Michael A. Gammino, Jr., of Rhode Island, reappointment.

Joseph D. Hughes, of Pennsylvania, reappointment.

Gloria L. Anderson, of Georgia, vice Oveta Culp Hobby, term expired.

Theodore W. Braun, of California, vice Joseph A. Beirne, term expired.

Neal Blackwell Freeman, of New York, vice Zelma George, term expired.

CONFIRMATIONS

Executive nominations confirmed by the Senate May 25, 1972:

U.S. COAST GUARD

The following-named officer of the U.S. Coast Guard for promotion to the grade of rear admiral:

Ricardo A. Ratti.

The following-named officer of the U.S. Coast Guard Reserve for promotion to the grade of rear admiral:

Charles J. Hanks.

U.S. DISTRICT COURTS

Otto R. Skopil, Jr., of Oregon, to be a U.S. district judge for the district of Oregon.

James M. Burns, of Oregon, to be a U.S. district judge for the district of Oregon.

EXTENSIONS OF REMARKS

A CAPITAL LEARNING EXPERIENCE: STUDENT INTERNS IN GOVERNMENT—A PROMISING NEW APPROACH

HON. ROMAN C. PUCINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. PUCINSKI. Mr. Speaker, recently more than 300 student leaders from 38 States visited Washington to express interest in the pending higher education legislation, meet their elected Representatives, and discuss among themselves the response of the Federal Government to their sense of social concern and desire to participate actively in public affairs. These young people have made a major contribution toward helping us reach agreement in conference on the higher education bill.

As a conferee, and as a member of the Subcommittee on Higher Education, I have a profound respect for the contribution of these young people.

The National Student Lobby which has helped bring these young people together has properly sensed the contribution that young people can make to the legislative process. It is for this reason that Congress should pay close attention to the unanimous interest shown by these young people in proposals to expand Federal assistance for work-study and internships, arrangements for short-term or part-time employment, or volunteer service by students while they are attending college. Every Member of Congress knows how greatly student interest in internship assignments has grown in recent years. Hardly any of us is in a position to accept all the offers we receive from students and their home institutions for summer internships and, increasingly often, similar opportunities during the school year. Thus I am led to wonder if the Federal Government is yet doing enough to accommodate this new thrust of student interest. It seems to me that Washington, with its enormous array of Government bureaus, almost all of which are carrying out studies or experimental programs from which students could learn a great deal, should be a center for various experimental efforts to combine higher education and public affairs on a scale not hitherto attempted.

It has been with the greatest of interest that I have learned of a proposal for a summer student program combining internships with organized courses. The program will run on a small scale in the summer of 1972 for around 100 students, each of whom will have a ful-time internship assignment, paid or unpaid, in an agency or office in Washington whose work is somehow relevant to the study of a major theme of public policy. The program is being cosponsored by three organizations: Mount Vernon College, a local 2-year women's college—although some of the seminars will be offered by Georgetown University and Catholic University; Organization Response, a nonprofit collaborative of scholars and scientists working to promote innovation in institutions of learning; and the National Student Educational Fund, a nonprofit educational organization representing over 100 student governments around the country.

The title of the program is "A Capital Learning Experience." The program will offer a number of study areas, including "Science and the Citizen," "New Towns," "Technology Assessment and the Quality of Life," "Dynamics of American Foreign Policy," "Environmental Quality," "Institutional Change in Higher Education and Research," "Health Care and Public Policy," "Television and Popular Education in America," and "Urban Ethnology Field Techniques."

At the end of the summer the organizers of the program will hold an open conference for other educational institutions, Government agencies, associations, students, and others who might be interested in participating in a similar venture during the academic year or next summer. Present plans call for the conference to be sponsored by the office of program development, George Washington University, which is administering a grant to the university from the National Endowment for the Humanities which provides, in part, for the establishment of a work-study office in the consortium of universities to serve local institutions and, perhaps, other colleges and universities elsewhere.

Increasingly often students are interested in seeking and receiving regular academic credit for the studies they carry out in agencies and offices. Unless a suitably qualified scholar or scientist is familiar with their work such credit can be hard to arrange. And yet, if the learning is genuine, and the student completes the assignment he or she has undertaken, it seems like a very good idea to secure academic recognition for it. To do so might help to relieve the strain on faculty time and facilities in institutions of higher education, while also recognizing that the entire community has at least a potential contribution to make to higher education.

