places in the states of AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, PA, RI, SC, TN, TX, VT, VA, WV and WI. Supporting shipper: G. F. Business Equipment, 32 East Dennick Avenue, Youngstown, OH 44501.

MC 112395 (Sub-3–1TA), filed October 8, 1980. Applicant: CITIZEN EXPRESS, INC., 38 N. French Broad Avenue, Asheville, NC 28801. Representative: Philip G. Carson, P.O. Box 7246, Asheville, NC 28807. *Petroleum products,* from bulk storage facilities in Mecklenburg and Guilford Counties, NC; Spartanburg, Anderson and Charleston Counties, SC; and Knox County, TN, to Buncombe, Henderson, Haywood, Transylvania, Madison and McDowell Counties, NC. Supporting shippers: Smoky Mountain Petroleum Co., Inc., 244 Swannanoa River Road, Asheville, NC 28805; Biltmore Oil Company, 233 Biltmore Avenue, Asheville, NC 28801; Grace Fuel Company, Inc., 1420 Merrimon Avenue, Asheville, NC 28804.

MC 128521 (Sub-3–2TA), filed October 8, 1980. Applicant: BIRMINGHAM-NASHVILLE EXPRESS, INC., P.O. Box 100417, Nashville, TN 37210. Representative: Robert S. Durrett (same address as applicant). *(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 KY and TN, on the one hand, and, on the other, points in LA. Restricted to traffice originating at or destined to the facilities of Pan-American Import Co., Inc. Supporting shipper: Pan-American Import Co., Inc., P.O. Box 52829, New Orleans, LA 70119. Applicant seeks to interline at Nashville, TN

MC 145873 (Sub-3–2TA), filed October 8, 1980. Applicant: RAMSEY TRUCKING, INC., 604 Hudson Road, Chattanooga, TN 37405. Representative: Billy R. Ramsey (same address as above). *Coke,* in dump vehicles, between points in the states of AL, GA, MS, and TN, having a prior or subsequent movement by water. Supporting shipper: Kock Carbon, Inc., 888 Worchester St., Wellesley, MA 02181.

MC 2934 (Sub-3–16TA), filed October 8, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *Furniture and furniture parts,* from points and places in the states of: AR, GA, MS, NC, IN and VA to: points and places in the states of: IL, IN, MI, MN, MO, NY, OH, PA AND WI. Supporting shipper: Wickes Furniture, 351 West Dundee Road, Wheeling, IL 60090.

MC 2934 (Sub-3–17TA), filed October 8, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Road, Carmel, IN 46032. Representative: W. G. Lowry (same as above). *New hospital and laboratory equipment,* from Two Rivers, WI to: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NH, MJ, NY, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA and WV. Supporting shipper: American Hamilton, 1316 18th Street, Two Rivers, WI 54241.

MC 125689 (Sub-3–1TA), filed October 6, 1980. Applicant: BEATTYVILLE TRANSPORT, INC., Ice Dam Lane, Box 675, Catlettsburg, KY 41129. Representative: Fred H. Daly, 2550 M Street, N.W. Washington, D.C. 20037. *Animal grease, chemicals, petroleum, rolling processing fluids and lubricating oils, wire drawing compounds, ingredients and raw materials used in the manufacture of rolling processing fluids and lubricating oils* between Franklin County, OH and points in the United States. Supporting shipper: The Ironsides Company, 270 West Mound Street, Columbus, OH 44219

MC 124887 (Sub-3–10TA), filed October 8, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksoville, FL 32202. *Chemicals and equipment, materials and supplies* used in the manufacture and distribution of chemicals. (except commodities in bulk), between Forest County, MS on the one hand, and, on the other, points in the United States. (Except Al and HI.) Supporting shipper: Sylvachem Corporation; P.O. Box 289, Jacksonville, FL 32201.

MC 115841 (Sub-3–28TA), filed October 8, 1980. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., McBride Lane, P.O. Box 22168, Knoxville, TN 37922. Representative: Michelene Good (same as above). *Foodstuffs and specialty gift items (except commodities in bulk),* from Monroe and Madison, WI to Greensboro, NC; Houston and Dallas, TX; Atlanta, GA; Jacksonville and Miami, FL; Denver, CO; Phoenix, AZ; Albuquerque, NM; Los Angeles, Vernon, Gardena, San Jose and Oakland, CA; Portland, OR; Seattle, WA; and their respective Commerical Zones. Supporting shipper: Swiss Colony, Inc., 1112-7th Avenue, Monroe, WI 53566.

MC 146222 (Sub-3–1TA), filed October 8, 1980. Applicant: ILCO TRUCKING, INC., P.O. Box 528, Leads, AL 35094. Representative: H. G. Jackson, Jr. (same as above). *Iron and steel articles (except commodities in bulk)* from points in the United States in and east of MT, WY, CO, and NM to the facilities of Atlas Metals Company, Inc., located in or near Birmingham, AL. Supporting shipper: Atlas Metals Company, Inc., 2066 Montevallo Rd., SW, Birmingham, AL 35211.

MC 151395 (Sub-3–3TA), filed October 8, 1980. Applicant: SNEAKER FREIGHT LINE, INC., 4215 Thurman Rd., P.O. Box 768, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. (a) *Polyethylene film and bags,* from Clayton County, GA, to points in AL, FL, KY, MD, MS, NC, SC, TN and VA; and (b) *Materials, equipment and supplies* used in the manufacture or distribution of polyethylene film or bags, from points in AL, FL, KY, MD, MS, NC, SC, TN and VA to Clayton County, GA. Supporting shipper: Dixie Bag Company, 4880 Massachusetts Blvd., College Park, GA 30337.

MC 128095 (Sub-3–7TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *New furniture and furniture parts* from the facilities of Douglas Furniture Corporation at Chicago, IL to Birmingham, AL; Orlando and Tampa, FL; Atlanta and Madison, GA; New Orleans, LA; and, Memphis, TN. Supporting shipper: Douglas Furniture Corporation, 5020 West 73rd Street, Chicago, IL 60638.

MC 128095 (Sub-3–8TA), filed October 8, 1980. Applicant: IBCO TRUCK LINE, INC., P.O. Box 1402, Tupelo, MS 38801. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Furniture, furniture parts, and materials, equipment and supplies used in the manufacture, sale and distribution thereof (except commodities in bulk, in tank vehicles)* from the facilities of The Hon Company at or near Muscatine, IA to points in AL, AR, GA, IL, IN, KY, LA.

MS, NC, OH, SC, TN and VA. Supporting shipper: The Hon Company, Muscatine, IA 52761

MC 144688 (Sub-3–12TA), filed October 8, 1980. Applicant: READY TRUCKING, INC., 2717 Campbell Boulevard, Ellenwood, GA 30049. Representative: Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 58501. *(1) Plastic pails and containers; and (2) materials and supplies used in the manufacture, sale and distribution of plastic containers (except in bulk),* between the facilities of Roper Plastics, Inc., at or near Atlanta, GA, on the one hand, and, on the other, points in the state of FL. Supporting shipper: Roper Plastics, Inc., 175 Lake Mirror Road, Forest Park, GA 30050.

MC 152161 (Sub-3–1TA), filed October 8, 1980. Applicant: PONSELL SUPPLY CO., INC., 1702 Swan Street, Jacksonville, FL 32204. Representative: Norman J. Bolinger, 3100 University Blvd. S., Suite 225, Jacksonville, FL 32216. *Roofing materials; asbestos building, roofing, and sheathing paper; composition and prepared roofing; shingles and siding; roofing cement; asbestos wallboard; and plastic pipe, conduit, fittings, and products;* from the facilities of Johns-Manville Sales Corporation at or near Green Core Springs, FL and Savannah, GA, to points in the U.S. in and east of the States of LA, AR, MO, IA, and MN. Supporting shipper: Johns-Manville Sales Corporation, P.O. Box 4487, Atlanta, GA 30302.

MC 148050 (Sub-3–1TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC. P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Petroleum products* from Baltimore, MD to points in NC. Supporting shipper: Ilderton Oil Company, P.O. Box 7145, High Point NC 27264.

MC 85970 (Sub-3–13TA), filed October 8, 1980. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38024. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. Common; Regular *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 St. Louis, MO and Nashville, TN, serving no intermediate points; from St. Louis, over I–55 to its junction with I–155, then over I–155 to Dyersburg, TN, then over U.S. Hwy. 51 to its junction with Tennessee Hwy. 20, then over Tennessee Hwy. 20 to Jackson, TN, then over I–40 to Nashville, TN and return over the same route. There are 10 certificates of support which may be examined at the Atlanta, GA Regional Office.

Note.—Applicant intends to interline at St. Louis, MO and Nashville, TN.

MC 59150 (Sub-3–8TA), filed October 8, 1980. Applicant: PLOOF TRUCK LINES, INC., 1414 Lindrose Street, Jacksonville, FL 32206. Representative: Martin Sack, Jr., 203 Marine National Bank Bldg., 311 W. Duval Street, Jacksonville, FL 32202. *Packaged sand and salt,* between points in FL, GA, AL and SC. Supporting shipper: Great Southern Salt Company, Inc., P.O. Box 1411, Brunswick, GA 31521.

MC 148050 (Sub-3–2TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC., P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *Insulating materials,* from Barrington, NJ to points in NC and SC. Supporting shipper: Presnell Insulation Co., Inc., P.O. Box 25551, Charlotte, NC 28212.

MC 148050 (Sub-3–3TA), filed October 8, 1980. Applicant: L & J MOTOR LINES, INC., P.O. Box 7267, High Point, NC 27264. Representative: Wilmer B. Hill, Suite 805, 666 Eleventh Street NW., Washington, DC 20001. *Petroleum products,* from Bradford, PA to points in NC. Supporting shipper: Kennedy Oil Company, Inc., P.O. Box 1428, High Point, NC 27261.

MC 47171 (Sub-3–10TA), filed October 9, 1980. Applicant: COOPER MOTOR LINES, INC., P.O. Box 2820, Greenville, SC 29602. Representative: Harris G. Andrews (same address as applicant). *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 NC east of U.S. Hwy 77, on the one hand, and, on the other, points in Culpepper, Suffolk, Windsor, Norfolk, Madison Heights, Petersburg, Lester Manor, Richmond, Fredericksburg, Warrenton, Franklin, Lynchburg, Farmville, Smithfield, Danville, South Boston, Victoria, and Roanoke, VA; Washington, DC; CT, Baltimore and Cumberland, MD; Wilmington and Cheswold, DE; MA, PA, NJ, NY, RI. There are six statements of support on file at the ICC Regional Office in Atlanta, GA.

MC 115093 (Sub-3–4TA), filed October 9, 1980. Applicant: MERCURY MOTOR EXPRESS, INC., 2511 North Grady Ave., Tampa, FL 33607. Representative: Joseph W. Watson (same address as above). *General Commodities (except household goods as defined by the Commission and Classes A and B explosives);* between points in FL, GA and SC. Supporting shipper: There are approximately 56 statements of support which may be examined at the ICC Regional Office, Atlanta, GA.

Note.—Applicant intends to interline with other carriers at Atlanta, GA and Florence, SC.

MC 107515 (Sub-3–79TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Foret Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Alcoholic Beverges (except in bulk)* from points in CA to points in St. Paul, MN and its commercial zone. Supporting shippers: Griggs Cooper & Co., Inc., 475 No. Prior Avenue, St. Paul, MN 55104, and Johnson Brothers Wholesale Liquor, 2341 University Avenue, St. Paul, MN 55114.

MC 107515 (Sub-3–80TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Automotive Care and Maintenance Supplies, and (2) Materials and Supplies Used in the Production and Distribution of commodities in (1)* between points in the US (except AK and HI) on the one hand, and, on the other, facilities utilized by Union Carbide Corporation at or near Paulsboro, NJ; Milford, CT; Wyoming, NY; Middlebury, VT; North Warren, PA; Logans Ferry, PA; New Kensington, PA; East Butler, PA; Hamilton, OH; Danville, IL; Holland, MI; Owosso, MI; Wixom, NI; Chicago, IL; Milwaukee, WI; Edgerton, WI; Alsip, IL; Freehold, NJ; Texas City, TX; and Torrence, CA. Supporting shipper: Union Carbide Corporation, 270 Park Avenue, New York, NY 10017.

MC 107515 (Sub-3–78TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Health Care Products* between facilities of Johnson & Johnson Products, Inc. at or near Cook and Will Counties, IL; Sherman, TX; North Brunswick, NJ; Menlo Park, CA; and Atlanta, GA. Supporting shipper: Johnson & Johnson Products, Inc., New Brunswick, NJ 08903.

MC 107515 (Sub-3–81TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA

30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Plastic Products, and (2) Materials, Equipment and Supplies used in the manufacture, distribution and sale of plastic products (except in bulk)* between points in the US restricted to transportation of traffic originating at or destined to the facilities of Sewell Plastics, Inc. Supporting shipper: Sewell Plastics, Inc., 5111 Phillip Lee Drive, S.W., Atlanta, GA 30336.

MC 126736 (Sub-3–4TA), filed October 15, 1980. Applicant: FLORIDA ROCK AND TANK LINES, INC., 155 East 21st Street, Jacksonville, Florida 32201. Representative: L. H. Blow, 155 East 21st Street, Jacksonville, Florida 32201. *Petroleum and Petroleum Products, in bulk, in tank vehicles,* from points in Macon and Columbus, GA to all points in FL. Supporting shipper: Exxon, 5601–77 Center Drive, Suite 200, Charlotte, NC 28210.

MC 151646 (Sub-3–2TA), filed October 14, 1980. Applicant: MISS–ALA DISTRIBUTORS, INC., Highway 45 South, P.O. Box 1728, Columbus, MS 39701. Representative: Peter A. Greene, 900 17th Street, N.W., Washington, D.C. 20006. *Contract,* irregular: *(1) kitchen cabinets; and (2) materials, equipment and supplies used in the manufacture, installation and distribution of kitchen cabinets,* between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Triangle Pacific Corporation. Supporting shipper: Triangle Pacific Corporation, 16803 Dallas Parkway, Dallas, TX 75248.

MC 138956 (Sub-3–4TA), filed October 14, 1980. Applicant: ERGON TRUCKING, INC., 202 East Pearl St., Jackson, MS 39201. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Cement and mineral filler* from the facilities of Louisiana Cement at New Orleans, LA to points in AL, FL, MS and TX. Supporting shipper: Louisiana Cement, Division of OKC Coporation, 14900 Intracoastal Drive, New Orleans, LA 70129.

MC 146293 (Sub-3–24TA), filed October 15, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. N.E., Atlanta, GA 30326. *Electronic equipment,* from the Port of Entry on the US-Mexico Border at or near Nogales, AZ to facilities of Magnavox Consumer Electronics Co., Jefferson City and Greenville, TN. Supporting shipper: Magnavox Consumer Electronics Co., P.O. Box 479, Greenville, TN.

MC 114848 (Sub-3–4TA), filed October 16, 1980. Applicant: WHARTON TRANSPORT CORPORATION, 1498 Channel Avenue, Memphis, TN 38113. Representative: James M. Wharton, 1498 Channel Avenue, Memphis, TN 38113. *Bulk Sugar, in pneumatic vehicles,* from St. Bernard Parrish, LA to Shelby County, TN. Supporting shipper: Sugar Services, Inc., P.O. Box 18375, Memphis, TN 38118.

MC 107515 (Sub-3–77TA), filed October 16, 1980. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd., N.E., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Paper and Paper Products* from Groveton, NH to Atlanta, GA and its commercial zone. Supporting shipper: AMB-Ansley Business Materials, 770 Mercury Blvd., Chesterfield, MO 63017.

MC 146293 (Sub-3–25TA), filed October 16, 1980. Applicant: REGAL TRUCKING CO., INC., P.O. Box 829, Lawrenceville, GA 30246. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S, 3390 Peachtree Rd. NE., Atlanta, GA 30326. *Batteries, and parts required in the manufacture thereof,* from Atlanta and Conyers, GA to points in OK and TX. Supporting shipper: C&D Battery, an ELTRA Company, Division of Allied Chemical Co., 1835 Industrial Blvd., Conyers, GA 30207.

MC 121654 (Sub-3–14TA), filed October 16, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representatives: Bruce E. Mitchell and Alan E. Serby, 3390 Peachtree Road, NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *Drugs, Intravenous Solutions, Patient Treatment Kits and Rubber Gloves* from the facilities of Abbott Laboratories at or near Rocky Mount, NC to Dedham, MA; Jersey City, NJ; King of Prussia and Pittsburgh, PA; and Baltimore, MD. Supporting shipper: Abbott Laboratories, 1400 Sheridan Rd., North Chicago, IL 60064.

MC 121654 (Sub-3–15TA), filed October 16, 1980. Applicant: COASTAL TRANSPORT & TRADING CO., P.O. Box 7438, Savannah, GA 31408. Representative: Alan E. Serby, Esq., 3390 Peachtree Rd. NE., 5th Floor, Lenox Towers South, Atlanta, GA 30326. *(1) Air Pollution Control Equipment, and (2) Materials and Equipment used in the manufacture and sale thereof (except in bulk)* from Jacksonville, FL to facilities of Andersen 2000, Inc., College Park, GA. Supporting shipper: Andersen 2000, Inc., P.O. Box 20769, Atlanta, GA 30320.

MC 115311 (Sub-3–10TA), filed October 16, 1980. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. (1) *Malt beverages and related advertising matter* from the facilities of Pabst Brewing Co. at or near Milwaukee, WI; Peoria, IL; Pabst, GA and Newark, NJ to Denver, CO (and its commercial zone) and (2) *Can ends* from Denver, CO (and its commercial zone) to the facilities of Pabst Brewing Co. at or near Milwaukee, WI; Peoria, IL; Pabst, GA and Newark, NJ. Supporting shipper: Pabst Brewing Co., P.O. Box 766, Milwaukee, WI 53201.

MC 124887 (Sub-3–11TA), filed October 16, 1980. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. (1) *Primary Metal Articles* and (2) *Materials and Supplies used in the manufacture and distribution of primary metal articles,* between points in TX, on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: Linebacker Steel, 5301 S. Westmoreland, Dallas, TX 75237.

MC 152213 (Sub-3–1TA), filed October 16, 1980. Applicant: MISSISSIPPI RIVER TRUCKING, INC., 1424 Lamar Ave., Memphis, TN 38104. Representative: R. Connor Wiggins, Jr., Suit 909, 100 N. Main Bldg., Memphis, TN 38103. *Such goods as are dealt in and distributed by wholesale and retail grocery houses* from points in and east of ND, SD, NE, KS, OK and TX to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Giarardeau, MO; and (2) *Metal cans* from facilities of Allied Foods, Inc. at Atlanta, GA, to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO. Supporting shippers: Port Clyde Foods, Inc., P.O. Box E, Hicksville, Long Island, NY, 11802; R. D. Michie Brokerage Co., P.O. Box 4879, Memphis, TN, 38104; Allied Foods, Inc., P.O. Box 93326, Atlanta, GA 30318; Woldert Canning, Inc., P.O. Box 1140, Tyler, TX 75710; SSC International, Inc., P.O. Box 825, Hackensack, NJ 07602.

MC 133917 (Sub-3–4TA), filed October 16, 1980. Applicant: CARTHAGE FREIGHT LINE, INC., P.O. Box 315, Carthage, TN 37030. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St. NW., Washington, DC 20004.

General Commodities (except classes A&B explosives, commodities of unusual value, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Chattanooga, TN, and points in its commercial zone, on the one hand, and, on the other, points in GA. Supporting shipper(s): A total of 70 supporting shippers are submitted with this application.

Note.—Applicant intends to tack with docket number MC 133917 and subs at Chattanooga and to underline at all authorized points.

MC 115322 (Sub-3–2TA), filed October 16, 1980. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: James E. Wharton, Suite 811, Metcalf Building, 100 South Orange Avenue, Orlando, FL 32801. *General commodities (except articles of unusual value, household goods as defined by the Commission, commodities in bulk, classes A and B explosives, and articles which, by reason of size or weight, require specialized handling and equipment) have a prior or subsequent movement by rail in interstate or foreign commerce* between points in FL. Supporting shipper: Southern Railway, 920 15th Street NW, Washington, DC 20005.

MC 113528 (Sub-3–2TA), filed October 14, 1980. Applicant: MERCURY FREIGHT LINES, INC., P.O. Box 1247, Mobile, AL 36633. Representative: Joy Stephenson (same address as applicant). *Common carrier,* regular routes: *General commodities (with the usual exceptions),* serving Bayou La Batre, AL as an off route point in connection with carrier's otherwise authorized regular route operation. Supporting shipper: Sun Propeller, Inc., P.O. Box 682, Bayou La Batre, AL 36509. Carrier intends to tack existing authority and subs.

MC 106644 (Sub-3–3TA), filed October 15, 1980. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Louis C. Parker, III (same as above). *Steel beams,* between Cayce, SC; Greensboro, NC and Savannah, GA, on the one hand, and, on the other, points on the international boundry at or near Douglas, AZ. Restricted to traffic originating at or destined to points in the state of Sanora, Mexico. Supporting shipper: Pioneer Steel Company, 2200 Congaree Drive, Cayce, SC 29033.

MC 144503 (Sub-3–5TA), filed October 14, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Charles L. Redel, 212 Hoeschler Exchange Building, La Crosse, WI 54601. *Transporting foodstuffs and such merchandise as is dealt in by retail gift and curio shops and catalog distribution centers in vehicles equipped with mechanical refrigeration* from the plantsite of The Swiss Colony, Inc., Monroe, WI, and The Swiss Colony Stores, Inc., Madison, WI, to all points and places in the Continental United States. Supporting shipper: The Swiss Colony, Inc., 1112 Seventh Ave., Monroe, WI 53566.

MC 95540 (Sub-3–21TA), filed October 15, 1980. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, Florida 33802. Representative: Jackie Hill (same address as applicant). *Swinging and boxed meats* from Grenada, MS to points in FL and WI. Supporting shipper: Pioneer Beef Company, P.O. Box 119, Grenada, MS 38901.

MC 146270 (Sub-3–1TA), filed October 15, 1980. Applicant: WINFORD NOAH WILLIAMS, P.O. Box 578, Aberdeen, N.C. 28315. Representative: Winford Noah Williams (address same as applicant). *General Commodities, except class A and B explosives and motor vehicles having a prior or subsequent movement by rail in trailer or flat car service,* between points in Anson, Richmond, Robeson, Scotland, Moore, Montgomery, Lee and Hoke Counties, N.C.; and Chesterfield and Marlboro Counties, S.C. Supporting shippers: There are 9 statements of support attached to this application which may be examined at the ICC Regional Office, Atlanta, Ga.

MC 152215 (Sub-3–1TA), filed October 16, 1980. Applicant: HILL's SCRAP & SALVAGE, INC., d.b.a. BILL HILL'S TRANSPORTATION, RR. 11, Box 226, McMinnville, TN 37110. Representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. *Valves, materials, supplies and equipment used in the manufacturing and distribution of valves* between the facilities utilized by Flo-Con System, Inc., at or near Champaign, Fisher, and Forest Park, IL, Sarasota, FL, Jackson and Forest, MS, and Grove City, PA on the one hand, and, on the other, points in the U.S. Supporting shipper: Flo-Con System, Inc., 1404 Newton Drive, Champaign, IL 61820.

MC 147886 (Sub-3–5TA), filed October 15, 1980. Applicant: A M & M, INCORPORATED, P.O. Box 1627, Jackson, TN 38301. Representative: R. Connor Wiggins, Jr., Suite 909, 100 N. Main Bldg., Memphis, TN 38103. (1) *Such goods as are dealt in and distributed by wholesale and retail grocery houses* from points in and east of ND, SD, NE, KS, OK and TX to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO; and (2) *Metal cans* from facilities of Allied Foods, Inc. at Atlanta, GA, to Memphis and Jackson, TN; Birmingham, AL; Little Rock, AR; Indianola and Tupelo, MS; and Sikeston and Cape Girardeau, MO. Supporting shippers: R. D. Michie Brokerage Co., P.O. Box 4879, Memphis, TN 38104; Allied Foods, Inc., P.O. box 93326, Atlanta, GA 30318; and SSC International, Inc., P.O. box 825, Hackensack, NJ 07602.

The following protests were filed in Region 4. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, 219 South Dearborn Street, Room 1304, Chicago, IL 60604.

MC 123407 (Sub-4–46TA), filed October 9, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). *Metal building products* from Tulsa, OK, to points in and east of ND, SD, NE, KS, OK, and TX.* Supporting shipper: Jo-Moco Products Company, 1102 E. Second Street, Tulsa, OK 74120.

*An underlying ETA seeks 120 days authority.

MC 48441 (Sub-4–4TA), filed October 15, 1980. Applicant: R.M.E., INC., P.O. Box 418, Streator, Illinois 61364. Representative: Michael D. Bromley, 805 McLachlen Bank Building, 666 Eleventh Street NW., Washington, D.C. 20001. *Common;* Irregular *Malt beverages, and materials, equipment and supplies used in the manufacture and distribution of malt beverages,* between points in the U.S. in and east of MT, WY, UT, CO, and NM, restricted against transportation of traffic originating at or destined to points in the Upper Peninsula of MI. and further restricted to the transportation originating at or destined to the facilities of Miller Brewing Company. Supporting shipper: Miller Brewing Company, 3939 West Highland Boulevard, Milwaukee, WI: 53201.

MC 87303 (Sub-4–2TA), filed October 14, 1980. Applicant: BEN–LEE MOTOR SERVICE CO., 3344 South Lawndale Avenue, Chicago, IL 60623. Representative: Allan C. Zuckerman, 39 South LaSalle Street, Chicago, IL 60603. *Chemicals, drugs, medicines, toilet preparations, pharmaceutical products, household products,* and *foodstuffs* (all restricted against commodities in bulk), between Cook County, IL, on the one hand, and, on the other, Milwaukee, Racine and Kenosha Counties, WI. Supporting shipper: Bristrol-Meyers Company, P.O. Box 8528, Chicago, IL 60680.

MC 144621 (Sub-4–8TA), filed October 14, 1980. Applicant: CENTURY MOTOR LINES, INC., 52275 U.S. Highway 31, North, South Bend, IN 46637. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Candy and confectionary products*, (1) from the facilities of New England Confectionary Co. at or near Cambridge, MA to points in the U.S. (except AK and HI), (2) from AL, GA, IL, IN, TX, and UT to points in MA, for 270 days. Supporting shipper: New England Confectionary Co., 254 Massachusetts Avenue, Cambridge, MA 02139.

MC 123907 (Sub-4–2TA), filed October 14, 1980. Applicant: DAHLMAN TRUCK LINES, INC., 2041 Madison St., Stevens Point, WI 54481. Representative: Attorney Joseph E. Ludden, 324 Exchange Bldg., P.O. Box 1567, La Crosse, WI 54601. *General commodities (except those of unusual value, class A and Class B explosives, and household goods as defined by the Commission* between the Chicago, IL commercial zone on the one hand, and, on the other, MN, WI, and the Upper Peninsula of MI. An underlying ETA seeks 120 days authority. Supporting shipper: Crooks Terminal Warehouses, Inc., 9441 W. Fullerton Avenue, Franklin Park, IL 60131.

MC 150050 (Sub-4–1TA), filed October 14, 1980. Applicant: FLEET ROAD SERVICE, INC., 558 W. 20th Place, Chicago, IL 60616. Representative: Gilbert J. Green, 5957 South Rutherford Avenue, Chicago, IL 60638. *Common*, irregular, *General commodities* (except items of extraordinary value, class A and B explosives; commodities in bulk; commodities injurious or contaminating to other lading, commodities requiring special equipment; livestock; and household goods) having prior or subsequent service via Railroad Piggyback, between Cook County, IL on the one hand, and, on the other, points and places in the states of IL, IN, MI, OH, and WI. An underlying ETA seeks 120 days authority. Supporting shipper: East-West Shippers Association, 414 Plaza Drive, Westmont, IL 60559.

MC 148705 (Sub-4–7TA), filed October 14, 1980. Applicant: TWIN CONTINENTAL TRANSPORT CORP., 5738 Olson Highway, Minneapolis, MN 55422. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Alcoholic beverages* from New Orleans, LA to points in the Minneapolis-St. Paul Commercial Zone. Supporting shipper: Ed Phillips and Sons Co., 2345 Kennedy Street NE., Minneapolis, MN 55413.

MC 111594 (Sub-4–6TA), filed October 14, 1980. Applicant: CW TRANSPORT, INC., 610 High Street, Wisconsin Rapids, WS 54494. Representative: Donald B. Levine, 39 South La Salle Street, Chicago, IL 60603. *Fabricated Metal Products* (except Ordnance, Machinery and Transportation equipment) between Ramsey County, MN on the one hand, and points in GA, KY, MI, TN, VA, WV and WI on the other. Supporting shipper: Simcote, Inc., 1645 Redrock Road, St. Paul, MN 55164.

MC 107295 (Sub-4–22TA), filed October 14, 1980. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). *Grout, concrete forming systems and accessories* thereto between Atlanta, GA; Converse, TX; Denver, CO; Hayward, CA; Houston, TX; Long Beach, CA; Los Angeles, CA; Oakland, CA, and Seattle, WA, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: The Burke Company, 2655 Campus Drive, San Mateo, CA 94403.

MC 123407 (Sub-4–45TA), filed October 8, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). *Plastic pipe and plastic fittings* from Gainesville, TX, to points in AR, CO, LA, OK, and NM. *Supporting shipper(s): Pyramid Plastics, P.O. Box 1164, Gainesville, TX 76240.

MC 129189 (Sub-4–2TA), filed October 14, 1980. Applicant: WING CARTAGE COMPANY, 4141 George Place, Schiller Park, IL 60176. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Prestressed concrete building materials* from Hodgkins, IL to KY. Supporting shipper: Composite Structures, Inc., 475 W. 55th St., Countryside, IL 60525.

MC 19311 (Sub-4–4TA), filed October 10, 1980. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Patrick O. Smith, 755 West Big Beaver, Suite 1200, Troy, MI 48084. *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 Bedford, Seymour and West Lebanon, IN as off-route points in connection with carrier's presently authorized regular route operations. An underlying ETA seeks 120 days authority. There are 20 Certificates of Support.

MC 20824 (Sub-4–5TA), filed October 15, 1980. Applicant: COMMERCIAL MOTOR FREIGHT, INC. OF INDIANA, 2141 S. High School Rd., Indianapolis, IN 46241. Representative: C. C. Boyd, Traffic Manager, 2141 S. High School Rd., Indianapolis, IN 46241. Common, Regular *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 Danville, IL and Moline, IL: From Danville over Interstate Highway 74 to junction Interstate Highway 80, and thence over Interstate Highway 80 to Moline, and return over the same routes; (2) Between Chicago, IL and East Dubuque, IL, over U.S. Highway 20; (3) Between Danville, IL and Kansas City, MO: From Danville over Interstate Highway 74 to junction Interstate Highway 72, thence over Interstate Highway 72 to junction U.S. Highway 36, thence over U.S. Highway 36 to junction U.S. Highway 24, and thence over U.S. Highway 24 to Kansas City, and return over the same routes; (4) Between Terre Haute, IN and Kansas City, MO, over Interstate Highway 70; (5) Between Evansville, IN and St. Louis, MO: From Evansville over U.S. Highway 41 to junction Interstate Highway 64, and thence over Interstate Highway 64 to St. Louis, and return over the same routes; (6) Between Chicago, IL and Sikeston, MO, over Interstate Highway 57; (7) Between Chicago, IL and St. Louis, MO, over Interstate Highway 55; (8) Between Dayton, OH and Toledo, OH, over Interstate Highway 75; (9) Between Columbus, OH and Ashtabula, OH: From Columbus over Interstate Highway 71 to Cleveland, OH, thence over Interstate Highway 90 to junction Ohio Highway 11, and thence over Ohio Highway 11 to Ashtabula, and return over the same routes; (10) Between Columbus, OH and Bridgeport, OH, over Interstate Highway 70; (11) Between Columbus, OH and Portsmouth, OH, over U.S. Highway 23; (12) Between Columbus, OH and Marietta, OH: From Columbus over U.S. Highway 33 to Athens, OH, thence over U.S. Highway 50 to junction Ohio Highway 7, and thence over Ohio Highway 7 to Marietta, and return over the same routes; (13) Between Fort Wayne, IN and Toledo, OH, over U.S. Highway 24; (14) Between Fort Wayne, IN and Youngstown, OH: From Fort Wayne over U.S. Highway 30 to junction Interstate Highway 71, thence over Interstate Highway 71 to junction Interstate Highway 76, thence over

*An underlying ETA seeks 120 days authority.

Interstate Highway 76 to junction Interstate Highway 80, and thence over Interstate Highway 80 to Youngstown, and return over the same routes; (15) Between Evansville, IN and Cairo, IL: From Evansville over U.S. Highway 41 to junction U.S. Highway 60, thence over U.S. Highway 60 to Wickliffe, KY, and thence over U.S. Highway 51 to Cairo, and return over the same routes; (16) Between Evansville, IN and Chattanooga, TN, over U.S. Highway 41; (17) Between Evansville, IN and Owensboro, KY: From Evansville over Indiana Highway 66 to junction U.S. Highway 231, and thence over U.S. Highway 231 to Owensboro, and return over the same routes; (18) Between Louisville, KY and Memphis, TN: From Louisville over Interstate Highway 65 to Nashville, TN, and thence over Interstate Highway 40 to Memphis, and return over the same routes; (19) Between Cincinnati, OH and Chattanooga, TN, over Interstate Highway 75; (20) Between Cincinnati, OH and Ashland, KY: From Cincinnati over U.S. Highway 52 to Portsmouth, OH, and thence over U.S. Highway 23 to Ashland, and return over the same routes; (21) Between Louisville, KY and Ashland, KY: From Louisville, over Interstate Highway 64 to junction U.S. Highway 60, thence over U.S. Highway 60 to Ashland, and return over the same routes; (22) Between junction Interstate Highway 57 and 24, on the one hand, and Chattanooga, TN, on the other, over Interstate Highway 24; (23) Between St. Louis, MO and Joplin, MO, over Interstate Highway 44; (24) Between St. Louis, MO and Sikeston, MO: From St. Louis over Interstate Highway 55 to junction U.S. Highway 60 and thence over U.S. Highway 60 to Sikeston, and return over the same routes; (25) Between St. Louis, MO and Hannibal, MO, over U.S. Highway 61; (26) Between Kansas City, MO and Saint Joseph, MO, over Interstate Highway 29; (27) Between St. Louis, MO and Memphis, TN, over Interstate Highway 55; (28) Between Rockville, IN and Saint Joseph, MO, over U.S. Highway 36; (29) Between Louisville, KY and Springfield, MO, over U.S. Highway 60; (30) (a) Serving all intermediate points in IL, IN, KY, MO, OH, and TN on Routes (1) through (29) above, and (b) serving all points in IL, IN, KY, MO, OH and TN as off-route points in connection with Routes (1) through (29) above and carrier's presently authorized regular route operations.

Note.—Applicant intends to serve the commercial zones of all points requested and will tack with existing authority in MC–20824. Applicant also intends to interline with other carriers. Thence are 65 supporting shippers.

MC 142310 (Sub-4–3TA), filed October 16, 1980. Applicant: H. O. WOLDING, INC., Box 56, Nelsonville, WI 54458. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. (1) *Foodstuffs* from the facilities of the Campbell Soup Company at Chicago, IL to points in MN, ND, SD, WI and the Upper Peninsula of MI. (2) *Materials, equipment and supplies used or useful in the manufacture, sale or distribution of foodstuffs* from points in MN, ND, SD, WI and the Upper Peninsula of MI to the facilities of Campbell Soup Company at Chicago, IL. An underlying ETA seeks 120 days authority. Supporting shipper: The Campbell Soup Company, 2550 W. 35th Street, Chicago, IL

MC 110948 (Sub-4–1TA), filed October 16, 1980. Applicant: SOO-SECURITY MOTORWAYS, INC., 60 Eagle Drive, Winnipeg, Manitoba, CD R3C 2L8. Representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Common Regular: General commodities* except household goods, and class A and B explosives (1) between the port of entry on the U.S.-Canada border at Pembina, ND and Minneapolis, MN, in foreign commerce: over Interstate Highway 29 to the junction of Interstate Highway 29 and Interstate Highway 94; then over Interstate Highway 94 to Minneapolis, MN and return over the same route, serving no intermediate points. (2) between the port of entry on the U.S.-Canada border at Portal, ND and Minneapolis, MN in foreign commerce: over U.S. Highway 52 to the junction of U.S. Highway 52 and Interstate Highway 94; then over Interstate Highway 94 to Minneapolis, MN and return over the same route, serving no intermediate points. There are over 225 supporting shippers.

MC 124078 (Sub-4–38TA), filed October 16, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th Street, Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. *Lime,* from the plantsite of the United States Gypsum Company at New Orleans, LA to TX, MS, AR, and AL. An underlying ETA seeks 30 days authority. Supporting shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 151556 (Sub-4–3), filed October 16, 1980. Applicant: ALLSTATE TRANSPORTATION COMPANY, 10700 Lyndale Avenue South, P.O. Box 877, Minneapolis, MN 55440. Representative: George L. Hirschbach, P.O. Box 417, Sioux City, IA 51102. *Air cleaners, air filters, mufflers, hydraulic filters, liquid clarifiers, dust collectors, particle pulverizers and parts used in the sale and manufacture thereof,* between St. Paul, MN; Cresco, Grinnell, and Oelwein, IA; Chillicothe and Kirksville, MO: Dixon, IL; Baldwin and Stevens Point, WI, on the one hand, and, on the other, points in IA, IL, IN, KS, MO, MI, MN, NE, ND, SD and WI. Supporting shipper: Donaldson Company, Inc., 1400 West 94th Street, Minneapolis, MN 55440.

MC 152076 (Sub-4–1TA), filed October 16, 1980. Applicant: BETTY A. DOUGHERTY d.b.a. MIDWEST MEAT & PRODUCE, 115 W. Woodley Street, Northfield, MN 55057. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Meat, meat products, meat byproducts and articles dealt in by meat packinghouses;* from South St. Paul, MN to points in CA, IL, NE, OH, OK and WI. Supporting shipper: Sunstar Foods, Inc., Beef Division, P.O. Box 297, 425 South Concord, South St. Paul, MN 55075.

MC 133178 (Sub-4–3TA), filed October 16, 1980. Applicant: PAPER CARGO CORPORATION, 2465 Burlingame, SW., Wyoming, MI 49509. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate, NW., Comstock Park, MI 49321. *Contract*—Irregular: *Expanded plastic packaging materials* and *materials, equipment and supplies* used in the manufacture and sale of expanded plastic articles, between IL, on the one hand, and, on the other, points in MI, IN, OH, and WI, under a continuing contract or contracts with Free-Flow Packaging Corp., Thornton, IL. Supporting shipper: Free-Flow Packaging Corporation, 2500 Middlefield Road, Red Wood City, CA 94064.

MC 152206 (Sub-4–1TA), filed October 16, 1980. Applicant: SUJAX, INC., Route 2, Box 30D, Union Grove, WI 53182. Representative: Richard C. Alexander, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Contract: Irregular, *Parts, materials, supplies, and equipment used in the manufacture of automobiles,* between Kenosha, WI, on the one hand, and, on the other, points in IL, IN, MI, OH, PA, and WV, and Louisville, KY, St. Louis, MO, and Chattanooga, TN. An underlying ETA seeks 120 days authority. Supporting shipper: American Motors Corporation, 5625–25th Avenue, Kenosha, WI 53140.

MC 103798 (Sub-4–4TA), filed October 14, 1980. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Foodstuffs,* from Vesper and Menomonie, WI to points in IA, IL, MO and NE. An underlying ETA

seeks 120 days authority. Supporting shipper: Sanna Division, 6501 Grand Teton Plaza, Madison, WI 53704.

MC 135208 (Sub-4–2TA), filed October 14, 1980. Applicant: GEORGE L. BIGELOW TRUCKING, INC., 135 Wright St., Delavan, WI 53115. Representative: Richard A. Westley, Attorney, 4506 Regent Street, Suite 100, Madison, WI 53705. *Fuel tanks* from the facilities of Stolper Industries, Inc., located at or near Walworth, WI to East Moline, IL. Supporting shipper: Stolper Industries, Inc., Brick Church Rd., Walworth, WI 53184.

MC 55896 (Sub-4–9TA), filed October 10, 1980. Applicant: R–W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. *Iron and steel articles* from Wayne County, MI to Kanawha County, WV. Supporting shipper: McLouth Steel Corporation, 1060 W. Jefferson Avenue, Trenton, MI 48183.

MC 84648 (Sub-4–1TA), filed October 16, 1980. Applicant: SPINDLER TRANSFER CO. d.b.a. SPINDLER'S SERVICE, 211 Cumming Ave., Superior, WI 54880. Representative: Robert D. Gisvold, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Deicing salt,* from Superior, WI to points in MN. An underlying ETA seeks 120 days authority. Supporting shipper: Cutler Magner Co., P.O. Box 6807, Duluth, MN 55806.

MC 125708 (Sub-4–13TA), filed October 16, 1980. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd Street, East Chicago, IN 46312. Representative: Edward F. V. Pietrowski, 3300 Birney Avenue, Moosic, PA 18507. *Non-ferrous metals and non-ferrous metal products,* Detroit, Bay City, Grand Rapids, Flint, Ithaca, Holland, Muskegon, and Kalamazoo, MI to points in NY, NJ, TX IL, OH, MO, NC, AR and PA. An underlying ETA seeks 120 days authority. Supporting shipper(s): Metalsco, Inc., Suite 822, 111 West Port Plaza, St. Louis, MO 63141.

MC 28961 (Sub-4–2TA), filed October 16, 1980. Applicant: McDUFFEE MOTOR FREIGHT, INC., 8050 West Warren Ave., P.O. Box 610, Dearborn, MI 48121. Representative: LaVergne L. Adsit (same as applicant). *Common;* regular; *General Commodities (STCC51)* (except those of unusual value, class A and B explosives, household goods as described by the Commission, commodities in bulk and those requiring the use of special equipment). Serving Pikeville, TN as an off route point in connection with Applicant's present regular route operations to and from Nashville and Knoxville, TN. Supporting shippers: International Harvester Co., 6125 Urbana Road, Springfield, OH 45501. Ferror Manufacturing Corporation, P.O. Box 190, Ferro Road, Pikeville, TN 37367.

MC 152127 (Sub-4–1TA), filed October 16, 1980. Applicant: MIGLER, INC., 329 N. State St., Kendallville, IN 46755. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Contract;* Irregular, *Petroleum oils, greases and lubricants, between Chicago, IL, Cleveland, OH, and Detroit, MI, on the one hand, and on the other, points in IN, IL, KY, OH, MI, and WV. Restricted to service performed under a continuing contract with Polar Inc. Supporting shipper: Polar, Inc., 92 East Franklin St., Dayton, OH 45459.*

MC 128837 (Sub-4–21TA), filed October 16, 1980. Applicant: TRUCKING SERVICE, INC., P.O. Box 229, Carlinville, IL 62626. Representative: Michael W. O'Hara, 300 Reisch Building, Springfield, IL 62701. *Foodstuffs (except in bulk),* from the facilities of Ocean Spray Cranberries Incorporated at Hopkins County, TX to points in AR, CO, KS, LA, MO, MS, NM, OK, and TN. An underlying ETA seeks 120 days authority. Supporting shipper: Ocean Spray Cranberries Incorporated, 7800 South 60th Avenue, Kenosha, WI 53142.

MC 127651 (Sub-4–3TA), filed October 16, 1980. Applicant: EVERETT G. ROEHL, INC., East 29th Street, Box 7, Marshfield, WI 54449. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Canned and preserved foodstuffs, and materials, equipment and supplies used in the production and distribution thereof* between the facilities of Loyal Canning Corp. at or near Loyal, WI on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KY, LA, MI, MS, MO, NJ, NY, NC, OH, PA, SC, TN, VA and WV. Supporting shipper: Loyal Canning Corp., Box 278, Loyal, WI 54446.

MC 103993 (Sub-4–21TA), filed October 15, 1980. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Representative: Kenneth Hays (same address as above). *Motor vehicles,* between Richmond, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Wayne Transportation, Division of Wayne Corporation, Industry Road, P.O. Box 1447, Richmond, IN.

MC 116519 (Sub-4–4TA), filed October 15, 1980. Applicant: FREDERICK TRANSPORT LIMITED, R.R. 6, Chatham, Ontario, Canada. Representative: Jeremy Kahn, 1511 K Street NW., Suite 733, Investment Bldg., Washington, DC. *Aluminum sheets,* in coils, from the facilities of Alcan Canada Products Limited at Bracebridge, ON, CD, to the facilities of Alcan Aluminum Corp., at or near Fairmont, WV (U.S. portion begins at International Boundary Line in NY). An underlying ETA seeks 120 days authority. Supporting shipper: Alcan Smelters and Chemicals, Ltd., P.O. Box 6090, Montreal, PQ, CD H3C 3H2.

MC 16903 (Sub-4–5TA), filed October 16, 1980. Applicant: MOON FREIGHT LINES, INC., P.O. Box 1275, Bloomington, IN 47402. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *Lumber,* from the U.S.-Canada International Boundary near Detroit, MI, to points in IN and KY. An underlying ETA seeks 120 days authority. Supporting shipper: Green Forest Lumber, Ltd., 250 Murton Street, Toronto, Ontario, Canada.

MC 152207 (Sub-4–1TA), filed October 16, 1980. Applicant: C.W.C. CO., 4700 Quebec Avenue North, New Hope, MN 55428. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg., Minneapolis, MN 55402. *Building materials* between points in IA, IL, MN, ND, SD, and WI. An underlying ETA seeks 120 days authority. There are 5 supporting shippers.

MC 126555 (Sub-4–23TA), filed October 15, 1980. Applicant: UNIVERSAL TRANSPORT, INC., P.O. Box 3000, Rapid City, SD 57709. Representative: Stockton and Lewis, The 1650 Grant Street Building, Denver, CO 80203. *Lumber* from WA, OR, MT, ID, and WY to ND, SD, and NE. Supporting shipper: McFarland Cascade, P.O. Box 2667, Eugene, OR 97402.

MC 150327 (Sub-4–3TA), filed October 16, 1980. Applicant: AMANON, INCORPORATED, 38294 Rickham Court, Westland, MI 48185. Representative: John S. Barbour, 2711 East Jefferson, Suite 202, Detroit, MI 48207. *Contract,* irregular, *Industrial paint finishing equipment and materials, equipment and supplies (except commodities in bulk) used in the installation thereof* between Troy and Madison Heights, MI, one the one hand, and on the other, all points in the U.S. except AK, HI, and MI, under continuing contracts with Alpha-Debon Industries, Inc. Supporting shipper: Alpha-Debon Industries, Inc., 1743 Larchwood, Troy, MI 48084.

MC 152100 (Sub-4–1TA), filed October 15, 1980. Applicant: W & H TRUCK SYSTEMS, INC., 7601 West 59th Street, Summit, IL 60501. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. *(a) Foodstuffs, other than in bulk; and (b) Materials,*

equipment and supplies used or useful in the manufacture, sale and distribution of foodstuffs, other than in bulk; between points in the continental U.S. in and east of MT, WY, CO and NM. Supporting shipper: D'Amico Marcaroni Co., 2601 Bond Street, Park Forest South, IL 60444. An underlying ETA seeks 120 days authority.

MC 114055 (Sub-4–2TA), filed October 15, 1980. Applicant: RAY KOLNIK, d.b.a. RAY KOLNIK TRUCKING, Route 1, Prairie View Road, Walworth, WI 53184. Representative: Attorney Joseph E. Ludden, 324 Exchange Building, P.O. Box 1567, La Crosse, WI 54601. *Malt Beverages,* from St. Paul, Washington, County, MN., Belleville, St. Clair County, IL, and Frankenmuth, Saginaw County, MI, to Elgin, Kane County, IL and Fox River Grove, McHenry County, IL. An underlying ETA has been granted for 120 days. Supporting shippers: Elgin Beverage Co., 1685 Fleetwood Drive, Elgin, IL 60120. L & V Distributors, Inc., 104 Northwest Highway, Fox River Grove, IL 60021.

MC 148314 (Sub-4–32TA), filed October 15, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Plastic film,* from Cleveland and Akron, OH, to Chicago and Lansing, IL; and Hammond, IN. Supporting shipper: Land-O-Frost, Inc., 16850 Chicago Ave., Lansing, IL 60438.

MC 145820 (Sub-4–2TA), filed October 14, 1980. Applicant: NORTH CENTRAL DISTRIBUTING CO., P.O. Box 5453 University Station, Fargo, ND 58105. Representative: Richard P. Anderson, 502 First National Bank Bldg., Fargo, ND 58126. *Contract* irregular: *Lumber and wood products* from points in WA, OR, ID, MT and CA, to points in ND, SD, MN, WI, IA and IL under contract with Louisiana-Pacific Corporation. An underlying ETA seeks 120 days authority. Supporting shipper: Louisiana-Pacific Corporation, 1300 SW 5th Avenue, Portland, OR 97201.

MC 115242 (Sub-4–3TA), filed October 14, 1980. Applicant: DONALD MOORE, 601 North Prairie Street, Prairie du Chien, WI 53821. Representative: Michael S. Varda, 121 S. Pinckney Street, Madison, WI 53703. *Lumber construction board and insulation* from points in AL, AR, GA, LA, MS and Pevely, MO to Janesville, LaCrosse, Madison and Prairie du Chien, WI. Supporting shipper(s): Quality Wood Treating Co., Inc., 1520 South 16th Street, Prairie du Chien, WI 53821; and Lumbermens Service, a corporation, 6124 McKee Road, Madison, WI 53711.

MC 142920 (Sub-4–7TA), filed October 14, 1980. Applicant: OLIVER TRUCKING CORP., 2203 W. Oliver Street, Indianapolis, IN 46221. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract* irregular: *Such commodities as are dealt in or used by manufacturers or distributors of sound, communications, educational or enterainment equipment and materials (except in bulk),* from Terre Haute and Indianapolis, IN, to points in TX under continuing contract(s) with CBS, Inc. Supporting shipper: CBS, Inc., 51 W 52 Street, New York, NY 10009. An underlying ETA seeks 120 days authority.

MC 149492 (Sub-4–2TA), filed October 14, 1980. Applicant: CHICAGO-LAND-QUAD CITIES EXPRESS, INC., 817 W. 21st St., Chicago, IL 60608. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Contract* irregular: *Plastic pellets and granules,* from Calument City, IL to Mauldin, SC.; Neenah, WI.; Finderne, NJ.; Terre Haute, IN.; Kalamazoo, MI.; Ada, OK.; Adrian, MI.; French Lick, IN. Under continuing contract(s) with American Thermoplastics. Supporting shipper: American Thermoplastics, 142nd & Paxton Ave., Calument City, IL 60409. An underlying ETA seeks 120 days authority.

MC 139151 (Sub-4–4TA), filed October 16, 1980. Applicant: CANUS TRUCKING, LTD., 150 Sutherland Ave., Winnipeg, Manitoba, Canada R2W 5K4. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005. *Common, irregular, lime and limestone products,* from Manitowoc County, WI, to the port of entry on the US/Canada boundary line at or near Noyes, MN. Supporting shipper: Rockwell Lime Company, Manitowoc, WI 54220.

MC 19311 (Sub-No.4–5TA), filed October 16, 1980. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Representative: Patrick O. Smith, 755 West Big Beaver—Suite 1200, Troy, MI 48084.*Common;* irregular; *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 Macomb and St. Clair Counties, MI on and south of Michigan Highway 21 in connection with carrier's presently authorized regular route operations. An underlying ETA seeks 120 days authority. There are 45 Certificates of Support filed with the application.

MC 139667 (Sub-No. 4–1TA), filed September 19, 1980. Applicant: CHARLES SCHMIDT TRUCKING COMPANY, INC., 101 W. Sanger, Salem, IL 62881. Representative: Brenda Schmidt (same address as applicant) *Building Materials,* to and from Centralia, IL. to points in 48 states (except AK and HI). An underlying ETA seeks 120 days authority. Supporting shipper: American Solartron Corporation, Route 5, Box 170, Centralia, IL. 62801.

MC 152141 (Sub-4–2TA), filed October 14, 1980. Applicant: Young TRANSPORTATION, INC., 2526 North Western Ave., Plymouth, IN 46563. Representative: David G. Abraham, 6400 Goldsboro Road, Suite 304, Washington, D.C. 20034. *Contract,* irregular, *lumber or wood products, except furniture* as described in Item 24 of the Standard Transportation Commodity Code Tariff; *pulp, paper or allied products* as described in Item 26 of the STCC Tariff; *chemicals or allied products* as described in Item 28 of the STCC Tariff; *rubber or miscellaneous plastics products* as described in Item 30 of the STCC Tariff; *clay concrete, glass or stone products* as described in Item 32 of the STCC Tariff; and *fabricated metal products except ordnance* as described in Item 34 of the STCC Tariff; between points in the U.S., under continuing contracts with Young Door Company, Midwest Division, Plymouth, IN; Young Door Company, South Central Division, Hartselle, AL; Young Door Company, Eastern Division, Sunbury, PA; and Challenge Metal Products, Inc., Ligonier, IN.

MC 136293 (Sub-4–3TA), filed October 15, 1980. Applicant: LOUIE SENSKE and JIM SENSKE d.b.a. SENSKE AND SON TRANSFER, 117 Fourth Avenue North, Crookston, MN 56716. Reprsentative: Gene P. Johnson, P.O. Box 2471, Fargo, ND 58108. Trailers and buildings in sections, between points in IA, MN, MT, NE, ND, SD, WI and WY. Supporting shippers: There are 7 statements of support attached.

MC 147644 (Sub-4–6TA), filed October 15, 1980. Applicant: JMC TRANSPORT, INC., 1719 Potters LN., Jeffersonville, IN 47130. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Alcoholic beverages* (except in bulk), from Cincinatti, OH and Frankfort, KY to points in AZ, CA, NM, NV and UT. Supporting shipper: National Distilleries, Inc., 126 Section Road, Cincinatti, OH 45216. An underlying ETA seeks 120 days authority.

MC 145095 (Sub-4–2TA), filed October 15, 1980. Applicant: POWER FUELS,

INC., P.O. Box 1369, Minot, ND 58701. Representative: F. J. Smith, Suite 307, 420 N. 4th St., Bismarck, ND 58501. *Anhydrous ammonia in bulk, tank vehicles,* from Velva, ND to Reserve, MT. Supporting shipper: Cominco America, Inc., 205 NW 25th, Fargo, ND 58104.

MC 152194 (Sub-4–1TA), filed October 15, 1980. Applicant: NECOMA TRANSPORT, INC., 11 South 360 Madison Street, Hinsdale, IL 60521. Representative: Stephen H. Loeb, Suite 2027, 33 North LaSalle Street, Chicago, IL 60602. *Liquid cleaning compounds,* in bulk, in tank vehicles, from the facilities of Onyx Chemical Co., at Blue Island, IL to St. Louis, MO, Ft. Madison, IA, and points in OH, IN, MI, and WI. Supporting shipper: Onyx Chemical Co., 14000 South Seeley Avenue, Blue Island, IL 60406.

MC 146643 (Sub-4–31TA), filed October 15, 1980. Applicant: INTER-FREIGHT TRANSPORTATION, INC., 655 East 114th St., Chicago, IL 60628. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Contract;* Irregular; *Foodstuffs and materials, equipment and supplies used in the manufacture thereof (except in bulk),* between the facilities of D'Amico Foods Company at or near Steger, IL, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, KS, OK and TX. Supporting shipper: D'Amico Foods Company, 3601 Chicago Road, Steger, IL 60475. An underlying ETA seeks 120 days authority.

The following applications were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 35320 (Sub-5–35TA), filed October 14, 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). Common, regular. *General commodities, except household goods as defined by the Commission, and Classes A and B explosives,* serving New Orleans, LA and its commercial zone as an off-route point in connection with carrier's otherwise authorized regular route operations. Supporting shippers: Eight.

Note.—Applicant intends to tack and interline.

MC 40270 (Sub-5–1TA), filed October 15, 1980. Applicant: CRABBS TRANSPORT, INC., P.O. Box 3486, Enid, OK 73701. Representative: R. H. Lawson, Attorney, 2753 Northwest 22nd Street, Oklahoma City, OK 73107. *Salt and Salt Products, in bulk or in packages on pallets,* between Hutchinson, KS, on the one hand, and, on the other, points in OK on and south of a line beginning at the OK-TX State line and extending along U.S. Highway 66 to Oklahoma City, OK, then along U.S. Highway 62 to junction U.S. Highway 266, then along U.S. Highway 266 to junction U.S. Highway 64, and then along U.S. Highway 64 to the OK-AR State line. Supporting shippers: Cargill, Inc., P.O. Box 9300, Minneapolis, MN, Carey Salt Div. of Procesed Minerals, Inc. P.O. Box 459, Hutchinson, KS

MC 58902 (Sub-5–1TA), filed October 14, 1980. Applicant: MANLEY TRUCK LINE, INC., P.O. Box 1575 SSS, Springfield, MO 65806. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. Common; Regular: *General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading,* (1) between Joplin, MO and Fort Smith, AR, serving all intermediate points and the off-route points in Newton and McDonald Counties, MO and Benton, Washington, Crawford, Sebastian Counties, AR: from Joplin over U.S. Hwy 71 to Fort Smith and return over the same route; (2) between Springfield, MO and Fort Smith, AR, serving all intermediate points: from Springfield over U.S. Hwy 60 to Junction U.S. Hwy 71, then over U.S. Hwy 71 to Fort Smith and return over the same route; (3) between Tulsa, OK and Fort Smith, AR, serving no intermediate points and serving the junction of U.S. Hwys 64 and 69 for purposes of joinder only: from Tulsa over U.S. Hwy 64 to Fort Smith and return over the same route; (4) between Neosho, MO and Miami, OK: from Neosho over U.S. Hwy 71 to Junction U.S. Hwy 60, then over U.S. Hwy 60 to Junction MO Hwy 43, then over MO Hwy 43 to Junction MO County Hwy U, then over MO County Hwy U to MO/OK border and Junction OK Hwy 10 C, then over OK Hwy 10C to Junction OK Hwy 10, then over OK Hwy 10 to Miami and return over the same route; (5) between Springdale, AR and Tulsa, OK, serving all intermediate points in AR and the junction of OK Hwy 33 and U.S. Hwy 69 for purposes of joinder only: from Springdale over AR Hwy 68 to Junction OK Hwy 33, then over OK Hwy 33 to Tulsa, and return over the same route; (6) between Muskogee, OK and Junction U.S. Hwys 69 and 66, serving the junction of U.S. Hwys 69 and 66 and the junction of OK Hwy 33 and U.S. Hwy 69 for the purpose of joinder only and serving Muskogee for the purpose of joinder only: from Muskogee over U.S. Hwy 69 to Junction U.S. Hwy 66 and return over the same route. There are 28 supporting shippers.

Note.—Applicant proposes to serve all of the commercial zones of all of the specified points and intermediate points as shown in Routes (1) through (5) above. Applicant proposes to tack the authority sought above with its existing authority so as to provide a through service. Applicant also proposes to interline traffic transported under the above-listed authority with other carriers at various terminal locations.

MC 59367 (Sub-5–5TA), filed October 14, 1980. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, Ft. Dodge, IA 50501. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Frozen foods,* between points in Webster County, IA, on the one hand, and, on the other, points in CO, KS, MN, MO, NE, ND, SD and WI. Supporting shipper: General Foods Corporation, 250 North St., White Plains, NY 10625.

MC 60066 (Sub-No. 5–4TA), filed October 15, 1980. Applicant: BEE LINE MOTOR FREIGHT, INC., 1804 Paul Street, Omaha, NE 68102. Representative: Donald L. Stern, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Shock absorbers, and parts, materials, equipment and supplies used in the manufacture of shock absorbers,* between Dawson County, NE on the one hand, and, on the other, points in the U.S. (except NE, AK and HI). Supporting shipper: Monroe Auto Equipment Co., International Drive, Monroe, MI 48161.

MC 67234 (Sub-5–10TA), filed October 15, 1980. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. *Furniture or Fixtures, Furnishings, crated and uncrated,* between Los Angeles, CA, on the one hand, and on the other, points in the U.S. Supporting shipper: Boyd Furniture Manufacturing, Inc., 21640 Wilmington Avenue, Carson, CA 90810.

MC 78400 (Sub-5–16TA), filed October 14, 1980. Applicant: BEAUFORT TRANSFER COMPANY, P.O. Box 151, Gerald, MO 63037. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Containers, and materials and supplies used in the manufacture thereof,* between points in the U.S., in and east of ID, UT, and AZ, restricted to traffic originating at or destining to the facilities of Alton Box Board Company. Supporting shipper: Alton Box Board Company, 401 Alton Street, Alton, IL 62002.

MC 99427 (Sub-5–5TA), filed October 14, 1980. Applicant: ARIZONA TANK

LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check, 666 Grand Avenue, Des Moines, IA 50309. *Residual fuel oils,* in tank vehicles from points in San Juan County, NM to points in CO and AZ. Supporting shipper: Giant Refining, Inc., P.O. Box 256, Farmington, NM 87401.

MC 106398 (Sub-No. 5–47TA), filed October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK. *Iron and steel articles,* between points in AR, KS, OK, TX, CO, NM, MS and LA. Supporting shipper: Singer Steel, P.O. Box 3528, Enid, OK 73701.

MC 106398 (Sub-No. 5–48TA), filed October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Buildings, complete, knocked down or in sections, including all component parts and accessories* from the facilities of National Steel Products, Inc. at Houston, TX; to points in the states of NM, CO, UT, ID, WA, OR, CA, NV and AZ. Supporting shipper: National Steel Products, Inc., P.O. Box 40490, Houston, TX.

MC 106398 (Sub-5–49TA), filed, October 15, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, Director of Traffic, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Composition board,* from the facilities of United States Gypsum Company, Greenville, MS; to points in CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI and VT. Supporting shipper: United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 111231 (Sub-5–13TA), filed, October 15, 1980. Applicant: JONES TRUCK LINES, INC., 610 East Emma Avenue, Springdale, AR 72764. Representative: Don A. Smith, P.O. Box 43, 510 North Greenwood Avenue, Fort Smith, AR 72902. *Plastic Pipe, Fittings, Gaskets, Sealer and Accessories,* between plant site of MARATHON PLASTICS, INC., at or near Litchfield, IL, on the one hand, and, on the other, points in the U.S., except AK, AL, AR, FL, GA, HI, IN, IA, KS, KY, MS, MI, MN, MO, NE, NC, ND, OH, OK, SC, SD, TN, VA, and WI. Supporting shipper: Marathon Plastics, Inc., P.O. Box 189, Litchfield Industrial Park, Litchfield, IL 62056.

MC 113362 (Sub-5–15TA), filed, October 14, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. *Foodstuffs (except in bulk),* from the facilities Sanna Division, Beatrice Foods Company, at Menomonee, Cameron, Vesper, Wisconsin Rapids, and Eau Claire, WI to points in AR, KS, LA, MS, MO, OK, TX, and Memphis, TN. Supporting shipper: Sanna Division, Beatrice Foods Company, P.O. Box 8046, 6501 Grand Teton Plaza (53719), Madison, WI 53708.

MC 113908 (Sub-5–22TA), filed, October 14, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Lecithin and kindred products, (non-exempt farm products; crude petroleum, natural gas or gasoline; non-exempt food or kindred products; textile mill products; lumber or wood products, except furniture; pulp, paper, or allied products; chemicals or allied products; petroleum or coal products; rubber or miscellaneous plastics products; general commodities, except household goods as defined by the Commission and classes A & B explosives),* between points in the U.S. Supporting shippers: (a) American Lecithin Company, P.O. Box 4056, Atlanta, GA 30302. (b) P.G. Consultants, Inc., P.O. Box 903, Arlington Heights, IL 60006. (c) Riceland Foods, Inc., P.O. Box 927, Stuttgart, AR 72160.

MC 114273 (Sub-5–32TA), filed, October 14, 1980. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core, Corporate Counsel (same as above). *Air conditioning, heating, and cooling equipment and component parts, materials and supplies used in their manufacture, repair, packaging and distribution,* between those pts in the U.S. in and east of ND, SD, NE, CO, OK and TX. Restricted to the transportation of traffic originating at or destined to those facilities of Fedders Corporation. Supporting shipper(s): Fedders Corporation, Woodbridge Avenue, Edison, NJ 08817.

MC 114284 (Sub-5–8TA), filed October 15, 1980. Applicant: FOX–SMYTHE TRANSPORTATION CO., P.O. Box 82307, Oklahoma City, OK 73148. Representative: William B. Barker, 641 Harrison Street, P.O. Box 1979, Topeka, KS 66601. *Candy,* from the facilities utilized by E. J. Brach & Sons at or near Chicago and Carol Stream, IL; Kansas City, MO; Little Rock, AR; and Oklahoma City, OK, to points in AR, NM, OK, and TX. Supporting shipper; E. J. Brach & Sons, 4656 West Kinzie Street, Chicago, IL 60644.

MC 115331 (Sub-5–12TA), filed October 14, 1980. Applicant: TRUCK TRANSPORT, INCORPORATED, 11040 Manchester Road, St. Louis, MO 63122. Representative: J. R. Ferris, (same as applicant). *Lime,* from the plant site of the U.S. Gypsum Company at New Orleans, LA to points in TX, MS, AR and AL. Supporting shipper(s): The United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 117119 (Sub-5–36TA), filed October 15, 1980. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean (same address as applicant). *Such commodities as are dealt in or used by manufacturers and distributors of paint, chemicals, and related articles* (except in bulk) between all points in the U.S. (except AK and HI). Supporting shipper(s): The Sherwin-Williams Company, P.O. Box 6875, Cleveland, OH 44101.

MC 119399 (Sub-5–30), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Fibrous glass products and materials; mineral wool; mineral wool products and materials; insulated air ducts; insulating products and materials; glass fibre rovings; yarn and strands; glass fibre mats and mattings; flexible air duct* (except commodities in bulk) between the facilities of CertainTeed Corp. at or near Kansas City, KS on the one hand, and, on the other points in AR, LA, OK, and TX. Supporting shipper: CertainTeed Corporation, P.O. Box 860, Valley Forge, PA 19482.

MC 119399 (Sub-5–31TA), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (same address as applicant). *Malt beverages* from Pottawattamie County, IA and Douglas County, NE to points in AR and MO (except Joplin, Springfield and West Plains, MO). Supporting shipper: PL Distributing Company, P.O. Box 38, Council Bluffs, IA.

MC 119399 (Sub-5–32TA), filed October 14, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant). *Commodities that are dealt in by retail and wholesale food business houses, (except commodities in bulk)* between points in CA, CO, KS, MN, MO, OK and TX restricted to traffic originating or

destined to the facilities of the Pillsbury Company. Supporting shipper: The Pillsbury Company, LeSuer, MN 56058.

MC 119741 (Sub-5–20), filed October 14, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Fireplaces and fireplace parts and accessories,* from the facilities of Heatilator, a Division of Vega Industries, Inc. at Centerville and Mount Pleasant, IA to all points in the U.S. Supporting shipper: Heatilator, a Division of Vega Industries, Inc., P.O. Box 409, Mount Pleasant, IA 52641.

MC 119741 (Sub-5–21), filed October 14, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, N.W., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Such merchandise as is dealt in or used by retail or variety and department stores (except foodstuffs and commodities in bulk),* between points in AL, AR, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, for the account of Naum Bros. Inc. Supporting shipper: Naum Bros. Inc., 2373 West Ridge Road, Rochester, NY 14626.

MC 119789, (Sub-5–37TA), filed October 15, 1980. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same as applicant). *Foodstuffs (except in bulk),* from Lafayette and New Iberia, LA to ID, MT, and UT. Supporting shipper: B. F. Trappey's Sons, Inc.; Locker Drawer 400; New Iberia, LA, 70560.

MC 121658 (Sub-5–7TA), filed October 15, 1980. Applicant: STEVE D. THOMPSON TRUCKING, INC., 710 Prairie St., Winnsboro, LA 71295. Representative: Robert L. McArty, P.O. Box 22628, Jackson, MS 39205. *Common, regular, 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 Bastrop, LA and Crossett, AR: from Bastrop over LA Hwy 139 to its juction with LA Hwy 142; over LA Hwy 142 to its junction with AR Hwy 133; over AR Hwy 133 to Crossett, and return over the same route, serving no intermediate points, but serving the commercial zones of Bastrop, LA and Crossett, AR. Supporting shippers: 7.

Note.—Applicant intends to interline and tack.

MC 123285 (Sub-5–1TA), filed October 15, 1980. Applicant: CLETEX TRUCKING, INC., P.O. Box 812, Cleburne, TX 76031. Representative: Clint Oldham, 1108 Continental Life Building, Forth Worth, TX 76102. *Flyash and lime, in bulk,* from Johnson County and Freestone County, TX, to points in MS. Supporting shipper: Woodbine Corporation, 2510 Decatur, Forth Worth, TX, 76106.

MC 124174 (Sub-5–25TA), filed October 15, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Scrap, metal, and metal articles,* from Douglas County, NE to Bourbon County, KS. Supporting shipper(s): Aaron Ferer & Sons Co., 909 Abbot Drive, Omaha, NE 68130.

MC 124711 (Sub-5–5TA), filed October 15, 1980. Applicant: BECKER CORPORATION, P.O. Box 1050, El Dorado, KS. 67042. Representative: Rod Parker (same as applicant). *Lube Oil,* from West Memphis, AR to Tulsa, OK, Skiatook, OK and Wichita, KS. Supporting shipper: Rapid Oil Company, 7214 East 38th, Tulsa, OK 74145.

MC 128709 (Sub-5–2TA), filed October 14, 1980. Applicant: PARIS MOTOR FREIGHT, INC., P.O. Box 1787, Ft. Smith, AR 72901. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. *Household appliances, and parts for household applicances;* and *television sets, recorders (tape or wire), and accessories for television sets and recorders,* from Little Rock, AR to points in OK. Supporting shipper: General Electric Company, 6901 Lindsey Road, Little Rock, AR 72206.

MC 128883 (Sub-5–5TA), filed October 15, 1980. Applicant: NORTH IOWA EXPRESS, INC., 1921 N.E. 58th Avenue, Des Moines, IA 50313. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *General commodities, except Class A and B explosives, commodities in bulk and those requiring special equipment* between Des Moines, IA, and Omaha, NE, serving all intermediate points over U.S. Highway 6 and Interstate Highway 80. Applicant intends to interline with other carriers and join the subject authority with its present operations. Supporting shippers: 10.

MC 133655 (Sub-5–11TA), filed October 15, 1980. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 402535, Dallas, TX 75240. Representative: Matthew J. Reid, Jr., P.O. Box 2298, Green Bay, WI 54306. *Such commodities as are dealt in or used by manufacturers and distributors of chemicals (except commodities in bulk)* from those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX to points in AR, LA, MS, OK, TN, and TX, restricted to movement from, to, or between facilities of or used by McKesson Chemical Company. Supporting shipper: McKesson Chemical Company, 3525 No. Causeway Blvd., Metarie, LA 70002.

MC 135078 (Sub-5–7–TA), filed October 14, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. *General Commodities (except household goods as defined by the Commission and classes A & B Explosives)* from points in AL, GA, NC and SC to the Commercial Zones of Des Moines, IA; El Dorado Springs, Kansas City and Lexington, MO; and Omaha, NE. Supporting shippers: Wholesale Carpets, Inc., 13425 "I" Circle, Omaha, NE 68137; Mattingly Stores, Inc., Thirteenth & Franklin, Lexington, MO 64067; Dunbrooke Sportswear Co., P.O. Box 430 Lexington, MO 64067.

MC 135797 (Sub-5–74TA), filed October 15, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicant). *General commodities (with the usual exceptions),* between points in the United States (except AK and HI). Restricted to traffic originating at or destined to the facilities of Specialty Materials Company. Supporting shipper: Specialty Materials Company, P.O. Box 3452, El Paso, TX 79923.

MC 136553 (Sub-5–3TA), filed October 14, 1980. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Construction materials and materials and supplies used in the manufacture and distribution of construction materials,* between Dubuque, IA, on the one hand, and, on the other, points in KS, MN, MO, NE, ND, SD, and TN. Supporting shipper: Dubuque Lumber Co., 2655 Lincoln Avenue, Dubuque, IA 52001.

MC 136786 (Sub-5–35TA), filed October 14, 1980. Applicant: ROBCO TRANSPORTATION, INC., P.O. Box 10375, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Such merchandise as is dealt in or used by retail stores,* between Forsyth County, NC, Kanawha County, WV, Osage-Tulsa Counties, OK, East Baton Rouge County, LA, Marion County, IN,

and points in TN, on the one hand, and, on the other, points in the U.S. Supporting shipper: Ardan Wholesale, Inc., P.O. Box 2260, Des Moines, IA 50310.

MC 138104 (Sub-5–6TA), filed October 15, 1980. Applicant: MOORE TRANSPORTATION CO., INC., 3509 N. Grove Street, Fort Worth, TX 76106. Representative: Bernard H. English, Fort Worth, TX 76116. *(1) pellet mills, conveyors, and attachments, and (2) materials, supplies and equipment used in the manufacture of the commodities described in (1) above,* (1) from Tarrant County, TX to points in AL, AR, CA, CO, FL, GA, IA, IL, IN, KS, LA, MN, MO, MS, NC, NE, OK, PA, SC, and TN, and (2) above, in the reverse direction. Supporting shipper: Landers Machine Company, Inc., 207 E. Broadway, Fort Worth, TX 76104.

MC 138627 (Sub-5–2TA), filed October 14, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Masonary products* from East Canton, OH and Bradford and Summerville, PA to points in AR, KS, MO, and OK. Supporting shipper: S–G Metals Industries, Inc., P.O. Box 2039, Kansas City, KS 66110.

MC 138627 (Sub-5–3TA), filed October 15, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Salt* from Hutchinson, KS to Fort Dodge, IA. Supporting shipper: Olson Distributing Company, Inc., 227 South 21st Street, P.O. Box 842, Fort Dodge, IA 50501.

MC 138627 (Sub-5–4TA), filed October 14, 1980. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Fort Dodge, IA 50501. Representative: Arlyn L. Westergren, Westergren & Hauptman, P.C., Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Iron and steel articles,* from Granite City, IL and its Commercial Zone to points in AR, IN, IA, KS, KY, MI, MN, MO, NE, ND, OH, OK, SD, TN, TX, and WI. Supporting shipper: Michigan Metal Processing Corporation, P.O. Box H, Granite City, IL 62040.

MC 138686 (Sub-5–1TA), filed October 14, 1980. Applicant: L.C.W. TRUCKING, INC., 101 Hampton Road East, Crowley, TX 76102. Representative: M. Ward Bailey, 2412 Continental Life Bldg., Fort Worth, TX 76102. *Cheese and cheese products* from points in WI, Lena, IL, St. Olaf and Luana, IA to Dallas, Houston and San Antonio, TX.

MC 140033 (Sub-5–8TA), filed October 15, 1980. Applicant: COX REFRIGERATED EXPRESS, INC., 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. *Anti-freezing compounds, except in bulk,* from Weatherford, TX to points in the States of OR, WA, CA, ID, NV, AZ, UT, NM, CO, WY, and MT. Supporting shipper: Power Service Products, Inc., 1410 Bowie, Weatherford, TX 76086.

MC 140364 (Sub-5–8TA), filed October 15, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, Manager-Transportation, 111 West Clarendon, Phoenix, AZ 85013. Contract, irregular: *Foodstuffs and materials and supplies used in the manufacture thereof,* between points in the U.S., restricted to traffic for the account of, originating at, or destined to the facilities utilized by Armour and Company. Supporting shipper: Armour and Company, Greyhound Tower, Phoenix, AZ 85077.

MC 140665 (Sub-5–39TA), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: Ann Holcombe, P.O. Box 786, Ravenna, OH 44266. *General commodities, except articles of unusual value, Class A & B explosives, household goods as defined by the Commission, commodities in bulk, and articles because of their size and weight requiring special equipment,* (1) between points in AL, CO, CT, DE, DC, FL, IL, KS, MD, MA, MN, NE, RI, SD, SC, TN, VA and WI on the one hand, and on the other, points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, KY, LA, MN, MS, MO, MT, NE, NV, NM, OH, OK, OR, SD, TN, TX, VT, WA, WI and WY; and (2) between AR, GA, IA, KY, MI, MO, NJ, NC, and OK on the one hand, and, on the other points, in AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, SD, and WI; and (3) between IN, LA, NY, OK, PA, and WV, on the one hand, and, on the other, AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, OH, SD, TN, and WI; and (4) between TX on the one hand, and on the other, AL, AR, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OK, SD, and WI. (Restricted against the transportation of traffic moving between points within AL, AR, CO, FL, GA, IL, IA, KS, KY, MN, MS, MO, NE, OH, OK, SD, TN, and WI.) Supporting shipper: ITOFCA, Inc., Two Walker Avenue, Clarendon Hills, IL 60514.

MC 140665 (Sub-5–40TA), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *General commodities (except articles of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and articles requiring special equipment,* between points in Tennessee East of the Tennessee River, on the one hand, and on the other, points in AZ, CA, ID, NV, OR, UT, WA, restricted to traffic moving on Mid-South Shippers Association, Inc., bills of lading. Supporting shipper: Mid South Shippers Association, Inc., 230 Willow Street, Nashville, TN 37210.

MC 140665 (Sub-5–41), filed October 14, 1980. Applicant: PRIME, INC., P.O. Box 4208, Springfield, MO 65804. Representative: H. J. Anderson, P.O. Box 4208, Springfield, MO 65804. *Plastics, dried flowers and cloth flowers and such commodities as are dealt in or used by distributors of floral products,* between Bolivar, MO, on the one hand, and on the other, Atlanta, GA, Dallas, TX, and New Albany, IN. Supporting shipper: Teters Floral Products Company, Box 210, Bolivar, MO 65613.

MC 142207 (Sub-5–1TA), filed October 15, 1980. Applicant: BRANNAN SYSTEMS, INC., P.O. Box 29287, New Orlenas, LA 70189. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, N.E., Atlanta, GA 30326. *(1) Petroleum and petroleum products, except in bulk, and (2) materials, equipment and supplies used in the production or distribution of the commodities above* between Good Hope and Metairie, LA on the one hand, and, on the other, points in AL, FL, MS, KY, TN, and TX. Supporting shipper: Chevron U.S.A., Inc., P.O. Box 1706, Atlanta, GA 30301.

MC 144603 (Sub-5–26TA), filed October 14, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Drive, Maryland Heights, MO 63043. Representative: Raymond C. Dougherty (same address as applicant). *General commodities, (except Classes A & B explosives, commodities in bulk, commodities of unusual value, household goods and those requiring the use of special equipment)* from Los Angeles, CA and its Commercial Zone to Atlanta, GA, and Charlotte, NC, and their Commercial Zones (restricted to traffic from or to facilities of Greater Atlanta Shippers Assn., Inc. and Charlotte Freight Association, Inc.). Supporting shippers: Greater Atlanta Shippers Assn., Inc., 6168 Boat Rock Blvd., S.W., P.O. Box 43862, Atlanta, GA 30336 and Charlotte Freight Association, Inc., 2508 Starita Road, Charlotte, NC 28208.

MC 144622 (Sub-5–53TA), filed October 15, 1980. Applicant: GLENN

BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *(1) Drugs, medicines, toilet preparations, chemicals, soaps and animal feed supplements; and (2) Such commodities as are dealt in and sold by department stores, supermarkets, hardware and drug stores;* (a) From West Springfield, MA; Clifton, NJ; May's Landing, NJ; Memphis, TN; and Ft. Madison, IA to Sparks NV; (b) From West Springfield, MA; Clifton, NJ; and May's Landing, NJ to Memphis, TN; (c) From Pearl River, NY to Los Angeles, CA; Portland, OR; Dallas, TX; Atlanta, GA; and Chicago, IL. Supporting shipper: American Cyanamid Company, Berdan Avenue, Wayne, NJ 07470.

MC 144682 (Sub-5–8TA), filed October 14, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: D. Paul Stafford, Suite 1125, Exchange PK, P.O. Box 45538, Dallas, TX 75245. *Soda ash, sodium bicarbonate, borax, boric acid, pesticides and surfactants, in containers,* (1) from CA, Green River, WY, Denver, CO, and Salt Lake City, UT, to Points in TX, and (2) from points in TX to points in NM. Supporting shipper: Van Waters & Rogers, A Division of Univar Corporation, 4707 Alpha Rd., Dallas, TX 75234.

MC 144682 (Sub-5–9TA), filed October 15, 1980. Applicant: R. R. STANLEY, 1738 Empire Central, Dallas, TX 75235. Representative: Lawrence A. Winkle, P.O. Box 45538, Dallas, TX 75245. *Foodstuffs (except commodities in bulk)* (1) From Milton, PA to points in NC, SC, GA, FL, AL, MS, LA, AR and TN; (2) From Vacaville, CA to points in OR and WA, and (3) Between Milton, PA, Vacaville, CA and La Porte, IN. Supporting shipper: American Home Foods, 685 Third Avenue, New York, NY 10017.

MC 145384 (Sub-5–9TA), filed October 14, 1980. Applicant: ROSE-WAY, INC., P.O. Box 4644, Des Moines, IA 50306. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Lumber, lumber products, wood products and millwork,* From Eugene, Baker, Dillard, Grants Pass, Klamath Falls, Bend, Madras, Prineville, and Portland, OR and Kettle Falls, Spokane, Sumner, Hoquiam, Aberdeen and Seattle, WA to points in IA, IL, IN, MI, MN, OH, WI, PA, and NY. Supporting shipper: Lawrence R. McCoy & Co., Inc., 120 Front street, Worsecester, MA 01608.

MC 145743 (Sub-5–2TA), filed October 15, 1980. Applicant: T.F.S. INC., RR 2, Box 126, Grand Island, NE 68801. Representative: A. J. Swanson, Quaintance & Swanson, P.O. Box 1103, 226 North Phillips Avenue, Sioux Falls, SD 57101. *Meats and packinghouse products* from Darr, NE, to Montgomery, AL and points in its commercial zone. Supporting shipper: Dugdale of Nebraska, Inc., P.O. Box 166, Cozad, NE 69130.

MC 146336 (Sub-5–5TA), filed October 15, 1980. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC, 1609 109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, Suite 1125, Exchange Pk., P.O. Box 45538, Dallas, TX 75245. Contract; irregular; *disposable surgical supplies, and pieced or finished paper or non-woven fabric used in the manufacture of disposable supplies;* (1) from Grand Prairie, Arlington, and Sherman, TX, to Jacksonville, FL, Denver, CO, and Seattle, WA, and (2) from Lake Charles, LA and Houston, TX, to Grand Prairie and Arlington, TX. Shipments in (2) above restricted to traffic having a prior movement by water. Supporting shipper: Surgikos, Inc., 2500 Arbrook Dr., Arlington, TX.

MC 146448 (Sub-5–11TA), filed October 15, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. *Tile and materials, equipment and supplies used in the installation, manufacture and sale thereof* from the facilities of American Olean Tile Co. at Cloverport and Lewisport, KY, to points in the United States (except AK and HI). Supporting shipper: American Olean Title Company, 1006 Cannon Avenue, Lansdale, Pa 19446.

MC 147214 (Sub-5–2TA), filed October 14, 1980. Applicant: DETERMANN INDUSTRIES, INC., 1425 No. Washington Blvd., Camanche, IA 5273. Representative: Carl E. Munson, 469 Fischer Building, Dubuque, IA 52001. *Corn germ, in bulk,* from Cedar Rapids IA, to Decatur, IL. Supporting shipper: Cargill, Inc., Cedar Rapids, IA.

MC 148548 (Sub-5–3TA), filed October 15, 1980. Applicant: KEIM TRANSPORTATION, INC., P.O. Box 226, Sabetha, Ks. 66534. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS. 66612. Contract, irregular; *Iron & Steel Articles (except "Mercer" commodities as defined in 74 MCC 459, 543 or earth drilling commodities as described in Roy L. Jones et al 103, MCC 825, 832),* Part 1) Between points and places in CO, NE, KS, OK, IA, and MO. Part 2) Between points and places in CO, NE, KS, OK, IA, MO on the one hand and points in OR, IL, IN, OH, MI, KY, TN, AL, GA, IA, and PA on the other hand. Supporting shipper: Steel and Pipe Supply Co. Inc., P.O. Box 703, Osage St., Manhattan, KS 66502.

MC 149155 (Sub-5–1TA), filed October 15, 1980. Applicant: JOHN PEPPER d.b.a. MIDWEST CARTAGE COMPANY, P.O. Box 318, Atchison, KS 66002. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Non-exempt food or kindred products (STCC No. 20)* between points in Buchanan County, MO, and York County, ME. Supporting shipper: Prime Tanning Co., Inc., 205 Florence, St. Joseph, MO 64504.

MC 150311 (Sub-5–14TA), filed. October 14 1980. Applicant: P & L MOTOR LINES, INC., P.O. Box 4616, Fort Worth, TX 76106. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Such commodities dealt in or used by wholesale grocers, except commodities in bulk in tank vehicles,* between Rochester, NY and points in the U.S. Supporting shipper: Wegmans Food Markets, Inc., P.O. Box 844, 1500 Brooks Ave., Rochester, NY 14603.

MC 150425 (Sub-5–8TA), filed. October 15, 1980. Applicant: TRANS-CONTINENTAL EXPRESS, INC., P.O. Box D, Clarksville, TX 75426. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Malt beverages,* from the facilities of Miller Brewing Co. at or near Ft. Worth, TX to Bossier Parish, LA. Supporting shipper: G and G Distributing, Inc., 410 Hamilton St., Bossier City, LA 71111.

MC 150440 (Sub-5–4), filed October 14, 1980. Applicant: UNIVERSAL EXPRESS, LTD., 536 S. 19th Street, West Des Moines, IA 50265. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Household and commercial laundry and kitchen applicances and parts and materials used in the repair or manufacture of such applicances (except commodities in bulk, in tank vehicles),* (1) Between Farfield and Hampton, IA, on the one hand, and, on the other, points in DC, DE, IN, KS, KY, MD, MI, MO, NJ, NC, OH, OK, PA, SC, TX, VA, and WV, and (2) between Newton, Fairfield, and Hampton, IA, on the one hand, and, on the other, points in AL, AR, VT, CO, CT, FL, GA, IL, MA, ME, MS, LA, NE, NH, NY RI, TN, and WY. Supporting shipper: The Maytag Company, Newton, IA 50268.

MC 150493 (Sub-5–2TA), filed October 15, 1980. Applicant: CARL HATCHER TRUCKING, INC., Route 3, Antlers, OK 74523. Representative: R. H. Lawson, Attorney, 2753 Northwest 22nd Street, Oklahoma City, OK 73107. Contract irregular: *Oil, used in the treatment of*

lumber, posts and poles, in bulk, from Mt. Pleasant, TX to the facilities of Julian Lumber Company in Pushmataha County, OK and *Creosote, used in the treatment of lumber, posts and poles, in bulk,* from Houston and Lone Star, TX and Lake Charles, LA to the facilities of Julian Lumber Company in Pushmataha County, OK. Supporting shipper: Julian Lumber Company, Rattan, OK 74562.

MC 151118 (Sub-5–6TA), filed October 15, 1980. Applicant: MDR CARTAGE, INC., 516 West Johnson, Jonesboro, AR 72401. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Plastic and plastic articles (except commodities in bulk);* and (2) *equipment, materials and supplies used in the manufacture, sale and distribution of commodities described in (1) above (except commodities in bulk and those requiring special equipment):* Between the facilities of The Vollrath Company at Arlington and Gallaway, TN, on the one hand, and, on the other, points in the United States (except AK & HI). Supporting shipper: The Vollrath Company, 209 Vollrath Drive, Gallaway, TN 38036.

Note.—Dual operations may be involved.

MC 152171 (Sub-5–10TA), filed October 15, 1980. Applicant: C & L TRUCKING, INC., P.O. Box 409, Judsonia, AR 72081. Representative: Timothy C. Miller, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101. Contract; Irregular. *Chemicals, drugs, insecticides, soap, toilet preparations, cleaning compounds, buffing compounds and materials, supplies and articles used in the manufacture, sale and distribution thereof (except in bulk)* (1) from West Springfield, MA, Clifton and Mays Landing, NJ, Philadelphia, PA and Memphis, TN to Sparks, NV; and, (2) from Philadelphia, PA and Baltimore, MD to Memphis, TN; and, (3) between West Springfield, MA and Clifton and Mays Landing, NJ, on the one hand, and, on the other, Memphis, TN and Fort Madison, IA, under contract with American Cyanamid Company. Supporting shipper: American Cyanamid Company, Berdan Avenue, Wayne, NJ 07470.

MC 152172 (Sub-5–1TA), filed October 14, 1980. Applicant: DENNIS KEAR, d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Alcohol,* between points in NE, on the one hand, and, on the other, Atchison County, MO. Supporting shipper: Nebraskahol, P.O. Box 214, York, NE 68467.

MC 152172 (Sub-5–2TA), filed October 14, 1980. Applicant: DENNIS KEAR d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. (1) *Electrical equipment,* from the facilities of Larad Industries, Inc. at or near York, NE, to pts in the U.S. (except AK and HI); and (2) *Materials, equipment and supplies used in the production and distribution of electrical equipment,* from pts in the U.S. (except AK and HI) to the facilities of Larad Industries, Inc. at or near York, NE. Supporting shipper: Larad Industries, Inc., South Highway 81, Box 586, York, NE 68467.

MC 152190 (Sub-5–1TA), filed October 15, 1980. Applicant: HOUGHTON TRUCKING, INC., Houghton, IA 52631. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Liquid fertilizer, in bulk,* (1) From Montrose, Ames, and Pleasant Hill, IA, to points in MO and IL; and (2) from the facilities of Merschmann Seed & Grain, Inc., at or near Fort Madison, IA, to points in MO and IL. Supporting shipper: Kaiser Agricultural Chemical, Division of Kaiser, Aluminum & Chemical Sales, Inc., P.O. Box 65697, West Des Moines, IA 50265. Merschmann Seed & Fertilizer, Inc., P.O. Box 67, West Point, IA 52656.

MC 152192 (Sub-5–1TA), filed October 15, 1980. Applicant: EDWARD R. TEMMEN, Star Route 2, Jefferson City, MO 65101. Representative: James C. Swearengen, Hawkins, Brydon & Swearengen P.C., P.O. Box 456, Jefferson City, MO 65102. (A) *fertilizer,* from the plant site and facilities of Cooperative Farm Chemical Association, at or near Lawrence, KS, to all points in MO; and (B) *animal and poultry feed and feed ingredients,* from points in KS and IA, to points in MO. Supporting shipper: MFA Incorporated, 201 South 7th Street, Columbia, MO 65201.

MC 152199 (Sub-5–1TA), filed October 15, 1980. Applicant: VELDE EXPRESS, INC., 534 No. Iris Drive, Irving, TX 75061. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. Contract, Irregular: *Confectionery, and materials, equipment and supplies,* used in the manufacture and distribution of confectionery, between points in the U.S. Supporting shipper: Pangburn Company, P.O. Box 15050, Fort Worth, TX 76119.

MC 152200 (Sub-5–1TA), filed October 15, 1980. Applicant: C.M.W., INC. d.b.a. WIL-DOU TRUCKING, 1370 Sheffield Dr., Houston, TX 77015. Representative: W. Douglas McKinney (same as above). Contract: Irregular. *Oil field valves, machines, oil field related supplies and accessories in bulk and boxes.* Between Houston, TX and all points in LA, on the one hand, and OK, AR, and MS and their commercial zones, on the other. Supporting shipper: Sella Valve Corp., 4460 West 12th Street, Houston, TX 77055.

MC 96878 (Sub-5–1TA), republished filed September 18, 1980. Applicant: CONSOLIDATED TRANSFER AND WAREHOUSE CO., INC., 1251 Taney, North Kansas City, MO 74116. Representative: Robert L. Winsky (same address as applicant). *Pipe and Tubing: brass, bronze, copper, cement and asbestos fibre, concrete, conduit, cooling, cupro-nickel, drain, finned, iron, or steel (covered, lined, or wrought), machinery, metal, NOI, plastic, resin and mineral composition, sewer, sheet metal, steel, surface irrigation, welded, wrought iron, oilfield, heat-exchangers, irrigation, water; Materials Required for the Manufacture of Pipe and Tubing: iron or steel (NOI, flat, coil, rod, strip, angle, channel, plate, wire, rope)* between points in the U.S. Applicant intends to tack to its existing authority. Supporting shipper: La Barge Pipe, Inc., 20 South Fourth St., St. Louis, MO 63102.

MC 99427 (Sub-5–6TA), filed October 17, 1980. Applicant: ARIZONA TANK LINES, INC., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same address as applicant). *Sulfuric acid,* from Milan, NM (Reid Siding), to Inspiration Copper, Inspiration, AZ. Supporting shipper: Chemical Marketing Services, P.O. Box 1026, Grants, NM 87020.

MC 112713 (Sub-5–19TA), filed October 17, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Avenue, Overland Park, KS 66207. Representative: Robert E. DeLand (same as applicant). Common, Regular. *General Commodities (except commodities in bulk, household goods as defined by the Commission, those requiring special equipment, those of unusual value and Classes A and B explosives),* between Parkersburg, WV and Clarksburg, WV. From Parkersburg over U.S. Hwy 50 to Clarksburg, serving no intermediate points, but serving their commercial zones. Supporting shipper: None.

Notes.—Applicant intends to tack and interline the authority sought with that contained in MC 112713.

MC 113908 (Sub-5–23TA), filed October 17, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). *Fruit juice and fruit juice concentrates (non-exempt farm products; non-exempt food or kindred products),* between (Wapato), Yakima County, WA, on the one hand, and, on the other, points in

OH. Supporting shipper: Gama Foods, Inc., Route One, Wapato, WA 98951.

MC 116077 (Sub-5–10TA), filed October 17, 1980. Applicant: DSI TRANSPORTS, INC., 5851 San Felipe, Suite 800, Houston, TX 77027. Representative: J. C. Browder, Manager of Traffic—Operations, DSI Transports, Inc., 5851 San Felipe, Suite 800, Houston, TX 77027. *Commodities, in bulk, in tank vehicles,* between points in the U.S. (except AK and HI). Restricted to traffic originating at or destined to the facilities of the Temple-Eastex, Inc., at or near Evadale, TX.

MC 118142 (Sub-5–4TA), filed October 16, 1980. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Meat, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A & C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766,* from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in the U.S. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 119700 (Sub-5–8TA), filed October 16, 1980. Applicant: STEEL HAULERS, INC., 306 Ewing Avenue, Kansas City, MO 64125. Representative: Frank W. Taylor, Jr., 1221 Baltimore Ave., Suite 600, Kansas City, MO 64105. *Iron and steel articles* from Oklahoma County, OK to points in AR, CO, IL, IN, IA, KS, LA, MN, MO, NE, NM, SD, TX, and WI. Supporting shipper: Oklahoma Steel Mill, Inc., 2700 S.W. 15th, Oklahoma City, OK 73108.

MC 119741 (Sub-5–22), filed October 16, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50001. Representative: D. L. Robson (same as applicant). *Washers and dryers, attachments, parts, and accessories thereof, and materials, equipment, and supplies used in the manufacture, distribution, and sale of the above-named commodities,* between Greene and Hamilton Counties, IA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Webster City Products Co., 600 Stockdale Street, Webster City, IA 50595.

MC 119741 (Sub-5–23TA), filed October 17, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Pneumatic rubber tires, molded and extruded rubber parts, reinforced rubber hose, tread rubber, and tubes,* from the facilities of Cooper Tire & Rubber Company at Hancock and Wood Counties, OH to points in IA, KS, MN, MO, NE, ND, SD, and WI. Supporting shipper: Cooper Tire & Rubber Company, P.O. Box 550, Findlay, OH 45840.

MC 119741 (MC-5–24TA), filed October 17, 1980. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., 1515 Third Avenue, NW., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *(1) Fireplaces, oil and gas space heaters, fireplace accessories, and firebrick, and (2) materials, equipment, and supplies used in the manufacture and distribution of commodities named in (1) above,* between Wisconsin Rapids, WI, on the one hand, and, on the other, points in the U.S. Supporting shipper: Preway, Inc., 1430 Second Street, North, Wisconsin Rapids, WI 54494.

MC 124174 (Sub-5–26TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811 "L" Street, Omaha, NE 68137. *Beverages, malt liquors, and related advertising, promotional materials, and empty containers or rejected shipments on return,* between points in WI, MN, IL, NE, OH, NY, NJ, TX, and OK. Supporting shipper(s): Rich Dist. Co., 1101 Enterprise Ave. Bay 12, Oklahoma City, OK 73132; Sooner Suds, Inc., 7120 E 13th Street, Tulsa, OK 74112.

MC 124174 (Sub-5–27TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811"L" Street, Omaha, NE 68137. *(1) Stove pipe, chimneys, ducts, flashings, and metal products and (2) equipment, materials, and supplies used in the manufacture, sale, and distribution of (1) above (except commodities in bulk, in tank vehicles),* between Redwood City, CA and Cincinnati, OH, on the one hand, and on the other, points in the USA (except AK and HI). Supporting shipper(s): Dura-Vent Transport Corp., 2525 El Camino Real, Redwood City, CA 94064.

MC 124174 (Sub-5–28TA), filed October 17, 1980. Applicant: MOMSEN TRUCKING CO., 13811 "L" Street, Omaha, NE 68137. Representative: Karl E. Momsen, 13811"L" Street, Omaha, NE 68137. *Ties, timbers, poles, railroad rails (new or used) and materials used in the maintenance and construction thereof,* between points in MO, CO, KS, TX, NE, IA, and OK. Supporting shipper(s): Ties & Tracks, Inc., 8500 Flora Street, Kansas City, MO 64131.

MC 124236 (Sub-5–10TA), filed October 17, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher, Traffic Manager, Chemical Express Company, 4645 North Central Expressway, Dallas, TX 75205. *Lime, in bulk,* from the plant site of the United States Gypsum Company at New Orleans, LA, to TX, MS, AR, and AL. Supporting shipper(s): United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606.

MC 124511 (Sub-5–4TA), filed October 17, 1980. Applicant: OLIVER MOTOR SERVICE, INC., P.O. Box 223, East Highway 54, Mexico, MO 65265. Representative: Leonard R. Kofkin, 39 South La Salle Street, Chicago, IL 60603. *Iron and Steel Articles,* from Detroit, MI to points in MO. Supporting shipper: A. B. Chance Company, North Allen Street, Centralia, MO 65240.

MC 126118 (Sub-5–32TA), filed October 16, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Metallic ores,* from points in PA to points in TN. Supporting shipper: Powmetl Co., Carolyn Pilcher, Office Manager, Route 3, Box 360, Ripley, TN 38063.

MC 126118 (Sub-5–33TA), filed October 17, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in or used by manufacturers and distributors of containers (except in bulk, in tank vehicles),* between San Antonio, TX and its commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Concept Enterprises, Inc., Robert L. Autrey, Secretary, 10604 Sentinal, San Antonio, TX 78217.

MC 128709 (Sub-5–3TA), filed October 17, 1980. Applicant: PARIS MOTOR FREIGHT, INC., P.O. Box 1787, Ft. Smith, AR 72902. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. Common; regular. *General commodities (except household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* (a) Between Oklahoma City, OK and Dallas, TX serving the Junction of Interstate Hwy 35 and Interstate Hwy 35W for the purpose of joinder only. From Oklahoma City over Interstate Hwy 35 to Dallas and return over the same route; (b) Between the Junction of Interstate Hwy 35 and Interstate Hwy 35W and Fort Worth, TX, serving the Junction of Interstate Hwy 35 and

Interstate Hwy 35W for the purposes of joinder only. From the Junction of Interstate Hwy 35 and Interstate Hwy 35W to Fort Worth and return over the same route. Supporting shipper: 32.

MC 133805 (Sub-5–29TA), filed October 14, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *Porcelain and Pottery and Iron Parts,* between points in the U.S. (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of Lapp Insulators, Inc. Supporting shipper: Lapp Insulators, Inc., P.O. Box 772, Sandersville, GA 31082.

MC 133805 (Sub-5–30TA), filed October 17, 1980. Applicant: LONE STAR CARRIERS, INC., Route 1, Box 48, Tolar, TX 76476. Representative: Don Garrison, Esq., P.O. Box 1065, Fayetteville, AR 72701. *General Commodities, (except commodities in bulk, household goods as defined by the Commission, those requiring special equipment, those of unusual value and Classes A and B explosives),* between all points in the U.S. Restricted to the transportation of traffic having a prior or subsequent movement by water, and restricted to the transportation of the traffic of Transconex in their N.O.V. operations. Supporting shipper: Transconex, Inc., P.O. Box 3295, Jacksonville, AR 72701.

MC 135007 (Sub-5–8TA), filed October 16, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Contract,* Irregular: *Chemicals or Allied Products (STCC No. 28)* between points in the U.S. Supporting shipper: Thompson-Hayward Chemical Company, 4400 Vandalia Road, Des Moines, IA 50315.

Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire, P.O. Box 130, Lowell, AR 72745. *Such commodities as are dealt in or used by wholesale, retail discount or variety stores (except in bulk)* from points in the U.S. (except AK and HI), to the facilities of Hart Stores, Inc. located in OH and WV. Supporting shipper: Hart Stores, Inc., 770 W. Goodale, Columbus, OH 43212.

MC 135797 (Sub-5–76TA), filed October 17, 1980. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esquire, P.O. Box 130, Lowell, AR 72745. *Foodstuffs,* between Memphis, TN on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 136786 (Sub-5–36TA), filed October 17, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, IA 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Chemicals, and materials, equipment and supplies used in the manufacture and distribution thereof,* between Hanover County, VA, on the one hand, and, on the other, points in the U.S. Supporting shipper: Chemical Treatment Company, 500 Lickinghole Road, Ashland, VA 23005.

MC 138469 (Sub-5–23TA), filed October 17, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Such commodities as are dealt in or used by manufacturers of rubber caster wheels (except commodities in bulk)* from points in TX and Lake Charles, LA, and its Commercial Zone to Tulsa, OK and (2) from Tulsa, OK to points in CA, IL, MI, OH, PA, TN, and WI, restricted to the transportation of traffic originating at or destined to the facilities of Unarco Rubber Products, Div. of Unarco Industries. Supporting shipper: Unarco Rubber Products Division, Unarco Industries, 6235 East 13th Street, Tulsa, OK 74112.

MC 139034 (Sub-5–1TA), filed October 16, 1980. Applicant: W. F. BARTHELME, d.b.a., W. F. BARTHELME DIST. CO., 1602 North Broadway, Pittsburg, KS 66762. Representative: Laurel D. McClellan, 401 North Sixth Street, P.O. Box 478, Fredonia, KS 66736. Contract; Irregular. *Hides* from the facility of Iowa Beef Processors, Inc., at or near Holcomb, KS to points in the U.S., except HI and AK. Supporting shipper: Iowa Beef Processors, Inc., Dakota City, NE 68731.

MC 140125 (Sub-5–1TA), filed October 17, 1980. Applicant: SCHUSTER GRAIN COMPANY, INC., P.O. Box 616, LeMars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Feed ingredients,* from points in IA, to Dakota County, NE. Supporting shipper: Central Soya Company, Inc., 39th and Dakota Avenue, South Sioux City, NE 68776.

MC 142288 (Sub-5–2TA), filed October 17, 1980. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral Place, Tulsa, OK 74115. Representative: Virginia Hamilton (same address as applicant). *Cement Clinker,* between OK and CO. Supporting shipper: Martin-Marietta Cement Mid-West Division, P.O. Box 45586, Tulsa, OK 74145.

MC 143638 (Sub-5–1TA), filed October 16, 1980. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74306. Representative: Troy Johnson (same address as applicant). *Coal, in bulk,* between AR, KS, MO, TX. Supporting shipper: Cherokee Coal Company, Box 179, Porter, OK 74454.

MC 143638 (Sub-5–2TA), filed October 17, 1980. Applicant: JOHNSON'S TRUCKING, INC., Route 1, Box 31, Inola, OK 74306. Representative: Troy Johnson (same address as applicant). *Fertilizer, in bulk,* Between KS, MO, AR, OK, TX and NM. Supporting shipper: Chem-Quip, 5101 W. 21st St., Tulsa, OK 74107.

MC 144166 (Sub-5–4TA), filed October 17, 1980. Applicant: BILL STARR TRUCKING, INC., 1041 Vista Drive, Independence, MO 64055. Representative: Alex M. Lewandowski, 1221 Baltimore Avenue, Suite 600, Kansas City, MO 64105. Contract; Irregular. *Newsprint in rolls and paper products,* from the facilities of the Southland Division, St. Regis Paper Company at or near Herde, TX and at or Near Sheldon, TX to North Kansas City, MO. Supporting shipper: Clark Printing Co., 1534 Burlington, North Kansas City, MO 64116.

MC 144622 (Sub-5–54TA), filed October 16, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Drugs, medicines, and rubber or plastic articles* from Malvern, PA to Atlanta, GA; Buena Park, CA; Kent, WA; and points in TX. Supporting shipper: Wyeth Laboratories, P.O. Box 861, Paoli, PA 19301.

MC 145947 (Sub-5–2TA), filed October 7, 1980. Applicant: SHELTON D. SMITH, d.b.a. PROTOCOL TRUCKING CO., a sole proprietorship, P.O. Box 40098, Garland, 75040. Representative: William D. White, Jr., 4200 Republic National Bank Tower, Dallas, 75201. Contract; irregular; (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, (2) 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, (3) 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, and (4) castings, forging and parts thereof used in the manufacture of drilling bits. (1) Between Dallas County, on the one hand, and on the other, points in LA; (2) Between Dallas County, on the one hand, and on the other, TX Gulf ports for export shipments only. Supporting shipper: Dresser Industries, P.O. Box 6504, Houston, TX 77005.

MC 150578 (Sub-5–12TA), filed October 16, 1980. Applicant: STEVENS TRANSPORT, a division of STEVENS FOODS, INC., 2944 Motley Drive, Mesquite, TX 75150. Representative: Jackson Salasky, P.O. Box 45538, Dallas, TX 75245. *Lard, shortening, vegetable oil, cooking or salad oil, margarine and edible tallow,* from the facilities of the Bunge Edible Oil Corp. located at or near Ft. Worth, TX to points in the states of CA, CO, MS, WA, NV, OR and Atlanta, GA, Chattanooga, TN and Miami, FL. Supporting shipper(s) Bunge Edible Oil Corp. P.O. Box 192, Kankakee, IL 60901.

MC 151384 (Sub-5–5TA), filed October 17, 1980. Applicant: G AND J TRUCKING, INC., 3701 Spradlin Ave., P.O. Box 4201, Ft. Smith, AR 72914. Representative: Jay C. Miner, P.O. Box 313, Harrison, AR 72601. *Containers and materials and supplies used in the manufacture of containers,* between the facilities of American Can Company in Ft. Smith, AR, on the one hand, and, on the other, Denver, CO, Dallas, TX and Lenexa, KS. Supporting shipper: American Can Company, 4411 Midland Blvd., Ft. Smith, AR 72904.

MC 151400 (Sub-5–1TA), filed October 17, 1980. Applicant: MARTIN L. LEWIS, d.b.a. M.L. LEWIS DISTRIBUTING, 790 Woodland, EL Paso, TX 79922. Representative: Martin L. Lewis, 790 Woodland, El Paso TX 79922. Contract; Irregular. *Argicultural Products, Chemicals, Fertilizer, Building Products, Carpet, Floor Tile, Steel and Iron Articles,* between El Paso, TX on one hand, and on the other, points in KY, VA, TN, NC, SC, GA, LA, MS, FL, and all points West of the Mississippi River. Supporting shipper: 8.

MC 151534 (Sub-No. 5–3TA), filed October 17, 1980. Applicant: R&D TRANSPORTATION, 818 5th Ave., P.O. Box 1908, Des Moines, IA 50306. Representative: Craig D. Vermie, 1350 Financial Center, Des Moines, IA 50309. *(1) Irrigation systems, (2) parts for irrigation systems, (3) pipe, tubing, poles and such material, equipment and supplies as are used in the installation and maintenance thereof, (4) iron and steel articles, (5) accessories, parts, equipment, materials and supplies used in the manufacture of assembly of the commodities described in (1) through (4) above and ocean carrier owned or leased equipment, loaded or empty,* between the facilities of Valmont Industries, Inc. located in Douglas County, NE on the one hand and, on the other, the ports of Houston and Galveston, TX. and New Orleans, LA. Supporting shipper; Valmont Industries, Inc., Hiway 275 West Valley, NE 68064.

MC 151768F (Sub-5–3TA), filed October 16, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A.J. Swanson, Att'y, P.O. Box 1103, Quaintance & Swanson, Sioux Falls, SD 57101. *General Commodities (except those of unusual value, class A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment)* between points in the U.S. Restricted to traffic originating at or destined to the facilities of Ardan, Inc. Supporting shipper: Ardan, Inc., 2320 Euclid Ave., Des Moines, IA 50310.

MC 151768F (Sub-5–4TA), filed October 17, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A.J. Swanson, Att'y, Quaintance & Swanson, P.O. Box 9480, Sioux Falls, SD 57101. *Foodstuffs (except in bulk in tank vehicles)* from the plantsite of Adams Packing Association, Inc., at or near Memphis, TN. to points in the U.S. (except AK. and HI.) Supporting Shipper: Adams Packing Association, Inc., P.O. Box 37, Auburndale, FL 33823.

MC 152219 (Sub-5–1TA), filed October 17, 1980. Applicant: RAINBOW BUS COMPANY, 610 South Industrial, Euless, TX 76039. Representative: Elohim Ranyak, 10334 Portrush Drive, Dallas, TX 75243. *Passengers and their baggage in round trip pleasure tours in special and charter operations,* beginning and ending in Dallas and Tarrant Counties, TX to points in NM, CO and LA. Supporting shippers: 28.

MC 152245 (Sub-5–1 TA), filed October 17, 1980. Applicant: ARMOUR FOOD EXPRESS COMPANY, P.O. Box 2785, Amarillo, TX 79105. Representative: R. L. Gordon, Manager-Transportation, 111 West Clarendon, Phoenix, AZ 85013. *Food or kindred products,* between ALAMEDA COUNTY, CA, and points in OR. Supporting shipper: Cornnuts, Inc., P.O. Box 6759, Oakland, CA 94603.

THE FOLLOWING APPLICATIONS WERE FILED IN REGION 6. SEND PROTESTS TO: INTERSTATE COMMERCE COMMISSION, REGION 6 MOTOR CARRIER BOARD, P.O. BOX 7413, SAN FRANCISCO, CA 94120.

MC 26739 (Sub-6–2TA), filed October 9, 1980. Applicant: ALFARM TRUCKLINES, 1703 Embarcadero Road, Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. *Steel and steel products* between Houston, TX; Denver, CO; and Norfolk, NE, on the one hand, and, on the other, all points in the states of AR, CO, IL, IA, KS, KY, LA, MN, MS, NE, NM, OK, TN, TX, UT, WI, and WY, for 270 Days. An underlying ETA seeks 120 days authority. Restriction: Restricted to shipments originating at or destined to the facilities of Continental Steel. Supporting shipper: Continental Steel Co., 5305 Steele Street, Denver, Colorado 80216.

MC 135904 (Sub-6–1TA), filed October 14, 1980. Applicant: ALLTRANS LTD., 4878 Manor Street, Burnaby, BC, Canada, V5G 1B3. Representative: Jack R. Davis, 1100 IBM Building, Seattle, WA 98101. *Paper and paper products* (excluding newsprint) between points on the international boundary line between the United States and Canada in WA and points in CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Belkin Packaging Limited, 8255 Wiggins Street, Burnaby, BC, Canada.

MC 52793 (Sub-6–11TA), filed October 14, 1980. Applicant: BEKINS VAN LINES CO., New Products Division, 3090 Via Mondo, Compton, CA 90221. Representative: David P. Christianson, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017. *Filing cabinets SU & KD and related parts,* from Mayville, WI, to all points in VA, MD, DE, NJ, NY, PA, CT, MA, NH, VT and ME, for 270 days. Supporting shipper: Tab Products Co., P.O. Box 153, Mayville, WI 53050.

MC 148178 (Sub-6–1TA), filed October 14, 1980. Applicant: FORREST D. BELVIN, d.b.a., DALE BELVIN TRUCKING, 277 West Sierra, Clovis, CA 93612. Representative: Forrest D. Belvin (same as above). *Contract Carrier,* Irregular routes: *Tires and tubes,* from Warren, OH to AZ, CA, CO, OR, UT and WA, for 270 days. Supporting shipper: Denman Rubber Manufacturing Co., 400 Diehl Rd., Leavittsburg, OH 44430.

MC 152096 (Sub-6–1TA), filed October 10, 1980. Applicant: TERRANCE E. CARLSON and KENNETH O. CARLSON d.b.a., CARLSON BROS., P.O. Box 1406, Lewiston, ID 83501. Representative: Donald A. Ericson, 708 Old National Bank Bldg., Spokane, WA 99201. *Contract Carrier: Irregular Routes: Wood chips, sawdust, shavings, mixed loads of sawdust and shavings, plywood trim, hog fuel, and sawmill refuse,* between points in WA, OR, and ID north of the southern boundary of Idaho County, ID for 270 days. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501.

MC 106523 (Sub-6–3TA), filed October 10, 1980. Applicant: CARLSON TRANSPORT, INC., P.O. Box 20214, Billings, MT 59104. Representative: Charles A. Murray, Jr., 2822 Third Ave., N, Billings MT 59101. *Heavy equipment of unusual size and weight; machinery, equipment and supplies used in construction; including, but not limited to those commodities listed in the Standard Transportation Commodity Code, groups 32, 33, 34 and 35* between points in MT and points in ND, SD, WY, CO and ID, for 270 days. Supporting shippers: There are ten shippers. Their statements may be examined at the San Francisco Regional office.

MC 115523 (Sub-6–5TA), filed September 15, 1980. Applicant: CLARK TANK LINES COMPANY, P.O. Box 1895, Salt Lake City, UT 84110. Representative: William S. Richards, P.O. Box 2465, Salt Lake City, UT 84110. *Soda ash,* from Little America, WY to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT and WA for 270 days. An underlying ETA seeks 120 days authority. No supporting shipper.

MC 151028 (Sub-6–3TA), filed October 8, 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. *Contract carrier,* irregular routes: *General commodities, (except household goods as defined by the Commission, and Classes A and B explosives),* from Lake Charles, LA, Bayport, TX, Houston, TX and Baton Rouge, LA to Louisville, KY, Chicago, IL, Youngstown, OH, Livonia, MI and Columbus, OH, for the account of Hercules Incorporated, for 270 days. Supporting shipper(s): Hercules, Incorporated, 910 Market Street, Wilmington, DE 19899.

MC 42487 (Sub-6–37TA), filed October 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. *Common carrier,* regular routes: *General commodities, (except those of unusual value, Classes A and B explosives, livestock, green hides, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading),* serving the facilities of Reliance Electric Company at or near Madison, IN, as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant proposes to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined, as an off-route point, with authority in Docket No. MC 42487 Subs 500, 578 and 744. These authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Indianapolis, IN, Chicago, IL, St. Louis, MO, Des Moines, IA, Minneapolis, MN, Cincinnati, OH, Buffalo, NY, Boston, MA and Detroit, MI, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): Reliance Electric Company, 220 Eastview Drive, Brooklyn Heights, OH 44131.

MC 42487 (Sub-6–38TA), filed October 14, 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. *Common carrier,* regular routes: *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 commodities requiring special equipment),* serving Monticello, IA as an off-route point in connection with carrier's otherwise authorized regular route operations, for 270 days. Applicant intends to tack to its existing authority and any authority it may acquire in the future. The proposed authority will be tacked or joined with authority in Docket No. MC 42487 Sub 578 and Docket No. MC 42487 sub 646 as off-route points. These authorities, in turn, will be tacked or joined with other present authorities of Applicant at such points as Boston, MA, Buffalo, NY, Chicago, IL, Cincinnati, OH, Des Moines, IA, Detroit, MI, Denver, CO, Indianapolis, IN, Kansas City, MO, Minneapolis, MN and St. Louis, MO, to permit service to and from points throughout the United States. Applicant proposes to interline traffic with its present connecting carriers at authorized interline points throughout the United States as provided in tariffs on file with the Interstate Commerce Commission. Supporting shipper(s): There are nine (9) supporting shippers. Their statements may be examined at the Regional office listed.