The organizers of "A Capital Learning Experience" believe that a promising way for students to arrange to receive credit for their summer study efforts would be to enroll in a seminar related to the topic they are working on in their host agencies or offices. The instructor of each seminar will be prepared to help students secure credit, not just for their classroom work in a weekly seminar, but also for the work they have carried out in an agency or office, so long as it is directly relevant to the topic of the seminar. The range of initial offerings is fairly broad and might become more extensive in the future. Agencies are encouraged to contact the organizers of the program about student interns they have already selected for this summer who might want to enroll.

The organizers of the program have invited students seeking internship opportunities to file with them brief statements of their capabilities and interests. Agencies or offices hoping to find suitably qualified junior staff members for the summer of 1972 might contact the National Student Educational Fund or Organization Response if they are prepared to offer an internship to a suitably qualified student to carry out a project in one of the policy areas chosen for this summer.

The organizers of the program are careful to point out that the internship prospects they have identified are only that—possibilities, and no more. If agencies are interested, the prospects could be turned into actual appointments in a large number of cases. Oftentimes agencies have interesting projects which cannot be carried out for lack of help. A structured program through which these opportunities could be advertised or brought to the attention of students would have a great deal to commend it.

The National Student Educational Fund is a private, nonprofit organization representing student governments all over the country. One of its primary purposes is to help students become involved in research and policy-oriented internships in the Washington area. Toward that end the fund is prepared to enter into simple contracts with Government agencies and other organizations whereby the fund could administer blocks of internship stipends, at considerable savings to agencies in redtape, flexibility, and simplicity. The advantage to agencies is that positions created for full-time, year-round employees would not have to be encumbered for students on short-term assignments. Such contracts could include provision for health insurance and tuition.

In 1892 the universities of the District of Columbia secured legislation authorizing Government agencies to offer their students access to facilities for study and research. By the act of March 3, 1901 (20 U.S.C. 91) the statute was broadened to include students from colleges and universities elsewhere. Because

of the rigidities of Government employment and a lack of any obvious method for funding such appointments, relatively little was done by way of introducing students to the laboratories, libraries, and study project of Government departments. Today we are more sophisticated, and the colleges and universities are much more interested. This seems to be an opportune time for an expanded effort to include students in the enterprise of government.

Let me make it clear that the responsibility for adopting and carrying out policy rests with the Congress and the executive branch, but the study of possibilities and needs is a more general responsibility, in which students are eager to take part. Perhaps we should encourage more programs such as this one to open up the governmental process to students, faculty, and citizens generally. In hopes that my colleagues and other readers of the CONGRESSIONAL RECORD will be interested in these possibilities, I ask unanimous consent that a brief statement about the program I have mentioned be entered in the RECORD at this point, and that it be followed by a few brief excerpts from pertinent publications, collected by Organization Response.

A CAPITAL LEARNING EXPERIENCE, SUMMER 1972

Students are invited to submit project outlines for policy-oriented studies they would like to carry out in Washington.

Agencies are invited to inform us about challenging policy study assignments, paid or unpaid, in which they are prepared to supervise students.

In the following priority areas:

Science and the Citizen; New Towns; Technology Assessment and the Quality of Life; Dynamics of Contemporary American Foreign Policy; Comparative Political and Economic Systems; Environmental Quality; Institutional Change in Higher Education and Research; Health Care and Public Policy; Television and Popular Education in America; and Urban Ethnology Field Techniques.

A program to combine internships with regular seminars, with academic credit available for both phases of the program.

Sponsored by:

Mount Vernon College, Office of the Vice President for Academic Affairs, Foxhall Road, N.W., Washington, D.C. 20007, an independent two-year woman's college located in a quiet residential section of Northwest Washington, accredited by the Middle States Association.

Organization: Response, a nonprofit collaborative of scholars and scientists working to promote institutional innovation in the world of learning, 3233 P Street, N.W., Washington, D.C. 2007; a priority project for 1972–73 is to develop new institutional mechanisms to foster learning assignments beyond the campus.

The National Student Educational Fund, representing over 100 student governments, working to expand internship opportunity in Washington, 1835 K Street, N.W., Washington, D.C. 20006. A nonprofit organization able to administer student stipends, health insurance, and internship plans.

A CAPITAL LEARNING EXPERIENCE

The Washington, D.C. area offers unparalleled resources for the study of public affairs. Apart from summer jobs that students arrange themselves and a very few fall or spring term cooperative education placements, no systematic effort has been made to widen the scope of opportunity for students to carry out academically related projects in agencies of the Federal Government or the offices of national associations. As a first step toward a more intensive use of study opportunities in the Washington area, a small pilot project is planned for the summer of 1972: several seminars on policy topics, designed as an academic experience for students pursuing full-time internships or work-study projects. The aim of the program is to demonstrate the academic value of field experience in policy studies, in the expectation that Mount Vernon college and other educational institutions in Washington and elsewhere will sponsor expanded programs in the future, both in summer and during the school year.

GENERAL SUMMARY

A Capital Learning Experience is an undergraduate program designed to knit together on-the-job or field experience and academic study. Student participants will work full-time in summer intern positions in government or social action agencies and in addition, will be enrolled in seminars taught by members of the policy community in Washington.

The seminars, most of which will meet weekly and carry three hours of academic credit, are built around themes, such as "Dynamics of Contemporary American Foreign Policy," "Health Care Delivery," and "Science and the Citizen." Seminars will capitalize on the internship experience of the students by means of discussion, by supplementary reading, by providing guidance and perspective—in brief, by affording each student an opportunity to examine and reflect on his or her work experience.

Numerous internships have already been established in government agencies and research establishments. Most of these are already committed for 1972. Paying summer jobs have been greatly reduced by the job freeze in the Federal Government but a very few may still be arranged in special cases. Those who have already arranged summer jobs in policy-related fields are encouraged to apply for admission to the seminars. Students willing to pursue study assignment as volunteers, without stipends, may be able to secure interesting assignments, of considerable potential academic value, and arrange to receive academic credit for their field experience in addition to that provided through the seminars. Students are expected to establish a strong reinforcing relationship between the seminars and their work in offices and laboratories—to learn at first hand how knowledge can or should be applied to social needs.

This program is admittedly experimental this year. For that reason, the students we are interested in at this point are those who have a well-developed interest in a specific area—ideally, a fairly clear notion of "what they would like to spend the summer doing" or those who have already arranged internships. For example, a biology student interested in the physiological effects of noise might well be an ideal candidate for an internship in Congress or in the Environmental Protection Agency while participating in a seminar on Technology Assessment and the Quality of Life.

Also because this first year is experimental and even more because of a conscious commitment to administrative flexibility, we plan to make available a number of options in the matter of academic credit and in organization of the seminars. However, all the seminars established for the summer of 1972 will carry three hours of academic credit from a sponsoring academic institution. Some will be taught by regular faculty members of area colleges and universities, such as Georgetown University, Catholic University, and the U.S. Naval Academy. Students should arrange to have program credits recognized by their home institutions.

Students may also arrange to receive academic credit for their internship assignments; some will be worth three hours, some six hours. Other intern assignments may not be eligible for academic credit or students may wish to seek credit for them. Where a student wishes to undertake an assignment for credit, the sponsoring academic institution will assist in arranging a learning contract whose successful performance will lead to the award of credit. Where the internship does carry academic credit, the internship supervisor, i.e., the student's on-the-job supervisor will be called upon to certify that the assignment was satisfactorily completed.

Each seminar will have about ten students. Its instructor will choose the members of his seminar from among those who have expressed interest and who have or are seeking appropriate internship assignments. He will also have a role in deciding whether or not the internship will be convertible to academic credit. Further, he will have a major role in scheduling. As noted above, most seminars will meet weekly. However, depending on the nature of the internship assignments and arrangements at the faculty members' institutions, they may meet more often, or less often and more intensively. For example, the seminar whose major academic orientation is anthropology may be scheduled to allow for more intensive class meetings at the beginning and end of the program.

OFFERINGS

Science and the Citizen, an exploration of the unfulfilled popular dimension of science, development of programs to advance the public understanding of science.

Instructor (tentative): Wilton S. Dillon, anthropologist and student of communications processes in society, Director, Office of Seminars, Smithsonian Institution; former staff member, National Academy of Sciences. Author, Gifts and Nations (1968).

Internship Prospects: Mostly volunteer, with science agencies such as the National Science Foundation or the National Academy of Sciences, or assist in developing popular exposition to be offered in conjunction with the December, 1972 meeting of the American Association for the Advancement of Science.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Sociology, science, education, cultural studies.