MC 113678 (Sub-6–26TA), filed October 15, 1980. Applicant: CURTIS, INC., 4810 Pontiac St., Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *General commodities* (except household goods and Classes A and B explosives) from Atlanta, GA; Chicago, IL; Boston, MA; St. Louis, MO; New York, NY; Charlotte and Greensboro, NC; Philadelphia, PA; Greenville, SC; and Memphis, TN, and points in their respective commercial zones, to Oakland, Sacramento, and San Jose, CA, and points in their respective commercial zones for 270 days. Supporting shipper: Bay Area Shippers Consolidating Assoc., P.O. Box 12154, Oakland CA 94604.

MC 143570 (Sub-6–1TA), filed October 14, 1980. Applicant: D & G TRUCKING, INC., 4420 E. Overland Road, Meridian, ID 83642. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Asphalt in packages,* from points in Davis County, UT to points in ID, for 270 days. Supporting shippers: Building Specialties Wholesale Co., Inc., 8620 Franklin Rd., Boise, ID 83709.

MC 56640 (Sub-6–6TA), filed October 14, 1980. Applicant: DELTA LINES, INC., P.O. Box 2081, Oakland, CA 94604. Representative: Kirk Wm. Horton, 333 Hegenberger Road, Suite 400, Oakland, CA 94621. *Cleaning and washing compounds, merchandise, soaps, and related articles* between points in Santa Clara County, CA, on the one hand, and, on the other, points in AZ, OR, and WA, for 270 days. An underlying ETA seeks 120 day authority. Supporting shipper: Economics Laboratory, Inc., 640 Lentest Road, San Jose, CA 95133.

MC 144606 (Sub-6–3TA), filed October 14, 1980. Applicant: DUNCAN & SON LINES, INC., 714 E. Baseline, Buckeye, AZ 85326. Representative: Andrew V. Baylor, 337 E. Elm St., Phoenix, AZ 85012. *Expanded plastic articles;* from Monrovia, CA to New Orleans, LA, for 270 days. Supporting shipper: Reid Valve Company, Inc., 133 E. Maple Ave., Monrovia, CA 91016.

MC 152211 (Sub-6–1TA), filed October 14, 1980. Applicant: R. L. FALLON, 12927 N. 107th St., Longmont, CO 80501.

Representative: R. L. Fallon (same as applicant). *Coal* from points in Jackson, County, CO to points in WY for 270 days. ETA filed seeking 120 days authority. Supporting shipper: Walden Coal Company, POB 37, Cowdrey, CO 80434.

MC 151057 (Sub-6–3TA), filed October 9, 1980. Applicant: FASHIONABLE FURNITURE MFG., CO., 3170 Airway Ave., Costa Mesa, CA 92626. Representative: Donald R. Hedrick, Post Office Box 88, Norwalk, CA 90650. *New data processing devices and system component parts used in the assembly thereof; and, radio or television receiving sets, loudspeakers, talking machines, and, vision and radio receiving sets and talking machines combined,* between points in CA, OR, WA, ID, NV, MT, WY, UT, AZ, CO, NM, SD, NE, KS, OK, TX, and IN, for 270 days. Applicant intends to interline with other carriers at Indianapolis, IN. Supporting shipper: Electro-sport, Inc., 17842 Cowan, Irvine, CA 92714.

MC 152203 (Sub-6–1TA), filed October 15, 1980. Applicant: WADEN C. FULTZ, JR., Fort Benton, MT 59442. Representative: Jerry Brooke, 1216 Front Street, Fort Benton, MT 59442. (1) General commodities from Great Falls, MT to Fort Benton, MT, for 270 days. Applicant will interline. Supporting shipper(s): RENN Industries, Inc., Fort Benton, MT 59442.

MC 152216 (Sub-6–1TA), filed October 14, 1980. Applicant: GILBERT TRUCK LINES, INC., WESTERN, 5005 South Braun St., Morrison, CO 80465. Representative: Jack B. Wolfe, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Contract carrier,* irregular routes: *Vegetable oils and vegetable meals and by-products,* from the facilities of Cargill, Inc. at Riverside, ND to all points in the U.S. (except AK and HI) for 270 days, under contract with Cargill, Inc. Supporting shipper: Cargill, Inc., P.O. Boox 9300, Minneapolis, MN 55440.

MC 152217 (Sub-6–1TA), filed October 14, 1980. Applicant: GYPSY TRUCKING, 706 So. March Point Rd., Anacortes, WA 98221. Representative: Robert G. Gleason, 1127–10th East, Seattle, WA 98102. *Boats, boat molds, boat trailers and boat accessories,* between the states of WA, OR, ID, MT, WY, UT, AZ, NM, CA, MV, CO, TX and AK, for 270 days. Supporting shipper(s): There are 5 supporting shippers. Their statements may be viewed at the regional office listed.

MC 150726 (Sub-6–3TA), filed October 9, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Representative: Thomas M. Loughran, Loughran & Hegarty, 100 Bush Street, 21st Fl., San Francisco, CA 94104. *Water soluble can coating,* in bulk, in tank vehicles, from San Francisco, CA to points in AZ, CO, ID, MT, NV, NM, OR, UT, WA and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Glidden, Division of SCM Corporation 1000–16th St., San Francisco, CA 94107.

MC 139906 (Sub-6–42TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Petroleum catalysts and spent petroleum catalysts* between the facilities of Filtrol Corporation, at or near Salt Lake City, UT on the one hand, and, on the other, points in NJ, PA, TX, LA, CA, IL, IN, DE, KS, KY, NY, OH, OK, WA, and MN for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Filtrol Corporation, 5959 West Century Blvd., Los Angeles, CA 90045.

MC 139906 (Sub-6–43TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Chemicals* (1) from the facilities of Stauffer Chemical Co. at or near Monongahela, PA and Lemoyne, AL to points in the U.S. and (2) from the facilities of Stauffer Chemical Co., at or near Freeport, TX to points in the states of DE, ID, ME, MD, MS, MT, NE, NH, OR, RI, SD, TX, UT, VT, WA, WV, and WY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Stauffer Chemical Co., Nyala Farms Rd., Westport, CT 06880.

MC 139906 (Sub-6–44TA), filed October 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Printers ink* (except in bulk) from Edison, NJ to Tampa, FL; Murfreesboro, TN; Denver, CO, and Richmond, VA and points in their respective commercial zones for 270 days. An underlying ETA seeks authority for 120 days. Supporting shipper: J. M. Huber Corp., Thornall, St., Edison, NJ 08817.

MC 147832 (Sub-6–3TA), filed October 10, 1980. Applicant: JIM EDDLEMAN d.b.a. J & J CATTLE COMPANY, 5765 North Logan, Denver, CO 80216. Representative: John Lewis, The 1650 Grant Street Bldg., Denver, CO 80203. (1) *Foodstuffs; (2) Pharmaceutical materials, supplies, and products; (3) Chemicals; (4) Alcoholic beverages; (5) Tobacco products; (6) Pet foods; (7) Such commodities as are dealt in by distribution or consolidation warehouses for the commodities described in (1), (2), (3), (4), (5), and (6); and exempt commodities when moving with regulated commodities.* (1) From all points in: AL, AR, AZ, CA, FL, GA, IA, ID, IL, KS, KY, LA, MI, MN, MO, MS, MT, NE, ND, NM, NV, OK, OH, OR, SD, TN, TX, UT, WA, WI, and WY. To the county of Denver, CO (2) From the county of Denver, CO to all points in: AL, AR, AZ, CA, FL, GA, IA, ID, IL, KS, KY, LA, MI, MN, MO, MS, MT, NE, ND, NM, NV, OK, OH, OR, SD, TN, TX, UT, WA, WI, and WY. An underlying ETA seeks 120 days authority. Supporting shippers: Beatrice Cold Storage, Inc., 4475 E. 50th Ave., Denver, CO 80216 and City Ice Incorporated, 2101 31st St., Denver, CO 80216.

MC 115648 (Sub-6–1TA), filed October 14, 1980. Applicant: LOCK TRUCKING, INC., P.O. Box 278, Wheatland, WY 82201. Representative: Ward A. White, P.O. Box 568, Cheyenne, WY 82001. *Building materials* from points, in ID, OR and WA to points in CO and UT, for 270 days. Supporting shipper: Boise Cascade Corporation, P.O. Box 2885, Portland, OR 97208.

MC 151771 (Sub-6–1TA), filed October 14, 1980. Applicant: MISSOURI RIVER TRANSPORT INC., 2127 Vaughn Road, Great Falls, MT 59404. Representative: Glenn Lagerquist (same as applicant). (1) *Railroad ties, railroad rails and accessories for assembling the same,* from points of entry on the International Boundary line between the U.S. and Canada located in MT and points in MT; to points in CA, NV, AZ and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Red River Supply Inc., 2123 Vaughn Road, Great Falls, MT 59404; Crown Distributors, P.O. Box 131, Black Eagle, MT 59414.

MC 144572 (Sub-6–6TA), filed October 9, 1980. Applicant: MONFORT TRANSPORTATION COMPANY, P.O. Box G, Greeley, CO 80631. Representative: James P. Beck, 717—17th St., Suite 2600, Denver, CO 80202. *Inflatable air supported structures and materials, parts, equipment and supplies used in connection with, or the installation of, inflatable air supported structures,* from the facilities of Air-Tech Industries, Inc. located at or near East Rutherford, NJ to points in CA and CO, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Air-Tech Industries, Inc., 85 Madison Circle Dr., East Rutherford, NJ 07073.

MC 141599 (Sub-6–1TA), filed October 10, 1980. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD., d.b.a. SHADOW LINES, 241 School House Road, Coquitlam, B.C., Canada V3K 4X9. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Dolomite in bulk,* from Chewelah, WA, to ports of entry on the U.S.-Canada boundary line in WA, for 270 days. Supporting shipper: Fibreglass of Canada Ltd., 32700 Mission Way, Mission, B.C., Canada V2V 5X9.

MC 141599 (Sub-6–2TA), filed October 10, 1980. Applicant: MOUNTAIN PACIFIC TRANSPORT, LTD., d.b.a. SHADOW LINES, 241 School House Road, Coquitlam, B.C., Canada V3K 4X9. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Granulated slag* from ports of entry on the U.S.-Canada International boundary line in Whatcom County, WA, to Tacoma, WA, for 270 days. Supporting shipper: Certainteed Corp., Shelter Materials Group, P.O. Box 860, Valley Forge, PA 19482.

MC 152168 (Sub-6–1TA), filed October 8, 1980. Applicant: PIF SYSTEMS, INC. d.b.a. PACIFIC INTERNATIONAL FREIGHT SYSTEMS, 1330 West Walnut Parkway, Compton, CA 90220. Representative: Earl N. Cook (same as applicant). *Bonded or other than bonded general commodities in containers or other than in containers having a prior or subsequent movement by steamship,* Between: Points in the harbors of Los Angeles, San Diego and San Francisco, CA, Houston, TX and Seattle, WA, and: Points in the States of CA, AZ, NV, WA and OR for 270 days. Supporting shippers: There are 7 shippers. Their statements may be examined at the Regional office listed.

MC 152169 (Sub-6–1TA), filed October 10, 1980. Applicant: PACIFIC BASIN INDUSTRIES, INC., Pier 91, Bldg. 50, Seattle, WA 98119. Representative: William D. Redhead (same as applicant). *Prefabricated Aluminum Curtain Walls and Materials, Supplies, and Equipment used in the manufacture thereof,* between points in King County, WA and points in AZ, CA, CO, ID, NM, NV, MT, OR, TX, WA, and WY, for 270 days. Supporting shipper: Fentron Building Products, Inc., 2801 NW. Market Street, Seattle, WA 98107.

MC 149078 (Sub-6–3TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Candy and confectionery, other than hollow mold,* and *edible nuts, in packages and in bulk in barrels* from points in GA, OH and TX and import shipments from ports in NY and NJ to points in Los Angeles County, CA for 270 days. Supporting shipper: Betty Zane Corporation, 600 West Terrace Drive, San Dimas, CA 91773.

MC 149078 (Sub-6–4TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., Ontario, CA 91761. Representative: Bobbie F. Albanese, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Liquid nickel chloride and liquid nickel sulphate in drums* from Joliet, IL to Buena Park, CA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Oxy Metal Industries, Corp., 32100 Stephenson, Madison, MI 48071.

MC 149078 (Sub-6–5TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Frozen foods* from Patterson, CA and points in CA to points in AL, FL, GA, LA, MA, NY, NC, OH, IL, OR, TN, TX and WA for 270 days. Supporting shipper: Patterson Frozen Foods, P.O. Box 114, Patterson, CA 95363.

MC 149078 (Sub-6–6TA), filed October 9, 1980. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., Ontario, CA 91761. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Fresh Frozen Berries* from CA to points in the United States (except AK and HI) limited to shipments for the account of Naturipe Berry Growers for 270 days. Supporting shipper: Naturipe Berry Growers, P.O. Box A, Watsonville, CA 95076.

MC 124692 (Sub-6–22TA), filed October 9, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. *Metal and metal articles,* between points in the U.S. in and west of WI, IL, MO, OK and TX (except AK and HI), for 270 days. Shippers: There are 36 shippers. Their statements may be examined at the Regional Office listed.

MC 147724 (Sub-6–2TA), filed October 9, 1980. Applicant: TYRONE SCHULZ, an individual d.b.a. TY SCHULZ TRUCKING, Route 1 Box 221, Ione, CA 95640. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. *Contract Carrier* Irregular routes: *refractories, brick firebrick, fire clay* and *foundry supplies* and *materials, equipment* and *supplies* used in the manufacture, sale, installation and distribution of the above, under continuing contracts with C.E. Cast Industrial Products and Interpace Corporation, and *paint* and *materials, equipment,* and *supplies* used in the manufacture, sale, installation and distribution of paint, under continuing contracts with Pervo Paint Co., between points in the United States, for 270 days. Supporting shippers: C. E. Cast Industrial Products, P.O. Box 306, Ione, CA. 95640; Interpace Corporation, P.O. Box 785, Ione, CA. 95640; Pervo Paint Co., 6624 Stanford Avenue, Los Angeles, CA 90001.

MC 150852 (Sub-6–3TA), filed October 9, 1980. Applicant: SKYLINE TRANSPORT, INC., 1469 West 6720 South, West Jordan, UT 84084. Representative: Robert G. Simonian (same as applicant). *Contract Carrier:* Irregular routes: *Fertilizers, Insecticides, Farm & Garden Supplies* from points in UT to points in CA, AZ, OR, WA, CO for the account of The Pax Company, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: The Pax Company, 580 West 1300 South, Salt Lake City, UT 84115.

MC 150956 (Sub-6–5TA), filed October 14, 1980. Applicant: SOUTHWEST TRUCK SERVICE, P.O. Box AD, Watsonville, CA 95076. Representative: William F. King, Suite 400, Overlook Bldg., 6121 Lincolnia Rd. Alexandria, VA 22312. *Non-exempt food or Kindred Products* Between Fresno County, CA and the state of AZ., for 270 days. Supporting shipper: Pillsbury Company & its Subsidiaries, 1100 N. 4th St., LeSueur, MN 56058.

MC 126327 (Sub-6–3TA), filed October 14, 1980. Applicant: TRAILS TRUCKING, INC., 1825 De La Cruz Blvd., Suite 11, Santa Clara, CA 95050. Representative: Laura M. Robinson (same as applicant). *Paper and paper products* from Newberg and Oregon City, OR, to points in CA, for 270 days. Supporting shipper: Publishers Paper Co., 6637 Southeast 100th Ave., Portland, OR 97266.

MC 149015 (Sub-6–1TA), filed October 9, 1980. Applicant: UNLIMITED SERVICE PICK-UP AND DELIVERY, 500 Richards Blvd., Sacramento, CA 95810. Representative: Bobbie F. Albanese, 13215 E. Penn St., Ste. 310, Whittier, CA 90602. *General commodities, except those of unusual value, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment,* between Sacramento County, CA, on the one hand, and, on the other, El Dorado County, CA and Douglas and Carson City Counties, NV, for 270 days. Applicant intends to interline. Supporting shippers: There are six supporting shippers. Their statements may be examined at the Regional Office listed.

MC 151925 (Sub-6–2TA), filed October 9, 1980. Applicant: KEN VAN LEUVEN & SON, INC., 10798 Seneca Drive, Boise, ID 83709. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. *Contract Carrier,* Irregular routes: *Roofing and roofing materials,* from points in CA, OR, and WA to the facility of Building Specialties Wholesale Co., Inc. at or near Boise, ID and Idaho Falls, ID, for 270 days. Supporting shipper: Building Specialties Wholesale Co., Inc., 8620 Franklin Road, Boise, ID 83709.

MC 152167 (Sub-6–1TA), filed October 14, 1980. Applicant: WELLS PROPANE, INC., P.O. Box 485, Wells, NV. 89835. Representative: M.D. Eriksen (same as applicant). *Contract Carrier,* Irregular routes: *Liquefied petroleum gas,* in bulk, in tank vehicles, from Opal and Sinclair, Wy, and from Salt Lake City, Pineview, Altamont and Bluebell, Ut, to Wendover Ut, and Ely, Elko, Jackpot and Wells, Nv, 270 days. Supporting shipper(s): Pargas, Inc., P.O. Box 67, Waldorf, Md. 20601.

MC 142186 (Sub-6–1TA), filed October 14, 1980. Applicant: WHEELS WEST, INC., 11631 Waddle Creek Road S.W., Olympia, WA 98502. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. *Contract Carrier,* Irregular routes: *Parts and accessories for automobiles and trucks,* from DuBois, PA and Columbia, TN to points in the United States (except AK and HI), for the account of Triangle Auto Spring Co. of DuBois, PA, for 270 days. Supporting shipper: Triangle Auto Spring Co., P.O. Box 425, Maloney Road, DuBois, PA 15801.

MC 89684 (Sub-6–7TA), filed October 14, 1980. Applicant: WYCOFF COMPANY INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same as applicant). *Luggage,* between Denver, CO, on the one hand, and, on the other, points in UT and CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Samsonite Corporation, 11200 East 45th Ave., Denver, CO 80239.

MC 89684 (Sub-6–8TA), filed October 14, 1980. Applicant: WYCOFF COMPANY INCORPORATED, P.O. Box 366, Salt Lake City, UT 84110. Representative: John J. Morrell (same as applicant). *Agricultural implements and tractor parts,* between Denver, CO, on the one hand, and, on the other, points in UT and ID, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: John Deere Parts Depot, 6101 Stapleton N. Drive, Denver, CO 80216.

Republication

MC 77061 (Sub-6–12TA), filed September 16, 1980. Applicant: SHERMAN BROS., INC., P.O. Box 706, Eugene, OR 97440. Representative: Russell M. Allen, 1200 Jackson Tower, Portland, OR 97205. *Lumber and lumber mill products, composition board, plywood, roofing materials and metal products,* from points in OR to points in WA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Georgia Pacific Corporation, 900 S.W. 5th, Portland, OR 97204.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80–33280 Filed 10–24–80; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

U.S. Circuit Judge Nominating Commission, First Circuit Panel

Chairperson: Jerome P. Facher.

The First Circuit Panel of the U.S. Circuit Judge Nominating Commission will meet on November 8, 1980 in the Post Office and Federal Courthouse, Boston, Massachusetts at 9:00 a.m. The purpose of the meeting is to interview candidates and will be closed to the public pursuant to Pub. L. 92–463, Section 10(d) as amended. [CF 5 U.S.C. 552b(c)(6)].

Phillip B. Cover,

Advisory Committee Liaison Officer.

[FR Doc. 80–33317 Filed 10–24–80; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 80–20]

Woodfield Drugs, Inc., and Herbert S. Rein, Trading as Crest Pharmacy, West Hempstead, N.Y.; Hearing

Notice is heregy given that on July 3, 1980, the Drug Enforcement Administration, Department of Justice, issued to Woodfield Drugs, Inc., and Herbert S. Rein, t/a Crest Pharmacy, West Hempstead, New York, an Order To Show Cause as to why the DEA Certificate of Registration, AW7513408, issued to Respondents pursuant to Section 303 of the Controlled Substances Act (21 U.S.C. 823) should not be revoked.

Thirty days having elapsed since the said Order To Show Cause was received by the Respondents, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, October 28, 1980, in Room 19, Suffolk County Family Court, Building No. 17, Veterans' Memorial Highway, Hauppauge, New York.

October 21, 1980.

Peter B. Bensinger,

Administrator, Drug Enforcement Administration.

[FR Doc. 80–33344 Filed 10–24–80; 8:45 am]

BILLING CODE 4410–09–M

LIBRARY OF CONGRESS

Copyright Office

[Docket LPR–10]

Manufacturing Clause Study

AGENCY: Library of Congress, Copyright Office.

ACTION: Announcement of the undertaking of a study and a request for comments.

SUMMARY: At the request of Congress, the Copyright Office is undertaking a study of the possible economic impact of the elimination of the so-called "manufacturing clause" from the United States Copyright law as provided by section 601 of Title 17 of the United States Code. The "manufacturing clause" is scheduled to be eliminated from the law on July 1, 1982. The Copyright Office must prepare its final findings and recommendations for the Congress to be filed on or about July 1, 1981.

Under the copyright law now in effect, certain nondramatic literary materials in the English language must be manufactured either in the United States or in Canada in order for the work to enjoy the full remedies provided by the copyright law in an action for infringement of the rights of reproduction or distribution. The "manufacturing clause" now applies only to works by American citizens or domiciliaries, and, under special circumstances, even such works may be exempt from the manufacturing clause.

In 1976, the House Committee on the Judiciary, after evaluating the arguments in favor of and against retention of any manufacturing clause in the copyright law, concluded that "there is no justification on principle for a manufacturing requirement in the copyright statute . . .." H. REP. NO. 1476, 94th Cong., 2d Sess. (1976) at 166. The Committee amended section 601 of the then pending copyright revision bill to repeal the manufacturing requirement on July 1, 1981. Following a conference with the Senate, the House amendment was accepted, but the date for

termination of the manufacturing requirement was extended to July 1, 1982.

Senator Hugh Scott, in the course of Senate debate on the copyright revision bill in 1976, stated that the extension of the phaseout date for the manufacturing requirement from July 1, 1981 to July 1, 1982.

"will enable Congress to take a close look at the dangers faced by the printing industry in this country.

To insure that Congress has adequate and accurate information on which to base its reassessment before the phaseout takes place, Senator McClellan and I have written to the Register of Copyrights requesting that such a study be timely undertaken. We have received assurances that the Register would direct that such a study be undertaken." 122 Cong. Rec. S17252, 94th Cong., 2d Sess. (1976).

The subject matter of the study will consist of addressing the issues relating to the "economic impact on United States book manufacturing industry; United States labor rates compared with those abroad; industry health; impact on jobs in U.S. and U.S. industry; advances in printing technology that are relevant; progress on implementation of the Toronto Agreement of 1968;[1] ramifications of granting copyright monopoly on book manufacturing industry; and other relevant factors that . . . [the Copyright Office] should deem appropriate." 122 Cong. Rec. S17253, 94th Cong., 2d Sess. (1976).

The Copyright Office will conduct a hearing (or hearings as needed) in order to give all interested parties an opportunity to express their current views on the scheduled phase-out of the "manufacturing clause" of the 1976 law.

The Copyright Office has requested that the Congressional Research Service (CRS) of the Library of Congress assist in the project by preparing for Congress a statistical evaluation of the economic impact of the elimination of the "manufacturing clause." The CRS has agreed to conduct such a statistical evaluation with the acquiescence of Congress. The Economics Division of the CRS is planning its evaluation based on available relevant statistics and is also considering the feasibility of conducting a survey of a representative sample of industries affected. Although the CRS will conduct its survey and reach its findings independently, there will be careful coordination (and cooperation) with the Copyright Office to insure thorough consideration of all issues and to avoid duplication of effort.

In addition, Mr. William Lofquist of the Bureau of Industrial Economics, U.S. Department of Commerce will act as a consultant on this project.

The Copyright Office actively seeks the comments as to issues and/or questions to be raised not only from organization representatives, but also from any individual whose informed opinion may aid the Copyright Office in preparation for the hearing(s) and the Congressional Research Service in designing its survey.

FOR FURTHER INFORMATION CONTACT: Anthony P. Harrison, Assistant Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287–8350.

DATES: All comments should be received on or before November 14, 1980.

ADDRESSES: Interested parties should submit ten copies of the written comments, if by mail to: Office of the Register, Copyright Office Library of Congress, Washington, D.C. 20559, or if by hand to the Office of the Register, Copyright Office, Library of Congress, James Madison Memorial Building, Room LM–405.

(917 U.S.C. 601).

Dated: October 15, 1980.

David Ladd,

Register of Copyrights.

Approved:

Daniel J. Boorstin,

The Librarian of Congress.

[FR Doc. 80–33338 Filed 10–24–80; 8:45 am]

BILLING CODE 1410–03–M

[1] Congress exempted copies manufactured in Canada from the manufacturing clause of the Copyright Act because it found that "wage standards in Canada are substantially comparable to those in the United States . . .." H. REP. NO. 1476, 94th Cong., 2d Sess. (1976). The Canadian exemption was made possible in part also by a memorandum agreement known as the "Agreement of Toronto," signed by representatives of some, but not all, American and Canadian business and labor printing organizations in February 1968. American representatives agreed that they would seek an exemption for Canadian-manufactured copies from the manufacturing clause of the United States copyright law. The Canadian representatives agreed that they would "urge the Canadian Government to accept the Florence Agreement as soon as exemption for Canada has been adopted by the U.S. Congress." ["Agreement of Toronto" as contained in Chapter XIV of the "Second Supplementary Report of the Register of Copyrights" (1975) at page 24].

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 80–71]

NASA Advisory Council (NAC); Aeronautics Advisory Committee; Meeting

The ad hoc Advisory Subcommittee on Commuter Air Transport Technology of the NAC Aeronautics Advisory Committee will meet November 19, 20, 21, 1980 in Room 205, Building 211 of the NASA Ames Research Center, Moffett Field, California. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including Subcommittee members and participants).

The Subcommittee will review user requirements and manufacturer viewpoints relative to future commuter transport aircraft, review NASA studies of the potential benefits of advanced technology in such aircraft, and assess the adequacy of NASA's current and planned aeronautics research and technology programs to ensure the availability of any new technologies of particular benefit to this class of aircraft. The Chairperson is Prof. Richard S. Shevell, and there are eight members of the Subcommittee.

FOR FURTHER INFORMATION CONTACT: Mr. Harry W. Johnson, Executive Secretary of the ad hoc Subcommittee on Commuter Air Transport Technology, Code RJG, NASA Headquarters, Washington, DC 20546 (202/755–2380).

AGENDA:

November 19, 1980

8:30 a.m.—Introductory Remarks and Background
9:00 a.m.—Commuter Airline Operators' Requirements
10:30 a.m.—Airframe Studies
2:00 p.m.—In-House Commuter Technology (Ames)
3:00 p.m.—Propulsion Studies

November 20, 1980

8:30 a.m.—General Aviation Technology Program
11:00 a.m.—Transport Aircraft Technology Program
2:00 p.m.—Draft of NASA Report and Recommendations
3:00 p.m.—Manufacturers' Views

November 21, 1980

8:30 a.m.—Development of Subcommittee Report and Recommendations
12:00 noon—Adjourn.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

October 21, 1980

[FR Doc. 80–33314 Filed 10–24–80; 8:45 am]

BILLING CODE 7510–01–M

[Notice 80–72]

NASA Advisory Council, Informal Executive Subcommittee; Meeting

ACTION: Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces the following meeting:

NAME: NASA Advisory Council, Informal Executive Subcommittee.

DATE AND TIME: November 13, 1980, 9:00 a.m.—5:00 p.m. November 14, 1980, 9:00 a.m.—12:00 noon.

ADDRESSES: Scripps Institution of Oceanography, Director's Conference Room, Director's Office, La Jolla, California 92093.

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

AGENDA:

November 13, 1980

9:00 a.m.—Introduction.
9:15 a.m.—Report on Solar System Exploration Committee Initial Activities.
10:00 a.m.—Discussion of candidates for participation in the 1981 Goals Study (Closed Session).
5:00—Adjourn.

November 14, 1980

9:00 a.m.—Plans for NASA Advisory Council 1981 activities.
12:00 noon—Adjourn.

FOR FURTHER INFORMATION CONTACT: Mr. Carl R. Praktish, Assistant Executive Secretary, National Aeronautics and Space Administration, Washington, DC 20546 (202/755–8380).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee of the NASA Advisory Council was established to assist the Chairperson in planning the activities, establishing meeting agendas, and guiding the activities of its parent unit. The Informal Executive Subcommittee is chaired by the Council Chairperson, Dr. William A. Nierenberg, and membership includes the Council's Vice Chairperson and four other members.

This meeting will be closed to the public from 10:00 a.m. to 5:00 p.m. on November 13 for a discussion of the qualifications of candidates for participation in the proposed 1981 study of future space program goals for NASA. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 15 persons, including subcommittee members and other participants).

Gerald D. Griffin,
Acting Associate Administrator for External Relations.
October 21, 1980.
[FR Doc. 80-33313 Filed 10-24-80; 8:45 am]
BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–10]

Commonwealth Edison Co.; Availability of Final Environmental Statement for the Dresden Nuclear Power Station, Unit No. 1 Chemical Decontamination

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's (the Commission) regulations in 10 CFR Part 51, notice is hereby given that a Final Environmental Statement has been prepared by the Commission's Office of Nuclear Reactor Regulation, related to chemical decontamination of the primary cooling system at Dresden Nuclear Power Station, Unit 1 located in Grundy County, Illinois. The FES is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555, and in the Local Public Document Room at Morris Public Library, 604 Liberty Street, Morris, Illinois 60451. The FES concludes that the proposed decontamination will not significantly affect the quality of the human environment and that the impacts from the decontamination are outweighed by its benefits.

The notice of availability of the Draft Environmental Statement for chemical decontamination of Dresden Nuclear Power Station, Unit No. 1, and request for comments from interested persons was published in the **Federal Register** on June 6, 1980 (45 FR 38197). The comments received from Federal, State and local agencies and interested members of the public have been included as Appendix A to the Final Statement.

Copies of the Final Environmental Statement (NUREG–0686) may be purchased at current rates, from the National Technical Information Service, Springfield, Virginia 22161, (703) 557–4650.

Final unclassified NUREG-series documents are also available directly from NRC to those with deposit accounts with the Superintendent of Documents, U.S. Government Printing Office (see 44 FR 46005, August 6, 1979). To place orders call (301) 492–7333 or write: ATTN: Publications Sales Manager, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 17th day of October, 1980.

Sincerely,

Dennis M. Crutchfield,
Chief, Operating Reactors Branch No. 5, Division of Licensing.
[FR Doc. 80-33380 Filed 10-24-80; 8:45 am]
BILLING CODE 7590-01-M

[Dockets Nos. 50–329 and 50–330]

Consumers Power Co. (Midland Plant, Units 1 and 2); Issuance of Amendments to Construction Permits

Notice is hereby given that pursuant to a Memorandum and Order dated August 4, 1980 by the Atomic Safety and Licensing Board, the U.S. Nuclear Regulatory Commission has issued Amendment No. 2 to Construction Permit No. CPPR–81 and Amendment No. 2 to Construction Permit No. CPPR–82, which were issued to Consumers Power Company for construction of Midland Plant, Units 1 and 2, located in Midland County, Michigan.

The Board's Order authorizes the addition of antitrust conditions to the construction permits. At the time Construction Permits Nos. CPPR–81 and CPPR–82 were issued, the antitrust proceeding was in progress.

The Commission has found that the provisions of the amendments comply with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I. Since the amendments only involve the addition of antitrust conditions, this action involves no safety questions or environmental impacts; i.e., this action does not involve a significant hazards consideration, does not constitute an unreasonable risk to the health and safety of the public, and is not inimical to the common defense and security. In addition, the issuance of these amendments will not result in any significant environmental impact; and pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

A copy of the Memorandum and Order, dated August 4, 1980, the construction permits, the amendments and other related documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

and at the Grace Dow Memorial Library, 1710 W. St. Andrews Road, Midland, Michigan. Single copies of the amendments may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 20th day of October, 1980.

For the Nuclear Regulatory Commission.

F. Miraglia,

Acting Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 80-33382 Filed 10-24-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-424; 50-425]

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Unit Nos. 1 and 2); Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated September 25, 1980, Mr. Gary Flack, on behalf of Georgians Against Nuclear Energy (GANE), requested that a proceeding be instituted to assess the need for power from Georgia Power's Vogtle Nuclear Power Plan, Units 1 and 2, and to assess the need for a supplemental Environmental Impact Statement in light of new forecasts for electricity demand submitted by Georgia Power to the Georgia Public Service Commission. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room for the Alvin W. Vogtle Plant, Unit Nos. 1 and 2, located at the Burke County Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Bethesda, Maryland this 21st day of October, 1980.

For the Nuclear Regulatory Commission.

E. G. Case,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 80-33361 Filed 10-24-80; 8:45 am]

BILLING CODE 7590-01-M

Plan for Developing a Safety Goal

Notice is hereby given that the Commission has instituted a plan for developing a safety goal. The plan, prepared, at Commission direction, by the Commission's Office of Policy Evaluation and Office of the General Counsel, is presented below. Additional copies of the "Plan for Developing a Safety Goal," NUREG-0735, are available for purchase from the NRC-GPO Sales Program, Attention: Sales Agent, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; and the National Technical Information Service, Springfield, Virginia 22161.*

The plan includes provision for a preliminary policy paper, concerning which public comments will be requested. The preliminary paper is scheduled to be submitted for the Commission's consideration by December 29, 1980. Persons wishing to make suggestions to be used in developing the preliminary policy paper should address comments, preferably by November 19, 1980, to the Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Edward J. Hanrahan, Director, Office of Policy Evaluation. Comments received too late for consideration in preparing the preliminary policy paper will be considered in subsequent stages of the program.

Dated at Washington, District of Columbia, this 22d day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Office of the Secretary.

Plan for Developing a Safety Goal

(NUREG-0735)

Introduction

This report presents a Commission-approved plan for development and articulation of NRC safety objectives, notably—but not exclusively—with respect to reactors; with special attention to interim objectives attainable in the near term, but including consideration of an overall program as well.

The plan is based on a proposed plan, submitted pursuant to Commission direction, by Edward J. Hanrahan, Director, Office of Policy Evaluation (OPE) and Leonard Bickwit, Jr., General Counsel. The principal authors of the plan were George Sege, Senior Policy Analyst, OPE, and Martin Malsch, Deputy General Counsel. In preparing the plan OPE and the Office of the General Counsel (OGC) had the benefit of consultation with the Offices of Nuclear Regulatory Research (RES), Nuclear Reactor Regulation (NRR), and Standards Development (SD), and ACRS members and staff. Commission comments are reflected.

*A copy of NUREG-0735 is available for inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C.

Background

1. Origin of the Plan

In connection with its consideration of SECY-80-230B, "Update of Chapter V of TMI Action Plan: NRC Policy, Organization, and Management," the Commission directed OPE and OGC to prepare a proposed plan for developing a safety goal, to be submitted to the Commission in August 1980. The plan was to include provisions for utilizing on-going efforts by the Office of Research, NRR, and the ACRS, which are scheduled to be completed in October 1980. (Memo, Secretary to EDO/GC/OPE/OPA, 7-9-80, at item 9.) In response to that direction, OPE and OGC submitted a proposed plan for the Commission's consideration on August 12, 1980. (SECY-80-379)

The Commission further directed that OPE submit, by December 29, 1980, a draft safety policy statement for Commission consideration and public comment. (Memo, Secretary to EDO/GC/OPE/OPA, 7-9-80, at item 10.) Provision for that draft policy statement was included in the proposed plan.

The Commission had previously stated its intentions in this regard:

- In its FY 1982-86 Policy, Planning, and Program Guidance, the Commission stated its intent to seek to define more clearly the level of protection of the public health and safety that it believes is adequate.
- In its letter to Dr. Press commenting on the report of the President's Commission on the Accident at Three Mile Island, the Commission stated that it is prepared to move forward with an explicit policy statement on safety philosophy and on the role of safety-cost tradeoffs in NRC safety decisions.

On October 14, 1980 the Commission approved the proposed plan, subject to certain comments, which are now reflected in the plan.

2. Work Status (Current as of August 12, 1980.)

Pertinent work has been or is being done or sponsored by OGC, the ACRS, RES, and NRR. The status of these efforts is presented in Appendix A (supplemented with further detail concerning the RES-sponsored efforts in Appendix 2).

The NRC and other have underway a number of probablistic plant analyses which are producing estimates of the probability of significant accident sequences (severe core damage or core melt sequences). The Probablistic Analysis Staff (Office of Research) has been suggesting the use of interim criteria and priorities for taking corrective action pending formal

development of numerical criteria.* The interim criteria suggested by PAS are as follows:

Estimated probability, of severe core damage, per year	Action
Greater than 10^{-2}	Correct in days
10^{-2} to 10^{-3}	Correct in months
10^{-3} to 10^{-4}	Correct in years
10^{-4} to 10^{-5}	Consider correction
Less than 10^{-5}	No action

Users of these interim criteria are urged to weigh possible bias in the analysis, the quality of the analysis, the potential scale of consequences, and other significant factors in applying them.

3. Legislation

The Senate's NRC Authorization bill for FY 1981, S. 2358, would require NRC, after notice and opportunity for public hearing, to develop a safety goal for reactor regulation. The goal would be required to delineate subjective criteria, supplemented to the extent possible by quantitative criteria. The bill calls for consideration of retroactive—as well as prospective—application of the goal. It specifies a June 30, 1981, deadline for a report to Congress. (Section 5 of S. 2358.) There is no corresponding provision in H.R. 7981, the House compromise version of the NRC FY 1981 authorization, which has not yet been considered by the full House.

Discussion

1. The Safety-Goal Issue and Its Parts

The basic principle of a safety goal and its application is simple: a general degree of safety is established as a goal and rules are made and licensing actions taken with that goal in mind. Ideally the goal would be translated into actual decision standards by Commission rules, and the rules (rather than the goal itself) would be applied in individual cases. In practice, development of a safety goal is subject to complications which are of the essence of the issue. They stem from data-base gaps, which limit knowledge of what the risks are; different philosophical perspectives as to criteria that should be used to define when a risk is "acceptable"; and important subsidiary issues, such as those involving economic and equity considerations, and techniques of interpretation under uncertainty.

The questions constituting these essential parts of the issue can be articulated and grouped in many ways. In fact, such articulation and grouping are expected to evolve as the policy development work progesses. The following is a starter list, compiled for initial planning purposes and as a point of departure for later modifications:

a. What estimated risks flow from available licensing-policy options?

(1) What uncertainties surround those estimates?

b. What known risk levels are acceptable?

(1) What uncertainties are acceptable?

(2) To what extent is there increased aversion to risk of high consequences even at low probability?

c. What constrains safety requirements that NRC should impose?

(1) What is the role of safety-cost tradeoffs?

(2) To what extent should benefits of nuclear power—absolute and relative to alternatives—enter safety-requirement decisions?

(3) To what extent is it appropriate for requirements for new and previously approved plants to differ?

(4) How should stringency of safety goals compare with risks accepted from other (non-nuclear) electrical energy sources and with risks arising in various other contexts?

(5) To what extent should equities of distribution of benefits and adverse impacts influence safety requirements?

(6) Should safety goals be applied directly to cases, in order to attain a similar degree of safety from case to case (even though that may result in specific design and operation requirements differing according to circumstances)? Or should goals be applied generically and have *requirements*, rather than estimated degree-of-safety *results*, be uniform?

(7) To what extent should goals reflect protection of individuals regardless of numbers of persons affected, and to what extent should they reflect total, integrated population or societal effects?

What policies are appropriate in the face of gaps in knowledge as to what the risks are and the need for clarity of licensing requirements?

(1) Should there be an overall top-level safety-goal policy that would control lower-order specific decision classes, with toleration of uncertainties in interpretation of overall policy in terms of specific regulations? Or should goals be defined in operationally useful form for narrower areas, thereby achieving better predictability of requirements, though at the cost of losing some overall philosophical consistency and conceptual completeness?

(2) What is the proper balance between stability of requirements and flexibility for modification as knowledge develops and insights change?

e. In veiw of inherent uncertainties, how should probability estimates and consequence predictions be verified?

f. Under uncertainty as to goals or imprecision of goals or doubts as to their interpretation, how should judgments be made in:

(1) Establishing generic requirements?

(2) Cases?

2. Program Approach

The program approach focuses in the near term on (a) general policy statements, (b) articulation of policy with respect to parts of the issue, and (c) isolation of more difficult questions for further consideration. The approach rests on recognition that even if a full and definitive resolution of the safety-goal issue is not a practical near-term objective, highly useful purposes can be served by significant limited contributions to the objectives. In addition, the policy development process itself can perform a useful function of illuminating the safety-goal issue and its place in regulation, thereby helping to rationalize regulatory decision-making.

The program emphasizes development of options for near-term Commission action, while also providing for foundation-laying for subsequent further development of policy.

The method of approach includes the following elements:

- Utilization of results and interim results of ongoing NRC efforts (ACRS, RES, NRR).
- Consideration (and, as appropriate, solicitation) of inputs from outside groups with considered views (AIF, EPRI, other industry groups; nuclear-critic groups).
- Performance of background studies (past AEC/NRC practices, practices of other agencies, approaches in other industrial countries, theories and facts of risk acceptance).
- Workshops, for discussion among knowledgeable persons of varied viewpoints.
- Solicitation and consideration of public comments, with wide and varied opportunities for public participation (including public availability of papers for comment, public meetings, and public attendance at workships, etc.).
- Reception and development of a broad range of alternatives before narrowing to a limited number of

*(1) "Interim Quantitative Action Criteria," R. Bernero (PAS) to R. Mattson (NRR), 7/29/80. (2) "Cyrstal River IREP Study and Interim Criteria for Action," R. Bernero to R. Mattson, 7/22/80. (3) R. Bernero, oral presentation at Duke Power Co./NSAC Seminar on Oconee Risk Assessment, Charlotte, N.C., 7/22/80. (4) R. Bernero, oral presentation before ACRS Subcommittee on Reliability and Probabilistic Assessment, Los Angeles, CA., 7/1/80.

significant options (and ultimately perhaps a single recommended approach).

• Staff papers for Commission consideration at critical stages of policy analysis.

• Opportunities for Commission guidance as the work progresses. Preliminary Commissioner views will be sought in interviews early in the program.

The form of eventual Commission action (policy statement, rulemaking, etc.) is left open at this time.

Should there be legislative direction concerning this work, its scope and schedule will be reviewed in light of legislative requirements. The thrust of the Senate's bill (Section 5 of S. 2358) was taken into account in planning, but we judged it to be premature to rely on the scope and schedule specifics of that bill in structing the program.

3. Organization and Management

The capabilities of the ACRS and all pertinent NRC offices will be utilized, supplemented by consultants and contractors as necessary. The plan gives program responsibility to OPE, working with an Inter-Office Steering Group, chaired by the Director, OPE.

Program Plan

1. Objective

To develop an explicit articulation of policy with respect to the fundamental issues of public health and safety and the level of protection the Commission believes is adequate.

2. Scope

The policy articulation to be developed will include some general approach to risk acceptability and safety-cost tradeoffs, and, to the extent that these reasonably lend themselves to articulation, quantitative safety goals, safety improvement goals, and standards for review of past actions in light of new rules and improved practices.

The work will deal primarily—but not exclusively—with power reactors.

3. Overall Plan and Schedule

The proposed plan is keyed to submittal of two papers for Commission consideration and public comment, as follows:

• A preliminary policy paper by December 29, 1980..

• A policy paper within a year of submittal of the plan, which will include alternatives to meet the stated objective.

The milestones are presented in Table 1.

Table 1.—*Program Milestones*

Event	Date
Establish Inter-Office Steering Group.	Oct. 24, 1980.
Preliminary reports on Brookhaven risk studies.	September 1980.
Complete Commissioner interviews..	October 1980.
Final report of ORNL study of approaches to acceptable risk.	October 1980.
ACRS report on quantitative safety-goals.	October 1980.
Amplified NRR paper on concepts and issues.	October 1980.
Exploratory meetings on Approaches with NRC/Industry/Public Interest Groups.	October and November 1980.
Complete working paper on Criteria.	Nov. 17, 1980.
Submit information paper on detailed plans and schedule for Background Studies.	[a] Dec. 1, 1980.
Complete working paper on Alternative Frameworks.	Dec. 1, 1980.
Submit Preliminary Policy Paper.....	[b] Dec. 29, 1980.
Hold Workshop on Frameworks.....	Feb. 17, 1980.
Receive public comment on Preliminary Policy Paper.	Mar. 16, 1980.
Hold public meeting(s).....	Spring 1981.
Complete Background Studies.....	Apr. 30, 1981.
Complete preliminary draft of Proposed Approach.	May 20, 1981.
Hold Workshop on Proposed Approach.	June 23, 1981.
Submit Policy Paper.....	Aug. 12, 1981.

[a] Some background studies may be initiated before that date.
[b] Issue for public comment after Commission approval for release.

4. Tasks

The proposed work consists of the tasks described below.

Task I: Liaison

1. Follow ongoing NRC and NRC-sponsored activities (including ACRS, RES, and NRR). Obtain final and interim results for consideration in the program. Principal early inputs include ACRS findings on quantitative safety goals (October 1980.); final report on "Approaches to Acceptable Risk" (RES/ORNL/Decision Research, October 1980.); preliminary reports on risk criteria and their impact and on risks of other societal activities (RES/Brookhaven, September 1980.); and a revised, expanded draft of paper on "Concepts, Problems, and Issues in Developing Safety Goals and Objectives for Commercial Nuclear Power" (NRR Division of Safety Technology, October 1980.).

2. Establish and maintain contact with outside groups known or believed to have interest and considered views (including industry and public interest groups). Solicit as necessary and receive for consideration articulated views and analyses from these groups.

3. Establish and maintain information interchange with groups having relevant responsibilities and related interests. (This includes Congressional and NSF/NAS contacts, other governmental contacts, and may include foreign contacts.) (OPE, Inter-Office Steering Group, and to be assigned.)

Task II: Background Studies

A. *Nuclear Regulatory Statutes and Practices.* Update and amplify the Commission paper, "Adequate Protection of the Health and Safety of the Public" (OGC, 10–18–79) as necessary to provide a current compendium including legal analysis, interpretation of safety goals in AEC/NRC regulations and cases, history of changes in law and interpretations, and controversies concerning interpretation. Prepare reports on legal and historic aspects. (OGC/Historian, early 1981.)

B. *Statutes and Practices of Other Agencies.* 1. Select for study 3 to 10 other Federal agencies with important safety responsibilities. (Candidates include EPA; FAA; Department of Transportation, notably with respect to highway safety; NASA; Food and Drug Administration; Consumer Products Safety Commission).

2. Analyze the practices of the selected agencies with respect to safety goals, utilizing analysis of pertinent statutes in the October 1979 OGC paper.

3. Prepare report on findings, including comments concerning relevancy to NRC. (Responsibility and schedule to be determined.)

C. *Approaches of Other Industrialized Countries to Safety Goals.* Using information developed by the ACRS and RES, conduct limited additional study to round out the information concerning nuclear safety goals as viewed in other countries. (Candidate countries include UK, FRG, France, Japan.) Prepare report, including comments on relevancy to U.S. and NRC. (IP/OPE, schedule to be determined.)

D. *Social Acceptance of Risks.* 1. Review the literature on the levels and circumstances of risk acceptance in contexts other than the nuclear industry, including the results of the RES-sponsored study of coal vs. nuclear risks and of recent CONAES studies of risks of various electrical energy sources. (Candidate other contexts include transportation, tobacco, alcohol, home and consumer products, industry, construction, dams, war, sports, natural hazards.)

2. Prepare summary reports (overview). (Responsibility and schedule to be determined.)

E. *Theories of Risk Acceptance.* Describe alternative theories of risk aversion and acceptance, including considerations such as relation to other risks, voluntary or involuntary exposure, nature of hazards, specificity of victim, number of persons at risk, proximity in time and place, relation to benefits, and

uncertainty as to nature and magnitude of the risk, using the results of ORNL study and adding the limited work necessary. (OPE/RES, schedule to be determined.)

Task III: Policy Development

A. *Criteria.* 1. Develop a set of criteria by which the merits of a safety-goal formulation should be judged. (Candidate criteria may include such considerations as: To what extent does the formulation address significant elements of the issue? How complete is it? To what extent does it lead to coherent and rationale results? To what extent is it acceptable to affected publics? How clearly can it be interpreted in terms of regulatory actions? How useful is it? Etc.)

2. Prepare working paper for use in policy development. (OPE, November 1980.)

B. *Frameworks.* 1. Develop candidate approaches to safety-goal formulation. (These may include frameworks that aim at a comprehensive statement, or statements with respect to only those parts of the issue judged to be tractable; quantitative and/or qualitative formulation approaches; concentrating on individual or social risks, or both; stated in terms of probabilities of events, such as core melt and/or containment failure, or of public consequences, notably radiation exposure risk; etc.) Drawn from work of ACRS, NRR, RES, AIF, EPRI, public interest groups, etc.

2. Prepare working paper on alternative frameworks, presenting a range of alternatives, for use in early policy development. (OPE, December 1, 1980.)

3. Narrow down to a few significant and usable approach options which span the range of approaches, and develop further for use in Subtasks III.C and D. (OPE, December 1980; update July 1981.)

C. *Preliminary Policy Paper.* 1. Prepare a draft policy statement concerning safety goals, setting forth significant approach options, together with underlying rationale, for Commission consideration.

2. Following Commission review, submit for public comment.

3. Prepare proposed updated program plan for next phases of work and submit for Commission consideration. (OPE, December 1980.)

D. *Policy Paper.* 1. Evaluate Commission guidance and peer and public comment on the Preliminary Policy Paper (Subtask III.C).

2. Prepare a draft policy statement concerning safety goals, together with underlying rationale, for Commission consideration and public comment (taking item 1 into account). (OPE, 8/12/81.)

3. Identify and plan for further work and submit for Commission consideration. (OPE, August 1981.)

Task IV: Workshops

Note.—This task envisages holding two workshops, to help illuminate the considerations that should guide the narrowing of options. These will be discussion workshops, with assigned topics (and perhaps subtopics assigned to subgroups), involving invited knowledgeable persons representing a broad range of viewpoints, drawn from technical, social, and humane disciplines, industry, public interest groups, universities, and government. The composition of the two workshops is not expected to be identical. The proposed workshops and associated tasks are as follows.

A. *Workshop on Frameworks and Philosophies of Approach.* 1. Prepare and provide to participants an input package including the Preliminary Policy Paper and topics and guidelines for discussion.

2. Hold workshop to discuss general approaches to safety-goal formulation, including goal forms, assumptions, and decision criteria. (Arrangements responsibility to be determined; February 1981.)

3. Prepare report, for use in Subtasks IV.B and III.D.

B. *Workshop on Proposed Approach.* 1. Prepare and provide to participants an input package including the Preliminary Policy Paper, preliminary draft of proposed approach, report on Workshop A, and topics and guidelines for discussion.

2. Hold workshop to discuss merits and problems of a reference safety-goal statement and its chief alternatives. (Arrangements responsibility to be determined; June 1981.)

3. Prepare report, for use in Subtask III.D.

Task V: Management

1. Plan, organize, and integrate the project.

2. Measure progress and adjust the program in light of Commission guidance and other developments. (OPE, with assistance of Inter-Office Steering Group.)

5. Public Participation

Wide public participation will be sought.

This plan will be published in the **Federal Register**, with opportunity for public comments and suggestions for consideration in the Preliminary Policy Paper.

The two workshops will be open to the public.

The Preliminary Policy Paper and the Policy Paper will be issued for public comment, and consideration will be given to possible invitations of comment on other papers.

One or more public meetings will be held, to provide further occasion for public input.

6. Organization

The Commission has assigned the principal program responsibility to OPE.

An Inter-Office Steering Group is being established to gain the benefit of NRC-wide participation in guidance of the program and to serve as a focal point for securing work contributions for the various NRC offices. The offices represented include OPE, OGC, RES, NRR, SD, IE, and NMSS. In addition, an ACRS staff member will participate. The members are being chosen on the basis that they should be broadly capable professionals, of inquiring mind, and not averse to challenging established ways. Their participation will be part-time, with a priority adequate to the program's schedule. They are being appointed by the respective Office Directors (or Committee Chairman), with approval of the EDO in the case of offices reporting through the EDO. The group's chairman will be the Director, OPE.

OPE and the steering group will be further assisted in program guidance by outside consultants.

The study work will be done partly by assignment of specific work packages to appropriate NRC offices, contractors, and consultants.

Consideration will be given to retaining the services of a national labotary for "housekeeping" and other contractual support of the goal-development effort.

7. Program Adjustment

As the work progresses, OPE, in consultation with the Inter-Office Steering Group, will develop any needed modifications of this plan, in consonance with the program's objectives, scope and overall schedule, and in accordance with Commission guidance.

Appendix A—Status of NRC Work

• OGC: OGC has submitted for the Commission's information a legal analysis of NRC's present requirements and practices with respect to safety adequacy. ("Adequate Protection of the Health and Safety of the Public," memo to the Commission from L. Bickwit, GC, 10–18–79.)

• ACRS: In May 1979 the ACRS recommended to the Commission that NRC consider the establishment of quantitative safety goals for nuclear power reactors. (Letter to NRC Chairman Hendrie from ACRS Chairman Carbon, 5–16–79.) After expression of interest by Commissioner Ahearne (letter to Chairman Carbon, 6–11–79), the ACRS undertook to develop the concept further and assigned the project to its Subcommittee on Reliability and Probabilistic Assessment. In August 1979 the ACRS wrote that it would take up to a year to arrive at a recommendation that the Committee would find appropriate. (Letter to Commissioner Ahearne from ACRS Chairman Carbon, 8–14–79.) After a series of meetings which included consideration of a number of domestic and foreign risk-analysis and criteria-development programs, the Subcommittee presented a tentative framework for risk management decision-making to the Committee at its June 1980 meeting.

The ACRS Subcommittee on Reliability and Probabilistic Assessment met on July 1, 1980 to continue its evaluation of development of quantitative safety goals for nuclear power plants. Speakers from NRC's Probablistic Analysis Staff (RES), EPRI, AIF, IEEE, and General Atomic, as well as ACRS Fellows and consultants presented and discussed proposed approaches. Based on the information provided to the Subcommittee through its July 1, 1980 meeting, Subcommittee Chairman Okrent informed the Committee on July 12 that he and ACRS Fellows working with him would prepare a draft letter for Committee review at the September or October 1980 ACRS meeting. The draft is expected to be accompanied by background documents describing:

Approaches to safety goals found in the literature.

A possible set of safety goals and decison rules, and their implications.

It is expected that the ACRS will report its findings to the Commission after its September or October 1980 meeting.

• Office of Nuclear Regulatory Research:

The Office of Nuclear Regulatory Research has in progress a research program on quantification of safety decison-making. The specific activities involved and their status are as follows:

A Comparative Risk Assessment and Acceptable Risk Criteria project is being conducted by the Oak Ridge National Laboratory to develop methods for addressing unacceptable and acceptable risk, and to compare public and occupational risk associated with the coal and nuclear fuel cycles. A preliminary draft of a report on Approaches to Acceptable Risk is presently being reviewed, and a draft report on the risk associated with the coal and nuclear cycles is being finalized for distribution in October 1980.

A research task force of a variety of professional disciplines has been established to formulate several possible sets of numerical criteria, using different technical approaches. The formation of the research task force and the conduct of its meetings are being coordinated through the Institute of Electrical and Electronic Engineering (IEEE), with cooperation from other professional engineering societies. The task force has been established in the IEEE SC–5 Reliability Committee, and has completed several working group meetings as of June 1980. Discussions are currently taking place among IEEE, ANS, and AIF concerning the respective roles of these organizations, in efforts to arrive at a coordinated approach.

Brookhaven National Laboratory has been contracted to independently formulate criteria in order to investigate the implications of such criteria and to determine the impact of attempting to satisfy such criteria. Information on risk exposure and risk acceptance cirteria from other societal activities is being collected. Draft reports are expected in September 1980. Also, baseline calculations of WASH–1400 accident sequence probabilities are being revised by using hardware and human error failure rates.

As means of peer review during the BNL project, the National Science Foundation, the National Academy of Science, and the American Statistical Association have been contacted to set up peer review functions. Negotiations are underway to define the specific mechanisms for these peer reviews. The ACRS Subcommittee on Probabilistic Analysis are carrying out independent reviews and formulating their own recommendations.

Several meetings are scheduled to accomplish an integration of these activities. A meeting of nuclear industry representatives was held in Washington, D.C., on March 18, 1980 to discuss fundamental issues involved in establishing risk criteria. It is anticipated that one or more of these meetings will be internationally sponsored.

Task descriptions and schedules of the various RES-sponsored efforts appear in Appendix B.

• Office of Nuclear Reactor Regulation: On July 10, 1980 the NRR's Division of Safety Technology (DST) circulated for comment within NRC a draft paper entitled, "Concepts, Problems, and Issues in Developing Safety Goals and Objectives for Commercial Nuclear Power." In October 1980, DST plans to issue a revised and expanded draft, which is expected to include a fuller treatment of suggested goal forms and assumptions for the goals, together with a rationale for decision criteria for choosing among candidate sets of interrelated goals, standards, and guidelines. In addition, DST is prepared to develop a paper on the desirability of specific safety goals. The paper would be drafted from a licensing perspective and would be intended as a proposed "NRC staff" alternaive, for consideration along with other viewpoints.

Appendix B—Description of RES-Sponsored Projects

Projects to Formulate and Evaluate Quantitative Risk Criteria

Performing Organization: Brookhaven National Laboratory

Task 1. Perform a comprehensive literature review on published articles addressing quantitative risk criteria. Revised draft report due September 15, 1980.

Task 2. Update WASH–1400's curves and tables on risks from activities other than nuclear. Evaluate both individual and societal risks along with associated uncertainties. Revised draft report due September 15, 1980.

Task 3. Review present state-of-the-art of fault tree and event tree modeling and quantitative risk evaluations. Explicitly identify limitations and capabilities in utilizations to determine whether numerical risk criteria are satisfied. Draft report due September 15, 1980.

Task 4. Update WASH–1400 calculations to incorporate new failure data and new quantitative models. The updated WASH–1400 evaluations will serve as baselines to compare with risk evaluations of other plants. Coding of WASH–1400 fault trees and event trees for automatic computer updating to be completed by October 1, 1980.

Task 5. Based on comparative risk considerations, formulate and evaluate quantitative risk criteria based on an acceptable level approach. Consider quantitative criteria for acceptable levels for:

a. Core melt probability.
b. Probability versus curies released.
c. Early fatalities.
d. Latent fatalities.
e. Dollar damage.

Evaluate different criteria and give the pros and cons for utilizing each criterion along with the risk ramifications. Consider different methods for compliance determinations. Specifically address the treatment of uncertainties and data and models required. Draft report due September 15, 1980.

Task 6. Formulate and evaluate quantitative criteria based on an unacceptability level approach. Consider the same five items as for the acceptable level approach. Consider ramifications and methods for determining compliance. Specifically address the treatment of uncertainties along with data and models required. Draft report due September 15, 1980.

Note.—Final reports will be issued in 1981.

Performing Organizations: Oak Ridge and Decision Research (Paul Slovic, Ralph Keeney, etc.)

Task 1. Consider the comments and reviews made on the draft report of *Approaches to Acceptable Risk* and issue a final report. Final report due October 1, 1980.

Task 2. Formulate and evaluate specific quantitative criteria for acceptable levels of risk from nuclear reactors. Consider quantitative levels for core melt probability, probability versus release, early and latent fatalities, and dollar damage. Consider the different approaches for justifying the criteria (expert judgment, comparative arguments, decision-theoretic approaches, etc.) and discuss possible public reactions. Evaluate ramifications of the criteria and specifically consider methods for implementing and determining compliance with the criteria. Draft report due January 1981.

Task 3. Consider quantitative criteria based on the unacceptable level approach. Perform the same analyses as in Task 1 but addressing defined, unacceptable quantitative criteria. Also consider how the unacceptable level approach might converge to the acceptable level approach. Draft report due January 1981.

Performing Organizations: Oak Ridge and Science Applications

Task: Complete final report on evaluating risks from coal versus nuclear power. The report treats all phases of the nuclear fuel cycle and coal cycle. Final report due October 1, 1980.

Performing Organization: Argonne National Laboratory

Task 1. Begin to quantify the benefits from nuclear power for considerations in risk-benefit evaluations. As phase one of this task, specifically consider the loss of economic benefits from shutdown of one plant or multiple plants. Utilize existing computer codes and consider specific plant shutdowns covering minimum to maximum losses. Considered multiple plant shutdowns by region. Develop an empirical model for decision-theoretic utilizations. Draft report due December 1, 1980.

Task 2. Apply decision-theoretic approaches to regulatory decision-making. Explain in understandable terminology the concepts and inputs required in utilizing formal decision-theoretic approaches. Use the models and analyses obtained from IREP as specific case studies. Perform detailed sensitivity studies to determine the impacts of different value assessments. Develop a formal treatment for handling uncertainties in the decision-making process. Draft report due March 1981.

Note.—In addition to the above projects, the IEEE has established working groups to formulate numerical risk criteria from an industry oriented point of view. The National Academy of Science and National Science Foundation has carried out several forums on acceptable risk criteria. The American Statistical Assocation has also established a committee dealing with the proper use of statistics in risk analyses.

[FR Doc. 80-33379 Filed 10-24-80; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 22, 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 U.S.C., Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, 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

• Economics, Statistics, and Cooperatives Service
U.S. Manufacturers' Use of Casein and Lactalbumin
Single Time
Manufacturers using casein and lactalbumin, 630 responses, 788 hours
Charles A. Ellett, 395–7340

• Farmers Home Administration
7 CFR 1990–A, B & C Biomass Energy and Alcohol Fuels Loans [1] and Guarantees
FMHA 1990–1 and 1990–2
On occasion
Farms and small corporations, 350 responses, 3,500 hours
Charles A. Ellett, 395–7340

Revisions

• Economics, Statistics, and Cooperatives Service
Cattle of Feed Surveys
Monthly
Cattle feeders, 66,760 responses, 4,435 hours
Charles A. Ellett, 395–7340

• Economics, Statistics, and Cooperatives Service
Multiple Frame Hog and Cattle Survey
Quarterly
Hog and cattle producers, 209,800 responses, 52,450 hours
Office of Federal Statistical Policy and Standard, 673–7974

Reinstatements

• Food and Nutrition Service
Report of Child Nutrition Operations
FNS–10
Monthly
State eductional agencies, 672 responses, 672 hours
Charles A. Ellett, 395–7340

• Food and Nutrition Service
Report of Program Operations
FNS–187
Monthly
State agencies, 948 responses, 37,920 hours
Charles A. Ellett, 395–7340

• Food and Nutrition Service
Annual Report of Revenue and Cost
FNS–13
Annually
State educational agencies, 59 responses, 9,515,720 hours
Charles A. Ellett, 395–7340

[1] Final action on this clearance request may occur prior to the close of the normal ten-day public comment period due to urgent need for development of alternative energy resources.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strnad—245–7488.

New Forms

• Food and Drug Administration
FY '80 Multi-Purpose Survey
Single time
Main food shoppers for households; area probability, 1,500 responses, 1,500 hours
Office of Federal Statistical Policy and Standards, 673–7974

• Health Resources Administration
Health Planning Performance Evaluation on Health Promotion/Disease Prevention
Single time
PHS gran. who are st. hlt. plan. and develop agen. and hlt., 40 responses, 120 hours
Richard Eisinger, 395–6880

• Social Security Administration
Quarterly Estimate of Expenditures
OSCE/SSA 65
Quarterly
Administrators of State agencies, 216 responses, 108 hours
Barbara F. Young, 395–6880

• Social Security Administration
State Agency Quarterly Statement of Financial Plan for AFDC
SSA–125
Quarterly
State welfare agencies, 216 responses, 432 hours
Barbara F. Young, 395–6880

• Social Security Administration
Quarterly Budget Estimates
OCSE–25
Quarterly
State welfare agencies, 216 responses, 216 hours
Barbara F. Young, 395–6880

• Social Security Administration
Quarterly Statement of Expenditures and Related Schedules
SSA/OCSE–41, Sched. A, OCSE–4134, 411, 4130, 4140, 4150, 4160, 4111
Quarterly
States, 1,580 responses, 2,250 hours
Barbara F. Young, 395–6880

Reinstatements

• Social Security Administration
State's Quarterly Report of Wages Paid
SSA–3963 and A
Quarterly
Political subdivisions and interstate instrumentalities, 64,000 responses, 122,000 hours
Barbara F. Young, 395–6880

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526.

New Forms

• Offices, Boards, Division
National Opinion Research Center (NORC) Field Test I
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395–4814

• Offices, Boards, Division
Computer Assisted Telephone Interviewing (CATI)
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395–4814

• Offices, Boards, Division
Survey Research Center Field Test
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395–4814

• Offices, Boards, Division
National Field Test
BJS (Series 3620)
Single time
National household sample
Andrew R. Uscher, 395–4814

• Offices, Boards, Division
National Opinion Research Center (NORC) Field Test II
BJS (Series 3620)
Single time
Households in Chicago SMSA
Andrew R. Uscher, 395–4814

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523–6341.

Revisions

• Employment and Training Administration
Trade Readjustment Determinations and Allowance Activities and Employability Services
ETA 563 telegraphic report
Monthly
SESA's for petitions under the Trade Act, 36,000 responses, 2 hours
Arnold Strasser, 395–6880

C. Louis Kincannon,
Acting Deputy Assistant Director for Reports Management.

[FR Doc. 80–33434 Filed 10–24–80; 8:45 am]
BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21750; (70-6503)]

Cape Cod Gas Co.; Proposed Issuance and Sale of First Mortgage Bonds to Institutional Investor Pursuant to a Private Offering

October 21, 1980.

Notice is hereby given that Cape Cod Gas Company ("Cape Cod"), P.O. Box 1360, Hyannis, Massachusetts 02601, a public utility subsidiary of Colonial Gas Energy System ("Colonial"), a holding company, has filed a declaration with this Commission pursuant to Sections 6 and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(4) promulgated thereunder regarding the private placement of first mortgage bonds. All interested persons are referred to the amended declaration, which is summarized below, for a complete statement of the proposed transactions.

On October 7, 1977, Colonial filed an application for exemption under Section 3(a)(1) of the Act (File No. 31-763). Its application for exemption is pending. Pursuant to a Stipulation in that proceeding dated January 26, 1978, entered into by Colonial and the Division of Corporate Regulation pending the development of a plan of financial simplification or recapitalization by Colonial appropriate to the requirements for exemption under Section 3(a)(1), Colonial has registered as a public utility holding company under Section 5(a) for the limited purpose of complying with the provisions of Sections 6, 7 and 12(b) of the Act.

Cape Cod is seeking authorization to issue and sell up to $1,000,000 of its 14% first mortgage bonds due 1995 which are to be sold to John Hancock Mutual Life Insurance Company. It claims exception from the competitive bidding requirements of Rule 50(b) pursuant to subparagraph 50(a)(4).

Cape Cod's capital structure as of July 31, 1980, and pro forma is shown in the following table.

Cape Cod

[Thousands omitted]

Unaudited	Amount	Percent	Pro forma Amount	Pro forma Percent
Long-term debt	$13,713	44.73	$13,488	44.32
Notes payable banks	6,000	19.57	6,000	19.71
Total debt	19,713	64.30	19,488	64.03
Preferred stock	1,079	3.52	1,079	3.55
Common equity	9,866	32.18	9,866	32.42

Cape Cod—Continued

[Thousands omitted]

Unaudited	Amount	Percent	Pro forma Amount	Pro forma Percent
Total capitalization	30,658	100.00	30,433	100.00

A statement of bond and total fixed charges coverages as of July 31, 1980, is reflected below, based on the reported income for the twelve months ended that day.

	Unaudited	Pro forma
Income before taxes	$3,692	$3,692
Bond interest	1,246	1,319
Bond interest coverage	2.96 x	2.80 x
Total interest	3,050	3,092
Preferred dividends	2,035	2,108
Total fixed charges	70	70
Coverages for total fixed charges and preferred stock dividends	1.45 x	1.42 x

The bonds will be issued under Cape Cod's Indenture of Mortgage and Deed of Trust, as amended and supplemented, and will be of equal rank with the outstanding bonds. The bonds will have an average life of approximately 10 years and will not be redeemable for five years nor refundable for an additional five years in anticipation of borrowings having a lower effective interest cost. Cape Cod will also agree to certain reasonable limitations on its right to issue additional bonds, incur short-term debt, and pay dividends on its common stock. The exact terms of the bonds will be negotiated and contained in a supplemental indenture to be filed by amendment.

The Cape Cod bonds will mature November, 1995 and will be subject to sinking fund requirements beginning in the third year and increasing at designated intervals. The proceeds of the bonds will be used by Cape Cod to refund approximately $1,000,000 in principal amount of First Mortgage Bonds, Series E, 5½% due November 15, 1980.

The fees and expenses incurred or to be incurred in connection with the proposed transactions will be filed by amendment. The Massachusetts Department of Public Utilities has jurisdiction over the proposed issue and sale of bonds. No other state or federal commission except this Commission, has jurisdiction over such transactions.

Notice is hereby given that any interested person may, not later than November 12, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the declarant at the above-stated address, and proof of service (by affidavit or in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 33321 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21749; October 21, 1980 (70-6452)]

Consolidated Natural Gas Co.; Post-Effective Amendment Related to Intrasystem Financing, Issuance of Long-Term Notes of Subsidiaries to Holding Company and Acquisition of Such Notes by Holding Company

October 21, 1980.

In the Matter of Consolidated Natural Gas Company, 30 Rockefeller Plaza, New York, New York 10020, CNG Coal Company, CNG Development Company Ltd., CNG Producing Company, CNG Research Company, Consolidated Gas Supply Corporation, Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company, The East Ohio Gas Company, The Peoples Natural Gas Company, The River Gas Company, and West Ohio Gas Company.

Notice is hereby given that Consolidated Natural Gas Company ("Consolidated"), a registered holding company, and certain of its subsidiary companies, CNG Coal Company ("Coal Company"), CNG Development Company Ltd., CNG Producing Company ("Producing Company"), CNG Research Company ("Research Company"), Consolidated Gas Supply

Corporation ("Gas Supply"), Consolidated Natural Gas Service Company, Inc., Consolidated System LNG Company ("LNG Company"), The East Ohio Gas Company ("East Ohio"), The Peoples Natural Gas Company ("Peoples"), The River Gas Company ("River"), and West Ohio Gas Company ("West Ohio") have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 43 and 45 promulgated thereunder. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order issued June 2, 1980 (HCAR No. 21603), the Commission authorized the intrasystem financing program of Consolidated Natural Gas Company and eleven of its subsidiary companies. Among other things, the order authorized: (1) a short-term bank loan ("Gas Storage Loan") by Consolidated of up to $125,000,000; (2) the issuance of up to $100,000,000 of commercial paper by Consolidated or back-up bank borrowings not exceeding $100,000,000 if the sale of commercial paper is impractical; and (3) the purchase by Consolidated of $110,000,000 par value of subsidiary common stock.

Consolidated would make up to $260,000,000 in open account advances to subsidiaries for gas storage requirements to be financed with proceeds of Gas Storage Loan and proceeds from the sale of commercial paper or back-up bank borrowings. The subsidiaries would use the proceeds from the sale of common stock to finance, in part, their 1980 capital expenditures. On August 28, 1980 a Supplemental Order (HCAR No. 21692) was issued releasing jurisdiction with respect to various matters on which jurisdiction had been reserved pending issuance of state commission orders. On October 7, 1980, Consolidated was authorized to issue and sell $100,000,000 principal amount of ——% Debentures Due October 1, 2000 at competitive bidding.

Consolidated has now filed a post-effective amendment requesting authorization to make long term loans in 1980 to certain subsidiaries to partially finance their 1980 capital expenditures. Such loans would be made following the debenture financing by Consolidated. The consummation of these proposed transactions are contingent upon the issuance in 1980 of the $100,000,000 principal amount of the Debentures authorized in our order of October 7, 1980.

The subsidiary companies listed below propose to issue to Consolidated and Consolidated proposes to acquire up to $100,000,000 principal amount of non-negotiable, long-term notes maturing in the years stated, at a date to be determined by the officers of Consolidated, and bearing interest at a rate predicated upon and substantially equal to the effective cost of money to Consolidated through the issuance and sale by Consolidated of its debenture issue in 1980, such interest to be paid semi-annually, at dates to be determined by the officers of Consolidated, as follows:

CNG Producing Co. (Maturing: $2,125,000 in each year 1985 to 2000, inclusive)	$34,000,000
Consolidated Gas Supply Corp. (maturing: $2,812,500 in each year 1985 to 2000, inclusive)	45,000,000
The East Ohio Gas Co. (maturing: $625,000 in each year 1985 to 2000, inclusive)	10,000,000
The Peoples Natural Gas Co. (maturing: $625,000 in each year 1985 to 2000, inclusive)	10,000,000
West Ohio Gas Co. (maturing: $62,500 in each year 1985 to 2000, inclusive)	1,000,000
Total	100,000,000

The order of June 2, 1980 (HCAR No. 21603) authorized the issuance and sale of $110,000,000 of subsidiary company capital stock to Consolidated from time to time up to May 31, 1981. The sale of Debentures and subsequent issuance of long-term notes by subsidiary companies to Consolidated will result in a reduction in the acquisition of the subsidiary companies' capital stock by Consolidated. Consolidated now proposes to purchase from the following subsidiary companies, subject to the sale of the Debentures and receipt of appropriate state commission financing approvals, and the subsidiaries propose to issue and sell, at par value, capital stock to Consolidated aggregating $68,000,000 as follows:

Subsidiary	Number of shares ($100 Par)	Par value
CNG Coal Co	20,000	$2,000,000
CNG Producing Co	515,000	51,500,000
CNG Research Co	35,000	3,500,000
Consolidated Gas Supply Corp	100,000	10,000,000
The River Gas Co	10,000	1,000,000
Total		68,000,000

Assuming that said Debentures are issued and sold as contemplated, it can be anticipated that the amount of open account advances for gas storage inventory and/or working capital similarly authorized by the Commission can be reduced. The extent of such

reduction cannot, however, be presently determined. Therefore, it is requested that authorizations heretofore granted with respect to such open account advances be permitted to continue.

It is stated that the Public Service Commission of West Virginia has jurisdiction over the proposed long-term borrowings of Gas Supply that the Public Utilities Commission of Ohio has jurisdiction over the long-term borrowings proposed by River and West Ohio and that the Public Utility Commission of Pennsylvania has jurisdiction over the long-term borrowings by Peoples.

It is further stated that no other state or federal commission, other than this Commission has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are estimated not to exceed $600, including $500 for the system service company charges, at cost. All such fees and expenses are to be paid by Consolidated.

Notice is further given that any interested person may, not later than November 10, 1980, request in writing that a hearing be held in respect of such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices or orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33320 Filed 10-24-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 19]

Associate Administrator for Public Communications

Delegation of Authority No. 19 reflects the transfer of all printing contract authority from the Associate Administrator for Data and Management Services to the Associate Administrator for Public Communications. Delegation of Authority No. 19 reads as follows:

I. Pursuant to the authority delegated by the Administrator to the Assistant Administrator for Support Services in Delegation of Authority No. 3A (44 FR 50125), there is hereby delegated to the Associate Administrator for Public Communications, the following authority:

A. Printing Contract Authority.

1. To contract for printing services for the Agency pursuant to Chapter 4 of Title 41, United States Code, as amended, subject to the limitations contained in section 257(a) and (b) of that Chapter.

II. The authority delegated herein may be redelegated.

III. The authority delegated herein may be exercised by any SBA employee officially designated as Acting Associate Administrator for Public Communications.

Effective Date: October 27, 1980.

Dated: October 17, 1980.

Paul D. Sullivan,

Assistant Administrator for Support Services.

[FR Doc. 80-33335 Filed 10-24-80; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The Small Business Administration Region III Advisory Council, located in the geographical area of Pittsburgh, Pennsylvania, will hold a public meeting at 9:00 a.m., on Wednesday, November 19, 1980, at the Holiday Inn, 2750 Mosside Boulevard, Monroeville, Pennsylvania, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Jack C. Forbes, District Director, U.S. Small

Business Administration, 1401 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222—(412) 644–2780.

Dated: October 20, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80–33336 Filed 10–24–80; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council, Public Meeting

The Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, Nebraska, will hold a public meeting from 9:30 a.m. to 2:00 p.m., on Friday, November 21, 1980, in the Conference Room, Omaha District Office, U.S. Small Business Administration, 19th & Farnam, Omaha, Nebraska, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Rick Budd, District Director, U.S. Small Business Administration, 19th & Farnam, Omaha, Nebraska 68102—(402) 221–3620.

Dated: October 20, 1980.

Michael B. Kraft,

Deputy Advocate for Advisory Councils.

[FR Doc. 80–33337 Filed 10–24–80; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5404]

First Puerto Rico Capital, Inc.; Issuance of a License To Operate as a Small Business Investment Company

On June 25, 1980, a notice was published in the **Federal Register** (45 FR 42918) stating that First Puerto Rico Capital, Inc., located at 54 W. McKinley Street, Mayaguez, Puerto Rico 00708, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business July 10, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02–5404 to First Puerto Rico Capital, Inc. on October 14, 1980.

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

Peter F. McNeish,

Acting Associate Administrator for Investment.

October 20, 1980.

[FR Doc. 80–33440 Filed 10–24–80; 8:45 am]

BILLING CODE 8025–01–M

Small Business Investment Company, Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.301(c) sets forth the SBA Regulation governing the maximum annual cost of money to small business concerns for Financing by small business investment companies.

Section 107.301(c)(2) requires that SBA publish from time to time in the **Federal Register** the current Federal Financing Bank (FFB) rate for use in computing the maximum annual cost of money pursuant to § 107.301(c)(1). It is anticipated that a rate notice will be published each month.

13 CFR 107.301(c) does not supercede or preempt any applicable law that imposes an interest ceiling lower than the ceiling imposed by that regulation. Attention is directed to new subsection 308(i) of the Small Business Investment Act, added by section 524 of Pub. L. 96–221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Effective November 1, 1980, and until further notice, the FFB rate to be used for purposes of computing the maximum cost of money pursuant to 13 CFR § 107.301(c) is 11.765 percent per annum.

Peter F. McNeish,

Acting Associate Administrator for Investment.

October 22, 1980.

[FR Doc. 80–33439 Filed 10–24–80; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA) Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on November 19, 1980 at the Sheraton National Motor Hotel, South Ball Room, Columbia Pike and Washington Boulevard, Arlington, Virginia commencing at 2:00 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks and Introductions; (2) Approval of Minutes of Meeting Held on September 11, 1980; (3) Special Committee Activities Report for September and October 1980; (4) Chairman's Report on RTCA Administration and Management; (5) Consideration of Establishing New Special Committees; (6) Approval of Special Committee 133 Report on Minimum Operational Performance Standards for Airborne Weather and Ground Mapping Pulsed Radars; (7) Approval of Special Committee 133 Report on Minimum Operational Performance Standards for Airborne Radar and Beacon Systems for Helicopters; (8) Comments and Reports of RTCA International Associate Representatives; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1717 H Street, NW, Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on October 17, 1980.

Karl F. Bierach,

Designated Officer.

[FR Doc. 80-33322 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-80-29]

Petitions for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 17, 1980.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Rocket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 20, 1980.

Edward P. Faberman,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
20781	World Airways, Inc	14 CFR 121.291	To permit the introduction of petitioner's B-747-200C aircraft in service with a 520 passenger seat configuration without conducting the required emergency evacuation demonstration.
20793	Lundy Aeronautics	14 CFR 63.39(b)(2)	To allow the practical test for a flight engineer rating to be conducted in an FAA-approved flight simulator.
20664	Swift Aire Lines	14 CFR 145.73	To enable petitioner to use Fokker F-27 parts provided or repaired by Icelandair.
13204	Executive Air Fleet	14 CFR 121.155 and SFAR 38	Extension of Dec. 31, 1980, termination date of Exemption No. 2030E. The exemption allows petitioner to operate notwithstanding the "exclusive use" provisions.
20478	S.B.S. Aero Center	14 CFR 141.27(c)(2)	To permit petitioner to obtain a provisional pilot school certificate in less than 180 days after the date of their previously expired certificate.
20631	The Budd Company	14 CFR 91.32(b)(1)	To permit the pilots of petitioner's Gates Learjet Model 35 airplanes to operate those aircraft up thru the aircraft's maximum certificated altitude (FL 450) without either pilot wearing an oxygen mask.

Dispositions for Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20577	Air Florida, Inc	14 CFR 121.153(a)(1)	To permit petitioner to operate two B-737-100 aircraft under foreign ownership and/or registry. Granted 8/22/80.
19475	Flight Safety International	14 CFR various sections	To extend the expiration date past October 31, 1980 of Exemption No. 2854 which permits FSI trainees to complete a practical test for a type rating in a flight simulator. Granted 10/9/80.
16955	American Airlines Training Corp	14 CFR 61.58(c)	To allow pilots to conduct the entire 24-month pilot in command proficiency check in a digital flight simulator. Granted 10/9/80.
19587	Executive Air Fleet	14 CFR 135.25	To allow the petitioner to operate aircraft listed in its operations specifications without exclusive use of such aircraft. Withdrawn 8/28/80.
20567	Swift Aire Lines, Inc	14 CFR 121.310(d)	To permit Nord 262 aircraft to operate with a cockpit control device that does not have an "on", "off", and "armed" function. Withdrawn 9/22/80.
20782	Philippine Airlines	Portions of Parts 21 and 91	To be allowed to operate and maintain aircraft leased from Hughes Airwest using an FAA-approved MMEL and Hughes continuous airworthiness program. Granted 10/3/80.
19634	Douglas Aircraft Company	14 CFR 121.310(d)(4)	To permit Part 121 operation of McDonnell Douglas DC-8 aircraft with an emergency light system without a cockpit control device that has an "on," "off," and "armed" position. Granted 10/10/80.
20352	Amway Corporation	14 CFR 61.58	To permit the petitioner's pilots to complete the entire 24-month pilot-in-command check in an FAA approved flight simulator. Granted 10/16/80.
20815	Royal Air Marac	Portions of 14 CFR Parts 21, 61, 63, and 91.	To permit petitioner to operate (U.S.) registered Boeing 707 aircraft leased from Trans World Airlines from October 5 to 19, 1980, in accordance with Federal Aviation Administration approved master minimum equipment list, to maintain the aircraft in accordance with TWA's FAA-approved continous airworthiness maintenance program, and to use certain flight crewmembers who do not have U.S. airman certificates. Granted 10/4/80.
19834	Flying Tiger Line and Venezolana Inter'l Aviacion, S. A.	Portions of Parts 21, 91, and 121.	To amend Exemption No. 2939 to delete Seaboard World Airlines' name and to reflect various changes that would occur with the merger of Flying Tiger and Seaboard World, scheduled to be completed on 9/30/80. Granted 10/8/80.

[FR Doc. 80-33316 Filed 10-24-80; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 209
Monday, October 27, 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

[M-298]

CIVIL AERONAUTICS BOARD

October 22, 1980.

TIME AND DATE: 9:30 a.m., October 29, 1980.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notification.

2. Docket 38197, Petition by Delta Air Lines to amend the Board's rules on Terminations, suspensions, and reductions in service in Part 323. (OGC, BDA)

3. Dockets 38845 and 38844, Air Florida's notice and exemption request to suspend service at Daytona Beach, FL, before the expiration of the 90-day notice period. (BDA, OCCR)

4. Docket 38776, Application of the Department of International Affairs, General Administration of Civil Aviation of China d.b.a. CAAC for an exemption to perform scheduled and charter foreign air transportation into the United States beginning December 1, 1980 (BIA, OGC)

5. Notice of Proposed Rulemaking to amend the CAB rules to include a civil penalty for violation of Part 300 and to amend the authority line for Part 300. (Memo No. 9996, BCP, OGC)

6. Notice of Proposed Rulemaking to require carriers to re-file fitness data when they have not begun service within 2 years of being authorized, or have ceased to operate for 2 years. (Memo No. 9994, OGC, BDA)

7. Notice of Proposed Rulemaking to conform the air taxi operator rules in Part 298 to the new data requirements for fitness determinations in Part 204. Amendment to Part 204 to clarify that it does not apply to Alaskan mail carriers that have not been designated as essential air service carriers and do not provide scheduled passenger service. (Memo No. 9995, OGC, BDA)

8. Dual authority, to allow certificated carriers to engage in air taxi operations. (BDA, OGC)

9. Docket 22690, Caribbean-Atlantic Airlines, Inc.-Eastern Air Lines, Inc., Acquisition Case (Complaint of Melvin Graciani for labor protective provision relief). (Memo No. 008, OGC)

10. Docket 37167, (Steve Sami d.b.a. Arya Travel Agency v. Iran National Airlines Corporation) Motion for review of BCP's dismissal of third-party complaint. (Memo No. 9997, OGC)

11. Docket 28366, Denver-Alaska Service Investigation, Order Dismissing Petition. (Memo No. 007, OGC)

12. Docket 38456, *Petition of Parsons, Kansas*, Order to Show Cause. (Memo No. 9999, OGC)

13. Docket EAS-519, Appeal of the Essential Air Transportation Determination of Binghamton/Endicott/Johnson City, New York filed by Broome County, New York. (Memo No. 9998, OGC, OCCR, BDA)

14. Dockets EAS-153, 255, 331, 332, and 231—Alaska Airlines appeals of Essential Air Service Determinations for Cordova, Petersburg, Wrangell, Yakutat and Middleton Island, Alaska; Docket 38563—Alaska Airlines' notice to reduce air service from seven days per week to five days per week at Cordova, Petersburg, Wrangell and Yakutat, Alaska. (Memo No. 003, BDA, OCCR, OGC)

15. Docket 38667—American Airlines' notice under section 401(j) to suspend all service at Des Moines, Iowa, and Omaha, Nebraska. (Memo No. 004, BDA, OCCR)

16. Dockets 38267 and EAS-251, Century Airlines notice of intent to reduce service below the essential level at Eureka/Arcata, California, under section 419(a)(3)(B) of the act. (BDA, OCCR)

17. Docket 34556, Piedmont's notice to suspend service at London-Corbin, Kentucky. (Memo No. 006, BDA, OCCR)

18. Docket 37751, Revision to Nor East's interim rate of compensation for providing essential air service at New Bedford. (Memo No. 002, BDA, OCCR)

19. Docket 37830, Petitions for a stay of Order 80-6-15, June 3, 1980—award of Orange County-San Jose authority to PSA under automatic market entry provision. (BDA)

20. Docket 37013, Munz Northern Airlines, Inc. Bush Points Proceeding. (Memo No. 005, BDA)

21. Docket 38579, Application of Cayman Airways Limited for an exemption from section 402 of the Federal Aviation Act of 1958, as amended. (BIA, OGC, BCP)

22. Docket 37868, Petition of Capitol International Airways, Inc., for reconsideration of Order 80-5-8, which granted the Boston-London exemption to World Airways, Inc. (BIA, BCP, OGC)

23. Dockets 34900 and 38723, (1) application of Transporte Aereo Dominicano, S.A. for exemption authority to operate U.S.-Dominican Republic and U.S.-Hailti Passenger and cargo service; (2) petition of Aeromar C. por A. for Board review of Order 80-8-14. (BIA, OGC)

24. Docket 34783, Application of KLM for an amended foreign air carrier permit. (BIA, OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 763-5068.

[S-1968-80 Filed 10-23-80; 3:24 pm]

BILLING CODE 6320-01-M

2

FEDERAL COMMUNICATIONS COMMISSION.

The Federal Communications Commission will hold a Special Open Meeting on the subjects listed below On Tuesday, October 28, 1980 at 9:30 a.m., in room 856, at 1919 M Street NW., Washington, D.C.

Agenda, Item Number, and Subject

Common Carrier—1—*Title:* Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)—Docket 20828. *Summary:* The Commission will consider petitions for reconsideration of the *Final Decision* in the Second Computer Inquiry.

Common Carrier—2—*Title:* In the Matter of Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252). *Summary:* The Commission will consider a proposal to amend its tariff filing and facilities authorization requirements for certain non-dominant carriers providing domestic communications service. This and the other item concerning CC Docket 79-252 will be considered together.

Common Carrier—3—*Title:* In the matter of policy and rules concerning rates for competitive common carrier services and facilities authorizations therefor. CC Docket 79-252. *Summary:* The Commission will consider the issue of its discretion to define a communications common carrier as well as to forbear from imposing Title II regulation.

Broadcast—1—*Title:* Petition to reassign VHF-TV Channel 9 from New York City to a northern New Jersey community. *Subject:* The Commission will consider a petition from Senators Bradley and Williams of New Jersey to reassign VHF-TV Channel 9 from New York to a northern New Jersey community. Channel 9 is currently subject to an outstanding license (Station WOR-TV, RKO General, Inc.) which has not been renewed (appeal pending) and an application for a new station from Multi-State Communications.

This meeting may be continued the following work day to allow the

Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1961–80 Filed 10–23–80; 11:30 am]

BILLING CODE 6712–01–M

3

FEDERAL COMMUNICATIONS COMMISSION.

FCC schedules oral argument in WWLE(AM), Cornwall on Hudson, N.Y., renewal case (Docket 20591–92).

The Commission has scheduled an oral argument in the WWLE(AM) renewal case for November 20 at 10:50 AM.

FCC Administrative Law Judge Thomas B. Fitzpatrick, in an initial decision released October 20, 1977, had concluded that willful concealment and misrepresentation by WWLE, incorporated principals with respect to the company's ownership warranted the denial of WWLE's license renewal and the grant of Mechanicville Broadcasting Co.'s application for a new license.

WWLE subsequently contended that its application had been erroneously designated for hearing, the burden of proof on the ownership issue had been improperly placed, and the judge misevaluated the evidence, applied incorrect legal standards and failed to admit new evidence. It also moved to dismiss the Mechanicville application on the grounds that its station WMVI has been silent for over four years.

The Commission said WWLE, Mechanicville and the Broadcast Bureau would have 20 minutes each in which to present their arguments, with WWLE being able to reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1966–80 Filed 10–23–80; 3:07 pm]

BILLING CODE 6712–01–M

4

FEDERAL COMMUNICATIONS COMMISSION.

Commission will hear oral argument on WIGO license revocation November 20 (BC Docket No. 78–53).

The FCC will hear WIGO, Inc., licensee of WIGO(AM), Atlanta, Ga., argue against having its license revoked on November 20 at 9:30 A.M., 1919 M St. NW., Washington, D.C.

In an initial decision released in June 1979, FCC Administrative Law Judge John H. Conlin revoked WIGO's broadcast license for knowingly broadcasting information about Atlanta's illegal number game.

The Commission allocated WIGO and the FCC Broadcast Bureau each 20 minutes for argument, and said WIGO could reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1964–80 Filed 10–23–80; 3:06 pm]

BILLING CODE 6712–01–M

5

FEDERAL COMMUNICATIONS COMMISSION.

Additional item considered at Commission meeting Tuesday, October 21st.

During the Open Meeting scheduled for October 21, 1980, the Commission discussed the reconsideration of *Petitions for Reconsideration of the Commission's Report and Order Revising the Processing Policies for Waiver of the Telephone Company-Cable Television "Cross Ownership Rules."*

The prompt and orderly conduct of Commission business did not permit prior notice of this additional item.

Additional information concerning this matter may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: October 23, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1963–80 Filed 10–23–80; 3:06 pm]

BILLING CODE 6712–01–M

6

FEDERAL COMMUNICATIONS COMMISSION.

Delection of agenda item from October 21st open meeting.

The following item was deleted from the list of agenda items scheduled for consideration at the October 21, 1980, Open Meeting, and previously listed in the Commission's Public Notice of October 14, 1980 (#00441).

Agenda, Item Number, and Subject

General—2 *Title:* In re petition by Lee M. Holmes (RM–3467) for amendment of Parts 2, 22, and 73 of the FCC's Rules and Regulations. *Summary:* Lee M. Holmes has filed a petition with the FCC requesting the reallocation of VHF–TV Channel 5 or 6 for TV broadcasting in the State of Hawaii. The Commission is also considering reallocating the band 98–108 MHz to FM broadcating in Hawaii. Both bands are presently allocated exclusively to the common carrier fixed service for inter-island use. The item before the Commission discusses the merits of these actions.

Additional information concerning this item may be obtained from Edward Dooley, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: October 23, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1967–80 Filed 10–23–80; 3:07 pm]

BILLING CODE 6712–01–M

7

FEDERAL COMMUNICATIONS COMMISSION.

FCC sets oral argument in WMJX(FM), Miami, Fla., renewal case for November 20 (Docket 20826).

The Commission has scheduled an oral argument for November 20, at 10:00 a.m., to consider exceptions to the January 18, 1978, initial decision of FCC Administrative Law Judge Thomas B. Fitzpatrick denying Bartell Broadcasting of Florida, Inc. renewal of its license for FM station WMJX (formerly WMYQ), Miami, Fla.

In the initial decision Judge Fitzpatrick found that Bartell had failed to abide by representations made to the Commission, that false, misleading and deceptive matter had been broadcast with respect to contests conducted by WMJX and that newscasts concerning station-conducted contests had been distorted and falsified. He therefore concluded that Bartell did not have the requisite qualifications to operate WMJX and that the public interest would not be served by granting renewal.

The Commission allocated Bartell and the Chief of the FCC Broadcast Bureau each 20 minutes for argument, and said that Bartell could reserve part of its time for rebuttal.

Issued: October 22, 1980.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[S–1965–80 Filed 10–23–80; 3:06 pm]

BILLING CODE 6712–01–M

8

FEDERAL ENERGY REGULATORY COMMISSION.

October 22, 1980.

TIME AND DATE: 10 a.m., October 29, 1980.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Power Agenda—467th Meeting, October 29, 1980, regular Meeting (10 a.m.)

CAP–1. Project No. 3113, South San Joaquin Irrigation District.
CAP–2. Project No. 3114, Merced Irrigation District.
CAP–3. Project No. 3115, Merced Irrigation District.
CAP–4. Project No. 3116, Merced Irrigation District.
CAP–5. Project No. 3136, Turlock Irrigation District.
CAP–6. Project No. 3235, Greater Lawrence Sanitary District.
CAP–7. Docket No. ER80–222, Georgia Power Co.
CAP–8. Docket No. ER77–614, Union Electric Co.

Miscellaneous Agenda—467th Meeting, October 29, 1980, Regular Meeting

CAM–1. Docket No. RM81– , revision to the regulations governing preservation of records.
CAM–2. Suspension of filing date for annual report due from Federal authority.
CAM–3. Docket No. RM80–69, annual report of Gas supply for certain natural gas pipelines: Form No. 15.
CAM–4. Docket No. RM79–53, Part 273 regulations under the Natural Gas Policy Act of 1978.
CAM–5. Docket No. RM80–75, interim rule amending section 282.202(a) of the Commission's regulations under the Natural Gas Policy Act of 1978.
CAM–6. Docket Nos. RA79–4, RA79–22, RA80–44 and RA81–1–000, Arizona Fuels Corp.
CAM–7. Docket No. RA80–79, Bogert Brothers, Exxon.

Gas Agenda—467th Meeting, October 29, 1980, Regular Meeting

CAG–1. Docket No. RP81–1–000, Michigan Wisconsin Pipe Line Co.
CAG–2. Docket No. TA81–1–14–000 (PGA81–1), Lawrenceburg Gas Transmission Corp.
CAG–3. Docket No. RP81–3–000, Southwest Gas Corp.
CAG–4. Docket No. RP80–126, Equitable Gas Co.
CAG–5. Docket No. RP80–145, Columbia Gulf Transmission Co.; Docket No. RP80–146, Columbia Gas Transmission Corp.
CAG–6. Docket No. RP80–147, Texas Eastern Transmission Corp.
CAG–7. Docket No. TA80–2–27 (PGA80–3 and IPR80–3), North Penn Gas Co.
CAG–8. Docket No. TA80–2–25 (PGA80–3, IPR80–3, AP80–2, LFUT80–2, TT80–2 and STR80–2), Mississippi River Transmission Corp.
CAG–9. Docket No. RP77–62, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG–10. Docket No. RP80–7, Kentucky West Virginia Gas Co.
CAG–11. Docket No. CI62–965, Gulf Oil Corp.; Docket No. CI72–438, Shell Oil Co.; Docket No. CI72–389, Exchange Oil & Gas Corp.; Docket No. CI74–352, Champlin Petroleum Co.; Docket No. CS80–123, Calpetco V; Docket No. CS80–133, Workover One, Inc.; Docket No. CI71–751, Phillips Petroleum Co.; Docket No. CI70–50, Chevron U.S.A. Inc.; Docket No. CI70–78, Chevron U.S.A. Inc.; Docket No. CS71–761, Alison Suzanne Robertson Murphy and A & F Enterprises, Inc. (Alison Suzanne Robertson); Docket No. CS71–762, Corbin J. Robertson, Jr. and Bridgeport, Inc. (Corbin J. Robertson Jr.); Docket No. CS71–772, Elizabeth Robertson Geiselman and WRG, Inc. (Elizabeth Robertson Geiselman); Docket No. CS71–774, Carroll Christine Robertson Hochner & Ener Corp. (Carroll Christine Robertson); Docket No. CS71–779, Hugh Roy Marshall and HRM Enterprises Inc.; Docket No. CS71–778, Wilhelmina Anne Barnhart; Docket No. CS80–176, H & H Gas Co.; Docket No. CI71–726, McCulloc Oil & Gas Corp.; Docket No. CI72–294, Exxon Corp.; Docket No. CI75–338, American Petrofina Co. of Texas; Docket No. CI77–47, Exxon Corp.; Docket No. CI77–122, Exxon Corp.; Docket No. CI73–120, Anadarko Production Co.; Docket No. CI78–392, Cities Service Co.; Docket Nos. CI80–254 amd CI80–259, Ocean Production Co., et al.; Docket No. CI80–365, Conoco Inc.; Docket No. CI80–281, Marathon Oil Co.; Docket No. CI80–382, Shell Oil Co.; Docket No. CI80–383, Canadian Superior Oil (U.S.) Ltd.; Docket No. CI80–294, Texaco Inc.; Docket No. CI80–385, Alminex U.S.A., Inc.; Docket No. G–16388, The Superior Oil Co.; Docket No. CI80–286, Conoco Inc.; Docket No. CI80–355, Mesa Petroleum Co.; Docket No. CI80–359, Mesa Petroleum Co. (operator), et al.; Docket No. CI80–423, Diamond Shamrock Corp.; Docket Nos. CI80–452 and CI80–453, Aminoil U.S.A. Inc.; Docket No. CI80–476, Natresco Inc.; Docket No. CI80–477, The Superior Oil Co.; Docket No. CI73–119, Transocean Oil, Inc.
CAG–12. FERC gas rate schedule No. 89, the Superior Oil Co.
CAG–13. Docket No. RI79–2, Logue & Patterson, Inc.
CAG–14. Docket No. TC81–9–000, Texas Gas Transmission Corp.
CAG–15. Docket No. CP80–65, Tennessee Gas Pipline Co., a division of Tenneco Inc.; Docket No. CP80–260, Consolidated Gas Supply Corp.; Docket No. CP80–277, Honeoye Storage Corp.; Docket Nos. CP76–492, et al., National Gas Storage Corp.
CAG–16. Docket No. CP80–82, Michigan Wisconsin Pipe Line Co., Texas Eastern Transmission Corp. and Transcontinental Gas Pipe Line Corp.
CAG–17. Docket No. CP78–340, Trunkline Gas Co.
CAG–18. Docket No. CP80–257, Southern Natural Gas Co. and Florida Gas Transmission Co.
CAG–19. Docket No. CP80–335, Arkansas Louisiana Gas Co.
CAG–20. Docket Nos. CP66–110, et al., (CP66–121), Midwestern Gas Transmission Co.; Docket No. CP79–161, Midwestern Gas Transmission Co.; Docket Nos. CP66–110, et al., Great Lakes Gas Transmission Co.; Docket No. CP79–169, Michigan Wisconsin Pipe Line Co.
CAG–21. Docket Nos. CP66–110, CP70–100, CP71–299, CP70–19 and CP71–222, Great Lakes Transmission Co.
CAG–22. Docket No. CP70–19, Great Lakes Gas Transmission Co.

Power Agenda—467th Meeting, October 29, 1980, Regular Meeting

I. Licensed Project Matters

P–1. Project No. 3032, Riceland Electric Cooperative, C & L Electric Cooperative & Arkansas Electric Cooperative; Project No. 3144, Arkansas Power & Light Co.
P–2. Project No. 3042, Riceland Electric Cooperative, C & L Electric Cooperative & Arkansas Electric Cooperative Corp.; Project No. 3145, Arkansas Power & Light Co.
P–3. Project No. 3044, Arkansas Valley Electric Cooperative Corp. and Arkansas Electric Cooperative Corp.; Project No. 3148, Arkansas Power & Light Co.
P–4. Project No. 3045, Riceland Electric Cooperative, Arkansas Electric Cooperative Corp. and C & L Electric Cooperative; Project No. 3146, Arkansas Power & Light Co.
P–5. Project No. 2030, Portland General Electric Co.

II. Electric Rate Matters

ER–1. Docket Nos. ER77–488 and ER78–520 (phase II), El Paso Electric Co.
ER–2. Docket No. ER80–204, CP National Corp.
ER–3. Docket No. ER80–329, Central Power & Light Co.
ER–4. (A) Docket No. ER80–2011, Bonneville Power Administration (system rates); (B) E–9563, Bonneville Power Administration (wheeling rates).
ER–5. Docket No. RM79–29, amendments to part 35 of the regulations under the Federal Power Act; proposed limitation on adders for all electric rates; Docket Nos. ER80–782 and ER80–779, Commonwealth Edison Co.; Docket Nos. ER80–779 and ER80–749, Central Illinois Public Service Co.; Docket No. ER80–750, Public Service Co. of Indiana, Inc.; Docket No. ER80–733, Southern Indiana Gas & Electric Co.; Docket No. ER80–782, Wisconsin Power & Light Co.; Docket Nos. ER80–720, ER80–721 and ER80–722, Dayton Power & Light Co.; Docket No. ER80–721, Cincinnati Gas & Electric Co.; Docket No. ER80–726, Columbus & Southern Ohio Electric Co.; Docket No. ER80–726, Dayton Power & Light Co.; Docket No. ER80–662, Ohio Edison Co.; Docket No. ER80–646, Indiana & Michigan Electric Co.; Docket No. ER80–646, Central Illinois Public Service Co.; Docket No. ER80–732, Wisconsin Electric Power Co.; Docket No. ER80–732, Commonwealth Edison Co.; Docket Nos. ER80–747, ER80–748 and ER80–754, Central Illinois Public Service Co.; Docket No.

ER80–731, Illinois Power Co.; Docket No. ER80–678, Union Electric Co.; Docket No. ER80–678, Missouri Public Service Co.; Docket No. ER80–678, St. Joseph Light & Power Co.; Docket Nos. ER80–616, ER80–618, ER80–667 and ER80–668, Wisconsin Power & Light Co.; Docket Nos. ER80–616 and ER80–618, Wisconsin Public Service Corp.; Docket No. ER80–618, Madison Gas & Electric Co.; Docket No. ER80–667, Northern States Power Co. (Minnesota); Docket No. ER80–667, Northern States Power Co. (Wisconsin).

Miscellaneous Agenda—467th Meeting, October 29, 1980, Regular Meeting

M–1. Docket No. RM80–65, exemption from all or part of part 1 of the Federal power act of small hydroelectric power projects with an installed capacity of 5 megawatts or less.

M–2. Docket No. RM81– , eligibility, rate and exemptions of qualifying and utility-owned geothermal small power production facilities.

M–3. Reserved.

M–4. Reserved.

M–5. (A) Docket No. RM78–15, rules relating to investigations; (B) Docket No. RM81– , amendment to the standards of conduct.

M–6. Docket No. RM80–60, ex parte and separation of function rules.

M–7. Docket No. RM80–8, bona fide offers; right of first refusal.

M–8. (A) Docket No. RM80–50, high-cost natural gas: production enhancement procedures; (B) Docket No. RM80–14, final regulations under section 105 and 106(b) of the Natural Gas Policy Act of 1978; (C) Docket No. RM80–21, regulations under section 110, 105 and 106(b) of the Natural Gas Policy Act of 1978; (D) Docket No. SA80–90, American Petrofina Co. of Texas, et al.

M–9. Docket No. RM80–73, Natural Gas Policy Act of 1978, section 110, gathering allowance.

M–10. Docket No. RM80–74, Natural Gas Policy Act of 1978, section 110, compression allowance.

M–11. Docket No. RM80–11, statement of policy on distributor access to Outer Continental Shelf Gas

M–12. Docket No. GP80–6, Arkansas Louisiana Gas Co.; Docket No. GP80–7, Caprock Pipeline Co.; Docket No. GP80–28, Cimarron Transmission Co.; Docket No. GP80–31, Cities Service Gas Co.; Docket No. GP80–8, Colorado Interstate Gas Co.; Docket No. GP80–11, Columbia Gas Transmission Corp.; Docket No. GP80–12, Consolidated Gas Supply Corp.; Docket No. GP80–45, Eastern Shore Natural Gas Co.; Docket No. GP80–40, El Paso Natural Gas Co.; Docket No. GP80–9, Equitable Gas Co.; Docket No. GP80–29, Florida Gas Transmission Co.; Docket No. GP80–39, Kentucky-West Virginia Gas Co.; Docket No. GP80–4, Louisiana-Nevada Transit Co.; Docket No. GP80–14, McCulloch Interstate Gas Co.; Docket No. GP80–16, Mid-Louisiana Gas Co.; Docket No. GP80–17, Mississippi River Transmission Corp.; Docket No. GP80–32, Montana-Dakota Utilities Co.; Docket No. GP80–30, Mountain Fuel Supply Co.; Docket No. GP80–5, Natural Gas Pipeline Co., of America; Docket No. GP80–44, Natural Fuel Gas Supply Corp.; Docket No. GP80–43, Northern Natural Gas Co.; Docket No. GP80–36, Northwest Pipeline Corp.; Docket No. GP80–37, Oklahoma Natural Gas Gathering Corp.; Docket No. GP80–18, Pacific Gas Transmission Co.; Docket No. GP80–19, Panhandle Eastern Pipe Line Co.; Docket No. GP80–33, South Texas Natural Gas Co.; Docket No. GP80–35, Southern Natural Gas Co.; Docket No. GP80–20, Tennessee Gas Pipeline Co.; Docket No. GP80–21, Texas Eastern Transmission Corp.; Docket No. GP80–22, Texas Gas Pipe Line Corp.; Docket No. GP80–23, Texas Gas Transmission Corp.; Docket No. GP80–25, Transwestern Pipeline Co.; Docket No. GP80–26, Trunkline Gas Co.; Docket No. GP80–34, West Texas Gathering Co.; Docket No. GP80–27, Western Gas Interstate Co.; Docket No. GP80–10, Western Transmission Corp.; Docket No. GP80–38, Zenith Natural Gas Co.; Docket No. GP80–13, Kansas-Nebraska Natural Gas Co.

M–13. Docket No. RM79–21, regulations implementing alternative fuel price ceilings on incremental pricing under the Natural Gas Policy Act of 1978.

Gas Agenda—467th Meeting, October 29, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP78–58, Valero Interstate Transmission Co. (formerly South Texas Natural Gas Gathering Co.).

II. Producer Matters

CI–1. Docket Nos. CI79–178, CI78–1268, CI79–200, CI78–1251, CI78–1272, CI78–816, G–11083, et al., CI75–16, et al., Exxon Corp.; Docket Nos. CI78–180, et al., CI78–532, CI79–519, and CI79–522, Texaco Inc.; Docket No. G–5010, et al., Exxon Corp.; Docket No. CI79–512, Exxon Corp.; Docket No. CI79–593, Texaco Inc.; Docket No. CI78–713, Champlin Petroleum Co.; Docket Nos. CI79–309 and CI79–153, Gulf Oil Corp.; Docket Nos. CI79–620 and CI80–55, Exxon Corp.; Docket Nos. CI77–797, CI79–461, CI79–529, CI79–485, CI78–736, CI79–126, CI79–44, CI78–519, CI79–631, and FERC gas rate schedule No. 89, Gulf Oil Corp.; Docket No. CI79–537, Texaco Inc.; Docket No. CI80–59, Exxon Corp.; FERC gas rate schedule No. 12, et al., Gulf Oil Corp.; FERC gas rate schedule No. 316, et al., Gulf Oil Corp.; FERC gas rate schedule Nos. 9 and 271, et al., Gulf Oil Corp.; Docket Nos. CI78–1232, CI78–1173, CI78–604, G–14515, CI77–123, CI78–674, CI78–993, G–12154, and CI75–22, Gulf Oil Corp.; FERC gas rate schedule Nos. 590, 599, 624, and 272, Gulf Oil Corp; Docket Nos. CI79–249, CI76–215, CI76–239, CI77–263, and CI80–189, Gulf Oil Corp.; Docket No. CI80–147, Louisiana Land Offshore Exploration Co. Inc.; Docket No. CI76–783, Arkla Exploration Co.; Docket No. CI79–648, Champlin Petroleum Co.; Docket Nos. CI79–522 and CI79–553, Exxon Corp.; Docket No. CI79–514, the Louisiana Land & Exploration Co.; Docket No. CI80–204, Aminoil of Louisiana Inc.; Docket No. CI78–1128, Arkla Exploration Co.; Docket Nos. CI80–43, CI79–103, CI79–199 and CI64–349, Exxon Corp.; FERC gas rate schedule No. 273, et al., Gulf Oil Corp.; FERC gas rate schedule No. 42, et al., Warren Petroleum Co., a division of Gulf Oil Corp.; FERC gas rate schedule Nos. 150, 348, 533, 49, 84, 93, 110, 311, 426, 455, 594, 502, and 543, et al., Gulf Oil Corp.; Docket No. CI80–325, Gulf Oil Corp; Docket Nos. CI80–237, CI77–689, G–15058, et al., CI80–177, CI80–248, CI80–298 and CI79–220, Exxon Corp.; Docket Nos. CI80–306, CI80–324 and CI80–332, Texaco Inc.; FERC gas rate schedule Nos. 42, 55, 67 and 22, Warren Petroleum Co.; Docket No. CI80–457, Aminoil USA, Inc.; FERC gas rate schedule Nos. 87, 92, 130, 142, 159, 160, 197, 498, 503 and 530, Gulf Oil Corp.; Docket No. CI80–294, Texaco Inc.

CI–2. Docket No. CI79–355, Conoco Inc.; Docket Nos. CI79–282, CI79–284 and CI79–285, Tenneco Exploration, Ltd.; Docket No. CI79–283, Tenneco Exploration II, Ltd.; Docket No. CI79–286, Tenneco Oil Co.; Docket Nos. CI78–473, CI78–485 and CI78–486, Texaco Inc.; Docket No. CI79–522, Texaco, Inc.

CI–3. Docket Nos. CI77–298 and IN79–3, Tenneco Inc., et al.; Docket Nos. G–3973, G–7368, G–11936, G–11943 and G–11946, Mobil Oil Corp.

CI–4. Docket Nos. RI74–188 and RI75–21, Independent Oil & Gas Association of West Virginia.

III. Pipeline Certificate Matters

CP–1. Docket No. TC80–93, Mid Louisiana Gas Co.

CP–2. Docket No. CP80–135, Northern Natural Gas Co., a division of internorth, Inc.

CP–3. Docket No. CP80–347, Natural Gas Pipeline Co. of America.

CP–4. Docket No. CP79–402, Lone Star Gas Co., a division of Enserch Corp.

CP–5. (A) Docket Nos. CP78–123, et al., Northwest Alaskan Pipeline Co.; Docket No. CP78–124, Northern Border Pipeline Co.; Docket No. CP79–60, Pacific Gas Transmission Co.; (B) Delegation to the Federal inspector of certain authority under section 4, 5, 7 and 8 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary

[S–1960–80 Filed 10–23–80; 11:19 am]

BILLING CODE 6450–85–M

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FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 45, issue N. 204, page No. 69340, published: Monday, October 20, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OR MEETING: 9:30 a.m., October 23, 1980.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202–377–6677).

CHANGES IN THE MEETING: The following items have been withdrawn from the open meeting:

Branch Office Application—First Federal Savings & Loan Association of Lake Worth, Lake Worth, Florida.
Application for Bank Membership and Insurance of Accounts—Superior Savings & Loan Association, Los Angeles, California.

No. 411, October 23, 1980.

[S–1959–80 Filed 10–23–80; 10:32 am]
BILLING CODE 6720–01–M

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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: Thursday, October 16, 1980.

CHANGES IN THE MEETING: Additional meeting/deletion. The following item will be considered by the Commission at a closed meeting scheduled for Wednesday, October 22, 1980, at 9:30 a.m.

Regulatory matters bearing enforcement implications.

The following item was not considered at a closed meeting scheduled for Wednesday, October 22, 1980, following the 10:00 a.m. open meeting:

Regulatory matters bearing enforcement implications.

Chairman Williams and Commissioners Loomis, Evans and Friedman 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: Marcia MacHarg at (202) 272–2468.

October 22, 1980.

[S–1962–80 Filed 10–23–80; 12:48 pm]
BILLING CODE 8010–01–M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
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

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

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 Friday, October 24, 1980

Note: The **Rules Going Into Effect Today** listing appearing in the issue for Friday, October 24, 1980, incorrectly contains entries which will not be effective until November 24, 1980. Please disregard those items. The correct entries for October 24, 1980 are the following:

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

63432 9–24–80 / Residential Conservation Service Program; final and interim rules

FEDERAL COMMUNICATIONS COMMISSION

63279 9–24–80 / FM broadcast station in Ackerman, Miss.; changes in table of assignments

61633 9–17–80 / FM broadcast station in Effingham, Ill.; changes in table of assignments

61633 9–17–80 / FM broadcast station in Hudson Falls, N.Y.; changes in table of assignments

61632 9–17–80 / FM broadcast station in Iron River, Mich. and Crandon, Wis.; changes in table of assignments

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

62978 9–23–80 / D&C Violet No. 2; listing of color additives subject to certification

Rules Going Into Effect Sunday, October 26, 1980

TRANSPORTATION DEPARTMENT

Office of the Secretary—

63493 9–25–80 / Relocation of the boundary line of the Pacific time zone to include Juneau, Alaska, and parts of the surrounding area.

Rules Going Into Effect Today

COMMERCE DEPARTMENT

International Trade Administration—

63836 9–26–80 / Implementation of Export Administrative Act of 1970, additional amendments to regulations

ENERGY DEPARTMENT

Conservation and Solar Energy Office—

64108 9–26–80 / Energy conservation program for consumer products; waiver of consumer test procedures

ENVIRONMENTAL PROTECTION AGENCY

63843 9–26–80 / Air quality; ozone attainment status designation of Chatham County, Ga.

50086 7–28–80 / Assessment and collection of noncompliance penalties by EPA and approved of State noncompliance penalty program

FEDERAL COMMUNICATIONS COMMISSION

63490 9–25–80 / Clarification by the relationship between open Commission meetings and other procedural and pleading rules

63857 9–26–80 / Radio broadcast services. Separate operation of visual and aural transmitters of TV station

63280 9–24–80 / Specification of circumstances under which class II-B public coast stations may be exempt from watch requirements on 156.8MHz

INTERIOR DEPARTMENT

Fish and Wildlife Services—

63812 9–25–80 / Endangered and threatened wildlife and plants; listing as threatened with critical habitat for the Coachella Valley Fringed-toed lizard

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 October 24, 1980

PRINCIPLES OF REGULATIONS WRITING SEMINAR

WHAT: The aim of the seminar is to improve the quality of Federal regulations by teaching how to design and draft clear regulations.

The Principles of Regulations Writing Seminar covers the following concepts:

1. How to prepare for drafting: adopting a style manual, knowing your audience.
2. How to draft a regulation: organizing a regulation to make it easier for the reader, using consistent clear language, avoiding jargon and legalese, and reviewing and redrafting systematically.
3. How to prepare a regulation to comply with **Federal Register** publication requirements: writing an effective preamble and explaining how the regulation amends the Code of Federal Regulations.

WHO: Any Federal employee who drafts documents or who reviews for substance documents that are published in the **Federal Register.**

WHEN: November 19, 1980; January 21, 1981; February 25, 1981; May 13, 1981

HOW: Register for the class by sending a training authorization form to us. After we receive your training authorization form, we will mail you a confirmation letter that will serve as an admission ticket to the class. Tuition will not be charged for an applicant who cancels a confirmed reservation five work days before the day of the class. Someone may substitute for the applicant if the agency training office approves.