New Towns, Planning and design of experimental cities and towns, government support of new towns, role of new technology in human settlements.

Instructor: being arranged.

Internship Prospects: Mostly volunteer, with new communities, such as Columbia, Maryland (The Rouse Corporation), Reston, Virginia, or others, or the Department of Housing and Urban Development, urban research groups, or committees of the Congress.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Political science, architecture, city planning, or urban studies.

Technology Assessment and the Quality of Life, detailed predictive studies of the impact of new products and technological change on communities, the environment, and individuals.

Instructor: being arranged.

Internship Prospects: Mostly volunteer, with the Department of Transportation, engineering consulting firms, the Environmental Protection Agency, Food and Drug Administration, or other regulatory bodies.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Upperclass work in a technical or analytic discipline, such as chemistry; studies of tolerances; experience with testing consumer products; or safety research.

Dynamics of American Foreign Policy, exploration of fourteen current issues confronting policy-makers. Simulation exercises

will be employed as a means of explicating relationships assumed to operate in the foreign policy formulation process, and exposure to foreign affairs agencies will be provided to enable students to derive insights into the policy-making process from practitioners. Emphasis will be on student participation.

Instructor: Charles W. Kegley, Assistant Professor of International Politics, School of Foreign Service, Georgetown University. Co-editor. After Vietnam: The Future of American Foreign Policy (Doubleday Anchor Books. 1971)

Offered by: Georgetown University Summer School, registration fee $15.00; tuition (3 credits hours): $181.00. Extra credit available through the Independent Study Program through arrangement with the instructor.

Internship Prospects: Mostly volunteer, with embassies, the World Bank, Department of State, Agency for International Development, or various international policy associations.

Preparation: Developed interests in international affairs, political science, government, or foreign area studies.

Comparative Political and Economic Systems, scholarly analysis of and systematic instruction in comparative economic and political systems in the world. (No further applications for 1972)

A six-week program, fully enrolled for the summer of 1972, combining two courses, "Comparative Political Systems" and "Comparative Economic Systems," with internships in a wide variety of agencies, Congressional offices, and associations. For application materials for the summer of 1973 write to Mrs. Kathleen Teague, Executive Secretary, Charles Edison Memorial Youth Fund, 2121 P Street, N.W., Suite 222, Washington, D.C. 20037. Tuition: about $350 (subject to change)

Instructor: Dr. Lev E. Dobriansky, Professor of Economics, Georgetown University.

Environmental Quality, human environmental dependence, basic biological and social processes influenced by the physical environment, human ecology, and policy applications of the above.

Instructor: Denis Hayes, Fellow Woodrow Wilson International Center for Scholars Smithsonian Institution; National Organizer, Earth Day, 1970.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Biology, ecology, or environmental studies or projects.

Institutional Change in Higher Education and Research, the social responses of institutions of learning to new public expectations, alternative institutions, study of the literature of institutions.

Instructor: Dr. Philip C. Ritterbush, Chairman, Organization Response, a nonprofit collaborative of scholars and scientists working toward improvement in institutions of learning. Former Director of Academic Programs, Smithsonian Institution; former staff member, Office of Science and Technology. Editor, The Bankruptcy of Academic Policy (1972); Scientific Institutions of the Future (1972).

Internship Prospects: Volunteer assignments to assist in developing future issues of PROMETHEUS, an analytic policy review for institutional leaders and others concerned with future directions of the world of learning; studies in educational associations.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: History, sociology, or institutional change projects.

Health Care and Public Policy, a critical examination of the health care delivery system and the Federal Government's role.

Instructor: Dr. Alan Kaplan, Adjunct Professor, School of Law, American University; staff member, the Institute for the Study of Health and Society.

Internship Prospects: National Institutes of Health, medical education associations, consulting firms, research establishments, Congressional committees.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Social studies, economics, or sociology.

Television and popular education in America, an exploration of public policies which might enhance the contribution of the media to education.

Instructor: Lt. Robert Clark Weller, Instructor, U.S. Naval Academy. Conducting course, spring term, 1972 on experimental applications of television in education.

Internship Prospects: Corporation for Public Broadcasting, Federal Communications Commission, U.S. Office of Education, educational associations.

Offered by: Mount Vernon College, June 26-September 1, 1972. Three credit hours. Tuition: $165.00. Field experience credit by arrangement.

Preparation: Communication, literature, popular culture.

Urban Ethnology Field Techniques, an intensive experience in observing social conditions.

Instructor: Dr. Michael Kenny, Director of the Field School and Professor of Cultural Anthropology, Catholic University of America, Washington, D.C. 20017. Phone (202) 529–6000, ext. 605/6.

Offered by: Catholic University of America. 6 credit hours. Tuition: (graduate) $366.00; (undergraduate) $306.00. This course will run from June 19 through August 11. The first and last weeks will be intensive seminar-workshops. The rest of the period will be given over to intensive field observation. Applications should be submitted as soon as possible.

Preparation: Social studies, anthropology, urban studies.

Other Subjects. Applicants may send project outlines and statements of educational background. We will attempt to assist in placement of referral to other agencies.

1972 PROGRAM—EXPLORATORY PHASE

The seminars listed herein are expected to be offered if ten or more suitably qualified students apply. In order to be considered each student must have arranged a work-study or internship appointment in a Washington area agency or organization directly relevant to the seminar topic, or seek such an internship through our program offices. No students will be accepted for any seminar until the exploratory phase has been concluded and Mount Vernon College or other academic sponsor has agreed to offer the seminar.

ACCEPTANCE

As soon as applications for a particular seminar reach the minimum level (generally eight or ten) set by the instructor and the academic sponsor, students will be accepted by formal notice in writing. Internships may be arranged at any time. Offers for both paid and unpaid internships will generally be made by agencies or offices direct to students who have applied through this program.

APPLICATION PROCEDURES

Each student should submit two copies of the following:

1. Cover sheet (with items in the following order double spaced)

1. Institute (no student should apply to more than one).
2. Name of student.
3. Address (dormitory, box number, etc.).
4. Telephone Number.
5. Name of Institution.
6. Address of Institution.
7. Major (or expected major) and degree for which enrolled, date expected.
8. State whether health insurance coverage, family or college, would be in effect in Washington, D.C. from late June through early September, 1972.
9. Preference for dormitory residence or residence in community.
10. Write "Stipend Necessary" if a paid internship is necessary in order for you to participate in this program.

Write "Prepared to Volunteer" if no paid internship can be arranged.

2. Capability statement

Outline of courses completed, including grades and name of instructor, with a phrase or two regarding the skills acquired. List of previous employment or special projects, extra-curricular activities relevant to the subject of the institute, and other information that might help to establish your qualifications to pursue an internship or work-study assignment. Items under preparation in the preceding list are examples of areas of capability relevant to particular policy topics, but are not to be regarded as necessary prerequisites. Indicate the dates when you could be available in the Washington area if accepted for the program. This statement should be factual and objective, and a fair representation of your capabilities. No more than 500 words, normally about half that many.

3. Project outline

A description, in your own words, of a subject you would like to explore or study, a line of policy you would like to review, or the kind of project with which you would like to become associated. Specify the agency or office which might best accommodate such work. Students who have already arranged internships should indicate the period of their appointment, supervisor (if known), and name of agency or organization. This project outline and the capability statement will be used by our program staff in attempting to arrange internships. Their intent is to describe what you have learned, what you would like to learn, and (briefly) how you might hope to go about doing so.

APPLICATION ADDRESS

A Capital Learning Experience, the National Student Educational Fund, 1835 K Street, N.W., Washington, D.C. 20006.

APPLICATION PROCESSING

We will acknowledge receipt of your application with a description of the seminar for which you have applied, and biographical information about the instructor. Students should use this descriptive material in securing advance approval of their college or university for seminar credit.

By the second week of May we expect to be able to advise whether or not an internship could be arranged. Students receiving internship appointments in the interim should notify the program. Letters of final advice about the program will be mailed in the second week of May or soon thereafter. Learning contracts for field experience credit need not be cast in final form before students arrive in Washington.

Sponsoring academic institutions are not necessarily committed to offering the seminars described herein. The purpose of this announcement is to invite applications which, if received in sufficient quantity and quality, will make it possible to proceed.

OFFERS OF INTERNSHIPS

Agencies or offices willing to offer paid or unpaid internships to students with interests in any of the policy subjects listed in this announcement are invited to contact Miss Kathleen Paasch, Executive Secretary, Organization Response, 3233 P Street, N.W., Washington, D.C. 20007. Telephone (202) 333–1866.