WHERE: Send your training form to: Principles of Regulations Writing Seminar, Office of the Federal Register, NARS, Washington, D.C. 20408. The class will be held in Washington, D.C., at 1100 L Street N.W. in Room 9407.

COST: $75 for each person.

FOR MORE INFORMATION: Phone Viola Wilson (202) 523–5240.

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federal register

Book 2 of 2 Books
Monday, October 27, 1980

71088 Part II—Commerce:
Improving Government Regulations; Inventory of Regulations

71140 Part III—Interior/BLM:
Outer Continental Shelf; Central and Northern California, Proposed Oil and Gas Lease Sale No. 53

71156 Part IV—DOT/FAA:
U.S. National Aviation Standard; Active Beacon Collision Avoidance System

71195 Part V—DOT/FAA:
Completion of Airworthiness Review Program

71198 Part VI—USDA/AMS:
Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

71236 Part VII—DOT/Sec'y:
Washington National Airport; Special Air Traffic Rules and Airport Traffic Patterns; Proposed Rulemaking

71251 Part VIII—DOT/FAA:
Metropolitan Washington Airports, Future Operation and Development; Delay in Implementation of Policy and Regulations

71254 Part IX—DOE:
Organization and Functions of the Department of Energy; Proposed Rulemaking

71266 Part X—DOD/Army/EC
Amendments to Real Estate Handbook

71314 Part XI—DOE:
International Energy Program; Voluntary Agreement and Plan of Action; Approvals by the Deputy Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

71326 Part XII—DOE:
Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analysis (Average Fuel Cost); Correction and Extension of Comment Period

Legal

federal register

Monday
October 27, 1980

Part II

Department of Commerce

Improving Government Regulations; Inventory of Regulations

DEPARTMENT OF COMMERCE

13 CFR Ch. V

15 CFR Chs. I–IV; VI; VIII; IX; XII

19 CFR Ch. III

32A CFR Ch. XVIII

37 CFR Ch. I

44 CFR Ch. IV

46 CFR Ch. II; III

50 CFR Ch. II–IV; VI

Improving Government Regulations; Inventory of Regulations

AGENCY: U.S. Department of Commerce.

ACTION: Inventory of regulations for review under E.O. 12044.

SUMMARY: The Department of Commerce (DOC) has developed an Inventory of Regulations as a basis for reviewing regulations that are subject to Executive Order (E.O.) 12044, "Improving Government Regulations." The Inventory includes a list of both "significant" and "nonsignificant" rules and regulations to be reviewed by DOC. The Inventory is intended to facilitate comments and views by interested public parties on the Department's regulatory review efforts.

FOR FURTHER INFORMATION CONTACT: For information about specific regulations, please refer to the "agency contact" listed below each entry.

For information on the Inventory of Regulations generally contact: Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2482.

For information on this edition of the Inventory of Regulations contact: Roger J. Mallet, Senior Economist, Office of Regulatory Policy, U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2153.

SUPPLEMENTARY INFORMATION: On March 23, 1978, President Carter signed E.O. 12044, "Improving Government Regulations." To comply with the Executive Order, DOC published in the **Federal Register** (44 *FR* 2082 January 9, 1979) Department Administrative Order (DAO) 218–7, "Issuing Departmental Regulations." The DAO, including appendices, establishes the overall procedures to be followed by the Department units in developing and promulgating regulations, as well as the procedures to be followed in reviewing existing regulations. The DAO further directs Department units to review their "significant" regulations once every four years.

In addition to providing broad guidelines for determining which regulations should be treated as "significant", E.O. 12044 directed each agency to develop specific criteria for identifying significant regulations. In developing regulatory review programs, each Department unit head is directed by DAO 218–7 to consider:

- The continued need for the regulation;
- The type and number of complaints or suggestions received since the regulation was adopted or last reviewed;
- The need to simplify or clarify language;
- The need to eliminate overlapping and duplicative regulations; and
- The length of time since the regulation has been evaluated or the degree to which technology, economic conditions or other factors have changed.

Department unit heads are further required to ensure that regulations selected for review are included in a notice of review in DOC's semiannual Agenda of Regulations, and that a regulatory analysis is prepared for those regulations determined to be "major." Further criteria are provided in the appendices to the DAO.

The Office of the Assistant Secretary for Policy is responsible for Department oversight on E.O. 12044. The Deputy Assistant Secretary for Regulatory Policy, through the Office of Regulatory Policy (ORP), coordinates regulatory activities and monitors DOC progress and compliance with the Executive Order.

DOC's Inventory of Regulations is not required by the Executive Order. The Inventory is the result of departmental efforts, initiated by ORP, to improve regulatory programs. In the Department's review, a central directory of regulations is a necessary management tool for overseeing and coordinating DOC's diverse regulatory responsibilities.

The Inventory serves a threefold purpose. First, the Inventory provides a central directory of regulations and their relative importance. Second, the Inventory provides a data base for response to more detailed reporting, compliance and management requirements. Third, the Inventory provides DOC with a summary of its total regulatory review activities as well as the necessary information to determine whether Department units are making progress in reviewing their existing regulations in a timely and logical sequence.

The Inventory organizes DOC regulations by programmatic activities within Department units. It consists of Schedules A and B:

- Schedule A provides a list of rules and regulations determined to be "significant" by the Department units. The schedule provides the title of the regulation, agency contact, and the date the regulation was last reviewed, or if not, when the unit will review the regulation. The schedule also indicates the date the Department unit expects to publish a notice of proposed rulemaking in the **Federal Register** if it believes changes will be made in the regulation. Also, the schedule identifies regulations which require a regulatory analysis or which are possible candidates for elimination.
- Schedule B provides a list of rules and regulations determined to be "nonsignificant" by the Department units. This schedule provides the title of the regulation, agency contact, and anticipated date of review.

Schedules A and B also provide rankings of the relative importance of each regulation and the degree of improvement that is anticipated once the regulation is reviewed by the Department unit. An explanation of the Department's ranking scheme is given in the "Explanation of Information" section.

The Department is committed to review "significant" regulations once every four years. The current review cycle for significant regulations ends December 1982.

A total of 241 regulations are listed in the Inventory.[1] Of this total 90 regulations are considered to be "significant." The remaining 151 regulations are considered to be "nonsignificant."

List of Abbreviations

The following Department units have reported regulations in this Inventory:

ADMIN—Assistant Secretary for Administration
EDA—Economic Development Administration
ITA—International Trade Administration
MARAD—Maritime Administration
NOAA—National Oceanic and Atmospheric Administration

[1] The Economic Development Administration's (EDA) regulations are not included in the Inventory. EDA is awaiting congressional action on amendments to its basic statutory authority, the Public Works and Economic Development Act of 1965. The amendments will provide EDA with new program authorities which will require EDA to revise most of its regulations. In light of this, EDA believes that it is best to postpone publication of an Inventory of EDA's regulations.

OMB—Office of Management and Budget
NMFS—National Marine Fisheries Service
OCZM—Office of Coastal Zone Management
NTIA—National Telecommunications and Information Administration
OCE—Office of the Chief Economist
BEA—Bureau of Economic Analysis
CENSUS—Bureau of the Census
OFSPS—Office of Federal Statistical Policy and Standards
OADS—Office of Associate Deputy Secretary
ORD—Office of Regional Development
PTI—Assistant Secretary for Productivity, Technology and Innovation
NBS—National Bureau of Standards
NTIS—National Technical Information Service
PTO—Patent and Trademark Office
USTS—United States Travel Service

Explanation of Information

The Department units ranked the "importance" and the "margin for regulatory improvement" of each regulation. The "importance" of each regulation is ranked on a scale of 1–5. The larger the number, the more important it is. The "margin for regulatory improvement" is ranked on a scale of A–C. The letter following the numerical ranking indicates the potential "margin for regulatory improvement," (A=low, B=moderate, and C=high).

The "importance" and "margin for regulatory improvement" are determined on the basis shown below:

Ranking and Determination of "Importance"

1—The regulation is not significant to the agency or the public.
2—The regulation is significant to the agency but not significant to the public.
3—The regulation is not significant to the agency but is significant to the public.
4—The regulation is significant to the public and requires a regulatory analysis according to the Department unit criteria contained in DAO 218–7.
5—The regulation is significant to the public and will likely receive broad public attention; *or* the annual economic impact associated with the regulation is estimated to reach the $100 million threshold figure in E.O. 12044 for performing a regulatory analysis.

Ranking and Determination of "Margin for Regulatory Improvement"

A—A review will likely lead to few or no changes in the existing regulation, either in language or in substance.
B—A review will lead to substantive changes in the regulation; *or* a major rewriting of the regulation may occur to improve its clarity and understandability to the public.
C—A review will lead to major changes in the regulation to make it more cost effective and less burdensome on the public; *or,* the regulation is no longer warranted and should be eliminated.

Table I summarizes the number and ranking of regulations reported by each Department unit.

Public Comments

The inventory of Regulations is published to provide the public with an early opportunity to comment on the regulatory reviews being undertaken by the Department units. In particular, DOC would like to solicit comments on the following questions: (1) Which regulations should be reviewed together because they are closely related? (2) Which regulations present the most problems to the public in terms of compliance costs or reporting? (3) Which regulations are candidates for possible elimination? (4) Which regulations should be subject to a regulatory analysis?

Please send us any comments and suggestions that you may have on this Inventory. Comments should be submitted by November 30, 1980 to: Robert T. Miki, Deputy Assistant Secretary for Regulatory Policy (Acting), U.S. Department of Commerce, Washington, D.C. 20230, (202) 377–2482.

Jerry J. Jasinowski,
Assistant Secretary for Policy.

Table I.—*Summary of DOC's Inventory of Regulations*

Department unit	Regulations ranked according to—[1] Regulatory importance Rank	Regulatory importance Number	Margin for regulatory improvement Rank	Margin for regulatory improvement Number
ADMIN	1	6	A	7
	2	0	B	1
	3	3	C	1
	4	0		
	5	0		
EDA[2]	NA	NA	NA	NA
ITA	1	21	A	4
	2	0	B	16
	3	0	C	4
	4	1		
	5	2		
MARAD	1	17	A	38
	2	37	B	30
	3	3	C	9
	4	0		
	5	20		
MBDA	(3)	(3)	(3)	(3)
NOAA/OMB	1	0	A	3
	2	2	B	0
	3	1	C	0
	4	0		
	5	0		
NOAA/NMFS	1	17	A	51
	2	15	B	14
	3	20	C	8
	4	16		
	5	5		
NOAA/OCZM	1	0	A	8
	2	9	B	2
	3	0	C	2
	4	2		
	5	1		
NTIA	1	0	A	0
	2	0	B	1
	3	0	C	0
	4	0		
	5	0		
4		0		
	5	1		
OCE/BEA	1	3	(4)	(4)
	2	1	(4)	(4)
	3	2	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OCE/BIE	1	0	(3)	(3)
	2	0	(3)	(3)
	3	1	(3)	(3)
	4	0	(3)	(3)
	5	0	(3)	(3)
OCE/CENSUS	1	1	(4)	(4)
	2	1	(4)	(4)
	3	6	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
OCE/OFSPS	1	0	(3)	(3)
	2	1	(3)	(3)
	3	0	(3)	(3)
	4	0	(3)	(3)
	5	0	(3)	(3)
OADS	1	0	A	0
	2	1	B	0
	3	0	C	1
	4	0		
	5	0		
ORD	1	8	A	1
	2	7	B	8
	3	0	C	6
	4	0		
	5	0		
PTI/NBS	1	2	(4)	(4)
	2	0	(4)	(4)
	3	0	(4)	(4)
	4	0	(4)	(4)
	5	0	(4)	(4)
PTI/PTO	1	1	A	2
	2	0	B	4
	3	1	C	1
	4	0		
	5	5		
USTS	1	1	A	0
	2	0	B	1
	3	0	C	0
	4	0		
	5	0		

[1] See explanation of criteria for rankings in the text. Ranking for "Regulatory Importance" is on a scale of 1 to 5 with 1 indicating the least important and 5 indicating the most important. For ranking of "Margin for Regulatory Improvement", a scale of A to C was employed, with the greatest degree of improvement expected as the "C" level.
[2] EDA has not completed its Inventory of Regulations. Its basic legislation, the Public Works and Economic Development Act of 1965, is currently under review by Congress.
[3] Unit has no regulations.
[4] All regulations have been reviewed.
[5] Regulation has been reviewed.

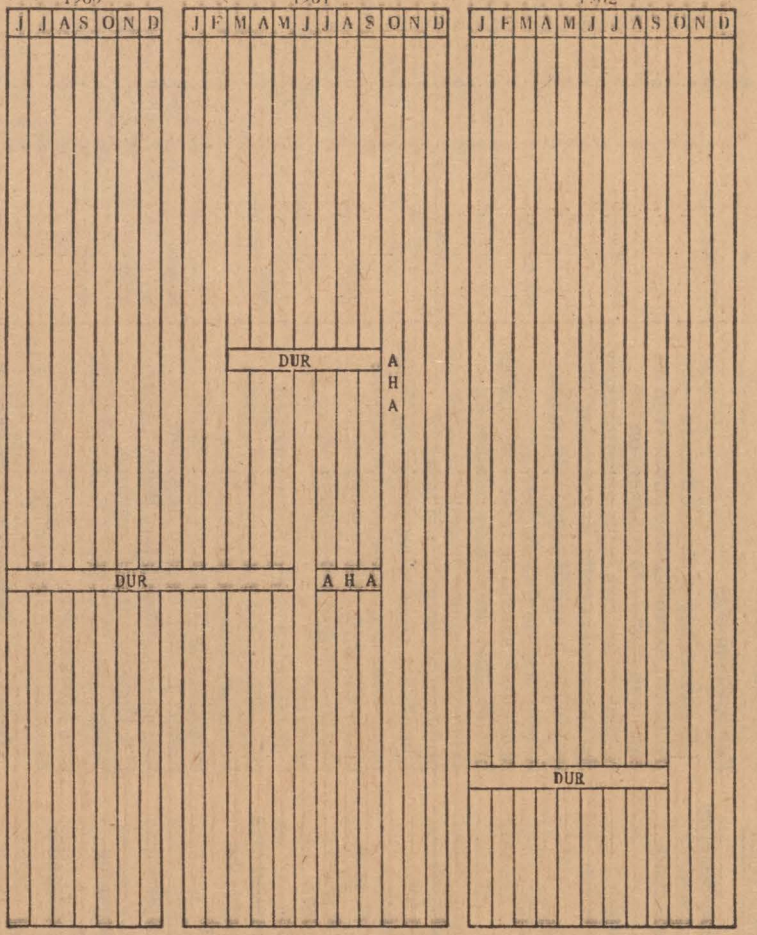
BILLING CODE 3510-BT-M

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Federal Register Notice [2]
ADMIN 101S	Public Information (Freedom of Information)(15 CFR 4.1-9) CONTACT: Marilyn McLennan Office of Organization and Management Systems (202) 377-4217	3/A	February 1980	--
ADMIN 102S	Privacy Act (15 CFR 4b.1-14) CONTACT: Marilyn McLennan (202) 377-4217	3/A	March 1980	--
ADMIN 103S	Nondiscrimination in Federally Assisted Programs of the Department of Commerce: Effectuation of Title VI of the Civil Rights Act of 1964 (15 CFR 8.1-15) CONTACT: Calvin Brooks Office of Civil Rights (202) 377-3940	3/A	February 1979	July 1981
ITA 501S	Export Administration Regulations (15 CFR Parts 368 and 370-399) CONTACT: Kent Knowles Office of Export Administration (202) 377-4293	4/B**	Under Review	Fall 1981
ITA 502S	Restrictive Trade Practices or Boycotts (15 CFR Part 369) CONTACT: Richard Seppa Office of Anti-boycott Compliance (202) 377-5914	5/A	1977	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

[2] Anticipated date of Federal Register notice indicates that a regulation will be revised, modified, or terminated. Absense of a date indicates that the Department unit does not anticipate changes in substance or language.

* Review may lead to elimination of the regulation.

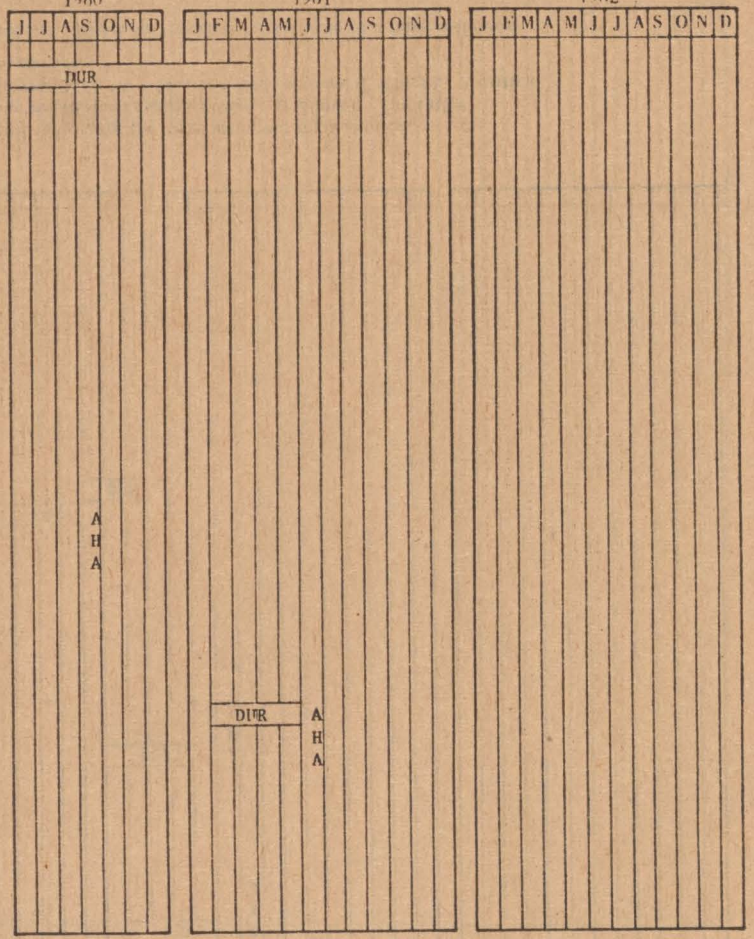
** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Federal Register Notice [2]
ITA 503S	Antidumping Duties and Countervailing Duties (19 CFR Parts 353 and 355) CONTACT: B. Waring Partridge Deputy to the Dep. Asst. Secy. for Import Administration (202) 377-1780	5/A	Under Review	--
MARAD 701S	Rules of Practice and Procedure Before MARAD and the Maritime Subsidy Board (46 CFR Part 201) CONTACT: M. F. McMorrow Office of the General Counsel (202) 377-2751	5/B	1979	NPRM -- Published June 25, 1979
MARAD 702S	Procedures for Review by the Secretary of Commerce of Actions by the Maritime Subsidy Board (46 CFR Part 202) CONTACT: R. J. Patton, Jr., Secretary Maritime Subsidy Board (202) 377-2056	5/B	Spring 1980	October 1980
MARAD 703S	Statistical Data Required for Use in Operating-Differential Subsidy Application Hearings (46 CFR Part 207) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	5/A	1976	July 1981

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

[2] Anticipated date of Federal Register notice indicates that a regulation will be revised, modified, or terminated. Absense of a date indicates that the Department unit does not anticipate changes in substance or language.

* Review may lead to elimination of the regulation.

** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)

Title/Description	Rank 1/	Last Reviewed	1980 J J A S O N D	1981 J F M A M J J A S O N D	1982 J F M A M J J A S O N D	Federal Register Notice 2/
MARAD 704S Approval of Certain Vessel Transfers or Charters; Citizenship Declarations by Owners or Mortgagees; Uniform Bareboat Charter Agreement; Fees for Processing Vessel Transfer Applications (46 CFR Part 221) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	5/B	Under Review Sections 221.4, 221.7 and Appendix 1979 - Section 221.14 Remaining Sections to Part 221 Reviewed Over Period 1962-1968	DUR A H A	DUR A H A		October 1980 -- April 1981
MARAD 705S Participation by Vessels Built with Construction-Differential Subsidy in the Carriage of Oil from Alaska in the Domestic Trade (46 CFR Part 250) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	5/B	1977	DUR	A H A		April 1981
MARAD 706S Application for Subsidies and Other Direct Financial Aid; Charges for Processing Applications to Transfer Ownership or Vessels Built with Construction-Differential Subsidy (46 CFR Part 251) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797 J. B. Young Office of Trade Studies and Statistics (202) 377-4758	5/B	1974	DUR	A H A		Unknown

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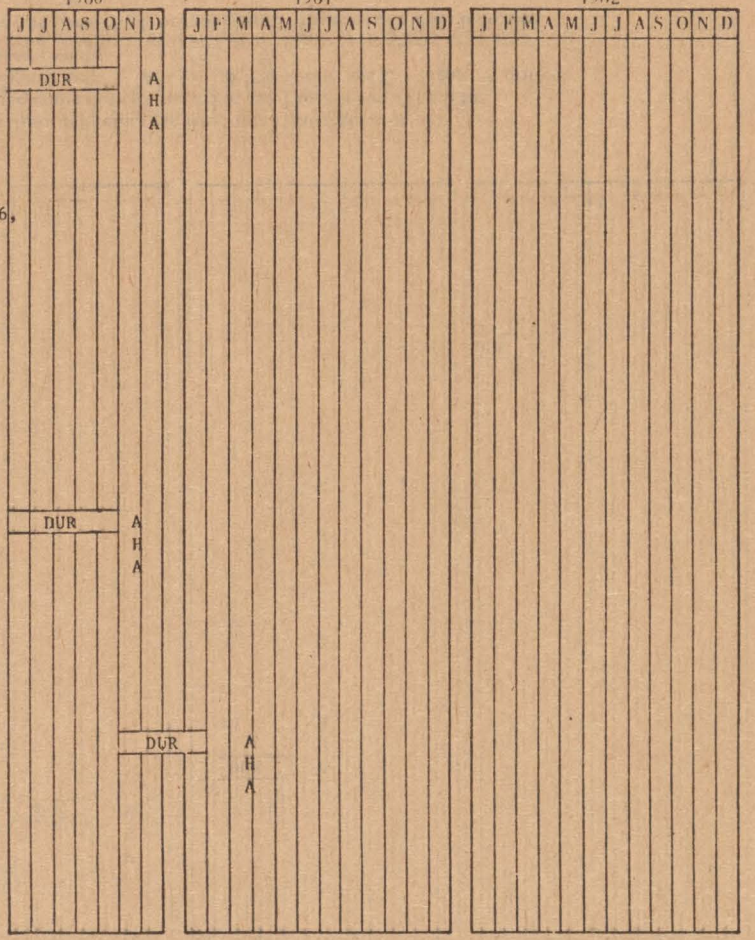
** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)	Federal Register Notice 2/
MARAD 707S — Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Worldwide Services (46 CFR Part 252) CONTACT: F. R. Larson, Office of Ship Operating Costs, (202) 377-5532	5/B	1979-Section 252.21 Final Rule, May 8, 1980; Sections 252.22 and 252.31 Final Rule February 6, 1980	DUR; AHA	December 1980 (Major revisions to be made to entire Part 252)
MARAD 708S — Policy and Procedure Regarding Conduct of Subsidy Condition Surveys and Accomplishment of Subsidized Vessel Maintenance and Repairs (46 CFR Part 272) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157	3/B	1979-1980		Proposed Amendments to be Published October 1980
MARAD 709S — Construction-Differential Subsidy Repayment: Total Repayment Policy and Procedure (46 CFR Part 276) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797	3/C**	Under Review	DUR; AHA	Unknown - NPRM Published May 5, 1980 (Reconsideration is being given to policy in proposed revision to regulations)
MARAD 710S — Employment in the Foreign-to-Foreign Trade of Liquid and Dry Bulk Vessels Constructed with the Aid of Construction-Differential Subsidy (46 CFR Part 278) CONTACT: E. A. Uttridge, (202) 377-3797	5/B	1973	DUR; AHA	April 1981



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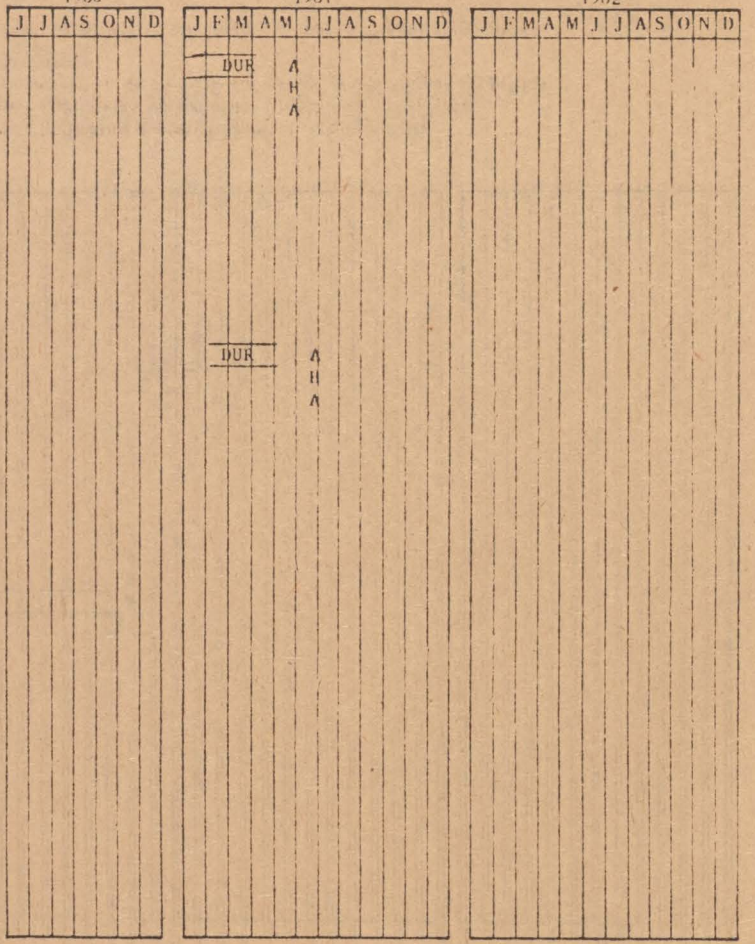
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Federal Register Notice [2]
MARAD 711S	Operating-Differential Subsidy for Bulk Cargo Vessels in United States Foreign Commerce on the Great Lakes, Connecting Rivers, St. Lawrence River, Gulf of St. Lawrence (46 CFR Part 279) CONTACT: F. R. Larson Office of Ship Operating Costs (202) 377-5532	5/A	1972	June 1981
MARAD 712S	Limitations on the Award and Payment of Operating-Differential Subsidy for Liner Operators (46 CFR Part 280) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	5/B	1977	July 1981
MARAD 713S	Conservative Dividend Policy Restrictions on Cash Dividend Payments by Vessel Operators Under Operating-Differential Subsidy Agreements (46 CFR Part 283) CONTACT: E. A. Uttridge (202) 377-3797	5/A	1979	Final Rule June 3, 1980
MARAD 714S	Insurance Requirements for Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels and of Vessels Sold or Adjusted Under the Merchant Ship Sales Act of 1946 (46 CFR Part 289) CONTACT: K. H. Green Office of Maritime Insurance (202) 377-4820	3/A	1980	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice [2]
MARAD 715S	Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in Carrying Bulk Raw and Processed Agricultural Commodities from the United States to the Union of Soviet Socialist Republics (46 CFR Part 294) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	5/B	Various Sections 1974-76	1981: DUR; A H A	May 1981
MARAD 716S	Obligation Guarantee Program (46 CFR Part 298) CONTACT: E. Fitzgerald Office of Ship Financing Guarantees (202) 377-3773 E. L. Loe Office of Financial Management (202) 377-3824	5/A	1977	1982: DUR; A H A	1982
MARAD 717S	Valuation of War Risk Hull Insurance (46 CFR Part 309) CONTACT: K. H. Green Office of Maritime Insurance (202) 377-4820	5/A	1974	1981: DUR; A H A	May 1981
MARAD 718S	Merchant Marine Training at U.S. Merchant Marine Academy and State Maritime Academies and Colleges (46 CFR Part 310) CONTACT: A. Friedberg Office of Maritime Manpower (202) 377-3018	5/B	Under Review	1980: DUR; A H A	November 1980

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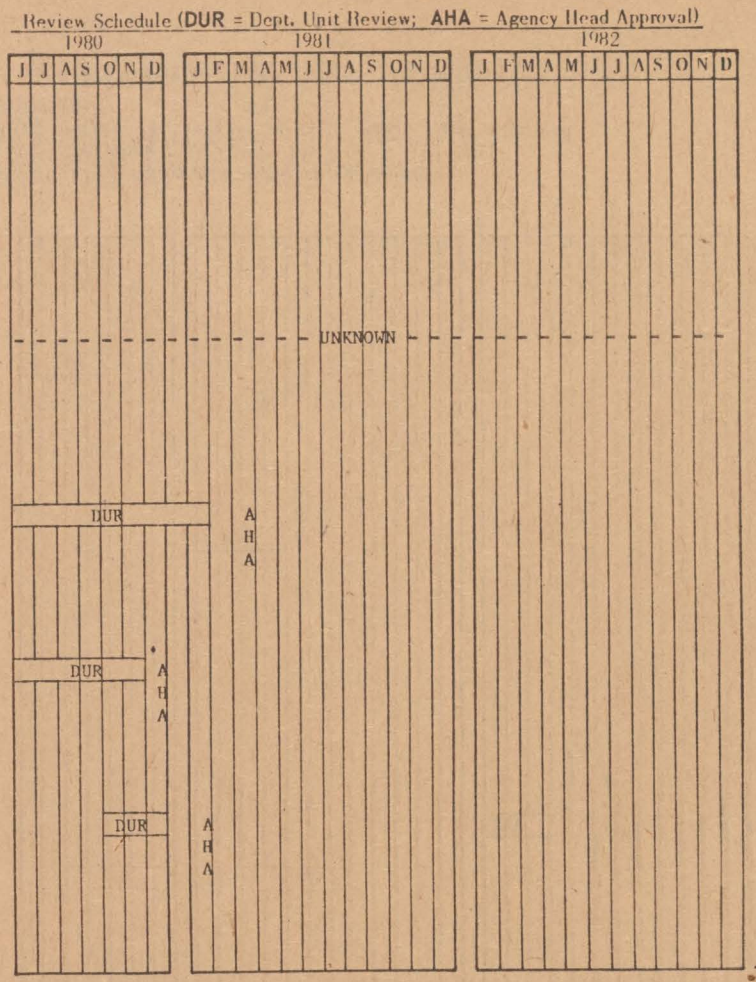
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
MARAD 719S	Requirements for Establishing United States Citizenship to Qualify for Participation in MARAD Financial Assistance Programs (46 CFR Part 355) CONTACT: D. Lansberry, Office of the General Counsel, (202) 377-3235	5/B	1979	Proposed Revisions Published October 5, 1979
MARAD 720S	Cargo Preference - U.S. Flag Vessels (46 CFR Part 381) CONTACT: L. C. Paine, Office of Market Development, (202) 377-3325	5/B	1977	Unknown
MARAD 721S	Capital Construction Fund Program (46 CFR Part 390) CONTACT: E. A. Uttridge, Office of Subsidy Contracts, (202) 377-3797	5/B	1976	March 1981
MARAD 722S	Federal Income Tax Aspects of the Capital Construction Fund (46 CFR Part 391) CONTACT: E. A. Uttridge, (202) 377-3797	5/A	1976	January 1981
MARAD 723S	Radar Observer Certificates, Ship's Safety, and Use of Radar (32A CFR Part 1867) CONTACT: B. T. Kyle, Office of Ship Operations, (202) 377-5157	5/B	1960	Feb. 1981-[Rev. of remaining Natl. Shipping Regs. to be Initiated Oct. 1981 (32A CFR Ch. XVIII to be transferred to 46 CFR to accomodate Ofc. of Fed. Reg.)]



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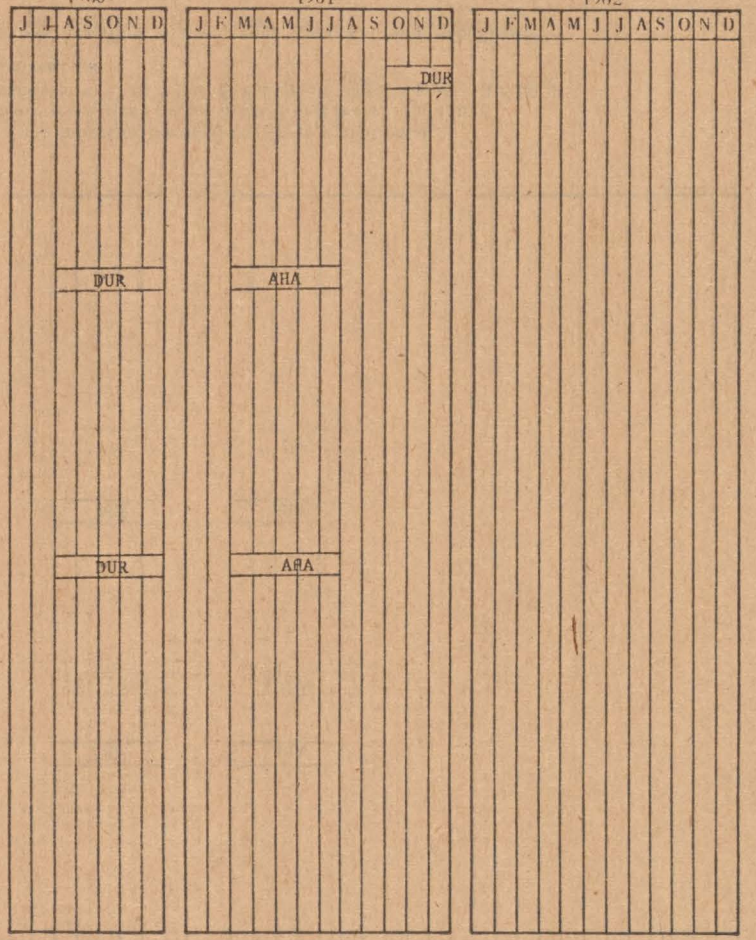
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank [1]	Last Reviewed	Federal Register Notice [2]
NOAA/ OMB 1101S — Uniform Relocation Assistance and Real Property Acquisition Policies (15 CFR Part 916) CONTACT: Edwin F. McCann, Office of Administrative Operations, (301) 443-0134	3/A	Unknown	--
NOAA/ NMFS 1301S — Marine Mammals: Pribilof Islands (General) (50 CFR Part 215, Subpart A) CONTACT: Georgia Cranmore, Office of Marine Mammals and Endangered Species, (202) 634-7471 Walter Kirkness, Pribilof Islands Program, (206) 399-7777	3/B	Under Review	September 1981
NOAA/ NMFS 1302S — Marine Mammals: Pribilof Islands Public Display of Living Fur Seals (50 CFR Part 215, Subpart B) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/B	Under Review	September 1981

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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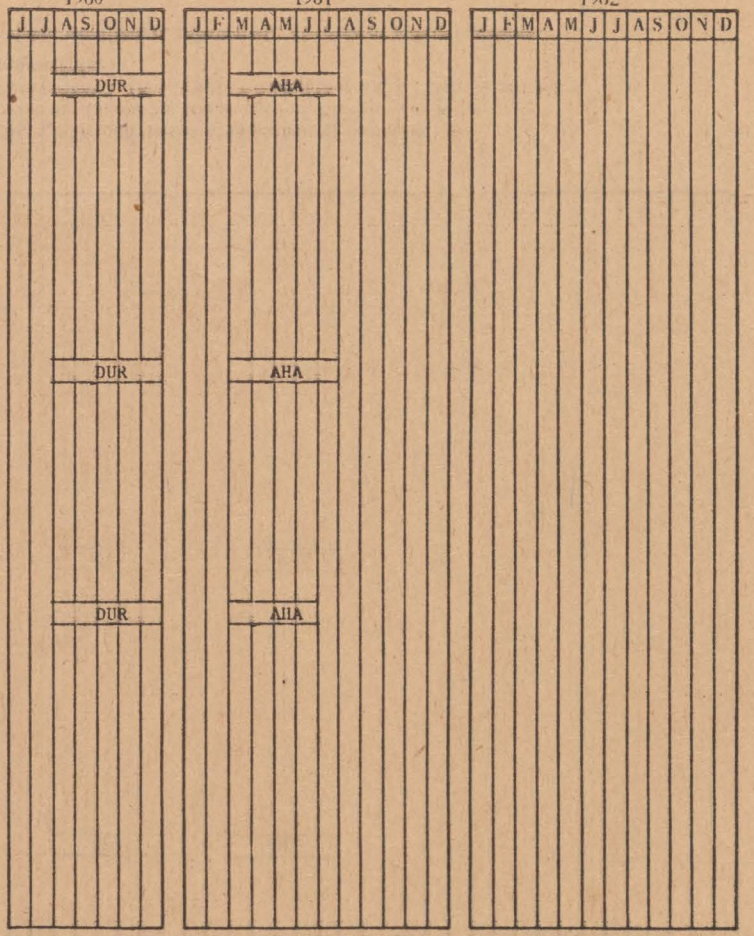
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1303S Marine Mammals: Pribilof Islands (Administration)(50 CFR Part 215, Subpart C) CONTACT: Georgia Cranmore, Office of Marine Mammals and Endangered Species, (202) 634-7471 Walter Kirkness, Pribilof Islands Program, (206) 399-7777	3/B	Under Review	September 1981
NOAA/ NMFS 1304S Regulations Governing the Taking and Importing of Marine Mammals: Introductions and Prohibitions (50 CFR Part 216, Subparts A and B) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/A	Under Review	September 1981
NOAA/ NMFS 1305S Regulations Governing the Taking and Importing of Marine Mammals: Native Exceptions (50 CFR 216.23) CONTACT: Georgia Cranmore, Office of Marine Mammals and Endangered Species, (202) 634-7471	3/A	Under Review	September 1981

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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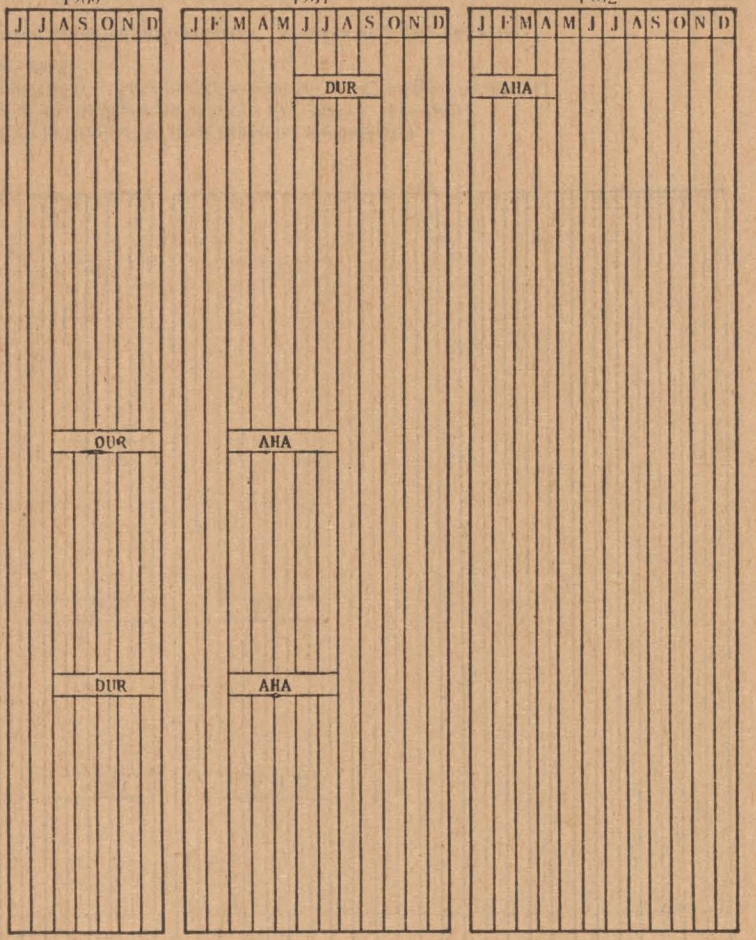
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Federal Register Notice [2]
NOAA/ NMFS 1306S	Regulations Governing the Taking and Importing of Marine Mammals: Taking and Related Acts Incidental to Commercial Fishing Operations (50 CFR 216.24) CONTACT: Thomas McIntyre Office of Marine Mammals and Endangered Species (202) 634-7471 Kenneth Hollingshead Office of Marine Mammals and Endangered Species (202) 634-7471	5/B	October 1977	June 1982
NOAA/ NMFS 1307S	Regulations Governing the Taking and Importing of Marine Mammals: Scientific Research Permits and Public Display Permits (50 CFR 216.31) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	3/B	Under Review	September 1981
NOAA/ NMFS 1308S	Regulations Governing the Taking and Importing of Marine Mammals: Waivers of the Moratorium (50 CFR 216.32) CONTACT: Gary Barone (202) 634-7461	3/C	Under Review	September 1981

Review Schedule (DUR - Dept. Unit Review; AHA = Agency Head Approval)



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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1309S	Regulations Governing the Taking and Importing of Marine Mammals: Procedures for Issuance of Permits and Modifications, Suspension, or Revocation Thereof (50 CFR 216.33) CONTACT: Gary Barone, Office of Marine Mammals and Endangered Species, (202) 634-7461	3/C*	Under Review	September 1981
NOAA/ NMFS 1310S	Regulations Governing the Taking and Importing of Marine Mammals: Possession of Permits (50 CFR 216.34) CONTACT: Gary Barone (202) 634-7461	3/C*	Under Review	September 1981
NOAA/ NMFS 1311S	Endangered Species, General Provisions (50 CFR Part 217) CONTACT: Gary Barone (202) 634-7461	3/B	Under Review	September 1981
NOAA/ NMFS 1312S	Marine Mammals: Civil Procedures (50 CFR Part 218) CONTACT: Morris Pallozzi, Enforcement Division (202) 634-7265	3/A	June 1980	--
NOAA/ NMFS 1313S	Marine Mammals: Seizure and Forfeiture Procedures (50 CFR Part 219) CONTACT: Morris Pallozzi (202) 634-7265	3/B	July 1980	--

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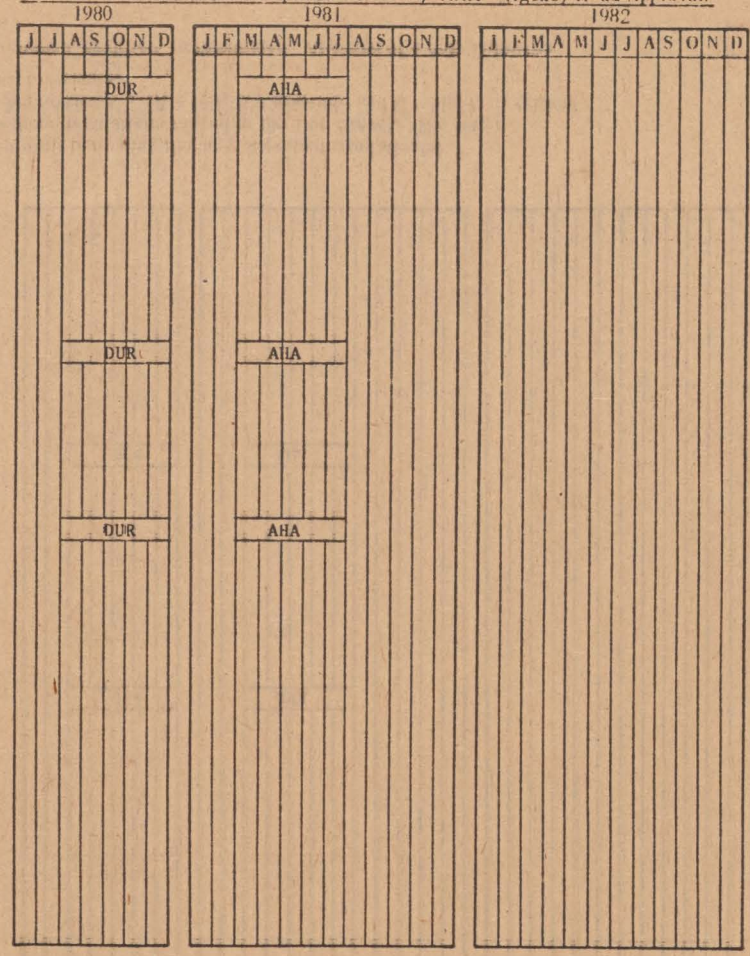

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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1314S	Endangered Species: General Permit Procedures (50 CFR Part 220, Subparts A, B, C, and D) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	3/B	Under Review	September 1981
NOAA/ NMFS 1315S	Endangered Species: Permits Involving Endangered or Threatened Sea Turtles (50 CFR Part 220, Subpart E) CONTACT: Gary Barone (202) 634-7461	3/B	Under Review	September 1981
NOAA/ NMFS 1316S	Endangered Species: Importation and Exportation at Designated Ports (50 CFR Part 221) CONTACT: Gary Barone (202) 634-7461	3/A	Under Review	September 1981
NOAA/ NMFS 1317S	Endangered Fish and Wildlife (50 CFR Part 222) CONTACT: Morris Pallozzi Enforcement Division (202) 634-7265	3/A	August 1980	--
NOAA/ NMFS 1318S	Threatened Fish and Wildlife (50 CFR Part 227) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	3/A	Under Review	September 1981

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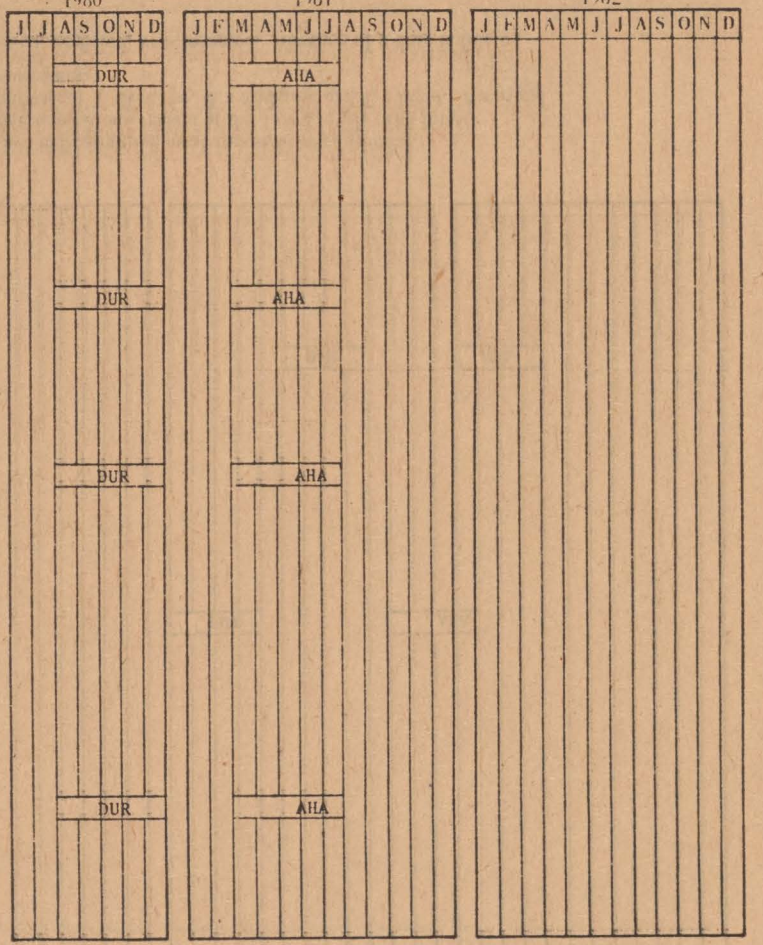

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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1319S — Whaling Provisions (50 CFR Part 230) CONTACT: Lynn Haines, Office of Marine Mammals and Endangered Species, (202) 634-7287 Dean Swanson, Office of Marine Mammals and Endangered Species, (202) 634-1792	5/A**	March 1980	--
NOAA/ NMFS 1320S — Northwest Atlantic Commercial Fisheries: Transportation of Wildlife (50 CFR Part 246) CONTACT: Morris Pallozzi, Enforcement Division, (202) 634-7265	3/A	Summer 1979	--
NOAA/ NMFS 1321S — Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: Inspection and Certification (50 CFR Part 260) CONTACT: I. D. Sackett, Seafood Quality and Inspection Division, (202) 634-7451	4/A	1977	April 1982
NOAA/ NMFS 1322S — Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Whole or Dressed Fish (50 CFR Part 261) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	June 1982

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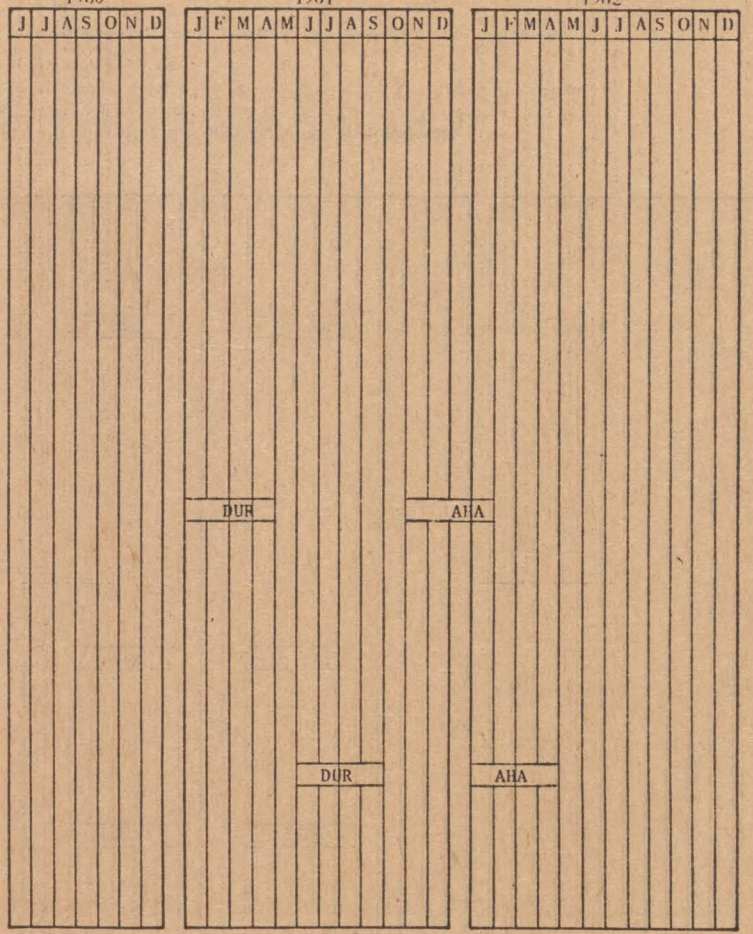

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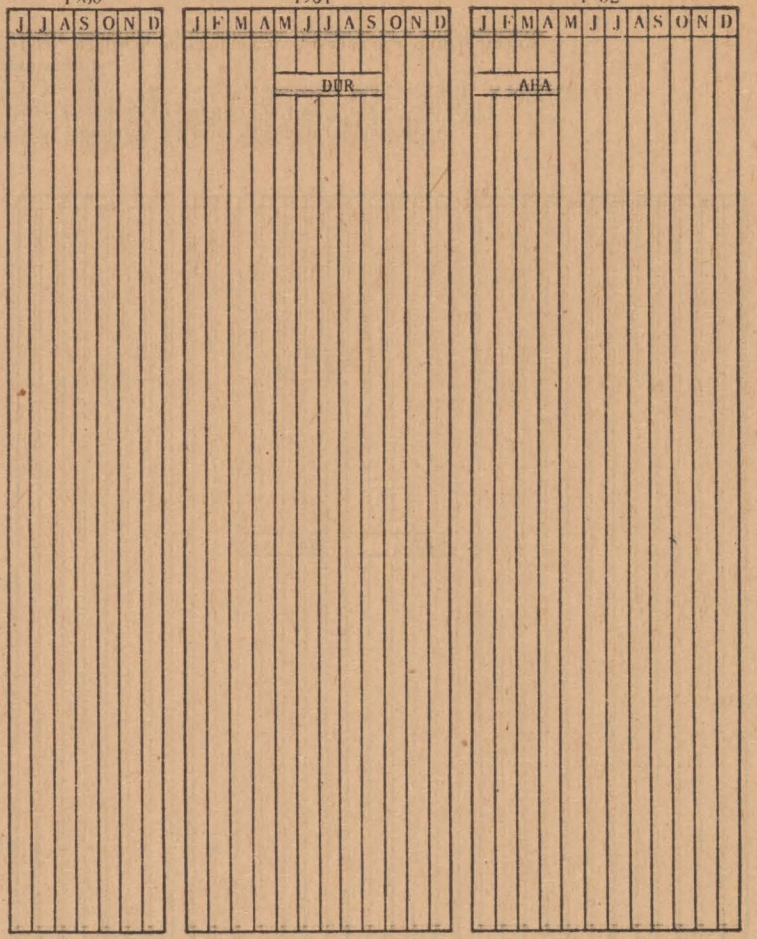
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1323S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Steaks (50 CFR Part 262) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	June 1982
NOAA/ NMFS 1324S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Fish Fillets (50 CFR Part 263) CONTACT: J. R. Brooker (202) 634-7458	4/A	1979	--
NOAA/ NMFS 1325S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Frozen Fish Blocks and Products Made Therefrom (50 CFR Part 264) CONTACT: J. R. Brooker (202) 634-7458	4/A	1979	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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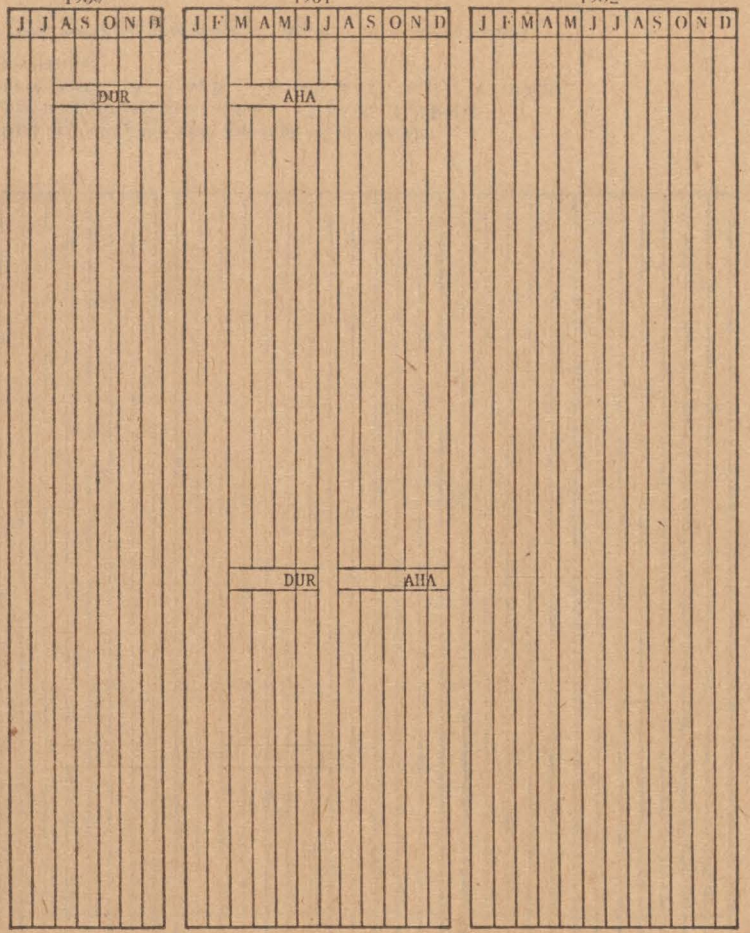
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1326S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Crustacean Shellfish Products (50 CFR Part 265) CONTACT: J. R. Brooker, Seafood Quality and Inspection Division, (202) 634-7458	4/A	1977	--
NOAA/ NMFS 1327S	Processed Fishery Products, Processed Products Thereof, and Certain Other Processed Food Products: U.S. Standards for Grades of Molluscan Shellfish (50 CFR Part 266) CONTACT: J. R. Brooker, (202) 634-7458	4/A	1979	--
NOAA/ NMFS 1328S	Fishery Marketing Cooperatives: Issuance of Cease and Desist Orders by the Government (50 CFR Part 290) CONTACT: Jukka Kolhonen, Fisheries Development Division, (202) 634-7451	3/A**	Never Reviewed	January 1982

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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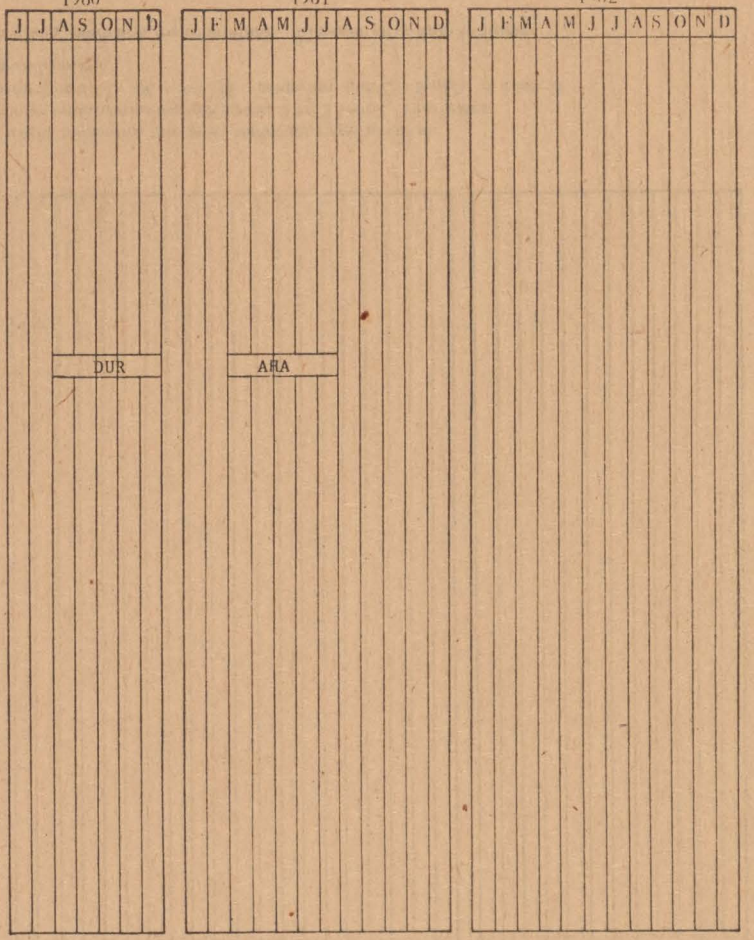
** Regulatory analysis required.

U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank 1/	Last Reviewed	Federal Register Notice 2/
NOAA/ NMFS 1329S — International Whaling Commission: Whaling (50 CFR Part 351) CONTACT: Lynn Haines, Office of Marine Mammals and Endangered Species, (202) 634-7207 Dean Swanson, Office of Marine Mammals and Endangered Species, (202) 634-1792	5/A**	December 1979	--
NOAA/ NMFS 1330S — Fishery Conservation and Management: Guidelines for Development of Fishery Management Plans (50 CFR 602.2) CONTACT: Daphne White, Office of Resource Conservation and Management, (202) 634-7218	5/A	Under Review	September 1981
NOAA/ NMFS 1331S — Fishery Conservation and Management: Foreign Fishing (50 CFR Part 611) CONTACT: Denton Moore, Permits and Regulations Division, (202) 634-7432	4/A	June 1980	--
NOAA/ NMFS 1332S — Fishery Conservation and Management: Citations (50 CFR Part 620) CONTACT: Steve Powell, Office of General Counsel, (202) 254-8350	3/A	June 1980	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice 2/
NOAA/ NMFS 1333S	Fishery Conservation and Management: Atlantic Groundfish, Cod, Haddock and Yellowtail Flounder (50 CFR Part 651)(Amendment No. 4) CONTACT: Allen E. Peterson Northeast Region (617) 837-9200	4/A**	September 1980		--
NOAA/ NMFS 1334S	Fishery Conservation and Management: Atlantic Surf Clam and Ocean Quahog Fisheries (50 CFR Part 652) (Amendment No. 2) CONTACT: Allen E. Peterson (617) 837-9200	4/A**	November 1979		--
NOAA/ NMFS 1335S	Fishery Conservation and Management: Atlantic Herring Fishery of the Northwestern Atlantic Ocean (50 CFR Part 653) (Amendment No. 3) CONTACT: Allen E. Peterson (617) 837-9200	4/A**	August 1980		--
NOAA/ NMFS 1336S	Fishery Conservation and Management: Squid Fishery of the Northwestern Atlantic Ocean (50 CFR Part 655) CONTACT: Allen E. Peterson (617) 837-9200 Robert Hanks Northeast Region (617) 837-9200	4/A**	June 1980		--

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Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice [2]
NOAA/ NMFS 1337S	Fishery Conservation and Management: Atlantic Mackerel Fishery of the Northwestern Atlantic Ocean (50 CFR Part 656) CONTACT: Allen E. Peterson Northeast Region (617) 837-9200	4/A**	June 1980		--
NOAA/ NMFS 1338S	Fishery Conservation and Management: Commercial Tanner Crab Fishery (50 CFR Part 671) (Amendment No. 5) CONTACT: Robert McVey Alaska Region (907) 586-7221 Philip Chitwood Alaska Region (907) 586-7221	4/A**	October 1979		--
NOAA/ NMFS 1339S	Fishery Conservation and Management: Trawl Fishery of the Gulf of Alaska/ Groundfish of the Gulf of Alaska (50 CFR Part 672) CONTACT: Robert McVey (907) 586-7221 Philip Chitwood (907) 586-7221	4/A**	November 1979		--

[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)	Federal Register Notice 2/
NOAA/ NMFS 1340S Fishery Conservation and Management: High Seas Salmon Fisheries Off the Coast of Alaska (50 CFR Part 674) CONTACT: Robert McVey, Alaska Region, (907) 586-7221 Philip Chitwood, Alaska Region, (907) 586-7221	4/A**	August 1980		--
NOAA/ NMFS 1341S Fishery Conservation and Management: International Agreements (50 CFR Part 680) CONTACT: William G. Gordon, Office of Resource Conservation and Management, (202) 634-7218 Allen E. Peterson, Northeast Region, (617) 837-9200 Director, Northwest Region, (206) 399-7575	5/A	September 1979		--
NOAA/ OCZM 1501S Coastal Zone Management Program, Development and Approval Provisions (15 CFR Part 923) CONTACT: Jane Rogers, Policy, Evaluation and External Relations Staff, (202) 634-4245	4/A	March 1979	1980: DUR; 1981: A H A	Fall 1981

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A = low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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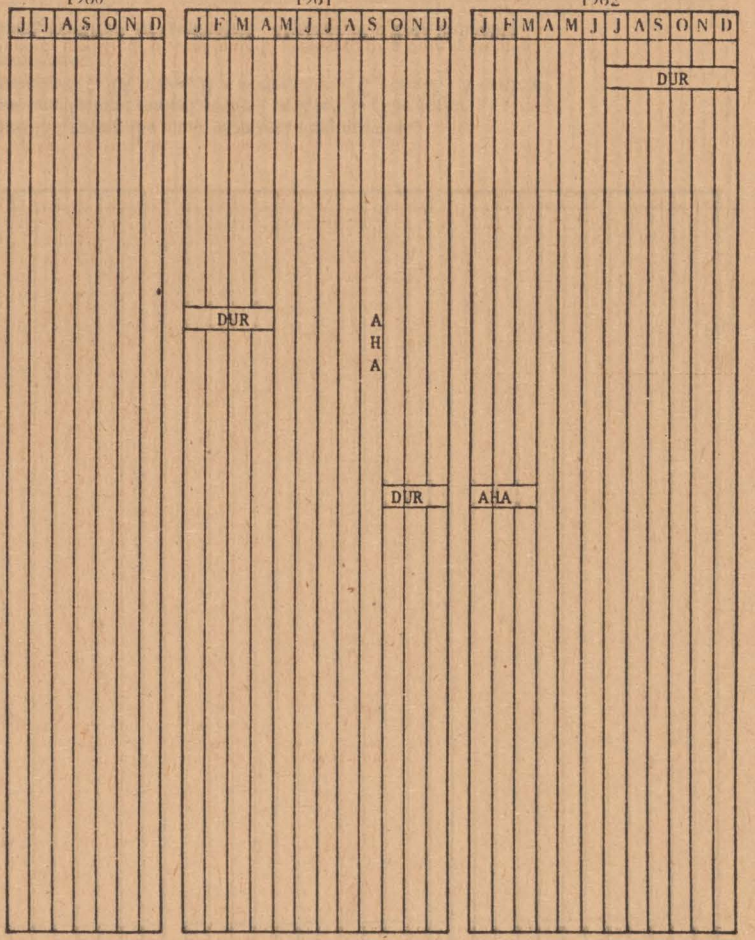
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Federal Register Notice [2]
NOAA/ OCZM 1502S	Consistency for Department of the Interior Outer Continental Shelf (OCS) Prelease Sale Activities and for Other Federal Activities (15 CFR Part 930) CONTACT: Jane Rogers Policy, Evaluation and External Relations Staff (202) 634-4245	4/A	June 1979	--
NOAA/ OCZM 1503S	Coastal Energy Impact Program Regulations (15 CFR Part 931) CONTACT: Eileen Mulaney Coastal Energy Impact Program Office (202) 254-8000	5/A	Regulation Adopted May 29, 1979	Fall 1981
NTIA 1701S	Public Telecommunications Facilities Program (15 CFR Part 2301) CONTACT: John Cameron Public Telecommunications Division (202) 724-3307 Kenneth D. Salomon Deputy Chief Counsel (202) 377-1866	5/B	May 1979	December 1981-NPRM March 1981-Final Regulations
OCE/ BEA 1901S	Foreign Direct Investment in the United States (15 CFR Part 804) CONTACT: George Kruer International Investment Division (202) 523-0657	3/C*	1979	Fall 1980 to be Revoked



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U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank 1/	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval) 1980 J J A S O N D / 1981 J F M A M J J A S O N D / 1982 J F M A M J J A S O N D	Federal Register Notice 2/
OCE/ BEA 1902S	Preliminary Survey of International Leasing Transactions in 1975 (15 CFR Part 805) CONTACT: Christopher Bach, Balance of Payments Division, (202) 523-0621	3/C*	1979		Fall 1980 to be Revoked
OCE/ BIE 2101S	Determination of Bona Fide Motor Vehicle Manufacturer (15 CFR Part 615) CONTACT: Rolf R. Nordlie, Transportation and Capital Equipment Division, (202) 566-7408	3/A	November 1979		--
OCE/ CENSUS 2301S	Foreign Trade Statute (15 CFR Part 30) CONTACT: Shirley Kallek, Office of Economic Fields, (301) 763-5274	3/A	June 1979		Revisions Published May 5, 1980
OCE/ CENSUS 2302S	Special Services and Studies by the Bureau of the Census (15 CFR Part 50) CONTACT: George E. Hall, Office of Demographic Fields, (301) 763-5167	3/A	December 1979		--

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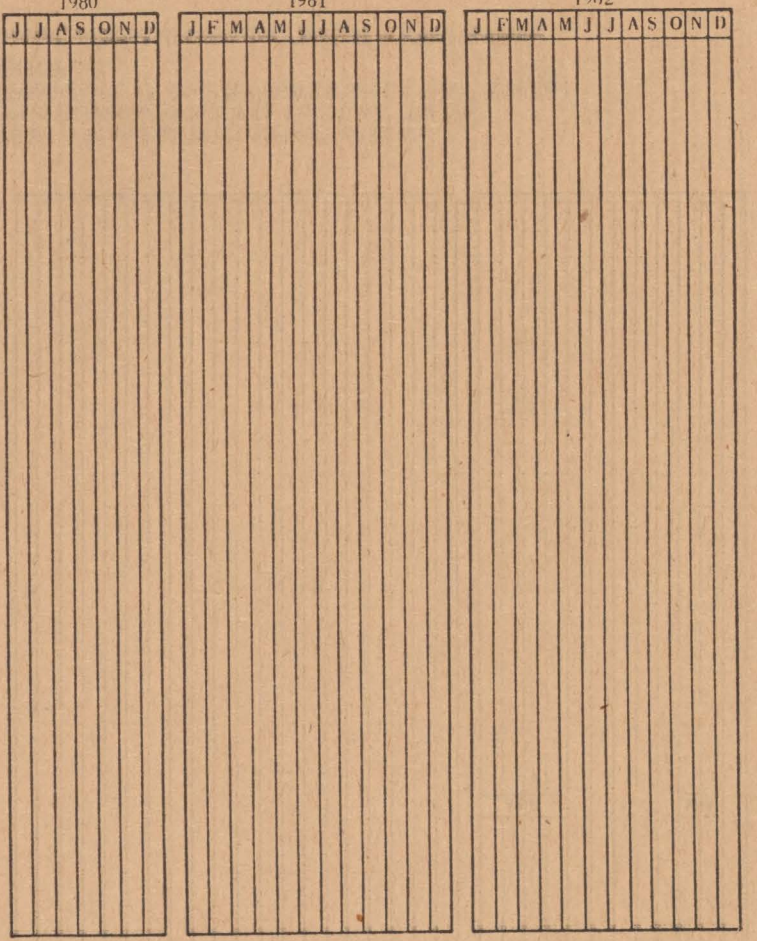
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank [1]	Last Reviewed	Federal Register Notice [2]
OCE/CENSUS 2303S Public Information (15 CFR Part 60) CONTACT: James D. Lincoln, Office of Administration, (301) 763-7980	3/A	December 1979	--
OCE/CENSUS 2304S Cut-Off Dates for Recognition of Boundary Changes for the 1980 Census (15 CFR Part 70) CONTACT: George E. Hall, Office of Demographic Fields, (301) 763-5167	3/A	June 1979	--
OCE/CENSUS 2305S Furnishing Personal Census Data from Census of Population Schedules (15 CFR Part 80) CONTACT: James D. Lincoln, Office of Administration, (301) 763-7980	3/A	December 1979	--
OCE/CENSUS 2306S Certain Population and Per Capita Income - Estimates Challenge Procedures (15 CFR Part 90) CONTACT: Richard A. Engel, Office of Associate Director for Demographic Fields, (301) 763-7892	3/A	Regulation Adopted April 6, 1979	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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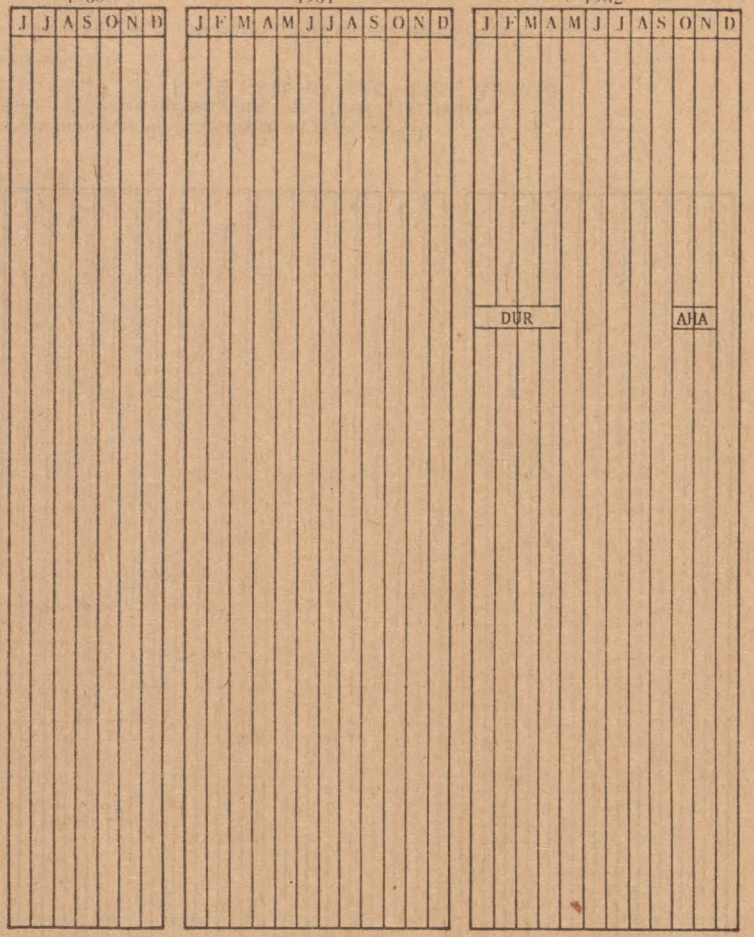
U.S. Department of Commerce

Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description	Rank [1]	Last Reviewed	Federal Register Notice [2]
PTI/PTO 3501S Secrecy of Certain Inventions and Licenses to File Applications in Foreign Countries (37 CFR Part 5) CONTACT: S. W. Engle, Special Laws Administration Group, (703) 557-2877	5/B	January 1980	November 1980
PTI/PTO 3502S Government Inventions Jurisdiction (37 CFR Subchapter B) CONTACT: O. A. Neumann, Office of Government Employee Inventions, (703) 557-3539	3/B	Unknown	December 1982
PTI/PTO 3503S Rules of Practice in Trademark Cases, Forms for Trademark Cases, and Classification of Goods and Services Under the Trademark Act (37 CFR Parts 2, 4 and 6) CONTACT: David J. Kera, Member, Trademark Trial and Appeal Board, (202) 557-3551	5/B	May 1980	December 1980
PTI/PTO 3504S Regulations for the Use of the Facilities of the Patent and Trademark Office. Published in the Official Gazette of the U.S. Patent and Trademark Office, 984 OG 26, 984 TMOG 20 CONTACT: Bradford B. Huther, Deputy Assistant Commissioner for Administration, (703) 557-2290	5/A	Revised June 1979	--

Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)



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Schedule A: INVENTORY OF SIGNIFICANT REGULATIONS

Title/Description		Rank [1]	Last Reviewed	Review Schedule (DUR = Dept. Unit Review; AHA = Agency Head Approval)	Federal Register Notice [2]
PTI/ PTO 3505S	Procedures for Enforcing Regulations Relating to the Use of Patent and Trademark Office Records Facilities. Published in the Federal Register, 43 FR 21345 CONTACT: Bradford R. Huther Deputy Assistant Commissioner for Administration (703) 557-2290	5/A	Adopted May 1978	1982: DUR (Mar–Apr)	--
PTI/ PTO 3506S	Rules of Practice in Patent Cases, and Forms for Patent Cases (37 CFR Parts 1 and 3) CONTACT: R. Franklin Burnett Special Assistant to the Assistant Commissioner for Patents (703) 557-3054	5/B	June 1978 (Part 1) May 1978 (Part 3)	1982: DUR (Jan–Apr) 1982: DUR (Jan–Apr)	Unknown Unknown

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ADMIN	101N	Employee Responsibilities and Conduct (15 CFR 0.735) CONTACT: Joseph Brown Office of Personnel (202) 377-4007	1/A	May 1981
ADMIN	102N	Seal of the Department of Commerce (15 CFR 1.1-3) CONTACT: David Farber Office of Publications (202) 377-3721	1/A	Completed January 1980 No Changes Required
ADMIN	103N	Procedure for Handling and Settlement of Claims Under the Federal Tort Claims Act (15 CFR 2.1-8) CONTACT: Meir Gabbay Office of the Controller (202) 377-4407	1/A	November 1980
ADMIN	104N	Rules of Procedures for Handling Contract Appeals (15 CFR 3.1-34) CONTACT: Hugh Dolan Appeals Board (202) 377-3135	1/C*	To Be Revoked Appeals Board to be Abolished
ADMIN	105N	Classification/Declassification and Public Availability of National Security Information (15 CFR 4a.1-42) CONTACT: William Randolph Office of Investigations and Security (202) 377-4371	1/B	October 1980
ADMIN	106N	Operation of Vending Stands (15 CFR 5.1-8) CONTACT: Tony Stadeker Office of Administrative Services (202) 377-4501	1/A	December 1980
ITA	501N	Instruments and Apparatus for Educational and Scientific Institutions (15 CFR Part 301) CONTACT: Richard Seppa Statutory Import Programs Staff (202) 377-3525	1/B	Under Review

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ITA	502N	Foreign Excess Property Regulations (15 CFR Part 302) CONTACT: Richard Seppa Statutory Import Programs Staff (202) 377-3525	1/A	Under Review
ITA	503N	Watches and Watch Movements (15 CFR Part 303) CONTACT: Richard Seppa (202) 377-3525	1/A	June 1981
ITA	504N	DMS Reg. 1: Basic Rules of the Defense Materials System [15 CFR Part 330 (old 32A CFR Part 621)] CONTACT: Iain S. Baird Office of Industrial Mobilization (202) 377-2233	1/B	Under Review
ITA	505N	DMS Reg. 1, Dir. 1: Self Authorization Procedure for MRO Needed to Fill Mandatory Acceptance Orders [15 CFR Part 331 (old 32A CFR Part 621a)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	506N	DMS Reg. 1, Dir. 2: Controlled Materials Producers and Distributors [15 CFR Part 332 (old 32A CFR Part 621b)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	507N	DMS Order 1: Iron and Steel [15 CFR Part 340 (old 32A CFR Part 631)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	508N	DMS Order 2: Nickel Alloys [15 CFR Part 341 (old 32A CFR Part 632)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	509N	DMS Order 3: Aluminum [15 CFR Part 342 (old 32A CFR Part 633)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ITA	510N	DMS Order 4: Copper and Copper-Base Alloys [15 CFR Part 343 (old 32A CFR Part 634)] CONTACT: Iain S. Baird Office of Industrial Mobilization (202) 377-2233	1/B	Under Review
ITA	511N	DPS Reg. 1: Basic Rules of the Defense Priorities System [15 CFR Part 350 (old 32A CFR Part 651)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	512N	DPS Reg. 2: Operations of the Priorities and Allocation Systems Between Canada and the U.S. [15 CFR Part 351 (old 32A CFR Part 652)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	513N	DPS Reg. 3: Compliance and Enforcement Procedures [15 CFR Part 352 (old 32A CFR Part 653)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	514N	DPS Order 1: Metalworking Machines [15 CFR Part 353 (old 32A CFR Part 661)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	515N	DPS Order 2: Nickel [15 CFR Part 354 (old 32A CFR Part 662)] CONTACT: Iain S. Baird (202) 377-2233	1/B	Under Review
ITA	516N	Effects of Imported Articles on the National Security (Interim Rule) [15 CFR Part 359 (old 31 CFR Part 9)] CONTACT: John Richards Office of Industrial Mobilization (202) 377-3695	1/B	Under Review

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ITA	517N	China Trade Act Corporations (15 CFR Part 363) CONTACT: Harry R. Stringer, Jr. Office of Country Marketing (202) 377-2210	1/C*	Under Review
ITA	518N	General Regulations Governing Foreign-Trade Zones in the U.S., with Rules of Procedure (15 CFR Part 400) CONTACT: B. Waring Partridge Office of Import Administration (202) 377-1780	1/B	Under Review
ITA	519N	T-1: Shipping Restrictions [44 CFR Part 401 (old 32A CFR Part 701)] CONTACT: Seymour Goodman Office of Export Administration (202) 377-4351	1/C	Unknown
ITA	520N	T-1: Int. 1: Shipments on American Flag Ships and Aircraft [44 CFR Part 402 (old 32A CFR Part 701a)] CONTACT: Seymour Goodman (202) 377-4351	1/C	Unknown
ITA	521N	T-2: Shipping Restrictions: North Korea and the Communist-Controlled Area of Vietnam [44 CFR Part 403 (old 32A CFR Part 702)] CONTACT: Seymour Goodman (202) 377-4351	1/C	Unknown
MARAD	701N	Contracts with MARAD and Maritime Subsidy Board - Contractor Redress of Appeals from Audit Findings, Interpretations or Decisions of MARAD (46 CFR Part 205) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824	1/A	March 1981

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	702N	Fees for Statistical Data and Reports, Copies of Regulations and Applications for Sale of Subsidized Vessels (46 CFR Part 206) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758 R. J. Patton, Jr., Secretary Maritime Subsidy Board (202) 377-2056 E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	1/A	1982
MARAD	703N	Repairs to Vessels Under Bareboat Charter from the U.S. (46 CFR Part 237) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	1/C	1982
MARAD	704N	Formulae for Determining Sea Speed of Vessels to Establish Eligibility for Financial Assistance (46 CFR Part 246) CONTACT: R. K. Kiss Office of Ship Construction (202) 377-4373	1/B	1982
MARAD	705N	Payments from Capital Reserve Fund Authorized for Container Construction and Research; Development and Design Expenses for Ships and Equipment (46 CFR Part 255) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	1/C*	October 1980
MARAD	706N	Minimum-Wage; Minimum-Manning and Reasonable Working Conditions with Respect to Vessels with Operating-Differential Subsidy (46 CFR Part 262) CONTACT: A. Friedberg Office of Maritime Manpower (202) 377-3018	1/C	April 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	707N	Domestic and Foreign Trade; Interpretations for Guam, Midway and Wake (46 CFR Part 277) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	1/A	1982
MARAD	708N	Establishment and Maintenance of the Statutory Capital and Special Reserve Funds and Determination of "Capital Necessarily Employed in the Business" and "Net Earnings" with Respect to Subsidized Operators (46 CFR Part 286) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797 E. L. Loe Office of Financial Management (202) 377-3824	1/C*	Reviewed To Be Revoked
MARAD	709N	Establishment of Construction Reserve Funds (46 CFR Part 287) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797	1/C	September-December 1980
MARAD	710N	Statements Required to be Filed by Certain Contractors or Their Representatives; Foreign Trade Cargo Reports; Penalties (46 CFR Part 222) CONTACT: R. J. Patton, Jr., Secretary Maritime Subsidy Board (202) 377-2051 J. B. Young Office of Trade Studies and Statistics (202) 377-4758	2/C	1982
MARAD	711N	Requirements for Maintaining Boom Lifting Capacities and Other Features for Ships Built with Construction-Differential Subsidy (46 CFR Part 253) CONTACT: R. K. Kiss Office of Ship Construction (202) 377-4373	2/A	Completed Spring 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	712N	Policy and Procedure Regarding Conducting of Subsidy Condition Surveys and Accomplishment of Subsidized Vessel Maintenance and Repairs (46 CFR Part 272) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/B	Completed Spring 1980
MARAD	713N	Determining Amount of Construction-Differential Subsidy with Respect to Materials and Equipment; Bid Procedure (46 CFR Part 275) CONTACT: R. K. Kiss Office of Ship Construction (202) 377-4373	2/C	January 1981
MARAD	714N	Information and Procedure Required Under Liner Operating-Differential Subsidy Agreements (46 CFR Part 281) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824 F. R. Larson Office of Ship Operating Costs (202) 377-5532 J. B. Young Office of Trade Studies and Statistics (202) 377-4758	2/B	July 1981
MARAD	715N	Uniform System of Accounts for Maritime Carriers (46 CFR Part 282) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824	2/A	1982
MARAD	716N	Valuation of Vessels for Determining Capital Employed and Net Earnings Under Operating-Differential Subsidy Agreements (46 CFR Part 284) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797 E. L. Loe Office of Financial Management (202) 377-3824	2/A*	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	717N	Determination by MARAD of Profit in Contracts and Subcontracts for Construction, Reconditioning, or Reconstruction (46 CFR Part 285) CONTACT: T. Pross Office of Shipbuilding Costs (202) 377-4452 E. L. Loe Office of Financial Management (202) 377-3824	2/A*	January 1981
MARAD	718N	Standard Forms for Construction Contracts and General Provisions of Operating-Differential Subsidy Contracts (46 CFR PArt 290) CONTACT: R. J. Patton, Jr., Secretary Maritime Subsidy Board (202) 377-2056	2/A*	January 1981
MARAD	719N	Definition of Capital Necessarily Employed in the Business By Subsidized Operators (46 CFR Part 291) CONTACT: E. A. Uttridge Office of Subsidy Contracts (202) 377-3797 E. L. Loe Office of Financial Management (202) 377-3824	1/C*	Reviewed To Be Revoked
MARAD	720N	Procedure to be Followed By Operators in the Rendition to MARAD of Annual and Final Accounting Under Operating-Differential Subsidy Agreements (46 CFR Part 292) CONTACT: E. L. Loe (202) 377-3824	2/B	January 1981
MARAD	721N	Requirements Under Merchant Ship Sales Act of 1946 (46 CFR Part 299) CONTACT: E. L. Loe (202) 377-3824	2/A*	May 1981

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Title/Description			Rank [1]	Anticipated Date of Review
MARAD	722N	War Risk Insurance Eligibility, Applications and Reporting Requirements (46 CFR Part 308) (Review to be limited to developing single application forms for the three types of War Risk coverage) CONTACT: K. H. Green Office of Marine Insurance (202) 377-4820	2/A	Under Review
MARAD	723N	Seamen's Service Awards for Wartime Service in Korea and Vietnam; Replacement of Awards Issued for World War II Service (46 CFR Part 350) CONTACT: A. Friedberg Office of Maritime Manpower (202) 377-3018	1/A	1982
MARAD	724N	Depositories Qualified to Accept Deposits of Funds Under Programs Authorized By Merchant Marine Act of 1936 (46 CFR Part 351) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824	2/A	1982
MARAD	725N	Transfer of Marine Equipment to Ship Operators and Shipyards By MARAD in Cases of Emergency (46 CFR Part 360) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/A	March 1981
MARAD	726N	Processing of Time-Barred Claims Against the Government (46 CFR Part 370) CONTACT: S. Jenkins Assistant General Counsel (202) 377-2422	2/A	December 1980
MARAD	727N	Procedures for Considering Applications for Operating-Differential Subsidy By Those with Interests in Coastwise or Intercoastal Service (46 CFR Part 380) CONTACT: J. B. Young Office of Trade Studies and Statistics (202) 377-4758	2/A	April 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	728N	Service Agreements with the National Shipping Authority to Operate Vessels Owned By the United States (32A CFR Part 1801) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/B	October 1980
MARAD	729N	Appointment of General Agents, Agents, and Berth Agents (32A CFR Part 1802) CONTACT: B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	730N	Bonding of Ship's Personnel (32A CFR Part 1803) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824 B. T. Kyle Office of Ship Operations (202) 377-5157	2/A	October 1980
MARAD	731N	Compensation Payable to Agents, General Agents, and Berth Agents (32A CFR Part 1804) CONTACT: E. L. Loe (202) 377-3824 B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	732N	Duties of Berth Agents and General Agents (32A CFR Part 1805) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157 A. Armstrong Office of Port and Intermodal Development (202) 377-4123	2/B	October 1980

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Title/Description			Rank 1/	Anticipated Date of Review
MARAD	733N	Certificate of Ownership and Operation for General Agency Vessels (32A CFR Part 1806) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/A	October 1980
MARAD	734N	Authority of General Agents to Provide for American Merchant Marine Library Service (32A CFR Part 1807) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	735N	Applicability of Former Maritime Commission and War Shipping Administration Orders, Regulations and Instructions and Allowability of Expenses Under Service Agreements with the National Shipping Authority (32A CFR Part 1808) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	736N	Maximum Brokerage Commission Applicable to National Shipping Authority Vessels (32A CFR Part 1822) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980
MARAD	737N	Procedural Rules for Financial Transactions Under Agency Agreements (32A CFR Part 1831) CONTACT: E. L. Loe, (202) 377-3824 B. T. Kyle, (202) 377-5157	1/A	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
MARAD	738N	Procedure to be Followed By General Agents in Preparation of Invoices and Payment of Compensation (32A CFR Part 1832) CONTACT: E. L. Loe (202) 377-3824 B. T. Kyle (202) 377-5157	2/A	October 1980
MARAD	739N	Marine Protection and Indemnity Insurance Instructions Under General Agency and Berth Agency Agreements (32A CFR Part 1841) CONTACT: K. H. Green Office of Marine Insurance (202) 377-4820 B. T. Kyle Office of Ship Operations (202) 377-5157	2/A	December 1980
MARAD	740N	Seamen's Claims; Administrative Action and Litigation (32A CFR Part 1851) CONTACT: K. H. Green (202) 377-4820 B. T. Kyle (202) 377-5157	2/B	Under Review
MARAD	741N	Slop Chests (32A CFR Part 1861) CONTACT: E. L. Loe Office of Financial Management (202) 377-3824 B. T. Kyle Office of Ship Operations (202) 377-5157	1/A	October 1980
MARAD	742N	Voyage Data (32A CFR Part 1862) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157 J. B. Young Office of Trade Studies and Statistics (202) 377-4758	2/B	October 1980

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Title/Description			Rank [1]	Anticipated Date of Review
MARAD	743N	Launch Services (32A CFR Part 1863) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	1/A	October 1980
MARAD	744N	Authority and Responsibility of the Operator to Undertake to Decommission and Deliver Ships to Reserve Fleets (32A CFR Part 1864) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	745N	Repatriation of Seamen (32A CFR Part 1865) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	746N	Authority and Responsibility of General Agents to Undertake to Decommission Tankers to be Withdrawn from Operation and Placed in a Reserve Fleet (32A CFR Part 1866) CONTACT: B. T. Kyle, (202) 377-5157	2/A	October 1980
MARAD	747N	Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports (32A CFR Part 1882) CONTACT: E. L. Loe, Office of Financial Management, (202) 377-3824 B. T. Kyle, Office of Ship Operations, (202) 377-5157	2/B	October 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
MARAD	748N	Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels Operated for the Account of the National Shipping Authority Under General Agency Agreement (32A CFR Part 1883) CONTACT: B. T. Kyle Office of Ship Operations (202) 377-5157	2/B	October 1980
MARAD	749N	General Agent's Responsibility in Connection with Foreign Repair Custom's Entries (32A CFR Part 1884) CONTACT: B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	750N	Procedure for Accomplishment of Vessel Repairs Under the National Shipping Authority Master Lump Sum Repair Contract (32A CFR Part 1885) CONTACT: B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	751N	Procedure for Accomplishment of Ship Repairs Under the National Shipping Authority Individual Contract for Minor Repairs (32A CFR Part 1886) CONTACT: B. T. Kyle (202) 377-5157	2/B	October 1980
MARAD	752N	National Shipping Authority Control and Utilization of Ports During a War or National Emergency (32A CFR Part 1901) CONTACT: A. S. Armstrong Office of Port and Intermodal Development (202) 377-4123	2/A	Under Review
MARAD	753N	Federal Port Controllers Designated Under a Standard Form of Service Agreement with the National Shipping Authority (32A CFR Part 1902) CONTACT: A. S. Armstrong (202) 377-4123	2/A	Under Review
MARAD	754N	Standard Form of Marine Terminal Operating Contract (32A CFR Part 1903) CONTACT: A. S. Armstrong (202) 377-4123	2/A	Under Review

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Title/Description			Rank 1/	Anticipated Date of Review
NOAA/ OMB	1101N	Public Information (Mission Information and Freedom of Information Act Request--Not Public Affairs) (15 CFR Part 903) CONTACT: Irma Lee Westrell Administrative Documentation Officer (301) 443-8192	2/A	Fall 1981
NOAA/ OMB	1102N	Coordination of Federal and Federally-Assisted Programs and Projects: Grants and Cooperative Agreements (15 CFR Part 905) CONTACT: Ann Terbush Grants Officer (301) 443-8575	2/A	Fall 1981
NOAA/ NMFS	1301N	North Pacific Commercial Fisheries: (50 CFR Part 210) CONTACT: Robert McVey Alaska Region (907) 586-7221	2/A	January 1981
NOAA/ NMFS	1302N	Regulations Governing the Taking and Importing of Marine Mammals: Actions Permitted By International Treaty, Convention, or Agreement (50 CFR 216.21) CONTACT: Georgia Cranmore Office of Marine Mammals and Endangered Species (202) 634-1792	1/C	January 1981
NOAA/ NMFS	1303N	Regulations Governing the Taking and Importing of Marine Mammals: Taking By State and Local Government Officials (50 CFR 216.22) CONTACT: Thomas McIntyre Office of Marine Mammals and Endangered Species (202) 634-1792	2/B	Under Review
NOAA/ NMFS	1304N	Regulations Governing the Taking and Importing of Marine Mammals: Exempted Marine Mammals and Marine Mammal Products (50 CFR 216.25) CONTACT: Thomas McIntyre (202) 634-1792	1/C*	January 1981
NOAA/ NMFS	1305N	Regulations Governing the Taking and Importing of Marine Mammals: Collection of Certain Marine Mammals Parts (50 CFR 216.26) CONTACT: Thomas McIntyre (202) 634-1792	2/B	January-April 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1306N	Regulations Governing the Taking and Importing of Marine Mammals: Importation at Designated Ports (50 CFR 216.40) CONTACT: Gary Barone Office of Marine Mammals and Endangered Species (202) 634-7461	1/C*	January 1981
NOAA/ NMFS	1307N	Regulations Governing the Taking and Importing of Marine Mammals: Penalties and Procedures for Their Assessment (50 CFR Part 216, Subpart F) CONTACT: Steve Powell Office of the Assistant General Counsel for Enforcement and Litigation (202) 254-0350	2/B	January 1981
NOAA/ NMFS	1308N	Regulations Governing the Taking and Governing of Marine Mammals: Notice and Hearing on Section 103 Regulations (50 CFR Part 216, Subpart G) CONTACT: Eric Erdheim Office of the Assistant General Counsel (202) 443-8066	1/A	Summer 1981
NOAA/ NMFS	1309N	Regulations Governing the Taking and Importing of Marine Mammals: Approval and Review of State Laws and Regulations (50 CFR Part 216, Subpart H) CONTACT: Georgia Cranmore Office of Marine Mammals and Endangered Species (202) 634-1792 Ronald Naveen Office of Assistant General Counsel - Fisheries (202) 634-4224	1/A	January 1981
NOAA/ NMFS	1310N	Marine Mammals: Federal/State Cooperation in the Conservation of Endangered and Threatened Species (50 CFR Part 225) CONTACT: Tom Loughlin Office of Marine Mammals and Endangered Species (202) 634-7471	2/A	January 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1311N	Aid to Fisheries: Fisheries Loan Fund Procedures (50 CFR Part 250) CONTACT: James Meehan Financial Services Division (202) 634-7466	1/A	September 1980
NOAA/ NMFS	1312N	Aid to Fisheries: Financial Aid Program Procedures (50 CFR Part 251) CONTACT: Michael L. Grable Financial Services Division (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1313N	Aid to Fisheries: Financial Aid Program Procedures, Conditioned Fisheries (50 CFR Part 251, Subpart B) CONTACT: James Meehan Financial Services Division (202) 634-7466	1/A	September 1980
NOAA/ NMFS	1314N	Aid to Fisheries: Commercial Fisheries Research and Development (50 CFR Part 253) CONTACT: Leo Fisher State/Federal Division (202) 634-7454	2/A	September 1981
NOAA/ NMFS	1315N	Aid to Fisheries: Control or Elimination of Jellyfish (50 CFR Part 254) CONTACT: Leo Fisher (202) 634-7454	1/C	September-December 1980
NOAA/ NMFS	1316N	Aid to Fisheries: Fishing Vessel Obligation Guarantee Program Procedures (50 CFR Part 255) CONTACT: James Meehan Financial Services Division (202) 634-7466	1/C	September-December 1980
NOAA/ NMFS	1317N	Aid to Fisheries: Fishing Vessel Construction-Differential Subsidy Procedures (50 CFR Part 256) CONTACT: Jack Kelly Financial Services Division (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1318N	Aid to Fisheries: Notice and Hearing on Subsidies (50 CFR Part 257) CONTACT: Jack Kelly (202) 634-7496	1/A	September 1980

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1319N	Aid to Fisheries: Fishermen's Protective Act Procedures (50 CFR Part 258, Subpart A) CONTACT: Kathryn E. Hensley, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1320N	Aid to Fisheries: Fishermen's Protective Act Procedures: Compensation for Damage Caused By Foreign Vessels in the Fishermen's Protective Zone (50 CFR Part 258, Subpart B) CONTACT: Kathryn E. Hensley, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1321N	Aid to Fisheries: Fishermen's Protective Act Procedures: Compensation for Fishing Vessel or Fishing Gear Damage in a U.S. Fishery Attributable to Other Vessels or Acts of God (50 CFR Part 258, Subpart C) CONTACT: Kathryn E. Hensley, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1322N	Aid to Fisheries: Capital Construction Fund (50 CFR Part 259) CONTACT: Lee Bowersox, Financial Services Division, (202) 634-7496	1/A	September 1980
NOAA/ NMFS	1323N	Tuna Fisheries: Pacific Tuna Fisheries (50 CFR Part 280) CONTACT: Alan W. Ford, Southwest Region, (213) 793-2575	2/A	March 1981
NOAA/ NMFS	1324N	Tuna Fisheries: Restrictions on Tuna Imports (50 CFR Part 281) CONTACT: Alan W. Ford, (213) 793-2575	2/A	March 1981
NOAA/ NMFS	1325N	Anadromous Fisheries Conservation, Development and Enhancement (50 CFR Part 401) (Joint regulations with the Department of the Interior) CONTACT: Richard Schaefer, State/Federal Division, (202) 634-7454	2/A	September 1981

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Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1326N	Interagency Cooperation - Endangered Species Act of 1973 (50 CFR Part 402)(Joint regulations with the Department of the Interior) CONTACT: Ron Naveen Office of the Assistant General Counsel - Fisheries (202) 377-2977	1/B	Summer 1981
NOAA/ NMFS	1327N	Fishery Conservation and Management: Regional Refishery Management Councils (50 CFR Part 601) CONTACT: Joe Clem Office of Resource Conservation and Management (202) 634-7218 Daphne White Office of Resource Conservation and Management (202) 634-7218	2/A	August-December 1980
NOAA/ NMFS	1328N	Fishery Conservation and Management: Guidelines for Development of Fishery Management Plans (50 CFR Part 602) (NOTE: 602.2 regulations are significant and have been included in Schedule A) CONTACT: Daphne White (202) 634-7218	2/A	June 1981
NOAA/ NMFS	1329N	Fishery Conservation and Management: Confidentiality of Statistics (Reserved)(50 CFR Part 603) (NOTE: Published in interim final 12-7-79) CONTACT: B. G. Thompson Office of Resource Conservation and Management (202) 634-7415	2/A	August-December 1980
NOAA/ NMFS	1330N	Fishery Conservation and Management: Civil Procedures (50 CFR Part 621) CONTACT: Steve Powell Office of the Assistant General Counsel for Enforcement and Litigation (202) 254-8350	2/B	Summer 1981
NOAA/ NMFS	1331N	Fishery Conservation and Management: Stone Crab Fishery of the Gulf of Mexico (50 CFR Part 654) CONTACT: Regional Director Southeast Region (813) 826-3141	2/A	August-December 1980

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Title/Description			Rank [1]	Anticipated Date of Review
NOAA/ NMFS	1332N	Fishery Conservation and Management: Northern Anchovy Fishery (50 CFR Part 662) CONTACT: Alan W. Ford, Southwest Region, (213) 793-2575	2/A	May 1981
NOAA/ OCZM	1501N	Section 305 Allocation Formula, Coastal Zone Management Program (15 CFR Part 926) CONTACT: Jane Rogers, Office of Policy, Evaluation and External Relations Staff, (202) 634-4245	2/A*	September 1981
NOAA/ OCZM	1502N	Coastal Zone Management, Research, Study and Training Program, Funding and Operations (15 CFR Part 933) CONTACT: Jane Rogers, (202) 634-4245	2/C*	September 1981
NOAA/ OCZM	1503N	Coastal Zone Management, Interstate Grants (15 CFR Part 932) CONTACT: Jane Rogers, (202) 634-4245	2/C*	September 1981
NOAA/ OCZM	1504N	Coastal Energy Impact Program, Engineering and Construction Guidelines for Applicants (Guidelines may be developed into regulations in the near future) CONTACT: Bart Chambers, Coastal Energy Impact Program Office, (202) 634-4128	2/A	October-November 1980
NOAA/ OCZM	1505N	Estuarine Sanctuary Guidelines (15 CFR Part 921) CONTACT: James W. MacFarland, Sanctuary Program Office, (202) 653-7301	2/B	Reviewed 1980
NOAA/ OCZM	1506N	Monitor Marine Sanctuary (15 CFR Part 924) CONTACT: Nancy Foster, Sanctuary Program Office, (202) 634-4236	2/A	June 1981

[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

* Review may lead to elimination of the regulation.

U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
NOAA/ OCZM	1507N	Designation and Management of Marine Sanctuaries (15 CFR Part 922) CONTACT: Nancy Foster Sanctuary Program Office (202) 634-4236	2/A	February 1981
NOAA/ OCZM	1508N	Key Largo Coral Reef Marine Sanctuary (15 CFR Part 929) CONTACT: Nancy Foster (202) 634-4236	2/B	Under Review
NOAA/ OCZM	1509N	Coastal Energy Impact Program, Project Assessments and Environmental Impact Statements (42 FR 44400, September 2, 1977) CONTACT: Eileen Mulaney Coastal Energy Impact Program Office (202) 634-4128	2/A	October-November 1980
OCE/ BEA	1901N	Annual Reporting of Revenues for Carrying Imports to, and Expenditures in, the United States of Shipping and Air Transport Operators of Foreign Nationality (15 CFR Part 802) CONTACT: Christopher Bach Balance of Payments Division (202) 523-0621	1/A	Review Completed No Changes
OCE/ BEA	1902N	Reports of International Transactions in Royalties and Fees with Unaffiliated Foreign Residents (15 CFR Part 803) CONTACT: Christopher Bach (202) 523-0621	1/A	Review Completed No Changes
OCE/ BEA	1903N	Public Information (15 CFR Part 807) CONTACT: Lester G. Welch Management Services Division (202) 523-0505	2/A	Review Completed No Changes

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

* Review may lead to elimination of the regulation.

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
OCE/ BEA	1904N	Direct Investment Surveys (15 CFR Part 806) CONTACT: George Kruer International Investment Division (202) 523-0657	1/A	Review Completed No Changes
OCE/ CENSUS	2301N	Seal (15 CFR Part 20) CONTACT: James D. Lincoln Office of Administration (301) 763-7980	1/A	Review Completed No Changes
OCE/ CENSUS	2302N	Training of Foreign Participants in Census Procedures and General Statistics (15 CFR Part 40) CONTACT: Suzann Evinger Office of Federal Statistical Policy and Standards (202) 673-7965	2/A	Review Completed No Changes
OCE/ OFSPS	2501N	Metropolitan Statistical Classification (Standard developed under authority contained in 31 U.S.C. 18b) CONTACT: George E. Hall Office of Demographic Fields (301) 763-5167	2/A	Review Completed-Final Revisions Published in FR January 1980
OADS	2701N	Procedural Regulation Setting Forth the Criteria for Applications for Federal Recognition of International Expositions (15 CFR Part 1202) CONTACT: Kenneth R. Clark Office of the Assistant General for International Trade (202) 377-5305	2/C	Summer 1981
ORD	2901N	Economic Development Regions (13 CFR Part 500) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	2/B	Winter 1982
ORD	2902N	Modification of Regional Boundaries (13 CFR Part 510) CONTACT: Frances Pappas (202) 377-5174	2/B	Winter 1982

[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank 1/	Anticipated Date of Review
ORD	2903N	Regional Commissions (13 CFR Part 520) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	1/C	Winter 1982
ORD	2904N	Review of Commission Plans (13 CFR Part 530) CONTACT: Frances Pappas (202) 377-5174	2/B	Winter 1982
ORD	2905N	Administration (13 CFR Part 540) CONTACT: Frances Pappas (202) 377-5174	2/A	Winter 1982
ORD	2906N	Technical and Planning Assistance (13 CFR Part 550) CONTACT: Frances Pappas (202) 377-5174	2/B	Spring/Summer 1982
ORD	2907N	Regional Transportation (13 CFR Part 551) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2908N	Energy Demonstration Projects and Programs (13 CFR Part 552) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2909N	Health and Nutrition Demonstration Projects (Reserved)(13 CFR Part 553) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982
ORD	2910N	Education Demonstration Projects (Reserved)(13 CFR Part 554) CONTACT: Frances Pappas (202) 377-5174	1/C	Spring/Summer 1982

1/ "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
ORD	2911N	Indigenous Arts and Crafts Demonstration Projects (13 CFR Part 555) CONTACT: Frances Pappas Program Development Officer (202) 377-5174	1/B	Spring/Summer 1982
ORD	2912N	Supplements to Federal Grants-in-Aid (13 CFR Part 560) CONTACT: Frances Pappas (202) 377-5174	2/B	Spring/Summer 1982
ORD	2913N	Coordination (13 CFR Part 580) CONTACT: Frances Pappas (202) 377-5174	2/B	Fall 1982
ORD	2914N	Interagency Evaluation, Review and Coordination of Programs and Projects (13 CFR Part 581) CONTACT: Frances Pappas (202) 377-5174	1/B	Fall 1982
ORD	2915N	Rules and Procedures of the Federal Cochairmen (13 CFR Part 590) CONTACT: Frances Pappas (202) 377-5174	1/C	Fall 1982
PTI/ NBS	3101N	Barrels and Other Containers for Lime (15 CFR Part 240) CONTACT: Allen J. Farrar Office of Legal Adviser (301) 921-2425	1/C*	Completed June 1980 To Be Revoked
PTI/ NBS	3102N	Barrels for Fruits, Vegetables and Other Dry Commodities, and for Cranberries (15 CFR Part 241) CONTACT: Allen J. Farrar (301) 921-2425	1/C*	Completed June 1980 To Be Revoked
PTI/ PTO	3501N	Register of Government Interests in Patents (37 CFR Part 7) CONTACT: B. R. Padgett Group Art Unit 223 (703) 557-2037	1/C	June 1981

[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

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U.S. Department of Commerce

Schedule B: INVENTORY OF NON-SIGNIFICANT REGULATIONS

Title/Description			Rank [1]	Anticipated Date of Review
USTS	3701N	Procedural Regulation Governing Applications of States, Cities and Non-Profit Organizations for Matching Grants to Promote International Tourism to U.S. (15 CFR Part 1200)	1/B	Unknown

CONTACT: Vito A. Passemante
Administrative Office
(202) 377-3811

[1] "Importance" of each regulation is ranked on a scale of 1 to 5, with the highest digit indicating the most important regulation(s). Schedule A lists only significant regulations ranked 3 to 5. Schedule B covers those regulations ranked at the 1 or 2 level. The letter following the numerical ranking indicates the potential "Margin for Regulatory Improvement", (A= low, B = moderate and C = high). A critical review of high potential regulations ("C") may lead to substantial regulatory improvements.

* Review may lead to elimination of the regulation.

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federal register

Monday
October 27, 1980

Part III

Department of the Interior

Bureau of Land Management

Outer Continental Shelf; Central and Northern California, Proposed Oil and Gas Lease Sale No. 53

UNITED STATES
DEPARTMENT OF THE INTERIOR
Bureau of Land Management

Outer Continental Shelf

Central and Northern California

Proposed Oil and Gas Lease Sale No. 53

In connection with oil and gas leasing on the Outer Continental Shelf (OCS), the Secretary of the Interior has established a policy pursuant to Sec. 19 of the OCS Lands Act, as amended, relating to sale notices to further and enhance consultation with the affected coastal states. That policy includes providing the affected States with the opportunity to review the draft proposed sale notice prior to its final publication in the Federal Register. The following is a draft sale notice for proposed Sale No. 53 in the offshore waters of Central and Northern California. This notice is hereby published as a matter of information to the public.

Ed Hastey
Director, Bureau of Land Management
Associate

Dated: 10/17/80

Approved:

For James A. Joseph
Secretary of the Interior

Proposed Sale Notice

1. Authority. This notice is published pursuant to the Outer Continental Shelf Lands Act of 1953 (43 U.S.C. 1331-1343), as amended, (92 Stat. 629), and the regulations issued thereunder (43 CFR Part 3300).

2. Filing of Bids. Sealed bids will be received by the Manager, Pacific Outer Continental Shelf (OCS) Office, Bureau of Land Management, 1340 West 6th Street, Room 200, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until 4:00 p.m., p.s.t., _____; or by personal delivery to the (place of sale), (address), (city and State) between the hours of 8:30 a.m., p.s.t. and 9:30 a.m., p.s.t., _____. Bids received by the Manager later than the times and dates specified above will be returned unopened to the bidders. Bids may not be modified or withdrawn unless written modification or withdrawal is received by the Manager prior to 9:30 a.m., p.s.t., _____. All bids must be submitted and will be considered in accordance with applicable regulations, including 43 CFR Part 3300. The list of restricted joint bidders which applies to this sale was published in ___ FR _____, _____.

3. Methods of Bidding. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease (insert number of tract), not to be opened until 10:00 am., p.s.t. _____" must be submitted for

each tract. A suggested form appears in 43 CFR Part 3300 Appendix A. Bidders are advised that tract numbers are assigned solely for administrative purposes and are not the same as block numbers found on official protraction diagrams or leasing maps. All bids received shall be deemed submitted for a numbered tract. Bidders must submit with each bid one-fifth of the cash bonus in cash or by cashier's check, bank draft on a solvent bank, or certified check, payable to the order of the Bureau of Land Management. No bid for less than a full tract as described in paragraph 12 will be considered. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, as well as submit a sworn statement that the bidder is qualified under 43 CFR Subpart 3316. The suggested form for this statement to be used in joint bids appears in 43 CFR Part 3300 Appendix B. Other documents may be required of bidders under 43 CFR 3316.4. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All leases awarded for this sale will provide for a yearly rental of $8 per hectare or fraction thereof. Except for the fixed net profit share tracts listed in paragraph 4(c) of this notice all leases awarded will provide for a minimum annual royalty payment of $8 per hectare or fraction therof. The following systems will be utilized.

(a) Bonus Bidding with 33 1/3 percent Royalty. Bids on tracts 53-138, 53-142, 53-143, 53-145, 53-146, 53-147, 53-149, 53-150, 53-151, 53-153, 53-154, 53-155, 53-159, 53-160, 53-161, 53-235, 53-236 and 53-239 must be on a cash bonus basis with a fixed royalty of 33 1/3 percent.

(b) Bonus Bidding with a Fixed Sliding Scale Royalty. Bids on tracts 53-185, 53-186, 53-192, 53-193, 53-197, 53-198, 53-199, 53-202, 53-203, 53-204, 53-205, 53-208, 53-209, 53-210, 53-211, 53-212, 53-213, 53-214, 53-215, 53-216 53-217, 53-218, 53-219, 53-220, 53-221, 53-222, 53-223, 53-224, 53-225, 53-226, 53-227, 53-228, 53-229, 53-230, 53-231, 53-232, 53-233 and 53-234 must be submitted on a cash bonus basis with the percent royalty due in amount or value of production saved, removed or sold fixed according to the sliding scale formula described below. This formula fixes the percent royalty at a level determined by the value of lease production during each calendar quarter. For purposes of determining the royalty percent due on production during a quarter, the value of production during the quarter will be adjusted for inflation as described below. The determination of the value of the production on which royalty is due will be made pursuant to 30 CFR 250.64.

The fixed sliding scale formula operates in the following way: when the quarterly value of production, adjusted for inflation, is less than or equal to $14.7878536 million, a royalty of 16.66667 percent in amount or value of production saved removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $14.7878537 million, but less than or equal to $1197.2061410 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 11.0

Ln = natural logarithm

Vj= the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.25

When the adjusted quarterly value of production is equal to or greater than $1197.2061410 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent royalty due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., the nearest dollar (for example, 15.392847 millions of dollars).

The form of the sliding scale royalty schedule is illustrated in Figure 1. Note that the effective quarterly royalty rate depends upon the inflation adjusted quarterly value of production. However, this rate is applied to the unadjusted quarterly value of production to determine the royalty payments due.

In adjusting the quarterly value of production for use in calculating the percent royalty due on production during the quarter, the actual value of production will be adjusted to account for the effects of inflation by dividing the actual value of production by the following inflation adjustment factor. The inflation adjustment factor used will be the ratio of the GNP fixed weighted price index for the calendar quarter preceding the quarter of production to the value of that index for the quarter preceding the issuance of the lease. The GNP fixed weighted price index is published monthly in the Survey of Current Business by the Bureau of Economic Analysis, U.S. Department of Commerce. The percent royalty will be due and payable on the actual amount or value of production saved, removed, or sold as determined pursuant to 30 CFR 250.64. The timing of procedures for inflation adjustments and determinations of the royalty due will be specified at a later date. Table 1 provides hypothetical examples of quarterly royalty calculations using the sliding scale formula just described under two different values for the quarterly price index.

Figure 1
Form of the Sliding Royalty Schedule

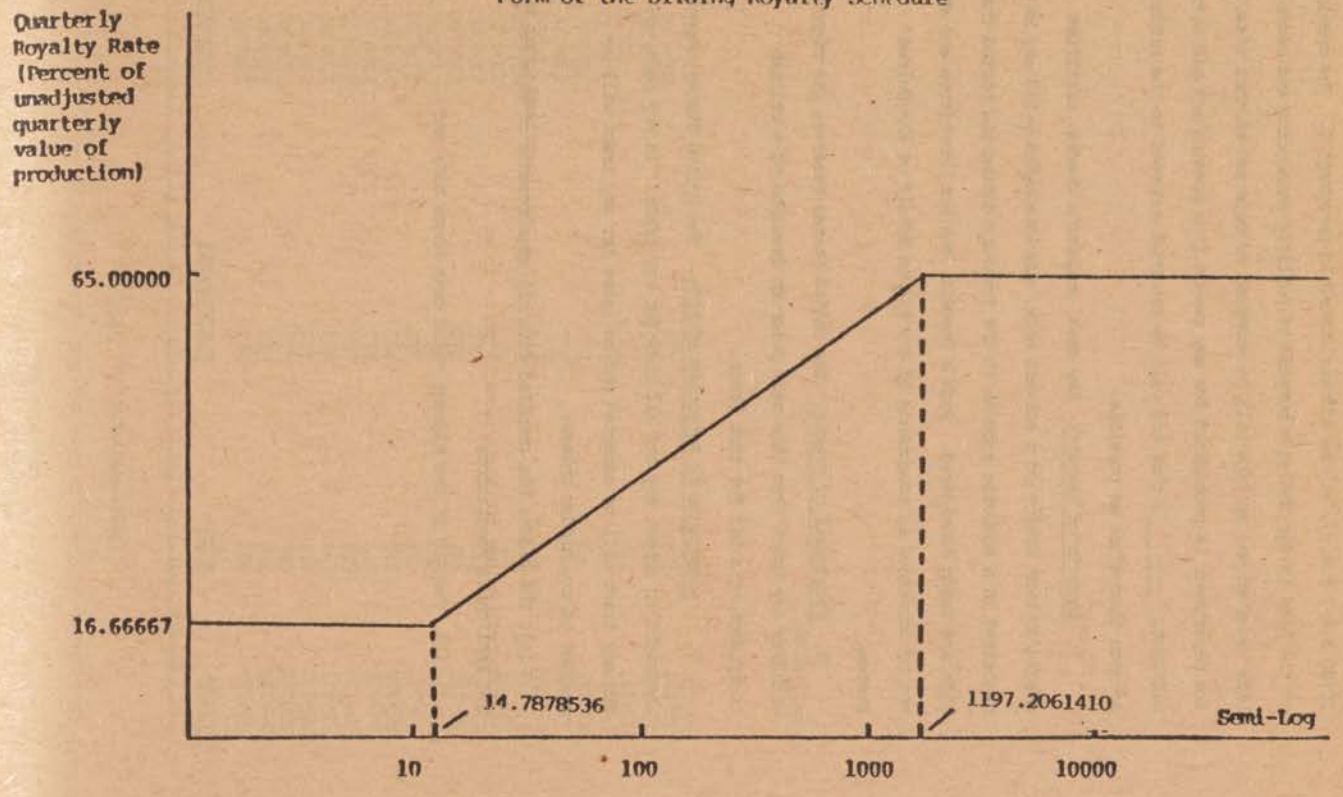

TABLE 1. HYPOTHETICAL QUARTERLY ROYALTY CALCULATIONS

(A) Actual Value of Quarterly Production (Millions of Dollars)	(B) GNP Fixed Weighted Price Index	(C) Inflation Factor[1]	(D) Adjusted Value of Quarterly Production[2] (Vj, Millions of $)	(E) Percent Royalty Rate (Rj)	(F) Royalty Payment[3] (Millions of Dollars)
10.000000	200.0	4/3	7.500000	16.66667	1.666667
30.000000	200.0	4/3	22.500000	21.28346	6.385039
90.000000	200.0	4/3	67.500000	33.36819	30.031378
270.000000	200.0	4/3	202.500000	45.45293	122.722921
810.000000	200.0	4/3	607.500000	57.53767	466.055118
10.000000	250.0	5/3	6.000000	16.66667	1.666667
30.000000	250.0	5/3	18.000000	18.82888	5.648665
90.000000	250.0	5/3	54.000000	30.91362	27.822257
270.000000	250.0	5/3	162.000000	42.99835	116.095557
810.000000	250.0	5/3	486.000000	55.08308	446.173028

1 Column (B) divided by 150.0 (assumed value of GNP fixed weighted price index at time leases are issued).

2 Column (A) divided by Inflation Factor.

3 Column (A) times Column (E). All values are rounded for display purposes only.

(c) Bonus Bidding with a Fixed Net Profit Share. Bids on tracts 53-165, 53-166, 53-167, 53-168, 53-169, 53-170, 53-171, 53-172, 53-173, 53-174, 53-175, 53-176, 53-177, 53-178, 53-179, 53-180, 53-181, 53-182, 53-183, 53-184, 53-190 and 53-191 must be submitted on a cash bonus basis with a fixed net profit share rate of 45 percent and a fixed capital recovery factor of 1.00 (which is a fixed capital recovery multiplier of 2.00). Note: The capital recovery factor represents the actual capital recovery premium that is debited to the net profit share lease capital account, which is made in addition to the debit for actual expenses. The net profit share payment shall be calculated according to the Department of Energy regulations 10 CFR 390 (45 FR 36784, May 30, 1980).