AN INVITATION TO PARTICIPATE

We extend this invitation to students, faculty members, educators, and potential host establishments. We hope to arrange a program of learning assignments and seminars that may test the capacity of a major city and its human resources to support stu-

dent-initiated learning. We may not be able to offer all of the seminars listed herein unless students planning or hoping to spend the summer in Washington on academically related projects contact us before the end of April. We offer to do our best to arrange rewarding internship assignments and seminars. By so doing we hope we are laying a foundation for the future. Agencies and colleges unable to participate in 1972 are invited to inform us of their interests for 1973 and beyond. We will try to bring such information to the notice of all who may be interested.

PETER COYE,
President, National Student Educational Fund.
Dr. EILEEN KUHNS,
Vice President for Academic Affairs, Mount Vernon College.
Dr. PHILIP C. RITTERBUSH,
Chairman, Organization Response.

ON THE DESIRABILITY OF INVOLVING COLLEGE STUDENTS IN BUSINESS AND COMMUNITY AFFAIRS

(Compiled by Philip C. Ritterbush, Chairman, Organization Response, a Washington-based collaborative of scholars and managers working in support of programs of off-campus study. Dr. Ritterbush formerly served as Director of Academic Programs, Smithsonian Institution.)

RELEVANT EDUCATION FOR THE 1970'S

It is paramount in our democratic system that each individual, as a responsible citizen, participate actively in appropriate matters pertaining to education. There are many areas in which business and industry can effectively participate in the enrichment and betterment of education. In order to reap the maximum benefit of this participation, a qualified person of appropriate rank should be designated at the federal, state, and local government education levels, to coordinate and encourage business, industry-education cooperation particularly in those areas where business and industry are in a position to make unique contributions to the betterment of education overall. These may include among others:

1. Encouraging and supporting programs at all levels of education aimed at bringing about a better understanding on the part of all—students, teachers, employees, and the public at large—of the contributions and inherent potentialities of our system of competitive private enterprise and democratic government.

2. Providing current information on specific areas of educational emphasis necessary to meet the current and future manpower and new knowledge needs of business and industry.

3. Assisting in the extension and improvement of technical-vocational educational programs aimed at improving the employability of youths and adults.

4. Sharing programs, techniques, and methodology developed in industrial training activities with educational institutions and others conducting training programs.

5. Participating in programs of cooperative education (work-study programs) and summer employment for students, teachers, counselors, and administrators.

9. Encouraging the active participation of company personnel in educational activities at all levels.

By: Education Committee National Association of Manufacturers.

From: Official Policy Positions 1971.

NORTHEASTERN UNIVERSITY PROGRAM OF COOPERATIVE EDUCATION

Cooperative Education at Northeastern University is a program providing for the coverage of a full-time job 52 weeks of the year through the use of two students on an alternating work-study schedule. Through meaningful work experience in one or more fields, the student has the opportunity to perceive the integration of theory and its application in the real world. Paid assignments, which enable the student to participate in a training program or complete a specific job, foster the growth of qualities such as responsibility, initiative, and cooperation with others. Through this exposure he is better able to determine where his interests lie and where his chances for success are greatest.

Northeastern University's quarter system provides for three work periods each year. One consists of 26 consecutive weeks, from the middle of June until December, followed by two 13-week work periods in the other half year.

A cooperative employer gains the services of intelligent and motivated men and women to perform duties that might free some of the professionals to do the work for which they are trained. As the student matures and becomes more familiar with the departmental operations, he is able to assume greater responsibility. Employers are also in the enviable position of evaluating potential career employees in a working situation prior to making any long-term commitments.

In these times, when students are earnestly interested in making a meaningful contribution to society, employment with organizations such as yours may enable them to do so in a positive manner. The students' experiences also provide the campus with good feedback on the progress being made by their government in solving current problems.

Also available from: Roy L. Wooldridge, Dean of Cooperative Education, The Co-Op Handbook 1971–1972: Northeastern University, 360 Huntingdon Avenue, Boston, Mass. 02115.

WORK-STUDY PROPOSALS AND RETURNING VETERANS

Our distinguished colleague from New York, Mr. Scheuer, has recently introduced two imaginative new legislative proposals aimed at aiding returning veterans of the Vietnam era. (One has been adopted as part of the Higher Education Amendments now pending in the Congress.) They are well on their way through the legislative process and I think it is not too early to take note of their significance.

The new program added as section 426 of the House-passed bill would authorize $50 million yearly to support new opportunities for part-time off-campus work for veterans and other students in community service, and would thereby combine financial assistance with meaningful, useful employment.

The following article by Jim Castelli of the *Catholic News*, the newspaper of the Archdiocese of New York, describes these programs and I commend it to your attention:

"The work study program is an addition to the current work study program which, under the Higher Education Act of 1965, aided 375,000 students at 2386 institutions last year. The current system promotes the creation of new on-campus jobs, mostly clerical. The Scheuer amendment would use $50,000,000, a third of the current budget, only for off-campus jobs which were involved in community service, in such areas as environmental quality, health care, education, welfare, public safety, crime prevention and control, transportation, recreation, housing and neighborhood improvement, rural development, conservation, beautification, and other fields of human betterment and community improvement!

"The funds would go to public and private non-profit agencies and to governments which can provide community service programs, and will pay full salary . . . The 40,000—50,000 students and vets in the program could earn about $1200 for the school year. This plus $180 a month GI benefits and summer earnings would mean an annual income of about $4000, hardly enough for a family man, as Scheuer points out, but enough for a single vet, and more than many have now."

By: Congressman Michael, Harrington of Massachusetts, 19 October 1971.

From: Congressional Record, pp. 11065-6.

SOME ANCIENT WISDOM

"I hear and I forget . . .
I see and I remember . . .
I do and I understand."—Confucius.

From: an official announcement, Wake Forest University Graduate School of Management.

PROPOSALS LEADING TO CREATION OF SPECIAL COOPERATIVE PROGRAM BETWEEN BUSINESSES AND UNIVERSITY OF DAYTON, OHIO

We need these young people, now. We need their energy, their talent, and their skills. We need their imagination and fresh points of view. We need the courage they have that allows them to innovate so boldly. We hear a lot of talks these days about the military-industrial complex." I would like to see us encourage the idea of the "educational-industrial complex."—the concept that American universities and industry have a close and ongoing relationship which is a true partnership for human progress.

By: William Verity, Jr., President, Armco Steel Corporation.

From: report on Project Interface, Office of the Vice President, University of Dayton.

BY THE DIRECTOR OF THE PEACE CORPS (NOW THE U.S. ACTION AGENCY)

"Higher education has to loosen its embrace on the student body. It has to tear down the walls that keep the students in and the greater world out. I firmly believe that a true 'higher' education should be intellectually based, but not limited to papers and exams, it must also be an education that brings the individual into an informed, useful relationship with his fellow man. He knows that he is a human being, knows where he comes from, makes his peace with where he is going, and is pleased to share the journey, brief as it is, with many others along the way.

"In this age of color television, satellites, Teflon, and digital, it may be difficult to accept the strong idealism of people who also seem so comfortable in our material world. But it is genuine. And the challenge to higher education is to nourish and encourage it, not stifle it."

By: Hon. Joseph Blatchford, Director, U.S. Action Agency, Washington, D.C.

From: Commencement Address, Bowling Green University, 12 June 1971.

IS YOUTH WILLING TO COOPERATE WITH THE ESTABLISHMENT?

"There is broad agreement among students and establishment leaders on many of the most pressing areas of domestic social need that warrant attention—poverty, race relations, pollution, reform of the political process and the legal system.

"Beneath their anger (over student acts of violence), establishment leaders are keenly interested in working with the students, sympathetic to their goals and even their feelings;

"Beneath their mistrust of the establishment, the majority of students want to work with establishment leaders;

"The majority of the media to the contrary, the overwhelming majority of the student body is moderate, antiviolent, and desirous of working within the system;

"Millions of students especially the forerunner group, are ready to devote time and effort, at minimal compensation and at the cost of postponing their individual career paths, to working toward the solution of pressing social problems."

(Of business surveyed in 1970 by Daniel Yankelovich, Inc. some 73–76% of industrial/retail establishments indicated interest and willingness in collaborating with col-

lege students; 1% of banks and insurance companies; and 71% of utilities and transportation companies. "There is enormous frustrated desire (among business leaders) to establish dialogue with these young people.")

By: The Task Force on Youth, Office of John D. Rockefeller 3rd.

From: Youth and the Establishment: A Report on Research . . . by Daniel Yankelovich, Inc. (N.Y.: JDR 3rd Fund, 1971).