(d) Bonus Bidding with a 16 2/3 Percent Royalty. Bids on the remaining tracts to be offered at this sale must be submitted on a cash bonus basis with a fixed royalty of 16 2/3 percent.

5. Equal Opportunity. Each bidder must have submitted by 9:30 a.m., p.s.t., _____, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (November 1973), and the Affirmative Action Representation Form, Form 1140-7 (December 1971).

6. Bid Opening. Bids will be opened on _____, beginning at 10:00 a.m., p.s.t., at the address stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight, _____, that bid will be returned unopened to the bidder, as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks or bank drafts on a solvent bank, submitted with a bid may be deposited in a suspense account in the Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Tracts. The United States reserves the right to withdraw any tract from this sale prior to issuance of a written acceptance of a bid for that tract.

9. Acceptance or Rejection of Bids. The United States reserves the right to reject any and all bids for any tract. In any case, no bid for any tract will be accepted and no lease for any tract will be awarded to any bidder unless:

(a) The bidder has complied with all requirements of this notice and applicable regulations;

(b) The bid is the highest valid cash bonus bid; and

(c) The amount of the bid has been determined to be adequate by the Secretary of the Interior.

No bid will be considered for acceptance unless it offers a cash bonus in the amount of $62 or more per hectare or fraction thereof.

10. Successful Bidders. Each person who has submitted a bid accepted by the Secretary of the Interior will be required to execute copies of the lease specified below, pay the balance of the cash bonus bid together with the first year's annual rental and satisfy the bonding requirements of 43 CFR Subpart 3318 within the time provided in 43 CFR 3316.5.

11. Leasing Maps/Official Protraction Diagrams. Tracts offered for lease may be located on the following official protraction diagrams which are available from the Manager, Pacific Outer Continental Shelf Office at the address stated in paragraph 2, at a cost of $2.00 each:

Outer Continental Shelf Official Protraction Diagrams:

NI 10-3 San Luis Obispo

NI 10-6 Santa Maria

12. Tract Descriptions. The tracts offered for bids are as follows: Note: There may be gaps in the numbers of the tracts listed. Some of the blocks identified in the final environmental statement may not be included in this notice.

Tentative Tract List
OCS Sale #53

OCS Official Protraction Diagram, San Luis Obispo, NI 10-3

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-129	589	All	2304.00
53-130	590	All	2304.00
53-131	591	All	2304.00
53-132	633	All	2304.00
53-133	634	All	2304.00
53-134	635	All	2304.00
53-135	677	All	2304.00
53-136	678	All	2304.00
53-137	679	All	2304.00
53-138	680	1/	1528.66*
53-139	721	All	2304.00
53-140	722	All	2304.00
53-141	723	All	2304.00
53-142	724	1/	1848.35*
53-143	725	1/	16.86*
53-144	767	All	2304.00
53-145	768	All	2304.00
53-146	769	1/	1196.23
53-147	770	1/	10.37
53-148	811	All	2304.00
53-149	812	All	2304.00
53-150	813	All	2304.00

*Estimated

OCS Official Protraction Diagram, San Luis Obispo, NI 10-3 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-151	814	1/	1663.03
53-152	855	All	2304.00
53-153	856	All	2304.00
53-154	857	All	2304.00
53-155	858	All	2304.00
53-156	897	All	2304.00
53-157	898	All	2304.00
53-158	899	All	2304.00
53-159	900	All	2304.00
53-160	901	All	2304.00
53-161	902	All	2304.00
53-162	941	All	2304.00
53-163	942	All	2304.00
53-164	943	All	2304.00
53-165	944	All	2304.00
53-166	945	All	2304.00
53-167	946	All	2304.00
53-168	947	All	2304.00
53-169	985	All	2304.00
53-170	986	All	2304.00
53-171	987	All	2304.00
53-172	988	All	2304.00
53-173	989	All	2304.00
53-174	990	All	2304.00
53-175	991	All	2304.00

OCS Official Protraction Diagram, Santa Maria, NI 10-6

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-176	16	All	2304.00
53-177	17	All	2304.00
53-178	18	All	2304.00
53-179	19	All	2304.00
53-180	20	All	2304.00
53-181	21	All	2304.00
53-182	22	All	2304.00
53-183	61	All	2304.00
53-184	62	All	2304.00
53-185	63	All	2304.00
53-186	64	All	2304.00
53-187	65	All	2304.00
53-188	66	All	2304.00
53-189	67	All	2304.00
53-190	105	All	2304.00
53-191	106	All	2304.00

OCS Official Protraction Diagram, Santa Maria, NI 10-6 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-192	107	All	2304.00
53-193	108	All	2304.00
53-194	109	All	2304.00
53-195	110	All	2304.00
53-196	111	All	2304.00
53-197	150	All	2304.00
53-198	151	All	2304.00
53-199	152	All	2304.00
53-200	153	All	2304.00
53-201	154	All	2304.00
53-202	155	All	2304.00
53-203	156	1/	2245.37
53-204	195	All	2304.00
53-205	196	All	2304.00
53-206	197	All	2304.00
53-207	198	All	2304.00
53-208	199	All	2304.00
53-209	200	1/	2051.92
53-210	201	1/	10.63
53-211	239	All	2304.00
53-212	240	All	2304.00
53-213	241	All	2304.00
53-214	242	All	2304.00
53-215	243	All	2304.00
53-216	244	All	2304.00
53-217	245	1/	917.10*
53-218	283	All	2304.00
53-219	284	All	2304.00
53-220	285	All	2304.00
53-221	286	All	2304.00
53-222	287	All	2304.00
53-223	288	All	2304.00
53-224	289	1/	719.12
53-225	328	All	2304.00
53-226	329	All	2304.00
53-227	330	All	2304.00
53-228	331	All	2304.00
53-229	332	1/	1976.80
53-230	333	1/	8.13
53-231	373	All	2304.00
53-232	374	All	2304.00
53-233	375	All	2304.00
53-234	376	1/	1761.43
53-235	418	All	2304.00

*Estimated

OCS Official Protraction Diagram, Santa Maria, NI 10-6 continued

(Approved March 26, 1976)

Tract	Block	Description	Hectares
53-236	419	All	2304.00
53-237	420	1/	2277.34
53-238	421	1/	738.55
53-239	463	1/	2190.91*
53-240	464	1/	2076.54*
53-241	465	1/	1962.21*
53-242	466	1/	1847.86*
53-243	467	1/	1733.53*

*Estimated

1/ That portion seaward of the three geographical mile line.

13. Lease Terms and Stipulations. All leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form 3300-1 (September 1978), available from the Manager, Pacific Outer Continental Shelf Office, at the address stated in paragraph 2.

(a) For leases resulting from this sale for tracts offered on a cash bonus basis with a fixed net profit share, listed in paragraph 4(c), Form 3300-1 will be amended as follows:

Sec. 4 Rentals. The phrase "which commences prior to a discovery in paying quantities of oil or gas on the leased area" is hereby deleted and replaced by "which commences prior to the date the first profit share payment becomes due."

Sec. 5. Minimum Royalty. Hereby deleted.

Sec. 6. Royalty on Production. Hereby replaced by Fixed Net Profit Share. The lessee agrees to pay a net profit share rate of 45 percent with a fixed capital recovery factor of 1.00 (which is a fixed capital recovery multiplier of 2.00) calculated pursuant to 10 CFR 390.

(b) For leases resulting from this sale for tracts offered on a cash bonus basis with fixed sliding scale royalty, listed in paragraph 4(b), Form 3300-1 will be amended as follows:

Sec. 6 Royalty on Production. (a) The lessee agrees to pay the lessor royalty of that percent in amount or value of production saved, removed or sold from the leased area as determined by the sliding scale royalty formula as follows. When the quarterly value of production, adjusted for inflation, is less than or equal to $14.7878536 million, a royalty of 16.66667 percent in amount or value of production saved, removed or sold will be due on the unadjusted value or amount of production. When the adjusted quarterly value of production is equal to or greater than $14.7878537 million, but less than or equal to $1197.2061410 million, the royalty percent due on the unadjusted value or amount of production is given by

$$Rj = b[Ln\ (Vj/S)]$$

where

Rj = the percent royalty that is due and payable on the unadjusted amount or value of all production saved, removed or sold in quarter j

b = 11.0

Ln = natural logarithm

Vj = the value of production in quarter j, adjusted for inflation, in millions of dollars

S = 3.25

when the adjusted quarterly value of production is equal to or greater than $1197.2061410 million, a royalty of 65.00000 percent in amount or value of production saved, removed or sold will be due on the unadjusted quarterly value of production. Thus, in no instance will the quarterly royalty due exceed 65.00000 percent in amount or value of quarterly production saved, removed or sold.

In determining the quarterly percent due, Rj, the calculation will be carried to five decimal places (for example, 21.25878 percent). This calculation will incorporate the adjusted quarterly value of production, Vj, in millions of dollars, rounded to the sixth digit, i.e., to the nearest dollar (for example, 15.392847 millions of dollars). Gas of all kinds (except helium) is subject to royalty. The lessor shall determine whether production royalty shall be paid in amount or value.

(c) Except as otherwise noted, the following stipulations will be included in each lease resulting from this proposed sale. In the following stipulations the term DCMOFO refers to the Pacific Area Deputy Conservation Manager, Offshore Field Operation of the Geological Survey and the term Manager refers to the Manager of the Pacific OCS Office of the Bureau of Land Management.

Stipulation No. 1

(a) If the DCMOFO has reason to believe that biological populations or habitats exist and require protection, he shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the DCMOFO and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones.

(2) A species of limited regional distribution that may be adversely affected by any lease operations.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: (1) relocate the site of such operation so as not to adversely affect the resources identified; (2) establish to the satisfaction of the DCMOFO, on the basis of the site specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The DCMOFO will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the DCMOFO has given the lessee written directions on how to proceed.

(b) The lessee agrees that if any area of biological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO, and make every reasonable effort to preserve and protect the biological resource from damage until the DCMOFO has given the lessee directions with respect to its protection.

Stipulation No. 2

If the DCMOFO, having reason to believe that a site, structure or object of historical or archaeological significance, hereinafter referred to as a "cultural resource," may exist in the lease area, gives the lessee written notice that the lessor is invoking the provisions of this stipulation, the lessee shall upon receipt of such notice comply with the following requirements.

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to, well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall conduct remote sensing surveys to determine the potential existence of any cultural resource that may be affected by such operations. All data produced by such remote sensing surveys as well as other pertinent natural and cultural environmental data shall be examined by a qualified marine survey archaeologist to determine if indications are present suggesting the existence of a cultural resource that may be adversely affected by any lease operation. A report of this survey and assessment prepared by the marine survey archaeologist shall be submitted by the lessee to the DCMOFO and the Manager for review.

If such cultural resource indicators are present the lessee shall: (1) locate the site of such operation so as not to adversely affect the identified location; or (2) establish, to the satisfaction of the DCMOFO, on the basis of further archaeological investigation conducted by a qualified marine survey archaeologist or underwater archaeologist using such survey equipment and techniques as deemed necessary by the DCMOFO, either that such operation shall not adversely affect the location identified or that the potential cultural resource suggested by the occurrence of the indicators does not exist.

A report of this investigation prepared by the marine survey archaeologist or underwater archaeologist shall be submitted to the DCMOFO and the Manager for their review. Should the DCMOFO determine that the existence of a cultural resource which may be adversely affected by such operation is sufficiently established to warrant protection, the lessee shall take no action that may result in an adverse effect on such cultural resource until the DCMOFO has given directions as to its preservation.

The lessee agrees that if any site, structure, or object of historical or archaeological significance should be discovered during the conduct of any operations on the leased area, he shall report immediately such findings to the DCMOFO and make every reasonable effort to preserve and protect the cultural resource from damage until the DCMOFO has given directions as to its preservation.

Stipulation No. 3

(a) To be included in any lease resulting from this sale for tracts:

53-156, 53-157, 53-158, 53-159, 53-162, 53-163, 53-164, and 53-165.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas, and the emplacement of pipelines will not be allowed within the potentially unstable portion of a lease block unless or until the lessee has demonstrated to the DCMOFO's satisfaction that mass movement of sediments is unlikely or that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case such mass movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of unstable sediments, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas is allowed, all such unstable areas must be mapped. The DCMOFO may also require soil testing before exploration and production operations are allowed.

(b) To be included in any lease resulting from this sale for tracts:

53-226, 53-227, 53-228, 53-231, 53-232, 53-233, 53-235, 53-236, 53-237, and 53-239.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas or emplacement of pipelines will not be allowed within the potentially unstable portions of this lease block unless or until the lessee has demonstrated to the DCMOFO's satisfaction that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of submarine canyons or channels, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for unstable bottom conditions. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all such unstable areas must be mapped. The DCMOFO may also require soil testing before exploration and production operations are allowed.

(c) To be included in any lease resulting from this sale for tracts:

53-131, 53-138, 53-142, 53-143, 53-146, 53-147, 53-150, 53-151, 53-155, 53-161, 53-168, 53-175, 53-182, 53-189, 53-196, 53-203, 53-209, 53-210, 53-217.

Exploratory drilling operations, emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas and the emplacement of pipelines will not be allowed in the vicinity of the fault until the lessee has demonstrated to the DCMOFO's satisfaction that exploratory drilling operations, structures (platforms), casing, wellheads and pipelines can be safely designed to protect the environment in case fault movement occurs at the proposed location. This may necessitate that all exploration for and development of oil or gas be performed from locations outside of the area of potential fault movement, either within or outside of this lease block.

If exploratory drilling operations are allowed, site specific surveys shall be conducted to determine the potential for active faulting. If emplacement of structures (platforms) or seafloor wellheads for production or storage of oil or gas are allowed, all fault zones must be mapped. The DCMOFO may also require soil testing before exploration and production operations are allowed.

Stipulation No. 4

This stipulation applies to those tracts located in military operating areas. The tracts affected are listed with the appropriate military geographical area coordinator.

Tracts 53-129 through 53-243: Commander, Western Space and Missile Center (WSMC) and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency.

(a) The lessee agrees that prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual, designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in the warning areas at all times.

(b) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel, and appropriate sheltering of personnel not evacuated (an appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances), will come into effect upon the order of the DCMOFO, after consultation with the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed seventy-two hours; however, any such suspension may be extended by order of the DCMOFO. During such periods equipment may remain in place.

(c) The lessee agrees to control his own electromagnetic emissions and those of his agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, Western Space and Missile Center (WSMC), and the Commander, Pacific Missile Test Center (PMTC), or other appropriate military agency, to the degree necessary to prevent damage to, or unacceptable interference with Department of Defense flight, testing or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, his agents, employees, invitees, independent contractors or subcontractors, will be effected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors and onshore facilities.

Stipulation No. 5

To be included in any lease resulting from this sale for tracts: 53-129 through 53-243.

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors, or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center (WSMC), the Pacific Missile Test Center (PMTC), or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 6

a) Pipelines will be required: 1) if pipeline rights-of-way can be determined and obtained; 2) if laying of such pipelines is technologically feasible and environmentally preferable; and 3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, considerations will be given to any recommendation of the intergovernmental planning program for assessment and management of transportation of Outer Continental Shelf oil and gas with the participation of Federal, State, and local governments and the industry.

b) Following the completion of pipeline installation, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the DCMOFO.

c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Port and Tanker Safety Act of 1978 (PL 95-474).

Stipulation No. 7

(a) Wells. Subsea well heads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, in such a manner as to allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the DCMOFO. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with accuracy of at least ±50 feet (15.25 meters) at 200 miles (322 kilometers).

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth surface design. In the event that an irregular pipe surface is unavoidable due to the need for valves, anodes or other structures, those irregular surfaces shall be protected in such a manner as to allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 8

The lessee shall include in his exploration and development plans, submitted under 30 CFR 250.34, a proposed fisheries training program for review and approval by the DCMOFO. The training program shall be for the personnel involved in vessel operations (related to offshore exploration and development and production operations), and platform and shorebased supervisors. The purpose of the training program shall be to familiarize persons working on the project of the value of the commercial fishing industry and the methods of offshore fishing operations and the potential hazards, conflicts and impacts resulting from offshore oil and gas activities. The program shall be formulated and implemented by qualified instructors.

Stipulation No. 9

To be included only in the leases resulting from this sale for the 33 1/3 percent royalty tracts and the fixed sliding scale royalty tracts identified in paragraph 4(a) and 4(b) of this notice.

(a) The royalty rate on production saved, removed or sold from this lease is subject to consideration for reduction under the same authority that applies to all other oil and gas leases on the Outer Continental Shelf (30 CFR 250.21). The Director, U.S. Geological Survey, may grant a reduction for only one year at a time and reduction of royalty rates will not be approved unless production has been under way for one year or more.

(b) Although the royalty rate specified in section 6 (a) of this lease or as subsequently modified in accordance with applicable regulations and stipulations is applicable to all production under this lease, not more than 16-2/3 percent of the production saved, removed or sold from the lease area may be taken as royalty in amount, except as provided in sec. 15(d); the royalty on any portion of the production saved, removed or sold from the lease in excess of 16-2/3 percent may only be taken in value of the production saved, removed or sold from the lease area.

14. Information to Lessees. The Department of the Interior will seek the advice of the State of California and other Federal agencies to identify areas of special biological or cultural resources.

Bidders are advised that the Department of Energy is authorized, under Section 302(b) & (c) of the Department of Energy Organization Act, to establish production rates for all Federal oil and gas leases.

Operations on some of the tracts offered for lease may be restricted by designation of fairways, precautionary zones, or traffic separation schemes established by the Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq). Corps of Engineers permits are required for construction of any artificial islands, installations and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf in accordance with section 4(e) of the Outer Continental Shelf Lands Act of 1953, as amended.

Bidders are advised that the Departments of the Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation and maintenence of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

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Bidders are also advised that in accordance with Sec. 16 of each lease offered at this sale, the lessor may require a lessee to operate under a unit, pooling or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with either a different royalty rate or a net profit share payment.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific Region Orders, as of their effective date, and any other applicable OCS Order as it becomes effective.

federal register

Monday
October 27, 1980

Part IV

Department of Transportation

Federal Aviation Administration

U.S. National Aviation Standard; Active Beacon Collision Avoidance System

DEPARTMENT OF TRANSPORTATION

U.S. National Aviation Standard; Active Beacon Collision Avoidance System

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Invitation for public comment on the Final U.S. National Aviation Standard for the Active Beacon Collision Avoidance System (BCAS).

SUMMARY: Active BCAS is a collection of airborne installations that make use of air-air transmissions for the purpose of aircraft separation assurance in low-to-medium density airspace. It is intended to satisfy the operational need for an airborne separation assurance service and to ensure compatibility with all other elements of the National Airspace System. Its operation does not depend upon the existence of any of these other elements except Air Traffic Control Radar Beacon System (ATCRBS) transponders with altitude encoders or Discrete Address Beacon System (DABS) transponders with altitude encoders in other aircraft. The standard defines the system and the performance characteristics, including technical parameters, of its subsystems. While not regulatory, the standard may provide the basis for later rule making concerning airborne collision avoidance equipment.

FOR FURTHER INFORMATION CONTACT: R. L. Bowers, Aircraft Separation Assurance Branch, ARD–244, Communications and Surveillance Division, Systems Research and Development Service, Federal Aviation Administration, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC 20590, telephone 202–426–8432. Additional copies of this notice may be obtained from the same address.

Invitation of Public Comments

Interested persons are invited to submit written data and comments on this U.S. National Aviation Standard as they may desire. Communications should identify the notice number and be submitted in duplicate to: Director, Systems Research and Development Service, Attn: ARD–10, Federal Aviation Administration, Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC 20590, on or before February 27, 1981. Copies of comments received will be made available through ARD–10 for examination before and after the closing date for comments.

Description

The Active Beacon Collision Avoidance System is an important element of the engineering and development program for Aircraft Separation Assurance (ASA). The other elements include Full-Capability BCAS, Automatic Traffic Advisory and Resolution Service (ATARS), Conflict Alert, Conflict Resolution and Automated Terminal Service. It is intended to be a stand-alone development which is independent of the other elements of the ASA program but which will operate compatibly and cooperatively with the other elements should any or all of them be implemented. Use of the signal formats of the Discrete Address Beacon System (DABS) has been selected for BCAS to provide for high quality system communications and to allow evolutionary transition to the enhanced performance capabilities of that system when it is implemented.

History

The "Proposed U.S. National Aviation Standard for the Active Beacon Collision Avoidance System" was published in the **Federal Register** (43 FR 59565) on December 21, 1978, with a supplementary notice published in 44 FR 4920 on February 15, 1979. The BCAS National Standard has been extensively revised since that time. Changes to the standard fall into three major areas:

1. Editorial. The standard has been reorganized into the same style and sequence as used for the DABS National Standard. Additionally, most of the tutorial material has been eliminated.

2. Formats and Protocols. These have been changed to conform with the current DABS National Standard.

3. Collision Avoidance Algorithm. Certain functions of the collision avoidance algorithm have been included to ensure that the Active BCAS units interface satisfactorily with each other, with ATARS, with Full-Capability BCAS, and with the air traffic control system.

Definition of U.S. National Standard

U.S. National Aviation Standards are system standards embodying descriptions of system characteristics. They are issued by the Administrator of the Federal Aviation Administration in accordance with Section 312(c) of the Federal Aviation Act (49 USC 1353(c)). They describe the performance characteristics (the technical parameters, tolerances and techniques) of major elements of the system to the extent necessary to assure proper operation and interface compatibility among elements of the National Airspace System (NAS). U.S. National Aviation Standards generally are limited to cooperative air-to-ground subsystems involving government owned ground equipment and private airborne equipment. They are not equipment specifications or standards pertaining to planning, programming, siting, installation, availability, reliability or maintainability.

Relationship of U.S. National Aviation Standards to Federal Aviation Regulations

U.S. National Aviation Standards issued by the Administrator in agency orders are binding only on FAA organizational elements. They establish the technical basis and description of the NAS and component subsystems. A National Aviation Standard is not a standard of general or particular applicability designed to implement or prescribe law or policy. It does not fall within the definition of "rule" contained in the Administrative procedures Act (5 USC 551). There is no requirement that a National Aviation Standard be published as a notice of proposed rule making in the **Federal Register.** However, U.S. National Aviation Standards may serve as the basis for subsequent rule making actions. Accordingly, because of the relationship between the Standards and possible subsequent regulator actions, FAA publishes such Standards in the **Federal Register** and solicits public comment prior to their approval by the Administrator.

The Standard

Accordingly, the Federal Aviation Administration proposes to adopt the following BCAS Standard.

Issued in Washington, DC, on October 20, 1980.

Robert W. Wedan,

Director, Systems Research and Development Service Engineering and Development, Federal Aviation Administration Department of Transportation.

U.S. National Aviation Standard for the Active Beacon Collision Avoidance System (Final Standard for Public Comment

October 20, 1980

Systems Research and Development Service, Federal Aviation Administration, Washington, D.C. 20590

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6. Characteristics of Ground RBX Equipment

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6.1.1 RF Peak Effective Radiated Power
6.1.2 Unwanted RF Output Power
6.1.3 Squitter Rate

U.S. NATIONAL AVIATION STANDARD FOR THE ACTIVE BEACON COLLISION AVOIDANCE SYSTEM

1. General.

1.1 System Features

1.1.1 The Function of Active BCAS

The Active Beacon Collision Avoidance System (Active BCAS) is a collection of airborne installations that make use of air-air beacon transmissions for the purpose of aircraft separation assurance in low-to-medium density airspace. The principal functions of a BCAS unit installed on an aircraft are:

a. Detect the presence of other aircraft flying in the vicinity and make position measurements. A BCAS unit is capable of detecting and tracking in range and altitude aircraft that are equipped with BCAS units and aircraft that are equipped with Air Traffic Control Radar Beacon System (ATCRBS) transponders with altitude encoders or Discrete Address Beacon System (DABS) transponders with altitude encoders.

b. Determine if any of these aircraft represents a collision threat.

c. Determine an appropriate aircraft vertical maneuver to resolve an encounter if a threat is detected.

d. Coordinate the maneuver decision with the other aircraft if it is also equipped with separation assurance capability so that the resulting maneuvers are compatible.

e. Communicate the maneuver decision (resolution advisory) to the pilot.

1.1.2 Rationale for the BCAS National Standard

1.1.2.1 Legal Rationale

Under Section 312(c) of the Federal Aviation Act as amended (49 U.S.C. 1353(c)), the Department of Transportation has the responsibility for the development and operation of a common system of air traffic control and navigation for both military and civil aircraft. Explicitly, the Act requires the Secretary to develop, modify, test and evaluate systems, procedures, facilities, and devices, as well as define the performance characteristics thereof, to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation, except for those needs of military agencies which are peculiar to air warfare and primarily of military concern. The promulgation of a national aviation standard for Active BCAS is in keeping with this directive, as it will permit uniformity among aircraft collision avoidance systems, promoting greater efficiency and safety in aviation.

1.1.2.2 Technical Rationale

U.S. national aviation standards are system standards containing descriptions of those systems selected for implementation as a result of these developments, modifications and test and evaluation efforts. They describe system characteristics, including technical parameters that ensure proper operation and compatibility between elements of the National Airspace System.

1.2 Coordination of BCAS With Other Elements of the National Airspace System

BCAS is compatible with other existing and proposed elements of the National Airspace System, and the operation of BCAS may be automatically coordinated with the operation of these other elements.

1.2.1 Coordination With Ground Air Traffic Control

The operation of BCAS does not require ground equipment. However, where appropriate ground units are available, the operation of airborne BCAS equipment can be automatically coordinated with the air traffic control system. The DABS transponder on board the BCAS aircraft is used for communicating with DABS ground sensors and is the principal means for coordinating with ground air traffic control (ATC) in areas of DABS coverage. Where there is no DABS ground sensor, BCAS can communicate with a special unit on the ground known as an RBX. The RBX may be used for coordination with ground air traffic control facilities.

1.2.2 Coordination With the Automatic Traffic Advisory and Resolution Service

The Automatic Traffic Advisory and Resolution Service (ATARS) is a ground-based collision avoidance service which employs a DABS ground sensor for aircraft surveillance and ground-air communications. Provisions are included in the BCAS airborne equipment for coordinating with ATARS when in areas of ATARS coverage.

1.2.3 Compatibility With ATCRBS and DABS Surveillance Systems

The BCAS is designed for full operational compatibility with ATCRBS and DABS equipment. BCAS provides surveillance of both ATCRBS and DABS transponders and includes safeguards to prevent interference with the operation of ATCRBS and DABS ground surveillance systems.

1.2.4 Compatibility With ATCRBS IFF Mark XII System (AIMS)

The BCAS system is designed for full operational compatibility with AIMS including Mode 4.

1.2.5 Compatibility With Full-Capability BCAS

Full-capability BCAS (Full BCAS) is an extended Beacon Collision Avoidance System designed to operate in all airspace. It provides pilot resolution advisories both in the horizontal and vertical planes through the use of modes of operation not available in Active BCAS. Active BCAS is designed for full operational compatibility with Full BCAS.

1.3 Scope of This Standard

This document describes and standardizes those characteristics of the Active Beacon Collision Avoidance System which must be controlled to provide compatibility among components of the system and to prevent impairment of services to other users of the airspace. The document standardizes signal characteristics and coordination protocols and provides limits on radiated energy. All applications of Active BCAS messages are standardized and no experimental or ad hoc applications should be implemented without prior approval of the Federal Aviation Administration.

1.3.1 Relationship to Other U.S. National Aviation Standards

Since the BCAS interacts with other systems and subsystems which are also part of the National Airspace System, the standards governing pertinent other systems are referenced herein (1.6). In the event of conflict between this Standard and either of the referenced standards, this Standard takes lower precedence.

1.3.2 Items Not Covered

This Standard does not prescribe the detailed technical features and capabilities of Active BCAS ground or airborne equipment nor the minimum performance standards which must be met for operation in the National Airspace System. Other documentation will prescribe such minimum

performance standards for both ground-based and airborne equipment. This Standard does not in any way define or constrain the media, devices or formats for cockpit display of BCAS advisories or traffic information.

1.4 Overall System Capability

1.4.1 Coverage

The airborn BCAS equipment performs surveillance of all aircraft equipped with ATCRBS or DABS transponders and encoding altimeters within its line-of-sight coverage airspace. BCAS equipment can be designed, in accordance with this Standard, to provide serviceable coverage at air-air ranges out to 20 nmi; a particular installation may be adapted to shorter ranges to match the performance capability of the aircraft in which is is installed. Similarly, RBX equipment can provide serviceable performance at ranges out to 50 nmi, while particular installations may be adapted to shorter ranges. Serviceable coverage corresponds to a link margin of 3 dB given nominal equipment and antenna parameters.

1.4.2 BCAS Operation

BCAS alternates between DABS and ATCRBS surveillance modes. The airborne BCAS equipment may use non-directional antennas, hence surveillance data may consist of range and altitude information only. Because of this, the threat detection and resolution logic limits its resolution advisories to the vertical dimension. BCAS may use antennas with direction finding capability in generating proximity warnings (1.4.8).

1.4.3 Coordination With Other BCAS Aircraft

The availability of an air-air link allows BACS to interact with the detected aircraft if it is BCAS equipped in order to provide coordinated resoultion, thereby preventing ties in the selection of escape maneuvers.

1.4.4 Functional Elements

The principal elements of the BCAS airbourne equipment are DABS and ATCRBS surveillance subsystems, a conflict resolution logic function and a pilot display. Every BCAS aircraft has a DABS transponder to provide BCAS–BCAS maneuver coordination and to coordinate with ATARS and the RBX.

1.4.5 DABS Surveillance

The DABS surveillance subsystem detects and tracks DABS-equipped aircraft. BCAS listens to squitters and replies generated by DABS transponders in response to ground interrogations in order to determine their altitudes and DABS addresses.

After BACS has received replies from a new aircraft, it compares the altitude of the aircraft against its own altitude to determine whether the aircraft should be interrogated to determine its range. If the measured range and the reported speed capability indicate that it is or could soon be a collision threat, the aircraft is regularly interrogated and the resulting track data are fed to the conflict resolution algorithms.

1.4.6 ATCRBS Surveillance

ATCRBS surveillance is accomplished by the transmission of modified ATCRBS Mode C interrogations at regular intervals. These interrogations elicit replies from ATCRBS transponders but, to minimize interference, DABS transponders do not reply.

ATCRBS synchronous interferences may be controlled by alternating Mode C interrogations and ATCRBS suppression transmissions at varying power levels to reduce the population of ATCRBS transponders replying to each interrogation.

1.4.7 Conflict Resolution

BCAS generates the following types of resolution advisories:

a. Positive advisories.
b. Negative advisories.
c. Vertical speed limit advisories.
d. Vertical speed minimum advisories.

An advisory is generated for each aircraft whose tracked range, range rate, altitude and altitude rate indicate that its projected separation is within predefined bounds. These threat boundaries vary according to local traffic and airspace conditions. Such variations are either based on external inputs, pilot inputs, or aircraft altitude. If the threat aircraft is also BCAS or ATARS equipped, a coordination procedure is performed before displaying the advisory to the pilot to assure that the aircraft maneuvers are compatible.

1.4.8 Proximity Warnings

BCAS may generate warnings of proximate aircraft that provide the ranges, range rates, altitudes, altitude rates, and bearings of such aircraft. Proximity warnings may be provided for intruding aircraft for which resolution advisories are unnecessary or may be accompanied by resolution advisories.

1.4.9 Display

The display indicates to the pilot the advisories generated by the conflict resolution function. The BCAS display is also used for the display of Automated Traffic Advisory and Resolution Service messages received by the DABS transponder from the ground.

1.5 Acronyms and Abbreviations

1.5.1 Acronyms

ASA: Aircraft Separation Assurance
ATARS: Automatic Traffic Advisory and Resolution Service
ATC: Air Traffic Control
ATCRBS: Air Traffic Control Radar Beacon System
BCAS: Beacon Collision Avoidance System
DABS: Discrete Address Beacon System
RAR: Resolution Advisory Register
RBX: Radar Beacon Transponder

1.5.2 Abbreviations

ABS(X): absolute value of X
FPM: feet per minute
FPS^2: feet per second per second
.GE.: is greater than or equal to
.GT.: is greater than
.LE.: is less than or equal to
LSB: least significant bit
.LT.: is less than
MAX(X): the maximum of the elements of the set X
MIN(X): the minimum of the elements of the set X
MSB: most significant bit
VSL: Vertical Speed Limit
VSM: Vertical Speed Minimum

1.6 References

Reference A: "U.S. National Standard for the IFF Mark X (SIF)/Air Traffic Control Radar Beacon System Characteristics", Attachment 1 to DOT/FAA Order 1010.51A, 8 March 1971.

Reference B: "U.S. National Aviation Standard for the Discrete Address Beacon System".

Note.—A reference to paragraph 4.1 of reference B would be shown herein as ref. B: 4.1.

2. Signals In Space

2.1 RF Characteristics

The radio frequency characteristics of all signals employed by BCAS conform to either the U.S. National Aviation Standard for ATCRBS or the U.S. National Aviation Standard for DABS (ref. A or B).

3. Signal Content

Note.—The DABS National Standard (ref. B) describes the location and coding of the general information contained in DABS transmissions. This section summarizes that description for the message formats used for BCAS/ATARS/RBX messages.

3.1 Data Blocks

The interrogation and reply data blocks can contain either 56 or 112 bits.

3.2 Format Structure

DABS transmission formats consist of 56 or 112 bits of which 24 bits are used as the address while the rest are used

for information transfer. The interrogation and reply formats which can contain BCAS/ATARS/RBX information are presented in Figures 3.2–1 and 3.2–2.

3.2.1 Bit Numbering and Sequence

The bits are numbered in order of their transmission, beginning with bit 1. Numerical values are encoded with the MSB transmitted first.

3.2.2 Fields

Information is coded in fields which consist of one or more bits. In this document the decimal equivalent of the binary code formed by the bit sequence within a field is used as the designator of the field function or command.

Note.—As an example, the 5-bit UF field is used to designate the uplink format type. The surveillance interrogation with identity is designated by a UF code of 001 01. Since 001 $01_2 = 5_{10}$, this format is designated as UF = 5.

3.2.2.1 Essential Fields

Each DABS transmission contains two essential fields: One describing the format and the other providing the address. The format descriptor is a 5 bit field at the beginning of the transmission and the address field always occurs at the end of the transmission. The formats are described by the UF (Uplink Format) or DF (Downlink Format) fields. The 24 bit address field carries parity information according to ref. B: 4.1. The designator is AP (Address/Parity).

3.2.2.2 Mission Fields

The remaining coding space is used to transmit the mission fields. For specific missions, a specific set of fields is prescribed.

Note.—Mission fields have two-letter designators within this Standard.

BILLING CODE 4910-13-M

Format No.	UF						
0	(0 0000)	---3---	(AQ:1)	-------23-------	(AP:24)		.Short Special Surveillance
4	(0 0100)	(PC:3)	(RR:5)	(DI:3)	(SD:16)	(AP:24)	.Surveillance, Altitude Request
5	(0 0101)	(PC:3)	(RR:5)	(DI:3)	(SD:16)	(AP:24)	.Surveillance, Identity Request
6	(0 0110)	(RD:3)	(MR:24)			(AP:24)	.Short Ground-Air Coordination
16	(1 0000)	---3---	(AQ:1)	------23-------	(MU:56)	(AP:24)	.Long Special Surveillance
20	(1 0100)	(PC:3)	(RR:5)	(DI:3)	(SD:16)	(MA:56) (AP:24)	.Comm-A, Altitude Request
21	(1 0101)	(PC:3)	(RR:5)	(DI:3)	(SD:16)	(MA:56) (AP:24)	.Comm-A, Identity Request
22	(1 0110)	(GD:3)	(MG:80)				(AP:24) .Long Ground-Air Coordination

Note: (1) (XX:M) denotes a field designated "XX" which is assigned M bits.
(2) ---N--- denotes unassigned coding space, N bits; must be set to all zeroes.
(3) The format number in the above uplink formats (UF) corresponds to the binary code in the first 5 bits of the interrogation.
(4) UF=6 is used for RBX ground-air communications, and UF=22 is used for RBX air-ground communications.

Fig. 3.2-1. DABS Interrogation or Uplink Formats Used for BCAS/ATARS/RBX Messages.

Format No.	DF								
0	(0 0000)	(MX:3)	(AQ:1)	(SL:3)	(AR:2)-1-	(AT:4)	(AC:13)	(AP:24)	Short Special Surveillance
4	(0 0100)	(FS:3)	(DR:5)	(UM:6)	(AC:13)			(AP:24)	Surveillance, Altitude
5	(0 0101)	(FS:3)	(DR:5)	(UM:6)	(ID:13)			(AP:24)	Surveillance, Identity
16	(1 0000)	(MX:3)	(AQ:1)-6-	(AT:4)	(AC:13)	(MV:56)		(AP:24)	.Long Special Surveillance
20	(1 0100)	(FS:3)	(DR:5)	(UM:6)	(AC:13)	(MB:56)		(AP:24)	.Comm-B, Altitude
21	(1 0101)	(FS:3)	(DR:5)	(UM:6)	(ID:13)	(MB:56)		(AP:24)	.Comm-B, Identity

Note: (1) (XX:M) denotes a field designated "XX" which is assigned M bits.
(2) ---N--- denotes unassigned coding space, N bits; must be set to all zeroes.
(3) The format number in the above downlink formats (DF) corresponds to the binary code in the first 5 bits of the reply.

Fig. 3.2-2. DABS Reply or Downlink Formats Used for BCAS/ATARS/RBX Messages.

BILLING CODE 4910-13-C

3.2.2.3 Subfields

Subfields may appear within mission fields.

Note.—Subfields are labelled with three-character alphanumeric designators within this Standard. Information which appears as a subset of a subfield is labelled with a four-character alphanumeric designator.

3.3 Field Descriptions

The fields and subfields which are applicable to the formats containing BCAS/ATARS/RBX information are described in this section. Fields and subfields defined by the DABS National Standard are described in 3.3.1; fields and subfields introduced by this Standard are defined in 3.3.2. Table 3.3–1 provides an index of these fields and subfields.

3.3.1 Fields and Subfields Defined by DABS National Standard

Note.—Certain coding reserved for ASA services in the DABS National Standard is further described in this section.

3.3.1.1 AC Altitude Code

Downlink, 13 bits, 20 through 32. Appears in downlink formats which report aircraft altitude (DF=0, 4, 16, 20). Coded according to pattern of ref. A: 2.7.13.2.5 and ref. A: Figure 1 if bit 26 is zero. Starting with bit 20, the sequence is C1, A1, C2, A2, C4, A4, M, B1, D1, B2, D2, B4, D4. Zero is transmitted in each of the 13 bits if altitude information is not available. Metric altitude is contained in this field if the M bit (bit 26) is set to '1'.

Note.—Metric altitude codes are not included in this Standard but may be defined in a future Standard. Currently, there is no standard metric Mode C altitude code.

3.3.1.2 AP Address/Parity

Uplink and downlink, 24 bits, 33 through 56 or 89 through 112. Appears in all formats. Parity is overlaid on the address according to ref. B: 4.1.2.

3.3.1.3 AQ Acquisition, Special

Uplink and downlink, 1 bit, 9. Appears in special surveillance formats UF=DF=0, and UF=DF=16. The code appearing in this field, when received in the uplink is repeated in the downlink. For protocol see 4.2.2.1 and 4.2.2.2.

3.3.1.4 AT ATARS

Downlink, 4 bits, 16 through 19. Appears in special surveillance formats DF=0, 16. For protocol see ref. B: 4.18.1.1.

Coding:

Bits 16 through 19 are assigned to ATARS address codes A through D sequentally; bit 16 representing site A.

BILLING CODE 4910-13-M

Table 3.3-1a
FIELD INDEX - SHEET A

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
AC		13	20-32		X	3.3.1.1	4.2.3
AP		24	33-56 or 89-112	X	X	3.3.1.2	4.2.1;4.5.2.1; 4.5.3.1 Ref. B: 4.1.2; B: 4.2.1.1; B: 4.2.1.2
AQ		1	9	X	X	3.3.1.3	4.2.2.1;4.2.2.2 4.2.3.1;4.2.3.2 Ref. B: 4.18.1.1
AR		2	13,14		X	3.3.2.1	4.2.3
AT		4	16-19		X	3.3.1.4	4.2.3; Ref. B: 4.18.1.1
DF		5	1-5		X	3.3.1.5	4.2.1;4.2.3; 4.3.2.1;4.4.3 4.3.2.2;4.4.2.1; 4.4.2.2;4.4.4
DI		3	14-16	X		3.3.1.6	4.4.5
DR		5	9-13		X	3.3.1.7	4.4.4; Ref. B: 4.11.2; B: 4.12.2
FS		3	6-8		X	3.3.1.8	4.2.1; Ref. B: 4.5
GD		3	6-8	X		3.3.2.2	4.5.4.1
ID		13	20-32		X	3.3.1.9	
MA		56	33-88	X		3.3.1.10	
	ATARS Resolution Advisory Message subfields of MA:						4.4.1
	ADS	8	33-40			3.3.2.3.1	
	COL	14	42-55			3.3.2.3.1	
	IRA	1	41			3.3.2.3.1	
	SIT	3	86-88			3.3.2.3.1	

Table 3.3-1b
FIELD INDEX - SHEET B

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
	ATCRBS Track Block Message subfields of MA:						4.4.1
	ADS	8	33-40			3.3.2.3.2	
	ADT	7	76-82			3.3.2.3.2	
	ALT	10	66-75			3.3.2.3.2	
	ATU	1	41			3.3.2.3.2	
	BRG	6	60-65			3.3.2.3.2	
	RDT	7	53-59			3.3.2.3.2	
	RNG	8	45-52			3.3.2.3.2	
	SEQ	3	42-44			3.3.2.3.2	
	SIT	3	86-88			3.3.2.3.2	
MB		56	33-88		X	3.3.1.11	
	Extended Capability Report subfields of MB:						4.4.3
	ACS	16	45-60			3.3.1.11.2	
	ARC	2	69-70			3.3.2.4.3	
	BDS	8	33-40			3.3.1.11.2	
	CBS	1	41			3.3.1.11.2	
	ECS	16	71-86			3.3.1.11.2	
	EDS	2	87-88			3.3.1.11.2	
	FDS	1	44			3.3.1.11.2	
	RAR Reply Message to ATARS subfields of MB:						4.4.2.1
	BDS	8	33-40			3.3.2.4.1	
	HO1	3	41-43			3.3.2.4.1	
	HO2	3	49-51			3.3.2.4.1	
	HO3	3	57-59			3.3.2.4.1	
	HO4	3	65-67			3.3.2.4.1	
	HO5	3	73-75			3.3.2.4.1	
	HO6	3	81-83			3.3.2.4.1	
	VE1	5	44-48			3.3.2.4.1	
	VE2	5	52-56			3.3.2.4.1	
	VE3	5	60-64			3.3.2.4.1	
	VE4	5	68-72			3.3.2.4.1	
	VE5	5	76-80			3.3.2.4.1	
	VE6	5	84-88			3.3.2.4.1	

Table 3.3-1c
FIELD INDEX - SHEET C

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
	RAR Busy Message to ATARS subfields of MB:						4.4.2.2
	BDS	8	33-40			3.3.2.4.2	
MG		80	9-88	X		3.3.2.5	
	BCAS-to-RBX Interrogation MG subfields:						4.5.4.1
	AID	13	15-27			3.3.2.5.1	
	ALC	13	42-54			3.3.2.5.1	
	DID	24	65-88			3.3.2.5.1	
	DRA	14	28-41			3.3.2.5.1	
	RAN	10	55-64			3.3.2.5.1	
	SLR	3	12-14			3.3.2.5.1	
MR		24	9-32	X		3.3.2.6	
	RBX Squitter subfield of MR:						4.5.2
	RAD	24	9-32			3.3.2.6.1	
	RBX Reply subfields of of MR:						4.5.3.2
	RTR	6	27-32			3.3.2.6.2	
	SLC	3	22-24			3.3.2.6.2	
MU		56	33-88	X		3.3.1.12 and 3.3.2.7	
	RAR Request and Resolution Message subfields of MU:						4.3.1;4.3.1.1;
	AR1	4	47-50			3.3.2.7.1	4.3.1.2;
	AR2	4	53-58			3.3.2.7.1	
	DID	24	65-88			3.3.2.7.1	4.3.1.2.1;
	DR1	4	43-46			3.3.2.7.1	
	DR2	4	51-54			3.3.2.7.1	
	LCK	1	41			3.3.2.7.1	
	MTB	1	42			3.3.2.7.1	
	UDS	8	33-40			3.3.2.7.1	

Table 3.3-1d
FIELD INDEX - SHEET D

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
MV		56	33-88		X	3.3.1.13 and 3.3.2.8	
	RAR Reply Message to BCAS subfields of MV:						4.3.2.1
	HO1	3	41-43			3.3.2.8.1	
	HO2	3	49-51			3.3.2.8.1	
	HO3	3	57-59			3.3.2.8.1	
	HO4	3	65-67			3.3.2.8.1	
	HO5	3	73-75			3.3.2.8.1	
	HO6	3	81-83			3.3.2.8.1	
	VDS	8	33-40			3.3.2.8.1	
	VE1	5	41-48			3.3.2.8.1	
	VE2	5	52-56			3.3.2.8.1	
	VE3	5	60-64			3.3.2.8.1	
	VE4	5	68-72			3.3.2.8.1	
	VE5	5	76-80			3.3.2.8.1	
	VE6	5	84-88			3.3.2.8.1	
	RAR Busy Message to BCAS subfields of MV:						4.3.2.2
	VDS	8	33-40			3.3.2.8.2	
MX		3	6-9		X	3.3.1.14	4.2.3.1;4.2.3.2 Ref. B: 4.18.1.1
PC		3	6-8	X		3.3.1.15	Ref. B: 4.3; B: 4.11; B: 4.12
RD		3	6-8	X		3.3.2.9	4.5.2.1; 4.5.3.1
RR		5	9-13	X		3.3.1.16	4.4.1.1; 4.4.2.1; Ref. B: 4.2.2.1; B: 4.6.2; B: 4.6.3
SD		16	17-32	X		3.3.1.17	
	Special Designator for DI=2 (ATARS Information) subfields of SD:						4.4.5; Ref. B: 4.18
	AIS	4	17-20			3.3.1.17.1	
	RAS	1	21			3.3.1.17.1	
	SLC	3	22-24			3.3.2.10.1	
SL		3	10-12			3.3.2.11	4.2.3

Table 3.3-1e
FIELD INDEX - SHEET E

Field	Sub Field	Bits No.	Bits Position	Formats Up	Formats Down	Reference Paragraph(s) Content	Reference Paragraph(s) Protocol
UF		5	1-5	X		3.3.1.18	4.2.2; 4.3.1.1 4.3.1.2;4.4.1.1; 4.4.1.2;4.4.5; 4.5.2.1;4.5.3.1; 4.5.4.1
UM		6	14-19		X	3.3.1.19	Ref. B: 4.6.2; B: 4.7; B: 3.3.33.2

BILLING CODE 4910-13-C

3.3.1.5 DF Downlink Format

Downlink, 5 bits, 1 through 5. Appears in all downlink transmissions. This field is the downlink descriptor. Coding according to Fig. 3.2–2.

3.3.1.6 DI Designator, Identification

Uplink, 3 bits, 14 through 16. Appears in uplink surveillance and Comm-A formats, UF=4,5,20,21. Contains identification of coding in the SD field
Coding:
0=SD not used
1=SD contains multisite information (ref. B: 4.13.1.1)
2=SD contains ATARS information (3.3.1.17.1, 3.3.2.10.1)
3–6=not assigned
7=SD contains extended reply request (ref. B: 4.11.1.1.1)
BCAS examines the content of the SD field whenever DI=2.

3.3.1.7 DR Downlink Request

Downlink, 5 bits, 9 through 13. Appears in surveillance and Comm-B replies, DF=4,5,20,21.
Coding:
0=No downlink request
1=B bit set
2=RAR bit set
3=RAR bit set and B bit set
4–15=not assigned
16–31=see Comm-D protocol, (ref. B: 4.12.2.1)
When the RAR bit is set, i.e., RAR is non-empty, BCAS causes DR=2 or 3 to be set, as appropriate.

Note.—Requests associated with codes 1–15 take priority over requests associated with codes 16–31.

3.3.1.8 FS Flight Status

Downlink, 3 bits, 6 through 8. Appears in downlink surveillance and Comm-B formats, DF=4,5,20,21. Contains flight status.
Coding:
0=Airborne and no ALERT and no SPI
1=Airborne and no ALERT and no SIP and BCAS interrogating
2=ALERT
3=Not assigned
4=SPI
5=Not assigned
6=ALERT and SPI
7=On the ground and no ALERT and no SPI

Note.—FS=1, unless pre-empted by a higher number FS code, when BCAS operates at sensitivity levels 2 through 7. The meaning of the other codes is explained in ref. B: 4.5.

3.3.1.9 ID Identification, (4096 code)

Downlink, 13 bits, 20 through 32. Appears in downlink formats DF=5, 21 which report aircraft identification. Coded to pattern corresponding to ref. A: 2.6.

3.3.1.10 MA Message, Comm-A

Uplink, 56 bits, 33 through 88. Appears in Comm-A interrogations, UF=20,21. The MA field is used to transmit ATARS ATCRBS track block and resolution advisory information to BCAS. Contains 8-bit ADS (Comm-A Definition) subfield.

Note.—Message content and codes not related to BCAS are not included in this Standard.

3.3.1.10. Subfield in MA: ADS, A-Definition Subfield

Uplink, 8 bits, 33 through 40, subfield in MA. Defines the data contained in the remainder of MA. For convenience in coding, ADS is expressed in two groups of 4 bits each, ADS1, 33 through 36, and ADS2, 37 through 40. ADS1 defines a specific A-sink (Comm-A destination) and ADS2 defines the specific message type for that A-sink. ATARS ATCRBS track block and resolution advisory messages use ADS1=1 and 3 respectively.

3.3.1.11 MB Message, Comm-B

Downlink, 56 bits, 33 through 88. Appears in Comm-B replies, DF=20,21. The MB field is used by BCAS to transmit RAR information and extended capability reports (ref. B: 4.6.3) to the ground. Contains 8-bit BDS (Comm-B Definition) subfield.

3.3.1.11.1 Subfield in MB: BDS, B-Definition Subfield

Downlink, 8 bits, 33 through 40, subfield in MB. Defines the data contained in MB. For convenience in coding, BDS is expressed in two groups of 4 bits each, BDS1, 33 through 36, and BDS2, 37 through 40. BDS1 defines a specific B-source (Comm-B source) and BDS2 defines the specific message type from that source. Extended capability and RAR messages use BDS1=1 and 3 respectively.

3.3.1.11.2 Subfields in MB for Extended Capability Report

The following subfields defined by the DABS National Standard appear in MB for an extended capability report:
ACS: A-Capability, 16 bits, 45 through 60. Contains identity of on-board Comm-A destinations.
Coding:
To report ADS1=x, bit 45 + x is set to '1'.

Note.—BCAS aircraft must have ADS1=1 (ATARS ATCRBS track block) and ADS1=3 (ATARS resolution advisory/RAR) A-sinks on board. An A-sink is an on-board destination for long messages.
BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An extended capability report is identified by BDS1=1 and BDS2=0, the combination of which is equivalent to BDS=16.
CBS: Continuation Bit, 1 bit, 41.
Coding:
0=Capability reported only in BDS1=1, BDS2=0
1=Further capability reported in BDS1=1, BDS2.GT.0
ECS: Extended Capability, 16 bits, 71 through 86. Contains identity of on-board sources of Comm-B messages.
Coding:
To report BDS1=x, bit 71 + x is set to '1'.

Note.—BCAS aircraft must have BDS1=1 (extended capability) and BDS1=3 (RAR) B-sources on-board. A B-source is an on-board source of long messages.

EDS: ELM Description, 2 bits, 87 through 88.
Coding:
0=No ELM capability
1=Uplink ELM capability
2=Not assigned
3=Uplink and downlink ELM capability
FDS: Flight Identification, 1 bit, 44.
Coding:
0=No flight identification capability
1=Flight identification capability

Note.—A description of the remaining subfield, ARC, in MB for an extended capability report is contained in 3.3.2.4.3 because ARC is not defined in the DABS National Standard.

3.3.1.12 MU Message, Special Interrogation

Uplink, 56 bits, 33 through 88. Appears in long special surveillance interrogation, UF=16. The MU field is used by BCAS to transmit air-air coordination information.

3.3.1.13 MV Message, Special Reply

Downlink, 56 bits, 33 through 88. Appears in long special surveillance reply, DF=16. The MV field is used by BCAS (and ATARS-only aircraft) to transmit air-air coordination information.

3.3.1.14 MX Maximum Airspeed Field

Downlink, 3 bits, 6 through 8. Appears in special replies, DF=0, 16 when AQ=1. Bits 6 through 8 are free coding space when AQ=0.
Coding:
0=No data available
1=Airspeed is up to 75 knots
2=Airspeed is between 75 knots and 150 knots
3=Airspeed is between 150 knots and 300 knots
4=Airspeed is between 300 knots and 600 knots

5=Airspeed is between 600 knots and 1200 knots
6=Airspeed is more than 1200 knots
7=Aircraft is on the ground (see ref. B: 4.5.2)
The maximum true airspeed flown in normal operation is used.

3.3.1.15 PC Protocol

Uplink, 3 bits, 6 through 8. Appears in surveillance and Comm-A interrogations UF=4,5,20,21. Contains operating commands to the transponder.
Coding:
0=No action
1=General All-Call lockout (ref. B: 4.3.1)
2=Squitter lockout (ref. B: 4.3.2)
3=General All-Call lockout and squitter lockout
4=Cancel B (ref. B: 4.11.2)
5=Cancel C (ref. B: 4.12.1.3.4)
6=Cancel D (ref. B: 4.12.2.3)
7=Not assigned

3.3.1.16 RR Reply Request

Uplink, 5 bits, 9 through 13. Appears in surveillance and Comm-A interrogations, UF=4,5,20,21. Contains length and content of requested reply. The RR codes to which BCAS responds are 17 and 19.
Coding:

RR Code	Reply Length	MB Content	UM Content
17	Long	Extended Capability (ref. B: 4.6.3)	*
19	Long	RAR (4.4.2.1)	*

*The contents of UM may be specified by coding in the SD field of the interrogation. If no UM content is specified, a voluntary message may be provided (ref. B: 4.7).

Note 1.—1.If bit 1 of the RR code is a one, the last four bits of the 5-bit RR code, if transformed into their decimal equivalent, designate the number (BDS1) of the requested source.

Note 2.—2.Voluntary messages are currently undefined.

3.3.1.17 SD Special Designator

Uplink, 16 bits, 17 through 32. Appears in surveillance and Comm-A interrogations, UF=4,5,20,21. Contains control codes. Coding depends on the content of the DI field.

BCAS examines the contents of SD when DI=2 for ATARS information.

3.3.1.17.1 Subfields in SD for DI=2 (ATARS Information)

The following subfields defined by the DABS National Standard appear in SD if DI=2:

AIS: ATARS Identity, 4 bits, 17 through 20.
Coding:
0=No change in ATARS site register
1=Set ATARS site A
2=Set ATARS site B
3=Set ATARS site C
4=Set ATARS site D
5–8=Not assigned
9=Reset ATARS site A (remove site register)
10=Reset ATARS site B (remove site register)
11=Reset ATARS site C (remove site register)
12=Reset ATARS site D (remove site register)
13–15=Not assigned

RAS: Reply ATARS, 1 bit, 21.
Coding:
0=No request for ATARS register content
1=Request for ATARS register content

Note 1.—A description of the remaining subfield, SLC, in SD when DI=2 is contained in 3.3.2.10.1 because SLC is not defined in the DABS National Standard.

Note 2.—Other subfields within SD are described in ref. B: 4.11.1.1.1. and B: 4.13.1.1.

3.3.1.18 UF Uplink Format

Uplink, 5 bits, 1 through 5. Appears in all uplink transmissions. This field is the uplink descriptor. Coding according to Fig. 3.2–1.

Note.—This field uniquely identifies the structure and content of all DABS interrogations.

3.3.1.19 UM Utility Message

Downlink, 6 bits, 14 through 19. Appears in surveillance and Comm-B replies, DF=4,5,20,21. Contains requested or volunteered data (see ref. B: 4.7).

Note.—The UM field is provided in order to accomplish simple message interchanges between the aircraft and the ground. UM is not used for BCAS.

3.3.2. BCAS Fields and Subfields

Location and coding of fields and subfields required for transmission of BCAS information not specified by the DABS National Standard (ref. B) are described in alphabetical order in the following paragraphs.

3.3.2.1. AR ASA Resolution Capability Report

Downlink, 2 bits, 13 through 14. Appears in special surveillance reply format, DF=0. Contains ASA resolution capability of aircraft.
Coding:
0=No ASA resolution capability
1=ATARS only
2=Active BCAS
3=Not assigned

3.3.2.2. GD G-Definition Field

Uplink, 3 bits, 6 through 8. Appears in long ground-air coordination (RBX) interrogation format, UF=22. Defines data content and coding in the MG field.
Coding:
0=MG not used
1=MG contains Active BCAS-RBX interrogation information (3.3.2.5.1)
2–7=Not assigned.

3.3.2.3 MA Message, Comm-A

ATARS uses the MA field (3.3.1.10) of Comm-A interrogations to transmit ATARS resolution advisories and ATCRBS track blocks.

3.3.2.3.1 Subfields in MA for an ATARS Resolution Advisory Message

ADS: A-Definition Subfield, 8 bits, 33 through 40 (3.3.1.10.1). An ATARS Resolution Advisory Message is identified by ADS1=3 and ADS2=0, the combination of which is equivalent to ADS=48.

COL: ATARS Resolution Advisory Column, 14 bits, 42 through 55.
Coding:
Each bit in the COL subfield is a dedicated bit representing a specific ATARS resolution advisory. The bits in COL have the following meaning:

Bit and ATARS Resolution Advisory

42—Climb
43—Don't descend
44—Don't descend faster than 500 FPM
45—Don't descend faster than 1000 FPM
46—Don't descend faster than 2000 FPM
47—Descend
48—Don't climb
49—Don't climb faster than 500 FPM
50—Don't climb faster than 1000 FPM
51—Don't climb faster than 2000 FPM
52—Turn left
53—Turn right
54—Don't turn left
55—Don't turn right

A bit set to '1' indicates that ATARS intends the associated resolution advisory to be active (associated RAR bit set to '1'). A bit set to '0' indicates that ATARS intends the associated resolution advisory to be inactive (associated RAR bit set to '0').

IRA: Initial Resolution Advisory Bit, 1 bit, 41.

Coding:
0=Not first time resolution advisory transmitted
1=First time resolution advisory transmitted

SIT: ATARS Site ID Code, 3 bits, 86 through 88.

0=No ATARS site ID reported
1=ATARS site A
2=ATARS site B
3=ATARS site C
4=ATARS site D
5–7=Not assigned

Note.—Structure of MA for ATARS Resolution Advisory Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	ADS1	Equal 3.
37 to 40	4	ADS2	Equal 0.
41	1	IRA	
42 to 55	14	COL	
56 to 85	30		Not assigned.
86–88	3	SIT	

3.3.2.3.2 Subfields in MA for an ATCRBS Track Block Message

An ATCRBS Track Block Message describes the position of an ATCRBS-equipped aircraft in the vicinity of BCAS. The plan position of the ATCRBS aircraft is given as range and bearing from the BCAS aircraft; altitude is given relative to mean sea level (29.92 inches of Mercury).

ADS: A-Definition Subfield, 8 bits, 33 through 40 (3.3.1.10.1). An ATCRBS track block message is identified by ADS1=1 and ADS2=3, the combination of which is equivalent to ADS=19.

ADT: ATCRBS Threat Altitude Rate, 8 bits, 78 through 85.

Coding:
The altitude rate is transmitted in two's complement notation with an LSB of 2 ft/sec. The minimum and maximum values are −256 ft/sec and +254 ft/sec respectively.

ALT: ATCRBS Threat Altitude, 10 bits, 68 through 77.

Coding:
The altitude is transmitted in positive binary notation with an LSB of 100 ft. The minimum and maximum values are −1000 ft and +101,300 ft respectively.

ATU: ATCRBS Track Update Bit, 1 bit, 41.

Coding:
0=Drop track
1=Add/update ATCRBS track block

BRG: ATCRBS Threat Bearing, 6 bits, 62 through 67.

Coding:
The bearing is transmitted in two's complement notation with an LSB of 5.625°. The minimum and maximum values are −180° and +174.375° respectively. Bearing is measured positive clockwise from magnetic north.

RDT: ATCRBS Threat Range Rate, 8 bits, 54 through 61.

Coding:
The range rate is transmitted in two's complement notation and is expressed as two-way range delay per unit time with an LSB of 250 μsec/hr. The minimum and maximum values are −32,000 μsec/hr. and +31,750 μsec/hr. respectively.

Note.—All BCAS range codes are expressed in terms of two-way range delay. Nominal transponder reply delays are not included in the range delay. To obtain the one-way range, multiply the two-way range delay by c/2, where c is the speed of light. For example, using $c=3*10^8$ m/sec, a 1 μsec two-way range delay is equivalent to a range of 150 meters, and a 250 μsec/hr range delay rate is equivalent to a range rate of 37,500 meters/hr.

RNG: ATCRBS Threat Range, 9 bits, 45 through 53.

Coding:
The range is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 1 μsec. The minimum and maximum values are 0 μsec and 511 μsec respectively. Any range greater than 511 μsec is expressed as 511 μsec.

SEQ: ATARS Track Sequence Number, 3 bits, 42 through 44.

Coding:
The decimal equivalent of the binary code formed by the bit sequence of the SEQ subfield denotes the track sequence number.

SIT: ATARS Site ID Code, 3 bits, 86 through 88.

Coding:
0=No ATARS site ID reported
1=ATARS site A
2=ATARS site B
3=ATARS site C
4=ATARS site D
5–7=Not assigned

Note.—Structure of MA for ATCRBS Track Block Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	ADS1	Equal 1.
37 to 40	4	ADS2	Equal 3.
41	1	ATU	
42 to 44	3	SEQ	
45 to 53	9	RNG	
54 to 61	8	RDT	
62 to 67	6	BRG	
68 to 77	10	ALT	
78 to 85	8	ADT	
86 to 88	3	SIT	

3.3.2.4 MB Message, Comm-B

BCAS uses the MB field (3.3.1.11) of Comm-B replies to transmit to the ground sensor (ATARS) and RAR Reply Message to ATARS, an RAR Busy Message to ATARS and an extended capability report. The technique for encoding the RAR Reply Message to ATARS is described in 5.2.3.3.

3.3.2.4.1 Subfields in MB for an RAR Reply Message to ATARS

BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An RAR Reply Message to ATARS is identified by BDS1=3 and BDS2=0, the combination of which is equivalent to BDS=48.

HO1: RAR Column 1 Horizontal Advisories, 3 bits, 41 through 43. Contains the horizontal resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
0=No horizontal resolution advisories
1=Not assigned
2=Turn left
3=Turn right
4=Don't turn left
5=Don't turn right
6=Not assigned
7=Don't turn left and don't turn right

HO2: RAR Column 2 Horizontal Advisories, 3 bits, 49 through 51. Contains the horizontal resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:
As specified for HO1.

HO3: RAR Column 3 Horizontal Advisories, 3 bits, 57 through 59. Contains the horizontal resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for HO1.

HO4: RAR Column 4 Horizontal Advisories, 3 bits, 65 through 67. Contains the horizontal resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for HO1.

HO5: RAR Column 5 Horizontal Advisories, 3 bits, 73 through 75. Contains the horizontal resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for HO1.

HO6: RAR Column 6 Horizontal Advisories, 3 bits, 81 through 83. Contains the horizontal resolution advisories set (if any) in column 6 (All other BCAS column) of the RAR.

Coding:
As specified for HO1.

VE1: RAR Column 1 Vertical Advisories, 5 bits, 44 through 48. Contains the vertical resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
0=No vertical resolution advisories
1–3=Not assigned
4=Don't descend
5=Don't descend faster than 500 FPM
6=Don't descend faster than 1000 FPM
7=Don't descend faster than 2000 FPM
8=Don't climb
9=Don't climb faster than 500 FPM
10=Don't climb faster than 1000 FPM
11=Don't climb faster than 2000 FPM
12=Not assigned
13=Climb
14=Not assigned
15=Descend
16=Don't descend and don't climb
17=Don't descend and don't climb faster than 500 FPM
18=Don't descend and don't climb faster then 1000 FPM
19=Don't descend and don't climb faster than 2000 FPM
20=Don't descend faster than 500 FPM and don't climb
21=Don't descend faster than 500 FPM and don't climb faster than 500 FPM
22=Don't descend faster than 500 FPM and don't climb faster than 1000 FPM
23=Don't descend faster than 500 FPM and don't climb faster than 2000 FPM
24=Don't descend faster than 1000 FPM and don't climb
25=Don't descend faster than 1000 FPM and don't climb faster than 500 FPM
26=Don't descend faster than 1000 FPM and don't climb faster than 1000 FPM
27=Don't descend faster than 1000 FPM and don't climb faster than 2000 FPM
28=Don't descend faster than 2000 FPM and don't climb faster than 500 FPM
30=Don't descend faster than 2000 FPM and don't climb faster than 1000 FPM
31=Don't descend faster than 2000 FPM and don't climb faster than 2000 FPM.

VE2: RAR Column 2 Vertical Advisories, 5 bits, 52 through 56. Contains the horizontal resolution advisories set (if any) in column 2. (ATARS site B column) of the RAR.

Coding:
As specified for VEI.

VE3: RAR Column 3 Vertical Advisories, 5 bits, 60 through 64. Contains the vertical resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for VE1.

VE4: RAR Column 4 Vertical Advisories, 5 bits, 68 through 72. Contains the vertical resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for VE1.

VE5: RAR Column 5 Vertical Advisories, 5 bits, 76 through 80. Contains the vertical resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for VE1.

VE6: RAR Column 6 Vertical Advisories, 5 bits, 84 through 88. Contains the vertical resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

Coding:
As specified for VE1.

Note 1.—Structure of MB for RAR Reply Message to ATARS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 3.
37 to 40	4	BDS2	Equal 0.
41 to 43	3	HO1	
44 to 48	5	VE1	
49 to 51	3	HO2	
52 to 56	5	VE2	
57 to 59	3	HO3	
60 to 64	5	VE3	
65 to 67	3	HO4	
68 to 72	5	VE4	
73 to 75	3	HO5	
76 to 80	5	VE5	
81 to 83	3	HO6	
84 to 88	5	VE6	

Note 2.—An RAR Reply Message to ATARS with all HOx and VEx subfields containing all zeroes implies an empty RAR.

3.3.2.4.2. Subfields in MB for an RAR Busy Message to ATARS

BDS: B-Definition Subfield, 8 bits, 33 through 40 (3.3.1.11.1). An RAR Busy Message to ATARS is identified by BDS1=3 and BDS2=1, the combination of which is equivalent to BDS=49.

Note.—Structure of MB for RAR Busy Message to ATARS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 3.
37 to 40	4	BDS2	Equal 1.
41 to 88	48		Not assigned.

3.3.2.4.3 Subfield in MB for Extended Capability Report

The following subfield appears in MB for an extended capability report:

ARC: ASA Resolution Capability, 2 bits, 69 through 70. Contains ASA resolution capability of aircraft.

Coding:
0=No ASA resolution capability
1=ATARS only
2=Active BCAS
3=Not assigned

Note.—Structure of MB for Extended Capability Report.

Position	Number of bits	Subfield	Remarks
33 to 36	4	BDS1	Equal 1.
37 to 40	4	BDS2	Equal 0.
41	1	CBS	
42 to 43	2		Not assigned.
44	1	FDS	
45 to 60	16	ACS	
61 to 68	8		Not assigned.
69 to 70	2	ARC	
71 to 86	16	ECS	
87 to 88	2	EDS	

The ACS, BDS1, BDS2, CBS, ECS, EDS and FDS subfields are described in 3.3.1.11.2.

3.3.2.5 MG Message, Long Ground-Air Coordination (RBX) Interrogation

Uplink, 80 bits, 9 through 88. Appears in long ground-air coordination (RBX) interrogation format, UF=22. Contains BCAS–RBX interrogation information. Data content and coding depend on the content of the GD field (3.3.2.2).

3.3.2.5.1 Subfields in MG for Active BCAS–RBX Interrogation Message

The following subfields appear in MG if GD=1:

AID: ATCRBS Identification, 13 bits, 15 through 27. Contains ATCRBS mode A identification code (4096 code) of

interrogating BCAS aircraft. Coded to pattern corresponding to ref. A: 2.6.

ALC: Altitude Code, 13 bits, 42 through 54. Coded according to pattern of ref. A: 2.7.13.2.5 and ref. A: Figure 1, if bit 48 is zero. Starting with bit 42, the sequence is C1, A1, C2, A2, C4, A4, M, B1, D1, B2, D2, B4, D4. Zero is transmitted in each of the 13 bits if altitude information is not available. Metric altitude is contained in this field if the M bit (bit 48) is set to '1'.

DID: DABS Address, 24 bits, 65 through 88. Contains discrete address of interrogating BCAS aircraft.

DRA: Displayed Resolution Advisory, 14 bits, 28 through 41. Contains resolution advisory displayed to pilot (5.2.3.5.2).

Coding:

Each bit in the DRA subfield is a dedicated bit which, when set to '1', identifies a particular resolution advisory component displayed to the pilot. A bit set to '0' indicates that the resolution advisory component associated with that bit is not displayed. When set to '1', each bit has the following meaning:

Bit	Active resolution advisory component
28	Climb.
29	Don't descend.
30	Don't descend faster than 500 FPM.
31	Don't descend faster than 1000 FPM.
32	Don't descend faster than 2000 FPM.
33	Descend.
34	Don't climb.
35	Don't climb faster than 500 FPM.
36	Don't climb faster than 1000 FPM.
37	Don't climb faster than 2000 FPM.
38	Turn left.
39	Turn right.
40	Don't turn left.
41	Don't turn right.

Note.—A DRA subfield set to all zeroes indicates no resolution advisory is being displayed to the pilot.

RAN BCAS to RBX Range, 10 bits, 55 through 64.

Coding:

The range is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 2 μsec. The minimum and maximum values are 0 μsec and 2044 μsec respectively. The RAN field in the initial (acquisition) BCAS to RBX interrogation is set to all ones to indicate that no data are available.

Note.—An RAN field set to all ones causes the RBX to reply with the SLC field set to the zero code (3.3.2.6.2).

SLR: Sensitivity Level Command Report, 3 bits, 12 through 14. Contains the last sensitivity level command received from the RBX to which this interrogation is addressed.

Coding:

0=No sensitivity level received
1=Last sensitivity level command received: set to level 1
2=Last sensitivity level command received: set to level 2
3=Last sensitivity level command received: set to level 3
4=Last sensitivity level command received: set to level 4
5=Last sensitivity level command received: set to level 5
6=Last sensitivity level command received: set to level 6
7=Last sensitivity level command received: set to level 7

Note.—Structure of MG for Active BCAS-RBX Interrogation Message.

Position	Number of bits	Subfield	Remarks
9 to 11	3		Not assigned.
12 to 14	3	SLR	
15 to 27	13	AID	
28 to 41	14	DRA	
42 to 54	13	ALC	
55 to 64	10	RAN	
65 to 88	24	DID	

3.3.2.6 MR Message, Short Ground-Air Coordination Interrogation

Uplink, 24 bits, 9 through 32. Appears in short ground-air coordination (RBX) interrogation format, UF=6. The MR field is used to transmit RBX squitter and reply information to BCAS. Data content and coding depend on the content of the RD field (3.3.2.9).

3.3.2.6.1 Subfields in MR for an RBX Squitter

The following subfield appears in MR if RD=1.

RAD: RBX Address, 24 bits, 9 through 32. Contains discrete address of RBX unit.

Note.—Structure of MR for RBX Squitter Message.

Position	Number of bits	Subfield	Remarks
9 to 32	24	RAD	

3.3.2.6.2 Subfields in MR for an RBX Reply

The following subfields appear in MR if RD=2.

RTR: RBX Threshold Range, 6 bits, 27 through 32.

Coding:

RTR is transmitted in positive binary notation and is expressed as two-way range delay with an LSB of 16 μsec. The minimum and maximum values are 0 μsec and 1008 μsec respectively.

SLC: BCAS Sensitivity Level Command, 3 bits, 22 through 24.

Coding:

0=No command issued
1=Set BCAS sensitivity level to 1
2=Set BCAS sensitivity level to 2
3=Set BCAS sensitivity level to 3
4=Set BCAS sensitivity level to 4
5=Set BCAS sensitivity level to 5
6=Set BCAS sensitivity level to 6
7=Set BCAS sensitivity level to 7

Note 1.—In an initial RBX Reply, SCL=0

Note 2.—Strutrue of MR for RBX reply message.

Position	Number of bits	Subfield	Remarks
9 to 21	13		Not assigned.
22 to 24	3	SLC	
25 to 26	2		Not assigned.
27 to 32	6	RTR	

3.3.2.7 MU Message, Special Interrogation

BCAS uses the MU field (3.3.1.12) of a long special surveillance interrogation for air-air coordination. The RAR Request Message and the Resolution Message share a common MU message format and are distinguished by the setting of the LCK subfield (see 3.3.2.7.1).

3.3.2.7.1 Subfields in MU for an RAR Request Message and Resolution Message

AR1: Add Resolution Advisory, 4 bits, 47 through 50. Contains the complement (don't climb or don't descend) of own resolution advisory chosen with respect to the interrogated threat to be added to the "All Other BCAS" column of the threat RAR.

Coding:

0=No complement to be added
1=Not assigned
2=Don't descend
3–6=Not assigned
7=Don't climb
8–15=Not assigned

AR2: Add Resolution Advisory, 4 bits, 55 through 58. This field is used by Full BCAS to post horizontal maneuver restrictions in the RAR of Active BCAS airborne equipments. Such restrictions are processed by Active BCAS while updating the RAR with ATARS resolution advisories (5.2.3.1.3.). In RAR Request Messages and Resolution Messages transmitted by Active BCAS, AR2 is set to all zeroes to indicate no message.

Coding:
0=No complement to be added
1–12=Not assigned
13=Don't turn left
14=Don't turn right
15=Not assigned

DID: DABS address, 24 bits, 65 through 88. Contains discrete address of interrogating BCAS aircraft.

DR1: Delete Resolution Advisory, 4 bits, 43 through 46. Contains the complement of own resolution advisory chosen with respect to the interrogated threat to be deleted from the "All Other BCAS" column of the threat RAR.

Coding:
0=No complement to be deleted
1=Not assigned
2=Don't descend
3–6=Not assigned
7=Don't climb
8–15=Not assigned

DR2: Delete Resolution Advisory, 4 bits, 51 through 54. This field is used by Full BCAS to post horizontal maneuver restrictions in the RAR of Active BCAS airborne equipments. Such restrictions are processed by Active BCAS while updating the RAR with ATARS resolution advisories (5.2.3.1.3.). In RAR Request Messages and Resolution Messages transmitted by Active BCAS, DR2 is set to all zeroes to indicate no message.

Coding:
0=No complement to be deleted
1–12=Not assigned
13=Don't turn left
14=Don't turn right
15=Not assigned

LCK: Extended RAR Lock Bit, 1 bit, 41. When set to '1', LCK instructs the interrogated BCAS aircraft to lock its RAR and maintain the lock state until a second coordination interrogation (Resolution Message) is received.

Coding:
0=Do not maintain RAR lock state for a second coordination interrogation.
1=Maintain RAR lock state until a second coordination interrogation is received.

Note.—The LCK subfield implicitly distinguishes an RAR Request Message from a Resolution Message because LCK is always set to '1' in an RAR Request Message while it is always set to '0' in a Resolution Message.

MTB: Multiple Threat Bit, 1 bit, 42.

Coding:
0=Interrogating BCAS has no more than one threat
1=Interrogating BCAS has more than one threat

UDS: U-Definition Subfield, 8 bits, 33 through 40. Defines the data content and coding in the remainder of MU.

For convenience in coding, UDS is expressed in two groups of 4 bits each, UDS1, 33 through 36, and UDS2, 37 through 40. UDS1 defines the destination of the MU message and UDS2 defines the specific message type.

RAR Request Messages and Resolution Messages are identified by UDS1=3 (RAR) and UDS2=1, the combination of which is equivalent to UDS=49.

Note.—Structure of MU for RAR Request Message and Resolution Message.

Position	Number of bits	Subfield	Remarks
33 to 36	4	UDS1	Equal 3.
37 to 40	4	UDS2	Equal 1.
41	1	LCK	
42	1	MTB	
43 to 46	4	DR1	
47 to 50	4	AR1	
51 to 54	4	DR2	
55 to 58	4	AR2	
59 to 64	6		Not assigned.
65 to 88	24	DID	

3.3.2.8 MV Message, Special Reply

BCAS uses the MV field of a long special surveillance reply (3.3.1.13) to transmit to another BCAS aircraft either an RAR Reply Message to BCAS or an RAR Busy Message to BCAS.

3.3.2.8.1 Subfields in MV for an RAR Reply Message to BCAS

The technique for encoding the RAR Reply Message to BCAS is described in 5.2.3.2.3.

H01: RAR Column 1 Horizontal Advisories, 3 bits, 41 through 43. Contains the horizontal resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

H02: RAR Column 2 Horizontal Advisories, 3 bits, 49 through 51. Contains the horizontal resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

H03: RAR Column 3 Horizontal Advisories, 3 bits, 57 through 59. Contains the horizontal resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

H04: RAR Column 4 Horizontal Advisories, 3 bits, 65 through 67. Contains the horizontal resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

H05: RAR Column 5 Horizonatal Advisories, 3 bits, 73 through 75. Contains the horizontal resolution advisories set (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

H06: RAR Column 6 Horizontal Advisories, 3 bits, 81 through 83. Contains the horizontal resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

Coding:
As specified for H01 in 3.3.2.4.1.

VDS: V-Definition Subfield, 8 bits, 33 through 40. Defines the data content and coding in the remainder of MV. For convenience in coding, VDS is expressed in two groups of 4 bits each, VDS1, 33 through 36, VDS2, 37 through 40. VDS1 defines the source of the MV message and VDS2 defines the specific message type from that source.

An RAR Reply Message to BCAS is identified by VDS1=3 (RAR) and VDS2=0, the combination of which is equivalent to VDS=48.

VE1: RAR Column 1 Vertical Advisories, 5 bits, 44 through 48. Contains the vertical resolution advisories set (if any) in column 1 (ATARS site A column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

VE2: RAR Column 2 Vertical Advisories, 5 bits, 52 through 56. Contains the vertical resolution advisories set (if any) in column 2 (ATARS site B column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

VE3: RAR Column 3 Vertical Advisories, 5 bits, 60 through 64. Contains the vertical resolution advisories set (if any) in column 3 (ATARS site C column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

VE4: RAR Column 4 Vertical Advisories, 5 bits, 68 through 72. Contains the vertical resolution advisories set (if any) in column 4 (ATARS site D column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

VE5: RAR Column 5 Vertical Advisories, 5 bits, 76 through 80. Contains the vertical resolution advisories (if any) in column 5 (Own BCAS column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

VE6: RAR Column 6 Vertical Advisories, 5 bits, 84 through 88. Contains the vertical resolution advisories set (if any) in column 6 (All Other BCAS column) of the RAR.

Coding:
As specified for VE1 in 3.3.2.4.1.

Note 1: Structure of MV for RAR Reply Message to BCAS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	VDS1	Equal 3.
37 to 40	4	VDS2	Equal 0.
41 to 43	3	H01	
44 to 48	5	VE1	
49 to 51	3	H02	
52 to 56	5	VE2	
57 to 59	3	H03	
60 to 64	5	VE3	
65 to 67	3	H04	
68 to 72	5	VE4	
73 to 75	3	H05	
76 to 80	5	VE5	
81 to 83	3	H06	
84 to 88	5	VE6	

The structure of the MV field for an RAR Reply Message to BCAS is identical to the structure of the MB field for an RAR Reply Message to ATARS (3.3.2.4.1).

Note 2.—An RAR Reply Message to BCAS with all H0x and VEx subfields containing all zeroes implies an empty RAR.

3.3.2.8.2 Subfields in MV for an RAR Busy Message to BCAS.

VDS: V-Definition Subfield, 8 bits, 33 through 46 (3.3.2.8.1). An RAR Busy Message to BCAS is identified by VSD1=3 (RAR) and VDS2=1, the combination of which is equivalent to VDS=49.

Note.—Structure of MV for RAR Busy Message to BCAS.

Position	Number of bits	Subfield	Remarks
33 to 36	4	VDS1	Equal 3.
37 to 40	4	VDS2	Equal 1.
41 to 88	48		Not assigned.

The structure of the MV field for an RAR Reply Message to BCAS is identical to the structure of the MB field for an RAR Busy Message to ATARS (3.3.2.4.2).

3.3.2.9 RD R—Defintion Field

Uplink, 3 bits, 6 through 8. Appears in short ground-air coordination (RBX) interrogation format, UF=6. Defines data content and coding in the MR field.
Coding:
0=MR not used
1=MR contains RBX squitter information (3.3.2.6.1)
2=MR contains RBX reply information (3.3.2.6.2)
3–7=Not assigned

3.3.2.10 SD Special Designator

Ground ATARS equipment uses the SD field format associated with the DI=2 code (3.3.1.17.1) of surveillance and Comm-A interrogations to transmit to BCAS a senstivitiy level command.

3.3.2.10.1 Subfield in SD for DI=2 (ATARS Information)

The following subfield appears in SD if DI=2.
SLC: BCAS Sensitivity Level Command, 3 bits, 22 through 24.
Coding:
0=No command issued
1=Set BCAS sensitivity level to 1
2=Set BCAS sensitivity level to 2
3=Set BCAS sensitivity level to 3
4=Set BCAS sensitivity level to 4
5=Set BCAS sensitivity level to 5
6=Set BCAS sensitivity level to 6
7=Set BCAS sensitivity level to 7

Note.—Structure of SD for DI=2 (ATARS Information).

Position	Number of bits	Subfield	Remarks
17 to 20	4	AIS	
21	1	RAS	
22 to 24	3	SLC	
25 to 32	8		Not assigned.

The AIS and RAS subfields are described in 3.3.1.17.1.

3.3.2.11 SL BCAS Sensitivity Level Report

Downlink, 3 bits, 10 through 12. Appears in short special surveillance reply, DF=0. Contains sensitivity level at which BCAS aircraft is currently operating.
Coding:
0=No BCAS sensitivity level reported
1=BCAS is operating at sensitivity level 1
2=BCAS is operating at sensitivity level 2
3=BCAS is operating at sensitivity level 3
4=BCAS is operating at sensitivity level 4
5=BCAS is operating at sensitivity level 5
6=BCAS is operating at sensitivity level 6
7=BCAS is operating at sensitivity level 7

Note.—A DABS aircraft with no ASA capability (AR=0) or which is only ATARS equipped (AR=1) causes SL to be set to the zero code.

3.3.2.12 Unassigned Coding Space

Unassigned coding space as indicated in Figures 3.2–1 and 3.2–2 contains all zeroes as transmitted by interrogators and transponders. Coding space currently unassigned is reserved for possible future use.

Note.—This rule assures that future assignments in this coding space define a "zero-block" as a default code, i.e., no message is sent and/or no capability exists.

4. Protocol

4.1 ATCRBS Surveillance.

4.1.1 ATCRBS Interrogation.

4.1.1.1 ATCRBS-Only All-Call.

For surveillance of aircraft equipped with ATCRBS transponders, the ATCRBS-Only All-Call interrogation is used (ref. B: 2.3.2).

Note 1.—This interrogation format causes all ATCRBS-equipped aircraft to reply and all DABS-equipped aircraft to not reply. The absence of replies from DABS transponders is desirable since such replies are unnecessary and would add to the interference environment. Absence of these replies from the BCAS synchronous interference environment is particularly beneficial.

Note 2.—An ATCRS-Only All-Call can be in mode A or mode C. A BCAS transmits mode C interrogations and thereby obtains range and altitude surveillance information. Mode A interrogations may also be used, but these are not necessary for basic range and altitude surveillance.

4.1.1.2 Control of Synchronous Interference

To control ATCRBS synchronous interference and facilitate BCAS operation in airspace with higher traffic densities, a feature called "whisper-shout" may be used. In this feature, a single interrogation is replaced by a sequence of interrogations at different power levels. Each of these interrogations, other than the one at lowest power, is preceded by a suppression pair (a pair of pulses spaced by 2 μs, with characteristics the same as the 2-pulse SLS control transmission defined in ref. A: 2.4.4). The suppression pair is transmitted at a power level lower than that of the accompanying interrogation. The suppression pair begins at a time 4 $\pm$ 1 μs before the beginning of the interrogation.

Note.—Figure 4.1–1 shows an example of a whisper-shout sequence with 4 interrogations from the top antenna and 4 interrogations from the bottom antenna. The four power levels are spaced uniformly by 6 dB, and each suppression pair is 8 dB below its accompanying interrogation. The intended mechanism is that each aircraft replies to one or at most two of the four interrogations in a group. Given a situation in which multiple aircraft are near enough in range to synchronously interfere with each other, it is likely they do not all reply to the same interrogation, and as a result the severity of synchronous interference is reduced. Use of whisper-shout has additional benefits in reducing the severity of the effects of multipath on the interrogation link.

BILLING CODE 4910-13-M

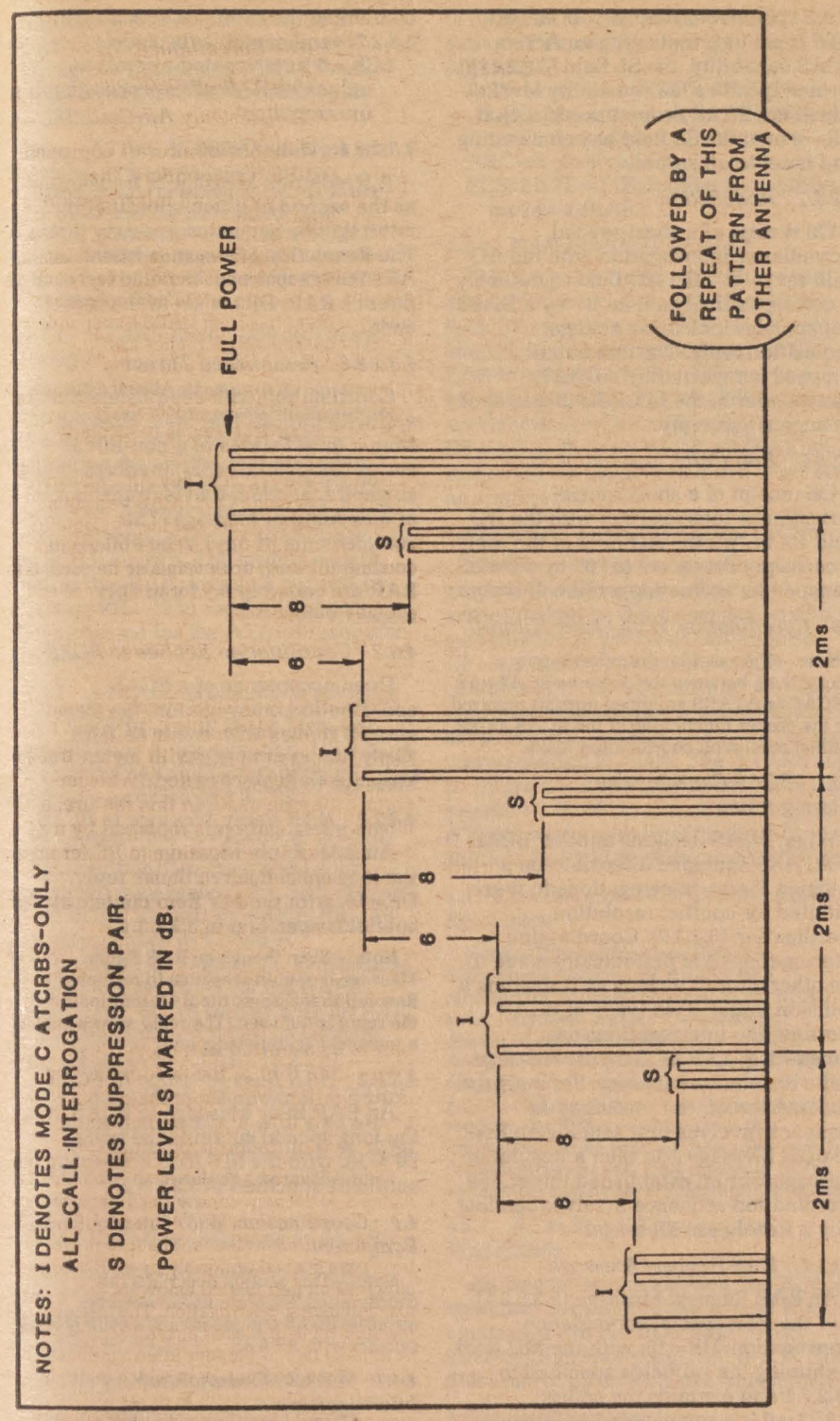

FIG. 4.1-1. EXAMPLE OF WHISPER-SHOUT SEQUENCE.

BILLING CODE 4910-13-C

4.2 DABS Surveillance

Note.—This section describes the interactions between the airborne BCAS and a DABS-equipped aircraft required for the proper functioning of the BCAS DABS surveillance tasks.

4.2.1 Detection

BCAS detects the presence of DABS equipped aircraft by listening at 1090 MHz, to transmissions containing altitude data, DF=4. These DABS transponder transmissions may occur in response to ground sensor discrete interrogations or as squitters.

BCAS derives the discrete address and altitude of the DABS aircraft from the AP and AC field, respectively. Additionally, BCAS examines the Flight Status, FS, field in these transmissions to determine if the other carrier has an interrogating BCAS (FS=1) or is on the ground (FS=7).

Note 1.—The fact that the other DABS aircraft has an interrogating BCAS is used as input into the computation of permissible interrogation rates (5.1.2).

Note 2.—If the other DABS aircraft is on the ground, BCAS does not need to track it.

4.2.2 Surveillance Interrogations

The response to the initial detection of a near-coaltitude DABS aircraft is a range acquisition interrogation, UF=0. When the range, altitude, and maximum speed capabilities of the BCAS aircraft and the detected DABS aircraft indicate that the detected aircraft is or could soon become a collision threat, periodic interrogations of the DABS aircraft are made using a short special surveillance interrogation, UF=0. Otherwise, interrogations to the DABS aircraft are temporarily suspended.

4.2.2.1 Acquisition

BCAS sets AQ=1 (3.3.1.3) in the short surveillance interrogation, UF=0, when a DABS aircraft is undergoing range acquisition. This serves as an aid in distinguishing the reply to own interrogation from replies elicited by other BCAS units.

4.2.2.2 Roll Call

BCAS sets AQ=0 (3.3.1.3) in the short special surveillance interrogation, UF=0, when a track has been established for a DABS aircraft.

4.2.3 Surveillance Replies

On receipt of a short special interrogation, UF=0, from a BCAS, a DABS transponder replies with a short special surveillance reply, DF=0. In this reply, the altitude, the contents of the ATARS site register, and the ASA capability of the aircraft are reported in the AC (3.3.1.2), AT (3.3.1.5) and AR (3.3.2.1) fields respectively. If the AR field is set to 2, indicating an Active BCAS capability, the SL field (3.3.2.11) further specifies the sensitivity level at which the BCAS is operating (5.2.4). If AR=0 or 1, the SL field has no meaning and is set to all zeroes.

4.2.3.1 Acquisition

On receipt of a short special surveillance interrogation with the AQ field set to "1", the AQ field of the reply is correspondingly set to "1" by a DABS transponder indicating a range acquisition reply. The maximum airspeed is reported by a DABS transponder in the MX field (3.3.1.14) of an acquisition reply.

4.2.3.2 Roll Call

On receipt of a short special surveillance interrogation with the AQ field set to "0", the AQ field of the reply is correspondingly set to "0" by a DABS transponder indicating a roll-call reply.

4.3 Coordination With Other Aircraft

Note.—This section describes the interactions between the airborne BCAS and a BCAS or ATARS equipped aircraft required for the proper functioning of the BCAS air-air conflict resolution coordination tasks.

4.3.1 BCAS Coordination Interrogations

When BCAS declares another BCAS or ATARS equipped aircraft to be a collision threat, interrogations to it are initiated for conflict resolution coordination (5.2.3.2). Coordination interrogations are periodically made to the other aircraft as long as it remains a collision threat. Two types of BCAS coordination interrogations are transmitted; an RAR Request Message and a Resolution Message. For a newly declared threat, the coordination sequence involves first sending an RAR Request Message and then a Resolution Message. For an established threat, the coordination sequence involves sending only a Resolution Message.

4.3.1.1 RAR Request Message.

An RAR Request Message (5.2.3.2.1) uses the long special surveillance interrogation, UF=16, with the MU field containing the subfields specified in 3.3.2.7.1 and contains the codes:

AR1=0 (no complement to be added)
DR1=0 (no complement to be deleted)
LCK=1 (interrogated BCAS to keep RAR locked for receipt of second coordination interrogation).

4.3.1.2 Resolution Message

A Resolution Message (5.2.3.2.2) uses the long special surveillance interrogation, UF=16, with the MU field containing the subfields specified in 3.3.2.7.1 and contains the code:

LCK=0 (interrogated aircraft to unlock its RAR after processing this interrogation).

4.3.1.2.1 New Threat

A Resolution Message is transmitted as the second of a two-coordination interrogation sequence to a new threat. The Resolution Message contains in AR1 the complement to be added to the threat's RAR. DR1 is set to the zero code.

4.3.1.2.2 Established Threat

Coordination with established threats and with aircraft that have changed from a threat status to a non-threat status (dropped threats) involves only a single transaction, that is, transmission of a Resolution Message. The complements (if any) to be added (or continued) and/or deleted in the threat's RAR are coded in AR1 and DR1 respectively.

4.3.2 Coordination Replies to BCAS

Upon acceptance of a BCAS coordination interrogation, the threat aircraft replies with either an RAR Reply Message to BCAS or an RAR Busy Message to BCAS (5.2.3.2.3).

4.3.2.1 RAR Reply Message to BCAS

An RAR Reply Message to BCAS uses the long special surveillance reply, DF=16, with the MV field containing the subfields specified in 3.3.2.8.1.

Note.—Even though an RAR Reply Message is sent in response to receipt of a Resolution Message, the RAR information in the reply is not used. The reply serves only as a technical acknowledgment.

4.3.2.2 RAR Busy Message to BCAS

An RAR Busy Message to BCAS uses the long special surveillance reply, DF=16, with the MV field containing the subfields specified in 3.3.2.8.2.

4.4 Coordination With Ground ATARS Equipment

Note.—This section describes the coordination interactions between an airborne BCAS equipment and DABS ground sensors with ATARS.

4.4.1 ATARS Coordination Interrogations

When ATARS has determined that a BCAS aircraft requires a resolution advisory to resolve a collision conflict with one or more threat aircraft, an ATARS Resolution Advisory Message is uplinked via the DABS transponder to the RAR of the BCAS aircraft. In addition, for all ATCRBS aircraft in the near vicinity of a BCAS aircraft, ATARS

transmits positional information to BCAS in an ATCRBS Track Block Message. A separate ATCRBS Track Block Message is sent for each such ATCRBS aircraft.

Note.—ATARS ATCRBS track block are correlated with surveillance data for ATCRBS threats detected by BCAS. If the track block and the surveillance data correlate, BCAS defers resolution of the conflict to ATARS (5.2.1.2.2). This process reduces the number of unnecessary alerts generated by BCAS.

4.4.1.1 ATARS Resolution Advisory Message

An ATARS Resolution Advisory Message uses a Comm-A interrogation, UF=20 or 21, with the MA field containing the subfields specified in 3.3.2.3.1. Accompanying each ATARS Resolution Advisory Message is a downlink request for the RAR content of the BCAS aircraft. The ground sensor intiates this RAR downlink request by inserting RR=19 in the RR field of the Comm-A used for the ATARS resolution advisory.

4.4.1.2 ATCRBS Track Block Message

An ATCRBS Track Block Message uses a Comm-A interrogation, UF=20 or 21, with the MA field containing the subfields specified in 3.3.2.3.2.

4.4.2 Coordination Replies to ATARS

For coordination, ground ATARS equipment may request the RAR content of the BCAS aircraft by setting RR=19 in a surveillance or Comm-A interrogation, UF=4,5,20,21. When these requests are received via the DABS transponder, BCAS replies with an RAR Reply Message to ATARS or an RAR Busy Message to ATARS (5.2.3.3).

4.4.2.1 RAR Reply Message to ATARS

An RAR Reply Message to ATARS uses a Comm-B reply, DF=20 or 21, with the MB field containing the subfields specified in 3.3.2.4.1.

4.4.2.2 RAR Busy Message to ATARS

An RAR Busy Message to ATARS uses a Comm-B reply, DF=20 or 21, with the MB field containing the subfields specified in 3.3.2.4.2.

4.4.3 Extended Capability Report

The presence of operating Active BCAS equipment on board an aircraft causes the CA=2 code (extended capability) to be set in all DABS All-Call replies, DF=11, to the ground sensor (ref B: 3.3.6). The ground sensor learns of the specific extended capabilities on board the aircraft by using the extended capability report protocol specified in ref. B: 4.6.3. An Active BCAS on board the aircraft causes the following codes to be set in the MB subfields of an extended capability message (3.3.1.11.2, 3.3.2.4.3):

ACS: bit 46=1 (ATARS ATCRBS track blocks), bit 48=1 (ATARS resolution advisory/RAR)
ARC=2 (Active BCAS)
ECS: bit 72=1 (Extended Capability), bit 74=1 (RAR).

4.4.4 RAR Downlink Request

BCAS signals to the ATARS ground sensor if one or more of the bits in the RAR bit matrix is set to "1" (RAR not empty), to initiate transmission of the RAR to ground ATARS. Whenever a non-empty RAR exists, the DR field in a surveillance or Comm-B reply, DF=4,5,20,21, is set to DR=2 (RAR bit set) or DR=3 (RAR bit set and B-bit set) as appropriate.

4.4.5 BCAS Sensitivity Level Control

BCAS sensitivity level control by ground ATARS equipment is accomplished by the transmission of a surveillance or Comm-A interrogation, UF=4,5,20,21, in which DI=2 (SD contains ATARS information) and the appropriate sensitivity level command is set in the SLC subfield (3.3.2.10.1) of the corresponding SD field. The ATARS site ID information required to correlate the sensitivity level command with a given ATARS site is contained in the AIS subfield (3.3.1.17.1) of the same SD field.

4.5 Coordination With Ground RBX Equipment

Note.—This section describes the interactions between BCAS and RBX required for automatic control of the BCAS sensitivity level and for the transfer of displayed resolution advisories to ATC. Airborne BCAS equipments within the RBX range threshold regularly communicate with ground RBX equipment in order to determine range to the RBX and to transmit this information along with altitude and displayed resolution advisories. RBX replies to BCAS contain sensitivity level commands to BCAS.

4.5.1 RBX–BCAS Transmission Waveforms

All transmissions between the BCAS-equipped aircraft and the ground RBX equipment use the 1030 MHz DABS interrogation waveform (ref. B: 2.1). The SLS control pulse P5 is not transmitted.

4.5.2 RBX Squitter

Note.—Ground RBX units transmit squitters (unsolicited replies) at a regular rate to facilitate acquisition by the BCAS-equipped aircraft.

4.5.2.1 Squitter Acceptance

An RBX squitter is accepted, evaluated and acted upon by the DABS transponder in accordance with the criteria defined for interrogations with UF=6 (ref. B: 4.2.2.3.2). UF=6 identifies the transmission as originating from an RBX. RD=1 identifies the transmission as an RBX squitter. The RBX squitter contains a broadcast address, that is, all ones, in the AP field.

4.5.3 RBX Reply

4.5.3.1 Reply Acceptance

An RBX reply is accepted, evaluated and acted upon by the DABS transponder in accordance with the criteria defined for interrogations with UF=6 (ref. B: 4.2.2.3.2). UF=6 identifies the transmission as originating from an RBX. RD=2 identifies the transmission as an RBX reply. The RBX reply contains the discrete address of the interrogating BCAS aircraft in the AP field. The SLC subfield contains the sensitivity level command. The RTR subfield contains the range threshold value to indicate the radius within which the BCAS aircraft is required to maintain continuous track of the RBX.

4.5.3.2 Reply Delay and Jitter

The sync phase reversal of the P6 pulse in the RBX reply waveform occurs 500 ± 0.25 μsec after receipt of the sync phase reversal of the BCAS interrogation waveform. The jitter of the RBX reply delay does not exceed 0.05 μsec, rms.

4.5.4 BCAS to RBX Interrogation

The response to an accepted squitter (4.5.2.1) from an RBX with which BCAS is not currently communicating is a discrete interrogation with UF=22 and GD=1 (3.3.2.2). This is a range acquisition interrogation which contains a range field RAN of all ones. This and all subsequent interrogations to the RBX contain any currently displayed resolution advisory in the DRA field and the ATCRBS ID code in the AID field. When the range threshold value (RTR), the RBX range, and the BCAS maximum speed capability indicate that the BCAS aircraft has already penetrated or could soon penetrate the RBX range threshold, BCAS establishes and maintains communication with the RBX by discrete interrogations at 4-second intervals with UF=22 and GD=1. These interrogations contain RBX–BCAS range estimates based on the previous reply. They also contain the last sensitivity level command received from the RBX. If the BCAS aircraft could not soon penetrate the range threshold, interrogations to the RBX are temporarily suspended.

5. Characteristics of Airborne BCAS Equipment

5.1 Interference Control

5.1.1 RF Peak Output Power

The peak RMS output power of each pulse of a BCAS airborne transmission, measured at the terminals of the antenna, is less than or equal to 27 dBW.

5.1.1.1 Unwanted Output Power

When the airborne BCAS equipment is not transmitting an interrogation, the RF output power at the terminals of the antenna does not exceed –50 dBm at any frequency.

5.1.2 Interference Limiting

An airborne BCAS unit counts the number of other BCAS-equipped aircraft within detection range by noting the number of DABS replies and squitters (DF=4) which have FS=1 and different DABS address codes. If necessary, BCAS controls own surveillance transmissions so that the BCAS interrogations received at any point in space by an ATCRBS transponder do not materially reduce the transponder reply probability. Specifically, the interrogation rate or power, or both, of an airborne BCAS unit are adjusted, as necessary, to hold the following inequality true:

$$\frac{(\beta * 10^{\alpha}) + 1}{250} * ((D * P_D) + (S * \sum_{i=1}^{n} P_i)) .LE. 570$$

Where:

α={MTL + 74)/10

β=number of interrogating BCAS aircraft detected by squitter reception.

MTL=1090-MHz receiver threshold for squitter reception (dBm referred to antenna)

D=DABS interrogation rate (per sec)

P_D=DABS-mode interrogation peak power (watts referred to antenna)

S=ATCRBS-mode scan rate (sequences/sec)

n=number of interrogations in an ATCRBS interrogation sequence within one scan. If whisper-shout (4.1.1.2) is used, an ATCRBS suppression pair followed by an ATCRBS-only All-Call interrogation is counted as a single interrogation.

P_i=peak power of the i-th ATCRBS interrogation (watts referred to antenna)

Note.—Typical values are MTL=–74 dBm, P_D=250 watts, S=1 scan/sec., and, for the example whisper-shout sequence shown in Fig. 4.1–1, n=8. For an airborne BCAS that does not use whisper-shout, typically n=2 (one interrogation from the top antenna and one from the bottom). Interrogation limiting is very rarely invoked. When interrogation limiting is not invoked the overall ATCRBS and DABS interrogation rates are as follows: The ATCRBS interrogation rate (independent of traffic environment) is typically 8 per second. The DABS interrogation rate depends on the number of DABS-equipped aircraft in the vicinity and is very small when flying in airspace of low traffic density. When there are 6 DABS-equipped aircraft within 10 nmi, the interrogation rate is typically 6 to 18 DABS interrogations per second.

5.1.3 Interrogation Rate Jitter

The time interval between successive interrogation or groups of interrogations from an airborne BCAS unit varies sufficiently to preclude synchronous interference with other equipment.

5.1.4 Suppression of Own Aircraft Transponder

The DABS transponder on board the aircraft is suppressed during each BCAS transmission. The suppression interval is 250 ± 50 microsecond beginning at the time of the first pulse of the BCAS transmission.

Note.—The purpose of this suppression is to assure that the BCAS does not interrogate its own transponder.

5.2 Collision Avoidance Algorithms

BCAS airborne equipments contain algorithms that implement the following functions as illustrated in Figure 5.2–1.

a. Surveillance.
b. Tracking.
c. Threat Detection.
d. Resolution.
e. Communication and Coordination.

Certain of these functions or subfunctions must be standardized to ensure that the airborne BCAS units interface satisfactorily with each other, with ATARS, and with the conventional air traffic control (ATC) system. Parameters used in the algorithms are adjusted automatically to maintain collision avoidance protection with minimal interference to normal ATC operations. Each of the functions or subfunctions which is standardized is discussed in a paragraph below.

5.2.1 Threat Detection

All aircraft which are tracked by BCAS are considered intruders and potential collision threats. The characteristics of an intruder which are used to define a threat are:

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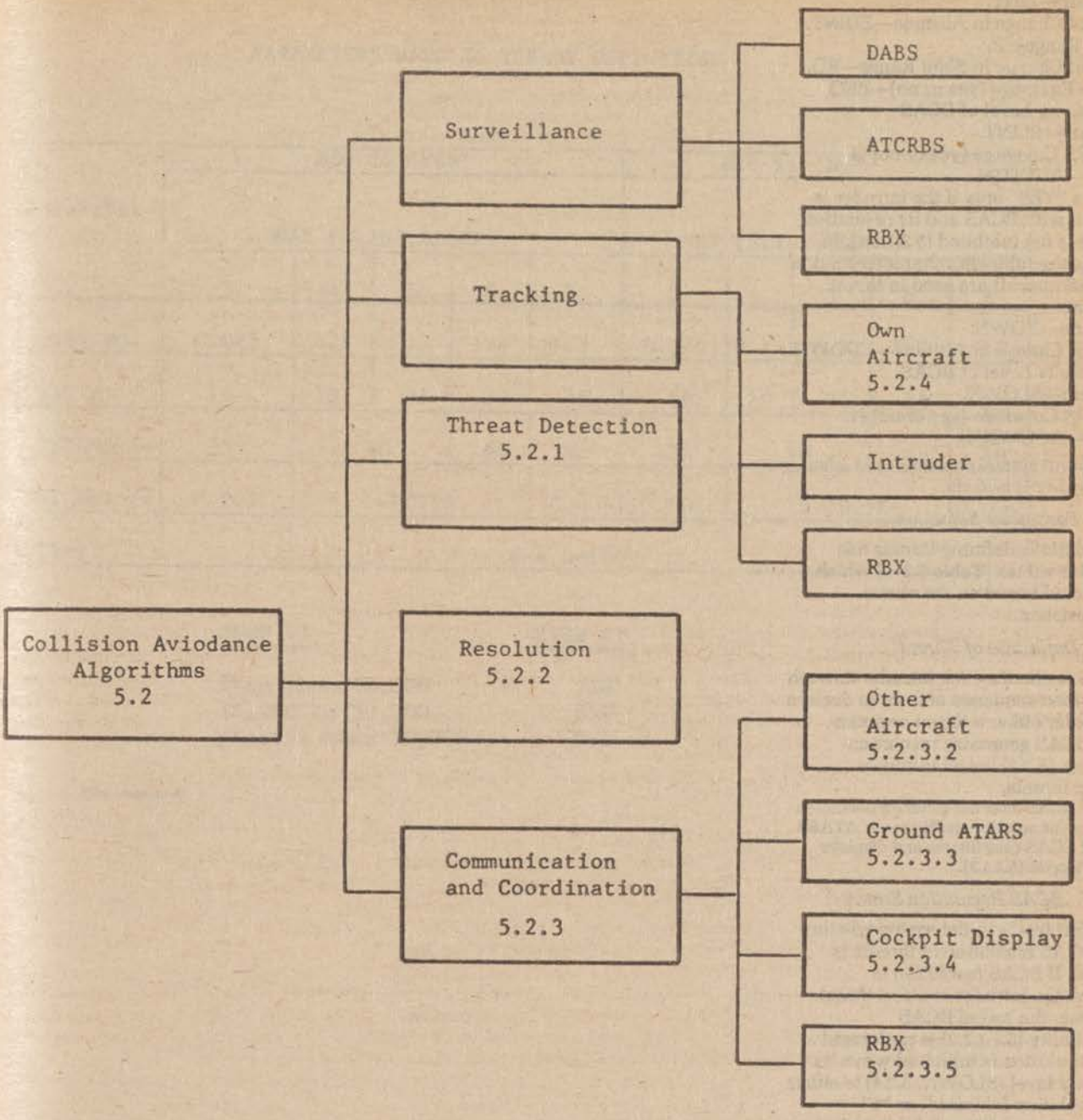

Figure 5.2-1. Functional Elements of BCAS Collision Avoidance Algorithms.

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Altitude—ZINT.
Rate of Change in Altitude—ZDINT.
Slant Range—R.
Rate of Change in Slant Range—RD.
BCAS Equipage (yes or no)—BEQ
Sensitivity Level of BCAS Operation—SLINT.
ATARS Coverage (yes or no) (4 entries)—ACINT(4).

BEQ is "YES" only if the intruder is equipped with BCAS and its resolution function is not inhibited (5.2.1.2.1). In addition, the following characteristics of the BCAS aircraft are used in threat definition:

Altitude—ZOWN.
Rate of Change in Altitude—ZDOWN.
Sensitivity Level of BCAS Operation—SLOWN.
ATARS Coverage (yes or no) (4 entries)—ACOWN(4).

Notes.—All altitudes are measured relative to 29.92 inches of mercury.

5.2.1.1 Parameter Selection

Calculations defining threats use parameter values (Table 5.2–1) which are selected based on the above characteristics.

5.2.1.2 Definition of Threat

BCAS evaluates each intruder through a prescribed sequence of tests to declare the intruder either a threat or a non-threat. BCAS generates resolution advisories (5.2.2) for all intruders declared threats.

Note.—BCAS does not generate resolution advisories for non-threats. However ATARS may, and BCAS coordinates and displays such advisories (5.2.3.3).

5.2.1.2.1 BCAS Resolution Status

The first test is to determine whether or not BCAS resolution of threats is inhibited. If BCAS resolution is inhibited, the intruder is a non-threat. Otherwise, the test of BCAS responsibility (5.2.1.2.2) is performed. BCAS resolution is inhibited when its sensitivity level (SLOWN, 5.2.4) is either "2" (Resolution Inhibited) or "1" (Interrogation of Aircraft Inhibited).

5.2.1.2.2 BCAS Responsibility

If BCAS is not responsible for the intruder, the intruder is a non-threat. Otherwise, the test of range divergence (5.2.1.2.3) is performed. BCAS is not responsible if both the intruder and BCAS are within coverage of the same ATARS site (have one or more common ATARS identity bits set). Thus if ACOWN(bit).EQ.1 and ACINT(bit).EQ.1 for any one common bit position, the intruder is declared a non-threat.

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TABLE 5.2-1

PARAMETERS USED IN THREAT DEFINITION

Parameter	BEQ is 'YES'					BEQ is 'NO'				
	MAX (SLINT,SLOWN)					MAX (SLINT,SLOWN)				
	3	4	5	6	7	3	4	5	6	7
DMOD NMI	0.075	0.1	0.3	1.0	1.3	0.075	0.1	0.3	1.0	1.3
TAU s	16	18	25	30	35	18	20	25	30	35
TVPCMD s	35	40		45	48	35	40		45	48
H1 NMI^2/s	0.002	0.00278			0.004	0.002	0.00278			0.004
ZTHR	See below									

ZOWN FT	ZTHR FT
less than 18,000	750
18,000 to 30,000	850
greater than 30,000	950

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ACINT for an ATCRBS-equipped intruder is determined through spatial correlation of intruder characteristics with ATCRBS track blocks (4.4.1.2).

5.2.1.2.3 Range Divergence

If the intruder range is diverging, the divergence hyperbola test (5.2.1.2.3.1) is performed. Otherwise, the test of time to range convergence (5.2.1.2.4) is performed. The range is diverging if RD is positive.

5.2.1.2.3.1 Divergence Hyperbola

If R*RD.LE.H1, the test of current range separation (5.2.1.2.3.2) is performed. Otherwise, the intruder is a non-threat.

5.2.1.2.3.2 Current Range Separation

If R.GT.DMOD, the intruder is a non-threat. Otherwise, the test of current altitude separation (5.2.1.2.5) is performed.

5.2.1.2.4 Time to Range Convergence

If (R–DMOD).GT.(TAU)*(-RD), the intruder is a non-threat. Otherwise, the test of current altitude separation (5.2.1.2.5) is performed.

5.2.1.2.5 Current Altitude Separation

If ABS(ZOWN–ZINT).GE.ZTHR, the test of altitude convergence (5.2.1.2.5.1) is performed. Otherwise, the test of vertical miss distance (5.2.1.2.6) is performed.

5.2.1.2.5.1 Altitude Covergence

If (ZOWN–ZINT) and (ZDINT-ZDOWN) have the same sign, altitude separation is decreasing and the test of time to altitude covergence (5.2.1.2.5.2) is performed. Otherwise, the intruder is a non-threat.

5.2.1.2.5.2 Time to Altitude Convergence

If ((ZOWN–ZINT)/(ZDINT–ZDOWN)).GT.TAU, the intruder is a non-threat. Otherwise, the test of vertical miss distance (5.2.1.2.6) is performed.

5.2.1.2.6 Vertical Miss Distance

If the projected vertical miss distance is small, the intruder is a threat. Otherwise, the test of range at co-altitude (5.2.1.2.7) is performed. The projected vertical miss distance is small if ABS((ZOWN–ZINT) +((ZDOWN–ZDINT)*TRTRU)).LE.ZTHR, where TRTRU=MIN(ABS(R/RD),TVPCMD) for RD.LT.O. If RD.GE.O, TRTRU=O.

5.2.1.2.7 Range at Co-Altitude

If altitude separation is decreasing (5.2.1.2.5.1) and the projected range at the time of co-altitude is small, the intruder is a threat. Otherwise, the intruder is a non-threat. The projected range at the time of co-altitude is small if ABS(R+(RD*TAUV)).LT.DMOD, where TAUV=(ZOWN–ZINT)/ZDINT–ZDOWN).

5.2.2 Computation of Resolution Advisories

BCAS considers the advisory options of Table 5.2–2 in resolving collision threats. Each threat is processed individually for selection of a resolution advisory. The sequence of resolution processing is as follows: a. Lock RAR (5.2.3.1).

b. Communicate with new threat (5.2.3.2.1).

c. Select sense of advisory for new threat (5.2.2.1).

d. Select magnitude of advisory (5.2.2.2).

e. Evaluate multi-aircraft situation (5.2.2.3).

f. Update RAR (5.2.3.1.1).

g. Unlock RAR (5.2.3.1).

h. Communicate with threat (5.2.3.2.2).

Note.—Items (a), (f), (g), and (h) of this sequence are also executed once for each newly declared non-threat that was previously a threat.

5.2.2.1 Selection of Sense

When an intruder is first declared a threat, BCAS selects the sense (climb or descend) of the maneuver. This sense selection remains unchanged throughout the encounter.

BCAS evaluates maneuver options by modeling the corresponding altitude separations after an escape maneuver at time of closest approach TESC, where TESC=MIN(ABS(R/RD),TVPESC); (Table 5.2–3). Options which imply vertical rates inconsistent with the current composite resolution advisory (5.2.3.4) are not modeled. Climbs and descents are modeled at nominal rates of 1000 FPM unless the current rate exceeds that magnitude, in which case the current rate is used. BCAS provisionally selects the sense of the maneuver which yields the greater altitude separation. If the threat is unequipped (BEQ is "NO") and the difference in separation resulting from a climb maneuver versus separation resulting from a descend maneuver is small (e.g. 150 ft or less), BCAS notes that its provisional sense selection is not significant.

5.2.2.1.1 Exception for Threats in a Multi-Aircraft Conflict

If the threat is BCAS-equipped (BEQ is "YES") and is in a multi-aircraft conflict, if own BCAS is not in a multi-aircraft conflict, and if own BCAS has received a message conveying maneuver sense from the threat BCAS (5.2.3.2.3), own BCAS selects the sense oposite that selected by the threat. Otherwise, BCAS makes no exception for multi-aircraft conflict conditions in selecting the sense of the resolution advisory other than that provide in 5.2.2.3.

Table 5.2–2.—*Resolution Advisory Options*

Down Sense	Up sense
Positive Advisories	
Descend	Climb.
Vertical Speed Minimums	
Descend faster than 500 FPM.	Climb faster than 500 FPM.
Descend faster than 1,000 FPM.	Climb faster than 1,000 FPM.
Descend faster than 2,000 FPM.	Climb faster than 2,000 FPM.
Negative Advisories	
Don't climb	Don't descend.
Vertical Speed Limits	
Don't climb faster than 500 FPM.	Don't descend faster than 500 FPM.
Don't climb faster than 1,000 FPM.	Don't descend faster than 1,000 FPM.
Don't climb faster than 2,000 FPM.	Don't descend faster than 2,000 FPM.

TABLE 5.2-3

PARAMETER USED IN RESOLUTION ADVISORY SELECTION

PARAMETER	MAX (SLINT, SLOWN)				
	3	4	5	6	7
TVPESC s	25	30	30	35	40
ALIM	See below				

ZOWN FT	ALIM FT
less than 10,000	340
10,000 to 18,000	440
18,000 to 30,000	640
greater than 30,000	740

5.2.2.1.2 Yielding to Prior Sense Selection by Threat

If the threat has already selected and communicated a vertical sense selection to BCAS, BCAS selects the sense opposite to that selected by the threat if the corresponding altitude separation at the time of closest approach (TESC, 5.2.2.1) is greater than 400 ft.

5.2.2.1.3 Path Prediction

BCAS models its own and the threat's trajectory based on threat's displayed resolution advisory (5.2.3.5.2) and own vertical maneuver options. The model of each aircraft's altitude profile is a projection with one maneuver at constant acceleration to a new altitude rate (equations below).

If the threat's current altitude rate (ZDINT) satisfies the displayed resolution advisory obtained from its RAR, the threat is modeled as continuing at its current altitude rate. Otherwise, the threat is modeled as accelerating to a rate which satisfies its displayed resolution advisory with minimum change in vertical rate.

If TCUR.LT.T.LE.DELAY+TCUR,
Z(T)=Z(TCUR)+(ZD(TCUR)
*(T−TCUR))
If
DELAY+TCUR.LT.T.LE.DELAY+TCUR
+(ABS(SE
NSE*ZDGOAL−ZD(TCUR))/VACCEL),
Z(T)=Z(TCUR)+(ZD(TCUR)
*(T−TCUR))+
(SENSE*.5*VACCEL
*(T−DELAY−TCUR)²)
,
If
T.GT.DELAY+TCUR+(ABS((SENSE
*ZDGOAL)−Z
D(TCUR))/VACCELL),
Z(T)=Z(TCUR)+(ZD(TCUR)*(DELAY
+(ABS((S
ENSE*ZDGOAL)−ZD(TCUR))/
VACCEL)))+(SENSE*.5*VACCEL
*(ABS((SENSE*ZDGOAL)−
ZD(TCUR))/VACCEL)²)+((T−DELAY−
TCUR−(ABS((SENSE*ZDGOAL)−
ZD(TCUR))/
VACCEL))*ZDGOAL*SENSE).

TCUR=Current Time
T=Time of Prediction
DELAY=Pilot Response Time
(=5 Sec for New Advisories)
(=1 Sec for Changed Advisories)
Z(X)=Altitude at time X
ZD(X)=Altitude Rate at Time X
ZDGOAL=Altitude Rate Objective of Resolution Advisory
(=MAX(1000 FPM,ABS(ZDOWN)) for Positive Advisories)
(=0 FPM for Negative Advisories)
(=−500 FPM: if ABS(VSL)=500)
(=−1000 FPM: if ABS(VSL)=1000)
(=−2000 FMP: if ABS(VSL)=2000)
SENSE=Sense Selection
(=+1 for "Up" Sense)
(=−1 for "Down" Sense)
VACCEL=Acceleration Rate
(=8 FPS²)

5.2.2.2 Selection of Advisory Magnitude

BCAS selects a resolution advisory which results in a predicted safe altitude separation at time of closest approach (TESC, 5.2.2.1) with the least impact on the current flight path by following the sequence of tests described below. Certain parameter values used in the prediction of safe altitude separation are selected based on the characteristics of own and threat aircraft.

5.2.2.2.1 Current Altitude Separation

The first test is to determine whether or not the current altitude separation is small. If the current altitude separation is small, the test of predicted altitude separation (5.2.2.2.2) is performed. Otherwise, the test of threat equipage (5.2.2.2.2.1) is performed. The current altitude separation is small if ABS (ZOWN−ZINT).LT.ALIM.

5.2.2.2.2 Predicted Altitude Separation

If the predicted altitude separation is small, a positive advisory of the established sense (5.2.2.1) is selected. Otherise, the test of extension of own vertical rate (5.2.2.2.3) is performed. The predicted altitude separation is small if ABS((ZOWN−ZINT) + ((ZDOWN−ZDINT)* TRUTRU)).LT.ALIM, where TRTRU=MIN(ABS(R/RD), TVPCMD).

5.2.2.2.2 Threat Equipage

If BEQ is "YES", the test of extension of own vertical rate (5.2.2.2.3) is performed. Otherwise, the test of threat altitude rate (5.2.2.2.2.2) is performed.

5.2.2.2.2.2 Threat Altitude Rate

If threat has no vertical rate (ZDINT near zero), the test of extension of own vertical rate (5.2.2.2.3) is performed. Otherwise, the test of predicted altitude separation (5.2.2.2.2) is peformed.

5.2.2.2.3 Extension of Own Vertical Rate

If extending own vertical rate will resolve the encounter, the vertical speed minimum test (5.2.2.2.3.1) is performed. Otherwise, the vertical speed limit test (5.2.2.2.4) is performed. Extending own vertical rate will resolve the encounter if the predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) is greater in magnitude than ALIM for all rates in the direction of ZDOWN (5.2.1) that are equal to or which exceed the magnitude of ZDOWN.

5.2.2.2.3.1 Vertical Speed Minimum

BCAS selects the lowest magnitude Vertical Speed Minimum (Table 5.2–2) which provides a vertical rate for own BCAS resulting in a predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) greater in magnitude than ALIM. If no such Vertical Speed Minimum exists, BCAS selects a positive advisory of the established sense (5.2.2.1).

5.2.2.2.4 Vertical Speed Limit

BCAS selects the highest magnitude Vertical Speed Limit (Table 5.2–2) that provides a vertical rate for own BCAS resulting in a predicted vertical separation (5.2.2.1.3) at time TESC (5.2.2.1) greater in magnitude than ALIM. If the lowest magnitude Vertical Speed Limit does not result in a predicted vertical separation at time TESC greater in magnitude than ALIM, BCAS selects a negative advisory of the established sense (5.2.2.1).

5.2.2.3 Multi-Aircraft Conflicts

BCAS converts existing resolution advisories as illustrated in Table 5.2–4 when it determines that own BCAS has more than one simultaneous threat. Sense selections which were noted to be not significant (5.2.2.1) do not constrain multi-aircraft resolution advisory selection, and may be changed as a result of multi-aircraft resolution. After conversion, all resolution advisories have significant sense.

5.2.3 Communication

BCAS airborne equipments communicate with BCAS aircraft, with ATARS aircraft, and with ATARS and RBX ground stations. The principal interface for these communications is the Resolution Advisory Register (RAR), illustrated by Figure 5.2–2. The RAR stores all current resolution advisories by source using a single bit to indicate which advisory components have been established by which source.

5.2.3.1 RAR Management

Access to the RAR is limited to one user at a time. This user may be own aircraft, a threat BCAS, or an ATARS ground site. To ensure that the RAR is not accessed while it is in the process of being updated, BCAS excludes any user other than the updating user from communicating with its RAR (except as provided in 5.2.3.2.3). That is, BCAS locks out all other users for the duration of the update. In order to protect against extended RAR lock intervals due to communications failures, the maximum duration of any RAR lock is 0.1 seconds.

5.2.3.1.1 Update RAR With Own BCAS Advisories

All advisories selected by own BCAS to resolve conflicts for which own BCAS is responsible are posted in the "Own BCAS" column of the RAR (Figure 5.2–2). A vertical speed minimum is stored

as a positive advisory of the same sense. The column is updated each time an advisory is added (new threat resolved) or an advisory for an existing threat is modified or deleted. If the current advisory for a threat is to be deleted, BCAS enters a "0" in the appropriate row of the RAR if that advisory is not also posted for another threat. If an advisory is to be added or refreshed for some threat, BCAS enters a "1" in the appropriate row of the RAR if a "1" is not already present. If an existing bit in the "Own BCAS" column is not refreshed within 6 seconds, it is set to "0".

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TABLE 5.2-4

CONVERSION OF RESOLUTION ADVISORIES

FOR MULTI-AIRCRAFT CONFLICTS

Existing Resolution Advisory		Converted Resolution Advisory			
Sense	Magnitude	No Significant 'UPWARD' or 'DOWNWARD' Sense Selections	One or More 'DOWNWARD' Sense Selections but No Significant 'UPWARD' Sense Selections	One or More 'UPWARD' Sense Selections but No Significant 'DOWNWARD' Sense Selections	Significant 'UPWARD' and 'DOWNWARD' Sense Selections
Upward	VSM	No Change	DESCEND	No Change	DON'T DESCEND
Upward	CLIMB	No Change	DESCEND	No Change	DON'T DESCEND
Upward	DON'T DESCEND	No Change	DESCEND	CLIMB	No Change
Upward	VSL	No Change	DESCEND	CLIMB	No Change
Downward	VSL	No Change	DESCEND	CLIMB	No Change
Downward	DON'T CLIMB	No Change	DESCEND	CLIMB	No Change
Downward	DESCEND	No Change	No Change	CLIMB	DON'T CLIMB
Downward	VSM	No Change	No Change	CLIMB	DON'T CLIMB

Each resolution advisory will be converted from the list on the left hand side to the advisory shown.

RAR BIT MATRIX
14 ROWS AND 6 COLUMNS
1 = ADVISORY ACTIVE
0 = ADVISORY NOT ACTIVE

	ATARS SITE A	ATARS SITE B	ATARS SITE C	ATARS SITE D	OWN BCAS	ALL OTHER BCAS
CLIMB						
DON'T DESCEND						
DON'T DESCEND FASTER THAN 500 FPM						
DON'T DESCEND FASTER THAN 1000 FPM						
DON'T DESCEND FASTER THAN 2000 FPM						
DESCEND						
DON'T CLIMB						
DON'T CLIMB FASTER THAN 500 FPM						
DON'T CLIMB FASTER THAN 1000 FPM						
DON'T CLIMB FASTER THAN 2000 FPM						
TURN LEFT						
TURN RIGHT						
DON'T TURN LEFT						
DON'T TURN RIGHT						

FIGURE 5.2-2. RESOLUTION ADVISORY REGISTER (RAR).

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5.2.3.1.2 Update RAR With Other BCAS Advisories

The advisory complements (Table 5.2–5) received from all other BCAS aircraft (5.2.3.2.2) are posted in the "All Other BCAS" column of the RAR (Figure 5.2–2). If there is a complement to delete (own BCAS dropped as a threat), BCAS enters a "0" in the appropriate row of the RAR if that complement is not also posted for another aircraft. If there is a complement to add or to be refreshed, BCAS enters a "1" in the appropriate row of the RAR if a "1" is not already present. If an existing bit in the "All Other BCAS" column is not refreshed within 6 seconds, it is set to "0".

5.2.3.1.3 Update RAR With ATARS Advisories

The first step in updating the RAR with a resolution advisory received from ATARS (4.4.1.1) is to write all zeroes received directly into the appropriate rows of the RAR column associated with that ATARS site. Then, all advisory components set to "1" are tested against the contents of the RAR (all columns) for compatibility (Figure 5.2–3). Any advisory component that is incompatible is not accepted. Any advisory component accepted is entered into the RAR as a "1" in the appropriate row. If the contents of any RAR column are not updated within 10 seconds, all bits in the column are set to "0".

5.2.3.2 Coordination With Other Aircraft

BCAS coordinates conflict resolution with other BCAS-equipped or ATARS-equipped aircraft (Figure 5.2–4).

5.2.3.2.1 Transmission of RAR Request Message

BCAS transmits the RAR Request Message (4.3.1.1) to a newly declared BCAS-equipped or ATARS-equipped threat and waits for a reply (4.3.2). If BCAS receives an RAR Busy Message (4.3.2.2), BCAS retransmits the RAR Request Message.

5.2.3.2.2 Transmission of Resolution Message

After selecting a resolution advisory for a threat, BCAS unlocks own RAR and then transmits the Resolution Message (4.3.1.2) to that threat. If BCAS receives an RAR Busy Message (4.3.2.2), BCAS retransmits the Resolution Message.

5.2.3.2.3 Coordination Reply to BCAS

If BCAS receives an RAR Request Message (4.3.1.1) from a BCAS aircraft and own RAR is not locked, BCAS locks the RAR for access only by the requestor and replies with an RAR Reply Message (4.3.2.1). If BCAS receives an RAR Request Message (4.3.1.1) while own RAR is locked to process the interrogating aircraft as a threat, and the DABS address code of the interrogating aircraft is less than the DABS address code of own BCAS, then own BCAS locks its RAR to deny access to all users other than the interrogating aircraft and replies with an RAR Reply Message (4.3.2.1). Otherwise, BCAS replies with an RAR Busy Message (4.3.2.2).

Table 5.2–5.—*Complements of Resolution Advisories*

Resolution Advisory	Complement
Climb faster than 500 FPM	Don't climb.
Climb faster than 1,000 FPM	Don't climb.
Climb faster than 2,000 FPM	Don't climb.
Climb	Don't climb.
Don't descend	Don't climb.
Don't descend faster than 500 FPM.	Don't climb.
Don't descend faster than 1,000 FPM.	Don't climb.
Don't descend faster than 2,000 FPM.	Don't climb.
Descend faster than 500 FPM.	Don't descend.
Descend faster than 1,000 FPM.	Don't descend.
Descend faster than 2,000 FPM.	Don't descend.
Descend	Don't descend.
Don't climb	Don't descend.
Don't climb faster than 500 FPM.	Don't descend.
Don't climb faster than 1,000 FPM.	Don't descend.
Don't climb faster than 2,000 FPM.	Don't descend.

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COMPATIBLE
RESOLUTION
ADVISORIES

1 = COMPATIBLE
0 = NOT COMPATIBLE

	CLIMB	DON'T DESCEND	DON'T DESCEND FASTER THAN 500 FPM	DON'T DESCEND FASTER THAN 1000 FPM	DON'T DESCEND FASTER THAN 2000 FPM	DESCEND	DON'T CLIMB	DON'T CLIMB FASTER THAN 500 FPM	DON'T CLIMB FASTER THAN 1000 FPM	DON'T CLIMB FASTER THAN 2000 FPM	TURN LEFT	TURN RIGHT	DON'T TURN LEFT	DON'T TURN RIGHT
CLIMB	1	1	1	1	1	0	0	0	0	0	1	1	1	1
DON'T DESCEND	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 500 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 1000 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DON'T DESCEND FASTER THAN 2000 FPM	1	1	1	1	1	0	1	1	1	1	1	1	1	1
DESCEND	0	0	0	0	0	1	1	1	1	1	1	1	1	1
DON'T CLIMB	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 500 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 1000 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
DON'T CLIMB FASTER THAN 2000 FPM	0	1	1	1	1	1	1	1	1	1	1	1	1	1
TURN LEFT	1	1	1	1	1	1	1	1	1	1	1	0	0	1
TURN RIGHT	1	1	1	1	1	1	1	1	1	1	0	1	1	0
DON'T TURN LEFT	1	1	1	1	1	1	1	1	1	1	0	1	1	1
DON'T TURN RIGHT	1	1	1	1	1	1	1	1	1	1	1	0	1	1

Figure 5.2-3. ATARS Advisory Compatibility.

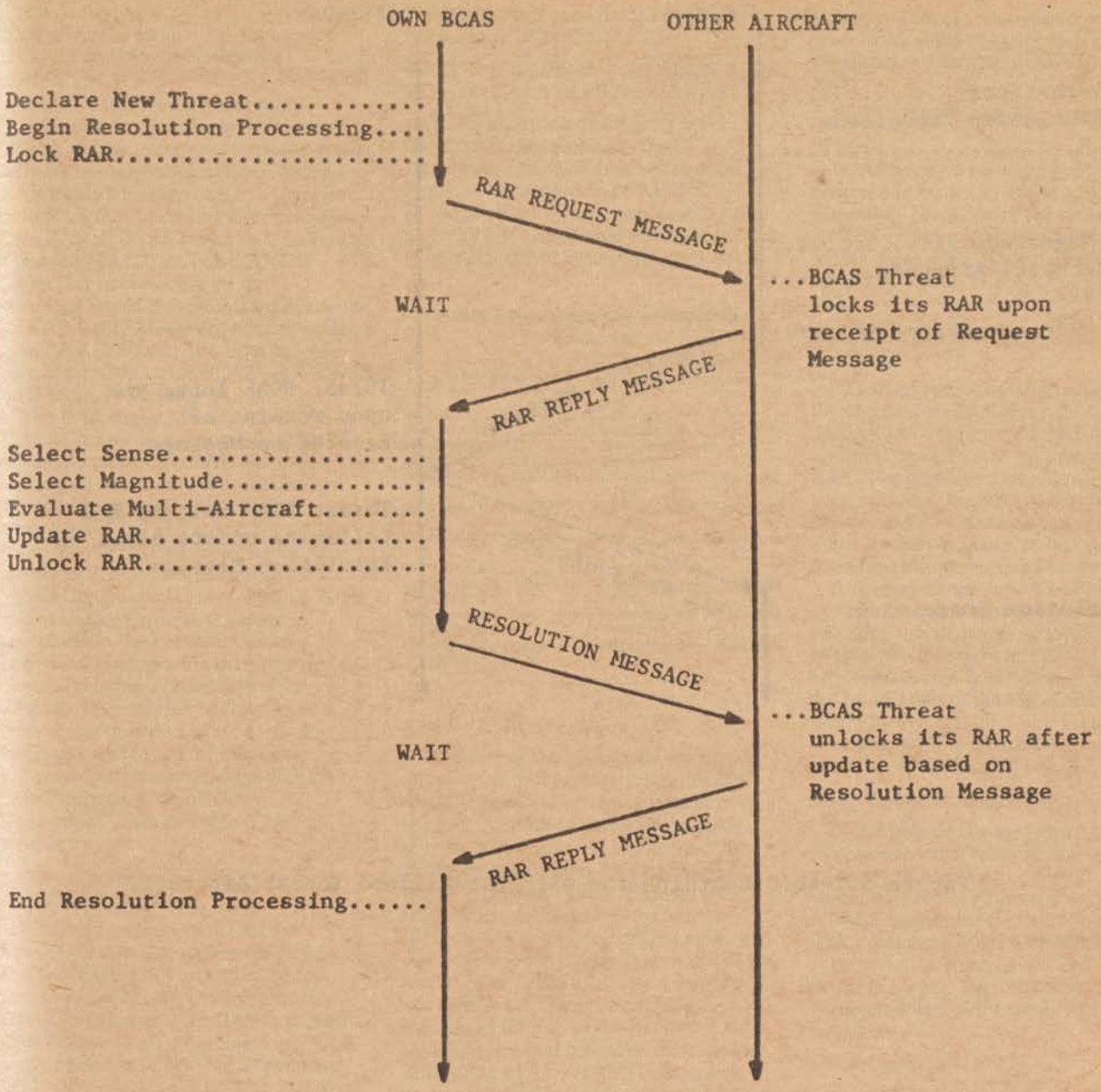

Figure 5.2-4a. Coordination With New Threat Aircraft.

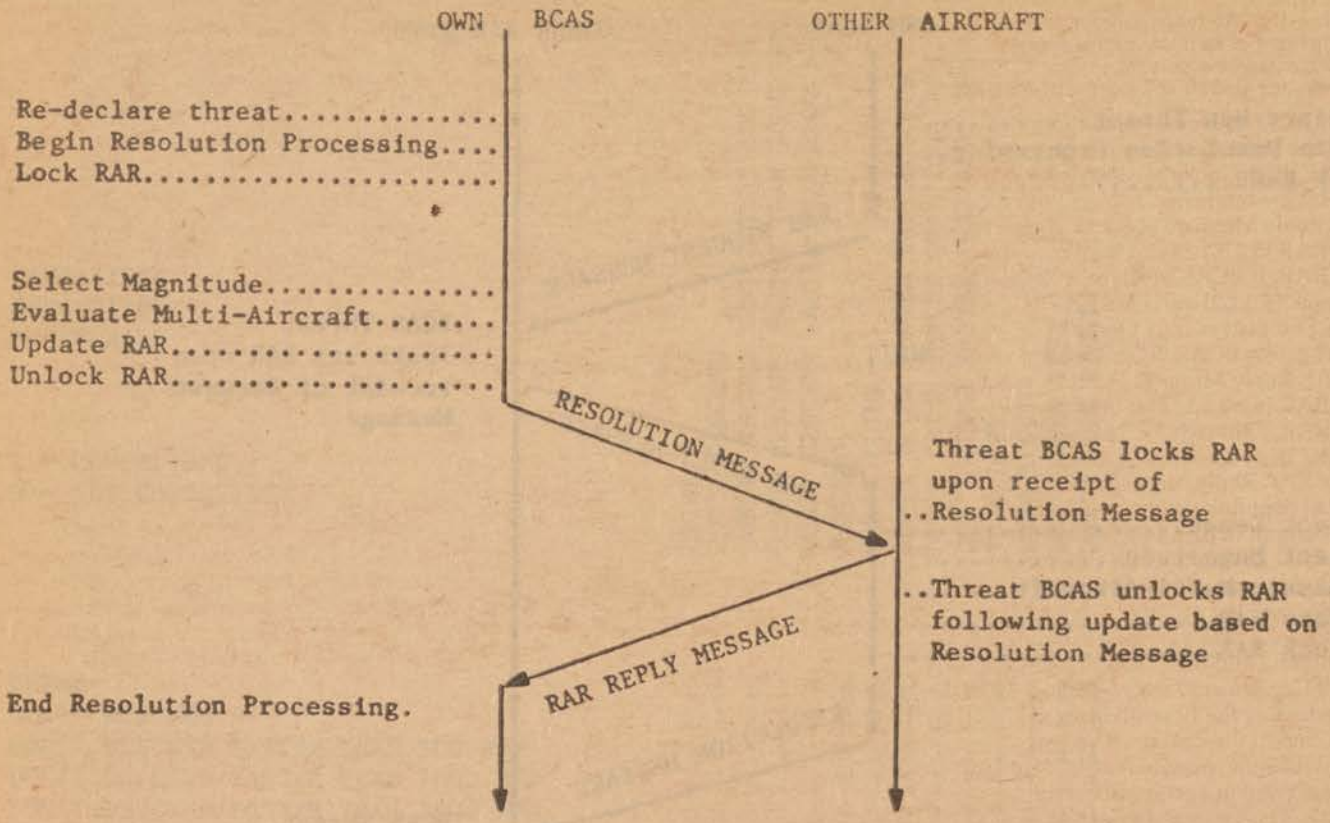

Figure 5.2-4b. Coordination with Established Threat Aircraft.

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Note.—If BCAS relinquishes access to its RAR in favor of an interrogating aircraft, BCAS reacquires access when the interrogating aircraft unlocks the BCAS RAR.

If BCAS receives a Resolution Message (4.3.1.2) and own RAR is not locked, BCAS locks own RAR for access only by the requestor, replies with an RAR Reply Message (4.3.2.1), updates own RAR (5.2.3.1.2) and then unlocks own RAR. If BCAS receives a Resolution Message (4.3.1.2) and own RAR is locked for access only by the interrogating BCAS, BCAS replies with an RAR Reply Message (4.3.2.1), updates own RAR (5.2.3.1.2) and then unlocks own RAR. Otherwise BCAS replies with an RAR Busy Message (4.3.2.2).

The RAR Reply Message to BCAS (4.3.2.1) contains an encoded image of each column of own RAR (3.3.2.8.1). The horizontal advisories of a column are encoded by scanning the "Left Component" list of Table 5.2–6 and selecting the first advisory contained in the column, and then scanning the "Right Component" list of Table 5.2–6 and selecting the first advisory contained in the column. The two horizontal components thus selected are then encoded in accordance with 3.3.2.8.1. The vertical advisories of a column are encoded using the same technique employed for encoding horizontal advisories except that the "Up Component" and "Down Component" lists of Table 5.2–6 are scanned.

5.2.3.3 Coordination With Ground ATARS Equipment

If BCAS receives an ATARS Resolution Advisory Message (4.4.1.1) and the RAR is not locked to deny access to the corresponding ground ATARS equipment, the RAR is locked to deny access to all other users, an RAR Reply Message (4.4.2.1) is transmitted, the RAR is updated (5.2.3.1.3), and the RAR is unlocked. Otherwise, an RAR Busy Message (4.4.2.2) is transmitted.

If BCAS receives a request from ground ATARS equipment to transmit RAR contents (RR=19, 4.4.2) and the request is not an ATARS Resolution Advisory Message, and if the RAR is not locked to deny access to the corresponding ATARS ground site, then the RAR is locked to deny access to all other users, an RAR Reply Message (4.4.2.1) is transmitted, and the RAR is unlocked. Otherwise, an RAR Busy Message (4.4.2.2) is transmitted.

The RAR Reply Message to ATARS (4.4.2.1) contains an encoded image of each column of own RAR (3.3.2.4.1). The horizontal and vertical advisories of each column are encoded using the technique employed for the RAR Reply Message to BCAS (5.2.3.2.3).

5.2.3.3.1 Command of Sensitivity Level From Ground ATARS Equipment

BCAS accepts a sensitivity level command from ground ATARS equipment (4.4.5). A sensitivity level command received from ATARS remains effective until replaced by the same site. If an existing command is not refreshed within 14 seconds, it is set to "0".

Table 5.2–6.—*Hierarchy of Resolution Advisories*

Left component	Right component
Turn left	Turn right.
Don't turn right	Don't turn left.
Up component	Down component.
climb	Descend.
climb faster than 2,000 FPM	Descend faster than 2,000 FPM.
climb faster than 1,000 FPM	Descend faster than 1,000 FPM.
Climb faster than 500 FPM	Descend faster than 500 FPM.
Don't descend	Don't climb.
Don't descend faster than 500 FPM.	Don't climb faster than 500 FPM.
Don't descend faster than 1,000 FPM.	Don't climb faster than 1,000 FPM.
Don't descend faster than 2,000 FPM.	Don't climb faster than 2,000 FPM.

5.2.3.4 Cockpit Display

To develop the composite resolution advisory output to the cockpit, BCAS scans the resolution advisories stored in the four ATARS columns of the RAR and the resolution advisories that own BCAS has generated for all threats for which it is responsible. A composite resolution advisory with up to four components is synthesized by selecting one or fewer advisories from each of the four lists in Table 5.2–6. An advisory, if any, is selected from each list by starting at the top of the list and selecting the first advisory that appears in any one of the ATARS columns or among the advisories generated by own BCAS.

Note 1.—An example of a four-component resolution advisory is "Don't Climb, Don't Descend, Don't Turn Right, Don't Turn Left."

Note 2.—The "Own BCAS" column of the RAR does not fully represent all advisories generated by own BCAS because Vertical Speed Minimum advisories are posted as positive advisories of the same sense. The "All Other BCAS" column is not used in synthesizing the composite resolution advisory.

5.2.3.5 Coordination With Ground RBX Equipment

BCAS communicates with any ground RBX equipment for which the range to the RBX is less than the range threshold for the RBX (4.5). BCAS accepts sensitivity level commands from each such RBX, and transmits displayed resolution advisories (5.2.3.5.2) to the RBX.

5.2.3.5.1 RBX Command of Sensitivity Levels

BCAS accepts sensitivity level commands from an RBX (4.5.3). A sensitivity level command received from an RBX remains effective until modified by the same RBX. If a command is not refreshed within 14 seconds, it is set to "0".

5.2.3.5.2 Displayed Resolution Advisory

The displayed resolution advisory is the composite resolution advisory derived from the four ATARS columns and the "Own BCAS" column of an RAR. The displayed resolution advisory transmitted to the RBX (4.5.4) is derived from own RAR. A displayed resolution advisory derived from the threat RAR is used for path prediction (5.2.2.1.3).

A displayed resolution advisory with up to four components is synthesized by selecting one or fewer advisories from each of the four lists in Table 5.2–6. An advisory, if any, is selected from each list by starting at the top of the list and selecting the first advisory that appears in any one of the four ATARS columns or in the "Own BCAS" column.

5.2.4 Selection of SLOWN

BCAS selects the lowest nonzero command as the value of SLOWN from all the current sensitivity level commands received from ground ATARS equipment (5.2.3.3.1) and ground RBX equipment (5.2.3.5.1). If there is no current nonzero command and ZOWN (5.2.1) is greater than 10,000 ft, SLOWN is selected as 7. Otherwise, SLOWN is selected as 5.

5.3 Interfaces

5.3.1 DABS Transponder Inputs

The following inputs to the DABS transponder are also input to the airborne BCAS equipment: a. ATCRBS Mode A (4096) code.

b. Altitude OFF signal.

c. On the ground signal.

d. DABS address code.

e. Own maximum operating airspeed code.

f. Pressure altitude.

Note.—The ATCRBS Mode A code and the altitude off input are from the DABS transponder control panel; the on the ground signal may be either from the control panel or from an automatic air-ground switch.

5.3.2 Additional Inputs

Additional inputs may be provided to the airborne BCAS equipment. For

example: a. A manual input for selection of sensitivity level.

b. An input signal from a radar altimeter which allows descend advisories to be inhibited at low altitudes and which permits automatic sensitivity level switching when in proximity to the ground.

c. Magnetic heading as provided by a directional gyroscope may be used with ATCRBS intruder bearing (as provided by a BCAS antenna with direction finding capability) for correlation with intruder bearing in ATCRBS track blocks by ground ATARS equipment (5.2.1.2.2).

5.4 Airborne Antenna System

A BCAS unit transmits interrogations and receives replies via two antennas, one top mounted and the other bottom mounted. These may be dedicated antennas or shared with other avionics.

Note.—A BCAS unit and DABS transponder may share a single pair of antennas.

5.4.1 Polarization

The antennas are vertically polarized.

5.4.2 Radiation Pattern

The radiation pattern of each antenna when installed on an aircraft is nominally equivalent to that of a quarter-wave monopole on a ground plane. This gives a nominal 3 dB vertical beamwidth of 30 degrees and an omnidirectional pattern in the horizontal plane.

Note.—Airborne BCAS equipment may use one or more antennas with direction finding capability and may use antennas with directional radiation patterns. If directional radiation patterns are employed, the antenna(s) must be so designed that BCAS surveillance is provided throughout the volume serviced by top and bottom mounted quarter-wave monopoles with antenna gains no less than that provided by the monopoles minus 3 dB.

5.4.3 Antenna Selection

5.4.3.1 Squitter Listening

A BCAS unit receives squitters via the top and bottom antennas. This can take the form of simultaneous reception using two receivers and two decoders or switched reception using one receiver. If reception is switched, the switching times are controlled to avoid undesirable synchronism with the squitters transmitted by DABS diversity transponders.

Note.—A DABS diversity transponder transmits squitters at the rate of nominally 1 each second alternating between its two antennas. An example of a switching pattern by which a BCAS unit can listen for squitters while avoiding undesirable sychronism is to switch receiving antennas once every 2 seconds; then in each 4-second period, squitters are transmitted/received via all four antenna pairs.

5.4.3.2 Interrogation

A BCAS unit transmits each ATCRBS or DABS interrogation via one or the other of the two antennas. Interrogations are not transmitted simultaneously via both antennas.

6. Characteristics of Ground RBX Equipment

6.1 Interference Control

6.1.1 RF Peak Effective Radiated Power

The maximum effective radiated peak power of any RBX squitter or reply pulse is +40 dBW including antenna gain and transmission loss.

6.1.2 Unwanted RF Output Power

When the RBX is not transmitting a squitter or reply, its output in the frequency band from 1027 to 1033 MHz does not exceed −35 dBW effective radiated power.

6.1.3 Squitter Rate

The squitter rate for a single RBX is one squitter every four seconds.

[FR Doc. 80-33141 Filed 10-24-80; 8:45 am]
BILLING CODE 4910-13-M

federal register

Monday
October 27, 1980

Part V

Department of Transportation

Federal Aviation Administration

Completion of Airworthiness Review Program

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. 1

[Docket No. 13542; Notice No. 74-5E]

Airworthiness Review Program: Completion

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice announcing completion of a Regulatory Review Program.

SUMMARY: With this notice the FAA completes the Airworthiness Review Program initiated in February 1974. The purpose of this Review was to update and improve the certification and operating regulations containing airworthiness standards and related procedural requirements. This notice also announces the availability of an index of the proposals made during the Review and the disposition of each one.

FOR FURTHER INFORMATION CONTACT: Marvin J. Walker, Regulatory Review Branch, AVS-22, Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION: In recognition of the rapid growth and technological advances within the aviation industry of the United States and other countries, the FAA gave notice of its Airworthiness Review Program on February 15, 1974. The FAA invited all interested persons to submit proposals to change the Federal Aviation Regulations involved for consideration as part of the regulatory process (see Notice 74-5; 39 FR 5785). The objective of the program was to update and improve certification and operating regulations, airworthiness standards, and related procedural requirements in the Federal Aviation Regulations. In the notice, the FAA announced that it would make available for comment a Compilation of Proposals to be given further consideration as possible agenda items for an Airworthiness Review Conference.

Over 1,000 proposals were submitted by the FAA and interested persons in response to Notice 74-5. A number of proposals received pertained solely to form numbers and other minor clarifying revisions. These were dealt with in Notice 74-33, the first of eight notices of proposed rule making issued under the Airworthiness Review Program.

On May 22, 1974, the FAA announced the availability of a Compilation of Proposals and invited all interested persons to submit comments (see Notice 74-5A; 39 FR 18662). In response to that invitation, the FAA received over 4,900 individual comments contained in 74 submissions. Of this number, one group of proposals was considered at the time to be straightforward, noncontroversial, and adequately justified. Notice 75-10, the second notice of proposed rule making issued under the Airworthiness Review Program, dealt with that group of proposals.

An Airworthiness Review Conference was held by the FAA December 2-11, 1974, in Washington, D.C., to obtain the views of those concerned with the remaining proposals. Over 600 persons attended. The proposals and related discussions culminated in the issuance of six additional notices of proposed rule making.

Notices of Proposed Rule Making Issued

The following notices of proposed rule making were issued as part of this Airworthiness Review Program:

Notice No., Title and Federal Register Citation

74-33 Form Number and Other Clarifying Revisions (39 FR 36595; Oct. 11, 1974)
75-10 Miscellaneous Proposals (40 FR 10802; Mar. 7, 1975)
75-19 Powerplant Proposals (40 FR 21866; May 19, 1975)
75-20 Equipment Deviation List (40 FR 22110; May 20, 1975)
75-23 Equipment and Systems Proposals (40 FR 23048; May 27, 1975)
75-25 Flight Proposals (40 FR 24664; June 9, 1975)
75-26 Airframe Proposals (40 FR 24802; June 10, 1975)
75-31 Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (40 FR 29410; July 11, 1975)

At one time the FAA considered issuing an additional notice of proposed rule making dealing with a group of proposals for periodically updating the type certificates of aircraft and products with lengthy service cycles. The proposals were listed as being deferred for this purpose in Notice 75-31, Appendix I, Group 2 (40 FR 29410; July 11, 1975). Accordingly, the FAA has issued a notice of proposed rule making (45 FR 57688; August 28, 1980) proposing amendments to the certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers. The proposals, therefore are removed from the Airworthiness Review Program.

Amendments Issued

Based on the comments received on the notices and further review within the FAA, the following amendments were issued as part of this Airworthiness Review Program:

Title Federal Register Citation

Form Numbers and Clarifying Revisions (40 FR 2576; Jan. 14, 1975)
Rotorcraft Anticollision Light Standards (41 FR 5290; Feb. 5, 1976)
Miscellaneous Amendments (41 FR 55454; Dec. 20, 1976)
Powerplant Amendments (42 FR 15034; March 17, 1977)
Equipment and Systems Amendments (42 FR 36960; July 18, 1977)
Flight Amendments (43 FR 2302; Jan. 16, 1978)
Airframe Amendments (43 FR 50578; Oct. 30, 1978)
Minimum Equipment Lists (MEL) (44 FR 43714; July 26, 1979)
Cabin Safety and Flight Attendant Amendments (45 FR 7750; Feb. 4, 1980)
Aircraft, Engine, and Propeller Airworthiness, and Procedural Amendments (45 FR 60154; Sept. 11, 1980)

Description of Index

To ensure that action has been taken in all areas of concern, the FAA has compiled an index of proposals which lists each proposal made during the Airworthiness Review, identification of its proponent, its disposition (adopted as a rule, deferred, removed from the airworthiness review, or withdrawn from consideration) and a reference to the volume number, page number, and date of publication of the **Federal Register** in which disposition was announced.

Of 1,996 proposals submitted, 1,203 were adopted as rules, 267 deferred, 194 removed from the Airworthiness Review, and 332 withdrawn from consideration.

The index is routinely being distributed to known interested persons. Copies of the index of proposals may be obtained by contacting the FAA Regulatory Review Branch at the address listed in the "FOR FURTHER INFORMATION CONTACT" paragraph.

(Secs. 313(a), 601, 603, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1424); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, and set forth in the "Department of Transportation Regulatory Policies and Procedures" published in the **Federal Register** on February 26, 1979 (44 FR 11634).

Issued in Washington, D.C., on October 20, 1980.

William J. Sullivan,

Chief, Safety Regulations Staff, Federal Aviation Administration.

[FR Doc. 80-33269 Filed 10-24-80; 8:45 am]

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federal register

Monday
October 27, 1980

Part VI

Department of Agriculture

Agricultural Marketing Service

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1135 (Tentative)

[Docket No. AO-380]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that a Federal milk order be established for the proposed Southwestern Idaho-Eastern Oregon marketing area. The milk order was proposed by three cooperative associations and was considered at a public hearing held December 5–8, 1978, and at a later reopening of the hearing on February 5–8, 1980. An analysis of the hearing evidence developed at both hearings indicates that dairy farmers are experiencing disorderly marketing conditions to an extent that warrants the adoption of a milk order for the area. Based on evidence presented at the December 1978 hearing, the Department initially recommended that an order not be established for this area.

DATE: Comments are due on or before November 26, 1980.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7183. A separate Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant."

Prior documents in this proceeding:

Notice of Hearing: Issued October 19, 1978; published October 24, 1978 (43 FR 49704).

Correction: Published October 27, 1978 (43 FR 50187).

Correction: Published November 13, 1978 (43 FR 52496).

Extension of time for filing briefs: Issued February 23, 1979; published February 28, 1979 (44 FR 11236).

Recommended decision: Issued August 13, 1979; published August 16, 1979 (44 FR 48128).

Extension of time for filing exceptions: Issued September 14, 1979; published September 19, 1979 (44 FR 54307).

Notice of reopened hearing: Issued November 27, 1979; published November 30, 1979 (44 FR 68853).

Notice of rescheduling of reopened hearing: Issued December 19, 1979; published December 27, 1979 (44 FR 76551).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this revised recommended decision with respect to a proposed marketing agreement and order regulating the handling of milk in an area tentatively identified as the Southwestern Idaho-Eastern Oregon marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, November 26, 1980. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The recommendations, as hereinafter set forth, concerning the tentative marketing agreement and order were formulated on the basis of the record of a hearing conducted at Boise, Idaho, on December 5–8, 1978, and a reopening hearing on February 5–8, 1980, pursuant to notices thereof which were issued October 19, 1978 (43 FR 48704), November 30, 1979 (44 FR 68853), and December 19, 1979 (44 FR 76551).

The material issues of record relate to:

1. Whether the handling of milk produced for sale in the proposed marketing area is in the current of interstate commerce, or directly burdens, obstructs, or affects interstate commerce in milk or its products;

2. Whether marketing conditions show the need for the issuance of a milk marketing agreement or order which will tend to effectuate the policy of the Act; and

3. If an order is issued what its provisions should be with respect to:

(a) Handlers to be regulated and milk to be priced and pooled;

(b) The classification of milk and assignment of receipts to classes of utilization;

(c) Pricing of milk;

(d) Distribution of proceeds to producers; and

(e) Administrative provisions.

On the basis of the record of the initial hearing held December 5–8, 1978, the Deputy Administrator, Marketing Program Operations, issued a recommended decision (44 FR 48128) in which it was tentatively concluded that the hearing evidence did not provide a sufficient basis for establishing a new order for the proposed marketing area. Interested parties were then invited to submit written exceptions to the decision. In their exceptions to the Department's tentative conclusions, proponents of the new order indicated that there was additional evidence concerning the need for an order which they desired to make available at a reopened hearing.

Based on the exceptions filed by proponents, it was concluded that in the public interest the hearing should be reopened for the purpose of receiving additional evidence concerning the economic and marketing conditions that related to any of the issues and proposals set forth in the original notice of hearing. The reopened hearing was held February 5–8, 1980, in Boise, Idaho.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at both the initial and reopened hearings and the records thereof:

1. *Character of commerce.* The area that was proposed for regulation includes 23 contiguous counties. Eighteen of the counties are in southwestern Idaho, and the remainder are in eastern Oregon. Of the 216 Grade A milk producers who resided in the area in June 1978 and whose milk was available to milk dealers serving the area, 198 reside in Idaho and 18 in Oregon.[1] The producers produced 27 million pounds of milk in June 1978 and supplied milk to 12 milk dealers in the area that was proposed. The fluid milk

[1] Most of the detailed statistical information pertaining to production, marketing, and pricing of Grade A milk for the proposed marketing area was available only for June 1978. Accordingly, the data used herein will apply to June except where more recent data are available.

sales of the dealers were about 10 million pounds. Essentially all fluid milk sales by milk dealers in the area are within the marketing area that was proposed.

The milk of dairy farmers associated with the proposed marketing area that is not needed for fluid use is made into manufactured dairy products at plants in Idaho and Utah. These products are sold in Idaho, Oregon, and other states. Dairymen's Creamery Association, Inc. (DCA), a proponent of the milk order, with a plant at Caldwell, Idaho, manufactures milk into American cheese, butter, and nonfat dry milk for distribution in several states. Another proponent cooperative association, Mountain Empire Dairymen's Association (MEDA), moves such milk to manufacturing plants in Idaho and Utah. The dairy products made in these plants are then sold in several states.

Milk dealers who operate fluid milk plants in the area that was proposed for Federal milk regulation distribute fluid milk products in Idaho and Oregon from such plants. Also, they compete in the area for fluid milk sales with at least 6 out-of-state fluid milk plants located in Oregon, Washington, and Utah which are regulated either by the Inland Empire, Oregon-Washington, or Great Basin Federal milk orders.

The Agricultural Marketing Agreement Act of 1937, as amended, provides in section 608(c)(1) that milk orders issued by the Secretary shall regulate such agricultural commodity, or product thereof, as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof. It is concluded that the handling of milk in the proposed marketing area is in the current of interstate commerce. Accordingly, the Department has appropriate jurisdiction in establishing a Federal milk order for this area.

2. *Need for an order.* Marketing conditions in the proposed Southwestern Idaho-Eastern Oregon area justify the issuance of a marketing agreement or order for the area.

Three dairy farmer cooperative associations, DCA, MEDA, and Western General Dairies, Inc. (WGDI), proposed an order for the Southwestern Idaho-Eastern Oregon area. In June 1978, DCA and MEDA represented about 70 percent of the producers who supply plants which would be regulated by this order. The third proponent, WGDI, does not have producer members that supply fluid plants who would be regulated by the order. Although the cooperative has 104 members in Idaho, all of this milk is marketed to plants that are regulated by the Great Basin Federal milk order.

At the time of the reopened hearing, DCA represented 196 Grade A producers. All of these producers' farms were located within the geographical territory of the proposed marketing area. In December 1979, receipts from these producers were about 18 million pounds, with more than half of such receipts associated with three fluid milk plants that would be regulated by the order.

With the exception of the supply from one nonmember producer, DCA is the exclusive supplier of milk to Associated Dairies, Inc. (Associated), which operates fluid milk plants at Boise, Idaho, and Twin Falls, Idaho. The cooperative owns 50 percent of Associated. In June 1978, these two plants had about 4.5 million poinds of fluid milk sales. Practically all of such sales were within the proposed marketing area.

Beginning in April 1979, DCA also became the exclusive supplier of Sun Ray Drive-In Dairy at Boise. This plant received about 350,000 pounds of milk from DCA in December 1979. In June 1978, Sun Ray had about 9 percent of the fluid sales in the proposed marketing area.

DCA also operates a plant at Caldwell, Idaho, which is a pool supply plant under the Oregon-Washington milk order. Presently, about 40 percent of the cooperative's Grade A member receipts are pooled under that order. Additionally, about 10 percent of such receipts are pooled under the Great Basin order. The cooperative's Grade A milk that is not needed for fluid use in the proposed marketing area is manufactured into dairy products at the association's Caldwell manufacturing plant.

Another proponent of the order, MEDA, operates on a regional basis with a large proportion of its member milk marketed under the Eastern Colorado order. The cooperative's member producers are located in Colorado, Idaho, Nebraska, Oregon, and Wyoming. It represents 119 producer members who reside in the Idaho-Oregon area, 87 of whom are available to supply fluid milk plants in the proposed area. The milk of MEDA's remaining producers in Idaho and Oregon is pooled under the Great Basin order.

Since the middle seventies, MEDA has sold milk on a supplemental basis (balancing the daily and seasonal variations in total milk needs) to the Meadow Gold fluid milk plant in Boise. This plant would be fully regulated under the proposed order. In June 1978, for instance, the association sold 572,000 pounds to the Meadow Gold plant, which represented about 11 percent of the plant's total producer supplies for the month. In more recent months, however, Meadow Gold has sharply reduced its purchases from MEDA, purchasing only 45,000 pounds in November 1979 and nothing at all in December 1979. The Meadow Gold plant receives the major part of its supply from about 25 producers who are not members of a cooperative association. In June 1978, the plant purchased 5 million pounds of milk from producers and sold 3.6 million pounds as fluid milk products.

The milk of MEDA producer members that is not sold for fluid use in the area is disposed of to manufacturing plants in Idaho and Utah, including DCA's manufacturing plant at Caldwell, Idaho. MEDA operates no manufacturing facilities in Idaho; it is a marketing organization exclusively.

In addition to the three fluid milk plants supplied by DCA and MEDA, the fluid market was serviced in June 1978 by four other plants located in the area that pasteurized, packaged, and distributed fluid milk products. The receipts from producers at the four plants for the month totalled 3.2 million pounds, and fluid sales were 1.8 million pounds. Also, six fluid milk plants outside the proposed marketing area were selling fluid milk products in the area. Such milk was priced and pooled under neighboring Federal milk orders.

The three fluid milk plants to which proponents were selling milk accounted for 68 percent of the June 1978 fluid milk sales in the area. The other four plants in the area accounted for 16 percent of the sales, and the six plants outside the area accounted for 14 percent of the sales. In addition, five milk dealers were distributing unpasteurized milk products and accounted for two percent of the fluid milk sales in the area.

DCA represented 42 percent of the 216 producers whose milk was available to the fluid market in June 1978. MEDA represented 31 percent of the producers. An additional 23 percent of the producers shipping milk to local dealers were not members of a cooperative association, and four percent of the producers supplied all or part of the milk needs of their own fluid processing operations.

a. *Testimony adduced at the December 5–8, 1978, hearing.* At the initial hearing, the proponent cooperative associations were represented by five dairy farmer witnesses who testified in support of the Federal milk order that was proposed. Certain employees of the cooperative

testified about the specific milk order provisions that were proposed.

One of the dairy farmer witnesses, who has produced milk in Canyon County, Idaho (in the proposed area) for 44 years, related some of the history of the market from his own experience. He stated that when he first started producing Grade A milk, it was customary for milk dealers to accept milk from farmers only when they needed it and to cut part of the farmers off the market during periods of seasonally high milk production.

By 1954, he said, about 150 dairy farmers had organized into a cooperative association (Grade A Milk Producers Association or GAMPA) and had attempted to negotiate supply contracts with milk dealers. In these attempts, the farmers were largely unable to reach a satisfactory agreement with respect to prices.

He testified that by 1970 the number of milk dealers operating in the market had decreased substantially, and GAMPA had only three outlets for its members' milk. This was reduced further when DCA bought one of the fluid milk plants.

The witness stated that this development intensified competition between the two remaining milk dealers for sales of fluid milk products. As the milk dealers lowered their retail prices, they pushed down the prices paid to the farmers. He stated that one result of this was that farmers received four different prices from a milk dealer depending on the area where fluid milk sales were made. Farmers paid the transportation cost to more distant areas from the Boise, Idaho, area, he said, or took a lower price so that the milk dealer could meet competition at locations outside the Boise area.

The witness stated that in 1972 GAMPA lost another buyer and began marketing milk in Oregon, Washington, and Utah to provide outlets for its members' milk. This led to a merger with MEDA which provided an outlet for milk in the Eastern Colorado market (Denver area). In this producer's view, a Federal milk order would provide orderly marketing for dairy farmers in contrast to the instability which characterized the southwestern Idaho market during his years of experience with it.

Aside from the historical development of the market, other proponent cooperative witnesses testified collectively that a Federal milk order is needed for the marketing area that was proposed because necessary elements of orderly marketing are lacking there.

Proponent witnesses testified that milk dealers competing for sales in the area do not pay farmers on the basis of a uniform classification plan that reflects the way milk is utilized, such as the higher-valued fluid milk products being included in a Class I classification and the lower-valued manufactured products being included in a Class II classification. It was stated that, while one of the dealers pays for milk on a classified use basis, there is no uniform classification plan for the market as a whole. It was claimed that another dealer pays for milk at a Class I utilization that is lower than its actual Class I use. In this connection, the witness indicated the handler establishes what the utilization scheme will be, but the dairy farmers have no way of verifying the utilizations on which they are paid. It was stated that another dealer pays a lower "flat" price for milk even though most or all of the milk distributed by the handler is in the form of fluid milk products.

Proponents' witnesses testified that there is a wide variation in prices paid dairy farmers for milk, and that such variation also is evident from the varying butterfat differentials paid by dealers. They said that it is essential for orderly marketing that minimum prices be paid for each class of milk by all milk dealers competing for sales in the marketing area. Proponents stated that such a pricing arrangement would prevent dealers from "shortchanging" dairy farmers through price determinations that do not reflect market values.

Proponents' witnesses testified also that in the absence of a Federal milk order, farmers and their cooperative associations cannot verify how their milk was used by milk dealers. Also, they stated that without an order there is no means of verifying the weight and butterfat content of the milk they deliver to the dealers.

Proponents' witnesses testified about another element of orderly marketing which they believe is lacking in the marketing area that was proposed. In the absence of an order, it was stated, there is no means for equitably distributing returns among producers from the sale of milk in each use classification. It was stated that cooperatives divert milk to manufacturing plants that is not needed for fluid use by milk dealers. Proponents assert that this diversion accrues to the benefit of all producers. It was stated that in the absence of marketwide pooling, as provided by a Federal milk order, producers who are members of a cooperative association realize a lower price for their milk than producers who are not members of a cooperative; and that the average prices received by all producers vary significantly form plant to plant. Proponents maintain that marketwide pooling under a Federal milk order would assure all farmers of an equal sharing of utilization in each class and would result in a more orderly market.

A final element of orderly marketing that proponents believe is lacking with respect to the area in question is that there is no means for farmers, consumers, milk dealers, or other interested parties to evaluate market conditions because there is no published information about milk production, sales, and other relevant market statistics. In proponents' view, one of the benefits of a Federal milk order for the area would be the availability of such information on a timely basis.

Three dairy farmers who were not affiliated with a cooperative association testified in opposition to the proposed milk order. One stated that he was being paid for his milk on the basis of 70 percent Class I utilization. he was apprehensive that a Federal milk order would cause the Class I utilization percentage of the market to drop continually. The other farmers expressed similar views.

b. *Testimony adduced at the February 5–8, 1980, reopened hearing.* At the reopened hearing, the three dairy farmers mentioned above testified in favor of the proposed order. Generally, these farmers stated they now favor an order because it would provide market stability. Two of the farmers testified that in the period between the December 1978 hearing and the February 1980 reopened hearing they had been cut off by handlers because of alleged quality problems with their milk. They maintained they had no unusual quality problems, and this was not refuted by the handlers involved.

One of these farmers also complained of having to balance the fluid needs of the fluid milk plant to which he delivers his milk. On days when his milk wasn't needed there, he testified, he had to haul it at his own expense to a manufacturing plant; and he would receive a lower price for this milk. The witness argued that the fluid milk operator, who produces the balance of his fluid needs with his own herd, should share in bearing the burden of the reserve supplies for the plant.

Another dairy farmer testified that he is now in favor of an order because he has experienced discrepancies in the butterfat testing of his milk and never knows if he is getting paid fairly for his butterfat. He said an order would provide a means to verify handlers' butterfat tests. Also, he said, he

supports an order because it would provide greater market security.

The witness stated that he had recently joined MEDA because the handler to which he was delivering his milk kept cutting his price. At first, he said, the handler promised him a fluid milk price on 100 percent of his milk. Then the handler told him he could only pay him the fluid price on 80 percent of his milk which, after some time, was dropped to 70 percent of his milk.

Several individual producer members and officers of DCA and MEDA also testified in support of the proposed order. The president of DCA testified that DCA has lost members to a proprietary handler (Meadow Gold) because the handler is able to pay its producers a higher price than can the cooperative. The DCA spokesman indicated this is because the cooperative helps carry the market's reserve milk supplies while Meadow Gold does not. Even though DCA charges its customers a higher Class I price then Meadow Gold pays, Meadow Gold can outpay the cooperative, it was claimed, because Meadow Gold does not carry its full share of the market's surplus, which results in a diluted blend price to the producer members of the cooperative.

The general manager of DCA testified that DCA owns half-interest in Associated Dairies and that DCA is, with one exception, the exclusive supplier of Associated Dairies and Sun Ray Drive-In Dairy. He said that DCA's Class I price to these handlers is based on the Minnesota-Wisconsin (M–W) price for the second preceding month plus $1.85. This price, however, moves only when the M–W price changes by 23 cents per hundredweight. The contracts with these handlers are under stress, he said, because Meadow Gold and other handlers in the market are able to acquire milk at lower prices.

The witness referred to an exhibit introduced at the December 1978 hearing which shows prices paid by the various handlers in the market. He pointed out that the average price paid by Associated to DCA for the months of January-October 1978 was $10.87 per hundredweight for Class I milk. During these same months, he said, Meadow Gold paid its own producers $10.59 per hundredweight for Class I milk and paid MEDA $11.04 per hundredweight for the small portion of supplemental milk it purchased from them.

He also pointed to the difference in butterfat differentials used by the various handlers in the market. He said Associated Dairies pays 12.8 cents for each tenth of a pound of butterfat variation above 3.5 pounds, while Meadow Gold pays 12.5 cents to MEDA but only 7.25 cents to its own producers.

The witness cited December 1979 as a more recent example of the price disparities in the market. In that month, he said, Meadow Gold paid a Class I price of $1.45 over the M–W price, while Associated paid $1.85 over M–W; yet the Meadow Gold producers received a blend price of $12.28 per hundredweight while DCA producers received a blend price of $11.84, or 44 cents less. He testified that the net result of this disparity in prices is that Associated has had to operate on lower margins that do not allow it to replace assets as needed. He said that margins were down 15 percent in 1979 and could be expected to decline further in 1980. As a result of the economic advantages to competing handlers, Associated has been unable to achieve the volume level it realized in is first year of operation, which was six years ago. This in time, according to the witness, has adversely affected the earnings of the cooperative.

The witness testified that the other handler supplied by DCA also is disadvantaged because of the wide differences in prices paid to producers for Class I milk. He said Sun Ray Dairy lost a major account to Meadow Gold last fall and that both Associated and Sun Ray have been losing sales to Falconhurst Dairy in Buhl (near Twin Falls). Falconhurst, he said, purchases milk at a price equal to the local cheese market price plus 75 cents. He stated that this meant a current (at the time of the reopened hearing) price of $11.95 paid by Falconhurst compared to $13.21 paid by Associated and Sun Ray.

The witness concluded his direct testimony by summarizing the history of the market and his position about a federal order for the area. He said that security and stability for dairy farmers has been and is still absent in this area due to the lack of a uniform system of classified pricing for the total market. Without a Federal order that will insure uniform price, audits, and verification of tests, weights, and utilization, he said, the instability that now exists in the market will intensify even more in the future.

The president and general manager of Associated Dairies testified that an order is needed in this area to equalize prices to handlers. He said that if the present marketing situation continues he would have to recommend to the company's board of directors that the present pricing arrangement between DCA and Associated, which has been in effect over six years, be changed to provide Associated with lower prices for milk so as to be competitive in the marketplace.

A producer, who is also a director of DCA, explained that the present disorder in the area stems from the fact that producers have no basis of determining a fair return. He stated that as long as one producer can be convinced he is getting a little more than his neighbor, it makes him happy. Accordingly, he said, as the market prices move up and down seasonally, producers jump from one supplier to another trying to better themselves in relation to one another.

The president of MEDA testified that the absence of a regulated system of classified pricing in the proposed marketing area has been a constant source of disorder for dairy farmers. He indicated that the disorder has stemmed from the ability of unregulated bottling plants to obtain milk from producers for less than its economic value.

Another MEDA member testified that there has been a significant shift of producers since the December 1978 hearing. He said MEDA has signed up several producers who formerly delivered their milk to Meadow Gold. The immediate impact of this shift was that MEDA delivered more milk to Meadow Gold for a short period of time. Gradually, however, Meadow Gold replaced the MEDA milk with other nonmember producers to the point where, by the end of 1979, it was purchasing virtually no milk from MEDA. Consequently, as of February 1980, MEDA had no share of the market's Class I sales. Other MEDA witnesses indicated that the constant shift of producers between processing plants has heightened tensions between handlers and producers in the market, particularly between MEDA and Meadow Gold.

The general manager of MEDA testified that the cooperative has 87 producer members in Southwestern Idaho-Eastern Oregon that he considers available to supply milk to handlers that would be regulated by the proposed order. He said that an order is needed to preclude handlers from passing on to these dairy farmers adverse impacts of competitive problems in the resale market. Without a classified pricing program, he noted, handlers can use various means to lessen their competitive problems by requiring dairy farmers to take lower prices for milk.

The witness claimed that in the past two years 87 producers in the Oregon-Idaho area have lost their fluid market because Meadow Gold discontinued buying their milk. Although, the cooperative ultimately was able to dispose of their milk, the witness said it was forced to take a lower return for it, thus reducing the total amount of money

available to MEDA's producers. He testified that MEDA's sales to Meadow Gold declined from 46 million pounds in 1974 to 11 million pounds in 1978 and that this displacement of one group of producers by another group was attributable solely to the absence of regulation.

The witness stated that the absence of regulation has enabled unregulated handlers to expand their distribution of fluid milk products at the expense of nonmember producers as well as MEDA producers. He alleged that nonmembers supplying certain handlers have been short-changed in being paid less for their milk than the prices charged these same handlers by DCA and MEDA. Also, he noted, the nonmember producers have not received the full butterfat value for their milk, nor do they have any way of being assured of getting paid for the full weight and test of their milk.

The spokesman also reiterated testimony of another MEDA witness that, if MEDA is unable to reverse the displacement of its member milk, it will be forced to cut the price of milk or establish its own fluid milk distributing plant to regain its share of the Class I market. Either alternative, he noted, would result in the kind of chaos and disorderly marketing conditions that the Agricultural Marketing Agreement Act was designed to prevent.

The Idaho operations manager for MEDA described the pricing arrangement between MEDA and Meadow Gold in 1975, which was prior to the time MEDA insisted on a change in pricing and Meadow Gold began replacing MEDA's milk with nonmember producers. The prices paid to MEDA by Meadow Gold varied according to how the milk was used, at which Meadow Gold plant the milk was received, where Meadow Gold distributed the milk, or which account Meadow Gold was serving. For example, for the month of March 1975, Meadown Gold paid a Class I price of $9.14 per hundredweight with a butterfat differential of 8.5 cents per point of fat for milk sold in the primary area (described as all fluid sales in the Boise area other than sales to the Circle K chain); it paid a price of $8.51 with a butterfat differential of 8.0 cents for milk sold in an area described as Area 1; it paid a price of $8.47 with a butterfat differential of 8.5 cents for milk sold in an area described as Area 2; it paid a price of $8.74 with a butterfat differential of 8.5 cents in an area described as the Circle K—Local Area in which the Circle K chain had stores; it paid a price of $6.86 with a butterfat differential of 7.7 cents for milk used in its Bannock Street distributing plant for other than fluid use (including shrinkage); and it paid a price of $7.11 with a butterfat differential of 8.3 cents for milk delivered to its Miller Street manufacturing plant (a few blocks away from the Bannock Street fluid milk plant, both in Boise).

The witness testified that at that time in 1975 this pricing system had been in effect for several years but that it was getting to the breaking point because it was deteriorating MEDA's blend price to the point where the cooperative could no longer live with it. Accordingly, he said that in April 1975 MEDA and Meadow Gold negotiated a new pricing arrangement whereby Meadow Gold paid MEDA the Great Basin Class I price for 75 percent of the milk delivered to its Bannock Street plant and the Great Basin Class III price (i.e., the Minnesota-Wisconsin price) for the remaining 25 percent.

The witness explained that after about one year Meadow Gold negotiated with MEDA for some milk for its Miller Street butter-powder plant. The parties agreed to an arrangement whereby Meadow Gold paid MEDA the Class I price on 80 percent of its milk delivered to the Bannock Street plant on the condition that it deliver a certain amount of milk to the Miller Street plant. Meadow Gold paid MEDA the "manufacturing price" for the milk delivered to the Miller Street plant. Under this arrangement, the witness said, MEDA at times received less from Meadow Gold than it would have received had it sold its milk to a cheese plant instead.

The record does not relate what transpired next, whether MEDA refused to supply milk to the Miller Street plant or whether it began charging a higher price. It does show, however, that Meadow Gold began purchasing less and less milk from MEDA. As a result of these declining purchases by Meadow Gold, MEDA, in about March of 1978, instituted a 10-cent per hundredweight service charge on top of the Great Basin Class I price (which was equal to the M–W price plus $1.90). Then, in late 1979 when Meadow Gold stopped purchasing all but spot shipments from MEDA, MEDA increased the service charge to 50 cents over the Class I price.

The president of Western General Dairies, Inc., a cooperative representing 630 Grade A producers in Utah, Wyoming, and Idaho, also testified in support of an order for the Southwestern Idaho-Eastern Oregon marketing area. Although WGDI would not have producers or plants under the proposed order, the spokesman testified that an order would provide needed stability and orderly marketing to the general region. He said WGDI's experience with the Great Basin order, under which WGDI operates fully regulated plants, has shown that an order provides producers with the security necessary to meet the tremendous investments needed for producers of Grade A milk. He said that an order eliminates the possibility of unreasonable profit by a processor at the expense of producers in the way he purchases milk for various uses and that it promotes better feelings among producers since they share equally in the Class I sales and in the sales of surplus milk used for by-products.

The manager of Safeway's Salt Lake City distributing plant, which is regulated under the Great Basin order, also testified in support of an order for the Boise area. Although this plant would not be regulated under the proposed order, the spokesman for Safeway indicated that it supported an order for the area because an order would subject its competitors to the same rules under which it operates. At the time of the reopened hearing, Safeway operated 14 stores in the proposed marketing area that were supplied with milk from its Salt Lake plant.

Opposition testimony to the adoption of the proposed order was presented at the reopened hearing by two individual dairy farmers. Both producers ship to Meadow Gold. One producer testified that an order would probably lower his price. He also said dairy farmers couldn't afford to give up their freedom of milk marketing which he believed a milk order for the area would take away.

The other producer opposed to the order testified that he had previously marketed his milk under the Great Basin order. The same problems exist under that order, he said, as exist in the proposed marketing area. He stated that he didn't feel there was any need for a marketing order here because he didn't believe there were chaotic marketing conditions existing in this area, and even if there were, he didn't see how an order would help this condition.

c. *Findings and conclusions on the need for an order.* On the basis of the testimony and evidence developed at the initial and reopened hearings, an order is needed to stabilize marketing conditions currently existing in the area. An order would establish and maintain orderly marketing conditions through the operation of a classified pricing plan applied uniformly to competing handlers for milk purchased from producers and an equitable basis of dividing among all

such producers the proceeds from the sale of their milk.

This market is in a region of heavy milk production and limited fluid milk sales. The outlet for fluid milk sales in the Southwestern Idaho-Eastern Oregon area is limited because the area is sparsely populated, with no large population centers. The estimated current population of the proposed marketing area in about 508,000.[2] Based on an estimated daily consumption of fluid milk of 0.9 pound per person, the total population of the proposed marketing area would provide a market for about 165 million pounds of Class I sales annually. In June 1978, about 14 percent of the estimated Class I sales in the proposed marketing area were supplied by handlers under other orders. Hence, dairy farmers who would be producers under the proposed order supply the remaining Class I sales of about 140 million pounds annually.

From data contained in the record, probably about 225 dairy farmers would be producers under the terms of the order as adopted herein. This number may be as few as 150 or as many as 250 producers, depending upon whether the order's blend price attracts milk now associated with other Federal order markets. If the number of producers associated with the market is about 225, total deliveries of their milk to be pooled under the order would be about 325 million pounds annually. At that rate, about 40 to 45 percent of producer milk would be used as Class I milk.

Within the proposed order's area, there is available from nearby producers a great deal more Grade A milk than can be used by distributing plants in the area. Moreover, it is likely that such milk supplies will increase in the future as more Grade B milk production is converted to Grade A and becomes available for the fluid market. This is becoming an increasingly significant factor in the market. Such a supply situation fosters disorderly marketing.

In this supply situation, handlers have an incentive to seek milk otherwise destined for manufacturing use for Class I purposes at prices that are little more than the prices paid for manufacturing grade milk in the region, which would be below the economic value of such milk under orderly marketing conditions. The availability of such cheaper milk weakens producers' bargaining position and lessens their ability to compete effectively for a Class I market.

[2] Official notice is taken of "Estimates of the Population of Counties and Metropolitan Areas", Series P-25, No. 873, Issued February 1980, Bureau of Census, U.S. Department of Commerce.

The record establishes that certain handlers have exploited this situation as is evidenced by the significant differences in purchasing arrangements that distributing plants serving the area have with their producers. As indicated, the three distributing plants supplied by DCA purchase their milk on the basis of utilization under a three-class system. The class prices charged by DCA under this arrangement generally follow the prices established under the Great Basin order. The purchasing arrangements of other unregulated distributing plants in the marketing area have very little relation to the actual utilization made of the milk by the individual plants. One of these plants with nearly 100 percent Class I utilization pays little more for its milk than prices paid for Grade A milk by local manufacturing plants. Another plant, Meadow Gold, pays its producers on the basis of a fixed 70 percent Class I—30 percent Class II utilization under a two-class system where the Class I price is the Minnesota-Wisconsin manufacturing milk price plus $1.45 and the Class II price is the M–W price. However, the record indicates that this plant's actual Class I utilization is higher than the 70 percent figure that is used as a basis in determining the prices it pays dairy farmers.

The cost of Class I milk under the various purchasing arrangements used by 5 of the 7 [3] distributing plants expected to be regulated under the proposed order varied in December 1979 from about $12.09 to $13.22. This wide range in plants' cost of milk is resulting in decreasing returns to producers. The plants whose Class I milk costs are low relative to others have a competitive advantage in their milk costs which they have used in lowering their resale prices to take away business from other plants. Consequently, producers supplying plants who now pay Class I prices at the high end of the range are in danger of either having their buyers lose additional Class I sales to plants paying lower prices or being forced to accept lower prices from them.

This is the marketing situation that confronts proponent DCA at the present time. The purchasing arrangement between Associated Dairies and DCA is now being strained by the competitive pressures from plants having lower Class I milk costs. DCA's general manager testified that the impact of such competitive pressures reduced Associated Dairies' operating margin in 1979 about 15 percent; and, under current marketing conditions, he expects it to be lower in 1980. Also, DCA lost additional fluid sales to another buyer because this buyer lost a major wholesale account to a plant paying lower prices to producers for Class I milk.

There are also wide variations in butterfat differential values used by the plants in adjusting prices for milk containing other than 3.5 percent butterfat. In June 1978, for example, butterfat differentials used by plants purchasing milk from producers varied from a low of 7.25 cents to a high of 13.4 cents for each ⅒ percent variation from the basic test of 3.5 percent. This compares to a June 1978 butterfat differential in most Federal orders of 12.3 cents per ⅒ percent variation from 3.5 percent. This lack of a uniform butterfat differential that reflects market values for butterfat results in gross inequities in the prices received by producers and, in fact, reduces returns to those producers whose milk tests above the basic 3.5 percent butterfat test.

As indicated, the largest buyer of nonmember milk (Meadow Gold) has no uniform system of paying its producers according to the utilization of their milk. This has resulted in general dissatisfaction among many of its nonmember producers to the end that in early 1979 a number of them joined MEDA to improve their bargaining position. Shortly after this happened, Meadow Gold not only replaced these producers but also the remainder of MEDA's producers who supplied milk to Meadow Gold on a supplemental basis to balance the daily and seasonal requirements of the handler. MEDA must now channel the milk of these former producers of Meadow Gold to manufacturing plants where they receive a lower return for the milk.

The ability of some high Class I use plants to purchase milk at prices which do not reflect the value of milk for such use is causing market disorder. Under such marketing conditions an order can provide a marketing environment in which producers can obtain the full economic value of their milk under orderly marketing conditions. An order will insure that all handlers are paying producers the same minimum class prices and will provide equity among handlers relative to their product costs.

While an order will tend to mitigate competitive problems at the farm level resulting from unequal raw product costs among handlers, it does not guarantee any producer a fluid milk outlet. However, with a proper minimum class price structure under an order, the present disparities in raw product costs will be eliminated, or at least mitigated.

[3] The record did not provide any pricing information for two small distributing plants at Buhl and Payette, Idaho.

Thus, any producer favorably located to the market's fluid milk outlets should be in a favorable position to supply such outlets.

The record indicates that another source of market disorder experienced by producers regularly supplying the Southwestern Idaho-Eastern Oregon market is the absence of any plan to distribute equitably among producers the burden of reserve supplies of milk necessarily associated with the fluid milk sales of the area. This is a source of much discord among dairy farmers which poses a continuing threat to orderly marketing in the area.

The distributing plants located in the proposed marketing area tend to receive only enough milk to meet their fluid milk and cottage cheese requirements. Some of these plants, however, rely on the proponent cooperatives in varying degrees to meet their day-to-day and season-to-season fluctuations in milk supply needs. Associated and Sun Ray, for instance, arrange for DCA to supply them with practically all of their milk at the time and in the quantities needed.

Other handlers in the market, notably Meadow Gold, receive most of their milk supply directly from nonmember producers and rely on cooperatives, MEDA in this case, for supplemental supplies. In both supply situations, the proponent cooperatives assume the burden of disposing of the milk distributing plants do not have an immediate need for but which represents a necessary reserve supply for the market. Additionally, another distributing plant operator relies to a large extent on his own farm production for the plant's milk supply. To balance the plant's daily fluctuation in milk supply needs, the handler purchases supplemental supplies from a local producer. On the days of the week when the plant has no need for the producer's milk, the producer markets the excess to a manufacturing plant and receives the lower manufacturing price for such surplus. Under this supply arrangement, the handler is assured of sharing to the fullest extent possible in the plant's total Class I milk on his own farm production while the producer bears the burden of the reserve milk that is necessarily associated with the plant's operation.

Under the various supply arrangements presently existing in this market, the lower returns associated with the market's reserve or surplus milk supplies are not being equally shared among all producers in the area. Consequently, substantial inequity results among producers, particularly between the members of cooperatives who are supplying milk to the market for fluid use and other dairy farmers who supply the market. Accordingly, an order for the area, with provision for marketwide pooling, will provide the means of equitably apportioning the burden of reserve milk among all producers and will contribute to more orderly marketing conditions for the area. The marketwide pooling of milk as adopted herein assures that all producers will share equally in the higher-priced Class I uses to the extent that there is a market for Class I milk. They will also share equally in the lower-priced reserve milk supplies that are necessarily associated with a fluid market.

The evidence in the record indicated that a great deal of confusion exists among producers over the prices (their levels and how they are computed) they are paid by handlers for their milk. When asked what the proper price level should be in this area, one producer responded that that was part of the problem—no one knew what the true value of milk was in this market.

An order will remove this uncertainty by establishing an official minimum "value" for milk in this area. Producers will no longer wonder, then, whether they are getting the full use value for their milk.

Producers also expressed a great deal of concern over whether they were being paid for their milk according to accurate weights and butterfat tests. Several testified about discrepancies in their weights and tests.

An important function of an order is to insure that such tests and weights are accurate. Except where a cooperative association is performing this service for its members, the market administrator will insure that each producer is being paid by handlers on the basis of proper milk weights and butterfat tests.

Another market service which is now needed and will be provided by an order is the collection and publication of accurate market data. Statistics showing the amount of milk pooled, the utilization of such milk in each class, the computation of the uniform price, and other data will be regularly published by the market administrator and sent to producers who are not getting such information through a cooperative association.

In the initial recommended decision denying an order for this area, it was found that "it is doubtful that a Federal milk order to establish classified pricing, marketwide pooling, and other provisions would provide any substantial benefits for producers that would justify the disadvantages of Federal government intervention" (44 FR 48130). At the reopened hearing, it was evident that a very large percentage of the producers serving the market, and several handlers as well, strongly feel that the advantages of Federal regulation far outweigh any costs or other disadvantages involved.

The costs of regulation would essentially be the administrative assessment (not more than 5 cents per hundredweight, or less than ½ cent per gallon) charge to handlers to cover the administration of the order by the market administrator and his staff; the market service fee (not more than 7 cents per hundredweight) charged to producers to cover the costs of check-testing their milk and providing them with market information; and any miscellaneous costs incurred by handlers for keeping the required records and filing the necessary reports with the market administrator.

It is concluded that a Federal order for the Southwestern Idaho-Eastern Oregon marketing area as herein proposed will stabilize and improve milk marketing conditions in the area. The order is in the public interest in that it will establish orderly marketing conditions for producers and handlers relative to milk distributed in the proposed marketing area and will assure a continuing and adequate supply of high-quality milk for consumers. Moreover, the order will effectuate the declared policy of the Act by providing for:

1. The establishment of uniform prices to handlers for milk received from producers according to a classified plan based upon the utilization made of the milk;

2. A regular and dependable procedure that affords all interested parties the opportunity to participate, through public hearings, in the determination of changes that may be required in the marketing plan in order to insure an orderly market;

3. An impartial audit of handlers' records to verify the payment of required prices;

4. A system for verifying the accuracy of the weight and butterfat content of milk purchased;

5. Uniform returns to producers supplying the market based upon an equal sharing among all such producers of the returns from the higher-valued Class I milk and the lower returns from the sale of reserve milk which cannot be marketed for fluid use; and

6. Marketwide information on receipts, sales, prices, and other related data concerning milk marketing conditions and practices in the area.

Although it did not take a position on the proposed order at either hearing, Meadow Gold, in its post-hearing briefs, opposed the adoption of the proposed order on the basis that the record

evidence does not demonstrate a need for the order. The briefs were general in nature and do not provide a sound basis for reaching a different conclusion on this issue.

3(a) *Handlers to be regulated and milk to be priced and pooled.* It is necessary to designate clearly what milk and which persons would be subject to the various provisions of the order. This is accomplished by providing specified definitions to describe the category of persons, plants, and milk products to which the applicable provisions of the order relate.

Marketing area. The marketing area for the proposed order should include all territory, including government reservations and installations, within the 18 contiguous Idaho counties of Ada, Adams, Blaine, Boise, Camas, Canyon, Cassia, Elmore, Gem, Gooding, Jerome, Lincoln, Minidoka, Owyhee, Payette, Twin Falls, Valley, and Washington; and the 5 contiguous Oregon counties of Baker, Grant, Harney, Malheur, and Union. This 23-county marketing area as specified herein was proposed by the proponents of the order. There was no opposition to the inclusion of these counties in the marketing area.

As indicated earlier, the estimated July 1, 1978, population of the proposed marketing area is 508,000. Ada County, in which Boise, Idaho, is located, contains the greatest concentration of population in the 23-county area. Its population of 153,000 represents more than 30 percent of the area's population. Much of the area is predominantly rural; 17 counties had less than 20,000 inhabitants on July 1, 1978. Only four counties (Ada, Canyon, and Twin Falls in Idaho, and Malheur in Oregon) had 25,000 or more inhabitants at that time. Principal cities in the proposed marketing area include Boise, Nampa, and Twin Falls, Idaho.

As specified herein, the marketing area should include all government reservations, installations, institutions, or other establishments operated by municipal, county, state, or Federal governments. The record indicates that such installations include the Boise Inter-Agency Fire Center, Boise; the Idaho Air National Guard Base, Boise; the Veterans Administration Hospital, Boise; the Mountain Home Air Force Base, Mountain Home, Idaho; the Baker Air Force Station, Baker, Oregon; and the Burns Air Force Station, Burns Oregon.

A spokesman for proponents testified that the proposed area includes the most heavily populated centers in the distribution territories covered by major handlers in this area. He said that in deciding upon an appropriate marketing area, proponents sought to include sufficient territory to effectively regulate the market without bringing under regulation several small handlers, primarily farmers, distributing milk in minimal quantities or in remote small communities.

The principal exhibit prepared on behalf of proponents shows that the following handlers would likely be subject to full regulation under the order: Associated Dairies, in Boise and Twin Falls, Idaho; Falconhurst Dairy, Buhl, Idaho; Meadow Gold Dairies, Boise, Idaho; Smith's Dairy, Buhl, Idaho; Stoker's Dairy, Burley, Idaho; and Sun Ray Drive-In Dairy, Boise, Idaho. Grade A milk sold for fluid consumption by these handlers throughout the defined marketing area must be approved by duly constituted regulatory agencies whose health ordinances conform to the U.S. Public Health Service Grade A Pasteurized milk ordinance.

The principal source of supply of handlers who would be regulated by the proposed order is from producer-members of two of the three cooperatives proposing an order for the area—DCA and MEDA. In June 1978, these cooperatives represented and marketed the milk of more than 70 percent of the approximately 216 producers on the market. Besides the approximately 216 producers supplying handlers in the proposed area, an additional six farms are operated by handlers whose principal source of supply is the production from their own farms. These handlers accounted for about 4 percent of the estimated total Class I distribution in the proposed marketing area. As proposed herein, the handlers with own-farm production would be exempt from the pooling and payment provisions of the order if they qualify as "producer-handlers" as specified in the attached order.

In addition to these handlers, six other handlers who operated plants that are fully regulated under three other orders distributed fluid milk products in the proposed marketing area. In June 1978, these handlers accounted for about 14 percent of the estimated total Class I distribution in the proposed marketing area. Four of these handlers operated plants that were fully regulated under the Oregon-Washington order, while one of the remaining two was regulated under the Great Basin order and the other under the Inland Empire order.

The route distribution of the plants that would be regulated is confined largely to the proposed marketing area; only two have sales outside the proposed area. The out-of-area disposition of these two plants is confined to nearby areas adjacent to the proposed marketing area and was 21 percent and 2 percent, respectively, of their total fluid sales in June 1978.

Because a significant portion of the sales of fluid milk by handlers who would be regulated is in relatively rural communities, it is appropriate that the marketing area be defined along county lines rather than on the basis of city boundaries. The marketing area as proposed herein includes all of the countries in which handlers in the area have a majority of the fluid sales. Accordingly, it is concluded that the marketing area as proposed should result in effective regulation of the principal handlers who compete for sales in the Idaho-Oregon area without bringing under full regulation plants having minimal fluid sales within the marketing area.

All producer milk received at regulated plants must be subject to classified pricing under the order regardless of whether it is disposed of within or outside the marketing area. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in-area" sales were subject to classification, pricing, and pooling, a regulated handler with Class I sales both inside and outside the marketing area could assign any value to its outside sales. The handler thereby could reduce the aveage cost of all its Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. Unless all milk of such a handler were fully regulated under the order, the handler would not be subject to effective price regulation.

The absence of effective classification, pricing, and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and could lead to a complete breakdown of the order. If a pool handler were free to value a portion of its milk at any price that such handler chooses, it would be impossible to enforce payment of uniform prices by all fully regulated handers to the producers who supply the market. It is essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

Route disposition. A definition for "route disposition" is a convenience for specifying the various kinds of fluid milk sales outlets that will be considered in determining whether a distributing plant would be regulated under the order. As proposed by proponents and adopted herein, route disposition would mean any delivery of a fluid milk product

classified as Class I milk to a retail or wholesale outlet (except to a plant), either directly or through any distribution facility or vendor, and including any disposition from a plant store or through a vending machine. It would not include delivery of fluid milk products to distribution points of the handler. The distribution from such points would be considered a route disposition from the milk plant.

Plant. Although a "plant" definition was not proposed by proponents, the order should nevertheless contain one for purposes of clarity, ease of order interpretation and reference. As adopted herein, "plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit would not be a plant. Similarly, separate facilities at which milk is only reloaded from one tank truck to another would not be a plant as defined herein.

Distributing Plant. A "distributing plant" would be a plant that is approved by a duly consistuted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month. In this definition and in the following "supply plant" definition, proponents in their proposed order language referred to "milk approved by a duly constituted regulatory agency for fluid consumption." The record indicates that the States of Idaho and Oregon have adopted and operate under the Grade A Pasteurized Milk Ordinance and Code, 1965 Recommendations of the United States Public Health Service, U.S. Department of Health, Education and Welfare. This means that the farms of diary farmers must be inspected and approved for the production of Grade A milk. Likewise, all plants processing or packaging milk for fluid use must be approved for handling Grade A milk. Accordingly, it is appropriate to refer in the order to "Grade A milk" rather than to milk approved for fluid consumption.

Supply plant. A "supply plant" also should be defined under the order. As adopted herein, "supply plant" means a plant that is approved by a duly consistuted regulatory agency for the handling of Grade A milk and from which fluid milk products are moved during the month to a pool distributing plant. This definition is similar to the one suggested by proponents of the order.

A proposal by Kraft, Inc., to modify proponents' proposed supply plant definition by including in a supply plant's movement of milk diversions as well as transfers to distributing plants should not be adopted. This modification was made in connection with another proposal by Kraft that would allow a pool supply plant to meet its shipping requirements through both transfers and diversions of milk from the supply plant to pool distributing plants, rather than through transfers only. As discussed in greater detail under the "handler" definition, the proposed order as adopted herein would allow any plant operator to be the handler on milk delivered for its account to the pool plant of another handler. It would appear that this type of a "handler" definition is an appropriate alternative to the objectives sought by Kraft to allow a pool supply plant operator to be the handler on milk delivered directly from producers' farms to pool distributing plants. Accordingly, a "supply plant" should be defined in terms of its primary function of transferring fluid milk products to pool distributing plants.

A supply plant, as envisioned for this area, would be a plant some distance from the consumption centers which performs the traditional function of assembling milk and supplying distribution plants with supplemental milk supplies during short-production months or heavy bottling days. Because of its distance from the market center, this type of plant would find it more efficient to receive milk from the farm and then transfer it to larger over-the-road tank trucks for transshipment to distributing plants.

Pool plant. Essential to the operation of a marketwide pool is the establishment of minimum performance requirements to distinguish between those plants engaged in serving the fluid needs of the regulated market and those that do not serve the market in a way or to a degree that warrants their sharing (by being included in the pool) in the Class I utilization of the market. A pool plant must either distribute milk in the marketing area or transfer milk to a pool plant which does. Because of differences in marketing practices and functions between distributing plants and supply plants, separate performance standards are provided in the attached order.

The following discussion sets forth the pooling standards that should apply to distributing plants and supply plants. To facilitate the discussion, it is noted that the pooling standards for a distributing plant or a supply plant provide that the plant's required association with the market shall be measured in terms of the proportion of its milk supply that is disposed of in the market. It is intended that such milk supply shall include any producer milk that is diverted from the plant by the plant operator to other plants. Although diverted milk is not physically received at the plant from which diverted, it is, nevertheless, an integral part of that plant's supply of milk and acquires pool status by virtue of its association with such plant. Therefore, diverted milk must be included as a receipt for purposes of establishing the diverting plant's qualification for pooling.

Milk that a cooperative or proprietary bulk tank handler may divert from a pool plant of another handler should not be included in such plant's receipts for purposes of determining the plant's pool status. A pool plant operator has no control over how much milk is being diverted from such operator's plant by a bulk tank handler supplying such plant. Consequently, the plant could fail to meet the pooling standards by virtue of diverted milk being associated with the plant without the operator's knowledge. The diversion limitations discussed later will effectively limit diversions by a cooperative or proprietary bulk tank handler to an appropriate level without the necessity of this milk being included as part of the pool plant's receipts.

To qualify as a pool plant, a distributing plant would be required to meet performance standards related to the proportion of its supply used in route disposition, including such disposition in the marketing area. As defined, pool distributing plants would include only those plants substantially engaged in the distribution of fluid milk products. In this connection, a pool distributing plant's total route disposition each month both inside and outside the marketing area, should not be less than 40 percent of its receipts from all sources of Grade A fluid milk products that are physically received at such plant or diverted from the plant to nonpool plants by the operator of such distributing plant. The route disposition in the marketing area of such a plant should be at least 10 percent of its total Grade A receipts.

This definition is similar to the one proposed by the proponent cooperatives, except that their proposal called for a total route disposition requirement of 50 percent. The 40 percent requirement herein provided should be appropriate under existing marketing conditions in the proposed marketing area. It is related to the

project marketwide Class I utilization which is about 40 percent.

The 10-percent minimum in-area distribution requirement adopted herein for a pool distributing plant was proposed by the order proponents. This requirement is reasonable under current marketing conditions. It will provide a reasonable indication of when a distributing plant is associated with the market to the extent that warrants its full regulation under the order.

A "pool supply plant" qualifies for pool status by shipping a certain percentage of its receipts from dairy farmers to pool distributing plants. As provided herein, receipts from dairy farmers would include deliveries by the plant's own producers and deliveries by cooperative and proprietary bulk tank handlers. Included also would be milk which the plant operator diverts to other plants. Under the adopted standards, a supply plant must ship 40 percent of its dairy farmer receipts each month to qualify for pool plant status. However, if the supply plant met the 40 percent shipping requirement during the months of September-February, it would be eligible to be pooled during the following months of March-August without making any shipments to distributing plants. This would be in recognition of the seasonal swings in production and the probability that milk from supply plants would not be needed in the spring and summer months when supplies are heavy relative to demand.

Only milk actually needed by a distributing plant should count as a qualifying shipment for a supply plant. For this reason, the order should include a net shipment requirement which would exclude from a supply plant's qualifying shipments to pool distributing plants any milk shipped back to the supply plant or to another plant operated by the same handler. This will prevent any wasteful "back-hauling" from occurring between a distributing plant and a supply plant for the sole purpose of qualifying a supply plant as a pool plant.

As published in the initial notice of hearing, proponents of the order proposed that a supply plant must transfer at least 50 percent of its receipts (including diversions) to pool distributing plants during the month to qualify as a pool plant. Under their proposal, a supply plant that qualified as a pool plant during each of the months of August through February would retain automatic pool status in each of the following months of March through July without having to meet any minimum shipping requirements. At the initial hearing, however, proponents modified their proposal to provide that a supply plant that met the 50 percent shipping requirement during each of the months of September through March would acquire automatic pooling status in the subsequent months of April through August.

Kraft, Inc., proposed an alternative pool supply plant provision that would reduce the performance requirements for a supply plant from those proposed by the order proponents. Kraft's proposal, which was a modification of its initial proposal, would require a supply plant to ship milk to distributing plants at a level of 35 percent during September-December, 30 percent during January and February, and 20 percent during other months. The proposal further provided for a pool supply plant to acquire automatic pooling status during the March-August period if such plant met the shipping requirements during the proceding months of September-February.

Under the Kraft proposal, a supply plant could meet the shipping requirement through shipments to pool distributing plants directly from producers' farms as well as by tranfer from the plant. Also, shipments to plants of producer-handlers, partially regulated distributing plants, distributing plants fully regulated under other Federal orders, and unregulated plants (to the extent that the supply plant shipments are disposed of as route disposition in the marketing area) would count as qualifying shipments.

Finally, the Kraft proposal provided for "unit pooling" of supply plants whereby a handler operating two or more supply plants could file a request with the market administrator that such plants be considered as a single plant for purposes of meeting the shipping requirements.

Neither the cooperatives' nor Kraft's proposals should be adopted in all respects. While Kraft's proposal would provide for certain marketing efficiencies by allowing unit pooling and direct deliveries, these efficiencies can be realized much more simply through the proprietary bulk tank handler provision adopted herein and discussed later in the decision.

As noted previously, this area has a great deal of milk produced within a short distance of the population centers of the market, i.e., Boise and Twin Falls. For this reason, the market has not had to rely on supply plants. Instead, the milk is shipped directly from producers' farms to pool distributing plants. When the milk is not needed at pool distributing plants, it is diverted to manufacturing plants for processing into butter, cheese, or nonfat dry milk.

In recent years, many of the dairy farmers supplying manufacturing plants—not only in Idaho but in other parts of the country as well—have upgraded their facilities so that they qualify for the production of Grade A milk. When this happens, the manufacturing plant operators receiving this milk have been forced to return a Grade A price to these producers in order to keep them as shippers. Typically, the handlers do this by pooling their milk under a Federal order.

Under most existing orders, the only way a proprietary manufacturing plant operator can pool the milk of producers is to qualify the manufacturing plant, or part of it, as a pool supply plant. Since the pool supply plant has to be approved by a regulatory authority for handling Grade A milk, it usually involves either construction of a separate plant or, at least, construction of a separate Grade A receiving room attached to the existing manufacturing plant.

The Southwestern Idaho-Eastern Oregon market is not presently serviced by any plant that specializes in the collection of milk for cooling and transshipment to a distributing plant. In fact, most markets today have no need for such plants, which generally lost their usefulness with the advent of farm bulk tanks, refrigerated trucks, and a modern highway system. Nevertheless, such supply plants have continued to be associated with some Federal order markets, in many cases largely because they have represented the means through which manufacturing plant operators could pool Grade A milk supplies under an order.

Under this new order, it is preferable that the building of unnecessary Grade A plants or receiving rooms not be encouraged when such facilities serve no other function than to qualify a manufacturing plant as a pool plant. For this reason, an alternative means should be provided for manufacturing plant operators to qualify as pool handlers and thereby be able to pool their Grade A milk supplies that normally, through one means or another, will become associated with a fluid market. A discussion of this new provision is included later under the "handler" definition.

As indicated, the proposed order provides that a supply plant that was a pool plant in each of the immediately preceding months of September-February should be a pool plant for the months of March-August irrespective of its shipments unless the operator of such a plant elects nonpool status for the plant. Providing pooling status to a plant in March-August on the basis of shipments in the preceding months

recognizes that the demand for supply plant milk usually varies seasonally and will be greatest during the season of low production. Moreover, this feature of pooling would enable dairy farmers associated with a qualified supply plant continued pool status throughout the year and will insure orderly marketing.

The record evidence does not support, as Kraft proposed, the need for lower pooling standards for supply plants than those adopted in the proposed order. Kraft's proposal of relatively low performance requirements required for pool status would make it possible for plants specializing in manufacturing dairy products to be pooled without being involved to a significant degree in supplying the fluid market. The stated objective of Kraft's proposal to provide the opportunity to pool the available Gade A production in the area can more appropriately be realized by other pooling techniques as adopted in the proposed order. Accordingly, Kraft's proposal is denied.

Certain plants should be excluded from "pool plant" status even though they meet the pooling standards of the order. A distributing plant that meets the pooling standards of the order but that also qualifies as a pool plant under another order and which has greater route disposition in the other order's marketing area should be qualified as a pool plant under the other order. Similarly, a supply plant that meets the shipping requirements of this order and another order but which has greater shipments to distributing plants regulated under the other order should be pooled under the other order. An exception, however, should be made in the case of a supply plant that is automatically qualified as a pool plant under this order during the months of March-August by virtue of its qualification during the preceding months of September-February. In its case, if the transfers to the other order plant are for surplus disposition and the operator of the supply plant elects to retain pool status under this order, the plant should remain pooled under this order.

Distributing plants with a minimal degree of route disposition in the marketing area should also be excluded from regulation under the order. As suggested by the proponent cooperatives, any distributing plant with an average of less than 300 pounds per day of Class I disposition in the marketing area should be exempt from regulation under the order. It is not necessary, in maintaining the integrity of the order, to regulate such a small operation.

Nonpool plant. A definition of "nonpool plant" is provided to facilitate the formulation of the various order provisions as they apply to such a plant. A nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The "nonpool plant" definition sets forth specific categories of nonpool plants, which are described below.

An "other order plant" would be a plant that is fully regulated under another Federal order. As such, it cannot be a pool plant under this order.

A plant of a "producer-handler" would be considered a nonpool plant since, by the nature of the operation, as discussed later, the plant is specifically exempt from pool status.

A "partially regulated distributing plant" would also be considered to be a nonpool plant. A partially regulated distributing plant would be a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant. Generally, such a plant would be one that has less than 10 percent of its route disposition in the defined marketing area of this order.

An "unregulated supply plant" means a supply plant that does not qualify as a pool supply plant, an other order plant, a producer-handler plant, or an exempt distributing plant. In essence, it is a plant which transfers milk to a pool distributing plant, but not to an extent that would qualify it for pool status under the order.

As suggested by the order proponents and adopted herein, an "exempt distributing plant" means a distributing plant with an average route disposition in the marketing area of less than 300 pounds per day. If would also be included among the nonpool plants specified in the order.

Handler. The impact of regulation under an order is primarily on handlers. A handler definition is necessary to identify those persons from whom the market administrator must receive reports, or who have financial responsibility for payment for milk in accordance with its classified use value. As herein provided, the following persons are defined as handlers under the order:

(1) The operator of a pool plant;

(2) A cooperative association with respect to bulk tank milk that is picked up at the farm and delivered to a pool plant or diverted for its account from a pool plant to a nonpool plant;

(3) The proprietary operator of a dairy products manufacturing plant located in the marketing area with respect to bulk tank milk that is picked up at the farm and delivered to a pool plant or diverted to a nonpool plant;

(4) The operator of a partially regulated distributing plant;

(5) A producer-handler;

(6) The operator of an other order plant from which milk is disposed of in the area;

(7) The operator of an unregulated supply plant; and

(8) The operator of an exempt distributing plant.

All of the categories of handlers listed above, with the exception of the "proprietary bulk tank handler", were proposed by proponents and are common to most milk orders. Each person that may incur an obligation (reporting and/or financial) under the order should be designated a handler. This will assure that all information necessary to determine their status under the order can be readily determined by the market administrator.

The handler who receives milk from producers at a pool plant should be responsible for reporting in detail the quantities of milk received from each producer and each other source. Such handler also should be responsible for reporting the necessary information to determine the utilization of such milk, and for making payments to producers, cooperative associations, and the producer-settlement fund in accordance with the terms of the order.

A cooperative association should be a handler under the order for farm bulk tank milk moved by the cooperative to a pool plant(s) or diverted to a nonpool plant(s). In the case of such movements to a pool plant, a cooperative should be the handler for milk received for its account from the farm of a producer that is delivered to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative. However, should there be a mutual agreement between the cooperative and the pool plant operator whereby such operator agrees to be the handler for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the cooperative need not be the handler for such milk.

Requiring a cooperative to be the handler on milk picked up for its account at the farm of a producer and delivered to a pool plant provides a practicable basis for the complete accounting of such milk. It also recognizes the current handling arrangements used by the cooperatives operating in the market in allocating their members' milk among distributing plants.

As indicated earlier, a large proportion of the milk received by the plants that would be fully regulated by the proposed order is picked up at the farm in trucks owned and operated by, or under contract to, cooperatives. In such circumstances, it is only the cooperative that has the opportunity to measure and sample the milk of individual producers that is received at a plant. In the absence of any agreement by the plant operator to be the handler on such milk, the cooperative must be the responsible handler for the milk as it leaves the farm.

The attached order provides that the milk delivered to a pool plant by the cooperative as a "bulk tank handler" would be considered as a receipt of producer milk by the operator of the pool plant at which it was physically received. Under this arrangement, the pool plant operator's obligation for such milk to the producer-settlement fund, to the administrative assessment fund, and to the cooperative would be the same as for producer milk received directly from the farm of an individual producer. The cooperative would be obligated to the producer-settlement and administrative assessment funds on only that portion of the milk picked up for its account that exceeds the quantity delivered to pool plants.

This accounting and payment procedure for bulk tank milk received from a cooperative will simplify the accounting for such milk by the pool plant operator. It will facilitate the administration of the order with respect to such items as financial responsibility, enforcement, and subsequent audit adjustments that may arise. Since the actual use of the milk reflects the receiving pool plant's operation, it is reasonable that the responsibility for the accounting and payment of such milk be placed directly on such pool plant operator.

The attached order also provides that a cooperative would be a handler on the milk of a producer which it diverts for its account from a pool plant of another handler to a nonpool plant. This handling arrangement will facilitate the movement of milk not needed for fluid use to nonpool plants for manufacturing. It also will assist the principal cooperatives (DCA and MEDA) in balancing supplies among the several distributing plants serving the market.

Under this handling arrangement, the diverting cooperative would be obligated to the producer-settlement and administrative assessment funds on the milk diverted. Conversely, the operator of the nonpool plant that received the milk from the diverting cooperative would not incur an obligation under the order.

As mentioned earlier, a problem that has been common throughout the Federal order system is that manufacturing plant operators have been faced with a gradual conversion of their milk supplies to Grade A. When this happens, the handles have found it necessary to pay these dairy farmers a price comparable to what they could get by having their milk pooled and priced under a Federal order. In order to accommodate these producers, the manufacturing plant operators have sought to pool their Grade A supplies under an order. To do this, however, the operator of such a plant has to qualify the entire plant, or at least a portion of it, as a "pool supply plant" under an order. This usually involves either building a separate Grade A facility or a Grade A receiving room on to the existing manufacturing plant. The milk of the operator's producers is picked up and delivered to this "supply plant," reloaded onto a tank truck, and then delivered to a pool distributing plant. In most cases, it would be feasible and more efficient to pick up a producer's milk and deliver it directly to a distributing plant, without first receiving the milk at a supply plant. However, a manufacturing plant operator that did this be the "handler" on this milk; instead, the distributing plant operator would be the handler, would have to account to the pool for this milk, and would be responsible for paying the producers.

The new order should recognize this problem by providing a way for a manufacturing plant operator to pool a Grade A milk supply without having to construct unnecessary facilities and without having to handle and transport milk unnecessarily. Accordingly, a provision similar, but not identical, to the cooperative bulk tank handler provision should be included for the proprietary operator of a manufacturing plant.

As provided herein, the proprietary operator of a plant located in the marketing area which manufactures milk into cheese, butter, nonfat dry milk, ice cream, or some other dairy product could be the handler on Grade A milk picked up at producers' farms and moved directly to the pool plant of another handler. The tank trucks used for this purpose would be required to be owned and operated by, or under the control of, such "proprietary bulk tank handler." In addition, prior to pooling milk in this manner, the "proprietary bulk tank handler" would have to submit to the market administrator a statement signed by the proprietary bulk tank handler and the pool plant operator receiving the milk specifying that the proprietary bulk tank handler will be the responsible handler for this milk.

When the milk picked up by the proprietary bulk tank handler is not needed at a pool distributing plant, such handler may divert it to the handler's own manufacturing plant or some other nonpool plant. However, the handler would be subject to the same diversion limitations applicable to pool plant operators and cooperative bulk tank handlers. This will assure that the proprietary bulk tank handler would be supplying a proportionate share of the milk needed by pool distributing plants.

The proprietary bulk tank handler provision should be restricted to handlers who have plants located in the marketing area. It there were no such restriction, a handler could pool a supply of milk based on its manufacturing plant in California, New York, or some other distant location, which is not the intent of this provision. Moreover, any plant located beyond the marketing area would probably find it more efficient to assemble milk and transfer it to larger over-the-road tank trucks for transshipment to pool distributing plants. In such case, the plant could qualify for pool status as a pool supply plant.

The attached proposed order recognizes that a pool plant operator may purchase milk from a cooperative bulk tank handler or a proprietary bulk tank handler on the basis of farm weights and tests or weights and tests taken when the milk is received at the plant. When the milk is purchased on the basis of farm weights and tests, the pool plant operator would get a Class III shrinkage allowance of 2 percent of the farm weight for the milk lost in handling and processing. In this case, the bulk tank handler would get no shrinkage allowance. However, when the pool plant operator purchases the milk on the basis of plant weights and tests, the plant operator would get a Class III shrinkage allowance of 1.5 percent, while the bulk tank handler would get a shrinkage allowance of .5 percent. As explained later, the shrinkage allowance is included in orders to recognize that a certain amount of milk will inevitably be lost in pumping it from the farm bulk tank to the truck, from the truck into the plant, and in the act of processing it in the plant. Accordingly, handlers are only required to pay the Class III price for this milk classified as "shrinkage."

As indicated, a pool plant operator's obligation on milk that is purchased from a cooperative bulk tank handler would be the same as for producer milk

received directly from the farm of an individual producer. The plant operator must account to the pool for this milk according to the classification assigned to the milk based on the plant's utilization. The pool plant operator in turn settles with the cooperative by paying the uniform price for the milk.

The accounting and payment procedure would be different, however, when a pool plant operator purchases milk from a proprietary bulk tank handler. In this case, the milk is the "producer milk" of the bulk tank handler, who must account to the pool for it. This is done by passing back to the bulk tank handler the classification of the milk assigned to the pool plant. Such milk would be classified on the same basis as transfers and diversions between pool plants. The payment for this milk between the two handlers is left to them.

The reason for the difference in treatment accorded the proprietary bulk tank handler is that the Act does not provide for the enforcement of payments between proprietary handlers. Accordingly, the proprietary bulk tank handler must be held as the accountable handler for milk delivered to the pool plant of another handler.

A pool plant operator receiving farm bulk tank milk from a cooperative should be responsible for paying to the market administrator the administrative assessment on such milk, just as such handler does on milk received directly from producers. However, if a pool plant operator receives milk from a proprietary bulk tank handler, it is the latter who should be held accountable for paying the administrative assessment on such milk. This is because the proprietary bulk tank handler must be the accountable handler for the milk as described above.

The new order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of members for delivery to a pool plant or diversion to a nonpool plant. This procedure will enable the cooperative to act as the marketing agent for a nonmember producer who has contracted with the cooperative to market his or her milk. Nothing in the order would require a cooperative to pick up the milk of nonmember producers. It would provide, however, that when a cooperative does pick up milk of nonmember producers on trucks under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the handling arrangements made.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. With the adopted handler definition, the new order would be consistent with that provision of the Capper-Volstead Act which recognizes that cooperatives "may deal in the products of nonmembers" and which limits such dealings to amounts not greater in value than those "handled by it for members."

In the event a cooperative does market the milk of a producer who is not a member of the association, a question arises about the appropriate method of paying such producer. If the nonmember producer has signed a contract with the cooperative whereby the producer authorizes the cooperative to market his or her milk and collect payments for it, the cooperative may pay the nonmember in accordance with the contract. If such marketing functions occur in the absence of a written contract, the cooperative would be required to pay the nonmember producer not less than the prices prescribed by the order.

Producer-handler. The order should exempt "producer-handlers" from the pooling and pricing provisions of the order.

Experience under Federal orders has demonstrated that effective regulation can be insured without the full regulation of individuals who process and distribute milk produced on their own farm and who buy no milk from other dairy farmers. Such operations are basically self-sufficient in that they rely primarily on their own farm production and assume the burden of maintaining the necessary reserve supply of milk associated with their fluid milk operation and of disposing of any daily or seasonal surpluses they may produce. Because of the costs associated with producing all of the milk needed for their fluid sales and handling the reserve supplies, producer-handlers seldom are able to gain any competitive edge in the marketplace by virtue of their exempt status.

As adopted herein, a "producer-handler" would be any person who operates a dairy farm and a distributing plant with route disposition in the marketing area, and who essentially relies on his/her own farm production for the plant's total supply. Such a person should be allowed to purchase a small amount of supplemental supplies from fully regulated handlers. Therefore, as proposed by the order proponents, a producer-handler could purchase 5,000 pounds per month or 5 percent of such handler's Class I utilization for the month, whichever is less. Such supplemental supplies could only be purchased from the following fully regulated handlers: pool plant operators, operators of other order plants, a cooperative association acting as a bulk tank handler, or a proprietary bulk tank handler.

This provision regarding purchases of supplemental milk from other sources differs slightly from the one suggested by proponents. As proposed at the hearing, the producer-handler would be restricted to buying fluid milk products by transfer only from pool plants or other order plants.

What is essential in imposing a restriction on supplemental purchases by a producer-handler is to insure that a producer-handler will not have any significant advantage over regulated handlers. Moreover, the requirement that such supplemental purchases be Class I compensates producers for carrying necessary reserve milk supplies for the market.

This objective can be accomplished without restricting supplemental purchases by a producer-handler to transfers from pool plants or other order plants. As indicated earlier, in this market the most efficient way to obtain supplemental supplies would be to have the milk delivered directly from producers' farms since there is an abundant supply of Grade A milk available within a short distance of any fluid processing plant in the market. Accordingly, it is reasonable to allow a producer-handler to buy milk that is moved directly from the farm by a pool plant operator, other order plant operator, or a handler on bulk tank milk, up to the limits provided on such purchases.

Certain other conditions proposed at the hearing and adopted herein would also apply to a producer-handler. Such a handler should not be permitted to reconstitute or convert milk products into fluid milk products, but should be allowed to increase the nonfat solids content of the milk produced or purchased by adding nonfat dry milk. It is necessary to preclude a producer-handler from reconstituting or conveting milk products into fluid milk products because such products have a surplus value and, if permitted, would place the producer-handler in a significant competitive advantage over regulated handlers in terms of product costs.

Under the proposed order, producer-handler status would be contingent on such person proving to the market administrator that the operation of the dairy farm and processing plant in

question are at his/her sole risk. A producer-handler's exemption from the pooling and pricing provisions is based upon the basis self-sufficiency of the total operation. Accordingly, no other person should be permitted to share the risk involved with the operation of a producer-handler's farm or his/her plant. All resources necessary to his/her own farm production of milk must be his/her personal risk. Similarly, all risk associated with the operation of the processing plant must be that of the producer-handler.

Producer. The term "producer" defines those dairy farmers who constitute the regular source of supply for the market. The producer definition adopted herein follows closely the one proposed and supported by proponents of the order.

Producer status under the order should be provided for any dairy farmer who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is received at a pool plant directly from his/her farm or is picked up at the farm by a bulk tank milk handler and delivered to a pool plant. Producer status also should be accorded such a dairy farmer who has an established association with the market and whose milk is diverted to a nonpool plant, usually for surplus disposal. To determine a producer's association with the market and to insure the marketability of such producer's milk in Grade A channels, it is reasonable to require that a dairy farmer's milk be received at a pool plant at least once during each of the months of September through February in order to be eligible for diversion to a nonpool plant. No individual producer delivery requirement need apply during the months of March through August for a producer having an established association with the market. The milk of a new dairy farmer coming on the market shall not be eligible for diversion until one day's production of the dairy farmer is physically received at a pool plant.

A producer-handler, who would have exempt status under the order, is excepted from the producer definition. In addition, provision must be made to preclude the possibility of a dairy farmer being a producer under two orders with respect to the same milk. In this regard, the producer definition should exclude a dairy farmer with respect to milk which is received at a pool plant under this order by diversion from a pool plant under another order if the dairy farmer is a producer under the other order with respect to such milk and the milk is allocated to Class II or Class III use under this order. Also, the definition should exclude a dairy farmer with respect to milk which is diverted to a pool plant under another order from a pool plant under this order if the milk is assigned to Class I milk under the other order.

Producer milk. The "producer milk" definition is intended to define the milk that would be priced and pooled under the order. The definition adopted herein contains the basic features suggested by the order proponents.

As provided herein, producer milk would include: (1) milk received directly from a producer at a pool plant by the plant operator or milk of a producer received at the pool plant from a cooperative association acting as a bulk tank handler; (2) milk picked up by a "proprietary bulk tank handler" and either delivered to a pool plant or diverted, within the limits specified, to a nonpool plant; (3) milk diverted by a pool plant operator or by a cooperative association from a pool plant to a nonpool plant within the limits specified in the order; and (4) milk picked up by a cooperative bulk tank handler for delivery to a pool plant but which is not received at the plant because of "shrinkage".

When milk is not needed at a pool plant, it usually must be diverted to a nonpool plant for use in manufactured milk products. Provision under the order should be made for "diversions," but within limits to insure that the pool distributing plants in the market are adequately supplied first. The diversion limits adopted for the order would be computed on a handler's aggregate receipts rather than in terms of individual producers.

As adopted herein, a pool plant operator (other than a cooperative association) may divert any milk that is not under the control of a cooperative that is diverting producer milk or a proprietary bulk tank handler. The total quantity that may be diverted during the month should be limited to 60 percent during the months of September through February and to 70 percent in all other months.

A cooperative association that is the handler for bulk tank milk and a proprietary bulk tank handler also should be allowed to divert milk for their respective accounts to nonpool plants. The same limits applicable to a pool plant operator should also apply to these handlers.

The proponents of the order suggested diversion limits of 50 percent during April-August and 40 percent in other months. Kraft, Inc., proposed diversion limits of 60 percent during September-December, 70 percent during January and February, and 100 percent in other months. As indicated, the market's annual Class I utilization is expected to be about 40–45 percent. Accordingly, diversion limits of 60 percent during September-February and 70 percent during March-August would approximate the seasonal surplus disposition requirements of the market.

Another feature of proponents' proposal would require that the milk of an individual producer be received at a pool plant 8 days during the month before such producer's milk is eligible for diversion to a nonpool plant. Kraft proposed that the milk of an individual producer must be received at a pool plant at least one day during each of the months of September-February, with no delivery requirement applicable in other months.

Marketing efficiency is optimized when a handler can decide how and where to move milk supplies under such handler's control. Producers supplying a plant can be very widely dispersed. For this reason a handler usually needs several different farm bulk routes to pick up producer supplies. In this circumstance, it makes much more sense to receive the milk of those producers closest to a handler's plant on a regular basis and to receive the milk of more distant producers only when such handler needs the extra milk. Of course, the reverse would also be true. The handler would want to divert to nonpool plants for manufacture the milk of the distant producers more often than those producers who are located closest to a pool plant.

For this reason, no valid purpose is served in requiring each producer's milk to be received at a pool plant 8 days per month. It may be far better to have one producer's milk received 100 percent of the time at a pool plant and another producer's milk received only 20 percent of the time. Of course, circumstances will vary according to the location of a handler's producers. Whatever the circumstances may be, they can best be accommodated by letting the handler decide which milk to receive at or ship to a pool plant and which milk to divert to a nonpool plant. Accordingly, the diversion limits applicable to the various handlers in the market should be established in terms of their aggregate supply of milk and not in terms of individual producers.

It is reasonable that there be some minimal "touch-base" requirement that would require each producer's milk to be occasionally received at a pool plant. For this purpose, a one-day delivery requirement during each of the months of September-February is sufficient. This

will insure that a producer's milk is available to the market and is of sufficient quality to be used for fluid use. For a producer who was on the market during February, no further delivery to a pool plant would be required until the following September. However, the milk of a producer who comes on the market during the months of March through August would have to be received once at a poolplant before it could be diverted to a nonpool plant. After establishing such association with the market, the milk of such producer could then be diverted to a nonpool plant continuously until September, when it would again have to be received at a pool plant one time during each of the months of September through February.

Kraft, Inc., proposed that a dairy farmer who is a "producer" under an order with a base-excess payment plan during any of the months of March through August could also be a producer under the Southwestern Idaho-Eastern Oregon order during any of these months only if the dairy farmer delivered at least 40 percent of his/her production during the month to the Southwestern Idaho-Eastern Oregon market. According to a Kraft witness, the purpose of the proposal is to prevent the surplus milk of another market from being pooled on the Boise order area market.

This proposal should not be adopted on the basis of the limited testimony contained in the record. It is fair to point out that certain other Federal orders contain the type of provision proposed by Kraft because of the problem of having surplus milk "dumped" on a market that does not have a base-excess plan. In such instance, the otherwise "excess milk" of a producer under a base-excess plan order would be eligible for a "uniform price" under the order without the base-excess plan. The "uniform price" would be higher than the "excess price" that would apply to the milk under the base-excess order.

Without knowing the actual circumstances that might be involved, it is preferable at this time not to establish the restrictions on milk movements as proposed. If, after gaining some experience with the new order, a clear pattern of abuse appears with respect to such movements of milk, it may be appropriate to give further consideration to the type of provision proposed by Kraft.

As suggested by the order proponents, two or more cooperative associations should be permitted to have their allowable diversions computed on the basis of their combined deliveries of producer milk to pool plants. A request to this effect should be filed with the market administrator prior to the first day of the month the agreement is effective. The request should specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative in the event the cooperatives exceed the diversion limits specified in the order. The method for assigning over-diverted milk must be approved by the market administrator.

When a handler diverts milk in excess of the limits prescribed in the order, the quantity that is over-diverted cannot qualify as producer milk and be priced under the order. In such case, the handler may designate the dairy farmers whose milk is over-diverted. If the handler fails to designate the over-diverted milk, the market administrator would disqualify all of the milk diverted by the handler on the last day of the month, then all the milk diverted on the second-to-last day, and so on in daily allotments until all of the over-diverted milk is accounted for. For example, if a handler over-diverted 10,000 pounds of milk for the month, but diverted 45,000 pounds on the last day of the month, the entire 45,000 pounds would be disqualified.

The procedure suggested by proponents would have required the market administrator to disqualify all of the milk diverted by the handler during the month if the handler failed to designate the dairy farmers whose milk would be disqualified. The alternative procedure adopted above will provide a less severe penalty for a handler who inadvertently over-diverts. In the event a handler does not identify which producers' milk is over-diverted, the procedure herein adopted will allow the market administrator to make this determination in a fair and orderly manner.

The order, wherever possible, should promote the most efficient handling of milk. To this end, the operator of a pool plant should be permitted to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Permitting diversions of milk between pool plants will promote efficient handling of milk and also will facilitate more simplified accounting procedures on producer milk weights, butterfat testing, and payrolling.

It should be noted that while diversions would be permitted between pool plants, diversions from a pool supply plant to another pool plant would not count as qualifying shipments for the supply plant. As discussed earlier, supply plants would qualify solely on the basis of their transfers to pool distributing plants.

Other Source Milk. An "other source milk" definition should be provided in the order. In addition to milk received from producers, a handler may receive milk or milk products from other sources. The other source milk definition identifies these various categories of receipts.

Fluid milk products and bulk fluid cream products from any source other than producers, cooperative and proprietary bulk tank handlers, pool plants, and plant inventories at the beginning of the month should be considered as other source milk.

Other source milk should also include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the classification plan adopted herein. Although no handler obligation would apply under the order to the receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts would be allocated directly to the handler's Class II utilization rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

All manufactured products from any source (including those produced at the plant) that are reprocessed, converted into, or combined with another product in the plant during the month should be defined as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated directly to the handler's Class II utilization, and no handler obligation would apply under the order to such receipts.

Other source milk also should include any disappearance of manufactured products for which the handler fails to establish a disposition. It is reasonable that each handler be required to account fully for all milk and milk products received or processed at its plant. Otherwise, a handler with inadequate records could have an opportunity to gain a competitive advantage over competitors who properly account for all

milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

Cooperative association. A definition of "cooperative association" is provided to facilitate formulation of the various order provisions as they apply to such an association of producers. A cooperative association means any cooperative marketing association of producers which the Secretary determines, after application by the cooperative associaton:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

(b) *Classification of milk.* The statutory authority for Federal milk orders specifies that an order shall classify milk in accordance with the form in which or the purpose for which the milk is used. As proposed by proponents, the order should provide for three classes of utilization.

The products included in Class I milk and sold in the proposed marketing area are required by health authorities to be produced in compliance with the inspection requirements of a duly constituted health authority. This is in contrast to the absence to the absence of such requirements for manufactured dairy products such as butter and hard cheese. Because of the extra cost of getting quality milk produced and delivered to the market in the condition and quantities required, it is necessary to establish a separate class for such milk to which a price above the manufactured milk price may be applied. The higher price for Class I milk must be at a level which, together with the prices applicable to other classes, will yield a blend price that will encourage production of milk to meet the fluid requirements of the market.

Class I milk should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

Each product designated herein as a Class I product would be considered a "fluid milk product" as defined in the order. In addition to these fluid milk products, Class I milk would include any skim milk and butterfat not specifically accounted for in Class II or III, other than shrinkage permitted a Class III classification.

As provided, skim milk or butterfat disposed of in any filled milk which is disposed of in fluid form shall be classified as Class I milk. This classification is identical to the treatment of filled milk in all Federal order markets. The basis for the uniform treatment of filled milk under the Federal orders is set forth in the Assistant Secretary's Decision issued October 13, 1969 (34 F.R. 16881). This decision was received into evidence as an exhibit at the initial hearing held in December 1978 for this market. The record evidence indicates that the findings and conclusions of this decision are equally applicable under current marketing conditions in the proposed marketing area.

Class III milk should include products which are made from surplus Grade A milk and which compete in a national market with similar products made from manufacturing grade milk. These products include cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese), butter, any milk product in dry form (such as nonfat dry milk), any concentrated milk product in bulk, fluid form that is used to produce a Class III product, and evaporated or condensed milk (plain or sweetened) in a consumer-type package. Class III milk also should include any product not specified in Class I or Class II.

An intermediate class, Class II, should apply to certain products which can command a higher value than Class III products but which must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured dairy products that can be used in making Class II products. Class II milk should include skim milk and butterfat disposed of in the form of a "fluid cream product," eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles one of these products. As defined in the order, "fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

Class II milk would also include bulk fluid milk products disposed of to any commercial food processing establishment at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages. In addition, it would include milk used to produce cottage cheese, lowfat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and certain other products as specified in the order.

The classification scheme adopted herein was proposed by the order proponents and is identical to the uniform classification plan contained in 29 other Federal order markets. It is based on exhaustive hearings held on this issue in 1971. The final decision on this matter was issued February 19, 1974 (39 FR 9012) and was received into evidence as an exhibit at the initial hearing held in December 1978 for this market. It contains a detailed discussion of the classification issue.

Proponents testified that this classification system would be fully appropriate for the proposed order and would comport with the need for greater uniformity among those essential provisions of marketing orders that should be uniform.

Classification of shrinkage. The Southwestern Idaho-Eastern Oregon order should contain provisions for classifying skim milk and butterfat in shrinkage. The shrinkage provisions adopted herein are similar to the shrinkage provisions now provided in most orders.

Total plant shrinkage should be prorated between (1) those kinds of receipts on which the Class III shrinkage limitations apply, and (2) other receipts, principally other source milk in the form

of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established Class III limit, the excess would be classified in Class I.

The shrinkage provisions provided herein recognize that shrinkage normally varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to milk picked up at producers' farms and delivered to a plant, a Class III shrinkage allowance of 0.5 percent for such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

A Class III shrinkage allowance of 1.5 percent to cover milk lost in processing is provided for the pool plant operator. This provides a total of 2 percent Class III shrinkage allowance for such milk from producers in the receiving and processing operations.

The total shrinkage allowance applicable to a pool plant operator depends upon whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if the milk is purchased on the basis of weights determined at the farm and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for any other handler who may have delivered the milk from the farm to the pool plant.

As provided herein, when bulk milk is transferred to another plant, the shrinkage allowance to the transferor handler would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is deverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This same procedure would apply to cooperative or proprietary bulk tank deliveries to pool plants when similar handling is involved.

This devision of the 2 percent shrinkage allowance, both in the case of deliveries from bulk tank handlers to plants and for transfers between plants, has been found practical and has been well accepted in Federal order markets where it now applies.

Shrinkage should be accounted for on an individual plant basis in the case of a handler operating more than one pool plant under the order. This procedure will best promote plant efficiency in the Southwestern Idaho-Eastern Oregon market.

Classification of milk transferred or diverted to other plants. Some fluid milk products or fluid cream products may be disposed of by regulated handlers to other plants. It is necessary, therefore, to provide specific rules so that the classification of such movements may be determined under this order.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk from a pool plant to another plant be classified in a manner similar to that used in classifying transfers of bulk fluid milk products.

Some skim milk or butterfat may be transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant. Such transfers should be classified as Class I milk unless both handlers request the same classification in another class in their monthly reports to the market administrator and sufficient Class II or Class III utilization is available at the transferee-plant after the allocation of its receipts of other source milk. If the shipping plant received other source milk in the form of nonfat dry milk, for example, during the month, the skim milk and butterfat so transferred should be classified so as to allocate the least possible Class I utilization to the other source milk. If the shipping handler received other source milk from an unregulated supply plant or an other order plant, the transferred quantities, up to the total of such receipts, should not be Class I to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee-plant.

As provided in this decision, bulk fluid milk products may be diverted from one pool plant to another pool plant. The classification of such diversions between pool plants should be treated in the same manner as bulk transfers of fluid milk products between pool plants.

Deliveries by a proprietary bulk tank handler to the pool plant of another handler also should be treated like a transfer or diversion between pool plants. Such deliveries should be classified as Class I unless both handlers request a different classification. However, a different treatment should apply to deliveries from a cooperative bulk tank handler to the pool plant of another handler. Since such deliveries are considered to be the "producer milk" of the pool plant operator, they should be assigned pro rata with other producer milk to the utilization remaining in the plant after classifying all other types of receipts at the plant.

The provisions governing transfers and diversions between pool plants described herein will contribute to obtaining the best possible utilization of producer milk. Such provisions will tend to insure that producer milk used in Class I will not be classified in a lower class when interplant shipments involve a pool plant with receipts of other source milk. Unless such safeguards are provided, a high-utilization plant could be used as a conduit for assigning milk obtained from nonpool sources for manufacturing purposes to a higher utilization (at the expense of producer milk) than it would receive by direct delivery to the plant at which it is actually utilized.

Skim milk or butterfat may be transferred or diverted from a pool plant to another order plant in the form of a fluid milk product or transferred from a pool plant to another order plant in the form of a bulk fluid cream product. The classification of such transfers or diversions shall apply only to the skim milk and butterfat in excess of any receipts at the pool plant from the other order plant.

The order should provide for the diversion of milk to other order plants for Class II or Class III use. Such provisions will foster the efficient handling of surplus milk in the market by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk wil continue to be pooled in the Southwestern Idaho-Eastern Oregon market.

Fluid milk products transferred or diverted to other order plants and bulk fluid cream products transferred to such

plants will be classified in accordance with the classes to which such milk is allocated under the other order. If information concerning the classification of transfers and diversions is not available to the market administrator in time to compute handler pool obligations, such transfers shall be classified in Class I, subject to adjustments when the information is available. In addition, the order should provide that if the other order provides for a different number of classes than the Southwestern Idaho-Eastern Oregon order, skim milk and butterfat allocated to a class consisting primarily of fluid milk products shall be classified in Class I and skim milk and butterfat allocated to other classes shall be classified as Class III milk. The order also provides that if a fluid milk product is transferred to an other order plant and such product is not defined as a fluid milk product under the other order, classification of such transfer shall be in accordance with the classification provisions of this order.

The order should prescribe a method for classifying the skim milk and butterfat in transfers and diversions from a pool plant to a producer-handler. If such skim milk and butterfat are in the form of a fluid milk product, such transfers should be classified as Class I milk. As described elsewhere in this decision, such a classification is necessary to assure that producers are not burdened with maintaining reserve supplies associated with the Class I sales of producer-handlers.

Skim milk and butterfat in the form of bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

The order must also provide for the classification of bulk deliveries from a cooperative or proprietary bulk tank handler to a producer-handler. Such deliveries should be treated the same as transfers or diversions from a pool plant to a producer-handler and be classified as Class I milk.

The order also must prescribe a procedure for classifying transfers or diversions to a nonpool plant that is not an other order plant or a producer-handler plant. Bulk fluid milk products transferred or diverted and bulk fluid cream products transferred should be classified as Class I milk unless a lower classification is requested and the operator of the nonpool plant makes available books and records to the market administrator for the purpose of verifying the receipts and utilization of milk and milk product at the nonpool plant. To determine such lower classification, the nonpool plant's utilization must be assigned to its receipts of milk from various sources.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the Southwestern Idaho-Eastern Oregon marketing area, and any transfers of packaged fluid milk products from the nonpool plant to Southwestern Idaho-Eastern Oregon pool plants, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under the Southwestern Idaho-Eastern Oregon order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e, the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned first to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under the Southwestern Idaho-Eastern Oregon order and second to any such remaining receipts from plants fully regulated under other orders.

Any remaining unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

The method herein provided for classifying transfers and diversions to nonpool plants accords equitable treatment to order handlers and also gives appropriate recognition to handlers in other regulated markets in the classification of milk transferred to a common nonpool plant. Giving highest use priority to dairy farmers directly supplying a nonpool plant recognizes that they are the regular and dependable source of supply of milk for fluid use at such plant. The proposed method of classification will safeguard the primary functions of the transfer and diversion provisions of the order by promoting orderly disposal of reserve supplies and in assuring that shipments to nonpool plants will be classified in an equitable manner.

Allocation of receipts to utilization. Because the value of producer milk is based on its classification, the Southwestern Idaho-Eastern Oregon order must provide a procedure for assigning a handler's receipts from different sources to the handler's utilization for the purpose of establishing such classification.

Proponents of the order testified that the system of allocating handlers' receipts to the various classes should be the same as that adopted in the decision issued June 19, 1964 (29 FR 9002), for 76 milk orders. This decision dealt with the issue of integrating into each order's regulatory plan milk which is not subject to classified pricing under any order and receipts at pool plants from other order plants. This decision was received into evidence in the form of an exhibit at the initial hearing. The decision established a procedure for allocating over a pool plant's total utilization the receipts at the plant from all nonpool sources and

for making payment into the producer-settlement fund on unregulated milk allocated to Class I.

Proponent representatives testified that the method developed for all Federal milk marketing orders as discussed in the June 19, 1964, decision is appropriate in the Southwestern Idaho-Eastern Oregon marketing area and will coordinate these regulations with respect to the treatment of unregulated milk and other order milk with comparable regulations under other Federal orders.

The aforesaid decision sets forth the standards for dealing with unregulated milk under Federal orders and the system of allocation to be included in all orders. It describes the appropriate treatment of other order milk received at pool plants that is used for coordinating the applicable regulations on all movements of milk between Federal order markets. This record indicates that the findings and conclusions of the aforesaid decision are equally applicable under current conditions in the proposed marketing area.

The order also provides that handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products be permitted to have such other source milk allocated directly to their Class II uses. Under the classification plan provided herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

Handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

It is not intended that the Class II outlet for producer milk necessarily be reserved for local producers. This use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated elsewhere, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in Class II products.

Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation of a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle receipts of fluid other source milk with receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating the actual use of fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk to Class III.

It should be noted that the order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

The attached order provides that, in the case of a multiple-plant handler, each of the handler's pool plants shall be considered separately for purposes of allocating receipts to utilization. In accordance with the "compensatory payment" decision referred to earlier, however, certain receipts of milk from unregulated supply plants and other Federal order plants are to share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of the handler's pool plants combined. The order, therefore, provides a procedure whereby the milk from unregulated supply plants and other order plants is classified on the basis of the handler's total system, but is assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of a handler's entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipt and making a corresponding reduction in the same class at one or more of such handler's other pool plants in the system. This technique, however, does not change the amount of milk to be accounted for at each plant or the classification of milk within the handler's entire system.

Classification of end-of-month inventory. The order should provide for the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Ending inventory of fluid cream products, eggnog, and yogurt, when held in bulk form, likewise should be classified in Class III. Such products held in packaged form at the end of the month should be classified as Class II milk.

Inventories classified in Class III should be subject in the following month to reclassification in a higher class, as determined through the allocation of receipts to utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as

applicable, for the current month would apply to any reclassified inventory.

Because of the regulatory treatment being accorded certain other source milk, it is necessary that fluid cream products, yogurt, and eggnog on hand in packaged form at the end of the month be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the next month, would be allocated in such month directly to the handler's Class II utilization.

For the first month the order is in effect, a slightly different classification of inventory must apply. Beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month to under the new order, such inventories should be allocated in the first month the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply in the following month if a higher classification results.

(c) *Pricing of milk.* In order to promote and maintain orderly marketing conditions for the Southwestern Idaho-Eastern Oregon market, minimum class prices for producrers must be established a levels that reflect economic conditions affecting the market supply and demand for milk and that tend to maintain a supply of milk sufficent to meet the fluid needs of the market plus a reserve to provide for daily and seasonal fluctuations in demand.

The Class I price must not be so high as to attract unneeded supplies to the market. On the other hand, the price must be high enough to encourage the production of an adequate quantity of high-quality milk required for the fluctuating daily and seasonal fluid needs of the market.

The Class II price should be high enough above the manufacturing price to compensate producers for a least a part of the cost of delivering sufficient Grade A milk to meet the needs of handlers for cream products, cottage cheese, ice cream, and related items for which handlers want Grade A milk.

The Class III price must be fixed at a level that will insure that milk produced in excess of the Class I and II requirements of the market can be processed into Class III products and disposed of in competition with similar products from unregulated manufacturing plants.

Class prices, as well as uniform prices to producers, should be computed and annunced on a 3.5 percent butterfat content basis. This will conform to prevailing practice in the market and throughout the Federal order system.

Class I price. For an 18-month period beginning with the effective date of the order, the Class I price should be computed each month by adding $1.50 to the "basic formula price" for the second preceding month. As defined herein, the "basic formula price" (also referred to as the "Minnesota-Wisconsin price") means the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, adjusted to a 3.5 percent butterfat basis.

The price for milk used for fluid purposes in the marketing area has a direct relationship to the price paid for milk used for manufacturing puroses. The Minnesota-Wisconsin or "M–W" price used in determing the price for Class I milk gives appropriate consideration to the economic factors underlying the general level of prices for milk and manufactured dairy products. It is used as the basic formula price in all Federal order markets and would be equally appropriate for use in the Southwestern Idaho-Eastern Oregon order. The differential over manufacturing milk prices is necessary to cover the added cost of meeting quality requirements in the production of milk for fluid use and the cost of moving it to the market.

Proponents of the order proposed that the Minnesota-Wisconsin manufacturing milk price be used as the basic formula price. This price is an average of prices paid at a large number of manufacturing plants in the two States. Plant operators report the total pounds of manufacturing grade milk received from dairy farmers, the total butterfat content, and the total dollars paid to dairy farmers for such milk, f.o.b. plant. These prices are reported on a current basis. The "M–W" price is announced by the Department for each month on or before the fifth day of the following month.

Cooperatives proposed that the Class I price for the order be established at $1.75 over the basic formula price for the second preceding month. A spokesman testified that this price level is necessary to assure the market's consumers of adequate supplies of pure and wholesome milk. He also stated that it will provide price alignment with other Federal order markets in the area and that it recognizes the ability and willingness of consumers to purchase milk.

At the time of the reopened hearing in February 1980, DCA was supplying Associated Dairies in Boise and Twin Falls and Sun Ray Drive-In Dairy in Boise. DCA was charging a Class I price equal to the M–W price for the second preceding month plus $1.85. However, this price moved only in 23-cent increments so that, for any given month, the actual price charged could be more or less than the M–W price plus $1.85. In addition, DCA also provided a minus adjustment to the price of 8.3 cents per hundredweight for milk moved by Associated from its Boise plant to its Twin Falls plant. As a result of these adjustments, the average Class I differential price charged by DCA during the period from January 1979 through February 1980 was $1.76.

The other cooperative in the market, MEDA, had been charging Meadow Gold a Class I price equal to the M–W price for the second preceding month plus $1.90. This is the basic Class I Price of the neighboring Great Basin order. When Meadow Gold began cutting back on its purchases of milk from MEDA in early 1979, the cooperative added a 10-cent service charge to the Class I price, bringing it up to $2.00. Later in 1979, when Meadow Gold was only purchasing spot shipments from MEDA, the service charge was increased to 50 cents per hundredweight.

As of the February 1980 hearng, Meadow Gold was purchasing essentially all of its milk from non-member producers. The price paid these non-member producers for Class I milk was equal to the Great Basin Class I price minus 45 cents, or a Class I differential price of about $1.45. This price was being paid on an arbitrarily established Class I utilization basis of 70 percent of a producer's milk. The price for other than Class I milk was equal to the Class III price under the Great Basin order, which is the M–W price for the month.

A Class I price equal to the basic formula price (i.e., the M–W price for the second preceding month) plus $1.50 is appropriate for this market. This price should result in a uniform price to producers that is 50 to 60 cents per hundredweight above the manufacturing price for the month assuming a 40 percent Class I utilization for the market. A uniform price at this level

should allow handlers to procure adequate supplies of milk for fluid use in competition with local manufacturing plants.

In determining the appropriate Class I differential, consideration should be given to the relationship of the supply arrangements for the various handlers and the Class I prices being paid. When a handler purchases milk from a cooperative which is balancing the handler's fluid requirements, payrolling producers, and providing field services, it is expected that the price charged by the cooperative would reflect these services. A study introduced in the record indicates that it could cost a cooperative as much as 35 cents per hundredweight to provide a handler with a full supply of milk. According to testimony in the record, DCA is recouping such costs through the $1.85 Class I differential now charged to Associated Dairies and Sun Ray. In addition, testimony by a MEDA representative indicated that their costs in supplying Meadow Gold were similarly covered in the $1.90 Class I differential charged by MEDA.

In establishing the appropriate minimum price that is to be paid by regulated handlers, it is not intended that the order Class I price reflect or include the costs that cooperatives incur in supplying handlers. A handler buying milk from a cooperative would be expected to pay the minumum order price plus an amount that would cover the procurement costs that are being incurred by the cooperative. If a handler were to buy its milk directly from producers rather than from a cooperative, the handler, of course, would have to bear the procurement costs in addition to paying the minimum order price. On this basis, a minimum Class I differential of $1.50 under the order would be a reasonably close approximation of the prevailing pricing arrangements in this market.

The Class I price adopted approximates the average price paid by handlers in the market weighted according to their share of Class I sales in the market. Thus, it does not represent an increase in price over the existing fluid milk price level. Therefore, the adopted Class I price should have little impact on the retail price level in the market.

The Class I price adopted for the order should be reviewed within 18 months of the effective date of the order. By such time, data relative to milk supplies and sales in the market will have been accumulated. This will allow for a careful examination of the appropriate Class I price level for this market at a public hearing.

Class III price. The Class III price should be the basic formula price for the month, as proposed by the order proponents.

Reserve milk disposed of in manufactured product uses should be priced at a level that will result in the orderly disposition of all excess supplies. Establishment of a price too high to clear the market of milk excess to fluid requirements would interfere with the orderly marketing of milk for both processors and producers. Fixing a price too low would encourage handlers to associate additional supplies with the market simply to obtain low-cost milk for manufacturing uses.

The Minnesota-Wisconsin price is the best available indicator of the value of milk used in butter, nonfat dry milk, and cheese, which are usually the last-resort uses for surplus milk. The M-W price is an average of the prices being paid by processors of these products who are meeting the competitive test of the unregulated marketplace. Use of the M-W pay price series for the Southwestern Idaho-Eastern Oregon market will provide consistency between this order and other Federal order markets which also use the M-W price series as the basic formula price for pricing Class III milk. In addition, it achieves parity between regulated and unregulated plants since it provides the regulated manufacturer with essentially the same margin for processing as is experienced in the unregulated market.

Class II price. The price for Class II milk should be the basic formula price for the month, plus 10 cents. This price level, which was proposed by the order proponents, will obtain for producers some extra return for producer milk used in Class II products above its value in other manufactured dairy products.

Class II products, other than cream products, need not be made from Grade A milk. For this reason, the price charged under the order for milk used in Class II products must be competitive with prices being paid by unregulated manufacturing plants making such products from manufacturing grade milk.

Although not required, many handlers nevertheless prefer to use Grade A milk in products such as ice cream and cottage cheese. These products constitute more than surplus disposal for a handler; they usually constitute part of the handler's regular line.

Producers should be compensated for making high-quality milk available to handlers on a steady basis for use in Class II products. Experience in Federal orders throughout the country has shown that milk used in Class II can be priced somewhat higher than the Minnesota-Wisconsin price without impairing the market for producer milk. A 10-cent differential, as proposed, together with the Class I differential, will help to insure producers of a uniform price which will compensate them for the production of a steady supply of high-quality milk.

Location adjustments. Location adjustments for Class I and uniform prices should not be included in the proposed order.

Most Federal orders provide for location adjustments on milk received at plants located more than certain distances from a designated basing point within the marketing area. These adjustments serve two basic purposes: (1) they assist in encouraging the movement of milk from supply areas to the principal population centers where it is processed for fluid use; and (2) they assist in maintaining proper price alignment with nearby markets. Circumstances in the Southwestern Idaho-Eastern Oregon market, however, do not require the use of such adjustments under the order.

As indicated, it is expected that 7 distributing plants, all of which are located in the proposed marketing area, would be fully regulated under the order. Three of these plants are located in Boise, one is in Twin Falls, two are in Buhl (18 miles west of Twin Falls), and one is in Burley (about 40 miles east of Twin Falls). There are no supply plants associated with the market.

The three distributing plants in Boise, which is in Ada County, were estimated to have sales of fluid milk products in June 1978 of about 8.5 million pounds. Production figures indicate that milk production in Ada County alone averages 11.5 million pounds per month. Over 12 million pounds per month are produced in Canyon County, which adjoins Ada County. It is apparent, then, that the Boise handlers should be able to obtain adequate milk supplies from nearby farms.

A similar situation exists in the Twin Falls area. In June 1978, the four distributing plants in the Twin Falls area had sales of about 2 million pounds. Milk production in Twin Falls County averages more than 8 million pounds per month. In adjacent Cassia County, where one of the four distributing plants is located, production averages roughly 6 million pounds per month.

The figures indicate that abundant supplies of milk are produced within short distances of each of the distributing plants in the market. Thus, there is no reason to assemble milk at a supply plant and transship it many miles, as is the case in some markets, in order to satisfy handlers' Class I requirements. In view of this, there is no

basis to conclude that location adjustments are needed to compensate for hauling milk from distant plants to distributing plants.

Proponents of the order originally proposed no location adjustments for the order. At the hearing, however, they altered their position and proposed adjustments at the rate of minus 10 cents per hundredweight for any plant located 100–110 miles from Boise and minus 2 additional cents per each 10 miles beyond 110 miles. A spokesman for proponents testified that this would result in a location adjustment of minus 16 cents at Twin Falls, or an adjusted Class I differential of $1.59. He said this would provide a price at Twin Falls that was identical to the adjusted Class I price at Twin Falls under the Great Basin order.[4]

Proponents failed to make a convincing argument why the price at Twin Falls should be any lower than the price at Boise. Similarly, there was no valid basis presented for having the price at Twin Falls under the new order about the same as the price there under the Great Basin order. It is noted, however, that the price under the new order would be within six cents of the Great Basin order price at Twin Falls.

The record clearly shows that milk from Twin Falls need not move to Boise to satisfy handler's requirements there. Therefore, no basis exists for having a minus location adjustment at Twin Falls.

Butterfat differential. The order should have a producer butterfat differential equal to .115 times the average wholesale price of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. This differential was proposed by proponents and is common to most other orders.

A butterfat differential reflects the incremental value of milk containing more or less butterfat than the standard announced level. Prices under the order will be announced for milk containing 3.5 percent butterfat. Milk containing less than 3.5 percent butterfat will be worth less than the 3.5 percent price, while milk testing above 3.5 percent will be worth more than the announced price. This adjustment will insure equitable payments reflecting such variations in butterfat content of milk delivered by individual producers.

Use of equivalent prices. If for any reason a price or pricing constituent needed by the market administrator in administering the order is not available, the market administrator is authorized by the order to use an equivalent price or pricing constituent as determined by the Secretary. Including such provision in the order will leave no uncertainty with respect to the procedure to be followed in the absence of any data customarily used and thereby will prevent interruption in the operation of the order.

d. *Distribution of proceeds to producers.* Marketwide pooling of producer returns should be provided in the order as the means of distributing among producers the proceeds from the sale of their milk. Such pooling method will assure each producer supplying the market a proportionate share of the market's total Class I sales.

The facilities in the various plants in the area for handling producer milk in excess of that needed for Class I purposes vary considerably. While a number of plants in the market are primarily Class I operations and handle little or no surplus milk, others utilize varying proportions of their supplies for Class II or Class III purposes. Under these conditions, a marketwide pool will facilitate the marketing of producer milk since the type of facilities at the plant will not be a determining factor in the price the plant can pay its producers compared to other plants.

A marketwide pool also will make it possible for producer associations to divert any weekly or seasonal reserves of milk and still keep producers on the market who are needed to fulfill the year-round requirements of the market. It will assist further in apportioning among all producers the lower returns from reserve milk manufactured when otherwise this burden would vary by individual groups of producers.

A marketwide pool thereby will contribute to market stability and the maintenance of an adequate and dependable supply of producer milk at reasonable prices.

Computation of uniform price. A key feature of marketwide pooling is the computation of a single uniform price to producers. Essentially, a uniform price is the weighted average value of all of the milk in the pool. It is computed by adding together the classified use value (or total pool obligation) of all the handlers in the market. This total value is then divided by the amount of milk in the pool to arrive at a "uniform price" to producers.

In order to compute the uniform price, the market administrator must first receive the report of receipts and utilization from all of the handlers in the pool. These reports, which would be due by the 7th day of the month, would include the total receipts and utilization of milk by each handler for the preceding month. Allowing time for receipt of these reports and computation of the uniform price, the market administrator should be able to announce the uniform price by the 11th day of the month.

Producer-settlement fund. Marketwide pooling requires the use of a producer-settlement fund which enables all handlers in the market to pay a uniform price to their producers. Payments into the producer-settlement fund are made by handlers whose total classfied use value of milk exceeds the value of their milk at the uniform price. Payments out of the producer-settlement fund are made to handlers whose use value is below the weighted average value (i.e., the uniform price) for the market. This transfer of funds enables handlers with a use value below the average for the market to pay their producers the same uniform price as handlers whose Class I utilization exceeds the market average.

As adopted herein, payments into the producer-settlement fund would be due on the 13th day of the month and payments out of the producer-settlement fuind would be made by the 15th day of the month. This 2-day interval should enable the market administrator to receive the payments into the fund in time to make the payments out of the fund. In the event that the balance in the producer-settlement fund is insufficient to make the required payments out of the fund, the market administrator should reduce uniformly such payments. However, the market administrator should complete such payments as soon as the necessary funds become available.

Payments to producers and cooperative associations. Each handler under the order should pay each producer for milk received from such producer, and for which payment is not made to a cooperative, at not less than the applicable uniform price. Provision also should be made for partial payments for milk received during the first half of the month.

Under the terms of payment as adopted herein, handlers would make a partial payment to producers on or before the last day of the month for milk received during the first 15 days of the month at not less than the Class III price for the preceding month. On or before the 18th day of the following month, handlers would be required to pay producers at the applicable uniform price for milk received in the preceding month. Such final payment would be exclusive of any partial payment made

[4] Our figures show a distance of 233 miles between Salt Lake City and Twin Falls. This would yield an adjusted Great Basin Class I differential price of $1.56. The Great Basin order specifies an adjustment of 22 cents for the first 160 miles and 1.5 cents for each additional 10 miles.

and any deductions authorized by the producer.

Provision also is made in the attached order for a cooperative association to receive payment for member producer milk which is received by a pool plant. Providing for a cooperative association to collect for its individual producer members will permit the cooperative association to reblend the proceeds from the sale of such milk, as authorized by the Act. It will also facilitate the movement of milk among pool plants and the orderly disposal of reserve milk supplies to other plants for manufacturing use.

As provided in the attached order, each handler, upon request, should pay cooperatives the full amount due for producers' milk in lieu of payments to individual producers. Both the partial and final payments to a cooperative association should be made at least 2 days prior to the date payments are due to individual producers. This will enable cooperative associations to pay their producer members on the same day other producers are paid.

The proponents of the order proposed that the market administrator collect from handlers all order payments due producers. Under the proponents' proposal, each handler would make partial payments to the market administrator by the 25th day of the month for milk received during the first 15 days of the month. The partial payment rate would be the Class III price for the preceding month. The remainder of the handler's obligation for milk received during the month would be paid to the market administrator by the 14th day of the following month. Following the receipt of partial payments by handlers, the market administrator would pay producers such monies by the last day of the month. The market administrator would make final payment to producers by the 19th day after the close of the month. In those cases where a cooperative is collecting the payments for milk of its members, the proposal would require partial and final payments by the market administrator two days prior to the date payments are due individual producers.

In their post-hearing brief to the initial hearing, proponents indicated no opposition to having payments being made to nonmember producers by either the market administrator or by handlers receiving such producer milk.

Proponents stated that under their proposed method of payment to producers, the market administrator would know promptly when a handler is delinquent in making payments for producer milk. This, they claimed, would permit the market administrator to institute action more promptly in the collection of delinquent payments.

Other reasons cited by proponents for having the market administrator pay producers are: (1) It would provide handlers with a stronger incentive for making prompt payment of their order obligations than if handlers pay producers directly; (2) it would simplify handlers' accounting to the producer-settlement fund; (3) such a plan has operated quite successfully in a number of other federal order markets; and (4) it assures that no handler competing for fluid milk sales in the area has an advantage over another handler by using producer money to enhance their own competitive position.

Two handlers—Kraft and Meadowgold—opposed this payment arrangement. Witnesses for the handlers indicated they prefer to pay their own producers. Having the market administrator pay producers, they contended, would unnecessarily add an additional party to the transaction between them and their producers and thus would interfere with normal handler-producer relations. The opposing handlers also indicated that the proposed payment arrangement could adversely affect their cash flow position because they would have to make full payment for their order obligations several days earlier than if they paid producers directly.

The record does not establish that cooperatives and individual producers in this market have been experiencing difficulties in collecting payments from handlers on a timely basis. The payment method adopted herein is presently used under most Federal orders and should work satisfactorily under the proposed order. This payment method will result in the least amount of change in the current payment arrangements of handlers. Should experience show that a serious payment problem has developed in the market, the payment method proposed by the cooperatives could be considered at a later time.

Regardless of the payment method used, handlers need a reasonable time each month to file their reports of receipts and disposition with the market administrator. Likewise, the market administrator must, in turn, have adequate time to process such reports and compute the uniform prices. The dates for producer payments provided in the proposed order are reasonable considering the reporting and price computations that must take place.

The attached proposed order provides that at the time final settlement is made for milk received from producers during the month, the handler is required to furnish each producer (or cooperative association) a supporting statement. This statement should show the pounds and butterfat tests of milk received from such producer, the rate(s) of payment for such milk and an itemization of any deductions claimed by the handler.

(e) *Administrative Provisions.—Charges on overdue accounts.* The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1 percent per month and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

Proponents originally proposed that a charge of .75 percent be applied to overdue accounts. At the hearing, however, a representative testified that they had modified their proposal so that the rate could fluctuate with changes in the prime interest rate. He stated that their revised proposal would establish the charge at not less than the prime rate that was effective on the first day of the calendar month in which the obligation becomes due. The prime rate to be used would be the one set by the Idaho First National Bank, a primary bank in the area.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary that handlers with Class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative expense and market service fund is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that

approximates the cost of borrowing money from commerical sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

It should be noted that late-payment charges are not a substitute for prompt payment by handlers. Those delinquent in their obligations will be subject to legal enforcement action as authorized under the Act.

It is concluded that a late-payment charge of 1 percent per month of the unpaid balance on overdue handler obligations to the market administrator, applicable the first day the obligation is overdue, is appropriate for the order. The charge should apply irrespective of whether the obligation is paid 1 day later or 10 days late.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid charges previously assessed.

Proponents suggested that the late-payment charge be applied on the third day following the date that a payment was due under the order. The purpose of this proposal presumably was to allow for mail delays. As adopted herein, payments will be considered to have been paid on time if they are postmarked by the date specified in the order. If a payment must be postmarked by a certain date, it reasonably should be received a day or two later. In view of this application of the due date, the late-payment charge should be applied on the day after the due date.

As proposed at the hearing, the order should apply a late-payment charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions, such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any late-payment charge, a partially regulated handler could have an advantage on such order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the performance of the market administrator's duties.

A late-payment charge should not apply at this time on handler obligations to producers and cooperatives. Under the payment system adopted herein, handlers will pay producers and cooperative associations. In this situation, it is more difficult to know with certainty when payment has been made. This, of course, presents a problem of knowing when a late-payment charge should apply. Producers and cooperatives in this market are in the best position to ensure prompt payments for their milk. Accordingly, a late payment charge should not apply to this type of transaction.

Expense of administration. Each handler should be required to pay to the market administrator, a proportionate share of the cost of administering the order. For this purpose, a charge of 5 cents per hundred weight, or such lesser amount as the Secretary may prescribe, on producer milk (including milk of such handler's own production) and on other source milk allocated to Class I (except milk so assessed under another Federal order) is provided.

The market administrator must have sufficient funds to administer properly the terms of the order. The Act provides that the cost of administration shall be financed through an assessment on handlers. A principal function of the market administrator is to verify the receipts and disposition of milk from all sources. Equity in sharing the cost of administration of the order among handlers will be achieved, therefore, by applying the administrative assessment on the basis of milk received from dairy farmers and on other source milk allocated to Class I milk.

The proposed order provides that a cooperative shall be the handler on milk it delivers in tank trucks from producers' farms to pool plants of other handlers. The cooperative is the handler on such milk basically for the purpose of making payments to its individual members. For all accounting purposes, however, the milk would be considered as producer milk at the plant of the receiving handler. It, therefore, would be treated the same as any other direct receipts from producers.

The market administrator must verify by audit the receipts and utilization at each pool plant, whether the plant operator buys milk directly from producers or through a cooperative as a bulk tank handler. It is appropriate, therefore, that the pool plant operator receiving such milk pay the administrative assessment on it on the same basis as for all other producer milk received at the plant. The cooperative bulk tank handler would be liable only for the administrative assessment on the quantity of milk picked up at producers' farms that is not received at the pool plant.

The proposed order also provides that a proprietary bulk tank handler may be the handler on milk delivered in tank trucks from producers' farms to the pool plants of other handlers. In addition, a pool plant operator is permitted to divert milk from producers' farms to the pool plant of another handler. In both of these instances, it is the handler for whose account the milk is being diverted who is responsible for making payments to the individual producers involved. Likewise, it is this handler who must be held accountable for paying the administrative assessment on milk.

The order specifies minimum performance standards that must be met to obtain regulated status. The operator of a plant not meeting such standards (i.e., a partially regulated distributing plant) is required to either (1) make specified payments (discussed elsewhere in this decision) into the producer-settlement fund on route disposition in the marketing area in excess of offsetting purchases of Federal order Class I milk, or (2) otherwise pay into such fund and/or to dairy farmers an amount not less than the classified use value of all receipts from dairy farmers computed as though such plant were a fully regulated plant.

In administering the order as it applies to partially regulated distributing plants, the market administrator incurs expenses in essentially the same manner as in applying the order to pool handlers, even though the order is not applicable to the partially regulated handler to the same extent as to fully regulated handlers. Hence, payment of the administrative assessment on the partially regulated handler's in-area sales only would reasonably constitute such handler's pro rata share of the administrative expense.

In the case of unregulated milk that enters the market through a regulated plant for Class I use, it is the regulated handler who utilizes the unregulated milk and who must report to the market administrator the receipt and use of such milk. Also, the receipts and utilization of all milk at the regulated handler's plant are subject to verification by the market administrator. Hence, it is appropriate that the regulated handler be responsible for payment of the administrative assessment on such unregulated milk.

The order is designed so that the cost of administration is shared equitably among handlers distributing milk in the proposed marketing area. However, to prevent duplication, an assessment

should not be made on other source milk on which an assessment was made under another Federal order.

Provision should be made so that the Secretary may reduce the amount of the administrative assessment without the necessity of amending the order. The rate can thus be reduced when experience indicates a lower rate will be sufficient to provide adequate funds for the administration of the order.

Marketing services. Provision should be made in the order for furnishing marketing services to producers, such as verifying the tests and weights of producer milk and furnishing market information. These services should be provided by the market administrator, and the cost should be borne by producers for whom the services are rendered. However, any cooperative association, if approved for such activity by the Secretary, may perform such services for its producers in lieu of having the market administrator perform the services.

There is a need for a marketing service program in connection with the administration of a Federal milk order for the Southwestern Idaho-Eastern Oregon area. The weighing and testing of the milk of all producers is closely related to the main provisions of the order, which are the classification and pricing provisions. The latter provisions are the basis of the computation of the minimum uniform price payable to producers.

The order requires all regulated handlers to submit to the market administrator each month a report showing the total quantity of skim milk and butterfat received from producers and the utilization of such skim milk and butterfat in the three price classifications provided. To verify that a handler has reported all receipts and disposition correctly and to insure that producers receive proper payment for their deliveries, the market administrator audits each handler's operation. The quantity of skim milk and butterfat received by a handler must balance, of course, with the quantities of skim milk and butterfat in the products processed and disposed of by the handler. This requires the availability of the weight and butterfat test of each producer's deliveries.

Milk produced on a handler's own farm should be exempt from marketing service deductions, even though it is subject to other provisions of the order. There are no payments to other persons on such milk. Hence, there is no need to provide the same marketing services as are provided other producers.

The other service provided, that of furnishing market information, is designed to keep the producer informed of developments that might affect such producer's price or market outlet in order that the producer may better evaluate marketing conditions. The objective of the program is to aid producers to achieve and maintain orderly marketing conditions for their milk.

In the case of producers who market their milk through a cooperative association, the Act authorizes such cooperative to perform these marketing services, and the costs of these services normally are borne by such producers through membership dues.

Proponent cooperative associations proposed that 8 cents per hundredweight be provided in the order as a marketing services deduction. Kraft, Inc., testified that 6 cents per hundredweight ought to be an adequate marketing service assessment, arguing that the costs of verifying producer tests could be substantially reduced if the market administrator were to use handler laboratory facilities rather than to maintain separate facilities.

In the absence of specific testimony introduced to indicate that the 8-cent rate is necessary, it is concluded that a rate of 7 cents per hundredweight should be provided. This represents the maximum rate established in any Federal order, regardless of market size. It is anticipated that such maximum rate will cover the costs that are likely to be incurred by the market administrator in providing the necessary services for producers. If experience indicates that marketing services can be performed at a lesser rate, provision is made whereby the Secretary may adjust the rate downward without the necessity of a hearing.

General provisions. The Southwestern Idaho-Eastern Oregon order proposed herein incorporates, by reference, certain terms, definitions, and administrative provisions that are included in Part 1000 of the Code of Federal Regulations. The provisions are common to all Federal milk orders, having been so adopted effective July 1, 1971 (36 FR 9844).

The first section (§ 1000.1) states that the uniform provisions included in Part 1000 shall be a part of each Federal milk marketing order as if set forth in full in each order, except in any order where any such provision is expressly defined or modified otherwise.

The second section (§ 1000.2) includes definitions of five general terms used in all Federal milk orders: Act, Order, Department, Secretary, and Person.

The third section (§ 1000.3) deals with the designation, powers, and duties of the market administrator.

The fourth section (§ 1000.4) pertains to the continuity and separability of provisions in an individual order. For the most part these are internal administrative rules and instructions to Department employees regarding procedures involved in the suspension, termination, or liquidation of any or all provisions of a Federal milk order.

The fifth section (§ 1000.5) describes a handler's responsibility with respect to records and facilities.

The final section (§ 1000.6) relates to the termination of obligations.

The standard provisions of Part 1000 have the same intent and purpose in each Federal milk order, and they have worked effectively since the adoption of Part 1000 in July 1971 for all Federal orders. Adopting Part 1000 by reference for the Southwestern Idaho-Eastern Oregon order will promote uniform application of these provisions, which have the same intent and purpose in all orders.

A detailed discussion of the need and basis for incorporating the general provisions in each order is contained in a decision issued by the Assistant Secretary on April 15, 1971 (36 FR 7514). The findings and conclusions thereof were received into evidence at the initial hearing and are made a part hereof by reference as the basis for adopting the same provisions in the Southwestern Idaho-Eastern Oregon order.

Ruling on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

(a) The tentative marketing agreement and the order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the market area. The minimum prices specified in the

proposed marketing agreement and order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The proposed marketing agreement and order will regulate the handling of milk in the same manner as, and will be applicable only to pesons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order

The recommended marketing agreement is not included in this decision because the regulatory provisions of such agreement would be the same as those contained in the proposed order. The following order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.

1135.1 General Provisions.

Definitions

1135.2 Southwestern Idaho—Eastern Oregon marketing area.
1135.3 Route disposition.
1135.4 Plant.
1135.5 Distributing plant.
1135.6 Supply plant.
1135.7 Pool plant.
1135.8 Nonpool plant.
1135.9 Handler.
1135.10 Producer-Handler.
1135.11 [Reserved]
1135.12 Producer.
1135.13 Producer milk.
1135.14 Other source milk.
1135.15 Fluid milk product.
1135.16 Fluid cream product.
1135.17 Filled milk.
1135.18 Cooperative association.

Handler Reports

1135.30 Reports of receipts and utilization.
1135.31 Payroll reports.
1135.32 Other reports.

Classification of Milk

1135.40 Classes of utilization.
1135.41 Shrinkage.
1135.42 Classification of transfers and diversions.
1135.43 General classification rules.
1135.44 Classification of producer milk.
1135.45 Market administrator's reports and announcements concerning classification.

Class Prices

Sec.

1135.50 Class prices.
1135.51 Basic formula price.
1135.52 [Reserved]
1135.53 Announcement of class prices.
1135.54 Equivalent price.

Uniform Price

1135.60 Handler's value of milk for computing uniform price.
1135.61 Computation of uniform price.
1135.62 Announcement of uniform price and butterfat differential.

Payments For Milk

1135.70 Producer-settlement fund.
1135.71 Payments to the producer-settlement fund.
1135.72 Payments from the producer-settlement fund.
1135.73 Payments to producers and to cooperative associations.
1135.74 Producer butterfat differential.
1135.75 [Reserved]
1135.76 Payments by a handler operating a partially regulated distributing plant.
1135.77 Adjustment of accounts.
1135.78 Charges on overdue accounts.

Administrative Assessment and Marketing Service Deduction

1135.85 Assessment for order administration.
1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601, et seq.

General Provisions

§ 1135.1 Geneal Provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1135.2 Southwestern Idaho-Eastern Oregon marketing area.

"Southwestern Idaho-Eastern Oregon marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the following Idaho and Oregon counties, including all reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed counties:

Idaho

Ada	Gooding
Adams	Jerome
Blane	Lincoln
Boise	Minidoka
Camas	Owyhee
Canyon	Payette
Cassia	Twin Falls
Elmore	Valley
Gem	Washington

Oregon

Baker	Harney	Union
Grant	Malheur	

§ 1135.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point or a vendor and disposition from a plant store or through a vending machine) except a delivery to another plant.

§ 1135.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities used only as a distribution point for storing packaged fluid milk products in transit or used only for reloading milk from one tank truck to another for transshipment shall not ba a "plant" under this definition.

§ 1135.5 Distributing plant.

"Distributing plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and at which fluid milk products are processed or packaged and from which there is route disposition in the marketing area during the month.

§ 1135.6 Supply plant.

"Supply plant" means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk and from which fluid milk products are transferred during the month to a pool distributing plant.

§ 1135.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 10 percent of the Grade A fluid milk products received at such plant (including milk diverted from such plant by the plant operator pursuant to § 1135.13); and

(2) Total route disposition (except filled milk) during the month equal to not less than 40 percent of such receipts.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred to pool distributing plants is 40 percent or more of the Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant by the plant operator but excluding producer milk diverted to the plant pursuant to § 1135.13), subject to the following conditions:

(1) Any supply plant that has qualified as a pool plant in each of the immediately preceding months of September through February shall be a pool plant in each of the following

months of March through August unless written request for nonpool status for any such month is filed by the plant operator with the market adminstrator prior to the fist day of any such month. In such case, nonpool status will be effective until the plant again qualifies as a pool plant by meeting the transfer requirements; and

(2) The volume of fluid milk products included as qualifying shipments to a distributing plant pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted by such pool distributing plant operator to the supply plant or to any other plant under the control of the supply plant operator.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, was disposed of as route disposition during the month in such other Federal marketing area than was disposed of as route disposition in this marketing area, and which is fully subject to the classification and pricing provisions of such other order.

(3) A distributing plant qualified pursuant to paragraph (a) of this section that also meets the pool plant requirements of another Federal order on the basis of route disposition in such other marketing area, and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is disposed of in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(4) A supply plant qualified pursuant to paragraph (b) of this section that also meets the pool plant requirements of another Federal order and from which greater qualifying transfers are made during the month to plants regulated under such other order than are made to plants regulated under this order, unless during the months of March through August the transfers to the other order plant are classified as Class II or Class III milk and the operator of the supply plant elects to retain automatic pooling under this part; or

(5) A distributing plant from which less than an average of 300 pounds of Class I milk per day, except filled milk, is disposed of in the marketing area during the month.

§ 1135.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a distributing plant that does not qualify as a pool plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a supply plant that does not qualify as a pool supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Execpt distributing plant" means a distributing plant defined in § 1135.7(c)(4).

§ 1135.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted pursuant to § 1135.13 for the account of the cooperative association;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples;

(d) Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(1) Such person (who, if qualified pursuant to this paragraph, shall be known as a "proprietary bulk tank handler") must operate a plant located in the marketing area at which milk is processed only into Class II or Class III products; and

(2) Prior to operating as a handler pursuant to this paragraph, such person must submit to the market administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk;

(e) Any person in his capacity as the operator of a partially regulated distributing plant;

(f) Any person defined as a producer-handler;

(g) Any person in his capacity as the operator of another order plant described in § 1135.7(c)(2) and (3);

(h) Any person in his capacity as the operator of an unregulated supply plant;

(i) Any person in his capacity as the operator of an exempt distributing plant.

§ 1135.10 Producer-handler.

"Producer-handler" means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(b) Receives no milk or fluid milk products from any source other than pool plants, other order plants, and bulk tank handlers described in § 1135.9(b) and (d);

(c) Such receipts do not exceed the lesser of 5 percent of his Class I utilization during the month or 5,000 pounds;

(d) Does not reconstitute or convert milk products into fluid milk products except to increase by the addition of nonfat dry milk the nonfat milk solids content of its own farm production or of fluid milk products received from other sources; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1135.11 [Reserved]

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved by a duly constituted regulatory agency for disposition as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1135.9(c) or (d); or

(3) Diverted from a pool plant in accordance with § 1135.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person who produces milk that is diverted to a pool plant from another order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1135.44(a)(8)(iii) and the corresponding step of § 1135.44(b); or

(3) Any person who produces milk that is reported as diverted to another order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order or the other order designates such person as a producer under such order.

§ 1135.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received at a pool plant from a handler described in § 1135.9(c);

(c) Received by a handler described in § 1135.9(c) in excess of the quantity delivered to pool plants;

(d) Received by a handler described in § 1135.9(d) that is not diverted pursuant to paragraph (f) of this section;

(e) Diverted from a pool plant for the account of the handler operating such plant to another pool plant; or

(f) Diverted from a pool plant to a nonpool plant by a pool plant operator or a handler described in § 1135.9(b) or (d), subject to the following conditions:

(1) Milk of a dairy farmer who was not a "producer" in the preceding month shall not be eligible for diversion until one day's production of milk of such dairy farmer is physically received at a pool plant;

(2) During each of the months of September through February milk of a dairy farmer shall not be eligible for diversion unless during the month one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(3) The total quantity of milk diverted by a cooperative association during the month may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to pool plants or diverted from pool plants during the month if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is to be effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator;

(4) The total quantity of milk diverted during the month by a proprietary bulk tank handler described in § 1135.9(d) may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk that the handler causes to be delivered to or diverted from pool plants during the month;

(5) The operator of a pool plant may divert for its account any milk that is not under the control of a cooperative association or a proprietary bulk tank handler that diverts milk during the month pursuant to paragraph (f)(3) or (4) of this section. The total quantity so diverted during the month may not exceed 60 percent in the months of September through February, and 70 percent in other months, of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator; and

(6) Any milk diverted in excess of the limits prescribed in paragraph (f)(3), (4), and (5) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted by the handler on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for.

§ 1135.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1135.9(c) and (d), pool plants;

(b) Receipts in packaged form from other plants of products specified in § 1135.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1135.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1135.40(b)(1)) for which the handler fails to establish a disposition.

§ 1135.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) The term "fluid milk product" shall not include:

(1) Evaportated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1135.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk and skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1135.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent non-milk fat (or oil).

§ 1135.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the cooperatiave association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act",

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk for its members; and

(c) To have its entire activities under the control of its members.

Handler Reports

§ 1135.30 Reports of receipts and utilization.

On or before the seventh day after the end of the month, each handler shall report to the market administrator, in the detail and on the forms prescribed by the market administrator, the following information for such month:

(a) Each handler, with respect to each of its pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1135.9(c);

(3) Receipts of milk from handlers described in § 1135.9(d);

(4) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(5) Receipts of other source milk;

(6) Inventories at the beginning and end of the month of fluid milk products specified in § 1135.40(b)(1); and

(7) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1135.9(b), (c), and (d) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through(c) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may presecribe.

§ 1135.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1135.9 (a), (b), (c), and (d) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer for such month:

(1) His/her name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of his/her milk;

(5) In the case of cooperative associations, the identify of producers for whom the cooperative association is authorized to collect payment pursuant to § 1135.73; and

(6) The amount and nature of any deductions authorized in writing by the producer to be made from payments due such producer for milk delivered.

(b) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1135.76(b) shall report for each dairy farmer who woud have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

Except as provided in § 1135.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1135.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1)(iv) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product

that was included within the fluid milk product definition pursuant to § 1135.15; and

(6) In shrinkage assigned pursuant to § 1135.41(a) to the receipts specified in § 1135.41(a)(2) and in shrinkage specified in § 1135.41 (b) and (c).

§ 1135.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1135.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from handlers described in § 1135.9 (c) and (d));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from handlers described in § 1135.9 (c) and (d) and in milk diverted to such plant from another pool plant, except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective amonts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1135.9 (b) or (c) or a proprietary bulk tank handler is the handler pursuant to § 1135.9(d), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat test determined from farm bulk tank samples, the applicable percentage for the cooperative association or the propietary bulk tank handler shall be zero.

§ 1135.42 Classification of tranfers and diversions.

(a) *Transfers and diversions (including deliveries by a handler described in § 1135.9(d)) to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or from a handler described in § 1135.9(d) to a pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk, and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computation pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1135.44(a)(7)and the corresponding step of § 1135.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1135.44(a) (11) or (12) or the corresponding steps of § 1135.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, tranfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such tranfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustments when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat

allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1135.40.

(c) *Transfers and diversions to producer-handlers and to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred or diverted by a handler described in § 1135.9(a), (b), or (d) to a producer-handler under this or any other Federal order or to an exempt distributing plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if tranferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section;

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1135.30 for the month with which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk field milk products at such nonpool plant from other order plants; and

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk field milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants to the extent possible, first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1135.43 General classification rules.

In determining the classification of producer milk pursuant to § 1135.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1135.30 and shall compute separately for each pool plant, and for each handler pursuant to § 1135.9 (b), (c), and (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1135.40, 1135.41, and 1135.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk of a handler pursuant to § 1135.9 (b), (c), or (d) shall be determined separately from the operations of any pool plant operated by such handler.

§ 1135.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1135.9(a) for each of the handler's pool plants separately and of each handler described in § 1135.9 (b), (c), and (d) by allocating the handler's receipts of skim milk and butterfat to its utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1135.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim

milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1135.40(b)(1) that were in inventory at the beginning of the month in package form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to, any product specified in § 1135.40(b), but not in excess of the pounds of skim remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1135.40(b)(1) that were not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section; and

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) and (7)(v) of this section for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler (excluding any duplication of Class I utilization resulting from reported Class I transfers between pool plants of the handler);

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section if Class II or Class III classification is requested by the operator of the orther order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1135.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section:

(11) Subject to the provisions of paragraph (a)(11) (i) and (ii) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler), with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from Class II and Class III combined pursuant to this subparagraph (a)(1) exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other

pool plants shall be adjusted in the reverse direction by a like amount; and

(ii) Should the pounds of skim milk to be subtracted from Class I pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section;

(i) Subject to the provisions of paragraphs (a)(12)(ii), (iii), and (iv) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk;

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1135.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler (excluding any duplication of utilization in each class resulting from transfers between pool plants of the handler);

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received;

(iii) Except as provided in paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class II and Class III combined that exceeds the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III combined shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount; and

(iv) Except as provided in paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section result in a quantity of skim milk to be subtracted from Class I that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in Class I shall be increased by an amount equal to such excess quantity to be subtracted, and the pounds of skim milk in Class II and Class III combined shall be decreased by a like amount (decreasing as necessary Class III and then Class II). In such case, the pounds of skim milk remaining in each class at this allocation step at the handler's other pool plants shall be adjusted in the reverse direction by a like amount;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from 9(d) handlers according to the classification of such products pursuant to § 1135.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1135.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1135.44(a)(12) and the corresponding step of § 1135.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1135.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler as described in § 1135.9(a), (b) and (d) who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association that so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1135.50 Class prices.

The class prices for the month per hundredweight of milk shall be as follows:

(a) *Class I price.* For the first 18 months this order is effective, the Class I price shall be the basic formula price for the second preceding month plus $1.50.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1135.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the

nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92–score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.52 [Reserved]

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month;

(a) The Class I price for the following month.

(b) The Class II and Class III prices for the preceding month.

§ 1135.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1135.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1135.9 (b), (c), and (d) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1135.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1135.44 (a)(14) and the corresponding step of § 1135.44(b) by the applicable class prices;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1135.44(a)(9) and the corresponding step of § 1135.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(i) through (iv) and the corresponding step of § 1135.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(7)(v) and (vi) and the corresponding step of § 1135.44(b); and

(f) Add the amount obtained from multiplying Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1135.44(a)(11) and the corresponding step of § 1135.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1135.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers who filed reports prescribed by § 1135.30 for the month and who made the payments pursuant to § 1135.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total huhdredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(f); and

(d) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall by the "uniform price."

§ 1135.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1135.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1135.71, 1135.76, 1135.77, and 1135.78 and out of which he shall make all payments due handlers pursuant to §§ 1135.72 and 1135.77. Payments due from the fund shall be offset by payments due from such handler.

§ 1135.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1135.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1135.60(f).

§ 1135.72 Payments from the producer-settlement fund.

On or before the 15th day after then end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to 1135.71(a)(2) exceeds the amount computed pursuant to § 1135.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary fund become available.

§ 1135.73 Payments to producers and to cooperative associations.

Each handler shall pay for milk received from producers and cooperative association as follows:

(a) On or before the last day of the month, each handler shall pay to each producer from whom milk was received during the first 15 days of the month not less than the Class III price per hundredweight for the preceding month.

(b) On or before the 18th day of the following month, each handler shall pay to each producer from whom milk was received during the month, the uniform price per hundredweight as adjusted pursuant to § 1135.74, less:

(1) Payments made pursuant to paragraph (a) of this section;

(2) Deductions for marketing services pursuant to § 1135.86; and

(3) Other proper deductions authorized by such producer in writing.

(c) On or before the second day prior to the dates specified in paragraphs (a) and (b) of this section, each handler shall pay a cooperative association for milk from producers who market their milk through the cooperative and who have authorized the cooperative to collect payments on their behalf an amount equal to the sum of the individual payment otherwise payable to such producers pursuant to paragraphs (a) and (b) of this section.

(d) In the event a handler has not received full payment from the market administrator pursuant to § 1135.72 by the 18th day of the month, the handler may reduce pro rata the payments to producers pursuant to paragraph (b) and (c) of this section by not more than the amount of such underpayment. Following receipt of the balance due from the market administrator, the handler shall complete payments to producers not later than the next payment date provided under this paragraph.

(e) In making payments to individual producers as required by this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment is required pursuant to this order;

(4) The rate used in making payment, if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1135.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1135.74 Producer butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth of one percent variation from 3.5 percent by a butterfat differential rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1135.75 [Reserved]

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1135.30(b) and 1135.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants, handlers pursuant to § 1135.9(b) and (d), and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1135.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant, a handler described in § 1135.9(b) and (d), and another order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or another order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1135.60 shall be priced at the uniform price of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest Class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1135.60 for such handler shall include, in lieu of the value of other source milk specified in § 1135.60(f) less the value of such other source milk specified in § 1135.71(a)(2)(ii), a value of milk determined pursuant to § 1135.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1135.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1135.30(b) and 1135.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1135.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing

the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1135.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (b)(1)(iii) of this section applies.

§ 1135.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in money due the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1135.78 Charges on overdue accounts.

Any unpaid obligation pursuant to §§ 1135.71, 1135.76, 1135.77, 1135.78, 1135.85, and 1135.86, shall be increased 1 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

As his pro rata share of the expenses of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1135.44(a) (7) and (11) and the corresponding steps of § 1135.44(b), except such other source milk that is excluded from the computations pursuant to § 1135.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1135.76(a)(2).

§ 1135.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments directly to producers (other than himself) pursuant to § 1135.73, shall deduct 7 cents per hundredweight, or such lesser amount as the Secretary may prescribe with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 13th day after the end of such month. Such moneys shall be expended by the market administrator to provide for market information and to verify the weights, samples, and tests of milk of producers who are not receiving such services from a cooperative association.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 16th day after the end of each month shall pay such deductions to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which a deduction was computed for each producer.

Signed at Washington, D.C., on: October 21, 1980.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 80-33364 Filed 10-24-80; 8:45 am]

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Monday
October 27, 1980

Part VII

Department of Transportation

Office of the Secretary

Washington National Airport; Special Air Traffic Rules and Airport Traffic Patterns; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 93

[Docket No. 70, Notice No. 80-16]

Special Air Traffic Rules and Airport Traffic Patterns

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes procedures for allocating the hourly number of instrument flight operations (takeoffs and landings or "slots") that may be reserved at Washington National Airport (DCA) in accordance with the FAA's High Density Rule. The alternatives proposed include: Administrative allocation, slot auction and variations thereof. Comments are also solicited on the continued use of the airline scheduling committee. In addition, adjustments to each of the three systems are proposed to assure that small and medium-sized communities do not lose nonstop service to National to larger markets.

The two new proposed methods of allocation are consistent with the concerns expressed by the Chairman of the Civil Aeronautics Board and the Department of Justice about continuing the antitrust immunity under which the airline scheduling committees currently allocate slots at the high density airports. They are also consistent with the policy set forth in the Airline Deregulation Act of 1978 that maximum reliance be placed on competitive market forces and on actual and potential competition to provide an efficient, innovative and well-managed air transportation system.

DATE: Comments must be received by December 26, 1980. In addition, interested persons will have until January 26, 1981 to reply to any comment contained in the public docket.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Docket Clerk, Office of the Secretary, Docket No. 70; Notice 80-16, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590 or be delivered in duplicate to Room 10421, 400 Seventh Street, S.W., Washington, D.C. 20590.

Comments delivered must be marked: Docket No. 70.

Comments may be inspected at Room 10421 between 9:00 a.m. and 5:30 p.m.

Commenters wishing the DOT to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments on Docket No. 70." The postcard will be dated and time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT:

Mr. Harvey B. Safeer, AVP-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-3331.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before December 26, 1980, and reply comments received on or before January 26, 1981, will be considered by the Secretary before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the 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. A report summarizing each substantive public contact with DOT personnel concerned with the rulemaking will be filed in the docket.

The Relationship to Notice No. 80-14

On October 16, 1980, the Department issued a Notice and Request for Comments (Notice 80-14) concerning the allocation of slots at Washington National Airport during the period December 1, 1980, until April 26, 1981. (45 FR 69403, October 20, 1980) The October 16 Notice is somewhat related to this Notice of Proposed Rule Making; however, this Notice proposes several alternative, long-term methods of allocating slots at Washington National Airport while the October 16 Notice concerns itself only with the need to resolve a short-term problem raised by the failure of the Scheduling Committee to allocate slots for the December-April period.

Public Hearing

A public hearing on the proposal will be scheduled within 30 days and a notice announcing the time and place of the hearing will be published.

Discussion of the Proposed Rule

Background

This notice is related to a Final Rule, Amendment Nos. 93-37 and 159-20 and a Policy (45 FR 62398, September 18, 1980 issued by the Department which sets forth a policy with implementing regulations for the future operation and development of Washington National Airport and Dulles International Airport.

The Federal Aviation Administration has broad authority under the Federal Aviation Act of 1958, as amended (FAAct) to regulate and control the use of navigable airspace of the United States. Under Section 307(a) of the FAAct (49 U.S.C. 1348(a)), the agency is authorized to develop plans for and to formulate policy with respect to the use of navigable airspace and to assign by rule, regulation, or order the use of navigable airspace under such terms, conditions, and limitations as may be deemed necessary in order to insure the safety of aircraft and the efficient utilization of such airspace. Under Section 307(c) of the FAAct (49 U.S.C. 1348(c)), the agency is further authorized and directed to prescribe air traffic rules and regulations governing the efficient utilization of the navagible airspace.

Under the authority of this statutory mandate, the FAA promulgated the "High Density" Rule (14 CFR 93.123 *et. seq.*) in Amendment 93-13 (33 FR 17896, December 3, 1968), effective on April 27, 1969.

The High Density Rule designates high density traffic airports and prescribes limitations on the operations that can be conducted at those airports. Section 93.123 establishes limits on the number of IFR (Instrument Flight Rules) operations that may be conducted at high density airports and further allocates those allowable IFR operations among the specified classes of users at high density airports. The preamble to the amendment described the purpose of the rule in terms of effecting the efficient utilization of the navigable airspace, stating it was "to provide relief from excessive delays at certain major terminals."

In conjunction with the high density regulations and as a means of implementing the regulations, in 1968 and 1969 the air carriers and air taxis formed committees to schedule their operations allocated under the rule. Under the authority of section 412 of the FAAct, the CAB approved the Air Carrier Scheduling Agreements (Order 68-12-11) and the air taxi scheduling agreements (Order 69-2-52) finding them to be not adverse to the public interest. In approving the agreements, which provided the air carrier

scheduling committee with immunity from the anti-trust laws, the CAB stated:

Furthermore, the agreements appear to be a necessary step in the implementation of the FAA regulations * * * Considering the complexities which would be involved in any attempt by the government to allocate scheduled assignments among the various individual airline users, we believe that the allocation of operations among the various individual carriers serving the high density airports should be left preferably to resolution by a voluntary cooperative effort by the carriers. Order 68–12–11, p. 4.

On September 2, 1966, the Civil Aeronautics Board approved an earlier agreement (Agreement CAB 19078) filed by various air carriers which was responsive to outstanding FAA NPRMs [1] concerning National Airport.

The Board stated that the agreement was responsive to FAA's program, but cautioned that the establishment of schedules by air carrier agreements have certain competitive implications.

In a letter dated October 9, 1968, to the CAB, the Assistant Attorney General, Antitrust Division, Department of Justice, stated "under the circumstances that now exist, the Department does not object in principle to properly limited agreements among air carriers to meet FAA air traffic congestion regulations." In another letter of that same date to the Acting Administrator of the FAA, the Assistant Attorney General stated:

The Department of Justice recognizes the urgent and critical nature of the air traffic congestion problem. The Department's interest in this matter is that the problem of air traffic congestion be dealt with, quickly and effectively, in a manner consistent with competitive principles.

The Assistant Attorney General also suggested that another method of performing this task would be for the FAA itself to allocate slots at congested airports. The letter to the FAA concluded:

We do not believe that in allocating airspace to reduce air traffic congestion, the FAA would be assuming an unmanageable task. In any event, such a responsibility would have to be exercised by the FAA to implement its proposed regulations should the airlines be unable to reach satisfactory agreements. The statutory authority for the FAA to do so is evidenced by a clear Congressional intent to place with the FAA primary responsibility for promoting and insuring the safe and efficient utilization of the navigable airspace and plenary authority to implement its responsibilities under the Act. 1958 U.S. Code Cong. & Adm. News 3741. The language of Sections 102, 307, 313, 601, and 1002 of the Act, together with its legislative history and general principles of administrative law, support the conclusion that the FAA has the authority to order any individual airspace user to reduce its operations at congested airports in the interest of safe and efficient airspace utilization, subject only to the requirement that the particular remedy fashioned by the FAA have a clear and substantial relation to its objectives and not be unreasonable, arbitrary, or capricious.

In July 1978, the CAB amended its practice of 12 years by announcing that it would reexamine "the need for and desirability of continued approval" of the airline scheduling committee agreements. (CAB Order 78–7–110, July 21, 1978.) In November, 1979, the FAA/CAB jointly circulated a report prepared by Polinomics Research Laboratories, Inc. This report is discussed in detail later in this notice. The Antitrust Division of the United States Department of Justice in commenting on the Polinomics Study [2] recommended "replacement of the airline scheduling committees with some type of market mechanism for allocating slots." Both the CCAB and the Department of Justice have advised the DOT of their concerns about the anti-competitive aspects of the airline scheduling committee process.[3] As a result of these concerns and the possible demise of the scheduling committees, the DOT believes it to be in the public interest to consider alternate allocation methodologies that ensure efficient utilization of the navigable airspace and further attempt to ensure that any such allocation methodology is consistent with antitrust concerns. The DOT also believes that these same concerns are applicable to the commuter air carrier association at National and require the consideration of alternative allocation methodologies for this association as well as the scheduling committees.

If all levels of air travel continue to increase, it is anticipated that the congestion problems, which faced the FAA in 1969 when the "High Density" Rule was first promulgated, will become more acute. Therefore, any proposal which would eliminate consideration of an allocation system and relies upon a first-come-first-serve system, at a time when there are problems of serious airspace congestion as an increasing number of users seek access to a limited resource, would be contrary to the DOT's mandate to prescribe rules and regulations for the efficient utilization of the airspace. The first-come-first-served system remains the basic FAA approach, but it assumes that all users can be reasonably accommodated—that is, that airspace resources are adequate. That philosophy cannot be reasonably applied when the resources available are not sufficient to satisfy the demands placed upon them. A system that allows only the first group of aircraft arriving at a terminal to land, while keeping all other aircraft in holding patterns or requiring them to divert to some location other than their intended destination because the hourly slot allocation at a given airport has been reached, cannot be considered an "efficient utilization of airspace." In fact, this would not only recreate the problems faced by the FAA when the High Density Rule was first promulgated, but would also compound them.

Even if airspace congestion did not materialize under a first-come, first-served system, serious problems could nevertheless be caused by ground congestion. The difficulties resulting from the groundside congestion at DCA were recognized by the CAB in June, 1967, when it instituted an investigation of congestion at the airport (See Order E–25319, June 20, 1967). Similar problems could occur at all high density airports and could affect other airports served by flights to or from them. The overall result would be an inefficient and unreliable system of air transportation service. Thus, the elimination of the scheduling committees would require the DOT to develop an alternative method of slot allocation to assure the efficient use of air and ground space.

As a result of the aforementioned, the DOT must continue to explore alternate methods of allocation. In view of the increasing demand for access to the relatively scarce resource of navigable airspace, the DOT does not consider it to be in the public interest to delay consideration of alternative action. Furthermore, since the demand for slots at DCA has increased dramatically and since the final rule implementing the policy for future operations at DCA (Amendment No.) will further reduce the availability of reservations for air

[1] On July 1, 1966, the Federal Aviation Administration issued a document entitled "Policies Covering Use of Washington National Airport" (31 FR 9148, July 2, 1966). In order to insure that the air carriers' operations were consistent with the hourly limitations in existence at the time, a policy was adopted that all changes or additions to air carrier schedules required written approval of the Director of the Bureau of National Capital Airports. On July 27, 1966, the Federal Aviation Administration issued an NPRM (cancelling the 1966 Policy) which proposed a limitation of 40 air carrier operations per hour at National Airport. The notice stated "the agency hopes that the limitations of 40 air carrier operations an hour can be accomplished among the various air carriers."

[2] The Justice Department's comments, as well as all comments received in response to the Polinomics study, are contained in the docket.

[3] As the Justice Department stated in its comments, it is "the executive agency charged with the responsibility of enforcing the antitrust laws and for furthering the nation's fundamental economic policy of competition."

carriers, the allocation proposals contained herein will, at this time, only be proposed for DCA. After a trial period there, the procedures if promulgated or variations thereof, if they are effective, may be expanded to cover all high density airports. It must be emphasized that although these options are prepared for DCA, other options may be more appropriate and they may be proposed for other high density airports. Such expansion would occur only after further rulemaking. Special provisions would be considered at airports serving foreign air commerce.

In exploring these allocation alternatives, the DOT has been mindful of Congressional intent, as stated in the Airline Deregulation Act of 1978, that maximum reliance be placed on competitive market forces.

Polinomics Study

After discussions between CAB, FAA and the Office of the Secretary of Transportation, the CAB, in conjunction with the FAA, commissioned Polinomics Research Laboratories, Inc. (PRL), to research the slot allocation problem and to report its findings on:

(1) The workings of the scheduling committee process;

(2) The possibility of employing some type of price mechanism to allocate slots; and

(3) Any other possible solution to the problem, excluding administrative allocation, which could successfully allocate the slots among the carriers consistent with FAA regulations as well as the mandates of the Airline Deregulation Act.

The PRL study recommended:

(1) A primary slot market organized as a sealed-bid, one price auction (each winning bidder paying the same price, i.e., the value of the lowest accepted bid);

(2) A computerized aftermarket to enable users to buy and sell slots;

(3) A separate market for small communities;

(4) Varying slot definitions to reflect individual airport capacity problems;

(5) Funds generated in auction to be used for expanding airport capacity, where possible. If not possible to expand capacity, funds should be used to subsidize less desirable off-peak traffic;

(6) Sanctions to prevent nonuse of substantial numbers of slots; and

(7) A gradual introduction.

Econ, Inc. Study

The FAA contracted in August, 1979, with Econ, Inc., of Princeton, New Jersey to further analyze slot allocation by auction. The contractor's report will also be included in the docket. The contract included a week-long evaluation exercise (February 11–15, 1980) in which an actual slot auction of the type proposed in this rulemaking was conducted with the MIT/Flight Transportation Associates Airline Management Game. This evaluation was a realistic computer model that permitted competing airline teams to schedule hypothetical air transportation networks and estimate carrier performance through the simulation of resulting traffic flows, costs, revenues, and load factors. Both the proposed "trading post" auction and administrative allocation systems were tested by teams made up of management and professional staff of eight airlines. The final report of this evaluation will be included in the docket and will be available from the Director of the Office of Aviation Policy, whose address is printed above.

I. Allocation Alternatives

Based upon a review of the PRL and Econ studies, an analysis of the comments submitted on the PRL study and further review of this area, it is proposed that Part 93 be amended to contain specific methodology for allocation of slots at DCA. The alternative allocation methods being considered by the DOT are:

A. Administrative allocation.

B. Allocation by auction.

C. Allocation by the present scheduling committee (the status quo) or modification thereof.

Regardless of the procedure that may be adopted, there are elements of the allocation process which are applicable to each method and should be considered. Specifically, these elements are:

—How should a "slot" or "reservation" be defined?

—Should all airport users compete for all slots or should there be separate allocations for different classes of users?

—Who should be eligible to bid for slots?

—Over how long a time period should a slot be awarded?

—What property rights, if any, do recipients of a slot have with respect to resale of slots?

—Should there be a penalty for nonuse of a slot?

—What provision is provided to assure that slots are available for essential air service?

—Should provision be made to restrict the use of slots to assure that carriers do not substitute more profitable service to larger cities for existing service to smaller communities?

With respect to these elements, the DOT proposes that:

1. A "reservation" be defined as authority to schedule one operation, either landing or takeoff, during a given one hour interval between 7:00 a.m. and 8:59 p.m. or the half hour interval between 9:00 p.m. and 9:30 p.m. The term "slot" as used in this document refers to a single reservation.

2. Three classes of reservations be defined. The first would be for "air carriers," which would be as defined in Part 1 of the Federal Aviation Regulations (FAR), that conduct operations with aircraft having a maximum passenger seating capacity of 56 or more; the second would be for "scheduled air taxis" [4] which would be defined as air taxis or an air carriers as defined in Part 1 of the FAR that conduct operations with aircraft having a maximum seating capacity of less than 56; and the third would be for other operations which would include general aviation. This is consistent with the classes of users adopted in Amendment No. 93–37. The first two categories of slots would be subject to the carrier agreement, administrative allocation or auction processes. The DOT further proposes that allocations for the first two catetories of reservations should be made through separate allocations for each category. Finally, a procedure for establishing fees for the third class of user would be set forth in a separate section.

3. Bidding or application for reservations would be limited to carriers operating under a certificate of convenience and public necessity issued by the CAB or registered with CAB and exempted from certification under 14 CFR Part 298.

4. Reservations would be awarded for a period of six months starting either in October or April immediately following the award of reservations. This would follow the current procedure of the airline scheduling committee, which allocates slots in January for the six-month period starting the last Sunday in April, and in July for the six-month period starting the last Sunday in October. Some questions have been raised as to whether a six month "reservation" period would create problems for commuter air carriers. Comments are solicited on this point.

5. The air carrier slots available under each of the three proposed allocation methods would be sudivided into three parts, with three different sets of slots

[4] This class of user is more appropriately identified as "commuter air carrier." The term "scheduled air taxi, " is used in this section to be consistent with the language in FAR Part 93. This term will be changed in a later amendment.

devoted to three categories of airports served: large hub, medium hub, and small and non-hub.

The question of a marketable property rights for holders of a slot and the question of a penalty being levied for nonuse of a slot are dealt with in the discussions of each of the procedures under consideration. In addition, under the administrative allocation procedure, the DOT proposes, as one alternative, to allocate slots specifically for the purpose of providing the minimum level of essential air service as determined by the CAB. The DOT recognizes that there may be some problems with this proposal and, therefore, solicits comments on other alternatives which may be more effective for the allocation of slots for essential air service under any allocation procedure chosen.

The following is a description of the administrative, auction and scheduling committee allocation alternatives and the proposed modification to each to preserve an equitable distribution of traffic to small, medium and large hub airports.

A. Administrative Procedures

In order to assure continuity of operation at DCA, the DOT has been analyzing several alternative administrative procedures for allocating IFR reservations. The easiest way to allocate slots would be to freeze all allocations at their existing levels. While this may suffice in the short run (one scheduling period), over the longer term it is neither adequate nor desirable. Such a static situation is inconsistent with the goals and objectives of the Airline Deregulation Act to encourage increased competition and permit access by new entrant carriers. New entrants could participate only to the extent that incumbent carriers were willing to relinquish slots.

The problems of new entrants could be resolved by awarding new entrants a portion of the slots and prorating the remainder among the prior users. This approach stands at one end of the spectrum. At the other end is an allocation process based upon a complex mathematical linear programming model. The model would operate on a series of constraints represented by the different airlines, the aircraft they own, the markets that they could serve, the markets they have historically served, the number of passengers that potentially exist in each market pair, the operating costs of each aircraft type for each airline and some estimate of expected fares. The objective would be to (1) maximize the number of passengers carried, industry profits, or some specially defined social welfare function or (2) minimize total cost, cost per revenue passenger mile or some weighted social cost function. The solution to this model is the slot allocaion that is expected to achieve the objective function.

The DOT has been experimenting with these types of models. The development of such models, however, has not reached the point where they can be effectively utilized to allocate slots. A procedure has been developed, however, which has some of the attributes of the two extremes. The initial objectives in developing this procedure were: (1) Not to generate extreme changes in allocations from one scheduling period to the next, even though over a long period of time, extensive changes to allocations could occur; (2) to provide for new entrants and potential slot increases for "efficient" users of existing slots; and (3) to incorporate some concept of "public service" achieved in the use of the slots. To some extent, these objectives reflect the concerns expressed by both those who support and those who oppose the present scheduling committee process or the market allocation (auction) process.

The alternative being proposed by DOT (Alternative A) involves a two-step procedure. This procedure is described in detail in the FAA reprt, "A Method for Administrative Assignment of Runway Slots" a copy of which is contained in the docket. Each air carrier wanting an IFR reservation would be requested to submit an initial reservation request. For any given hour, an air carrier could request one or more reservations as desired. These requests would have to be submitted by January 1 and July 1 of each year. All the requests would be aggregated. If there is a resolution, i.e., the number of reservations requested is less than or equal to the number available in each hour, all requests would be granted. If there is no resolution, it would become necessary to determine the total number of reservations to be awarded to each air carrier.

Assuming there is no resolution, each air carrier's award is then computed as a function of:

(a) Number of slots allocated in preceding scheduling period, with a minimum of four slots;

(b) Number of passengers enplaned per departure;

(c) Number of passengers deplaned per arrival;

(d) Number of different cities to which nonstop service was provided in preceding scheduling period relative to number of slots allocated.

The number of slots requested by each carrier would constitute the upper bond of the number of slots allocated to the air carrier.

Each air carrier, including new entrants, would at a minimum receive at least four reservations per day (but not more than the number requested). Sufficient reservations would also be allocated to provide essential air service as determined by the CAB. The four reservation minimum could be changed by future rulemaking to balance changes in total daily IFR reservations and the number of air carriers requesting reservations.

Consideration of the number of slots currently allocated to a specific air carrier would provide for continuity and stability of existing service patterns. At present, the DOT is considering allocating half of the available slots based upon the existing allocation. The second and third factors are measures of service provided in the past with the slots that have been allocated. Average enplanements or deplanements per operation, however, tend to favor those operators using large aircraft in high density markets. One of the factors discussed by many respondents was the potential for concentration of slots in such markets to the exclusion of smaller markets. Thus, the fourth factor has been included, namely, the number of different cities provided direct air service by each air carrier. This criteria along with the enplanement/deplanement criteria is considered a measure of public service. The "cities served" criteria is intended to obtain a better distribution of service to and from high density markets among the three area airports, National, Dulles and Baltimore-Washington, and to provide direct access to and from National to the maximum number of cities.

Reservations for air taxi operations would be allocated in the same manner.

Specific issues that comments should address include:

1. The relative weights to be given to the factors. DOT is currently considering 50 percent for factor (a), 15 percent each for factors (b) and (c), and 20 percent for factor (d);

2. In computing factors (b) and (c), the DOT is considering crediting a carrier for the number of passengers enplaning or deplaning and are thus served by the aircraft making the stop.

3. In computing factor (d), DOT is considering crediting a carrier only for the number of different cities to and from which nonstop service is provided. Other alternatives in addition to or in lieu of (d) are:

x. Consider only those cities to which a carrier provides sole service;

y. Consider all cities to which service is provided within the established perimeter;

z. Consider all cities to which connections are provided in the United States.[5]

4. Allocation factors (b) and (c), enplanements and deplanements, encourage the maximum efficient use of available runway capacity. Aircraft load factors are a widely accepted measure of the maximum efficient use of aircraft. An alternative or additional criteria for allocating runway slots could be the load factor of flights to and from Washington National Airport attained by carriers during the preceding six month period. However, in order to prevent double counting some passengers, the DOT invites comments on a modification to the traditional method of computing load factors, i.e., the ratio of enplanements or deplanements to the available seats on each flight out of or into Washington National Airport.

Once each carrier is awarded a total number of reservations for the day, the second part of the process would commence—award by hour of day. Each carrier would be required to submit several alternative schedules showing the hourly distribution of its total daily reservation award. The number of operations in each schedule alternative would not be allowed to exceed the carrier's total daily reservation award. In addition, each carrier would be requested to provide preference rank for each alternative. The DOT would attempt to develop one or more feasible consolidated schedules for air carriers and for air taxis from the alternative schedules submitted by air carriers and air taxis. Feasible schedules would be those in which total operations in each hour do not exceed the IFR hour reservation maximum. In the event that more than one consolidated schedule is feasible, the DOT would select the consolidated schedule which maximizes attainment of individual carrier preferences as expressed by their preference ranking of schedules.

Participants in the previously mentioned week-long evaluation exercise (February 11–15, 1980) sponsored by the FAA and conducted by Econ, Inc., simulated application of the administrative allocation method described above in the context of the MIT/Flight Transportation Associates Airline Management game. Comments of participants in the exercise with respect to the administrative procedure are set forth below:

- The weights in the entitlement formula are arbitrary and cannot be shown to favor all carriers equally at all airports. As a result, carriers would end up tailoring their schedules to serve the entitlement formula rather than passenger convenience.
- The method might favor the larger carrier which would get many slots based on its extensive pattern of service and large volumes of connecting passengers.
- Computerized consolidation of individual carrier plans may never result in a combination which matches the hourly quota necessitating either submission of additional alternative plans by carriers or some other adjustment to develop a consolidated plan.
- The criteria to allocate slots should include through passengers.
- The consolidated plan for the hourly use of slots may adopt an individual carrier's least desirable alternative.
- The administrative method might be improved simply by limiting its use to overall allocation of slots and then using a scheduling committee to determine hourly allocations.
- Airlines are not free to revamp schedules capriciously in order to accommodate a particular allocation method. A schedule change at one airport has a ripple effect which impacts other segments served by the same flight.
- Incumbent carriers would lack reasonable certainty of obtaining slots for new markets and would have to reduce existing services to accommodate new carriers.

Comments are invited with respect to the overall mechanism, the specific weighting factors to be assigned to each component of the allocation formula, the minimum allocation to new entrants, the separate applicability to both the scheduled airline slots and the commuter slots and the set-aside for essential service.

B. Auctions

In a market economy, scarce resources are normally allocated by means of a price mechanism. One price mechanism that has been suggested as a means of allocating slots at National Airport is an auction. Auctions may vary as to whether they are conducted orally or by submission of sealed bids. Auctions may begin at a low bid and work upward to a final price or begin at a high price and work downward to a final price. Final auction prices may be established at the exact value of each qualifying bid or as "one price" (the value of the lowest qualifying bid or the highest rejected bid).

Before discussing auction variations, it is appropriate to point out that in accordance with 31 U.S.C. 482 and 483a, the money received as a result of any auction system will not be retained by DOT but will be paid into the Treasury of the United States. Other disposition of the revenues, although not now authorized by statute, may be more appropriate. For example, the money received as a result of any auction system could be paid into an appropriately dedicated fund for National Airport or some other aviation related purpose. Comments are invited on potential uses and legislation necessary to permit them.

It should be clearly understood that the auction process proposed herein is not intended to replace landing fees. Landing fees are only intended to recover the cost of maintaining and operating the airfields; they do not provide for and are not related to a system which would assure efficiency of access through the navigable airspace when operating to or from a particular airport, which is not what is contemplated by this auction process.

The DOT is proposing a semi-annual procedure (Alternative B) for National Airport with separate auctions for air carrier and commuter reservations. Reservation auctions would allow for the competitive pricing of the reservations. For hours when reservations are in high demand, the price of a reservation would be high. Conversely, for hours when there is less demand for reservations, the price would drop toward zero and would become $1.00 if there is excess supply. The specific procedure proposed by DOT consists of two elements: A "reservation auction" followed by a continuously operating "reservation exchange." The auction procedure termed the "Trading Post Auction" is described in considerable detail in a report entitled "The Allocation of Runway Slots by Auction" prepared by Econ, Inc. A copy is available for review in the docket. The proposal for air carriers is as follows (A similar procedure would be used for air taxis):

1. Each air carrier wanting an IFR reservation would be required to submit, by January 1 and July 1 of each year, sealed bids for the reservations that it desires for the six month period beginning the following April or October. For any given hour, an air carrier could bid for one or more reservations, all at the same price or at differing prices. Each bid would be required to identify the price and

[5] Regulatory Alternative A uses all nonstop service as a basis for determining the number of reservations given to each carrier. After further review of the proposal and the comments received, alternatives x, y, and/or z may be added to proposed Section 93.135(a)(1), and (b)(1).

specific hour for which the reservation is requested. A carrier may submit bids for as many reservations as desired in the same or different hours.

2. Within 72 hours after the receipt deadline for initial bids, the DOT would make public the aggregate demand curves for each hour (but not the individual airline demand curves), the market price for each hour's slots and a conditional allocation of the number of slots that they would have obtained as a result of their bids. The aggregate demand would be arrived at by adding together, at each possible price, the number of slots that each bidder desires. Either the total demand would be equal to or less than the supply of slots that are available, in which case all demands are met at a dollar price, or the demand would exceed the available supply. In the case of excess demand, the market price would be established at the highest bid price that is rejected. For example, at Washington National, the air carrier quota for any hour would initially be set at 36 slots (as adopted in Amendment Nos. 93–37 and 159–20). The highest bidders for the 36 slots would obtain them at the highest price bid but insufficient to obtain the 36th slot which would be the 37th highest price bid. Therefore, all successful bidders would pay the same price for each reservation at that hour.

3. If the conditional allocations and prices are agreeable to all bidders, an efficient, competitive equilibrium would have been found. In this case, all reservations would be awarded based upon the initial bid prices. It would be expected, however, that many of the bidders would not be satisfied with the initial results.[6]

4. An air carrier wishing to submit new bids would be allowed to do so within 72 hours after the DOT announces tentative awards in accordance with proposed § 93.135(a)(2). Only air carriers who have made a bid in the first round of bidding would be allowed to submit a bid in a subsequent round. During this additional round of bidding, a bidder would bid on any number of reservations in any hours. The sealed, secret, individual bids would be accumulated by the same procedure employed in the first round, and new conditional allocations, trading prices and total demands would be announced. This process is repeated so that instead of a one-time auction, there would be a series of auctions. Each iteration would increase the information available to the bidders, each would add to the bidder's insight into the demand pressure over all hours of the day. If, at any step, no bidder wishes to change its bid, then the process would terminate at an equilibrium solution.

5. After any 72 hour period during which no bid revisions are received by the DOT or if the only bids received, within 72 hours since the DOT last made public the number of reservations requested, are minimally different from the last bids received, bidding would close and prices would be established. A minimum difference may be in price or in the number of bids submitted. The DOT proposes to use a minimum bid difference procedure to establish a bidding "equilibrium" that will preclude minor fluctuations in carrier bids unnecessarily extending the time it takes to accomplish the slot auction. Based on the FAA's experience with the auction simulation performed last February, the DOT proposes that a minimum difference be established as 20% or less. For example, if the last determined bid price was $40 per reservation and the only newly submitted bid for that hour was $47, the new bid would be rejected and bidding would be closed since the difference between the two bid prices ($47–$40 which is $7) is less than 20% of the last bid price. A minimally different submission of bids would be a change in 20% or less of the overall awards. For example, if only 20 bids are submitted (out of a total 522 bids available in any day) for reservations, bidding would close since that is below 20% of the total number of slots available. In these instances, the bidders would be required to accept that slots awarded them and the obligations of payment at the final trading post prices.

6. Alternatively, the auction would be terminated and the most recent conditional awards and prices finalized, if all participating bidders inform the DOT within 24 hours after the announcement of conditional awards that they elect to terminate the auction.

7. The DOT would notify each successful bidder in writing of the amount of its accepted bid prices. The bidder would be required to submit to the DOT payment for one-sixth of the total amount accepted within 14 days after it has received such notification. The balance would be payable in five equal increments starting on the 1st day of the reservation period. Succeeding payments would be made on the first day of each month until the balance is paid.

8. At any time between award of reservations and the end of the time period over which they were purchased, reservation owners could sell their reservation to other users through a DOT reservation exchange. Any reservation owner wishing to sell a reservation and any air carrier or air taxi wishing to purchase a reservation would notify the DOT in writing of its intention. The DOT would maintain a list of available reservations and desired reservations and bid prices, but the names of the bidders and offerors would not be disclosed until the transaction is completed. This would eliminate special deals, collusion or conspiracy among the members of any class of user. The DOT would hold available reservations open to bids for a minimum of 24 hours after notification of their availability. The DOT would sell the reservation to the highest bidder; however, the seller would not receive more for the particular slot than it paid. The excess amount over the original purchase price would be paid to the Treasury (unless authority is obtained to place the money elsewhere, as previously discussed). The seller would be absolved of any payment requirement associated with the relinquished reservation provided that the resale price received by the DOT is equal to or exceeds the seller's payment obligation. Air carrier reservations could be purchased by air carriers or scheduled air taxis while scheduled air taxi reservations could be purchased by scheduled air taxis only.

In support of a market mechanism for allocating slots at airports with quotas, the Department of Justice stated:

> By requiring carriers to compete and pay for slots in the marketplace, carriers operating in the markets that placed the greatest demand on access to these airports would have the greatest incentive to acquire them. In this way, consumer welfare would be maximized, thereby, furthering Congress' intent to rely on market forces to allocate scarce transportation resources.

Increased economic efficiency would result from several changes emanating from a price allocation system. By requiring carriers to pay explicitly for slot rights, an auction method would assure that the slots go to those carriers that can most profitably use them. New entry and expansion by the more efficient carriers would be encouraged, while less efficient carriers would be discouraged from entering or expanding at the airport.

[6] At this point in the PRL procedure, for any single quota airport the bidding would stop and adjustments would have to occur through a secondary slot market. The proposal described herein continues with additional rounds of bidding. This is why the allocations are considered conditional. The first round gives each bidder information concerning the demand pressures which exist for each scheduling hour. On the basis of the information obtained about the results of the first round of bidding, and of each air carrier's individual needs, each air carrier could submit new bids in a second round of the slot exchange auction.

By creating a marketplace for slots, a carrier desiring to discontinue marginal or unprofitable service to a high density airport could sell its slots in the secondary market and thereby be relieved of slot payment requirements. If the carrier decides at a future date to reenter the high density airport, it could either buy slots in the secondary market or await the next periodic auction and bid for slots directly. The auction process would further work to improve efficiency by permitting carriers to dispose of slots without affecting their future ability to obtain slots. Under the scheduling committee process, airlines are reluctant to release a slot since their chances of ever getting the slot back are diminished as demand for slots increases.

One of the key areas addressed during the development of the Policy for the Metropolitan Washington Airports was the redistribution of passenger traffic from National Airport to Dulles or Baltimore-Washington International Airports. With slots at National free for the asking (within the quota ceilings), carriers have little incentive to establish connecting networks at the other two airports. By charging for the slots at National, via an auction system, it is expected that the cost of providing service between any other market and Washington will rise for service provided from National relative to that provided from either of the other two airports. Thus, there could be a cost advantage resulting from operating at either Dulles or Baltimore Washington International that could be reflected in lower fares, thereby promoting not only the Metropolitan Washington Airports Policy, but also the objectives of the Airline Deregulation Act. Even though there is a possibility that some carriers would choose not to reflect the additional cost of serving National by passing it through to National passengers through higher fares, the higher cost of National operations would nevertheless create an incentive for increased flights at the other airports.

While the Department of Justice recommends development of a market based system for allocating slots, there are some further considerations that it proposes. Specifically:

- The market mechanism chosen should result in the last added costs to carriers so that fares do not rise unduly;
- The objective of the system should *not* be to generate as much revenue as possible, but rather, only to require the *minimum* amount of expenditure necessary to assure that slots go to the carriers that value them most;
- Any market mechanism should take into account the needs of, and problems associated with, small community service;
- A computerized secondary market designed to facilitate expeditious buying and selling of slots should accompany the market mechanism;
- The interval between auctions should be one that balances the reliance on the primary auction market and the secondary market.

In commenting on the PRL report, carriers and trade organizations almost universally opposed the specific recommendations of the PRL report and the general concept of slot auctions. Comments by foreign flag operators will receive careful attention if the DOT considers auctions at high density airports where international service is provided, but the specific issues of international agreements are not germane to this NRPM because it addresses only National Airport which does not serve foreign air carriers. Some of these considerations are, however, relevant to review of comments in this rulemaking, since the procedures developed under it will serve as a model if implemented at National Airport. The analysis of the PRL proposal submitted by British Airways is typical of those received and is included in the docket for public review.

The arguments set forth in opposition to an auction (or other market) mechanism are set forth below.

- Airport development involves a complex balancing of commercial, environmental and land-use policies, and of Federal and local perspectives, which our society has firmly committed to the political process rather than blind economic forces.
- Lack of airport capacity in the U.S. and elsewhere *does not* arise from a lack of available development funds and will not be alleviated by the "profits" generated by auctions.
- An alternative use of the funds might be to subsidize off-peak traffic, which is the very kind of cross-subsidization among airline passengers and shippers that the pro-competitive policies of the Airline Deregulation Act are intended to eliminate.
- The auction principle ignores the policy of the United States, in company with most of the world, to regard the provision of airport services as a Governmental or public utility monopoly which must be undertaken on a nondiscriminatory basis for reasonable, cost-related fees.
- In the International Air Services Transit Agreement, 59 Stat. 1693 (1945), in force between the United States and 86 other nations, the United States has committed itself to impose, or permit to be imposed on international air services only "just and reasonable charges" for the use of American airports, and further, that "these charges shall not be higher than would be paid for the use of such airports and facilities by U.S. aircraft operators engaged in similar international services." These obligations are reiterated in one form or another in every bilateral air service agreement the United States has made with other nations.
- The slot auction approach to financing airport development is inconsistent with the balance Congress struck in the Airport and Airway Revenue Act of 1970 for allocating the development burden among the classes of users. Specifically, would the revenues generated by the slot auctions be in addition to or instead of the tax structure currently in place?
- The efficiencies that proponents of a slot auction foresee are based on a misunderstanding of airline operational and their economics. An auction for airport slots where the bidding is heavily influenced by operations and scheduling constraints as well as sunk marketing and capital costs will not ensure that slots are allocated to the carriers that can use them most profitably. Nor will it ensure that slots are awarded to the most efficient carriers, enabling them to enter new markets and grow in existing ones.
- The bidding system will not result in the use of slots by more efficient carriers, but by carriers serving large long-haul markets. Market economics (costs and revenue for city-pair service) and not necessarily airline efficiency will tend to be the driving factor in determining how much will be bid for a slot. The longer the market, the bigger the revenue. The long-haul markets also have a marked cost advantage since average seat-mile costs decline sharply with stage-length. The advantage is compounded in bigger markets where larger aircraft with more revenue per plane mile and lower average seat mile costs can be utilized.

In conjunction with the preceding points, comments are invited with respect ot the basis for such arguments given the fact that under any of the market mechanisms being considered all carriers would pay the *same* price for a slot during a given time period. Price discrimination would occur *between time periods* and not specifically between carriers.

- Two analyses submitted by Piedmont Airlines and the Commuter Airlines Association of America are available in the docket for review. These studies conclude that an auction procedure would result in a loss of service in short-haul markets, impair

connecting services and in general have a disproportionate impact on those airlines that provide service to small communities using small aircraft. As a result, that service which would be provided to small communities would be a significantly higher prices.

These comments raise the question of compatibility between the auction method of allocating slots and the proposed policy of maintaining National Airport's role as that of the region's "medium" and "short haul" airport. Respondents are requested to address the issue of slot auctions at National Airport and the impact that it might have on the relative air service roles that might result between National, Dulles and Baltimore-Washington Airports. The DOT is also interested in receiving any substantive data or analyses that address the issues raised by both proponents and opponents of slot auctions.

The DOT solicits comments on the auction as proposed (Alternative B). In addition to seeking comments on the entire proposal, the DOT specifically seeks comments on the following:

1. As an alternative form of auction, the agency is considering a one round only auction process. Under this procedure, bids would only be accepted under proposed § 93.135(a)(1). Subsequent rounds of bidding would not be accepted. The agency solicits comments on this one step auction as opposed to the multi-step or "Trading Post" auction.

2. Under the proposal, bids must be submitted for the hourly reservation requested. Reservations would be awarded for the entire auction period. Bids would not be accepted for only certain days during the auction period. The DOT will consider a modification to the proposal which would allow bids to be submitted for only certain days during the auction period. Comments are solicited on this suggested modification.

3. The DOT seeks comments on the time periods contained in the proposal. Particularly solicited are comments on whether the time periods would give air carriers or air taxis sufficient time to plan schedules. If the proposed time schedules are unacceptable, then commenters are requested to submit alternate time schedules.

4. Under the proposal, there is no requirement that reservations purchased be utilized (although payment must be made without regard to reservation use). The DOT solicits comments on the feasability of requiring that all reservations obtained be utilized for a minimum number of days each auction period. If not utilized that minimum amount of time, the reservation might be forfeited.

5. Comments are also requested with respect to the "slot exchange" concept, the necessity for a secondary market and the appropriateness of allowing airlines to profit (or incur losses) through the sale of slots.

6. Comments are also solicited on what should be considered as "minimally different" in accordance with proposed (Alternative B) § 93.135(a)(6).

C. Scheduling Committees

As noted above, the high density airport rules limit the number of slots that may be utilized per hour at four airports: Washington National, LaGuardia, John F. Kennedy International, and O'Hare. In lieu of individual reservation requests for the slots, the FAA accepts for each airport a consolidated schedule allocating slot reservations among different air carriers submitted by the Air Transport Association (ATA). Airline scheduling committees, made up of representatives of the air carriers and chaired by the ATA, work up the schedule on the basis of unanimous agreement. The Civil Aeronautics Board is currently investigating whether slot agreements substantially reduce or eliminate competition within the meaning of Section 412 of the Federal Aviation Act and whether it should continue to grant anti-trust immunity to slot ageements (80–9–). Civil Aeronautics Board permission in the form of an antitrust law exemption is required for the Committees to operate. (Section 414 of the Federal Aviation Act, 49 U.S.C. 1384). The Department of Justice, which will inherit the exemption-granting authority when the Board expires in 1985, has also opposed the scheduling committees as anticompetitive. While the DOT does not have statutory authority to authorize the continued operation of the committees, it is soliciting comments on them as part of its consideration of a non-action alternative.

If, in the light of public comments, the Department of Transportation concludes that the committee does not have a serious anticompetitive effect, and that it results in an economically efficient pattern of air service or that its operations can be modified in some manner to cure its perceived deficiencies, the Department will be prepared to make appropriate recommendations to the Board and the Justice Department.

Scheduling committees operate under a strict set of rules designed to prevent collusion and overtly anticompetitive behavior. To a degree, they are successful; they are criticized on antitrust grounds for faults inherent in their processes, not for active anticompetitive behavior. Members of the committee are identified by carrier name only. Economic matters, including the routes to be flown with the slots each carrier seeks, may not be discussed. Side agreements are not permitted, and individual carriers are not permitted to make direct exchanges of slots. All proposals are made publicly. Committee meetings are not "resolved," that is, a consolidated schedule is not adopted, until unanimous agreement has been reached.

At the beginning of each scheduling committee meeting, each carrier submits a list of the slots it desires for each hour. The chairman, an ATA employee, begins negotiations by attempting to persuade the members to reduce their request, especially for the most desirable hours where requests often far exceed the number of slots available, calling the roll of airlines in alphabetical order. When the total number of slots has been reduced to a level close to the total number of slots available for the day, the chairman directs the Committee's attention to the "sliding" process. At this stage, the carriers are asked to shift slot requests for hours in which total requests exceed the hourly limitation to other hours that are undersubscribed. At any time in the proceeding, the chair accepts proposed "exercises" from the members, such as a shift in the basic consolidated schedule being discussed by a uniform percentage reduction for each carrier, or by taking a prior season's schedule as a starting point. An individual carrier also may make a unilateral offer of a package of reductions and "slides" of its own request, which is often followed by corresponding offers from other carriers. When all carriers agree on a consolidated schedule, the meeting is "resolved," and the ATA submits the schedule to the FAA. If, after the meeting, a carrier notifies the ATA that it is not using a slot or slots, the members of the Committee are notified and another carrier is permitted to use it.

This process has been criticized for a number of weaknesses:

—The Committee's decisions do not turn on the economic efficiency of particular flights, and their results are not necessarily economically efficient overall.

—The negotiation process tends to lead participants to overstate their needs and cling to more slots than necessary in order to protect their position for future meetings.

—The veto each airline holds on the entire process, enables full participation by new entrants, but allows them to insist on more slots than they can economically use.

—There is no penalty for failure to use slots.

—The outcome of the meetings depends largely on what the carriers expect to happen if they do not agree. Their perception of what the DOT or the Congress would mandate in the absence of agreement skews the results in a way that does not provide for economic efficiency.

—While the scheduling committee agreement recognizes that carriers have no continuing right to the slots they use, the carriers view their previous allocations as "entitlements," and are reluctant to accept fewer slots.

Those favoring the scheduling committees argue that they do in fact make economically sound decisions, that the alleged distortions in the process are negligible, if they exist at all, and that the process is efficient, with minimal cost to the carriers and none to the Government.

The DOT invites specific comments on the appropriateness of the operations of the present committee system, as well as any suggestions for modifications to the rules under which the committees function that would improve the results. In addition, comments are invited on the current system used to allocate air taxi slots. Under that system, slots allocated to commuters are essentially frozen. New entrants or additional flights by a given air taxi can only be added when another air taxi relinquishes a slot or when the number of slots is increased. These will be weighed against objections to aspects of the auction and administrative allocation process to determine whether regulatory action under Alternatives A or B is advisable. In addition, these comments will be considered if Alternative A or B is adopted and proves unworkable, inefficient, or otherwise undesirable in actual practice.

D. Air Carrier Subcategories for Allocation

Part 93 of the Federal Aviation Regulations divides the available slots at Washington National Airport into three broad categories: Air carriers (scheduled operations of aircraft with more than 56 seats); commuters (scheduled operations of aircraft with 56 seats or less); and general aviation (all operations not included in the other two catetories). As set forth above, the three alternatives would in effect require users seeking slots to compete against other users in the same category, but not against users in some other category.

In the past, several airlines that primarily serve small or non-hub markets have indicated to the DOT that they could not compete on an economic basis for slots against carriers serving long-distance, dense, high-profit markets. In a similar vein, representatives of many small cities currently being served with nonstop service at National Airport have also expressed a concern that with fewer slots available, increased demand for slots, and an allocation mechanism based upon "economics" or "market efficiency," they would lose service altogether. The concerns of both the carriers and the communities served have some basis in fact, since the trend in slot usage at Washington National, as at other major airports, has been toward the more profitable longer haul and/or high passenger level markets.

There are a number of ways to reduce the potential adverse impact on smaller communities that currently have nonstop service to Washington National. At the one extreme, one could "grandfather" the existing slots to guarantee the present level of service. If a carrier chose to drop service to a specific city, it would lose its slots to any other carrier who offered to serve the affected city. Only if there were no carriers willing to provide such service could the slots be used to serve some other city. The DOT has decided not to consider such a system to preserve the *status quo*. Such grandfathering would not be responsive to the needs of those communities that do not currently have such service, nor would it be responsive to changing economic or market conditions. Indeed, it might even preserve service even if there was no need for it.

To address these concerns more flexibly, the DOT is considering adoption of a mechanism for stratifying the markets served from National Airport by scheduled air carriers into market subsets. Alternative bases for these subsets could be:

- Distance from Washington, D.C. (e.g. concentric rings)
- Geographic quadrants within 1000 mile perimeter (e.g. New England, Middle Atlantic, Southeast, etc.)
- City hub-size

While each of these methods has advantages and disadvantages, the DOT presently believes that city hub-size be the criteria for an initial division of the air carrier slots into subsets which would then be further allocated to specific carriers through one of the mechanisms described elsewhere in this NPRM.

The process [7] would start with a determination of the percent of total slots which are currently being used to serve the three market categories. During June, 1980, the distribution was:

	Percent
Large hub	54
Medium hub	28
Small nonhub	18

These percentages would then be applied to the total number of slots to be made available during the forthcoming scheduling period. This would set the size of the three air carrier "submarkets."

The second phase would be to allocate the slots independently in each of these submarkets using either scheduling committees, slot auctions or the administrative procedure. There would be no transfer of slots between "submarkets" unless the total demand for slots fell short of the number available. Using hub size as a criteria for establishing the allocation subset has the advantage of placing together markets of relatively comparable economic strength. While this mechanism would not guarantee that every small or nonhub would continue to receive the same amount of non-stop service to and from Washington National, it would tend to protect these markets from losing slots to the larger markets, and to compete more equitably for a limited resource with similarly situated competitors.

The DOT would be interested in any comments pertaining to:

- The need for a two-step process for air carrier slot allocation;
- Alternative criteria for subdividing the air carrier allocation and supporting rationale;
- Criteria for reallocating slots among allocation subgroups, if relevant;
- The basis for determining how many slots are allocated to each category of airports in subsequent scheduling periods;
- The distribution of slots by hour of day by airport classification.

With respect to the possible two-step process for allocation, DOT is also proposing that if the slots are not used to serve the specified hub type, they would revert to the DOT for reallocation.

[7] No specific regulatory language is proposed in this NPRM implementing this proposal. For purpose of submittal of comments, commenters should assume that any final rule relating to air carrier subcategories would include an amendment to § 93.123 which would break the hourly air carrier IFR operations permitted at Washington National Airport into subcategories with specific allocation for each category.

General Aviation Fees

Many of the respondents to the PRL study have raised the issue of pricing of access for general aviation. Given limited resources (slots) and the desire to achieve economic efficiency, they contend that it is inefficient to allocate slots specifically to general aviation users. Rather, they contend, such users should compete in the auction process for slots. In opposition to this is the argument that general aviation users do not require slots on a regularly scheduled basis. The specific issue of slots distribution among types of users was addressed in the Airports Policy. this NPRM addresses the issue of slot allocation among users within a class.

Two laternatives are being considered.

Alternative 1—Continue the present system of landing fees. This would not require a regulatory change.

Alternative 2—Set the fee for the use of a reservation (takeoff or landing) in any hour at the bid price established during the auction for scheduled air taxi reservations. this alternate (proposed § 93.135(f)) would only be promulgated if Allocation Alternate B is issued. In this connection, it must be noted that if an additional fee is imposed on general aviation, those falling within this class of user, as well as all others wishing to operate at DCA, would utilize other airports in the area including Dulles International Airport. The imposition of such a fee would be consistent with the court's decision in *Aircraft Owners and Pilots Association* v. *Port Authority of New York* (305 F. Supp. 93, 1969).

Comments with respect to these alternatives are solicited.

Extra Sections

It may be advisable to establish a pricing mechanism for extra sections authorized under current § 93.123(b)(4) if an auction slot allocation is adopted. The mechanism proposed for this alternative is that the same bid price for the first section would be charged for each extra section. This would require a regulatory change which is reflected in the Extra Section Alternate. Under this proposal the exemption for extra sections would remain in § 93.123(b)(4); however, the air carrier utilizing that extra section would pay the same bid price for the reservation as is paid by other air carriers for reservations during the hour in which the extra section is operated.

Comments are requested on whether such a provision is necessary or advisable.

Effective Date

DOT expects that it will need several months after the close of the comment period to analyze the comments received. In addition, the DOT believes that the effective date of the final rule will be 90 days after issuance of the rule. Comments on the effective date are invited.

Proposed Amendment

In consideration of the above, the DOT proposes to amend subpart K of Part 93 of the Federal Aviation Regulations (14 C.F.R. Part 93) as follows:

Allocation Alternate A: By adding a new § 93.135 to Subpart K as follows:

§ 93.135 Allocations at Washington National Airport.

(a) IFR reservations for air carriers at Washington National Airport as limited by § 93.123 shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air carrier that wants IFR reservations shall submit to the DOT a reservation request which contains the following information—

(i) A list of all reservations requested per hour;

(ii) A certified statement setting forth the total enplanements and deplanements at Washington National Airport during the preceding twelve-month period;

(iii) the total number of operations at Washington National Airport during the preceding twelve-month period;

(iv) A list of reservations held during the preceding six-month period showing effective dates, actual utilization, and equipment used;

(v) A list of all cities provided nonstop service to or from Washington National airport during the preceding twelve-month period; and

(vi) A list of all essential service determinations made by the CAB designating service to the Washington area as essential and currently being served through Washington National Airport and the subject carrier.

(2) Within 72 hours after the deadline for receipt of reservation requests, the DOT shall make public the total number of reservations requested and the total number of reservations per day awarded each carrier.

(3) If the total number of reservations requested by all air carriers for the day are less than or equal to the number of reservations available for the day, each carrier shall be awarded the total number of daily reservations it requested. If the total number of reservations requested for each hour of the day by all air carriers is less than or equal to the total available for the hour, each carrier shall be awarded the number of reservations requested each hour.

(4) If the number of reservations requested for the day by all air carriers exceeds the number available, each requesting carrier shall be awarded a total of four reservations per day (but not more than the number requested) plus two reservations per day for each minimum essential service flight specified by the CAB involving Washington National Airport and the subject air carrier. This initial award shall be termed "exempted reservations." The remaining total number of daily reservations (termed "nonexempted reservations") shall be awarded to each carrier based upon the following procedure:

(i) Each carrier presently serving the airport shall at the minimum either be awarded the lesser of (A) its requested total number of nonexempted reservations (requested reservations, less exemptions), or (B) the number of reservations calculated according to the following entitlement formula and rounded to integers.

$$Ai = .5(A)Bi + .3(A)Pi + .2(A)Ci$$

where:

Ai—carrier's allocation of total nonexempted slots to be allocated

A—total nonexempted reservations to be allocated

Bi—carrier's relative share of total daily slots during the preceding period

Pi—carrier's relative share of total enplanements and deplanements at the airport during the preceding period

Ci—ratio of number of cities served directly by the air carrier from the airport to the sum of the number of cities served directly from the airport by all carriers

i—subscript denoting individual carrier

(ii) If the allocation of any carrier calculated according to the entitlement formula given in paragraph (a)(4)(i) of this section exceeds the number of nonexempted reservations requested by the carrier, the excess number of slots shall be awarded to carriers desiring more nonexempted reservations than they are awarded by the entitlement formula. Such awards shall be in proportion to the recipient airline's relative share of total entitlements.

(5) If, in accordance with paragraphs (a)(3) or (a)(4) of this section, air carriers are awarded a total number of reservations per day, but no hourly award is made, within 30 days from the date of this award, each carrier must submit to the DOT a number of alternative plans specifying the hour by hour utilization of its awarded slots. Each carrier shall submit a minimum

number of plans where the minimum number is equal to the square root of the number of total slots awarded (both exempted and non-exempted) rounded to the next highest integer. Each carrier shall also submit a preference value between 1 and 100 for each plan; with 100 indicating the most preferred alternative.

(6) Within 30 days after the deadline for submitting hourly utilization plans, the DOT shall make public the number of reservations awarded to each carrier by hour of the day. In making these awards, the DOT shall attempt to develop a consolidated air carrier schedule of hourly reservations from among the alternative plans submitted by individual carriers in accordance with paragraph (a)(5) of this section. In the event that more than one consolidated schedule can be constructed, the DOT shall base hourly reservation awards on the consolidated schedule which maximizes, in the aggregate, the attainment of the carrier preference order submitted with the various alternative individual carrier plans. In the event that a consolidated schedule cannot be constructed from the alternative plans submitted by carriers, hourly reservations awards shall be based on a consolidated air carrier schedule developed by the DOT from the alternative plans submitted by the carriers in conjunction with minor changes in these plans as specified by the DOT after consultation with all carriers having been awarded slots.

(7) At any time after the public notification of reservation awards by hour through the end of the reservation period, carriers may cancel their reservations or request additional reservations from the DOT. The DOT shall reallocate cancelled reservations to carriers requesting additional reservations on a first come, first served basis.

(b) IFR reservations for scheduled air taxis at Washington National Airport, as limited by § 93.123, shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each scheduled air taxi that wants IFR reservations shall submit to the DOT a reservation request which contains the following information:

(i) A list of all reservations requested per hour;

(ii) A certified statement setting forth the total enplanements and deplanements at Washington National Airport during the preceding six-month period;

(iii) The total number of operations at Washington National Airport over the preceding twelve-month period; (iv) A list of reservations held during the preceding six-month period showing effective dates, actual utilization, and equipment used;

(v) A list of all cities provided nonstop service to or from Washington National Airport during the preceding six-month period; and

(vi) A list of all essential service determinations made by the CAB designating service to the Washington area as essential and currently being served through Washington National Airport and the subject scheduled air taxi.

(2) Within 72 hours after the deadline for receipt of reservation requests, the DOT shall make public the total number of reservations requested and the total number of reservations per day awarded each scheduled air taxi.

(3) If the total number of reservations requested by all scheduled air taxis for the day is less than or equal to the total number of reservations available for the day, each scheduled air taxi shall be awarded the total number of daily reservations it requested. If the total number of reservations requested for each hour of the day by all scheduled air taxis is less than or equal to the total available for the hour, each scheduled air taxi shall be awarded the number of reservations it requested in each hour.

(4) If the number of reservations requested for the day by all scheduled air taxis are greater than the number available, each requesting scheduled air taxi shall be issued two reservations (but not more than requested) per day plus two reservations per day for each minimum essential service flight specified by the CAB involving Washington National Airport and the subject air taxi. This initial award shall be termed exempted reservations. The remaining total number of daily reservations (termed nonexempted reservations) shall be awarded to each scheduled air taxi based upon the following procedure:

(i) Each scheduled air taxi presently serving the airport shall at the minimum either be awarded the lesser of (A) its requested total number of nonexempted reservations (requested reservations, less exemptions), or (B) the number of reservations calculated according to the following entitlement formula and rounded to integers.

$$Ai = .5(A)Bi + .3(A)Pi + .2(A)Ci$$

where:

Ai—scheduled air taxi's allocation of total non-exempted slots to be allocated
A—total non-exempted reservations to be allocated
Bi—scheduled air taxi's relative share of total daily slots during the preceding period
Pi—scheduled air taxi's relative share of total enplanements and deplanements at the airport during the preceding period
Ci—ratio of number of cities served directly by the air taxi from the airport to the sum of the number of cities served directly from the airport by all air taxis
i—subscript denoting individual air taxi

(ii) If the allocation of any air taxi calculated according to the entitlement formula given in paragraph (b)(4)(i) of this section exceeds the number of nonexempted reservations requested by the air taxi, the excess number of reservations shall be awarded to air taxis desiring more nonexempted reservations than they are awarded by the entitlement formula. Those awards shall be in proportion to the recipient air taxi's relative share of total entitlements.

(5) If, in accordance with paragraphs (b)(3) or (b)(4) of this section, air taxis are awarded a total number of reservations per day, but no hourly award is made, within 30 days from the date of this award, each air taxi must submit to the DOT a number of alternative plans specifying the hour by hour utilization of its awarded slots. Each air taxi shall submit a minimum number of plans where the minimum is equal to the square root of the number of total reservations awarded (both exempted and non-exempted) rounded to the next highest integer. Each air taxi shall also submit a preference value between 1 and 100 for each plan, with 100 indicating the most preferred alternative.

(6) Within 30 days after the deadline for submitting hourly utilization plans, the DOT shall make public the number of reservations awarded to each scheduled air taxi by hour of the day. In making these awards, the DOT shall attempt to develop a consolidated scheduled air taxi schedule of hourly reservations from among the alternative plans submitted by individual air taxis in accordance with paragraph (b)(5) of this section. In the event that more than one schedule can be constructed, the DOT shall base hourly reservation awards on the consolidated schedule which maximizes, in the aggregate, the attainment of the air taxi preference order submitted with the various alternative individual air taxi plans. In the event that a consolidated schedule cannot be constructed from the alternative plans submitted by air taxis, hourly reservations awards shall be based on a consolidated air taxi schedule developed by the DOT from the alternative plans submitted by the air taxis in conjunction with minor changes in these plans as specified by

the DOT after consultation with all air taxis having been awarded slots.

(7) At any time after the public notification of reservation awards by hour through the end of the reservation period, air taxis may cancel their reservations or request additional reservations from the DOT. The DOT shall reallocate cancelled reservations to air taxis requesting additional reservations on a first come, first served basis.

(c) For purposes of this section—

(1) The term "air carrier" or "air carrier except air taxis" means an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum passenger seating capacity of 56 or more.

(2) The term "scheduled air taxis" means a scheduled air taxi or an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum capacity of less than 56.

Allocation Alternate B: By adding a new § 93.135 to Subpart K as follows:

§ 93.135 Allocation at Washington National Airport.

(a) IFR reservations for air carriers at Washington National Airport, as limited by § 93.123(a), shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air carrier desiring an IFR reservation for the 6 month period beginning the following April or October, as appropriate, shall submit to the DOT an initial bid for reservations. Bids must identify the bid price and the hour of the day for which a reservation is requested.

(2) Within 72 hours after the receipt deadline for initial bids, the DOT shall make public the total number of reservation bids for each hour received and the number and price of reservations tentively awarded to each successful bidder. If, for any hour, the total number of reservation bids is equal to or less than the number available, all reservation bids for that hour shall be tentatively awarded at a $1 price. For those hours where the number of reservation bids exceeds the number of reservations available, reservations shall be tentatively awarded to the highest bidders for the hourly reservation. The award price for each hour shall be set at the highest rejected bid price.

(3) Within 72 hours after the announcement of tentative awards, any bidder who submitted initial bids may withdraw any or all of the bids previously submitted and may also submit new bids. New bids need not coincide with bids already submitted. Initial bids submitted in accordance with paragraph (a)(1) of this section shall remain valid unless formally withdrawn.

(4) Within 72 hours after the receipt deadline for bid revisions as set forth in paragraph (a)(3) of this section, the DOT shall again make public the total number of reservation bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. Tentative awards and prices shall be established according to the same procedure as specified in paragraph (a)(3) of this section.

(5) After each tentative reservation award, any bidder may continue to submit bid revisions in accordance with paragraph (a)(3) of this section. The DOT, in the event new bids are submitted, shall make public bid, award and the price information as specified in paragraph (a)(4) of this section.

(6) Reservations shall be awarded based upon the last set of bids received by the DOT if one of the following occurs:

(i) No additional bids are received during any 72 hour period.

(ii) The only bids received, within 72 hours since the DOT last made the last tentative award, are minimally different from the last bids received.

(iii) All bidders inform the DOT within 24 hours since the DOT made the last tentative award, that they desire to terminate the auction.

(b) IFR reservations for scheduled air taxis at Washington National Airport, as limited by § 93.123(a), shall be allocated in accordance with the following procedure:

(1) By January 1 and July 1 of each year, each air taxi desiring an IFR reservation for the 6 month period beginning the following April or October, shall submit to the DOT an initial bid for reservations. Bids must identify the bid price and the hour of the day for which a reservation is requested.

(2) Within 72 hours after the receipt deadline for initial bids, the DOT shall make public the total number of reservation bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. If, for any hour, the total number of reservation bids is equal to or less than the number available, all reservation bids for that hour shall be tentatively awarded at a one dollar price. For those hours where the number of reservation bids exceeds the number of reservations available, reservations shall be tentatively awarded to the highest bidders for the hourly reservation. The award price for each hour shall be set at the highest rejected bid price.

(3) Within 72 hours after the announcement of tentative awards, any bidder who submitted initial bids may withdraw any or all of the bids previously submitted and may also submit new bids. Withdrawn bids and new bids need not coincide with bids already submitted. Initial bids submitted in accordance with paragraph (a)(1) of this section shall remain valid unless formally withdrawn.

(4) Within 72 hours after the receipt deadline for bid revisions as set forth in paragraph (b)(3) of this section, the DOT shall again make public the total number of reservations bids for each hour and the number and price of reservations tentatively awarded to each successful bidder. Tentative awards and prices shall be established according to the same procedure as specified in paragraph (b)(2) of this section.

(5) After each tentative reservation award, any bidder may continue to submit bid revisions in accordance with paragraph (b)(3) of this section. The DOT, in this event, shall make public the bid, award and price information as specified in paragraph (b)(4) of this section.

(6) Reservations shall be awarded based upon the last set of bids received by the DOT if one of the following occurs:

(i) No additional bids are received during any 72 hour period.

(ii) The only bids received, within 72 hours since the DOT made the last tentative award, are minimally different from the last bids received.

(iii) All bidders inform the DOT within 24 hours since the DOT made the last tentative award, that they desire to terminate the auction.

(c) A successful bidder has 14 days after being notified in writing of the amount of its final accepted bid prices to submit to the DOT payment for one-sixth of the total amount accepted. The balance shall be paid in five equal increments starting on the 1st day of the reservation period. Succeeding payments shall be made on the first day of each month until the balance is paid. Original bidders shall be liable for full payment of the accepted bid price even if the reservation is subsequently resold subject to resale credits as described in paragraph (d) of this section.

(d) In the event that a successful bidder wishes to relinquish a reservation after the final award, it may so inform the DOT. The DOT shall offer the reservation for sale to the highest bidder. The DOT shall hold available reservations open to bids for a 24 hour period after being notified of the

availability of the reservation. Any air carrier or air taxi wishing to purchase reservations offered by an air carrier may do so. Reservations offered by air taxis may only be purchased by other air taxis. Air carriers or air taxi purchasing resale reservations shall reimburse the DOT. An initial payment equal to one month's prorata share of the total period purchase price shall be made to the DOT 14 days after being notified in writing of the award. The balance shall be paid in equal monthly installments starting on the first day of the first full month remaining in the reservation period. The DOT shall credit the seller of any reservation with monies received by the DOT from the resale of the reservation in an amount not exceeding the original purchase price.

(e) For purposes of this section—

(1) The term "air carrier" or "air carrier except air taxis" means an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum passenger seating capacity of 56 or more.

(2) The term "scheduled air taxis" means a scheduled air taxi or an air carrier as defined in Part 1 of this chapter that conducts operations with aircraft having a maximum capacity of less than 56.

(f) Each bidder wishing to submit a bid in accordance with this section shall, prior to its submission of any bid, designate in writing, an individual or individuals who will be authorized to represent the bidder in all actions taken under this section.

Extra Sections Alternate: By adding a paragraph (g) to § 93.135 (as proposed in Allocation Alternate B) to read as follows:

§ 93.135 Allocation at Washington National Airport.

* * * * *

(g) The bid price for extra sections operated by air carriers, in accordance with § 93.123(b)(4), shall be identical to the hourly price paid by air carriers during the hour in which the extra section is operated.

General Aviation Operations: By adding a paragraph (h) to § 93.135 (as proposed in Allocation Alternate B) to read as follows:

§ 93.135 Allocation at Washington National Airport.

* * * * *

(h) The bid price for "other" operations conducted in accordance with § 93.123 will be identical to the hourly price paid by air taxis during the hour in which the operations is conducted.

(Secs. 103, 307(a), (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348(a), (c), 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 2 of the Act for the Administration of Washington National Airport, 54 Stat. 688)

Note.—The Department has determined that this document involves a proposed regulation which is significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft Regulatory Analysis prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on October 21, 1980.

William J. Beckham, Jr.,

Acting Secretary of Transportation.

[FR Doc. 80-33404 Filed 10-22-80; 4:20 pm]

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federal register

Monday
October 27, 1980

Part VIII

Department of Transportation

Federal Aviation Administration

Metropolitan Washington Airports, Future Operation and Development; Delay in Implementation of Policy and Regulations

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 93 and 159

[Docket No. 19948, Amendments Nos. 93-38 and 159-22]

Metropolitan Washington Airports

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, notice of change of effective date.

SUMMARY: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy (45 FR 62398) and implementing regulations (Amendments 93-37 and 159-20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62406). The implementing regulations were to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96-400, however, prohibits the full implementation of the DOT/FAA policy and regulations until April 26, 1981. Therefore, this notice is being issued to announce a delay in the implementation of the entire Metropolitan Washington Airport Policy and to change the effective date of all the implementing regulations until April 26, 1981.

EFFECTIVE DATE: As of October 27, 1980, the effective date of the regulations published at 45 FR 62406 has been delayed until April 26, 1981.

FOR FURTHER INFORMATION CONTACT: Edward Faggen (Telephone (703) 557-8123), or Charles C. Erhard (Telephone (703) 557-0972), Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001.

SUPPLEMENTARY INFORMATION: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy and implementing regulations (Amendments 93-37 and 159-20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62398). The implementing regulations were to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96-400, states that none of the funds in the Act shall be used to mandate any reduction of the number of certificated air carrier slots per hour at Washington National Airport below the number authorized on September 12, 1980, until April 26, 1981. Therefore, it is necessary that the effective date of Amendments 93-37 and 159-20 be amended.

By letter dated September 23, 1980, the Secretary of Transportation notified the Chairmen of the Subcommittees on Transportation, Committees on Appropriations of the House of Representatives and United States Senate that:

> It is essential that all elements of the (Metropolitan Washington Airports) Policy be implemented together. We are cutting back the number of certificated air carrier operations at National, allowing for the use of widebody aircraft, and modifying the non-stop service perimeter. We would not undertake to do one of these things without doing the others. Nor would we want to make a substantial investment in National's redevelopment with its future unresolved. In short, the Policy was developed as a package because it is the only way to overcome the continuing controversy over National's future. The environmental impact statement that was prepared under a court order addressed the Policy as a whole, not in fragments. We are, therefore, not prepared to proceed with certain elements of the policy in January while the reduction in flights is deferred.
>
> In summary, the policy for National and Dulles airports must be implemented on time and with all parts of the balanced package in place.

For the reasons discussed above, additional notice and public procedure on this change to the effective date of Amendments 93-37 and 159-20 is unnecessary and good cause exists for making this change effective upon publication in the **Federal Register**. For the same reasons, full compliance with the procedures of Executive Order 12044, as implemented by the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), is not possible.

Accordingly, consistent with the position expressed in the Secretary's letters of September 23, effective (**Federal Register** Publication Date), the effective date of Amendments 93-37 and 159-20, which were published in the **Federal Register** on September 18, 1980 (45 FR 62406), is changed from January 5, 1981, to April 26, 1981.

(Secs. 103, 307(a), (b), and (c), and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1303, 1348(a), (b) and (c) and 1354(a)); Sections 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688, as amended by 61 Stat. 94; Section 4 of the Second Washington Airport Act, 64 Stat. 770; Section 6 of the Department of Transportation Act (49 U.S.C. Section 1655))

Note.—The FAA has determined that this rulemaking is significant under Executive Order 12044, as implemented by the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); the impact of this document is, however, minimal and does not warrant a full regulatory evaluation.

Issued in Washington D.C., on October 21, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-33412 Filed 10-22-80; 4:16 pm]

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federal register

Monday
October 27, 1980

Part IX

Department of Energy

Organization and Functions of the Department of Energy; Proposed Rulemaking

DEPARTMENT OF ENERGY

10 CFR Parts 701 and 1003

Organization and Functions of the Department of Energy

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and invitation for public comment.

SUMMARY: This proposed rule describes the organization of the Department of Energy, the major officers and elements, and their principal responsibilities. The rule will assist the public to determine which officials and elements of the Department are responsible for specific Departmental programs.

DATE: Comments must be received on or before November 14, 1980.

ADDRESS: Send written comments to: Mr. K. Dean Helms, Director of Organization and Management Systems, U.S. Department of Energy, Room 4D 035, 1000 Independence Ave., SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Mr. William A. Dorsey, Office of Organization and Management Systems, U.S. Department of Energy, Room 4D 023, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–6760.

Mr. Kenneth Cohen, Office of the General Counsel, U.S. Department of Energy, Room 6A 171, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252–3665.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of Energy, hereinafter "the Department" or "DOE", was established by the Department of Energy Organization Act (Pub. L. 95–91, 91 State. 565, 42 U.S.C. 7101), hereinafter "the Act", and it was activated on October 1, 1977, by Executive Order 12009, dated September 13, 1977, published on September 15, 1977, at 42 FR 16267. Part 701 of 10 CFR Chapter III which describes the organization and functions of the former Atomic Energy Commission, is now merged into the DOE, is being removed. The Act consolidated in the Department various functions relating to energy that had been carried out by several government agencies. The Energy Research and Development Administration and the Federal Energy Administration were abolished and their functions transferred to and merged in the Department. The Federal Power Commission also was abolished and its functions divided between the Secretary of Energy and the Federal Energy Regulatory Commission, which was established as an independent regulatory commission within the Department. Also transferred to the Department were:

(1) From the Department of Interior, the power marketing functions, certain research and development functions from the Bureau of Mines, and certain functions regarding leases of energy resources on Federal lands;

(2) From the Department of Housing and Urban Development, authority related to energy conservation standards for new buildings and the renewable resource demonstration program;

(3) From the Interstate Commerce Commission, the regulation of the transportation of oil by pipeline;

(4) From the Department of Navy, responsibility for the administration of the Naval Petroleum and Oil Shale Reserves; and

(5) From the Department of Commerce, responsibility for industrial energy conservation programs.

Following Subpart A, the Introduction and General Statements, Subpart B of this rule prescribes the principal responsibilities of the major officers and Headquarters elements of the Department. Subparts C, D, and E outline the major field installations and organizations through which the programs of the Department are carried out.

B. Comment Procedure

Interested persons are invited to submit written comments with respect to the proposed regulations to the address provided above. Comments should be so identified on the outside of the envelope: "Comments on DOE Organization."

C. Miscellaneous

In accordance with section 501(c)(1) of the Department of Energy Organization Act, DOE determined that these regulations present no substantial issue of fact or low, and are unlikely to have a substantial impact on the economy or large numbers of individuals or businesses. Accordingly, no public hearing is required.

For the same reasons DOE has determined that these regulations are not "significant" as that term is defined by DOE in its notice of "Regulatory Reform-Improving Government Regulations," 44 FR 1032, January 3, 1979, in implementation of Executive Order 12044.

Since this document is unlikely to have any significant effect on the environment, DOE has determined that the provisions of section 7(a)(2) of the Federal Energy Administration Act, as amended, requiring that proposals having such effect be submitted to the Environmental Protection Agency for review and comment, do not apply.

In accordance with the foregoing, it is proposed that 10 CFR Chapter III be amended by revoking Part 701, and that Chapter X be amended by addition of new Part 1003 as set forth below.

DOE has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821, and OMB Circular A–107.

Issued in Washington, D.C., October 20, 1980.

Lynn R. Coleman,

Acting Deputy Secretary.

PART 701—[REVOKED]

10 CFR Chapter X is proposed to be amended by adding a new Part 1003 to read as follows:

PART 1003—ORGANIZATION AND FUNCTIONS

Subpart A—Introduction

Sec.

1003.1 Background.
1003.2 Definitions.
1003.3 General explanation.
1003.4 Organization concepts and overview.
1003.5 Mailing addresses.
1003.6 Additional information.

Subpart B—Major Positions and Organization Elements

1003.11 Secretary.
1003.12 Deputy Secretary.
1003.13 Under Secretary.
1003.14 Chief Financial Officer.
1003.15 General Counsel.
1003.16 Federal Energy Regulatory Commission.
1003.17 Economic Regulatory Administration.
1003.18 Energy Information Administration.
1003.19 Assistant Secretary for Conservation and Solar Energy.
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Authority: Sec. 644, Pub. L. 95–91, 91 Stat. 599, 42 U.S.C. 7254; Sec. 501 Pub. L. 95–91, 91 Stat. 587, 42 U.S.C. 7191; 5 U.S.C. 552.

Subpart A—Introduction

§ 1003.1 Background.

The Department of Energy was created by the Department of Energy Organization Act of August 4, 1977, Pub. L. 95–91, 91 Stat. 565, 42 U.S.C. 7101. Secretary of Energy took office on August 5, 1977. Pursuant to the provisions of section 901 of the Act, the President by Executive Order 12009, dated September 13, 1977, prescribed October 1, 1977, as the effective date of the Act. The Executive Order was published in the **Federal Register** on September 15, 1977, 42 FR 46267.

§ 1003.2 Definitions.

As used in this part—

(a) "Department" and "DOE" mean the Department of Energy.

(b) "Secretary" means the Secretary of Energy.

(c) "The Act" means the Department of Energy Organization Act.

§ 1003.3 General explanation.

(a) The Act consolidated in the Department various functions relating to energy that previously were carried out by other Government agencies. The Energy Research and Development Administration and the Federal Energy Administration were abolished, and their functions were transferred to and merged in the Department. The Federal Power Commission also was abolished; certain of its functions are vested in the Federal Energy Regulatory Commission, which is established as an independent regulatory commission within the Department; and other functions are vested in the Secretary, who is given authority to assign them to the Commission as well as to other officers of the Department. Also transferred to the Department are:

(1) From the Department of the Interior, the power marketing functions, certain research and development functions from the Bureau of Mines, and certain functions regarding Federal oil and gas, coal, oil shale, tar sands and geothermal leases;

(2) From the Department of Housing and Urban Development, authority related to energy conservation standards for new buildings and the renewable resource demonstration program;

(3) From the Interstate Commerce Commission, the regulation of the transportation of oil by pipeline;

(4) From the Department of Navy, responsibility for the administration of the Naval Petroleum and Oil Shale Reserves; and

(5) From the Department of Commerce, responsibility for industrial energy conservation programs.

(b) The Act establishes the principal positions and elements of the Department and prescribes other organizational features. Otherwise, the Secretary is given broad authority to delegate his authority to subordinates, to establish positions and organizational units, and generally to supervise and administer the Department.

§ 1003.4 Organization concepts and overview.

(a) *Reporting Relationships.* The principal elements of the Department are divided into three general groups. The first group reports directly to the Secretary and Deputy Secretary. The second group reports to the Secretary and Deputy Secretary through the Under Secretary. The third group reports to the Secretary and Deputy Secretary through the Chief Financial Officer. This organizational arrangement frees the Secretary and Deputy Secretary of day-to-day management responsibilities for a number of DOE components and permits better integrated management at the Under Secretary level.

(b) *Organizations reporting directly.* Organizations that report directly to the Secretary and the Deputy Secretary are:

(1) General Consel.
(2) Office of Inspector General.
(3) Office of Alcohol Fuels.
(4) Office of Minority Economic Impact.
(5) Office of Hearings and Appeals.
(6) Assistant Secretary for Policy and Evaluation.
(7) Assistant Secretary for International Affairs.
(8) Economic Regulatory Administration.
(9) Energy Information Administration.
(10) Office of Legislative Affairs.
(11) Office of Public Affairs.
(12) Board of Contract Appeals.

In addition, the Office of Consumer Affairs and the Office of Intergovernmental Affairs report to the Secretary and Deputy Secretary through the Executive Assistant to the Secretary. The Office of Small and Disadvantaged Business Utilization reports to the Secretary and Deputy Secretary on all matters pertaining to Title II, Chapter 3, Section 221 of the Small Business Act (Pub. L. 95–507). The Regional representatives of the Secretary also report directly to the Secretary and Deputy Secretary. The Office of the Executive Secretary reports to the Secretary and the Deputy Secretary through the Special Assistant to the Secretary.

(c) *Organizations reporting through the Under Secretary.* The Under Secretary has supervisory responsibility for the major DOE operating programs. Organizations reporting to the Secretary and Deputy Secretary through the Under Secretary include:

(1) Assistant Secretary for Conservation and Solar Energy.
(2) Assistant Secretary for Nuclear Energy.
(3) Assistant Secretary for Fossil Energy.
(4) Assistant Secretary for Resource Applications.
(5) Assistant Secretary for Defense Programs.
(6) Assistant Secretary for Environment.
(7) Office of Energy Research.

(d) *Organizations reporting through the Chief Financial Officer.* The Chief Financial Officer is the equivalent of the Under Secretary as a principal officer of the Department and advisor to the Secretary and Deputy Secretary. The position of Chief Financial Officer was

created by the Secretary to focus on key management activities to assure their coordination internally and with other program and support activities of the Department; to assure that adequate management systems have been established in each of these areas; and to identify and remove obstacles to effective performance. Organizations reporting to the Secretary and the Deputy Secretary through the Chief Financial Officer are:

(1) Controller.

(2) Directorate of Administration.

(3) Directorate of Procurement and Contracts Management.

(4) Office of Equal Opportunity.

In addition, the Office of Minority Economic Impact coordinates its activities with the Chief Financial Officer.

§ 1003.5 Mailing address.

(a) The mailing address for all officials of the Department of Energy based in Washington, DC, other than the Federal Energy Regulatory Commission is:

U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

(b) The mailing address for all officials of the Federal Energy Regulatory Commission and all filings to be made with the Commission is:

Federal Energy Regulatory Commission
825 North Capitol Street, NE
Washington, DC 20426

§ 1003.6 Additional information.

For additional information on the Department's organization and functions of its Headquarters and field installations, see the "U.S. Government Manual."

Subpart B—Major Positions and Organization Elements

§ 1003.11 Secretary.

(a) All of the statutory authority under which the Department functions is vested in the Secretary, except for certain authorities and responsibilities assigned by the Act to specific officers or components of the Department. The Secretary may generally redelegate his authority, organize and reorganize the positions and units within the Department, issue rules, enter into agreements, acquire and maintain property, and generally administer the Department. The Secretary directs and supervises the administration of the Department, decides major policy issues, acts as the principal energy advisor to the President, and serves as the principal spokesman for the Department.

§ 1002.12 Deputy Secretary.

The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of the Secretary is vacant. The Deputy Secretary serves as an alter ego for the Secretary, and assists the Secretary in speaking for the Department, decides administrative matters of Department-wide scope, and acts as Co-Chairman (for the Department) of the Leasing Liaison Committee.

§ 1003.13 Under Secretary.

The Under Secretary bears primary responsibility within the Department for energy conservation. The Under Secretary in responsible for management of the major operating programs of the Department on a day-to-day basis and for supervision of the formulation of research and development policy and budget options for presentation to the Secretary and Deputy Secretary.

§ 1003.14 Chief Financial Officer.

The Chief Financial Officer coordinates the key management activities of the Department with each other and with the other program and support activities of the Department to identify and remove obstacles to effective performance. The Chief Financial Officer concentrates on matters dealing with resource planning and management, internal management systems and policies, and program and project management support and control.

§ 1003.15 General Counsel.

The General Counsel is responsible for all legal services within the Department, except for those within the exclusive jurisdiction of the Federal Energy Regulatory Commission. The General Counsel is the chief law officer of the Department and legal advisor to the Secretary and other principal staff within the Department. In addition, the General Counsel exercises the authority of the Secretary with respect to all intellectual property matters pursuant to the Energy Reorganization Act of 1974, the Federal Nonnuclear Energy Research and Development Act of 1974, and the Atomic Energy Act of 1954, all as amended; takes final action on all claims arising under the Federal Tort Claims Act, as amended 28 U.S.C. 2671–2680; and takes final action on all claims arising under the Military Personnel and Civilian Emnployees' Claims Act of 1964, as amended, 31 U.S.C. 240 *et seq.*

§ 1003.16 Federal Energy Regulatory Commission.

(a) The Act establishes the Federal Energy Regulatory Commission (FERC) as an independent regulatory commission within the Department. The Commission is composed of five members, appointed by the President, with the President designating one member as Chairman. The Chairman is responsible, on behalf of the Commission, for the executive and administrative operation of the Commission. The description of the organization and functions of the Federal Energy Regulatory Commission is set forth in 18 CFR Part 3.

(b) The functions of the Commission include:

(1) To establish and enforce rates and charges for electric energy transmission and sale, electric energy interconnections, natural gas transportation and sale, and natural gas producer and gatherer prices;

(2) To issue and enforce hydroelectric project permits and licenses;

(3) To conduct investigations and assess payments for headwater benefits;

(4) To participate in national water resources planning;

(5) To regulate permanent interconnections of electric utilities;

(6) To determine adequacy of interstate electrical service upon complaint of a state commission and appropriate notice and hearing;

(7) To regulate electric power mergers and dispositions of property;

(8) To implement and administer the Public Utility Regulatory Policies Act;

(9) To issue and enforce certificates for natural gas sales and transportation;

(10) To establish and enforce curtailments of natural gas;

(11) To regulate acquisitions and sales of natural gas pipeline facilities;

(12) To implement and administer the Natural Gas Policy Act;

(13) To establish and enforce oil pipeline rates, charges, and valuations;

(14) To establish and enforce oil pipeline common carrier duties;

(15) To regulate issuance and acquisitions of securities;

(16) To review and authorize interlocking directorates;

(17) To establish, administer, and enforce accounting rules, procedures and the Uniform Systems of Accounts;

(18) To review DOE Energy Action Proposals and proposed rules affecting FERC functions; and

(19) To review appeals from DOE Remedial Orders and Denials of Adjustments.

§ 1003.17 Economic Regulatory Administration.

The Economic Regulatory Administration (ERA) is headed by an Administrator who is the principal advisor to the Secretary on the development, management, and direction of economic regulatory programs other than those which are the responsiblity of the Federal Energy Regulatory Commission (FERC) or other DOE organizational elements. Activities include identifying the need for developing, promulgating and enforcing regulations; defining regulatory data requirements; and directing, designing, and implementing pricing, allocation, and import/export programs to ensure price stability and the equitable distribution of supplies to domestic users of crude oil, petroleum products, and natural gas liquids. In addition to programs relating to oil pricing and allocation, the Administrator directs other regulatory programs, including conversion of oil and gas fired utility and industrial facilities to coal or other alternate fuels; natural gas and electric power import/export controls; natural gas curtailment priorities and emergency allocations; regional coordination of electric power system planning and reliability of bulk power supply; contingency planning; and an active internvention program on behalf of the Secretary before the FERS and other Federal and State regulatory agencies in support of Departmental policy objectives.

§ 1003.18 Energy Information Administration.

(a) The Energy Information Administration (EIA) is headed by an Administrator who is responsible for collecting, evaluating, assembling, analyzing and disseminating energy data and information.

(b) The Administrator:

(1) Carries out a central, comprehensive, and unified energy data and information program to collect, evaluate, assemble, analyze, and disseminate data and information, including forecasts, which are relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which are relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs;

(2) Ensures the availability of adequate, comparable, and accurate energy information to the department, to other Government agencies, to the Congress, and to the public.

(3) Issues certain reports and other information documents independently of any other officer of the United States.

(4) Develops and operates energy data and applied analysis programs, including data collection, validation, analysis, interpretation, modeling and dissemination.

(5) Responds to the data and analytical needs of the Congress, the energy industry, the public, and other DOE organizations.

(6) Organizes the review and improvement of analytical methodologies to modify or eliminate deficiencies or redundancy and contributers to advances in the state-of-the-art of analytical methodologies.

§ 1003.19 Assistant Secretary for Conservation and Solar Energy.

The Assistant Secretary for Conservation and Solar Energy is responsible for the development of comprehensive energy conservation strategies for the Nation and for the continued development and application of solar energy technology. The Assistant Secretary for Conservation and Solar Energy develops, recommends and implements conservation policies and programs, including technology application programs, to improve energy efficiency and systems utilization and reduce energy consumption in transportation, buildings and community systems, industry and commerce, and utilities; and to encourage recycling of energy resources; and fosters solar energy research, development and demonstration, including heating and cooling of buildings, and agriculture and industrial process heating. Also, the Assistant Secretary for Conservation and Solar Energy conducts energy conservation and solar energy commercialization activities and manages the small scale technology program.

§ 1003.20 Assistant Secretary for Resource Applications.

The Assistant Secretary for Resource Applications develops, recommends and implements policies and programs:

(a) To reduce regulatory and financial constraints to resource development and utilization, and to demonstrate and encourage the commercial use of developed energy supply technologies;

(b) To carry out the Department's energy resource leasing functions, power marketing and transmission functions (involving the supervision and direction of the power administrations), and uranium enrichment and resource evaluation functions; and

(c) To manage the naval petroleum and oil shale reserves and to acquire, construct, maintain and operate a strategic petroleum reserve.

(d) To manage research, development and technology demonstration in geothermal energy and electric energy systems.

§ 1003.21 Assistant Secretary for Fossil Energy.

The Assistant Secretary for Fossil Energy develops, recommends, and implements research, development and demonstration programs involving fossil fuels, i.e., coal, petroleum and gas. The program effort includes applied research, technology development, engineering development and technology demonstration related to fossil fuel extractions, recovery, supply, conversion and utilization.

§ 1003.22 Assistant Secretary for Nuclear Energy.

The Assistant Secretary for Nuclear Energy is the principal advisor to the Secretary of nuclear fission energy and is responsible for the development and execution of DOE programs dealing with nuclear research and development, both civilian and naval, and for the management of nuclear waste. More specifically, the Assistant Secretary for Nuclear Energy:

(a) Develops and recommends a comprehensive fission energy plan as part of the National Energy Plan;

(b) Plans, develops, and executes DOE programs for nuclear waste management;

(c) Plans, develops, and executes DOE programs for nuclear reactor research and development, including improvements in the productivity, safety and efficiency of commercial nuclear power plants; development of liquid metal and gas cooled fast breeder reactors and advanced systems for the separation of uranium isotopes on a large scale as required for the nuclear fuel cycle; and assembly and analysis of nuclear power plant performance data in the U.S. and foreign electric utility industries, with an evaluation of the technical and economic aspects of nuclear power plant systems;

(d) Provides technical analyses and advice concerning non-proliferation, and represents the Department in all reviews connected with the International Nuclear Fuel Cycle Evaluation program; and

(e) Reviews, evaluates, and makes recommendations concerning alternative nuclear systems and new reactor and fuel cycle concepts and evaluates proposed advanced nuclear fission energy concepts and technical improvements.

§ 1003.23 Assistant Secretary for Defense Programs.

The Assistant Secretary for Defense Programs is responsible for conducting experiments and performing research and development work in the military application of atomic energy, and production and surveillance of nuclear weapons, as well as for other functions connected with security and the national defense. The Division of Military Application, an organizational unit of the Department, reports to the Assistant Secretary for Defense Programs. The Assistant Secretary for Defense Programs is the principal advisor to the Secretary on national security matters and the manager of the nuclear weapon program and the weapon complex as well as the programs of inertial confinement fusion, international security affairs, classification, safeguards and security, special materials production, and nuclear materials.

§ 1003.24 Assistant Secretary for Environment.

The Assistant Secretary for Environment is responsible for providing policy guidance to assure Department-wide compliance with environmental, health, and safety laws and regulations. The Assistant Secretary for Environment coordinates activities under the National Environmental Policy Act, Pub. L. 91–190 independently reviews and approves environmental impact statements and assessments prepared within the Department, and provides Departmental comments on environmental impact statements and assessments prepared elsewhere. In addition, the Assistant Secretary for Environment develops, recommends and implements a comprehensive program of research and development related to health, safety, and environmental aspects of energy technologies and programs.

§ 1003.25 Assistant Secretary for Policy and Evaluation.

The Assistant Secretary for Policy and Evaluation is the principal advisor to the Secretary for formulating and recommending national energy policy and for carrying out a systematic evaluation of DOE programs to ensure that each contributes toward attainment of National Energy Policy goals. More specifically, the Assistant Secretary for Policy and Evaluation:

(a) Develops, analyzes and recommends major energy policy initiatives and ensures the review and integration of policy proposals developed in the various program areas;

(b) Conducts in-depth analyses and evaluations of Departmental policies and continual assessments of the Nation's energy situation;

(c) Ensures that Departmental policies and programs promote competition and antitrust policies in the energy industries and that consumer impact is considered in Department decision making;

(d) Develops and analyzes legislative proposals to support policy objectives;

(e) Manages the Department of Energy Planning, Programming, and Budgeting System;

(f) Analyzes and evaluates DOE regulatory proposals for consistency with Departmental policy and effectiveness in achieving policy objectives and oversees development of regulatory impact analyses;

(g) Formulates DOE policy for use of tax incentives, loan guarantees, cooperative agreements, loans, grants, price supports and other financial incentives;

(h) Develops pricing policies for DOE energy services and products; and

(i) Prepares and coordinates the National Energy Policy Plan.

§ 1003.26 Assistant Secretary for International Affairs.

The Assistant Secretary for International Affairs formulates and recommends the international component of overall national energy policy; assesses world energy supply vulnerability and the international implications of U.S. contingency plans; develops Departmental positions for international negotiations; supports development and implementation of U.S. international nonproliferation policies, including international energy programs, coordinates cooperative international energy programs; and maintains relationships with foreign governments and international energy organizations and supporting international organizations.

§ 1003.27 Office of Energy Research.

The Office of Energy Research is headed by a Director who advises the Secretary on physical research programs; well-being and management of the multipurpose laboratories (excluding the weapons complex); education and training for basic and applied research activities, including financial assistance for such research activities, and monitors the Department's energy research and development programs for undesirable duplication or gaps. The Director of Energy Research develops, recommends and implements basic and physical research programs, magnetic confinement fusion energy programs, and selected advanced research and technology programs.

§ 1003.28 Office of Alcohol Fuels.

The Office of Alcohol Fuels is headed by a Director who is responsible for research, development, engineering, testing, evaluation, and demonstration programs designed to support increased production of biomass derived alcohol fuels and the development of a biomass-derived alcohol industry. Also, the Director of the Office of Alcohol Fuels is responsible for encouraging the development and utilization of biomass-derived alcohol, reducing and removing barriers to the effective utilization of such fuels; and managing Federal assistance programs for alcohol fuels production in the nature of loans, loan guarantees, price supports, purchase agreements, and grants.

§ 1003.29 Office of Inspector General.

The Office of Inspector General is headed by the Inspector General who reports to, and is under the general supervision of, the Secretary. The Inspector General is the principal advisor to the Secretary concerning the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations of the Department, including the Federal Regulatory Commission. More specifically, the Inspector General:

(a) Supervises, coordinates and provides policy direction for auditing, investigating, and inspecting activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs, and operations of the Department and its contractors;

(b) Recommends policies for, and conducts, supervises, or coordinates other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the programs and operations for the Department;

(c) Recommends policies for, and conducts, supervises, or coordinates relationships between the Department and other Federal agencies, State and local Government agencies and other non-governmental entities with respect to the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Department, and the identification and prosecution of participants in such fraud or abuse; and

(d) Keeps the Secretary and the Congress fully and currently informed concerning fraud and serious problems,

abuses, and deficiencies relating to the administration of Department programs and operations.

§ 1003.30 Office of Minority Economic Impact.

The Office of Minority Economic Impact is headed by a Director, who is the principal advisor to the Secretary on the effect of energy policies, regulations, and other actions of the Department on minorities and minority business enterprises. The Director, Office of Minority Economic Impact provides management and technical assistance to minority education institutions and minority business enterprises, and provides, as appropriate, financial assistance in the form of loans to minority business enterprises as a means of assisting them in participating in contract activities of the Department.

§ 1003.31 Office of Hearings and Appeals.

(a) The Office of Hearings and Appeals is headed by a Director who is responsible for carrying out certain adjudicatory functions, and for issuing orders of an adjudicatory nature with respect to any program within the Department except those within the jurisdiction of the Federal Energy Regulatory Commission (FERC) and the Board of Contract Appeals (BCA). The Office of Hearings and Appeals is a separate organizational entity within the Department. Certain Decisions and Orders issued by the Office of Hearings and Appeals are subject to review on appeal by the Federal Energy Regulatory Commission.

(b) The Director, Office of Hearings and Appeals:

(1) Issues all decisions with respect to a request that an applicant be excepted or exempted from the obligation that it comply with any general regulatory or other mandatory program within the jurisdiction of the Department (other than FERC or BCA) and supervises discoveries, conducts formal adversary hearings and decides motions made during the course of its consideration of these submissions;

(2) Makes final determinations on behalf of the Department in connection with Proposed Remedial Orders issued by the Economic Regulatory Administration;

(3) Analyzes and decides all applications and petitions that seek review of any order of an adjudicatory nature issued by an organization of the Department (other than FERC and BCA);

(4) Considers and decides Applications for Stay filed in connection with any appeal of exception proceedings, Applications for Modification or Recision, and Petitions for Special Redress filed under Section 21 of the Federal Energy Administration Act;

(5) Publishes in the **Federal Register** and circulates among interested parties notices concerning official proceedings and the issuance of Decisions and Orders and maintains a Public Docket Room pursuant to existing regulatory requirements; and

(6) Participates in the development of and concurs in all procedural regulations of the Department and issues, reviews, and keeps current those rules of practice and procedure for which the Department is responsible.

§ 1003.32 Special Assistant to the Secretary.

The Special Assistant to the Secretary assists the Secretary and the Deputy Secretary in those areas concerned with the internal management of the Department and performs special projects as assigned. The Special Assistant to the Secretary also supervises the activities of the Office of the Executive Secretary.

§ 1003.33 Executive Assistant to the Secretary.

The Executive Assistant to the Secretary assists the Secretary and the Deputy Secretary in external liaison activities, including liaison with the Executive Office of the President, and supervises the activities of the Office of Consumer Affairs and the Office of Intergovernmental Affairs. The Executive Assistant to the Secretary is also responsible for providing administrative support to the Department's Energy Coordinating Committee, and for performing special projects as assigned.

§ 1003.34 Office of Legislative Affairs.

The Office of Legislative Affairs is headed by the Assistant to the Secretary for Legislative Affairs who is the principal advisor to the Secretary, Deputy Secretary and the Under Secretary on Congressional matters. The Office of Legislative Affairs is the Departmental contact with the Congress.

§ 1003.35 Office of Public Affairs.

The Office of Public Affairs is headed by the Assistant to the Secretary for Public Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on public and media relations. The Assistant to the Secretary for Public Affairs recommends public affairs policy and manages the overall public affairs program for the Department, integrating the public affairs activites of Headquarters program organizations and field elements.

§ 1003.36 Office of Intergovernmental Affairs.

The Office of Intergovernmental Affairs is headed by the Director of Intergovernmental Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on DOE relations with State and local governments, Indian tribes and associations, and labor organizations. The Office of Intergovernmental Affairs communicates DOE policy and program decisions to and facilitates the exchange of policy-related information between the Department and State/local governments and Indian tribes. Also, the Director provides day-to-day supervision of the Regional Representatives of the Secretary, including the coordination of assignments made to the Regional Representatives of the Secretary.

§ 1003.37 Office of Consumer Affairs.

The Office of Consumer Affairs is headed by the Director of Consumer Affairs who is the principal advisor to the Secretary, Deputy Secretary and Under Secretary on consumer and energy education activities. The Director of Consumer Affairs is responsible for responding to citizen-oriented energy initiatives, assuring a public review of proposed DOE programs and policies and serving as Advisory Committee Management Officer for the Department.

§ 1003.38 Office of the Controller.

The Controller is responsible for the overall management and control of the Department's financial resources; for Department-wide budget formulation and execution; for Departmental accounting practices and procedures; for developing, implementing and maintaining the Departmental project management system for major operating programs; for controlling the establishment of management information systems; for determining the cost of Departmental products and services furnished to others; and for establishing policies and procedures for administration of the Department's construction program and providing central DOE functional direction over construction program and project planning and execution.

§ 1003.39 Directorate of Administration.

The Director of Administration is responsible for personnel management; for organization and management analysis; for Headquarters administrative services; for internal DOE labor relations, equal opportunity programs, and wage and salary administration at contractor operated facilities of the Department; for

automatic data processing and telecommunications policy; for automatic data processing equipment acquisition and management; for Departmental facility energy management; for real property management; for site selection policy, and for oversight of the industrial relations functions at the Government owned, contractor operated facilities of the Department.

§ 1003.40 Directorate of Procurement and Contracts Management.

The Director of Procurement and Contracts Management is responsible for all procurement, Federal assistance agreements, contracting, personal property management and related business activities of the Department, and therefore establishes and maintains Departmental policies, regulations, standards and procedures; enters into, extends and modifies contracts, Federal assistance instruments, (e.g., cooperative agreements, grants, loan guarantees, loans, price supports, etc.) and settles terminations thereof; enters into, extends and modifies agreements between the DOE and other governmental agencies; approves subcontracts and extensions, modifications, and settlement of terminations thereof; makes the final determination in bid protest cases and notifies the contracting officer of the course of action to be taken; develops issues, maintains, and enforces policies, procedures and plans to assure equitable treatment of all elements of the private sector, provides operational procurement and Federal assistance support to Headquarters elements; and develops, issues, and maintains Department policies, standards, procedures and systems pertaining to personal property management and to the Defense Production Act priorities and allocations programs.

§ 1003.41 Office of the Executive Secretary.

The Executive Secretary is responsible for providing support services to the Secretary, Deputy Secretary, Under Secretary and staff members of the Office of the Secretary in the areas of document control and action assignment coordination and tracking.

§ 1003.42 Office of Equal Opportunity.

The Director of the Office of Equal Opportunity is responsible for all equal opportunity programs of the Department, excluding equal opportunity programs applicable to the contractor operated facilities of the Department which are administered by the Director of Administration. The Director of the Office of Equal Opportunity is responsible to the Secretary, Deputy Secretary, and Under Secretary with respect to equal opportunity matters affecting programs under the primary cognizance of each major Departmental component.

§ 1003.43 Board of Contract Appeals.

The Board of Contract Appeals, as an adjudicatory arm of the Department, has jurisdiction over appeals involving contracts, debarments, work hour standard cases, and contract adjustment applications. The Board is also responsible for appeals involving: all contract-related disputes; invention appeals; and financial assistance instruments such as cooperative agreements, grants, and loan guarantees. The Board, under statute, or acting for the Secretary, hears and resolves, with finality, appeals pertaining to contract-related matters, and to such other delegated matters as appropriate and not inconsistent with its adjudicatory functions.

Subpart C—Power Administrations

§ 1003.61 Alaska Power Administration.

(a) The Alaska Power Administration markets power from and operates hydroelectric power projects, and performs certain water resource and power studies and planning functions. The Alaska Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Alaska Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Alaska Power Administration,
U.S. Department of Energy,
P.O. Box 50,
Juneau, Alaska 99802.

§ 1003.62 Bonneville Power Administration.

(a)The Bonneville Power Administration markets power from Federal hydroelectric power projects located in the Pacific Northwest. Its authority includes authority to sell revenue bonds to the Treasury and to spend revenues without appropriation. The Bonneville Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Bonneville Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Bonneville Power Administration,
U.S. Department of Energy,
P.O. Box 3621,
Portland, Oregon 97208.

§ 1003.63 Southeastern Power Administration.

(a) The Southeastern Power Administration markets power from hydroelectric power projects a ten-state area of the southeastern United States. The Southeastern Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Southeastern Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Southeastern Power Administration,
U.S. Department of Energy,
Samuel Elbert Building,
Elberton, Georgia 30635.

§ 1003.64 Southwestern Power Administration.

(a) The Southwestern Power Administration markets power from hydroelectric power projects in a six-state area of the southwestern United States. The Southwestern Power Administration is headed by an Administrator and is a separate and distinct organizational entity within the Department; the Secretary exercises the functions of the Southwestern Power Administration by and through the Administrator.

(b) The mailing address for the Administrator is:

Administrator,
Southwestern Power Administration,
U.S.Department of Energy,
P.O. Drawer 1619,
Tulsa, Oklahoma 74101.

§ 1003.65 Western Area Power Administration.

(a) The Western Area Power Administration performs power marketing functions which include the sale and distribution of power produced at Federal hydroelectric generation facilities and construction, operation, and maintenance of transmission lines and attendant facilities in 15 western States. The Western Area Power Administration is headed by an Administrator and is a separted and distinct organizational entity within the Department; the Secretary exercises the functions of the Western Area Power Administration by and through the Administrator.

(b) The mailing address for the administrator is:

Administrator,
Western Area Power Administration,
U.S. Department of Energy,
P.O. 3403,
Golden, Colorado 80401.

Subpart D—Regional and District Offices

§ 1003.71 Regional Representatives of the Secretary.

(a) The Secretary of Energy is represented in each of the ten Standard Federal Regions, established by Office and Management and Budget Circular No. A–105, by a Regional Representative for such Region. The Regional Representatives of the Secretary may be contacted at the addresses set forth below. Each Regional Representative is spokesperson for the Secretary in the region. Duties also include liaison with the State Governors to establish Regional Energy Advisory Boards; assuring effective regional outreach programs including interaction with regional business, labor, and consumer groups; involving, as appropriate, regional groups in Departmental decision-making; providing feedback to the Department on the effects of Departmental policies and programs; and performing other non-regulatory tasks as assigned in areas such as regional planning, conservation, energy resource development, and energy data collection.

(b) The mailing addresses of the Regional Representatives of the Secretary are:

Region and Address

I.—Regional Representative, U.S. Department of Energy, Analex Building—Room 700, 150 Causeway Street, Boston, Massachusetts 02114.
II.—Regional Representative, U.S. Department of Energy, 26 Federal Plaza, Room 3206, New York, New York 10007.
III.—Regional Representative, U.S. Department of Energy, 1421 Cherry Street, 10th Floor, Philadelphia, Pennsylvania 19102.
IV.—Regional Representative, U.S. Department of Energy, 1655 Peachtree Street, N.E., 8th Floor, Atlanta, Georgia 30309.
V.—Regional Representative, U.S. Department of Energy, 175 West Jackson Boulevard, Room A–333, Chicago, Illinois 60604.
VI.—Regional Representative, U.S. Department of Energy, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Texas 75235.
VII.—Regional Representative, U.S. Department of Energy, 324 East Eleventh Street, Kansas City, Missouri 64106.
VIII.—Regional Representative, U.S. Department of Energy, P.O. Box 26247—Belmar Branch, 1075 South Yukon Street, Lakewood, Colorado 80226.
IX.—Regional Representative, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105.
X.—Regional Representative, U.S. Department of Energy, 1992 Federal Building, 915 Second Avenue, Seattle, Washington 98174.

§ 1003.72 District Managers of the Economic Regulatory Administration.

(a) The field structure of the Economic Regulatory Administration (ERA) is divided into six districts, each headed by an ERA District Manager. The ERA District Managers each exercise supervisory and program responsibilities for all ERA field activities in the District with the exception of the functions of the Special Counsel for Compliance. These activities are: petroleum allocations, enforcement, fuels conversion, and utility power supply and reliability. Many of the ERA field components reporting to District Managers are collocated with the Regional Representatives of the Secretary. However, ERA programmatic activities are separate from the external relations and other activities performed by the Regional Representatives of the Secretary.

(b) The mailing addresses of the ERA District Managers are:

District and Address

Northeast.—ERA District Manager, U.S. Department of Energy, 1421 Cherry Street, Philadelphia, Pennsylvania 19102.
Central.—ERA District Manager, U.S. Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.
Southeast.—ERA District Manager, U.S. Department of Energy, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309.
Rocky Mountain.—ERA District Manager, U.S. Department of Energy, 1075 South Yukon Street, P.O. Box 26247—Belmar Branch, Lakewood, Colorado 80226.
Southwest.—ERA District Manager, U.S. Department of Energy, 2626 West Mockingbird Lane, P.O. Box 35228, Dallas, Texas 75235.
Western.—ERA District Manager, U.S. Department of Energy, 333 Market Street, San Francisco, California 94105.

§ 1003.73 Regional Offices of the Federal Energy Regulatory Commission.

(a) The regional offices of the Federal Energy Regulatory Commission are responsible for the investigation of electric power system resource requirements; load interruptions, reductions and accidents; and power plant fuel supplies and environmental issues. In addition, the regional offices conduct field portions of power surveys and coordinate emergency preparedness planning and Coastal Zone Management at the field level.

(b) The mailing addresses are:

Region and Address

Atlanta.—Regional Engineer, Federal Energy Regulatory Commission, 730 Peachtree Building, Room 500, Atlanta, Georgia 30308.
Chicago.—Regional Engineer, Federal Energy Regulatory Commission, 230 South Dearborn Street, Chicago, Illinois 60604.
Fort Worth.—Regional Engineer, Federal Energy Regulatory Commission, 819 Taylor Street, Room 9A–05, Fort Worth, Texas 76102.
New York.—Regional Engineer, Federal Energy Regulatory Commission, 26 Federal Plaza, Room 2207, New York, New York 10007.
San Francisco.—Regional Engineer, Federal Energy Regulatory Commission, 333 Market Street, Sixth Floor, San Francisco, California 94105.

Subpart E—Field Installations

§ 1003.81 Field installations generally.

In addition to the Departmental Headquarters in Washington, D.C., the Power Administrations, described in Subpart C of this part, and the Regional and District Offices described in Subpart D of this part, the Department is responsible for, and conducts major activities through, a wide variety of field installations. Many of these installations are, in turn, responsible for individual laboratories, test facilities, sub-offices, satellite installations, area offices and other subordinate organizational elements not described herein. The subsequent sections of this subpart describe the principal field installations reporting to or otherwise controlled by Departmental officials.

§ 1003.82 Field Installations: Under Secretary.

The five multi-program Operations Offices, which report to the Under Secretary, are responsible for the implementation of a wide range of Departmental research, development, and demonstration programs. The functions of the Operations Offices include procurement, contract management, and project management, as well as oversight of the major Government owned, contractor operated facilities of the Department. The mailing addresses of these offices are:

(a) Manager and Regional Representative, Chicago Operations and Regional Office, U.S. Department of Energy, 9800 South Case Avenue, Argonne, Illinois 60439.
(b) Manager, Idaho Operations Office, U.S. Department of Energy, 550 Second Street, Idaho Falls, Idaho 98401.
(c) Manager, Oak Ridge Operations Office, U.S. Department of Energy, P.O. Box E, Oak Ridge, Tennessee 37830.
(d) Manager, Richland Operations Office, U.S. Department of Energy, 825 Jadwin Avenue, P.O. Box 550, Richland, Washington 99352.

(e) Manager, San Francisco Operations Office, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612.

§ 1003.83 Field Installations: Assistant Secretary for Resource Applications.

The field installations listed below are each headed by a Manager who reports to the Assistant Secretary for Resource Applications:

(a) *Strategic Petroleum Reserve Project Management Office.* The Strategic Petroleum Reserve Project Management Office is the major field office of the Strategic Petroleum Reserve Program. The mission is to construct and maintain facilities to store crude oil to diminish U.S. vulnerability to severe crude oil supply interruption. The mailing address is:

Project Manager, Strategic Petroleum Reserve Project Management Office, U.S. Department of Energy, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Naval Petroleum Reserve in California.* The Naval Petroleum Reserve in California manages the exploration, conservation, development, and operation of the Naval Petroleum Reserves located in California. The mailing address is:

Director, Naval Petroleum Reserves in California, U.S. Department of Energy, P.O. Box 11, Tupman, California 93276.

(c) *Naval Petroleum and Oil Shale Reserves in Colorado, Utah, and Wyoming.* Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming are administered through an Office in Casper, Wyoming. The mission of the organization is to explore, prospect, conserve, develop, use and operate the Naval Petroleum Reserves located in the states above. The mailing address is:

Director, Naval Petroleum and Oil Shale Reserves in Colorado, Utah and Wyoming—NPR–3, U.S. Department of Energy, 400 East Forest Street, Suite 311, Casper, Wyoming 82061

(d) *Grand Junction Office.* The primary mission of the Grand Junction Office is to conduct a program to make increasingly reliable estimates of the nation's uranium resources and to determine areas favorable to uranium deposits. The Grand Junction Office also estimates uranium production capability; develops and evaluates improved exploration, assessment and production technology; administers leasing of mineral lands; and carries out activities relating to environmental effects of uranium mining and milling operations. The mailing address of the Office is:

Manager, Grand Junction Office, U.S. Department of Energy, 2597 B–¾ Road (South Redlands), Grand Junction, Colorado 81502.

§ 1003.84 Field installations; Assistant Secretary for Environment.

(a) The Environmental Measurements Laboratory is responsible for evaluating the exposure of man to environmental radiation, radioactivity, and other toxic materials. It develops and improves techniques for studying pathways of contaminants from source to man and applies new technology developments to the detection and analysis of ionizing radiation, traces metals and other pollutants.

(b) the mailing address for the laboratory is:

Director, Environmental Measurements Laboratory, U.S. Department of Energy, 376 Hudson Street, New York, New York 10014.

§ 1003.85 Field installations: Assistant Secretary for Fossil Energy.

The five Energy Technology Centers and two Mining Technology Centers, which report to the Assistant Secretary for Fossil Energy, conduct in-house research and development activities and manage small technology base projects in the area of fossil energy. The Centers and their mailing addresses are:

(a) Energy Technology Centers (ETC's)

(1) Director, Bartlesville energy Technology Center, U.S. Department of Energy, P.O. Box 1398, Bartlesville, Oklahoma 74003.

(2) Director, Grand Forks Energy Technology Center, U.S. Department of Energy, Box 8213, University Station. Grand Forks, North Dakota 58202.

(3) Director, Laramie Energy Technology Center, U.S. Department of Energy, P.O. Box 3395, University Station, Laramie, Wyoming 82071.

(4) Director, Morgantown Energy Technology Center,U.S. Department of Energy, P.O. Box 880, Morgantown, West Virginia 26505.

(5) Director, Pittsburgh Energy Technology Center, U.S. Department of Energy, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

(b) Mining Technology Centers (MTC's):

(1) Director, Carbondale Mining Technology Center, U.S. Department of Energy, P.O. Box 2587, Carbondale, Illinois 62901.

(2) Director, Pittsburgh Mining Technology Center, U.S. Department of Energy, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

§ 1003.86 Field installations: Assistant Secreatry for Nuclear Energy.

The field installations listed below report to the Assistant Secretary for Nuclear Energy:

(a) The Naval Reactors Offices in Pittsburgh and Schenectady administer the operations of atomic power laboratories and test facilities devoted to nulcear propulsion systems. The mailing addresses of these offices are:

(1) Manager, Pittsburgh Naval Reactors Office, U.S. Department of Energy, P.O. Box 109, West Mifflin, Pennsylvania 15122.

(1) Manager, Schenectady Naval Reactors Office, U.S. Department of Energy, P.O. Box 1069, Schenectady, New York 12301.

The Clinch River Breeder Reactor Plant Project Office is charged with design, licensing, construction, and testing of the nations's first large scale liquid sodium cooled breeder reactor power plant, and with operating the plant as part of a utility system. The mailing address of the project office is:

(1) Director, Clinch River Breeder Reactor Plant Project Office, U.S. Department of Energy, P.O. Box U, Oak Ridge, Tennessee 37830

(c) the Fast Flux Test Facility Project Office manages the contractor operations of a sodium-cooled fast flux reactor designed specifically for irradiation testing of reactor fuels and materials. The mailing address of the facility is:

(1) Director, Fast Flux Test Facility Project Office, U.S. Department of Energy, 825 Jadwin Avenue, Richland, Washington 99352.

§ 1003.87 Field installations; Assistant Secretary for Defense Programs.

The field installations listed below report to the Assistant Secretary for Defense Programs:

The Albuquerque Operations Office is primarily responsible for management of the nuclear weapons research, development, and production complex which includes 13 installations in 10 states. In addition, the office manages projects for other departmental programs including solar, geothermal, fossil and fusion reaserch. The mialing address is:

Manager, Albuquerque Operations Office, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115.

(b) The Nevada Operations Office is assigned responsibility for nuclear weapons testing and other related programs at the Nevada Test Site. The mailing address is:

Manager, Nevada Operations Office, U.S. Department of Energy, P.O. Box 14100, Las Vegas, Nevada 89114.

(c) The Savannah River Operations Office is responsible for energy research and development; production of special nuclear materials primarily for national defense, and related environmental research activities. The mailing address is:

Manager, Savannah River Operations Office, U.S. Department of Energy, P.O. Box A, Aiken South Carolina 29801

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Part X

Department of Defense

Corps of Engineers, Department of the Army

Amendments to Real Estate Handbook

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

32 CFR Part 644

[EP 405-1-2]

Amendments to Real Estate Handbook

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: This amendment revises a previously published section to reflect the renaming of one of the Divisions within the Directorate of Real Estate of the U.S. Army Corps of Engineers. This amendment also describes the existing procedures of the Corps of Engineers relating to disposal of real property. The procedures are included in the Real Estate Handbook (Engineer Pamphlet 405–1–2) and replace Engineer Regulations 405–1–900, 405–1–901, 405–1–902, 405–1–903, 405–1–904, 405–1–906, 405–1–907, 405–1–908, 405–1–909, 405–1–910, 405–1–911, 405–1–913, 405–2–999, 405–3–905, 405–3–916, 405–23–912, and 405–34–915.

EFFECTIVE DATE: October 8, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie L. Pitchford, Jr., Chief, Programs Division, Real Estate Directorate, Office of the Chief of Engineers, Washington, DC 20314 (202–272–0522).

SUPPLEMENTARY INFORMATION: On 15 January 1979 a final rule was published in the **Federal Register** (44 FR 3168) and amended on 8 February 1979 (44 FR 8184), 30 May 1979 (44 FR 31116), and 19 June 1979 (44 FR 35219) to describe existing procedures pertinent to certain other real estate activities of the Corps of Engineers. Further amendments will be published as existing Engineer Regulations are changed to the new format of the Real Estate Handbook.

Since this handbook only provides procedural guidance to personnel of the Office of the Chief of Engineers and Corps of Engineers field operating agencies having real estate responsibilities, notice of proposed rulemaking and the procedures thereto are considered unnecessary.

Date: October 3, 1980.

Forest T. Gay, III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

In consideration of the above, paragraph (a) of § 644.184 of Subpart D is revised to read as indicated below, and Part 644 is amended by adding Subpart F and changing the Table of Sections to read as set forth below:

§ 644.184 Responsibilities

(a) The Director of Real Estate, OCE, acting for and on behalf of the Chief of Engineers, has been delegated authority and responsibility for the administration of this program. There has been established within the Directorate of Real Estate the Realty Services Division which constitutes a central office of control responsible for supervision, inter-agency coordination, development of policies and procedures, Congressional liaison, and processing of appeals

* * * * *

Subpart F—Disposal

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Authority.—5 U.S.C. 301; 10 U.S.C. 3012.

Subpart F—Disposal

§ 644.311 General.

Subpart F sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

§ 644.312 Applicability.

Subpart F is applicable to Division and District Engineers having real estate responsibilities.

§ 644.313 Authority.

The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405–90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405–5 and AFR 87–15.

§ 644.314 Rules and regulations of the General Services Administration (GSA).

Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

(a) Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than $1,000.

(b) Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

(c) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

(d) Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

§ 644.315 Disposal priorities.

Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force:

(a) Transfer to other Department of Defense agencies and the U.S. Coast Guard.

(b) Transfer to other Federal agencies.

(c) Conveyance to eligible non-Federal agencies.

(d) Sale to the public.

§ 644.316 Environmental considerations.

The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq.) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has be submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200–1 and AR 200–2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

§ 644.317 Preserving historic landmarks and properties.

Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) will be set forth in Subpart H (to be published) and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200–1 and AR 405–90 for military real properties and in ER 1105–2–460 for civil works real properties.

(a) The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

(b) It is normally intended that the agency responsibilities under Section 106 of the National Historical Preservation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements

and must be complied with even when an environmental impact statement is not required.

§ 644.318 Compliance with State Coastal Zone Management Programs.

Subpart H will outline the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

§ 644.319 Protection of wetlands.

The requirements of Executive Order 11990, Protection of Wetlands, 42 FR 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the Order will be set forth in Subpart H (to be published).

§ 644.320 Floodplain management.

The requirements of Executive Order 11988, Floodplain Management, 42 FR 26951, (24 May 1977) and its implementation will be outlined in Subpart H (to be published). In accordance with ER 1165–2–26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

§ 644.321 Nondiscrimination covenant.

As required by Section 101–47.307–2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under Section 101–47.304.9(4) of the FPMR:

> The grantee convenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The convenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this convenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

§ 644.322 Disposition of proceeds from disposal.

(a) *Land and Water Conservation Fund.* Except as provided in (b) and (c) of this section and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C. 460L–5(a), FPMR Section 101–47.307–6). This includes the net proceeds from the sale of timber and structures.

(b) *Department of Defense Family Housing Management Account.* Section 501(b) of Public Law 87–554, as amended, 42 U.S.C. 1594a–1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

> Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700).

(c) *Proceeds from Sale or Transfer of Property Acquired.* Under Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph (a) of this section.

§ 644.323 Neutral language.

Wherever the words "man", "men", or their related pronouns appear in this Subpart, either as words or as parts of words (other than when referring to a specific individual), they have been used for literary purposes and are meant to include both female and male sexes.

§ 644.324 [Reserved]

§ 644.325 [Reserved]

Procedure for Placing Real Property in Excess Status

§ 644.326 Army military real property.

Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405–90.

§ 644.327 Air Force military real property.

Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87–4.

§ 644.328 Army military leased property.

(a) Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division of District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed $50,000.

(b) Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed $100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

(c) Any leased command real estate not coming within the category outlined in (a) and (b) of this section will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405–90.

§ 644.329 Army Civil Works real property.

(a) *Fee-Owned Land and Easements.* (1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN–REM) WASH DC 20314, accompanied by:

(i) A brief description of the character or nature of the land with an appropriately marked map showing the

approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for excessing.

(ii) Description of buildings and improvements.

(iii) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(iv) Information as to when and how the property was acquired.

(v) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(vi) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) *Action by the Office of the Chief of Engineers.* When the value of an easement interest reported pursuant to (a)(1) of this section does not exceed $1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of $1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

(b) *Leaseholds.* When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with Sections 644.333 through 644.339, he will take necessary action to terminate the lease in accordance with the procedure outlined in §§ 644.444 through 644.471.

§ 644.330 [Reserved]

§ 644.331 [Reserved]

§ 644.332 [Reserved]

Screening, Reassignment and Transfer of Real Property

§ 644.333 Screening for defense needs.

Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

(a) *Procedure for Screening Army Military Property.* Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) Washington DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) *Fee-owned Land.* Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(i) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405–90. The sample screening message in EP 405–1–2 at Figure 11–1, or a letter similar in form and content will be used without substantial deviation.

(ii) All action addressees and parties listed for information on Figure 11–1 in EP 405–1–2 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(iii) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph (e) of this section.

(iv) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405–90.

(2) *Capehart and Wherry Housing Projects.* Due to the complicated financial arrangements under which such projects are constructed and operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) Washington DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

(b) *Leaseholds, Buildings and Improvements.* Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405–90 and § 644.326 through 644.329, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of $50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) *Family Housing Leases.* Family housing leases under authority of Section 515, Public Law 84–161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) *Limit Screening.* Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) *Notice of Restoration Requirements.* All screening notices of

leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

(c) *Procedure for Screening Civil Works Property.* Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this Part will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

(d) *Screening of Air Force Property.* HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87–4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87–4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN–REM.

(e) *Report on Screening and Related Actions.* Immediately following the screening of fee-owned land, the DE will forward to DAEN–REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the rquirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to Sections 644.340 through 644.347 and Sections 644.385 through 644.389. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

(f) *Property with an Estimated Value of $50,000 or Less.* If the property has an estimated value of $50,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

(g) *Estimated Value in Excess of $50,000.* If military property has an estimated value in excess of $50,000, it must be reported to the Armed Services Committees of Congress pursuant to Title 10, United States Code, Section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

(h) *Date of Excess for Reporting Purposes.* From the above, it will be noted that where property has an estimated value in excess of $100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

§ 644.334 Reassignment and transfer procedures.

Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. *Transfer* refers to changing the jurisdiction for using and administering real property from one military department to another.

(a) *Reassignment Procedures—Army.* (1) *Military.* Reassignments of military real property are accomplished pursuant to a directive from DAEN–REM. These are not real estate disposal actions.

(2) *Civil Works.* Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) *Information Required.* Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN–REM as follows:

(i) Reference to excess directive, if any.

(ii) Description and map of lands.

(iii) Date, manner, and cost of acquisition of land and improvements.

(iv) Reference to any encumbrances which might affect the reassignment and use.

(v) Proposed effective date of reassignment.

(vi) Proposed new use.

(b) *Reassignment of Air Force Property.* The Air Force Staff reassigns real property within the Department of the Air Force.

(c) *Transfer of Military Property.* Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in §§ 644.400 through 644.443 and §§ 644.472 through 644.500.

§ 644.335 Screening of excess DOD property for nondefense Federal agency needs.

(a) *Screening by GSA.* (1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (§§ 644.348 through 644.367).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101–47.203–7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

(b) *Screening by Corps of Engineers.* Properties which are not reported to

GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

§ 644.336 Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD).

Simultaneously with screening under § 644.335 notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101–47.203.5 FPMR). Where such notice is given, these departments will be notified promptly, if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

§ 644.337 [Reserved]

§ 644.338 [Reserved]

§ 644.339 [Reserved]

Clearances—Army Military Real Property

§ 644.340 Reports to the Armed Services committees.

(a) Sections 644.340 through 644.347 describe the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

(b) Title 10 U.S.C. 2662 as amended by P.L. 96–418, dated 10 Oct. 1980, provides, in part that:

(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:

* * * * *

(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than $100,000.

(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than $100,000.

(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than $100,000.

(6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

* * * * *

(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

(d) A statement in an instrument of conveyence, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive.

(c) While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds $100,000.

§ 644.341 Clearance with the Armed Services committees.

(a) Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of $100,000, the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than $100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

(b) For Army property, data will be furnished in the format shown in Figure 11–2 (ENG Form 2187–R, Real Estate Disposal Report) in EP 405–1–2, and three copies forwarded to HQDA (DAEN–REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

(c) Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN–REZ–L) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

§ 644.342 Prior approval of Department of Defense.

(a) DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of $100,000.

(b) The data submitted pursuant to § 644.341 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

§ 644.343 Additional data for clearance with the committees.

To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187–R:

(a) Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red—Excess Area(s)

Green—Retained Area

Yellow—Previously Excessed Area(s)

Black or Dark Blue—Installation Boundary, heavy definition

Other Colors—for other purposes

(b) Copy of last utilization inspection report, plus information as to when and

how the excess property was last used by the Army.

(c) Basis for disposal: Base closure announcement; E. O. Survey; Command Report of Excess; Report of Availability; etc.

(d) A list of and general terms of any outgrants in effect on the excess area.

(e) Wether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities.

(f) Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

(g) Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187–R. Include official name of installation and former designations.

(h) Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served.

(i) Probable impact on local economy, if any.

(j) Estimate of any annual savings in operating and maintenance costs.

(k) Statement as to exchange potential of excess area.

(l) Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

(m) Character and use of area in vicinity of excess area.

(n) Care and custody costs for excess area.

(o) Staff/MACOM coordination.

(p) Environmental Assessment.

(q) Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

(r) Congressional district in which the property is located.

§ 644.344 Coordination with GSA.

At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

§ 644.345 [Reserved]

§ 644.346 [Reserved]

§ 644.347 [Reserved]

Reports of Excess Real Property and Related Personal Property to General Services Administration (GSA)

§ 644.348 Delegation of authority to division and district engineers.

Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), subpart 101–47.3, has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with §§ 644.333 through 644.339, and has been cleared with congressional committees, if required, in accordance with §§ 644.340 through 644.347.

§ 644.349 Excess property reported for disposal.

The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real Property, as set forth in section 644.355:

(a) *Fee-owned.* All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of $1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

(1) A lease containing an option to purchase;

(2) A lease containing a right of first refusal to purchase or to lease for an additional period;

(3) A right in the Government's grantor to the reversion of title; or

(4) A right reserved by the Government's grantor to repurchase the property.

(b) *Public Domain.* All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of $1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see §§ 644.376 through 644.384 for procedures for disposal of public domain land). Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

§ 644.350 Excess property reported for screening.

The types of property described in (a), (b), and (c) of this section must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

(a) Land held under lease, permit, license, easement, or similar instrument, other than listed in § 644.351.

(b) Improvements located on nonexcess Government-owned lands (including improvements on land held under permit from another Government agency; see §§ 644.376 through 644.384, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of $1,000 or more.

(c) Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in § 644.351) when, in the opinion of the DE, the improvements have a net salvage or market value of $1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

(d) Fee-owned property which, with improvements and related personal property, in the opinion of the

responsible Division or District engineer, have a fair market value of $1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in § 644.349(a) (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor).

§ 644.351 Excess property exempted from reporting.

No reports to GSA are required for the following types of excess property:

(a) Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than $1,000 in the opinion of the responsible DE;

(b) Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than $1,000 or are to be transferred to the owner of the land in restoration settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupany; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupany of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

(c) Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less that $1,000.

(d) Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

(e) Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

(f) Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of the Interior for return to the public domain pursuant to §§ 644.376 through 644.384.

(g) Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, Part 101–43, Utilization of Personal Property. However, when such structures are located on leased or permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible.

§ 644.352 Evaluation and reporting of flood hazards.

Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101–47.202–2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105–2–40 for information on the Flood Plain Management Services Program.)

§ 644.353 Determination of values for reporting.

Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of $1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

§ 644.354 Conditional reports of excess.

As an exception to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

(a) *Defense Industrial Reserve (DIR).* The Defense Industrial Reserve Act 50 U.S.C. 451 et seq., authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101–47.306–2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.)

(b) *Reserving Property for Civil Defense Purposes.* GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to cases where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advise.

§ 644.355 Preparation and submission of reports of excess.

(a) *Preparation.* (1) *General.* Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101–47.4902, and § 644.349 herein. However, since the type of information called for a Block 9 of standard form (SF) 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in §§ 644.516 through 644.539. Information on flood hazard will be included as required by § 644.352.

(2) *GSA Regulations.* Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the

provisions of Title 10, United States Code, Section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) *Reports of Excess—Air Force Property.* The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE.

(4) *Reports of Excess—Army Property.* DEs will prepare the SF 118 and the schedules for excess Army property.

(b) *Submission.* Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF–79–6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

§ 644.356 Report on Government title.

In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

(a) The description of the property.

(b) The date title vested in the United States.

(c) All exceptions, reservations, conditions and restrictions relating to the title acquired.

(d) Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.

(e) The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.

(f) All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN–REM), WASH, DC 20314.

(g) If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See § 644.317 for information on historic preservation.)

§ 644.357 Outgrant instruments, appraisals and muniments of title.

There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (§ 644.356 above) will state that HQDA (DAEN–REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN–REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN–REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN–REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

§ 644.358 Deposit of proceeds from disposal of family housing in the family housing management account.

(a) Title 42 U.S.C. 1594a–1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See § 644.322(b).)

(b) The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

(c) Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118 a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

§ 644.359 Supplemental information.

The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN–REM will be fully informed, with recommendations, in

order that the matter may be resolved through appropriate coordination with the GSA central office.

§ 644.360 Reports submitted for screening.

Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to § 644.350, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirements, pursuant to §§ 644.333 through 644.339, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

§ 644.361 Distribution of report of excess.

Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

(a) Complete copies to: (1) Regional Office, GSA—original and four copies.

(2) District Engineer—one copy.

(b) Division Engineer—one copy of the cover sheet (SF 118), and transmittal letter.

(c) A complete copy, except Schedule C (SF 118c), to HQDA (DAEN–REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN–REM) WASH DC 20314.

(d) Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

§ 644.362 Notice of receipt.

GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in §§ 644.368 through 644.375, will be figured from this date.

§ 644.363 Withdrawals or corrections of reports of excess.

(a) Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction" will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

(b) Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN–REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN–REM. (See §§ 644.340 through 644.347, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of $50,000.)

§ 644.364 Supply of forms.

Standard forms 118, 118a, 118b, and 118c, are not available in normal Army Adjutant General supply channels. The forms should be procured from GSA.

§ 644.365 [Reserved]

§ 644.366 [Reserved]

§ 644.367 [Reserved]

Care and Custody of Excess and Surplus Property

§ 644.368 Procedures and responsibilities for care, custody, accountability, and maintenance.

(a) *Department of the Army Military Property.* Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405–90.

(b) *Department of the Army Civil Works Property.* DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

(c) *Department of the Air Force Property.* Pursuant to AFR 87–4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

(d) *Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Other Federal Agencies.* Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

§ 644.369 Guidelines for protection and maintenance of excess and surplus real property.

Detailed guidelines are provided in FPMR Subsection 101–47.4913.

(a) *Calculated Risk.* These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

(b) *Improvements or Alterations.* FPMR Subsection 101–47.401–5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improvements or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practicable, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or suplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

§ 644.370 Transfer of custody to General Services Administration (GSA).

(a) Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101–47.202–10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

(b) The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

§ 644.371 Contracting for care and custody.

Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: "* * * An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia." (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

§ 644.372 Care and custody through interim use.

(a) *General.* Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101–47.203–9 and 101–47.312).

(b) *Permits to other Federal Agencies.* Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR Section 101–47.203–8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

(c) *Leases for Non-Federal Use.* Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405–80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN–REM on an individual basis.

§ 644.373 [Reserved]

§ 644.374 [Reserved]

§ 644.375 [Reserved]

Return of Public Domain Lands and Lands Obtained on a Temporary Basis From Another Federal Agency

§ 644.376 Procedure for disposal of public domain land.

(a) Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and

the U.S. Coast Guard in accordance with §§ 644.333 through 644.339, will be processed for disposal in accordance with 43 CFR 2370–2374 and § 644.381 hereof. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land Management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in §§ 644.472 through 644.500. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN–REM) Washington, D.C. 20314 and to the appropriate GSA regional office.

(b) If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN–REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in § 644.350(d). Generally lands which are extensively improved will be recommended to BLM for disposal as excess property.

(c) If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN–REP) Washington, D.C. 20314.

(d) If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN–REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

§ 644.377 Formal revocation of public land withdrawals and reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN–REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

§ 644.378 Cancellation of permits.

(a) Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in §§ 644.326 through 644.332, will be returned to the Federal agency from which it was obtained.

(b) When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN–REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in §§ 644.348 through 644.347, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained.

(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of § 644.381. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN–REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

(c) The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in § 644.379.

(d) Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN–REM with recommendations that they will provide disposition instructions.

§ 644.379 Procedure for cancellation of permits.

(a) When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN–REM:

(1) Description and location of the property;

(2) Date use was acquired;

(3) Department or agency from which acquired;

(4) Manner of acquisition; that is, by permit or other means, with copy of document;

(5) ENG Form 1440–R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

(b) Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in § 644.378(c), he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN–REM.

§ 644.380 Restoration of lands made available by other Government agencies.

(a) *Requirement.* Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in §§ 644.516 through 644.539 relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

(b) *Authority.* The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language:

> Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies.

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

(c) *Determination of Restoration Costs.* ENG Form 1440–R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

(d) *Payments for, or in Lieu of Restoration.* (1) *Work Performed by the Department of the Army.* If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) *Work Performed by Controlling Agency.* If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) *Payment in Lieu of Restoration.* If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on submission by the controlling agency of SF 1080 properly supported.

§ 644.381 Disposal of buildings and other improvements.

Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with §§ 644.472 through 644.500.

§ 644.382 [Reserved]

§ 644.383 [Reserved]

§ 644.384 [Reserved]

Predisposal Action

§ 644.385 Record of excess classification.

The DE will establish a record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued.

§ 644.386 Utilization for other needs.

The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN–REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

§ 644.387 Suspension of acquisition action on installations proposed for disposal.

When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN–REA–L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

§ 644.388 Army military—screening, clearance, preliminary report of excess, except where an E.O. 11954 survey has been made.

Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

(a) Immediately notify DAEN–REM by teletype, furnishing a brief statement of the real estate included in the recommendation.

(b) Promptly screen the property against Army and other defense

requirements if required by and in accordance with §§ 644.333 through 644.339, and advise DAEN–REM of the results.

(c) As soon as the screening message is dispatched under § 644.388(b), or immediately upon receipt of a disposal directive from DAEN–REM when screening is not required by §§ 644.333 through 644.339, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187–R, Disposal Report, for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with §§ 644.340 through 644.347. This should be forwarded to DAEN–REZ–L within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN–REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

(d) DOD approval of the disposal (property having estimated value in excess of $100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of $100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

§ 644.389 Army military—modified predisposal procedures where E.O. 11954 surveys have been made.

(a) DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

(b) If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405–90 to HQDA (DAEN–REM) Washington, DC 20314 within 15 days. DEs will be furnished a copy of the report.

(c) Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187–R, if required, for submission to DAEN–REZ–L.

(d) When the Report of Excess is approved, DAEN–REM will advise the DE and will request that screening be initiated. The approved report will be prompty referred through channels to the DE for further appropriate action.

(e) The ENG Form 2187–R will be forwarded to DAEN–REM not later than 15 days after receipt of the approved Report of Excess.

(f) As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

(g) When the estimated value of the property does not exceed $100,000 and preparation of an ENG Form 2187–R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN–REM of the date the SF 118 will be submitted to GSA.

§ 644.390 Executive Order 11954 surveys of civil works properties.

Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in Chapter 8 of EP 405–1–2.

§ 644.391 Predisposal conference.

(a) Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405–90, AFR 87–4, and §§ 644.368 through 644.375.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date.

(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

(b) It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

(c) A report on the predisposal conference will be forwarded to DAEN–REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

(d) When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

§ 644.392 Air Force—preliminary report of excess.

The DAF will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation

commander concerned, for submission of a preliminary Report of Excess to GSA.

§ 644.393 Final report of excess to GSA.

Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish HQDA (DAEN–REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with §§ 644.348 through 644.367. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

§ 644.394 Protection of disposal information.

To prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340–16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. "FOR OFFICIAL USE ONLY" marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification "CONFIDENTIAL" or higher has been used, documents must be declassified in accordance with AR 380–5.

§ 644.395 Coordination on disposal problems.

If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN–REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

§ 644.396 Assignment of personnel to administer.

To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

(a) Monitoring and expediting the actions described in §§ 644.385 through 644.399 and maintaining close liaison with GSA on disposal problems and actions.

(b) Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

(c) Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

(d) Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed.

§ 644.397 [Reserved]

§ 644.398 [Reserved]

§ 644.399 [Reserved]

Disposal of Fee-Owned Real Property and Easement Interests

§ 644.400 Authorities—general.

(a) *Statutory Authorities.* Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Public Law 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 et seq.), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

(b) *Rules and Regulations.* (1) *Issued by the GSA.* Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101–47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) *Issued by the Departments.* Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405–90, AFR 87–4, and AR 405–5/AFR 87–15, except Army civil works property which is governed by EP 405–1–2.

(c) *Authorities Delegated to the Department of Defense.* Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in § 644.314.

(d) *Authorities Delegated to the Army and Air Force.* Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203 (a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484).

(3) Other specific delegations from the Administrator of General Services.

(e) *Authorities (Special).* In addition to the general authority cited in paragraph (d)(2) of this section, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof

according to the nature of the particular law. These laws are described in subsequent sections of EP 405–1–2.

§ 644.401 Transfers—general.

Resumés of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in sections 644.402 through 644.408. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be transferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101–47.203–7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Excess property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands chiefly valuable for migratory bird management are subject to GSA regulations but are made without reimbursement (§ 644.429).

§ 644.402 Transfers among the armed services.

10 U.S.C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

§ 644.403 Transfers to Tennessee Valley Authority.

10 U.S.C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U.S.C. 301).

§ 644.404 Transfers to Federal Prison Industries, Inc.

18 U.S.C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

§ 644.405 Transfers to Veterans Administration.

38 U.S.C. 5003 authorizes the Secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word "facilities," as used in this Act, has been construed to include buildings and grounds.

§ 644.406 Transfers to Secretary of Transportation and the National Weather Service.

49 U.S.C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act similarly authorizes transfer of meteorological facilities, without charge, to the National Weather Service.

§ 644.407 Transfers to District of Columbia.

40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be recommended by the National Capital Planning Commission. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

§ 644.408 Interchange of national forest and military and civil works lands.

16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department, with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

§ 644.409 Procedures for Interchange of National Forest Lands.

(a) *General.* The interchange of national forest lands is accomplished in three steps: first, agreement must be reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the **Federal Register** an order transferring the respective lands of each department to the other.

(b) *Initiation of Requests for Interchange.* Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys. Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to

the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN–REM) WASH DC 20314, with appropriate recommendations.

(c) *Contents of Interchange Planning Report.* The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(i) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(ii) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes.

(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

(d) *Relinquishment and Assumption of Possession.* Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

§ 644.410 Procedure for other transfers.

(c) *Applicability—Exceptions.* Sections 644.410 through 644.412 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

(b) *Authority to Execute.* (1) *Secretaries of the Army and Air Force.* Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) *Division and District Engineers* will execute instruments transferring real property and related personal property to other Federal agencies: (i) which has been reported to GSA and which is transferred at the direction of GSA; (ii) leaseholds, easements, and other lesser interests in lands; and (iii) buildings, fixtures, and other improvements.

§ 644.411 Form of inter-agency transfer instrument.

(a) Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary of head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel, or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) A reference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services.

(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

(b) The DE will provide the data outlined in paragraph (a) of this section to HQDA (DAEN–REM) WASH DC 20314 for use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

§ 644.412 Transfer of custody and accountability.

The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the

transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN–REP) WASH DC 20314.

§ 644.413 Exchanges of fee-owned land and easement interests.

The statutes identified in sections 644.414 through 644.417 authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by States, other non-Federal agencies, and their instrumentalities. As a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

§ 644.414 MCA acts.

The annual military construction authorization acts usually contain general authority for the acquisition, "by donation, purchase, exchange of Government-owned lands, or otherwise," of lands and interests therein at specified installations or for specified military purposes. The annual acts must be examined to determine that specific authority exists to acquire land by exchange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in §§ 644.415 through 644.419.

§ 644.415 Army military and Air Force lands—$50,000 limitation.

(a) 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land, by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than $50,000.

(b) 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Government-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operations integrity of a military installation; and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

§ 644.416 Army civil works lands.

The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b–1).

§ 644.417 For MCA family housing.

The Act of 1 September 1954, Public Law 765, 83rd Congress (68 Stat. 1119), as amended by Sec. 415 of Public Law 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for "Military Construction-Army Family Housing at Military Installations and Facilities."

§ 644.418 Procedure for exchange.

(a) Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180–1–1. Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporated in a stipulation therein (§§ 644.111 through 644.121)

(b) Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved § 644.441. To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advance, be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN–REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should included to support the proposed action:

(i) Description and map of the property to be conveyed.

(ii) Statements as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(iii) A sufficient number of drafts or the conveyance to permit distribution thereof to interested agencies and the grantee.

(iv) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(v) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(vi) Any additional information necessary to a proper understanding of the proposed transaction.

(vii) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged.

(viii) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or is not required by regulation to be made.

(ix) Recommendations of the Division and District Engineers.

§ 644.419 Public Law 87–852 easements.

Public Law 87–852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

§ 644.420 Disposal of property in which the military departments have a continuing interest under special acts of Congress.

General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which

the disposals are premised, properties that can be conveyed under authorities discussed in §§ 644.421 through 644.424 are not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.

§ 644.421 Highway purposes.

Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of Chapter 2 of Title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

§ 644.422 Authorized widening of a public highway, street, or alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under Title 23 of the United States Code (see § 644.421), and to public lands in the National Forest System.

§ 644.423 Airport development.

(a) *Authority.* 49 U.S.C. 1723 provides that

> (a) . . . whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department, or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States.

(b) *Approval.* The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 F.R. 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in the suggested format of deed in EP 405–1–2.

(c) *Requirements for Conveyance Instrument.* Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

(4) That the grantee agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21)—nondiscrimination in federally assisted programs of the Department of Transportation—effectuation of Title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(i) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical

activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(ii) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(iii) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph (c)(7) of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

(d) *Procedure for Conveyance.* Upon receipt of a deed from the District Engineer, DAEN–REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval, before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(i) The request from the Administrator of FAA to the Secretary of the military department concerned;

(ii) The reply from the Secretary involved to the Administrator, making the property available;

(iii) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(i) The type and condition of the property, including improvements acquired therewith or constructed since acquisition;

(ii) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(iii) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

§ 644.424 Development of public port or industrial facilities.

(a) *Authority.* Section 108 of Public Law 86–645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

(b) *Limitation.* Only lands within a navigation project will be made available for conveyance for these purposes.

(c) *Delegations, Rules, and Regulations.* Pursuant to rules and regulations published in the **Federal Register** 11 March 1961 (26 FR 2117–2118; 33 CFR 211.141–211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(i) That the development of public port or industrial facilities on land within a project will be in the public interest;

(ii) That such development will not interfere with the operation and maintenance of the project;

(iii) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(iv) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(v) The conditions, reservations and restrictions to be included in a conveyance under the Act.

(2) The District Engineer has been delegated authority to:

(i) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(ii) Determine the period of time in which applications for conveyances may be filed.

(3) *Notice.* The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (i) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (ii) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) *Filing of Application.* Any agency interested in the development of public ports or industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully

the purposes for which the land is desired and the scope of proposed development.

(5) *Price.* No conveyance shall be made for a price less than the fair market value of the land.

(6) *Conveyance.* Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11–5 in EP 405–1–2 executed by the Secretary of the Army.

(d) *Procedure.* (1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN–REM), with recommendations, and with the information required by § 644.329, and such additional information as will enable the Chief of Engineers to make the determinations required under paragraph (c)(1) of this section.

(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with paragraph (c)(3) of this section. The public notice will follow substantially the guide format in Figure 11–4 of EP 405–1–2.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN–REM for the determination referred to in paragraph (c)(1)(iv) of this section.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11–5 of EP 405–1–2 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN–REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in § 644.441.

§ 644.425 Authority and procedure for disposal of surplus property by DA to eligible public agencies.

FPMR Section 101–47.303–2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in §§ 644.428 through 644.432 for public highways, streets, and alleys under the Act listed in §§ 644.421 and 644.422, by transfer to the District of Columbia under § 644.407, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)(3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, Section 101–47.4905.

§ 644.426 Classification.

Pursuant to FPMR, Section 101–47.303–1, any item of surplus land not reported to GSA for disposal in accordance with §§ 644.348 through 644.367 will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in § 644.427.

§ 644.427 Notice to eligible public agencies.

FPMR, Sections 101–47.303–2 and 101–47.308–1, et seq., provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than $1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e)(3)(H).

§ 644.428 Airport property.

(a) *Eligible Transferees.* The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

(b) *Preliminary Procedures.* (1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g)(1).

(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

(c) *Classification.* District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN–REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA. District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is

determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN–REM.

(d) *Notice of Availability.* Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11–6 in EP 405–1–2 is a format for use in preparing the notice.

(e) *Advertising.* The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under Section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA approves such acquisition.

(f) *Form of Application.* Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11–7 in EP 405–1–2). The application includes the provisions of Section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN–REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

(g) *Request for Modifications in the Provisions of Section 13(g) of the Surplus Property Act of 1944, as Amended.* Should an applicant request modifications in the restrictions and conditions imposed by Section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN–REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN–REM for further necessary action.

(h) *Personal Property.* Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

(i) *Meetings with Public Bodies.* Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

(j) *Land Survey.* In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

(k) *Transfer Instruments.* The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11–8 in EP 405–1–2 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

(l) *Recordation.* All transfer instruments will be recorded by and at the expense of the transferee.

(m) *Compliance.* The Administrator, FAA, is responsible for determining and enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

§ 644.429 Wildlife purposes.

(a) *Authority.* The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b–d, in connection with land and improvements that: (1) can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

(b) *Notice of Availability.* If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program.

(c) *Classification—Factors to be Considered and Determinations to be Made by Disposal Agency.* Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any state or to the Department of the Interior, under the authority cited in paragraph (a) of this section. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN–REM), Washington, D.C. 20314. In addition to the determination

that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN–REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

(d) *Application.* Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation. In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

(e) *Instrument of Conveyance.* Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample Deed for Conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11–10 in EP 405–1–2.

(f) *Publication of Order.* The order required to be published in the **Federal Register** after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

§ 644.430 Shrines, memorials, or religious purposes.

Pursuant to the provisions of FPMR, Section 101–47.308–5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in §§ 644.472 through 644.500.

§ 644.431 Power transmission lines.

(a) *Authority.* Pursuant to the provisions of Section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with §§ 644.333 through 644.339. Screening with the appropriate state agencies will be conducted in all cases.

(b) *Procedure.* Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN–REM in order that a determination of the action to be taken may be obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

§ 644.432 Assignment to Department of Health, Education, and Welfare (HEW) or successor agencies for health or educational purposes.

(a) *Authority.* Under Section 203(k)(1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k)(1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under Section 203(k)(1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR, Section 101–47.308–4, a military department, when acting as disposal agency is authorized to assign property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

(b) *Notice to Department of Health, Education, and Welfare or Successor Agencies.* When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in Section 203(k)(1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in §§ 644.333 through 644.339 and §§ 644.348 through 644.367) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party.

(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20-day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if their is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under Section 203(k)(1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under Section 203(k)(1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN–REM.

(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

§ 644.433 Surplus disposal to private parties.

General. Sections 644.435(b) through 644.440 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in §§ 644.540 through 644.557.

§ 644.434 Cottage site disposal.

Disposal of lots for cottage site development and use is authorized by P.L. 84–999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130–2–400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297–R, will be used.

§ 644.435 Procedure.

(a) *Fee-owned land.* When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under § 644.426 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in §§ 644.540 through 644.557.

(b) *Easements.* Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of $225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR, Section 101–47.313–1).

§ 644.436 Appraisal.

Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

§ 644.437 Disposal plan for fee-owned land.

A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

(a) Description and map of the lands.

(b) Description of buildings and other improvements.

(c) Appraisal made in accordance with §§ 644.41 through 644.49, unless exempted by § 644.436.

(d) Information as to when, from whom, and how the property was acquired.

(e) Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.

(f) Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(g) If there is an indication of valuable minerals, such statement will be made with full explanatory data.

(h) Where the estimated value of the land together with improvements and related personal property is in excess of $1,000, the disposal plan will be submitted to DAEN–REM for approval.

§ 644.438 Disposal plan for easements.

When recommending disposal of a surplus easement the District Engineer will submit the following:

(a) Information as to when and from whom the easement was acquired.

(b) The consideration paid therefor.

(c) Identification of the installation to which it is appurtenant.

(d) If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

(e) If the owner of the servient estate, or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easments discussed in paragraph (b) of § 644.435.

§ 644.439 Sale and conveyance.

Sales procedure, including advertising, will be in accordance with §§ 644.540 through 644.557. Normally, conveyance will be by deed, prepared and executed as provided in § 644.441.

§ 644.440 Application of antitrust laws.

Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN–REM information on the probable terms or conditions. DAEN–REM will use this information as the basis for a request to the Attorney General for advice (FPMR, Section 101–47.301–2).

§ 644.441 Preparation and execution of deeds.

(a) *Authority to Execute.* All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegations set forth in §§ 644.400 through 644.443 will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HEW for disposal will be executed by officers of that department.

(b) *Form of Deed or Instrument.* Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to DAEN–REM. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements.

(c) *Authority for Conveyance.* Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite: "* * * under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 C.F.R. 101–47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 F.R. 7113)." Conveyances to states and their instrumentalities under the special statutes, listed in §§ 644.425 through 644.432, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Public Law 537, 80th Congress (§ 644.429) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101–47.313–11).

(d) *Conditions in the Conveyance.* The deed will contain the reservations, restrictions, or conditions, required by: (1) the directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

(e) *Acceptance by Grantee.* Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and excepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

(f) *Execution of Deed.* (1) The Division Engineer will forward to DAEN–REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Engineer. Upon approval of the proposed disposal by DAEN–REM, the deed will be forwarded to higher authority for execution and returned to the District Engineer for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(i) Real Property Classification, ENG Form 1825.

(ii) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in §§644.425 through 644.432.

(iii) Disposal plans.

(iv) Appraisal where not included in (iii) above.

(v) Statement on advertising conducted.

(vi) Abstract of bids.

(vii) Relocation contract or change agreement.

(g) *Distribution of Deeds.* Deeds will be delivered by the District Engineer and recorded by or at the expense of the grantee. Upon delivery and recordation of any deed conveying Army, Air Force, or nondefense property, the District Engineer will conform two copies by endorsing thereon the date and manner of delivery, and the date, time and place of recordation in the public land records. One conformed copy will be forwarded to HQDA (DAEN–REM) WASH DC 20314, and the other conformed copy to HQDA (DAEN–REP) WASH DC 20314. This requirement extends to copies of deeds executed by other disposal agencies and furnished District Engineers pursuant to FPMR, Section 101–47.307–3(b). Two additional copies of deeds delivered by District Engineers will be conformed and furnished any other Federal agency charged with compliance enforcement of any reservations, restrictions, or conditions in the deed.

§ 644.442 [Reserved]

§ 644.443 [Reserved]

Disposal of Leaseholds and Leasehold Improvements

§ 644.444 Authority.

Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions stated in Sections 644.444 through 644.471. Exceptions are where: (a) under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101–47.4905), in which cases the procedures provided in §§ 644.400 through 644.443 will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN–REM.

§ 644.445 Procedure for termination of leases.

When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms of leases providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the next fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

(a) *Forms of Notice of Termination.* Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11–11 in EP 405–1–2. Notice of Cancellation, Figure 11–12 in EP 405–1–2, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

(b) *Manner of Serving Notice of Cancellation.* The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

(c) *Distribution of Notice of Termination.* The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

§ 644.446 Vacation and protection of premises.

The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to §§ 644.368 through 644.375 and AR 405–90.

§ 644.447 Joint survey of premises.

(a) *When Required.* As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph (c) of § 644.454. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

(b) *Contents.* The report will show, in detail, the work items necessary to place the premises in as good a

condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

(c) *Housing Leases.* The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

§ 644.448 Limits on government obligation to restore.

The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

(a) *Restoration Not to Exceed Fee Simple Value.* The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

(b) *Where Estimated Cost of Restoration Exceeds Diminution in Value.* When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that, "This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished" (28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

§ 644.449 Requirement for notice by lessor.

Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B–48678, 10 April 1945, the Comptroller General expressed the following views along this line:

(a) In leases pertaining to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

(b) In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

(c) Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

(d) As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

§ 644.450 Items excluded from usual restoration obligation.

Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

(a) Foundation work.

(b) Waterproofing or membraning.

(c) Exterior tuck pointing.

(d) Cleaning or repair of catch basins, cesspools, or manholes.

(e) Repair of: (1) Interior unfinished walls.

(2) Unfinished hollow tile, concrete block, or gypsum block walls.

(3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).

(4) Insulating materials in walls necessitated by leakage in walls or roofs.

(5) Damage to plaster caused by leakage in wall or roof.

(6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighting, caulking or sealing.

(7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.

(8) Structural steel or iron.

(9) Fire escapes.

(10) Heating systems.

(11) Plumbing systems.

(12) Ventilating systems and air conditioning systems.

(13) Power plants.

(14) Electric wiring.

(15) Lighting fixtures (or replacement).

(16) Sprinkler systems.

(f) Settling or subsidence.

(g) Other structural repairs to buildings or equipment.

§ 644.451 Nature of required restoration.

Restoration by the Government will ordinarily include the following:

(a) Wear and tear beyond that which is reasonable and ordinary.

(b) Damage due to negligence by Government personnel.

(c) Restoration or reinstallations necessitated by alterations or removals by the Government.

(d) Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See §§ 644.516 through 644.539).

§ 644.452 Minor restoration cases—determining extent of restoration required.

(a) In minor restoration cases, ENG Form 1440A–R, Joint Terminal Condition Survey, will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 1440B–R, Cost of Restoration. In order to effect economies, the DE may arrange for the utilitization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed $5,000; and

(2) The net salvage value of Government improvements remaining does not exceed $1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed $1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

(b) *Preparation of ENG Form 1440–R.* Use of ENG Form 1440B–R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A–R and ENG Form 1440B–R, which complement each other.

(2) The use of ENG Form 1440B–R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in paragraph (b) of § 644.460.

§ 644.453 Major restoration cases—determining extent of restoration required.

(a) *Engineer Estimate and Appraisal.* Any restoration case not covered by the definitions of minor restoration case in paragraph (a) of § 644.452 is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440–R, Cost of Restoration, will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440–R is divided into five parts, each relating to specific factors, to be used as conditions may require.

(b) *Preparation of ENG Form 1440–R.* Comments and instructions for preparation of ENG Form 1440–R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, Part I of the form:

(1) "1" to "6" Self-explanatory.

(2) "7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (Part 4)." The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) "8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations): (Part 4)." An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the "value in place" of the improvements to be sold or otherwise disposed of. "Value in place" is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) "9. Gross Salvage Value of Government-owned property: (Part 4)". The "gross salvage value" is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property

to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for moving intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) "10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (Part 4)." The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440–R (Part 4), and the total will be reflected on the recapitulation sheet (Part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the estimated "Cost of Restoration other than Cost of Dismantling and Removal" (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) "11. Estimated Net Salvage Value of Government-owned Property: (Part 4)". This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) "12. Cost of Restoration other than Cost of Dismantling and Removal: (Part 3)". From information developed by the joint survey of the property, § 644.447 above, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) "13. Total Cost of Restoration: (Item 10 plus Item 12)". The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) "14. Net Cost of Restoration: (Item 9 minus Item 13)". In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an "in place" value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration.

(10) "15. Approximate Time Required for Actual Salvaging and Restoration Operations". So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

§ 644.454 Negotiating restoration settlements.

Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

(a) *Financial Limitations Which Preclude Actual Restoration.* In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

(b) *Settlement Where Property Enhanced in Value by Improvements.* Where the leased property has been enhanced in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be

given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with §§ 644.540 through 644.557. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

(c) *Reaching Agreement on Estimates of Cost.* The terminal survey and condition reports specify the items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440–R (Part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration may be made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

§ 644.455 Claims for loss or damage of personal property.

In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

§ 644.456 Rent during the period required for restoration.

A sufficent period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

§ 644.457 Settlement where part of the premises is surrendered.

Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

§ 644.458 Documenting lease terminations and restoration settlements.

In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Governemnt improvements removed. Releases will also be obtained as indicated in § 644.462.

(a) *Form to be Used.* Releases will be executed, in triplicate, on ENG Form 232–R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11–16 in EP405–1–2. Distribution of releases will be accomplished in the same manner as set forth in § 644.460.

(b) *Qualified Release.* In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form.

§ 644.459 Preparation of supplemental agreements effecting settlement.

The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B–63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items; instead, the other party to the agreement will be advised of his right to submit a claim. On the other

hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

§ 644.460 Supplemental agreement assembly.

(a) *Composition.* Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

(1) Completed Notice of Termination.

(2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).

(3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required.

(4) Joint terminal survey and condition report.

(5) ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) Estimated cost of restoration of leased personal property if not otherwise included.

(7) Statement of cost of any restoration actually performed by the Government.

(b) *Distribution.* An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

§ 644.461 Payment for restoration or settlement in lieu of restoration.

Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

§ 644.462 Performance of restoration work by district engineer—extension of time.

Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Subpart. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting Proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232–R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

§ 644.463 Termination and settlement of leasehold condemnation proceedings.

(a) *Leasehold Condemnation Termination Assembly.* When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus a prompt report will be made to DAEN–REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action:

(1) Name of project and using service.

(2) Style and civil number of the condemnation proceedings in which the land is involved.

(3) Particular tract or tracts involved.

(4) A citation of the authority pursuant to which the surplus status has been determined.

(5) Three copies of ENG Form 1440–R, or 1440A–R and 1440B–R.

(6) The proposed date of vacation of premises by Government.

(7) The term condemned and rights of the Government as to extension and cancellation thereof.

(8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.

(9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.

(10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.

(11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.

(12) Recommendation as to the advisability of abandoning the proceeding.

(13) Request for termination of condemnation proceeding.

(b) *Action by Chief of Engineers.* DAEN–REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings.

§ 644.464 Negotiating stipulation where proposed settlement not acceptable.

Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under §§ 644.452 and 644.453. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN–REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN–REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the terms will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN–REM and the Department of Justice,

which stipulation will specifically provide:

(a) That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

(b) That the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

§ 644.465 Physical restoration where stipulation not obtained.

If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this subpart.

§ 644.466 Release and record of physical restoration.

The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work peformed will be obtained.

§ 644.467 Condition reports.

Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

§ 644.468 Settlement of claims.

Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN–REA–C to have the proceeding amended to enlarge the issues to include restoration.

§ 644.469 [Reserved]

§ 644.470 [Reserved]

§ 644.471 [Reserved]

Disposal of Buildings and Other Improvements (Without the Related Land)

§ 644.472 Authority.

Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR, Section 101–47.302–2, the Department of the Army is designated as the disposal agency for the following property:

(a) Leases, permits, licenses, easements, and similar real estate interests held by the government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(b) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

§ 644.473 Methods of disposal.

Excess buildings and other improvements may be disposed of by the following methods:

(a) By demolition for utilization of salvage materials in the overall Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

(b) By transfer to another Federal agency.

(c) By assignment to the Department of HEW for disposal for health or educational purposes pursuant to Section 203k(1) of the Federal Property Act (FPMR 101–47.308–4).

(d) By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (§§ 644.400 through 644.443 and §§ 644.540 through 644.557).

(2) Boy Scouts of America (§§ 644.540 through 644.557).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved.

(5) An emergency Plant Facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

(e) By donation, abandonment or destruction.

§ 644.474 Determining method of disposal.

DE's are designees of the Chief of Engineers under AR 405–90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informed of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

§ 644.475 Excessing Army military and Air Force property.

The procedures for placing buildings and improvements in excess status are set forth in AR 405–90 and AFR 87–4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405–90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87–4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for

excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of $50,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of $50,000 or less, he will limit his statement to this fact and will not specify an estimated valuation.

§ 644.476 Excessing civil works property.

The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

(a) Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735–2–1 (Property Accounting Procedures-Civil).

(b) Buildings or improvements which cannot be kept in repair at a reasonable cost.

(c) Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

(d) Buildings or improvements which are damaged or unsuitable for public service.

(e) Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

(f) Temporary buildings or improvements which have served the purpose for which they were constructed.

§ 644.477 Civil works property—reimbursement of appropriation.

Under Title 33, United States Code, Section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-excess land come within the purview of this law. For further instructions on disposition of proceeds, see § 644.322.

§ 644.478 Demolition of buildings and other improvements for utilization of salvage material.

With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in §§ 644.444 through 644.471. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420–70). Further, it is provided in AR 420–70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87–4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

§ 644.479 Authority for transfer of buildings and improvements to other Federal agencies.

Buildings and other imporvements which have been screened for defense requirements, as outlined in §§ 644.333 through 644.339, may be transfered to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in §§ 644.400 through 644.443. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

§ 644.480 Procedure for transfer.

Transfer of buildings to other Federal agencies will be accomplished by DD Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property, or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: "Transfer to (Department or Agency), adjustment of funds not required." When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (§§ 644.348 through 644.367) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in §§ 644.333 through 644.339. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in §§ 644.400 through 644.443.

§ 644.481 Responsibility of transferee.

Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

§ 644.482 Assignment to Department of HEW or successor agencies.

Pursuant to delegation of authority contained in FPMR, Section 101–47.308–4, as set forth in §§ 644.400 through 644.443, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational purposes. Assignments will be effected by letter addressed as indicated in § 644.483. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property

proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in §§ 644.400 through 644.443 in regard to the delegation to disapprove transfers by HEW.

§ 644.483 Notification of Department of HEW or successor agencies.

When buildings or other structures are reported to GSA for screening pursuant to §§ 644.348 through 644.367, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

(a) A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

(b) The extent of building site clearance expected.

(c) That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

(d) When improvements may be inspected.

(e) That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

§ 644.484 Procedure for disposal through the Department of HEW or successor agencies.

During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referred to the appropriate field representatives of HEW.

(a) Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

(b) Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN–REM will be informed in order that corrective action may be requested of HEW.

§ 644.485 Sale of buildings and other improvements.

Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be diposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

(a) *Sale to Lessor Where Restoration is not Required.* Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all improvements located on the premises involved in any one lease is less than $1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with paragraph (d) of this section.

(b) *Sale Under Options.* All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See § 644.486 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

(c) *Sale to Eligible Public Agencies, the Boy Scouts, and the Public.* The sales procedure, including notice to eligible public agencies and advertising, set forth in §§ 644.540 through 644.557 will be followed in the sale of buildings or other improvements.

(d) *Appraisal.* Except as otherwise provided in Sections §§ 644.540 through 644.557 buildings and other improvements will be appraised prior to sale. Except as provided in § 644.490, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

§ 644.486 Disposal of buildings and improvements constructed under emergency plant facilities (EPF) or similar contracts.

Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

(a) *By Using Service.* Disposal of structural components as well as equipment may be accomplished by the using service. The term "structure" is defined to mean plant equipment which:

(1) Is held under a facilities contract of the Department;

(2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

(b) *By the Corps of Engineers.* Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN–REM, the following coordinated actions will be taken:

(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor. (Figure 11–18 in EP 405–1–2 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corps of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

§ 644.487 Procedure for disposal of surplus chapels.

By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (§ 644.430).

§ 644.488 Soliciting applications for purchase of chapels.

Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

(a) Purpose and intent of the use of the chapel.

(b) Facilities currently being used by the church/organization applying.

(c) Membership size of the church/organization.

(d) History of the church/organization and when established locally.

(e) Denomination and/or organization.

§ 644.489 Conditions of sale of chapels.

When sold under the provisions of § 644.490, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials, or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraised fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

§ 644.490 Determining price and provisions of sale for chapels.

(a) *Price.* The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in paragraphs (a)(1) and (2) of this section cogizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

(b) *Provisions of Sale.* (1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor.

§ 644.491 Coordination with the Chief of Chaplains.

The DE will submit applications for the purchase of chapels to DAEN–REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN–REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does

not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN–REM will be informed.

§ 644.492 Report on disposal of chapel.

As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN–REM) WASH DC 20314, by letter, which will contain the following information:

(a) Location and brief description of chapel or chapels.

(b) Reference to disposal instructions, if any, received from the Chief of Chaplains.

(c) Identity of purchaser and price paid.

§ 644.493 Release of restrictions on chapels sold.

Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN–REM with appropriate recommendations. DAEN–REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

§ 644.494 Donation, abandonment or destruction.

(a) *General.* Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

(b) *Finding of Fact.* The finding will be prepared as a separate document headed: Finding of Fact for ———— The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of $500,000 requires the approval of DAEN–REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

§ 644.495 Donation to a public body.

A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made. may be donated to a public body.

§ 644.496 Abandonment.

Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

§ 644.497 Destruction.

Disposal by the Corps of Engineers, as authorized in AR 405–90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army of Air Force command for disposal action under AR 405–90 or AFR 87–4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

§ 644.498 [Reserved]

§ 644.499 [Reserved]

§ 644.500 [Reserved]

Disposal of Standing Timber, Crops, and Embedded Gravel, Sand and Stone

§ 644.501 Authority.

(a) *Crops.* Crops are defined as personal property in FPMR Section 101–47.103–12 and are disposed of under FPMR Section 101–45.309–1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

(b) *Standing Timber, Embedded Gravel, Sand or Stone.* These are defined as real property (FPMR Section 101–47.103–12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR Section 101–47.302–2).

(c) *Small Lots of Standing Timber.* In accordance with AR 405–90, installation commanders are authorized to sell small lots of standing timber with a value not more than $1,000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed $10,000.

(d) *Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material.* The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C. 601. In such cases, DAEN–REM will obtain the necessary permission.

§ 644.502 Determination of excess status.

(a) *Military.* The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405–90. The procedure for the determination of availability of timber for disposal is outlined in AR 420–74.

(b) *Civil Works.* (1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN–REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130–2–400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria

available for disposal exceeds 5,000,000 board feet, request will be made to DAEN–REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of Section 5 of the Act of 13 June 1902, as amended, (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

§ 644.503 Methods of disposal.

Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

§ 644.504 Disposal plan for timber.

The DE take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

(a) Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

(b) Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

(c) Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor.

(d) The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

(e) Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

(f) Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

(g) Minor sales, involving lots with an estimated value of $1,000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the DE Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

§ 644.505 Disposal plan for embedded gravel, sand or stone.

Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

(a) Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

(b) Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

(c) Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

(d) Specifications as to methods to establish amount of material removed for the purpose of payment.

(e) With certain exceptions as disussed in paragraph (d) of § 644.544 an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

§ 644.506 Procedure for transfer to another Federal agency.

As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practicable or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN–REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR Section 101–47.203–7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in §§ 644.507 and 644.508. The foregoing instructions do not apply to land clearance operations performed either by contract or force account. It applies only to those cases where it is proposed to offer property for sale.

§ 644.507 Sales.

DEs will be governed by the general procedure set forth in Sections 644.540 through 644.557 in selling standing timber, growing crops, embedded sand or gravel or stone products.

§ 644.508 Agreement with Small Business Administration (SBA) on sale of timber.

The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating

in the timber business. This agreement is published for compliance as Figure 11–19 in EP 405–1–2. In the implementation of this agreement, the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

§ 644.509 Status as small business.

(a) *Definition.* Each invitation for bids for the sale of timber with an estimated value of $2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the "Certificate as to Small Business Status" (Figure 11–20 in EP 405–1–2).

(b) *Self-Certification.* 13 CFR 121.3–9(c) provides: "In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved."

(c) *Definition for Set-Asides.* The definition of small business provided in Figure 11–20 in EP 405–1–2 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business § 644.512. These portions of the definition are subject to frequent revision by SBA.

§ 644.510 Information for SBA on timber sales.

Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of $2,000 or more:

(a) Advice on proposed or prospective timber sales of Army timber.

(b) Copies of invitation for bids.

(c) Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

§ 644.511 Certificate of competency by SBA.

Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD–SBA Agreement. A certificate of competency issued by SBA will be honored in such cases.

§ 644.512 DA–SBA joint set-aside determination.

Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD–SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN–REM) WASH DC 20314 with DE comments and recommendation.

§ 644.513 [Reserved]

§ 644.514 [Reserved]

§ 644.515 [Reserved]

Clearance of Explosive Hazards and Other Contamination From Proposed Excess Land and Improvements

§ 644.516 Clearance of Air Force lands.

The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after dispostion has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See § 644.535 for support required of the Corps.

§ 644.517 Clearance of Army lands.

The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a "Statement of Clearance" (Appendix E, AR 405–90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

(a) Records of the neutralization work performed, including statement of methods employed.

(b) List of dangerous and explosive materials removed.

(c) Number and names of demolition technicians employed.

(d) Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

§ 644.518 Determination of categories.

Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

(a) *Category One.* Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof.

(b) *Category Two.* Those lands or buildings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010, will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for disposal.

§ 644.519 Responsibilities.

(a) *Category One.* The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as

certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety veiwpoint, clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN–REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armed Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this Subpart F. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN–REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

(b) *Category Two.* The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposed excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the Major Army Command (MACOM) to DAEN–REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700–4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminated facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700–4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

§ 644.520 Contaminated industrial property.

(a) GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of the Office, Chief of Engineers (OCE), or the property may be withdrawn from excess and returned to the using command for care and custody.

(b) A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection.

(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

§ 644.521 Limitations on clearance cost.

The following principles are established for determination of the financial limit of clearance operations at excess installations:

(a) *Government-owned land.* Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

(b) *Leased land.* Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

§ 644.522 Clearance of military scrap.

Military scrap can contain or be contaminated with explosives, chemicals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN–REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

§ 644.523 Restricting future of artillery and other ranges.

Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of

fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no known definite period within which such projectiles will become inert through weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work has been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN–REM–C with the DE recommendations.

§ 644.524 Reporting contaminated land to the General Services Administration.

Contaminated areas, except industrial properties as covered by § 644.520 will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

(a) The extent and type of such contamination;

(b) Plans for decontamination, if any; and

(c) The extent to which the property may be excessed without future decontamination.

§ 644.525 Statement of clearance in reporting excess property to GSA.

The Report of Excess will include the Statement of Clearance furnished by the using command (§ 644.517). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale of lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destory any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

§ 644.526 Reporting target ranges.

All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner:

(a) If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

(b) If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

§ 644.527 Recording Statements of Clearance.

On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN–REM and DAEN–REP.

§ 644.528 Return of contaminated leased land to owners.

Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in § 644.525.

(a) Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

(b) As stated in § 644.525, the owner should be advised that the Department is willing to remove or destory any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

§ 644.529 Supplemental agreement with owner of contaminated leased land.

In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises.

Suggested Clauses for Use in Supplemental Agreement

Whereas, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated map(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of Lessor) , of dollars ($), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and convenant, in consideration of the payment, to use the land for such purposes only.)

§ 644.530 Conditions in conveying land suspected of contamination.

The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

Whereas, said property was a part of (Name of Installation) , a military installation used for , and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

Whereas, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to

the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

Whereas, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

Whereas, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

Whereas, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

Now, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here convenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintanance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

§ 644.531 Warning to public of danger in handling explosive missiles.

When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the later is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

§ 644.532 Reporting accidents.

Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385–40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requested to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN–REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

§ 644.533 Contamination discovered after return of land to owner, or sale.

When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revised and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN–REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative.

§ 644.534 Return of public domain land.

(a) *General.* The procedures described elsewhere in §§ 644.516 through 644.539 to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

(b) *Congressional.* A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such as to make dedudding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget: ". . . requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that

takes into account the desired future use and value of the land to be decontaminated."

(c) *Army.* The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary of the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN–REM with complete background data for review and instructions.

§ 644.535 Support in clearance of Air Force lands.

Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF commands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

(a) A map which depicts and annotates differing areas according to their estimated highest and best use.

(b) An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

§ 644.536 [Reserved]

§ 644.537 [Reserved]

§ 644.538 [Reserved]

§ 644.539 [Reserved]

Sale Procedure

§ 644.540 Advertising.

(a) *Definition and Purposes.* GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this Subpart F. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favortism has been shown by officers or employees of the Government in making sales of public property.

(b) *Notice to Department of Commerce.* A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than $5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1–1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

(c) *Procedure.* Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN–REM by the most expeditious means.

(d) *Bidders Mailing Lists.* Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2–205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: *"Attention Bidders.* If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

(e) *Inspection of the Property.* Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

§ 644.541 Award of contract.

(a) *Opening of Bids.* All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

(b) *Award and Notice to Bidders.* Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

(c) *Equal Offers.* Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received,

award shall be made by a drawing by lot limited to the equal acceptable offers received (See also § 644.542.)

(d) *Public Auction.* When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR, Section 101–47.304–7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN–REM will be obtained before auction sales are undertaken.

§ 644.542 Application of anti-trust laws.

The Federal Property Act provides that real property and related personal property with an aggregate total cost of $1,000,000 or more (or personal property with an acquisition cost of $3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN–REM information on the probable terms and conditions of the sale. DAEN–REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, Section 101–47.301.2 provides guidance on the information to be furnished. Where indentical bids in excess of the $2,500 are received, FPMR, Section 101–47.304–8 provides for a report to the Department of Justice. Section 101–47.304–8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

§ 644.543 Determination of acceptable offers after advertising.

(a) Generally an acceptable offer is one which:

(1) Is submitted by a responsible bidder.

(2) Conforms to the Invitation for Bids.

(3) Equals or exceeds the appraised fair market value of the property.

(4) Was independently arrived at in open competition.

(b) A formal appraisal is not required where real property components:

(1) Are to be offered on a competitive sale basis that will adequately test the market.

(2) Are at the same location and are to be sold under a single advertisement.

(3) Have a total estimated fair market value of $10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the $10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed $10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in paragraphs (d) and (e) of this section.

(c) All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of $10,000 will be appraised. Where an acceptable offer, as defined in paragraphs (a) and (b) of this section, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

(d) Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed $1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

(e) Where the appraised or estimated value of all items to be included in a single sales contract exceeds $1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN–REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph (c)(2) of § 644.544.

§ 644.544 Negotiated sales.

(a) *To Private Parties.* Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

(b) *To Eligible Agencies.* (1) Acts of Congress listed in the Federal Property Management Regulation, Section 101–47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except Section 203(c)(3)(H) of the Federal Property Act (40 U.S.C. 484(c)(3)(H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The Section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are

obtained. (The other Acts listed in Section 101–47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (Sections 644.400 through 644.443).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

(c) *Authority to Negotiate.* (1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of $1,000 or less by negotiated sale without advertising, provided that such action is within the purview of paragraphs (a) and (b) of this section, and satisfactory terms of disposal can be obtained. Except as provided in § 644.543 and paragraph (b) of § 644.544 all sales are not less than the appraised fair market value. See paragraph (d) of this section for requirement for appraisal by contract.

(2) All other proposals to negotiate sales without advertising will be submitted to DAEN–REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of $1,000 under provisions of the Federal Property Act cited in paragraph (b)(1) of this section, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN–REM) for transmittal to GSA for submission to the Committees.

(d) *Appraisal by Contract.* Pursuant to Federal Property Management Regulation, Section 101–47.304–9(b), where sales are to be negotiated under the authority provided by paragraphs (a) and (b) of this section, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN–REM.

(e) *Record to Justify Waiver of Advertising.* (1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by paragraph (b) of this section, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with the record of the case as the required documentation of justification for waiver of advertising. DAEN–REM will make available to the DE necessary copies of such statements for filing or distribution.

§ 644.545 Form of invitation for bids and contract of sale.

Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571–R, Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038–R, Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change the formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN–REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to DAEN–REM for approval. Suggested additional provisions and conditions for use in the sale of standing timber are contained in ENG Form 2140–R, Supplement to Standard Form 114 for use in Timber Sales Contract. In preparing sale contract forms, the following instructions will be followed:

(a) A definite date and time will be set for the opening of bids.

(b) Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

(c) The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the "Treasurer of the United States" for at least 20 percent of the bid. When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

(d) For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

(e) Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the

Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038–R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

§ 644.546 Credit.

Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. Prior to offering property for sale on an extended payment plan basis, approval from DAEN–REM will be obtained. Extension of credit will be within the limitations of FPMR, Section 101–47.304–4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

§ 644.547 Extensions of time.

Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

(a) Establishment of realistic periods for completion of the sales contract.

(b) Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

(c) Reasonable restrictions on resale of improvements at the site.

(d) Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

§ 644.548 Abstract of bids.

At the opening of bids, DD Form 1501 or 1501–1 (Abstract of Bids) will be prepared showing all bids received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

§ 644.549 Payments.

All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States."

§ 644.550 Sale to employees or military personnel.

The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

§ 644.551 Equal opportunity—sales of timber, embedded sand, gravel, stone, and surplus structures.

Consistent with Executive Order No. 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7–103.18 will be included in all contracts and first-tier subcontracts over $10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12–805:

(a) Sale of standing timber.

(b) Sale of embedded sand, gravel, and stone in their natural state.

(c) Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

§ 644.552 Statement of contingent or other fees.

The instructions and procedures contained in Section I, Part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1–506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1–506–3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1–506.3 is $1,000 insofar as sales or property of the Department of Energy are concerned.

§ 644.553 Preparation and distribution of sales documents and reports of sales.

(a) *Report of Funds Received.* As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

(b) *Numbering of Contracts.* The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180–1–1 (ECI 30–203).

(c) *Documentation and Reports of Sale.* The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see paragraph (d) of this section).

(1) Contract—one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)—one copy (not required for negotiated sales).

(3) DD Form 1131—four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

(4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph (e) of § 644.544).

(5) Advertisement, if any—two copies.

(6) Bond, if any—two signed copies.

(d) *Distribution of Reports of Sale.*

(1) *Military Property.* The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) *Civil Works Property.* The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy

of advertisement, if any, and original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

§ 644.554 Insurance against loss or damages to buildings and improvements by fire or acts of God.

The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (Section 101–47.304–4(f)).

§ 644.555 [Reserved]

§ 644.556 [Reserved]

§ 644.557 [Reserved]

Inspections To Insure Compliance With Disposal Conditions

§ 644.558 Properties requiring compliance inspections.

The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

§ 644.559 Civilian component training facilities.

(a) *Authority.* Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interest of the United States. The Secretary of Defense is authorized by (40 U.S.C. 484(k)(4)(d)) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States.

(b) *Authority Delegated.* The authority vested in the Secretary of Defense under the Act cited in paragraph (a) of this section has been redelegated to the Secretary of the Army and the Secretary of the Air Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

§ 644.560 Inspections of civilian component training facilities and other properties conveyed subject to conditions.

The DE, within whose areas of military real estate operations are located the facilities conveyed under the authority mentioned in § 644.559, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integrated with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k)(4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

§ 644.561 Inspections of civil works properties.

Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

§ 644.562 [Reserved]

§ 644.563 [Reserved]

§ 644.564 [Reserved]

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federal register

Monday
October 27, 1980

Part XI

Department of Energy

International Energy Program; Voluntary Agreement and Plan of Action; Approvals by the Deputy Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

DEPARTMENT OF ENERGY

International Energy Program; Voluntary Agreement and Plan of Action; Approvals by the Deputy Secretary of Energy Pursuant to Section 5 of the Voluntary Agreement

AGENCY: Department of Energy.

ACTION: Publication of approval of participation by U.S. Reporting Companies in the International Energy Agency's Third Allocation Systems Test.

SUMMARY: The text of letters of approval and recordkeeping requirements with respect to U.S. Reporting Companies participation in the Third Test of the IEA's International Oil Allocation System which were issued September 30, 1980 are published herewith.

EFFECTIVE DATE: October 1, 1980.

FOR FURTHER INFORMATION CONTACT: Craig S. Bamberger or Martin S. Kaufman, Office of General Counsel, International Trade and Emergency Preparedness, GC–11, Room 6E–067, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252–2900.

SUPPLEMENTARY INFORMATION: Pursuant to Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. 6272 and the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement), 2 CCH Federal Energy Guidelines, para. 15,845, U.S. oil companies participating in the Voluntary Agreement are afforded an antitrust defense for activities in connection with the preparation or testing of the International Energy Agency (IEA) Emergency Oil Allocation System. Pursuant to Section 5(b) of the Voluntary Agreement, specific approval is required if participants in the Voluntary Agreement are to provide or exchange confidential or proprietary information or data in connection with such activities. Beginning October 1, 1980 the IEA is conducting a third test of its emergency oil allocation system (AST–3). U.S. Reporting Companies which participate in the Voluntary Agreement have been given written approval pursuant to Section 5(b) of the Voluntary Agreement for participation in AST–3.

The documents published herewith are the letter of approval sent to the 20 U.S. Reporting Companies participating in the Voluntary Agreement and in AST–3, the requirements for recordkeeping in connection with such participation (which requirements apply and elaborate existing DOE regulations contained in 10 C.F.R. Part 209) and correspondence among the Department of Energy, the Department of Justice, the Department of State and the Federal Trade Commission evidencing consultation among those agencies and the required concurrence of the Department of Justice in the issuance of the letter of approval by the Department of Energy. Notice of a meeting of the Industry Supply Advisory Group and its participation in AST–3 was published in the **Federal Register** on October 1, 1980 (45 FR 65026).

COMMENTS RECEIVED: The proposed letter of approval and recordkeeping guidelines were published in the **Federal Register** for public comment, 45 FR 56126 (August 22, 1980). Four written comments were submitted; one by a law firm which has previously commented on industry activities pursuant to the Voluntary Agreement; one each from two U.S. oil companies which are participants in the Voluntary Agreement and will be participating in AST–3; and one from counsel to several U.S. oil companies participating in the Voluntary Agreement and in AST–3.

The comment received from the law firm which has previously participated in hearings and rulemakings with respect to section 252 of EPCA and in connection with industry participation in the Voluntary Agreement was premised on the belief that the letters of approval and recordkeeping guidelines were in the nature of a "rule, regulation or order" of the DOE, and asserted that the **Federal Register** notice requesting public comment did not comply with statutory requirements or general principles of administrative due process. The premise of this comment is mistaken; the letters of approval and recordkeeping guidelines are not rules, or orders as those terms are used in the DOE Organization Act, 42 U.S.C. 7101 or as the terms are used in the Administrative Procedure Act, 5 U.S.C. 551. The letters are neither rules of general applicability, nor are they orders granting or denying rights, privileges or licenses. The letters merely apply the Voluntary Agreement, and the DOE's recordkeeping regulations, 10 CFR Part 209, to a particular activity. The letters of approval are specifically required by section 5(b) of the Voluntary Agreement, which itself is authorized by section 252 of EPCA, as a condition of the availability of the statutory antitrust defense for certain voluntary activities. The letters of approval, do not have to be accompanied by a regulatory analysis or impact statement as this commenter asserted. This same commenter noted, with respect to the recordkeeping guidelines, that Congressional intent in adopting section 252 of EPCA and requiring the presence of a full-time Federal employee at any industry meeting was to ensure that the monitoring agency maintained a "sleepless eye" on such meetings. Section 4(a) of the recordkeeping requirements explicitly states that a U.S. representative will be present throughout all test meetings. However, recognizing the potentially irregular work hours necessitated by a simulated emergency, the recordkeeping requirements permits individual work by ISAG members when U.S. Government observers are not available; in extraordinary circumstances off-site communications and on-site phone calls by ISAG members also will be permitted in the absence of U.S. Government observers, provided such communications are adequately recorded and justified. Such an arrangement is necessary if AST–3 is to simulate, to a reasonable extent, an actual allocation exercise; we believe section 252 of EPCA and the Voluntary Agreement recognize a need to balance antitrust monitoring and attaining a workable emergency allocation system.

One of the oil companies which commented had four specific recommendations. The first was that the statement in section 6 of the approval letter that U.S. test participants will keep a "full and complete" record of communications should be changed to a requirement that U.S. participants maintain a log of their communications. The recordkeeping requirements state that U.S. ISAG members must maintain a full and complete record of test site communications, test site telephone conversations or off-site communications by means of a standard log. This log, if appropriately kept, will be a full and complete record of communications as required by Section 252 of EPCA and the recordkeeping requirements. The same commenter also suggested that the reference to U.S. company employees serving on National Emergency Sharing Organizations (NESOs) and the statement that such activities are not covered by the approval be accompanied by a statement that approval by the U.S. Government is not necessary. Such a change was not made in the final approval letter because it was determined to be inappropriate for the U.S. Government to reach any conclusion about participation in foreign NESOs by U.S. company personnel or personnel of affiliates of U.S. companies because such activities are primarily within the jurisdiction of foreign governments and because the precise nature of the operation of foreign NESOs is not sufficiently understood by

the U.S. Government for it to be in a position to make any statement concerning such activities. The exclusion of such activities from the scope of the approval letter does not imply any intention to prohibit, disapprove or discourage participation by U.S. companies or their foreign affiliates on NESOs. This commenter also suggested that section 7(j) of the draft approval letter (section 7(k) of the final approval letter) be modified to require that interim approvals for the discussion of additional information or data, not specifically described in sections 7(a)–(j), be in writing so as to avoid the ambiguous situation of an oral approval which has not been reduced in writing. This suggestion has been incorporated. Finally, this commenter observed that in view of the recordkeeping and submission requirements, there was no need for U.S. Government officials to have access to offices of U.S. participants to inspect records, interview employees or observe AST–3 activities. However, such access is required by the recordkeeping requirements in order to permit U.S. observers to evaluate the adequacy of various monitoring systems which will be employed during AST–3, particularly with respect to monitoring of company-to-company communications which are approved for the first time in AST–3. In addition, section 8 of the Voluntary Agreement requires participants to keep records in connection with actions under the Voluntary Agreement for 5 years, and access to such records at U.S. company offices will enable U.S. Government observers to evaluate the adequacy of that provision.

The other U.S. oil company participating in AST–3 which submitted written comments also made a number of suggestions. The first comment concerned the disapproval, in Section 8(b) of the letters, of ISAG access to opening inventory data, closing inventory level and inventory level changes for October 1979 because such data would also disclose company inventory positions at the close of September 1979, a period not included in the AST–3 data base. In light of this comment, and after considerable discussion with the IEA and ISAG manager, we have determined that ISAG need not, as a routine matter, have access to opening inventory data as of October 1, 1979, data showing inventory level changes in October 1979 and the "check total" in as reflected in the Questionnaire A data for October 1979. Analysis by U.S. Government agencies concerned leads to the conclusion that such data may not be essential for ISAG's tasks. However, if experience during AST–3 shows that ISAG needs such information to perform adequately, such access can be granted under the procedure outlined in section 8(b) of the approval letter. A second point raised by this commenter concerns the provision of interim approval by U.S. Government representatives for disclosure of or access to data not specifically enumerated in approval letter and suggested that the approval be valid for more than the 24 hours provided in section 7(k). This suggestion has not been adopted because we are confident that the U.S. Government representatives from the Department of Energy, the Department of Justice and the Federal Trade Commission will be able to consult with one another and decide whether to extend an interim approval within 24 hours from the issuance of the original interim approval. This commenter also stated that the limitations in section 8(a) of the approval were too narrow and that ISAG personnel should be permitted to discuss logistic or supply anomalies with one another. Section 8(a) has been modified to permit an ISAG member to discuss such anomalies, to the extent of confirming whether the data submitted is accurate, with another ISAG member who is employed by the company which submitted the data in question, as well as the company itself, and the IEA Secretariat. This change was made because it is quite possible that an ISAG member employed by a company submitting questionable data might be in a position to know if that data submission is accurate; however, in our view it is unlikely that an ISAG member not employed by the submitting company would know whether that company's data are accurate. This commenter also made a number of recommendations with respect to the recordkeeping requirements. It suggested that section 8(a) and 8(b) of the recordkeeping requirements seem to create duplicative reporting; this duplication is intentional because it is useful, for antitrust monitoring purposes, for the U.S. Government to receive written communication as promptly as possible from the originator, which is the intention of section 8(a). Section 8(b) requires that the recipient also provide a copy to the Federal agencies concerned; the purpose of this is to ensure that there is a cross-check as to the completeness of the submissions under 8(a). This commenter also urged that the time for submitting records of unwritten communications provided in section 8(c) be lengthened from 24 hours to three working days. This suggestion has been adopted so as to make this transmission requirement consistent with other filing deadlines in the recordkeeping requirements. It was also suggested that section 8(e) of the recordkeeping requirements, which provides for conference telephone calls involving U.S. monitors, is impracticable. One of the purposes of AST–3, from the perspective of the U.S. agencies, is to test possible monitoring modalities, and AST–3 will provide an opportunity to learn whether such conference calls are useful. Section 8(e) of the recordkeeping requirements, which provides for on-site inspection of company offices was criticized as being undersirable from an operational and legal standpoint because company personnel involved in AST–3 will also be involved in regular company business activities. The purpose of on-site monitoring, as previously stated, is to permit the U.S. Government to evaluate methods of monitoring company-to-company communications which are permitted in AST–3 for certain limited purposes. It is expected that the on-site monitoring can be arranged in such a way to minimize interference with normal company business not related to AST–3. Finally, this commenter stated that section 9(a) of the recordkeeping requirements will require duplicative reporting since most actions taken as part of AST–3 will be reflected in data submission, voluntary offer communication or other records submitted under other provisions of the recordkeeping requirements. If the requirements of section 9(a) are satisfied by other record submissions, then a separate report would only have to refer to those other submissions and incorporate them by reference and therefore would not be duplicative or unduly burdensome. Moreover, the requirement of a record of "actions taken" is explicitly provided in Section 8 of the Voluntary Agreement.

The comments by counsel to several U.S. companies participating in the Voluntary Agreement and in AST–3 were detailed and numerous. The first point made was that verbatim transcripts of the test are impractical and should not be employed in AST–3. To the contrary, the experience of U.S. Government observers during the Second Allocation Systems Test (AST–2) was that verbatim transcripts were useful for certain types of EPCA meetings or work sessions and pursuant to the statutory requirement of Section 252 of EPCA such transcription will continue to be employed for those portions of the test which are susceptible to accurate transcription. Also in connection with transcripts, it

was noted that explicit provision for review of transcripts should be made. Section 5 of the approval letter now includes a statement that transcripts will be available for review by participants or their counsel either during the test or later. It is anticipated that most verbatim transcripts will be available for review during the test, but it is also possible that some transcripts may not be available until after the test officially ends and those will have to be reviewed subsequent to AST–3. This commenter also suggested that the approval letter contain a general statement permitting access by U.S. ISAG members to any confidential or proprietary data which might be reasonably required during the test. We feel that the substance of this suggestion is already taken into account in section 7(k) of the approval letter, but that the open-ended approval of access to any data submitted during the test, without specification or without prior consideration by U.S. officials would not be consistent with the standards established in section 252 of EPCA and Voluntary Agreement. This comment also suggested, as did one of the oil companies, that section 7 of the approval letter recite that approval of participation by U.S. company or U.S. company affiliate personnel in NESOs was not necessary. This suggestion has been discussed previously. It is also suggested in this comment that section 7 specifically take into account data related to marine transportation which may be included in the test. Section 7(c) has been amended to refer specifically to data concerning availability of marine tonnage to transport crude oil or petroleum products, so as to reflect a more precise description of the role of the ISAG Marine Advisor contained in the final version of the AST–3 Test Guide. The comment also suggested that section 7 refer specifically to information contained in voluntary offer submissions; a new section 7(j) has been added to such effect. Although we believe that all of the information or data contained in voluntary offers is likely to be subsumed in sections 7(b) through (i), the explicit mention of voluntary offers will serve to eliminate any ambiguity, and takes into account the experience of AST–2 in which an additional approval was necessary to allay the concern of test participants in this regard. The commenter also suggested that section 7(a) could be interpreted as requiring that all data except that specified in the last sentence of 7(a) be disrupted whereas in actual fact other data may not be disrupted, but would be subject to disruption so as to make it impossible for anyone other than the submitting company to know whether the data is disrupted. The comment suggests that the phrase "may include as" be changed to "are only required" but this suggestion, in our view, does not accurately reflect the stipulation of the AST–3 test guide which permits companies to "mask" any data, particularly data which is not disrupted. We believe that the sentence as written does not create any serious ambiguities and that the tenor of section 7 of the approval letter, taken as a whole, makes it clear that all data except the three items specified mentioned in the last sentence of section 7(a) may or may not be disrupted and that the items specifically mentioned in the last sentence of section 7(a) will not be disrupted. The next suggestion made by this commenter is that section 7(i) be changed because the first and second sentences of that section appear inconsistent. We note, however, that the data format for national or regional product imbalances do not contain company specific data, and that such information could, if necessary, be provided in particular cases where it is necessary. The fact that submission of individual company product imbalance data is approved in the first sentence of section 7(i) is not inconsistent with limitation on access to such data by ISAG personnel; company specific product imbalance information may be provided to the IEA Secretariat under the approval but can only be provided to ISAG personnel if circumstances during AST–3 justify a further approval under section 7(k). The alternate language suggested by the commenter in this regard, which specifically refers to access to information otherwise approved in the letter of approval, has been adopted. This change should ameliorate any perceived inconsistency. This commenter also noted that references to the Deputy ISAG Manager requesting specific approvals would be inappropriate because the Deputy ISAG manager is not a U.S. citizen and is not employed by a U.S. company. Although we do not feel that this need be a matter of great sensitivity, in order to avoid any potential difficulties, all references to Deputy ISAG manager have been changed to "designee" of the ISAG manager.

This commenter also observed that section 8(i) (now designated 8(a)) of the proposed approval as originally written would prevent interaction between ISAG members concerning anomalies and precluded ISAG personnel communicating with reporting companies about anomolous data contained in NESO data submissions. As to the first criticism, it has been noted earlier that section 8(a) has been revised to permit discussions between the ISAG person who detects the anomalies and an ISAG Person who is normally employed by the company which submits the data. It is extremely unlikely, in our view, that an ISAG person not employed by a submitting company would have definitive information as to the accuracy of data. Section 8(a) has also been revised to permit ISAG personnel to talk with the company submitting the data or the company whose data a NESO has submitted about data anomalies. As did one of the oil company commenters, this commenter questioned the exclusion, in section 8(ii) (now 8(b)), of ISAG access to opening inventory data. The broad restriction contained in the draft approval has been modified so as to apply only to opening inventory data as of October 1, 1979 and other information from which that information could be derived. The limitation as to opening inventory data as of October 1 was imposed because such inventory data might well not be affected by the hypotehetical disruption upon which AST–3 is premised; moreover, we did not perceive significant utility in permitting ISAG to have routine unrestricted access to such data unless the hypotehetical disruption scenario significantly affected stock positions. As noted before, if access to October 1, 1979 opening inventory data is necessary, specific approval can be given by U.S. Government observers at the test. The commenter suggested with respect to section 12 of the approval, that the absolute prohibition of removal of test related documents by ISAG Personnel was unwarranted. Because we recognize that ISAG personnel may bring reference materials to the test site, and would understandably wish to retrieve them at the end of the test, the approval authorizes U.S. Government representatives at the test to permit removal of certain documents. The commenter suggested that section 14 of the approval, which provides for access by U.S. Government representatives at the test to data available to ISAG be limited to that data which is furnished pursuant to the approval. This suggestion would circumscribe U.S. Government access to data submitted by non-U.S. companies even if such data were available to U.S. company personnel serving on ISAG; such a limitation would not be consistent with the U.S. Government observers' obligation to monitor all actions of U.S. oil company personnel involved in

ISAG, including use of foreign company data. As did another commenter, this commenter objected to access to U.S. Reporting Company offices. As indicated previously, the purpose of such access is to monitor company-to-company communications, which are a novel aspect of this test.

This commenter also made a number of suggestions relating to the recordkeeping requirements. The first suggestion was that the prohibition of substantive communication between ISAG members at the test site in the absence of U.S. Government representatives was unduly restrictive. While we recognize that the requirement for presence of a U.S. Government representative may be inconvenient both for ISAG members and the U.S. Government observers, our understanding of the statutory requirements and the Voluntary Agreement indicates that to the extent practicable all ISAG communications should be subject to monitoring. Certain essential exceptions are recognized in the recordkeeping requirements, but the U.S. observers at AST–3 are committed to being availabe at the test site when communications between ISAG members are likely. During AST–2 this was the case, and little or not inconvenience was encountered in complying with an analogous provision in the AST–2 approval letter. With respect to the use of recording devices, the commenter noted that taping of meetings could result in inaccuracies or omissions; the agencies concerned recognize this problem and intend to use recording devices only in assisting them in memoralizing their notes of meetings, not directly to record meetings or other communications. The daily log referred to in section 4(d)(v) of the recordkeeping requirements is a document which will be prepared by U.S. observers and this has been made explicit in that section. Section 5(a) of the recordkeepoing requirements has been revised pursuant to a suggestion by this commenter that when a U.S. Government observer is present and indicates he will record a test site communication, the ISAG Members involved need not do so. Sections 7 and 8 of the recordkeepoing requirements have been slightly revised to include communications between the U.S. reporting companies and the IEA and to make it clear that only communications by a U.S. reporting company need be sent simultaneously to the Department of Energy, the Department of Justice, and the Federal Trade Commission. The time for submission of copies of documents or communications has been changed from 24 hours to three working days in a number of instances so as to reduce the burden on companies involved. With respect to the duplicative transmission of copies for records by reporting companies, previously discussed, the U.S. Government feels that such duplication is warranted as a means of evaluating different methods of recording the same event and determining, for the future, which method is most appropriate. With respect to the asserted burden of the requirement that U.S. companies report actions taken as part of the test (section 9 of the recordkeeping requirements), it is our view that such a requirement is wholly consistent with the Volunatry Agreement and should not be unduly burdensome.

Certain other stylistic, grammatical, organizational, and minor substantive changes have been made. The substantive changes derive from changes in the AST-3 Test Guide which was finally issued on September 9, 1980.

EFFECTIVE DATE: The final approval letter and recordkeeping guidelines are dated September 30, 1980 and are effective as of October 1, 1980.

Issued in Washington, D.C., October 21, 1980.

Eric J. Fyji,
General Counsel.

Appendices

A. Letter of Approval from Deputy Secretary John C. Sawhill to U.S. Reporting Companies.
B. Recordkeeping Guidelines.
C. Letter from Deputy Secretary of Energy to the Assistant Attorney General, Antitrust Division, Department of Justice.
D. Letter from the Deputy Secretary of Department of Energy to Assistant Secretary of State.
E. Letter from Assistant Secretary of State for Economic and Business Affairs to Secretary of Energy.
F. Letter from Deputy Assistant Attorney General for Antitrust Division, Department of Justice for Deputy Secretary of Department of Energy.
G. Letter from Federal Trade Commission to the Assistant Attorney General for Antitrust Division, Department of Justice.

Appendix A

Dear ——————————:

1. The International Energy Agency (IEA) will conduct in the near future a third test of the emergency allocation system (AST-3). The department of Energy (DOE) considers AST-3 a vital part of our preparedness activities. We hope your company will participate and provide full cooperation to the IEA in this undertaking.

2. This letter sets out guidelines for participation in AST-3 by U.S. oil companies and personnel of U.S. oil companies and provides required approvals for the exchange of confidential and proprietary information or data in connection with AST-3, as required by the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), 2 CCH Federal Energy Guidelines, para. 15,845. Participation by U.S. companies is governed by section 252 of the Energy Policy and Conservation Act (EPCA), DOE regulations at 10 C.F.R. Part 209, and the Voluntary Agreement.

3. AST-3 will begin on October 1, 1980 and will continue for approximately 10 weeks. The primary objective of AST-3 is to further test the concepts, procedures, data collection and data processing systems which have been devised to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (IEP) (TIAS 8278, November 18, 1974), as amended, including modifications and improvements made since the Second Allocation Systems Test in the spring of 1978, as further delineated in the Emergency Management Manual of the IEA (EMM), the ISAG/Secretariat Operations Manual (ISOM) and the AST-3 Test Guide issued by the AST-3 Design Group. AST-3 also will be used to assess the interface of the IEA emergency oil sharing system with that of the European Community, as described in the EMM. The test will serve as a vehicle for training personnel of the IEA Secretariat, the Industry Supply Advisory Group (ISAG), Reporting Companies and their affiliates, participating country National Emergency Sharing Organizations (NESOs), and in some cases Non-Reporting Companies, in the functioning of the emergency allocation system. The scope of AST-3 is designed to be significantly broader than the first Allocation System Test (AST-1) held in the autumn of 1976 and the second Allocation Systems Test (AST-2) held in the spring of 1978 and will more fully involve NESOs of member countries, Reporting Companies, affiliates of Rèporting Companies and some Non-Reporting Companies.

4. Industry will participate in several ways. First, industry representatives will staff the ISAG, which, with the IEA's Allocation Coordinator, Secretariat and an SEQ Emergency Group composed of representatives of IEA member countries, will comprise the IEA Emergency Management Organization at IEA headquarters in Paris, France conducting the test. Second, Reporting Companies will submit IEA Questionnaire A and other data to te IEA Secretariat and the ISAG, and will discuss these data with the IEA Secretariat and with the ISAG to the extent required for the test; their affiliates will make similar data submissions and have similar discussions with the NESO's of the participating countries in which they operate. Third, Reporting Companies will propose and simulate the carrying out of certain hypothetical supply reallocation measures called "Type 2" allocation by the IEA; in this connection, Reporting Companies may communicate with other Reporting Companies (i) for the purpose of identifying

suitable suppliers or receivers of oil to formulate "closed loop" Type 2 offers, (ii) to enable Reporting Companies to work out logistics needed to implement, or (iii) to undertake needed subsequent modification of Type 2 offers which have previously been accepted by the Allocation Coordinator. Finally, it is our understanding that some NESOs may have employees of Reporting or Non-reporting Companies or their affiliates as members of advisors.

5. In Paris, the test will be conducted, for notice purposes under the Voluntary Agreement, as a single meeting of ISAG carried out in accordance with Section 5 of the Voluntary Agreement. In addition to individual tasks and contacts with the Secretariat by ISAG members, working sessions will include meetings of all ISAG members, smaller group meetings of several ISAG members, as well as joint working sessions of a few ISAG members assigned to solve particular problems. The ISAG Manager or his designee may meet with members of the Control Group, consisting of the Chairman of the IAB, the Chairman of the SEQ and the IEA Executive Director. A verbatim transcript of certain sessions will be made under the supervision of U.S. Government observers; such transcripts will be available for review by participants in the sessions so transcribed, or their counsel, either during the test or later. For some ISAG sessions, a full and complete record will be prepared by U.S. Government observers who are present. A full and complete record of other communications will be maintained by the U.S. test participants. More detailed recordkeeping requirements, including operating procedures, are set out in the attachment to this letter. These recordkeeping requirements have been prepared in cooperation with the Department of State, the Department of Justice and the Federal Trade Commission, and are to be considered an integral part of this letter of approval.

6. In order to carry out the test, it will be necessary for Reporting Companies to provide the IEA Secretariat and the ISAG with certain information or data on IEA questionnaire forms and IEA formats, and to submit voluntary offers to supply or receive reallocated oil, and they may have to engage in other communications with the IEA Secretariat or ISAG to clarify, amplify, correct, or supplement such data submissions and voluntary offers. Further, ISAG members may have to exchange this and other information or data among themselves, with members of the IEA Secretariat, with IEA Reporting Companies, and with NESOs. Access to such information or data and to ISAG discussions and work sessions will be open to official observers from the European Community and IEA member countries authorized by the IEA to be present at the test. Aside from the IEA questionnaire and format data and information as to voluntary offers, much of the data or information will be available from public sources, particularly that described below in paragraph 7(b) through (g). Some such information or data, while actually public information, may not be definitely know to be publicly available by those exchanging it or it may be considered confidential by some companies. Some of the data or information needed to be provided or exchanged clearly will be confidential or proprietary.

7. Accordingly, approval under section 5(b) of the Voluntary Agreement is hereby given to Voluntary Agreement participants and their employees engaged in AST–3 to submit and exchange the types of information or data listed below which involve or might involve disclosure of confidential or proprietary information or data. However, this approval is granted only to the extent that the submission or exchange of these types of confidential or proprietary information or data is necessary to implement the oil allocation procedures of the IEP as delineated in the EMM and the ISOM and as elaborated in the AST–3 Test Guide, and to meet specific problems as they arise during AST–3. Approval is further limited to information or data covering the historical period October, November and December 1979 and January, February and March 1980. This letter neither approves nor disapproves the activities of company employees serving on NESOs or any communication between a Reporting Company or its affiliates and a NESO. Under these limitations, and those set forth in paragraphs 8, 9, 10, and 12, the submission and exchange of the following types of information or data is approved:

(a) Disaggregated October 1979 through March 1980 Questionnaire A or B data submitted during AST–3, *i.e.*, data as required by the Questionnaire A and B reporting instructions in effect for AST–3 as further defined in the AST–3 Test Guide, including:

—indigenous production of crude oil and natural gas liquids (NGLS) and feedstocks;

—imports and exports of crude oil, NGLSs and feedstock;

—petroleum product imports and exports (in crude oil equivalent);

—international marine bunkers; and

—inventory levels and changes.

This data base will be disrupted by Reporting Companies, coordinating with their affiliates as required, and by NESOs for Non-Reporting Companies operating within their boundaries, based on the Secretariat's disruption telex at the beginning of each cycle, and as elaborated during each cycle by updating telexes from the Secretariat. Reporting Companies may mask data if they so choose in accordance with the procedures established in the AST–3 Test Guide. Reporting Companies will rearrange their international supply plans to reflect the reduced availability of certain types of crude oil as well as certain other restrictions as indicated in the disruption telex and updating telexes and will report the new supply plan on Questionnaire A submitted to the Secretariat. In addition, each NESO will compile Questionnaire B from information or data received from Reporting Companies or their affiliates operating within its country and from non-Reporting Companies operating with its country and will submit Questionnaire B to the Secretariat. Company submissions to the Secretariat may include as actual undisrupted data the following:

—starting inventories as of October 1, 1979;

—indigenous crude/NGL production through all six months in the data base; and

—international marine bunkers.

(b) Capability of a refinery to process crude oils or specific crude oils, and the capability of a pipeline, dock, terminal or other storage or transit facility to receive, store, or throughput crude oils and petroleum products or specific crude oils or petroleum products.

(c) Availability of suitable marine tonnage to transport the available crude oil or petroleum products; and the capability of a port, installation, or waterway to receive or move vessels of various sizes and configurations.

(d) Main characteristics of crude grades and product types, excluding individual company product specifications.

(e) Actual and estimated historical production data on crude oil and NGLs for individual countries.

(f) Specific refinery considerations that prevent acceptance or processing of certain crudes, *e.g.*, the inability of the refinery to make certain specialty products for which the crude is particularly suited; the inability of a crude to meet certain general product specifications; hazards to refinery operations which use of a particular crude might cause; or the need for a refinery to operate at a minimum throughput level.

(g) Idenfification of supply logistics problems relating to certain countries.

(h) Identification of the existence of certain individual company considerations, involving:

(i) commercial policy,

(ii) supply or transportation factors, or

(iii) affiliate, third-party, concessional or other contractual arrangements,

which would preclude or make impracticable a proposed movement of oil. In each case, these considerations only would be described as such, without disclosure of calculations or examples of specific costs, prices or other financial information, or any other underlying facts.

Identification of product imbalances in certain countries or regions of certain countries, on EMM Format 7, and communications between NESOs and ISAG personnel concerning such product imbalances. Any discussion or communication about product imbalance questions with ISAG or to which ISAG personnel may have access shall not include disclosure of individual company confidential or proprietary information or data, other than the information or data approved in this letter, or which may be approved pursuant to subparagraph (k) of this paragraph 7.

(j) Voluntary offers to supply or receive reallocated oil.

(k) Such additional information or data or types of information or data as may be utilized to implement the oil allocation procedures of IEP as elaborated in the EMM, the ISOM and AST–3 Test Guide and to meet specific problems as they arise within ISAG, the disclosure of which is adequately justified in writing by the ISAG Manager or his designee and which is approved in writing on an interim basis by a U.S. Government representative attending the test. Such interim approval can be terminated by the

Department of Energy representative or the Department of Justice representative. Such interim approval shall not be applicable to information or data disclosed more than twenty-four hours after the interim approval is granted, unless it is extended in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the representative of the Federal Trade Commission. Such approvals shall be telexed to the U.S. Reporting Companies involved, if appropriate. Any such request by the ISAG Manager or his designee shall, to the extent practicable, be processed within twenty-four hours after receipt.

(1) Clarification, amplification, correction, explanation or supplementation of the types of information or data enumerated in subparagraphs (a) through (k), provided that this subparagraph (1) does not supersede any specific prohibition contained in subparagraphs (a) through (k) or elsewhere in this letter.

8. In order to carry out the test, these data and information must be provided and exchanged on a disagregated basis and the finding required by section 5(b)(2) of the Voluntary Agreement in this regard is hereby made, with the following limitations:

(a) During each test cycle, U.S. ISAG personnel will examine Questionnaire As and Bs to detect supply or logistical anomalies that might indicate that an error had been made by a Reporting Company or NESO in transmitting the data. After detecting a potential supply or logistical anomaly, a U.S. ISAG member may discuss such anomaly only with Secretariat personnel, member of ISAG who is regularly employed by the Reporting Company whose data is thought to be anomalous, the Reporting Company or NESO which tramsmitted the anomalous Questionnaire A or B data and the Reporting Company whose data is included in a Questionnaire B and which data is thought to be such an anomaly. U.S. ISAG personnel may not discuss suspected anomalies with any other persons. When responding to an inquiry from the ISAG member regarding such anomalies, a U.S. Reporting Company or its employee serving on ISAG only may confirm the accuracy of the reported data or provide corrected data. An explanation of such anomalies may be provided to personnel of the IEA Secretariat.

(b) Company-specific opening inventory data as of October 1, 1979, data showing inventory level changes in October 1979 and the "check total" for October 1979 as reflected in Questionnaire As and Bs shall not be made available to ISAG personnel on a routine basis, but only as necessary to solve specific supply problems when they arise. A U.S. Government observer present at the AST–3 test site may give written approval for disclosure of such data, upon receipt and consideration of a written request from the ISAG Manager or his delegate stating that access to such data is necessary.

(c) The Department of Energy representative, with the concurrence of the Department of Justice representative, after consultation with the Federal Trade Commission representative at AST–3, may terminate this approval as it applies to the conduct of any supply analysis by U.S. ISAG personnel if such anlysis may lead to unwarranted disclosure of competitively sensitive supply or logistical information, or have any other unwarranted anticompetitive effect.

9. This approval does not extend to provision or exchange of:

(a) Confidential or proprietary crude oil or petroleum product prices;

(b) Costs or market shares of crude oil or petroleum products (other than those which can be derived from the Questionnaire A or B data submitted during AST–3); or

(c) Individual company information regarding overall long-term investment, divestment, refining, operating, transportation or marketing programs.

10. A U.S. Reporting Company will be permitted to communicate with another Reporting Company only to enable them to formulate "closed-loop" voluntary offers, to enable them to arrange the logistics needed to implement Type 2 offers which have been accepted by the Allocation Coordinator, and to modify previously approved voluntary offers if necessary. Type 2 transactions are those intended to balance allocation rights/obligations and to remove significant product imbalances. These communications will be limited to discussions of the quality and volumes of oil that would be involved in a voluntary offer and the timing or logistics involved in effecting the physical transfer of such oil. No other confidential or proprietary information or data shall be discussed or exchanged. Prices or value of the oil shall not be discussed. Type 1 transactions are transactions made by a company to satisfy its own commercial supply, distribution or logistics needs in response to an oil supply emergency situation. Type 1 transactions will be assumed to have occurred without inter-company communications during AST–3.

Communications between Reporting Companies (involving one or more U.S. Companies) as described in this Paragraph 10 are permitted from October 15 through October 28, 1980 (for Cycle 1) and November 16 through 26, 1980 (for Cycle 2). During the period October 29 through November 15, 1980, communications between such Reporting Companies are permitted if, in the supplying or receiving company's opinion, they are necessary to modify a Cycle 1 Type 2 transaction approved for implementation by the Allocation Coordinator.

11. Participation in AST–3 does not create an obligation on U.S. ISAG members or U.S. Reporting Companies to provide or exchange any information or data which may be confidential.

12. In no case shall an employee or representative of a U.S. company participant in the Voluntary Agreement or any affiliate of a U.S. company, which affiliate is listed as a participant in the Voluntary Agreement, supply to his company or to any other person, any confidential or proprietary information or data obtained as a consequence of his membership in the ISAG or participation in any NESO, except such information or data as is necessary to be supplied in the course of carrying out AST–3 or related NESO activities. No U.S. ISAG member may remove any documents related to the test from the IEA premises, except as authorized in writing by a U.S. Government representtive attending the test.

13. One copy of all Questionnaire A data shall be provided on Questionnaire A formats, as distinquished from telex form, to:

Voluntary Agreement Coordinator, International Affairs, IA–12, Department of Energy, Forrestal Building, Room 7F–031, 1000 Independence Ave., S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

An additional copy shall be sent to each of the following:

Office of General Counsel, International Trade and Emergency Preparedness, GC–11, Department of Energy, Forrestal Building, Room 6E067, 1000 Independence Ave., S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

Donald A. Kaplan, Energy Section, Antitrust Division, Department of Justice, P.O. Box 14141, Washington, D.C. 20044, Twx No. 7108221907.

14. Any confidential or proprietary information or data exchanged or furnished pursuant to the test shall be supplied upon request to U.S. Government observers from the Department of Energy, Department of Justice or Federal Trade Commission. During AST–3 U.S. Government observers may obtain access to the offices of U.S. participants at the test site in Paris or in the United States for the purpose of observing AST–3 related activities, reviewing records kept in connection with AST–3 or interviewing employees participating in AST–3.

15. This approval may be modified or revoked in writing by the Department of Energy representative, with the concurrence of the Department of Justice representative in consultation with the Federal Trade Commission representative, if developments during AST–3 indicate that modification or revocation is warranted. Any modification or revocation shall be in writing and conveyed to all participants in the Voluntary Agreement and the ISAG Manager or his designee. No modification or revocation shall have retroactive effect.

16. This approval of U.S. company participation in the test and the provision of certain data and information (including the need to provide it in disaggregated form) has been the subject of consultation with the Department of State and has been concurred in by the Department of Justice, after consultation with the Federal Trade Commission, all as required by the Voluntary Agreement. Copies of correspondence reflecting our consultation with the Department of State, and the Department of Justice's concurrence in our approval, after consultation with the Federal Trade Commission, are annexed.

Sincerely,

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Appendix B.—Requirements for Recordkeeping by U.S. Companies Participating in the Third Allocation Systems Test (AST–3)

1. Introduction

The following requirements apply existing U.S. recordkeeping requirements (10 CFR Part 209) to the third IEA Allocation Systems Test (AST–3). These requirements apply to U.S. Reporting Companies and to U.S. Reporting Company employees who are members of the Industry Supply Advisory Group (ISAG) who will be participating in the test in Paris.

If experience indicates the need, the U.S. Government representatives will have discretion to allow alternative recordkeeping procedures consistent with Section 252 of the Energy Policy and Conservaiton Act and existing regulations.

2. Definitions

For purposes of these requirements the following definitions apply:

(a) The term "Communication" means any exchange of data or other informaiton relating to the carrying out of AST–3, except that such term does not include administrative, procedural, or ministerial information exchanged within the test site.

(b) The term "Test Site" means that portion of the building housing the headquarters of the International Energy Agency where IEA offices and conference rooms are located and such other office space or conference rooms as may be assigned by the IEA during the test.

(c) The term "Test Site Communication" means any face-to-face communication occurring within the test site which involves two or more ISAG members, at least one of whom is an employee of a U.S. company participant in the Voluntary Agreement or its affiliates.

(d) The term "Test Site Telephone Conversation" means any telephonic communication between a U.S. ISAG member and (i) another ISAG member, (ii) a Reporting Company, (iii) the Chairman of the Industry Advisory Board (IAB) to the IEA, (iv) any NESO representative, or (v) the IEA Secretariat.

(e) The term "Test Meeting" means the following Test Site Communications:

(i) Meetings of the entire ISAG;

(ii) Meetings of the ISAG Country Supply, Supply Coordination or Supply Analysis subgroups;

(iii) Meetings of the ISAG manager and/or deputy manager with ISAG subgroup heads.

3. Communications by U.S. ISAG Members

(a) *Permissible Communications.* Subject to the procedures and limitations in Sections 4 and 5, the following types of oral communications are permitted:

(i) Test Site Communications;

(ii) Test Site Telephone Conversations;

(iii) Off-Site Communications;

(iv) Communications by a U.S. ISAG member with representatives of the AST–3 Control Group. Such communication shall be considered a test site communication and recorded pursuant to paragraph 5 below.

(v) Communications by a U.S. ISAG member with representatives of the IEA Secretariat or members of the SEQ Emergency Group. The recordkeeping requirements set out in Section 5 below do not apply to such communications.

(b) *Restrictions on Communications.* All communications shall occur on the test site except when special circumstances make an off-site communication necessary, *e.g.*, when a need for immediate communication arises unexpectedly or otherwise makes a return to the test site impracticable, or when time zone differences involved in necessary communications would otherwise require very early morning arrival or very late night stay at the test site.

4. U.S. Government Monitoring and Recordkeeping at Paris

(a) A U.S. Government representative shall be present throughout all test meetings. He may be present during any other communications. While it is intended that U.S. Government representatives will be present continusouly at the test site to monitor test meetings, communications, work sessions and individual work by ISAG members (1) during such regular work hours as ISAG adopts and (2) at any extraordinary hours if given advance notice, it will not be necessary for U.S. Government observers to be present at times other than the above for permissible communications other than Test Site Communications, or individual work by ISAG members to be undertaken.

(b) Test meetings shall be monitored by a U.S. Government employee who shall be responsible for keeping a "full and complete" written record of each session, or for ensuring that a verbatim transcript is made.

(c) U.S. Government representatives may make use of tape recording devices or other recording devices, to assist in their personal recordkeeping.

(d) The "full and complete" record of the Paris portion of AST–3 shall consist of (i) the records of all test meetings; (ii) records of other test site communications which may be taken by U.S. Government representatives; (iii) the communication records required to be supplied to U.S. Government representatives by U.S. ISAG members pursuant to Section 6(a); (iv) the telexes, written communications and other records required to be supplied to U.S. Government representatives pursuant to Sections 6(b) through (d); and (v) a daily log summarizing the overall test activities of ISAG at Paris to be prepared by the U.S. Government observers. As they are accumulated in appropriate batches, these materials will be transmitted to the U.S. Government in Washington at approximately weekly intervals, to be correlated and analyzed with the remainder of the test records, *i.e.*, the records of Reporting Company communications on voluntary offers and their reports of actions taken, as required pursuant to Section 7.

5. Recordkeeping Requirements for U.S. ISAG Members

Recordkeeping with respect to test site communications other than test meetings will be conducted in accordance with subsections (a) through (c) below:

(a) A U.S. ISAG member shall maintain the full and complete record of a test site communication (except when a U.S. Government observer present indicates he will maintain such record), test site telephone conversation or off-site communications, by means of entering in a standardized log the date, time, identity of the parties (by name and organization) and a description of the transaction or information discussed, including identification of any problem involved and any conclusions reached or recommendations made. In the case of an off-site communication, he shall also state the special circumstances necessitating this communication.

(b) Where a U.S. ISAG member has been assigned to joint work sessions to solve specific identified problems, the overall subject matter of which is already contained in a full and complete record of a test meeting, and the results of which will be reported at a session where a full and complete record will be maintained, then, notwithstanding subsection (a), the record of such session to be kept by the U.S. ISAG member need only include the date, time, identity of the parties and a brief identification of the substance of the discussion during the work session, with a reference to the rest meeting where it was more fully discussed.

(c) Where more than one U.S. ISAG member is involved, the parties may designate who shall make and supply such records. By mutual agreement, non-U.S. ISAG members may make records of communications with U.S. Reporting Companies and with U.S. ISAG members if such records are kept in the rquired form and supplied to the U.S. Government representatives promptly, in accordance with these guidelines.

6. Disposition of Records at the Test Site

(a) Copies of records required to be maintained by U.S. ISAG members under Section 5 shall be submitted to a U.S. Government representative within three working days following the communication involved.

(b) Documents, information or data furnished by the IEA to U.S. ISAG members to be used in balancing allocation rights and obligations, including the member country allocation rights and obligations and any other information furnished in Step 1 of the IEA *Allocation Implementation Steps*, as described in the EMM and the ISOM, shall be provided to a U.S. Government representative.

(c) All documents, information or data furnished by or on behalf of U.S. Reporting Companies or the ISAG to the IEA in connection with balancing allocation rights and obligation shall be submitted to a U.S. Government representative at the test site.

(d) Telexes or other written communications from the ISAG to U.S. Reporting Companies and from U.S. Reporting Companies to the ISAG shall be provided to a U.S. Government representative at the test site.

7. Records of U.S. Reporting Companies

(a) A U.S. Reporting Company is required to maintain intra-corporate documents relating to the Voluntary Agreement. With respect to the test, this is expected to include

telexes received and sent, memoranda concerning intra-company discussions of hypothetical sales or exchanges, documentation concerning actions requested by the ISAG or proposed by a Reporting Company, communications with the IEA Secretariat, and any other documents generated by the test.

(b) A U.S. Reporting Company is also required to make a full and complete record of any communication with ISAG members, including any of its own employees who are members of the ISAG, except when the Reporting Company has agreed with the ISAG or with an ISAG member that the communication will be recorded by the ISAG or the ISAG member. Such records made by a U.S. Reporting Company shall be sent to the Department of Energy, the Department of Justice and the Federal Trade Commission within three working days of its occurrence.

(c) A U.S. Reporting Company is required to maintain copies of all written communications with another company, ISAG or the IEA Secretariat or make a full and complete written record of any non-written communication with another company, ISAG or the IEA Secretariat, in connection with carrying out the test, *i.e.*, a communication with respect to developing or implementing a voluntary offer.

(d) Records of *unwritten* communications should be made in the manner described in section 5(a) of these guidelines.

(e) Each U.S. Reporting Company is required to forward within two weeks copies of all test records set forth in section 7(a) through (d) to an appropriate office at company headquarters, where they shall be maintained for five years separately from other company records. These records may be subject to U.S. Government examination during and after the test.

8. Reports of Communications With Other Companies

(a) A copy of any written communication by a U.S. Reporting Company with another Reporting Company shall be simultaneously sent to the Departments of Energy and Justice and the Federal Trade Commission by the same means of transmission as used to send the original.

(b) A U.S. Reporting Company shall make a copy of each written communication received from another company and forward it to the Departments of Energy and Justice and the Federal Trade Commission within three working days of its receipt by the company office and/or individual to whom it is specifically addressed.

(c) A U.S. Reporting Company shall forward to the Departments of Energy and Justice and the Federal Trade Commission, within three working days of its occurrence, a copy of each record of an unwritten communication required to be made pursuant to Section 7(c).

(d) Upon advance notice by the Department of Energy, U.S. Reporting Companies shall permit personnel from the Departments of Energy and Justice and the Federal Trade Commission to monitor communications with other companies by means of on-site inspections at that Reporting Companies' office or three-way conference telephone calls.

9. Reports of Actions Taken

(a) Under the Voluntary Agreement U.S. Reporting Companies must report to the U.S. Government actions taken pursuant to a plan of action. Therefore, for the purposes of AST-3, each U.S. Reporting Company shall report to the Departments of Energy and Justice and the Federal Trade Commission actions taken as part of the test, such as details of voluntary offers made, those accepted, and simulated reallocations of supply in response to requests for voluntary offers.

(b) A report should be submitted within seven days of the end of the week in which the action was taken.

(c) The manner and particular content of a report is left to the discretion of the individual U.S. Reporting Company. It can be submitted in any fashion a company believes will best reflect what it has done. In the case of voluntary offers, the record should include substantially all of the information contained in the voluntary offer itself.

10. Addresses of Reporting Company Reports to the U.S. Government

Reports to U.S. Government agencies required pursuant to Sections 7, 8 and 9 of these Recordkeeping Requirements should be addressed, respectively, as follows:

Office of General Counsel, International Trade and Emergency Preparedness, GC-11, Department of Energy, Forrestal Building, Room 6E-067, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Telex and Twx No. 7108220176.

Donald A. Kaplan, Chief, Energy Section, Antitrust Division, Department of Justice, Post Office Box 14141, Washington, D.C. 20044, Twx No. 7108221907.

Ronald B. Rowe, Assistant Director, Bureau of Competition, Federal Trade Commission, 4125 13th Street, N.W., Suite 932, Washington, D.C. 20004.

Appendix C

Department of Energy,
Washington, D.C. 20585.

Hon. Sanford M. Litvack,
Assistant Attorney General for the Antitrust Division, Department of Justice, Washington, D.C. 20530.

Dear Mr. Litvack: As you know, the International Energy Agency (IEA) is in an advanced stage of preparation for the third test of its Emergency Allocation System (AST-3) which will begin on October 1.

Reporting Companies which are participants in the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) will be requested to assist the IEA in conducting AST-3. Such participation by U.S. Reporting Companies requires approval by the Department of Energy, as the Administrator of the Voluntary Agreement, for the submission and exchange of confidential and proprietary information or data. Participation by U.S. companies also is governed by Section 252 of the Energy Policy Conservation Act, 42 U.S.C. 6272 (EPCA), and DOE regulations, 10 C.F.R. Part 209.

AST-3 will begin on October 1 and will continue through approximately December 5, 1980. The primary objective of AST-3 is to test the procedures and data systems which have been designed by the IEA to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (TIAS 8270, November 18, 1974) (IEP) as more specifically delineated in the IEA Emergency Management Manual (EMM), the ISAG/Secretariat Operations Manual (ISOM), and the AST-3 Test Guide. The test will be used to train IEA Secretariat personnel, members of the Industry Supply Advisory Group (ISAG), employees of Reporting Companies and their affiliates, and officials of National Emergency Sharing Organizations (NESOs) of participating IEA countries, in the functioning of the IEA Emergency Allocation System.

Industry will participate in a number of ways. Industry representatives will staff the ISAG which, together with the IEA Allocation Coordinator, the IEA Secretariat and the SEQ Emergency Group, will comprise the Emergency Management Organization at IEA Headquarters. Reporting Companies will submit data to the IEA on Questionnaire A forms and in other ways, and will discuss test data with the IEA Secretariat and the ISAG, for purposes of the test. Reporting Company affiliates will submit similar data and have similar discussions with NESOs of participating countries. Reporting Companies will propose and simulate the carrying out of hypothetical supply reallocation measures, denominated by the IEA as "Type 2" allocation; in this connection Reporting Companies may communicate with each other to formulate "closed loop" Type 2 offers and to work out logistics needed to implement such offers or to modify previously approved Type 2 offers.

The categories of confidential or proprietary information or data which we propose to approve for exchange during AST-3 are enumerated in paragraph 7 of the proposed approval. The data base for the test consists of import, export, indigenous production and stock level information for the historical period October 1979 through March 1980. Most of this data will be disrupted by the emergency scenario designed to simulate a severe supply interruption. Paragraph 7(j) authorizes U.S. Government antitrust observers at the test to approve the provision or exchange of additional information or data if that is necessary for proper and efficient performance of AST-3 functions. Paragraphs 8, 9, and 10 of the proposed approval limit access to certain types of information and also prohibit or limit the provision or exchange of certain information or data which are not considered necessary for this test of the IEA Emergency Allocation System or are necessary for limited purposes only. Paragraph 12 of the proposed approval explicitly prohibits the disclosure of confidential or proprietary information or data for purposes other than the conduct of AST-3, and explicitly prohibits removal of such information or data from the test site without U.S. Government approval. The age of the data to be used in the test, its distortion or potential distortion by the "disruption", the possibility of data masking by companies, and the limitations and other safeguards included in the proposed approval

we believe effectively eliminate any potential anticompetitive effects of provision or exchange of such data for purposes of conducting AST–3.

Annexed to the proposed approval letter are "Requirements for Recordkeeping by U.S. Companies Participating in the Third Allocation System Test (AST–3)". These recordkeeping requirements are consistent with the recordkeeping provisions of Section 252 of EPCA, the Voluntary Agreement and 10 C.F.R. Part 209. Many of the ISAG group sessions during AST–3 will be stenographically transcribed; others will be memorialized by U.S. Government observers, who will have access to all ISAG meetings and all information or data made available to ISAG. Provision is also made for monitoring of inter-company communications regarding "Type 2" voluntary offers. In our view, the recordkeeping procedures should ensure that the U.S. Government agencies concerned will have a full and complete record of activities of U.S. companies participating in AST–3.

The proposed approval and the recordkeeping requirements were published for public comment in the Federal Register, 45 F.R. 56126, August 22, 1980. We intend to publish the final approval letter, as sent to U.S. Reporting Companies, in the Federal Register prior to the commencement of AST–3.

The draft approval letter which was published and the approval letter which I propose to send to Reporting Companies were developed in cooperation with the staffs of the Antitrust Division, Department of Justice, the Department of State and the Federal Trade Commission.

In our view the participation of U.S. oil companies and U.S. oil company personnel in the ISAG and the disclosure and exchange of confidential or proprietary information and data as specifically set forth in the proposed approval letter are essential to the development, preparation and testing of emergency allocation measures.

We hereby request your concurrence in our intended approval.

Sincerely,

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Appendix D

Department of Energy,
Washington, D.C. 20585.

Hon. Deane C. Hinton,
Assistant Secretary, Economic and Business Affairs, Department of State, Washington, D.C. 20520.

Dear Mr. Hinton: As you know, the International Energy Agency (IEA) is in an advanced stage of preparation for the third test of its Emergency Allocation System (AST–3) which will begin on October 1.

Reporting Companies which are participants in the Voluntary Agreement and Plan of Action to Implement the International Energy Program (Voluntary Agreement) will be requested to assist the IEA in conducting AST–3. such participation by U.S. Reporting Companies requires approval by the Department of Energy, as the Administrator of the Voluntary Agreement, for the submission and exchange of confidential and proprietary information or data. Participation by U.S. companies also is governed by section 252 of the Energy Policy Conservation Act, 42 U.S.C. 6272 (EPCA), and DOE regulations, 10 C.F.R. Part 209.

AST–3 will begin on October 1 and will continue through approximately December 5, 1980. The primary objective of AST–3 is to test the procedures and data systems which have been designed by the IEA to implement the emergency oil allocation procedures of the Agreement on an International Energy Program (TIAS 8270, November 18, 1974) (IEP) as more specifically delineated in the IEA Emergency Management Manual (EMM), the ISAG/Secretariat Operations Manual (ISOM), and the AST–3 Test Guide. The test will be used to train IEA Secretariat personnel, members of the Industry Supply Advisory Group (ISAG), employees of Reporting Companies and their affiliates, and officials of National Emergency Sharing Organizations (NESOs) of participating IEA countries, in the functioning of the IEA Emergency Allocation System.

Industry will participate in a number of ways. Industry representatives will staff the ISAG which, together with the IEA Allocation Coordinator, the IEA Secretariat and the SEQ Emergency Group, will comprise the Emergency Management Organization at IEA Headquarters. Reporting Companies will submit data to the IEA on Questionnaire A forms and in other ways, and will discuss test data with the IEA Secretariat and the ISAG, for purposes of the test. Reporting Company affiliates will submit similar data and have similar discussions with NESOs of participating countries. Reporting Companies will propose and simulate the carrying out by hypothetical supply reallocation measures, denominated by the IEA as "Type 2" allocation; in this connection Reporting Companies may communicate with each other to formulate "closed loop" Type 2 offers and to work out logistics needed to implement such offers or to modify previously approved Type 2 offers.

The categories of confidential or proprietary information or data which we propose to approve for exchange during AST–3 are enumerated in paragraph 7 of the proposed approval. The data base for the test consists of import, export, indigenous production and stock level information for the historical period October 1979 through March 1980. Most of this data will be disrupted by the emergency scenario designed to simulate a severe supply interruption. Paragraph 7(j) authorizes U.S. Government antitrust observers at the test to approve the provision or exchange of additional information or data if that is necessary for proper and efficient performance of AST–3 functions. Paragraphs 8, 9, and 10 of the proposed approval limit access to certain types of information and also prohibit or limit the provision or exchange of certain information or data which are not considered necessary for this test of the IEA Emergency Allocation System or are necessary for limited purposes only. Paragraph 12 of the proposed approval explicitly prohibits the disclosure of confidential or proprietary information or data for purposes other than the conduct of AST–3, and explicitly prohibits removal of such information or data from the test site without U.S. Government approval. The age of the data to be used in the test, its distortion or potential distortion by the "disruption", the possibility of data masking by companies, and the limitations and other safeguards included in the proposed approval we believe effectively eliminate any potential anticompetitive effects of provision or exchange of such data for purposes of conducting AST–3.

Annexed to the proposed approval letter are "Requirements for Recordkeeping by U.S. Companies Participating in the Third Allocation System Test (AST–3)". These recordkeeping requirements are consistent with the recordkeeping provisions of Section 252 of EPCA, the Voluntary Agreement and 10 C.F.R. Part 209. Many of the ISAG group sessions during AST–3 will be stenographically transcribed; others will be memorialized by U.S. Government observers, who will have access to all ISAG meetings and all information or data made available to ISAG. Provision is also made for monitoring of inter-company communications regarding "Type 2" voluntary offers. in our view, the recordkeeping procedures should ensure that the U.S. Government agencies concerned will have a full and complete record of activities of U.S. companies participating in AST–3.

The proposed approval and the recordkeeping requirements were published for public comment in the **Federal Register**, 45 FR 56126, August 22, 1980. We intend to publish the final approval letter, as sent to U.S. Reporting Companies, in the **Federal Register** prior to the commencement of AST–3.

The draft approval letter which was published and the approval letter which I propose to send to Reporting Companies were developed in cooperation with the staffs of the Antitrust Division, Department of Justice, the Department of State and the Federal Trade Commission.

In our view the participation of U.S. oil companies and U.S. oil company personnel in the ISAG and the disclosure and exchange of confidential or proprietary information and data as specifically set forth in the proposed approval letter are essential to the development, preparation and testing of emergency allocation measures.

We hereby request your views with respect to our intended approval.

Sincerely,

_____,

_____.

Appendix E

Department of State,
Washington, D.C. 20520.

September 25, 1980.

Hon. John C. Sawhill,
Deputy Secretary, Department of Energy.

Dear Mr. Sawhill: Thank you for your letter of September 24 requesting the views of the State Department on your proposed approval for participation by U.S. Reporting Companies in the IEA's third test of its emergency oil allocation system (AST–3).

Periodic tests of the allocation system are vital to assure that it will operate effectively to minimize the ill effects of an actual shortfall in the supply of oil to the industrialized countries. Since Reporting Companies are the foundation of the allocation system, realistic testing of that system requires their participation. We therefore strongly support your approval of their participation under the conditions which you have stipulated.

Sincerely,

Ernest Johnston,

Acting Assistant Secretary for Economic and Business Affairs.

Appendix F

U.S. Department of Justice,
Washington, D.C. 20530

September 30, 1980.

Hon. John C. Sawhill,
Deputy Secretary, Department of Energy, Washington, D.C. 20461.

Dear Dr. Sawhill: This is in response to your letter requesting our concurrence in your approval,for U.S. Reporting Companies to provide and exchange certain confidential and proprietary information in the course of assisting the International Energy Agency (IEA) in carrying out a third test of its emergency oil-sharing system (AST–3) during the period October 1–December 5, 1980. These approvals are required under Section 5(b) of the Voluntary Agreement and Plan of Action to Implement the International Energy Program, which is authorized pursuant to Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. § 6272.

You enclose a draft of a proposed letter to these companies with an annexed paper on recordkeeping requirements for AST–3. Approval is conditioned on compliance with these requirements and other limitations and antitrust safeguards set forth in the letter.

Earlier, the proposed approval and recordkeeping requirements were published as a matter of public information in the **Federal Register**, 45 FR 56126 (August 22, 1980), with a deadline of September 12, 1980 for public comments. We note your intention to publish in the **Federal Register** the formal issuance of approval to the companies prior to commencement of AST–3. This will include a statement reviewing the public comments received and the changes made in response to them after intensive interagency discussions among the staffs of the Departments of Energy, State and Justice and the Federal Trade Commission.

The confidential data clearances and recordkeeping requirements are based on those successfully employed in the first two IEA allocation system tests in 1976 and 1978. These precedents have been modified in essential respects only to incorporate provisions covering activities undertaken for the first time in AST–3 and to provide more effective monitoring based on our experience in the last test. We believe that the conditions, limitations and safeguards incorporated in the approval, as set forth briefly in your letter, will effectively deter any anticompetitive abuse of the statutory antitrust defense accorded these companies arising from their provisions and exchange of confidential data and other activities to assist the IEA in carrying out its test.

These safeguards, of course, must be adequately monitored, and careful provision has been made for this surveillance. The required recordkeeping, exchanges of data and other company activities undertaken at test headquarters in Paris will be monitored continuously by an interagency team of U.S. Government representatives from the four agencies. Five staff members from the Antitrust Division will participate and at least one will be present at the test site throughout the test. Other required recordkeeping and exchanges of data by U.S. companies participating in the test will be monitored by staff based in Washington.

Accordingly, I hereby concur in your approval of the proposed letter on submission and exchange of confidential and proprietary information and data by U.S. oil company participants in AST–3 and the annexed recordkeeping requirements for the test. I enclose a copy of a letter from the Federal Trade Commission evidencing the consultations we have held with that agency on this matter, as required by Section 5(b) of the Voluntary Agreement.

Sincerely yours,

Richard J. Favretto,

Deputy Assistant Attorney General Antitrust Division.

Appendix G

Federal Trade Commission,
Office of the Secretary,
Washington, D.C. 20580.

September, 30, 1980.

Hon. Sanford M. Litvack,
Assistant Attorney General for the Antitrust Division, Department of Justice, Washington, DC 20530.

Dear Mr. Litvack: The Honorable John C. Sawhill, Deputy Secretary of Energy and Administrator of the Voluntary Agreement and Plan of Action to Implement the International Energy Program ("Voluntary Agreement"), has requested your concurrence on the attached clearance letter. The letter provides clearance for the oil-company signatories of the Voluntary Agreement to exchange confidential and proprietary information among themselves and to provide such information and data to the International Energy Agency ("IEA") during the IEA's third test of the emergency oil allocation system ("AST–3"), beginning October 1, 1980. Under the Voluntary Agreement, the Attorney General or his delegate in Voluntary Agreement matters must consult with the Commission before concurring in the information exchange.

Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. § 6272, directs the Attorney General and the Federal Trade Commission to monitor the carrying out of the Voluntary Agreement to ensure that the purposes of the International Energy Program ("IEP") are substantially achieved in the least anticompetitive manner practicable. The Commission has examined the types of data and information proposed to be exchanged during AST–3. The data to be used during AST–3 will be from 6 to 12 months old, likely to be distorted due to the hypothetical supply disruption, or subject to masking (disguising) by the submitting company. Additionally, U.S. Government monitors will be at the IEA site during the conduct of the test, and will spot-check telephonic communications between Reporting Companies occurring off-site. A full and complete record will be made of all communications among U.S. oil company personnel, including a verbatim transcipt of most group meetings. Finally, removal of documents from the test site without written U.S. Government approval will be prohibited, as will the communication of confidential information learned at the test to persons not involved in the test.

The safeguards employed and the limited competitive significance of the data appear to strike the appropriate balance between achieving the objectives of the IEP and ensuring that the test is conducted in the least anticompetitive manner practicable. Accordingly, the Commission does not object to your approval of the information and data exchange needed to carry out AST–3. However, the Commission's staff will monitor AST–3 and continue to assess whether the allocation system can be modified to further limit its anticompetitive potential without jeopardizing the sytem's effectiveness.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80–33448 Filed 10–24–80; 8:45 am]

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federal register

Monday
October 27, 1980

Part XII

Department of Energy

Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analysis (Average Fuel Costs); Correction and Extension of Comment Period

DEPARTMENT OF ENERGY

10 CFR Part 436

[Docket No. CAS-RM-79-107]

Federal Energy Management and Planning Programs; Methodology and Procedures for Life Cycle Cost Analysis (Average Fuel Costs); Correction and Extension of Comment Period

AGENCY: Department of Energy.

ACTION: Proposed rules; correction and extension of comment period.

SUMMARY: The Department of Energy corrects an inadvertent error in the proposed rule on Methodology and Procedures for Life Cycle Cost Analysis, published on October 7, 1980 (45 FR 66632), and extends the comment period accordingly.

DATE: Comments on the proposed rule, as corrected, must be submitted on or before December 24, 1980.

ADDRESS: Send comments to: Carol Snipes, Office of Hearings and Dockets, Department of Energy, Mail Stop 6B-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9319.

FOR FURTHER INFORMATION CONTACT: Jack Vitullo (202) 252-9467, Neal Strauss (202) 252-9519.

SUPPLEMENTARY INFORMATION: On January 23, 1980, the Department of Energy (DOE) published a final Life-Cycle Cost rule (LCC rule) (45 FR 5620), which established the methodology and procedures for estimating and evaluating the life-cycle costs of proposed investments to conserve energy or to increase the use of renewable energy resources in existing and new Federal buildings.

On October 1, 1980, DOE issued a notice of proposed rulemaking to amend the methodology by updating the energy price projections, modifying the discount rate and the study period and inserting minor technical corrections (45 FR 66632, October 7, 1980). As published, the proposed rule contained the original tables of energy price Projections appended to the January 23, 1980, final rule rather than the revised tables which should have appeared. Thus the tables in appendices A, B, and C starting at 45 FR 66635 are in error. This notice substitutes the correct tables for the ones that were printed in error.

To ensure that the public has an adequate opportunity to review the proposed rule, as corrected, DOE is extending the comment period from December 8, 1980, to December 24, 1980.

Authority: Energy Policy and Conservation Act, as amended, 42 U.S.C. 6361(a)(2); Executive Order 11912, as amended by Executive Order 12003, 42 FR 37523 (July 20, 1977); National Energy Conservation Policy Act, as amended, Title V, Part 3, Pub. L. 95-619; Department of Energy Organization Act, 42 U.S.C. 7254.

Issued in Washington, D.C., on October 21, 1980.

Francis D. DeGeorge,

Principal Deputy Assistant Secretary.

The following correction is made to the **Federal Register** notice of proposed rulemaking at 42 FR 66632 (October 7, 1980):

Delete Appendices A, B, and C, at pages 66635-66654 and insert in lieu thereof the following:

BILLING CODE 6450-85-M

Appendix A To Subpart A of Part 436

TABLE A-1. SPW FACTORS, BASED ON A 7 PERCENT DISCOUNT RATE, FOR FINDING THE PRESENT VALUE OF FUTURE NONANNUALLY RECURRING (NONFUEL) AMOUNTS, SUCH AS REPLACEMENT COSTS AND SALVAGE VALUES[1]

Study Period (Years)	Factor
1	0.93
2	0.87
3	0.82
4	0.76
5	0.71
6	0.67
7	0.62
8	0.58
9	0.54
10	0.51
11	0.48
12	0.44
13	0.42
14	0.39
15	0.36
16	0.34
17	0.32
18	0.30
19	0.28
20	0.26
21	0.24
22	0.23
23	0.21
24	0.20
25	0.18

[1] The formula for finding the present value (P) of a future amount (F) is the following:

$$P = \frac{F}{(1 + d)^n},$$

where d = the discount rate, and

n = the year in which F occurs.

TABLE A-2. UPW FACTORS, BASED ON A 7 PERCENT DISCOUNT RATE, FOR FINDING THE PRESENT VALUE OF FUTURE ANNUALLY RECURRING (NONFUEL) COSTS, SUCH AS ROUTINE MAINTENANCE COSTS[1]

Study Period (Years)	Factor
1	0.94
2	1.81
3	2.62
4	3.39
5	4.10
6	4.77
7	5.39
8	5.97
9	6.52
10	7.02
11	7.50
12	7.94
13	8.36
14	8.75
15	9.11
16	9.45
17	9.76
18	10.06
19	10.34
20	10.59
21	10.84
22	11.06
23	11.27
24	11.47
25	11.65

[1] The formula for finding the present value (P) of an annually recurring uniform amount (A) is the following:

$$P = \frac{A(1 + d)^n - 1}{d(1 + d)^n},$$

where d = the discount rate, and

n = the number of corresponding periods over which A occurs.

TABLE B-1--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 1
(MAINE, NEW HAMPSHIRE, VERMONT, MASSACHUSETTS, CONNECTICUT, RHODE ISLAND)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.52	4.10	4.31	4.51	5.07	4.10	4.32	4.52	5.08	5.38
6	4.76	5.07	5.32	4.76	5.07	5.32	6.06	4.76	5.07	5.33	6.07	6.45
7	5.38	5.79	6.10	5.38	5.80	6.10	7.00	5.38	5.81	6.12	7.03	7.46
8	5.96	6.49	6.85	5.96	6.51	6.85	7.91	5.96	6.52	6.88	7.96	8.43
9	6.50	7.17	7.57	6.50	7.21	7.57	8.78	6.50	7.21	7.62	8.86	9.34
10	7.00	7.83	8.26	7.00	7.88	8.26	9.61	7.00	7.88	8.33	9.73	10.20
11	7.46	8.45	8.93	7.46	8.52	8.94	10.42	7.45	8.53	9.02	10.57	10.98
12	7.86	9.04	9.58	7.87	9.13	9.59	11.22	7.85	9.18	9.70	11.40	11.69
13	8.23	9.61	10.21	8.23	9.71	10.23	11.99	8.21	9.80	10.35	12.21	12.32
14	8.56	10.15	10.82	8.57	10.27	10.85	12.75	8.53	10.42	10.99	13.00	12.90
15	8.86	10.66	11.42	8.86	10.81	11.46	13.49	8.81	11.02	11.61	13.77	13.41
16	9.13	11.15	12.00	9.13	11.31	12.04	14.21	9.07	11.61	12.21	14.52	13.89
17	9.38	11.61	12.56	9.38	11.80	12.61	14.91	9.29	12.19	12.80	15.26	14.30
18	9.60	12.06	13.11	9.59	12.26	13.17	15.60	9.50	12.75	13.37	15.97	14.68
19	9.79	12.48	13.65	9.79	12.71	13.71	16.27	9.68	13.30	13.93	16.67	15.02
20	9.97	12.88	14.16	9.97	13.13	14.23	16.93	9.84	13.84	14.47	17.35	15.33
21	10.13	13.26	14.67	10.13	13.53	14.74	17.57	9.98	14.37	14.99	18.02	15.61
22	10.28	13.63	15.15	10.27	13.92	15.24	18.19	10.11	14.89	15.50	18.67	15.86
23	10.41	13.98	15.63	10.40	14.29	15.73	18.80	10.23	15.39	16.00	19.30	16.09
24	10.52	14.31	16.09	10.52	14.64	16.20	19.40	10.33	15.89	16.48	19.92	16.29
25	10.63	14.62	16.54	10.62	14.97	16.65	19.98	10.42	16.37	16.95	20.53	16.48

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MTFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subsqript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-2--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 2
(NEW YORK, NEW JERSEY, PUERTO RICO, VIRGIN ISLANDS)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.14
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.36
6	4.76	5.06	5.33	4.76	5.06	5.33	6.06	4.76	5.07	5.33	6.06	6.43
7	5.37	5.78	6.10	5.37	5.79	6.11	7.00	5.37	5.81	6.11	7.00	7.44
8	5.94	6.47	6.85	.94	6.48	6.85	7.91	5.93	6.54	6.86	7.90	8.41
9	6.47	7.13	7.57	6.47	7.16	7.57	8.78	6.45	7.24	7.58	8.77	9.32
10	6.97	7.77	8.26	6.97	7.81	8.27	9.61	6.94	7.93	8.27	9.60	10.19
11	7.43	8.37	8.93	7.42	8.43	8.94	10.42	7.39	8.61	8.94	10.41	11.01
12	7.85	8.94	9.58	7.85	9.01	9.59	11.22	7.80	9.27	9.60	11.20	11.78
13	8.25	9.49	10.21	8.24	9.58	10.23	11.99	8.19	9.91	10.23	11.97	12.51
14	8.62	10.01	10.82	8.61	10.11	10.85	12.75	8.55	10.54	10.85	12.73	13.20
15	8.96	10.50	11.42	8.96	10.62	11.45	13.48	8.88	11.16	11.46	13.46	13.86
16	9.28	10.97	12.00	9.28	11.11	12.04	14.20	9.19	11.76	12.05	14.17	14.47
17	9.58	11.41	12.56	9.57	11.57	12.61	14.91	9.48	12.35	12.62	14.87	15.05
18	9.86	11.84	13.11	9.85	12.01	13.17	15.59	9.74	12.93	13.17	15.55	15.60
19	10.12	12.24	13.64	10.11	12.43	13.71	16.26	9.99	13.49	13.71	16.21	16.14
20	10.36	12.62	14.16	10.35	12.83	14.23	16.91	10.22	14.04	14.24	16.86	16.60
21	10.58	12.98	14.66	10.57	13.21	14.74	17.55	10.43	14.58	14.75	17.49	17.07
22	10.79	13.33	15.15	10.77	13.57	15.24	18.17	10.63	15.10	15.25	18.11	17.50
23	10.98	13.65	15.62	10.97	13.92	15.72	18.78	10.81	15.61	15.73	18.71	17.91
24	11.16	13.97	16.08	11.15	14.24	16.19	19.37	10.98	16.12	16.20	19.29	18.30
25	11.33	14.26	16.53	11.31	14.56	16.65	19.94	11.14	16.61	16.66	19.86	18.66

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \cdots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-3--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 3
(PENNSYLVANIA, MARYLAND, WEST VIRGINIA, VIRGINIA, DISTRICT OF COLUMBIA, DELAWARE)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.38
6	4.77	5.06	5.32	4.77	5.06	5.32	6.06	4.77	5.11	5.33	6.06	6.46
7	5.40	5.79	6.10	5.40	5.79	6.10	7.00	5.41	5.91	6.10	7.00	7.48
8	6.00	6.48	6.84	6.00	6.50	6.85	7.90	6.01	6.73	6.85	7.90	8.45
9	6.56	7.16	7.56	6.56	7.18	7.57	8.76	6.58	7.57	7.57	8.77	9.39
10	7.09	7.80	8.25	7.10	7.84	8.26	9.59	7.12	8.42	8.26	9.60	10.28
11	7.59	8.42	8.91	7.59	8.47	8.94	10.39	7.62	9.21	8.93	10.41	11.12
12	8.05	9.00	9.56	8.05	9.07	9.59	11.18	8.09	9.93	9.59	11.20	11.91
13	8.48	9.56	10.19	8.48	9.64	10.23	11.95	8.52	10.61	10.22	11.96	12.66
14	8.87	10.08	10.80	8.88	10.18	10.85	12.69	8.93	11.23	10.84	12.71	13.37
15	9.25	10.58	11.39	9.25	10.70	11.45	13.42	9.30	11.81	11.44	13.44	14.04
16	9.59	11.06	11.97	9.60	11.19	12.04	14.13	9.65	12.35	12.02	14.15	14.67
17	9.91	11.51	12.53	9.92	11.66	12.61	14.82	9.97	12.84	12.59	14.85	15.27
18	10.21	11.93	13.07	10.22	12.10	13.16	15.49	10.27	13.30	13.14	15.52	15.83
19	10.49	12.34	13.60	10.50	12.52	13.70	16.14	10.55	13.72	13.68	16.18	16.37
20	10.75	12.72	14.11	10.76	12.93	14.22	16.78	10.81	14.12	14.20	16.82	16.87
21	11.00	13.09	14.60	11.00	13.31	14.73	17.40	11.06	14.48	14.70	17.45	17.35
22	11.22	13.43	15.09	11.23	13.67	15.23	18.01	11.28	14.81	15.20	18.06	17.80
23	11.43	13.76	15.55	11.44	14.02	15.71	18.60	11.49	15.13	15.67	18.65	18.22
24	11.63	14.08	16.01	11.63	14.35	16.18	19.18	11.69	15.41	16.14	19.23	18.63
25	11.81	14.37	16.45	11.81	14.66	16.64	19.74	11.87	15.68	16.59	19.79	19.01

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-4--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 4
(KENTUCKY, TENNESSEE, NORTH CAROLINA, SOUTH CAROLINA, MISSISSIPPI, ALABAMA, GEORGIA, FLORIDA, CANAL ZONE)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.25
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.31	4.52	5.07	5.37
6	4.78	5.05	5.32	4.78	5.05	5.32	6.06	4.78	5.10	5.33	6.06	6.44
7	5.42	5.77	6.10	5.42	5.77	6.10	7.00	5.43	5.91	6.10	7.00	7.46
8	6.03	6.45	6.85	6.03	6.46	6.85	7.91	6.05	6.73	6.85	7.91	8.43
9	6.61	7.10	7.56	6.61	7.12	7.57	8.78	6.64	7.56	7.57	8.78	9.35
10	7.17	7.72	8.25	7.16	7.76	8.26	9.62	7.21	8.41	8.26	9.62	10.22
11	7.68	8.31	8.91	7.68	8.36	8.94	10.43	7.74	9.22	8.93	10.43	11.04
12	8.17	8.87	9.56	8.17	8.93	9.59	11.23	8.24	10.01	9.59	11.23	11.82
13	8.63	9.39	10.19	8.63	9.47	10.23	12.01	8.71	10.78	10.22	12.01	12.55
14	9.06	9.89	10.80	9.05	9.98	10.85	12.77	9.16	11.52	10.84	12.77	13.24
15	9.46	10.36	11.39	9.46	10.46	11.45	13.51	9.57	12.23	11.44	13.51	13.88
16	9.84	10.80	11.96	9.84	10.91	12.03	14.23	9.96	12.92	12.02	14.24	14.49
17	10.20	11.21	12.52	10.19	11.34	12.60	14.94	10.33	13.59	12.59	14.95	15.07
18	10.53	11.61	13.06	10.53	11.75	13.16	15.63	10.68	14.23	13.14	15.64	15.61
19	10.85	11.98	13.59	10.84	12.14	13.70	16.31	11.01	14.85	13.68	16.32	16.12
20	11.14	12.33	14.10	11.13	12.50	14.22	16.97	11.31	15.46	14.20	16.98	16.60
21	11.42	12.66	14.59	11.41	12.84	14.73	17.61	11.60	16.04	14.71	17.63	17.05
22	11.68	12.97	15.07	11.67	13.17	15.22	18.24	11.87	16.60	15.20	18.26	17.48
23	11.92	13.27	15.54	11.91	13.48	15.71	18.86	12.13	17.14	15.68	18.88	17.88
24	12.15	13.55	15.99	12.14	13.77	16.17	19.46	12.37	17.67	16.15	19.48	18.26
25	12.37	13.81	16.43	12.36	14.04	16.63	20.04	12.59	18.17	16.60	20.07	18.61

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \cdots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-5--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 5
(MINNESOTA, WISCONSIN, MICHIGAN, ILLINOIS, INDIANA, OHIO)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.14
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.08	5.36
6	4.77	5.06	5.32	4.77	5.06	5.33	6.06	4.78	5.09	5.33	6.06	6.43
7	5.41	5.78	6.10	5.41	5.78	6.11	7.01	5.42	5.87	6.11	7.01	7.44
8	6.01	6.47	6.85	6.01	6.48	6.86	7.92	6.02	6.65	6.86	7.91	8.40
9	6.57	7.13	7.57	6.57	7.15	7.58	8.79	6.60	7.42	7.58	8.78	9.31
10	7.11	7.77	8.26	7.11	7.80	8.28	9.62	7.15	8.20	8.28	9.62	10.18
11	7.61	8.37	8.94	7.61	8.41	8.95	10.44	7.66	8.96	8.95	10.44	11.00
12	8.07	8.94	9.59	8.08	8.98	9.61	11.24	8.13	9.69	9.61	11.23	11.78
13	8.51	9.47	10.23	8.51	9.53	10.26	12.02	8.58	10.40	10.26	12.02	12.51
14	8.92	9.98	10.85	8.92	10.05	10.88	12.78	8.99	11.09	10.88	12.78	13.20
15	9.29	10.46	11.46	9.30	10.53	11.49	13.52	9.38	11.77	11.49	13.52	13.85
16	9.65	10.91	12.04	9.65	11.00	12.08	14.25	9.74	12.42	12.08	14.25	14.46
17	9.98	11.33	12.61	9.98	11.43	12.66	14.96	10.07	13.05	12.66	14.96	15.04
18	10.29	11.73	13.17	10.29	11.84	13.22	15.66	10.39	13.67	13.22	15.66	15.59
19	10.57	12.11	13.71	10.58	12.23	13.77	16.34	10.68	14.27	13.77	16.34	16.10
20	10.84	12.47	14.24	10.85	12.60	14.31	17.00	10.95	14.85	14.31	17.00	16.59
21	11.09	12.80	14.75	11.10	12.95	14.83	17.65	11.21	15.41	14.83	17.65	17.05
22	11.33	13.12	15.25	11.33	13.27	15.33	18.28	11.44	15.96	15.33	18.29	17.48
23	11.54	13.42	15.73	11.55	13.58	15.82	18.90	11.66	16.49	15.82	18.91	17.89
24	11.75	13.71	16.20	11.76	13.88	16.30	19.51	11.87	17.01	16.30	19.52	18.28
25	11.94	13.97	16.66	11.95	14.15	16.77	20.10	12.06	17.51	16.77	20.11	18.64

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-6--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 6
(TEXAS, NEW MEXICO, OKLAHOMA, ARKANSAS, LOUISIANA)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.51	5.07	4.10	4.32	4.52	5.07	5.38
6	4.77	5.07	5.32	4.78	5.07	5.32	6.06	4.78	5.09	5.33	6.06	6.45
7	5.42	5.81	6.10	5.42	5.83	6.10	7.00	5.43	5.85	6.10	7.00	7.46
8	6.02	6.54	6.85	6.03	6.57	6.85	7.91	6.04	6.61	6.85	7.91	8.43
9	6.60	7.25	7.57	6.61	7.29	7.57	8.78	6.63	7.35	7.58	8.78	9.34
10	7.15	7.94	8.26	7.16	8.01	8.27	9.61	7.19	8.09	8.27	9.62	10.20
11	7.66	8.60	8.93	7.67	8.70	8.94	10.43	7.72	8.80	8.94	10.43	11.02
12	8.14	9.23	9.58	8.15	9.36	9.60	11.22	8.20	9.49	9.60	11.23	11.78
13	8.58	9.84	10.21	8.60	9.99	10.24	12.00	8.66	10.14	10.24	12.01	12.50
14	8.99	10.42	10.83	9.01	10.59	10.86	12.76	9.08	10.78	10.86	12.77	13.17
15	9.38	10.97	11.43	9.40	11.18	11.46	13.51	9.47	11.38	11.47	13.52	13.81
16	9.74	11.50	12.01	9.76	11.74	12.05	14.24	9.84	11.97	12.06	14.24	14.41
17	10.07	12.01	12.58	10.10	12.27	12.63	14.95	10.18	12.53	12.63	14.96	14.97
18	10.39	12.49	13.12	10.41	12.79	13.18	15.64	10.50	13.07	13.19	15.65	15.49
19	10.68	12.96	13.66	10.70	13.28	13.73	16.32	10.80	13.59	13.73	16.33	15.99
20	10.95	13.40	14.18	10.98	13.75	14.25	16.98	11.07	14.09	14.26	16.99	16.46
21	11.20	13.82	14.68	11.23	14.21	14.77	17.63	11.33	14.57	14.78	17.64	16.90
22	11.44	14.23	15.17	11.47	14.64	15.27	18.26	11.57	15.03	15.28	18.28	17.31
23	11.66	14.62	15.65	11.69	15.06	15.75	18.88	11.79	15.48	15.76	18.90	17.70
24	11.86	14.99	16.11	11.89	15.46	16.23	19.49	12.00	15.91	16.24	19.50	18.06
25	12.05	15.34	16.56	12.08	15.85	16.69	20.08	12.19	16.32	16.70	20.09	18.40

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-7--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 7
(KANSAS, MISSOURI, IOWA, NEBRASKA)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.85	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.71	2.80	3.03	3.14
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.52	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.08	5.36
6	4.76	5.06	5.33	4.76	5.06	5.33	6.06	4.76	5.12	5.33	6.06	6.43
7	5.37	5.79	6.10	5.38	5.79	6.11	7.01	5.37	5.97	6.11	7.01	7.44
8	5.95	6.49	6.85	.95	6.51	6.86	7.92	5.94	6.85	6.86	7.91	8.41
9	6.48	7.17	7.58	6.48	7.19	7.58	8.79	6.47	7.78	7.59	8.78	9.33
10	6.97	7.83	8.27	6.97	7.86	8.28	9.62	6.95	8.74	8.28	9.62	10.20
11	7.43	8.45	8.94	7.43	8.50	8.96	10.44	7.41	9.73	8.96	10.43	11.02
12	7.86	9.04	9.60	7.86	9.10	9.62	11.23	7.84	10.75	9.62	11.23	11.80
13	8.26	9.59	10.24	8.26	9.67	10.27	12.01	8.23	11.78	10.27	12.01	12.52
14	8.64	10.12	10.86	8.64	10.21	10.89	12.77	8.61	12.85	10.89	12.77	13.21
15	8.99	10.62	11.47	8.99	10.72	11.50	13.52	8.95	13.94	11.51	13.51	13.86
16	9.32	11.09	12.06	9.31	11.20	12.10	14.24	9.28	15.05	12.10	14.24	14.47
17	9.62	11.53	12.63	9.62	11.66	12.68	14.95	9.58	16.19	12.68	14.95	15.04
18	9.91	11.95	13.19	9.91	12.10	13.24	15.65	9.87	17.36	13.25	15.64	15.58
19	10.18	12.35	13.73	10.17	12.51	13.79	16.32	10.13	18.56	13.80	16.32	16.09
20	10.43	12.73	14.26	10.42	12.90	14.33	16.99	10.38	19.79	14.33	16.98	16.57
21	10.66	13.09	14.78	10.66	13.27	14.85	17.63	10.61	21.04	14.85	17.63	17.02
22	10.83	13.42	15.28	10.87	13.62	15.36	18.26	10.83	22.33	15.36	18.26	17.44
23	11.08	13.74	15.76	11.08	13.95	15.85	18.88	11.03	23.65	15.86	18.93	17.84
24	11.27	14.04	16.24	11.27	14.26	16.33	19.48	11.22	25.00	16.34	19.48	18.22
25	11.45	14.33	16.70	11.45	14.56	16.80	20.07	11.39	26.38	16.81	20.07	18.57

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \cdots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-8--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 8
(MONTANA, NORTH DAKOTA, SOUTH DAKOTA, WYOMING, UTAH, COLORADO)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.13
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.22
5	4.10	4.31	4.52	4.10	4.31	4.52	5.07	4.10	4.32	4.51	5.07	5.33
6	4.75	5.07	5.32	4.74	5.07	5.32	6.05	4.74	5.08	5.32	6.06	6.37
7	5.33	5.80	6.10	5.33	5.81	6.10	7.00	5.31	5.83	6.10	7.00	7.34
8	5.87	6.51	6.85	5.86	6.52	6.85	7.90	5.82	6.57	6.85	7.91	8.25
9	6.36	7.21	7.57	6.34	7.22	7.57	8.77	6.29	7.29	7.57	8.78	9.10
10	6.80	7.88	8.26	6.78	7.91	8.27	9.60	6.70	7.99	8.26	9.61	9.89
11	7.20	8.52	8.93	7.18	8.56	8.94	10.42	7.07	8.67	8.94	10.43	10.64
12	7.57	9.14	9.58	7.54	9.18	9.60	11.21	7.40	9.33	9.59	11.23	11.34
13	7.90	9.73	10.22	7.87	9.78	10.24	11.99	7.70	9.96	10.23	12.01	12.00
14	8.21	10.29	10.83	8.17	10.36	10.86	12.75	7.97	10.56	10.85	12.77	12.62
15	8.49	10.83	11.43	8.44	10.91	11.47	13.50	8.21	11.14	11.46	13.52	13.20
16	8.74	11.35	12.02	8.68	11.43	12.06	14.22	8.43	11.70	12.05	14.25	13.75
17	8.97	11.84	12.59	8.91	11.94	12.63	14.94	8.62	12.23	12.62	14.96	14.27
18	9.18	12.31	13.14	9.11	12.42	13.19	15.63	8.80	12.75	13.18	15.66	14.75
19	9.38	12.77	13.67	9.30	12.88	13.74	16.31	8.96	13.24	13.72	16.34	15.21
20	9.55	13.20	14.20	9.47	13.33	14.27	16.97	9.10	13.72	14.25	17.01	15.64
21	9.71	13.61	14.71	9.62	13.75	14.78	17.62	9.22	14.18	14.77	17.67	16.04
22	9.86	14.01	15.20	9.76	14.16	15.29	18.26	9.34	14.62	15.27	18.30	16.42
23	9.99	14.38	15.68	9.89	14.55	15.78	18.88	9.44	15.04	15.75	18.93	16.78
24	10.11	14.75	16.15	10.00	14.92	16.25	19.49	9.53	15.45	16.23	19.54	17.11
25	10.22	15.09	16.60	10.11	15.28	16.72	20.08	9.61	15.84	16.69	20.14	17.43

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-9--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 9
(CALIFORNIA, NEVADA, ARIZONA, HAWAII, TRUST TERRITORY OF THE PACIFIC ISLANDS, AMERICAN SAMOA, GUAM)

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.54	3.67	4.05	4.25
5	4.10	4.31	4.51	4.10	4.31	4.51	5.07	4.10	4.32	4.51	5.07	5.37
6	4.77	5.05	5.32	4.77	5.05	5.33	6.05	4.77	5.07	5.33	6.06	6.44
7	5.40	5.75	6.10	5.40	5.75	6.11	7.00	5.40	5.79	6.11	7.00	7.45
8	5.99	6.41	6.85	5.98	6.42	6.86	7.91	5.99	6.49	6.86	7.91	8.40
9	6.54	7.04	7.58	6.54	7.05	7.59	8.78	6.54	7.17	7.59	8.79	9.31
10	7.06	7.64	8.27	7.06	7.66	8.28	9.62	7.07	7.82	8.28	9.63	10.17
11	7.53	8.20	8.95	7.53	8.22	8.97	10.44	7.54	8.44	8.97	10.45	10.98
12	7.97	8.72	9.60	7.96	8.75	9.63	11.25	7.97	9.02	9.63	11.26	11.74
13	8.36	9.21	10.24	8.36	9.25	10.28	12.03	8.36	9.56	10.28	12.05	12.46
14	8.72	9.67	10.87	8.72	9.71	10.91	12.80	8.72	10.08	10.91	12.82	13.14
15	9.05	10.10	11.47	9.05	10.15	11.52	13.55	9.04	10.57	11.52	13.57	13.79
16	9.35	10.51	12.06	9.36	10.55	12.12	14.29	9.34	11.03	12.12	14.31	14.39
17	9.63	10.88	12.64	9.63	10.94	12.70	15.01	9.60	11.46	12.70	15.03	14.96
18	9.88	11.24	13.20	9.89	11.30	13.27	15.71	9.84	11.87	13.27	15.74	15.50
19	10.10	11.57	13.74	10.12	11.63	13.83	16.40	10.07	12.25	13.83	16.43	16.01
20	10.31	11.88	14.27	10.33	11.95	14.37	17.08	10.27	12.62	14.37	17.10	16.49
21	10.50	12.17	14.78	10.52	12.24	14.89	17.74	10.45	12.96	14.89	17.76	16.94
22	10.68	12.45	15.29	10.70	12.52	15.40	18.38	10.61	13.28	15.40	18.41	17.37
23	10.83	12.70	15.77	10.86	12.78	15.90	19.01	10.76	13.59	15.90	19.04	17.77
24	10.98	12.94	16.25	11.01	13.02	16.39	19.63	10.90	13.88	16.39	19.66	18.15
25	11.11	13.17	16.71	11.14	13.25	16.87	20.24	11.02	14.15	16.87	20.27	18.51

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1}\left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1}\left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the substript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-10--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
DOE REGION 10
(WASHINGTON, OREGON, IDAHO, ALASKA)

	Residential Sector			Commercial Sector				Industrial Sector				
Study Period[2]	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.01	0.93	0.95	0.97	1.01	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.02	1.81	1.86	1.90	2.02	2.07
3	2.62	2.72	2.80	2.62	2.72	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.54	3.67	3.39	3.53	3.67	4.05	3.38	3.54	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.51	5.08	4.09	4.31	4.51	5.08	5.37
6	4.79	5.07	5.32	4.79	5.07	5.33	6.07	4.81	5.09	5.33	6.06	6.45
7	5.46	5.80	6.10	5.46	5.81	6.11	7.02	5.53	5.86	6.11	7.01	7.48
8	6.11	6.52	6.85	6.12	6.54	6.86	7.93	6.26	6.62	6.86	7.92	8.46
9	6.74	7.21	7.58	6.75	7.25	7.59	8.81	7.00	7.37	7.59	8.80	9.41
10	7.36	7.88	8.27	7.37	7.94	8.28	9.66	7.74	8.12	8.28	9.64	10.31
11	7.94	8.49	8.95	7.95	8.56	8.97	10.49	8.45	8.85	8.97	10.47	11.13
12	8.49	9.04	9.60	8.50	9.12	9.63	11.30	9.12	9.56	9.63	11.27	11.87
13	9.00	9.53	10.24	9.02	9.63	10.28	12.09	9.76	10.25	10.28	12.06	12.55
14	9.49	9.99	10.87	9.52	10.08	10.91	12.87	10.37	10.92	10.91	12.84	13.16
15	9.95	10.39	11.47	9.98	10.50	11.52	13.63	10.96	11.57	11.52	13.59	13.72
16	10.39	10.76	12.06	10.42	10.87	12.12	14.38	11.51	12.20	12.12	14.33	14.22
17	10.80	11.10	12.64	10.84	11.20	12.70	15.11	12.04	12.82	12.70	15.06	14.68
18	11.19	11.40	13.20	11.23	11.50	13.27	15.83	12.54	13.41	13.27	15.77	15.10
19	11.55	11.68	13.74	11.60	11.77	13.83	16.53	13.02	13.99	13.83	16.46	15.48
20	11.91	11.93	14.27	11.95	12.01	14.37	17.22	13.48	14.56	14.37	17.14	15.82
21	12.24	12.15	14.78	12.28	12.23	14.89	17.90	13.92	15.11	14.89	17.80	16.13
22	12.55	12.36	15.29	12.59	12.43	15.40	18.56	14.33	15.64	15.40	18.45	16.42
23	12.84	12.54	15.77	12.89	12.61	15.90	19.20	14.73	16.16	15.90	19.09	16.67
24	13.12	12.71	16.25	13.17	12.77	16.39	19.84	15.11	16.66	16.39	19.71	16.90
25	13.38	12.86	16.71	13.44	12.92	16.87	20.46	15.47	17.15	16.87	20.32	17.12

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \ldots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j .$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE B-11--UPW* DISCOUNT FACTORS ADJUSTED FOR ENERGY PRICE ESCALATION[1]
UNITED STATES AVERAGE

Study Period[2]	Residential Sector			Commercial Sector				Industrial Sector				
	Electricity	Natural Gas	Distillate	Electricity	Natural Gas	Distillate	Residual	Electricity	Natural Gas	Distillate	Residual	Coal
1	0.93	0.95	0.97	0.93	0.95	0.97	1.00	0.93	0.95	0.97	1.00	1.02
2	1.81	1.86	1.90	1.81	1.86	1.90	2.01	1.81	1.86	1.90	2.01	2.07
3	2.62	2.72	2.80	2.62	2.71	2.80	3.03	2.62	2.72	2.80	3.03	3.15
4	3.39	3.53	3.67	3.39	3.53	3.67	4.05	3.39	3.53	3.67	4.05	4.24
5	4.10	4.31	4.51	4.10	4.31	4.52	5.08	4.10	4.31	4.52	5.07	5.37
6	4.77	5.06	5.32	4.77	5.06	5.33	6.06	4.77	5.09	5.32	6.06	6.44
7	5.40	5.78	6.10	5.40	5.79	6.11	7.00	5.41	5.86	6.10	7.00	7.45
8	6.00	6.47	6.85	5.99	6.49	6.86	7.90	6.01	6.63	6.85	7.91	8.42
9	6.56	7.14	7.57	6.55	7.17	7.58	8.77	6.59	7.40	7.57	8.78	9.33
10	7.09	7.78	8.26	7.08	7.83	8.27	9.60	7.13	8.16	8.27	9.61	10.21
11	7.58	8.39	8.93	7.57	8.45	8.95	10.41	7.63	8.90	8.94	10.43	11.02
12	8.04	8.96	9.58	8.03	9.05	9.60	11.21	8.10	9.61	9.60	11.22	11.79
13	8.46	9.50	10.22	8.45	9.61	10.24	11.98	8.54	10.30	10.24	12.00	12.52
14	8.86	10.02	10.83	8.84	10.14	10.86	12.73	8.95	10.97	10.86	12.76	13.20
15	9.23	10.50	11.43	9.20	10.64	11.47	13.47	9.33	11.61	11.47	13.51	13.84
16	9.57	10.96	12.02	9.54	11.12	12.06	14.19	9.68	12.23	12.06	14.23	14.44
17	9.89	11.40	12.58	9.86	11.57	12.63	14.89	10.01	12.83	12.63	14.94	15.01
18	10.18	11.81	13.13	10.15	11.99	13.19	15.57	10.31	13.41	13.19	15.63	15.54
19	10.45	12.20	13.67	10.42	12.40	13.73	16.24	10.59	13.97	13.73	16.31	16.04
20	10.71	12.57	14.19	10.67	12.78	14.25	16.89	10.86	14.51	14.26	16.97	16.51
21	10.94	12.91	14.69	10.91	13.15	14.77	17.53	11.10	15.03	14.77	17.62	16.95
22	11.16	13.24	15.19	11.13	13.49	15.27	18.15	11.33	15.54	15.27	18.25	17.37
23	11.37	13.56	15.66	11.33	13.82	15.75	18.76	11.54	16.03	15.76	18.87	17.76
24	11.56	13.85	16.13	11.52	14.13	16.22	19.35	11.74	16.50	16.23	19.47	18.13
25	11.73	14.13	16.58	11.69	14.42	16.68	19.93	11.93	16.95	16.69	20.06	18.47

[1] These "modified" uniform present worth discount (UPW*) factors are based on a 7 percent discount rate and include the EIA projected real escalation rates in energy prices developed from the Mid-Term Energy Forecasting System (MEFS), for the periods mid-1980 to mid-1985, mid-1985 to mid-1990, and mid-1990 to mid-1995 and beyond. The formula for calculating these UPW* factors is the following: For 1 to k escalation periods,

$$UPW^* = \sum_{j=1}^{n_1} \left(\frac{1+e_1}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \sum_{j=1}^{n_2} \left(\frac{1+e_2}{1+d}\right)^j + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \sum_{j=1}^{n_3} \left(\frac{1+e_3}{1+d}\right)^j + \ldots + \left(\frac{1+e_1}{1+d}\right)^{n_1} \left(\frac{1+e_2}{1+d}\right)^{n_2} \cdots \left(\frac{1+e_{k-1}}{1+d}\right)^{n_{k-1}} \sum_{j=1}^{n_k} \left(\frac{1+e_k}{1+d}\right)^j,$$

where n_k = the length of the period for a given escalation rate in a given period, and the subscript k indicates the escalation period;

d = the discount rate; and $\sum_{j=1}^{n_k} \left(\frac{1+e}{1+d}\right)^j = \left(\frac{1+e}{d-e}\right)\left(1 - \left(\frac{1+e}{1+d}\right)^{n_k}\right)$.

[2] Study Period 1 is Mid-1980 to Mid-1981.

TABLE C-1--BASE-YEAR ENERGY PRICES
(MID-1980 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	25.56	25.15	18.85	14.22	17.30	18.84	18.79	18.85	20.09	7.29	17.58
Natural Gas	4.86[a]	4.44[a]	3.95[a]	3.46[a]	3.55[a]	3.69[a]	3.50	3.62	4.34	4.58[a]	3.83[a]
Distillate	7.19	7.27	7.46	7.53	6.98	7.20	6.92	7.04	6.84	6.84	7.21
COMMERCIAL SECTOR											
Electricity	26.20	23.96	18.41	14.60	16.83	17.68	17.77	17.46	21.25	7.06	18.06
Natural Gas	4.12[a]	3.77[a]	3.43[a]	2.90[a]	3.18[a]	3.10	3.05	3.37	3.76	3.92[a]	3.33[a]
Distillate	6.94	7.01	7.05	7.06	6.78	6.94	6.73	6.80	6.55	6.55	6.91
Residual	4.96	5.03	5.29	4.96	4.97	4.97	5.00	4.88	4.73	4.57	4.99
INDUSTRIAL SECTOR											
Electricity	21.66	15.85	13.72	10.87	12.16	14.02	14.23	13.05	17.06	3.31	12.61
Natural Gas	5.81	5.77	4.77	3.90	4.16	2.76	3.24	2.83	5.43	4.89	3.58
Distillate	6.75	6.99	7.15	7.14	6.78	6.92	6.72	6.84	6.55	6.55	6.93
Residual	4.79	5.12	5.22	4.93	4.95	4.96	4.98	4.83	4.72	4.68	4.96
Coal	1.83[b]	1.63[b]	1.42[b]	1.59[b]	1.29[b]	1.49[b]	1.15[b]	0.90[b]	1.89	1.55[b]	1.46[b]

Prices are developed from average U.S. prices projected for the year 1980 as reported in "Short-Term Energy Outlook," DOE/EIA-0202/2, February 1980. Regional breakdown of 1980 prices is based on the proportional relationship of regional prices to U.S. average prices estimated by the DoE Mid-Term Energy Forecasting System (MEFS) for the year 1985. Simple arithmetic averaging of the regional prices shown will not yield the exact U.S. average prices shown due to energy consumption weighting reflected in the U.S. average prices.

[a] The reduction in the 1980 U.S. average price of natural gas relative to that published in the January 23, 1980, Federal Register reflects a downward revision in the EIA short-term natural gas price forecast.

[b] The reduction in the 1980 U.S. average price of coal relative to that published in the January 23, 1980, Federal Register reflects the current softness in the spot market for coal.

TABLE C-2--BASE-YEAR ENERGY PRICES[a]
(MID-1980 PRICES PER UNIT OF ENERGY PURCHASED IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity (kWh)	0.091	0.086	0.064	0.049	0.059	0.064	0.064	0.054	0.069	0.025	0.060
Natural Gas (cu ft)	0.005	0.005	0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.005	0.004
Distillate (gal)	0.997	1.008	1.035	1.044	0.968	0.999	0.960	0.976	0.949	0.949	1.000
COMMERCIAL SECTOR											
Electricity (kWh)	0.089	0.082	0.063	0.050	0.057	0.060	0.061	0.060	0.073	0.024	0.062
Natural Gas (cu ft)	0.004	0.004	0.004	0.003	0.003	0.003	0.003	0.003	0.004	0.004	0.003
Distillate (gal)	0.963	0.972	0.978	0.979	0.940	0.963	0.933	0.943	0.908	0.908	0.958
Residual (gal)	0.742	0.753	0.792	0.742	0.744	0.744	0.748	0.730	0.708	0.684	0.747
INDUSTRIAL SECTOR											
Electricity (kWh)	0.074	0.054	0.047	0.037	0.041	0.048	0.049	0.045	0.058	0.011	0.043
Natural Gas (cu ft)	0.006	0.006	0.005	0.004	0.004	0.003	0.003	0.003	0.006	0.005	0.004
Distillate (gal)	0.936	0.969	0.992	0.990	0.940	0.960	0.932	0.949	0.908	0.908	0.961
Residual (gal)	0.717	0.766	0.781	0.738	0.741	0.742	0.745	0.723	0.707	0.701	0.742
Coal (ton)	41.175	36.675	31.950	35.775	29.025	33.525	25.875	20.250	42.525	34.875	32.850

[a] Note that prices in tables C-1 and C-2 are equivalent prices stated in different units of energy. table C-1 prices are per million Btu (MBtu); table C-2 are per unit of energy typically sold, e.g., kWh of electricity, cubic feet of natural gas, and gallons of oil.

Prices in table C-2 were derived from the prices in table C-1 by multiplying the price per MBtu times the ratio of the Btu content per sales unit of energy to 1 MBtu. The conversions from price per MBtu to price per sales unit are based on the following assumed equivalencies: 3,412 Btu per kWh of electricity, 1,030 Btu per cu ft of natural gas, 138,690 Btu per gallon of distillate, 149,690 Btu per gallon of residual, and 22,500,000 Btu per short ton of coal. For example, price per kWh of electricity = price per MBtu x $\frac{3,412}{1,000,000}$; hence in DoE Region 1, the price per kWh of residential electricity = \$26.56 x $\frac{3,412}{1,000,000}$ = \$0.091.

TABLE C-3--PROJECTED MID-1985 ENERGY PRICES
(MID-1985 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	26.54	25.12	18.84	14.21	17.29	18.82	18.77	18.84	20.08	7.28	17.56
Natural Gas	5.31	4.85	4.31	3.77	3.87	4.03	3.82	3.95	4.74	5.00	4.18
Distillate	8.49	8.59	8.81	8.90	8.24	8.50	8.17	8.32	8.07	8.07	8.51
COMMERCIAL SECTOR											
Electricity	26.19	23.94	18.40	14.59	16.82	17.67	17.76	17.44	21.24	7.05	18.05
Natural Gas	4.50	4.11	3.74	3.16	3.47	3.38	3.32	3.67	4.10	4.28	3.63
Distillate	8.19	8.28	8.33	8.34	8.01	8.19	7.95	8.03	7.73	7.73	8.16
Residual	7.13	7.23	7.60	7.13	7.15	7.14	7.20	7.01	6.79	6.58	7.17
INDUSTRIAL SECTOR											
Electricity	21.64	15.83	13.71	10.86	12.15	14.01	14.22	13.04	17.05	3.30	12.59
Natural Gas	6.35	6.30	5.21	4.26	4.54	3.02	3.53	3.09	5.93	5.34	3.91
Distillate	7.98	8.26	8.45	8.44	8.01	8.17	7.94	8.07	7.73	7.73	8.18
Residual	6.89	7.36	7.50	7.09	7.12	7.13	7.16	6.94	6.78	6.74	7.13
Coal	2.90	2.57	2.25	2.51	2.03	2.36	1.81	1.40	2.98	2.45	2.30

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

TABLE C-4--PROJECTED MID-1990 ENERGY PRICES
(MID-1990 PRICES PER MILLION BTU IN MID-1980 DOLLARS)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	26.27	24.36	19.67	15.47	18.21	20.31	18.22	16.40	20.55	8.80	18.32
Natural Gas	6.25	5.55	5.04	4.25	4.45	5.02	4.52	4.79	5.09	6.04	4.83
Distillate	9.75	9.86	10.08	10.17	9.51	9.77	9.45	9.55	9.35	9.35	9.80
				12.49	12.02						
COMMERCIAL SECTOR											
Electricity	25.93	23.18	19.23	15.85	17.74	19.15	17.21	15.01	21.70	8.57	18.71
Natural Gas	5.44	4.82	4.46	3.63	4.05	4.37	4.02	4.52	4.45	5.33	4.31
Distillate	9.46	9.54	9.60	9.61	9.28	9.47	9.23	9.27	9.01	9.01	9.43
Residual	8.13	8.25	8.61	8.15	8.17	8.16	8.22	8.00	7.81	7.60	8.16
INDUSTRIAL SECTOR											
Electricity	21.39	15.07	14.55	12.11	13.08	15.49	13.67	10.61	17.52	4.83	13.45
Natural Gas	7.66	7.83	7.98	6.49	6.36	4.02	6.15	3.94	6.97	7.22	5.39
Distillate	9.46	9.52	9.72	9.71	9.28	9.45	9.21	9.31	9.01	9.01	9.46
Residual	8.19	8.37	8.52	8.11	8.14	8.15	8.18	7.93	7.81	7.76	8.14
Coal	3.12	2.79	2.48	2.73	2.20	2.53	1.97	1.40	3.19	2.75	2.50

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

TABLE C-5—PROJECTED MID-1995 ENERGY PRICES
(MID-1995 PRICES PER MILLION BTU IN MID-1980 PRICES)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	21.93	23.86	19.32	15.84	18.09	20.04	18.20	14.47	18.24	9.29	17.80
Natural Gas	6.88	6.03	5.44	4.46	4.67	5.64	4.80	5.39	5.16	5.17	5.13
Distillate	11.85	11.97	12.20	12.29	11.63	11.89	11.56	11.66	11.44	11.44	11.92
COMMERCIAL SECTOR											
Electricity	21.59	22.67	18.88	16.24	17.62	18.89	17.19	13.09	19.41	9.06	18.17
Natural Gas	6.06	5.30	4.88	3.85	4.28	4.98	4.30	5.11	4.52	4.44	4.62
Distillate	11.55	11.66	11.72	11.73	11.40	11.58	11.34	11.38	11.10	11.10	11.53
Residual	10.11	10.24	10.61	10.16	10.21	10.20	10.26	10.02	9.82	9.62	10.14
INDUSTRIAL SECTOR											
Electricity	17.04	14.57	14.18	12.49	12.96	15.23	13.65	8.69	15.22	5.32	13.16
Natural Gas	9.64	9.81	7.60	7.69	7.71	4.63	9.73	4.53	7.30	8.78	6.35
Distillate	11.55	11.64	11.84	11.83	11.40	11.56	11.33	11.42	11.10	11.10	11.57
Residual	10.18	10.36	10.51	10.11	10.18	10.19	10.21	9.95	9.82	9.76	10.17
Coal	2.61	2.93	2.62	2.84	2.31	2.61	2.05	1.45	3.35	2.38	2.58

Prices based on DOE Mid-Term Energy Forecasting System (MEFS) Projection Series "A" (High Case).

TABLE C-6—ENERGY PRICE ESCALATION RATES MID-1980 TO MID-1985[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-0.02	-0.02	-0.02	-0.02	-0.01	-0.02	-0.02	-0.02	-0.01	-0.02	-0.02
Natural Gas	1.78	1.78	1.77	1.75	1.75	1.76	1.75	1.76	1.77	1.78	1.76
Distillate	3.38	3.39	3.38	3.39	3.37	3.38	3.38	3.39	3.37	3.37	3.38
COMMERCIAL SECTOR											
Electricity	-0.01	-0.02	-0.01	-0.01	-0.02	-0.01	-0.01	-0.02	-0.01	-0.02	-0.02
Natural Gas	1.77	1.76	1.75	1.73	1.74	1.74	1.73	1.75	1.76	1.76	1.75
Distillate	3.38	3.39	3.38	3.38	3.39	3.38	3.40	3.38	3.38	3.38	3.39
Residual	7.53	7.52	7.52	7.53	7.55	7.52	7.55	7.51	7.50	7.57	7.53
INDUSTRIAL SECTOR											
Electricity	-0.01	-0.03	-0.01	-0.02	-0.01	-0.02	-0.02	-0.01	-0.01	-0.05	-0.03
Natural Gas	1.80	1.76	1.78	1.76	1.77	1.79	1.74	1.80	1.79	1.79	1.75
Distillate	3.39	3.40	3.39	3.39	3.39	3.38	3.40	3.37	3.38	3.38	3.38
Residual	7.54	7.53	7.53	7.53	7.54	7.53	7.54	7.53	7.51	7.55	7.53
Coal	9.62	9.51	9.63	9.58	9.49	9.62	9.50	9.30	9.56	9.56	9.55

[a] Derived from DOE 1980 and 1985 Price Forecasts shown in Tables C-1 and C-3.

TABLE C-7—ENERGY PRICE ESCALATION RATES MID-1985 TO MID-1990[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-0.02	-0.61	0.87	1.72	1.04	1.53	-0.59	-2.73	0.47	3.85	0.85
Natural Gas	3.33	2.74	3.15	2.38	2.84	4.53	3.43	3.95	1.44	3.86	2.92
Distillate	2.81	2.80	2.74	2.71	2.91	2.83	2.94	2.82	2.97	2.97	2.85
COMMERCIAL SECTOR											
Electricity	-0.19	-0.64	0.89	1.67	1.07	1.62	-0.63	-2.96	0.43	3.97	0.73
Natural Gas	3.88	3.20	3.60	2.82	3.15	5.26	3.85	4.22	1.66	4.50	3.49
Distillate	2.91	2.88	2.89	2.88	2.99	2.93	3.01	2.91	3.09	3.09	2.94
Residual	2.66	2.68	2.52	2.71	2.70	2.71	2.69	2.67	2.84	2.92	2.61
INDUSTRIAL SECTOR											
Electricity	-0.23	-0.98	1.19	2.20	1.47	2.03	-0.78	-4.05	0.55	7.89	1.32
Natural Gas	3.81	4.46	8.89	8.82	6.98	5.88	11.74	4.95	3.26	6.20	6.64
Distillate	3.47	2.88	2.85	2.85	2.99	2.94	3.02	2.90	3.09	3.09	2.93
Residual	3.53	2.60	2.58	2.73	2.71	2.71	2.70	2.69	2.87	2.86	2.68
Coal	1.47	1.65	1.97	1.69	1.67	1.45	1.76	0.00	1.36	2.39	1.66

[a] Derived from DOE Mid-Term Energy Price Forecasts shown in Tables C-3 and C-4.

TABLE C-8--ENERGY PRICE ESCALATION RATES MID-1990 TO MID-1995 AND BEYOND[a]
(PERCENTAGE CHANGE COMPOUNDED ANNUALLY)

DOE Region and Fuel Type	DOE 1	DOE 2	DOE 3	DOE 4	DOE 5	DOE 6	DOE 7	DOE 8	DOE 9	DOE 10	U.S. Average
RESIDENTIAL SECTOR											
Electricity	-3.55	-0.42	-0.36	0.48	-0.13	-0.26	-0.02	-2.47	-2.35	1.10	-0.57
Natural Gas	1.92	1.68	1.56	1.01	0.97	2.33	1.23	2.36	0.26	-3.09	1.24
Distillate	3.97	3.95	3.89	3.86	4.10	4.00	4.13	4.06	4.13	4.13	4.01
COMMERCIAL SECTOR											
Electricity	-3.60	-0.44	-0.37	0.48	-0.14	-0.28	-0.03	-2.70	-2.21	1.13	-0.59
Natural Gas	2.16	1.93	1.80	1.18	1.11	2.67	1.38	2.49	0.29	-3.58	1.39
Distillate	4.08	4.09	4.07	4.06	4.20	4.12	4.22	4.18	4.27	4.27	4.09
Residual	4.47	4.41	4.26	4.50	4.56	4.56	4.54	4.60	4.68	4.82	4.43
INDUSTRIAL SECTOR											
Electricity	-4.45	-0.68	-0.50	0.63	-0.19	-0.34	-0.03	-3.91	-2.78	1.97	-0.43
Natural Gas	4.72	4.60	-0.95	3.41	3.92	2.89	9.60	2.84	0.93	3.99	3.35
Distillate	4.08	4.10	4.02	4.02	4.20	4.13	4.22	4.16	4.27	4.27	4.12
Residual	4.43	4.35	4.28	4.52	4.58	4.57	4.53	4.64	4.68	4.71	4.55
Coal	-3.47	1.00	1.12	0.79	0.98	0.60	0.77	0.62	0.94	-2.87	0.61

[a] Derived from DOE Mid-Term Energy Price Forecasts shown in tables C-4 and C-5, and assumed to extend up to 10 years beyond mid-1995 to encompass a study period of 25 years beginning in 1980.

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