NONTRADITIONAL STUDY

"We find enormous interest and considerable activity in non-traditional education already evident throughout the country. Most recently the external degree has been receiving the lion's share of attention, but other non-traditional approaches are also being attempted more widely, than we had supposed to be the case. There is a great emotional surge, among educators and the lay public alike, toward a postsecondary educational system with more flexibility than heretofore and with more options from which the individual should be able to choose, regardless of age or circumstances. The reasons for such interest vary but there is no question that it exists. Educators have their major concern centered in desirable academic change . . ."

By: Commission on Non-traditional Study, created under the College Entrance Examination Board in 1971.

From: New Dimensions for the Learner; A First Look at the Prospects for Non-Traditional Study (1971).

THE VALUE OF EXPERIENCE IN HIGHER EDUCATION

"We have not been very inventive about how to relate studies and experience or thought and action, and the result can be frustration, or apathy, or even revulsion on the part of good students. There is an excitement and an important feedback that comes from actually seeing and experiencing the relevance of intellectual exercises.

"Unquestionably, the notion that knowledge can and should be pursued for its own sake is at the heart of our lack of interest in connecting studies and concerns. We pay the price in student disinterest and in the proliferation of activities which do not have the discipline of intellectual content. A closer coordination of the student's two lives would bring the university into better focus and it would serve to aid the development of appropriate extracurricular activities, as well as add an important stimulus to intellectual growth."

By: James A. Perkins, then President, Cornell University.

From: The University in Transition (1966).

FOR ADDITIONAL READING

Asa Knowles and Associates, Handbook of Cooperative Education, $12.50, from Jossey-Bass, Inc., 615 Montgomery Street, San Francisco, Calif. 94111.

A VIEWPOINT ON SCHOOL BUSING

HON. DONALD M. FRASER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. FRASER. Mr. Speaker, from time to time we all receive constituent letters that make a particularly strong impression on us. Earlier this year, I received a copy of such a letter from Stanley Efron of Minneapolis on the busing issue.

In a forceful yet reasoned manner, Mr. Efron outlined his concerns to President Nixon about the need for continued national commitment to integrated education.

I include Mr. Efron's letter at this point in the RECORD:

RICE & EFRON,

Minneapolis, Minn., March 21, 1972.

President RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR PRESIDENT NIXON: I am a white lawyer, with nineteen years of practice at the law, and some small reputation in my community for knowing what I am doing. I have four children, three of whom are now in the public school system in the City of Minneapolis, the fourth who will be entering shortly, have been involved in public school matters since my oldest child entered kindergarten some eight years ago, have served two terms as President of the P.T.A. of an elementary school located in my fairly affluent neighborhood, have served one term as the President of my high school district P.T.A., and spent one year as Vice Chairman of the Minneapolis Citizens School Facilities Committee.

I give you my background only so that you will be aware that I am not speaking in the abstract about school matters as many politicians seem to be in the most recent past. This letter is occasioned by the text of your announcement on busing broadcast Thursday night on radio and television. I have read and examined the text carefully.

My own position is well known. I am *not* opposed to busing for the purpose of achieving racial balance in our schools, provided there is quality integrated education at the end of the bus ride and provided travel distances for students within the area can be established in such a way as to minimize travel time. In a metropolitan area such as this, a maximum travel area of three miles is desired. I have spoken out in favor of this type of busing many times over many years as a useful tool when other methods of achieving the end to segregation fall short of that goal.

I find that many white and black people in this community share that view. I am not so naive as to believe that *most* white Americans share that view. Most white Americans, in my experience, love slogans such as "I am opposed busing for the purpose of achieving racial balance". Such slogans are actually meaningless.

I would dearly like to know how we can stop busing in a way that will provide better education for every child in America "in a desegregated school system". I have examined your speech very carefully to find out how we get a desegregated school system. You raised the question "How can we end segregation in a way that it does not result in more busing?" You do not answer it. I invite you to answer it. That answer was not in your speech, and is certainly not in the outline of your legislative proposals.

As a lawyer I am fearful of your intemperate remarks regarding the judicial system. I have often been unhappy by the decisions of lower courts and have found that taking appeals sometimes solves my problems. If, in fact, the lower Federal courts have gone too far "beyond the requirements laid down by the Supreme Court", surely the Supreme Court will remedy the situation in due course.

Perhaps you believe that the Congress and the President ought to be intermediate appellate courts designed to speed up the process. That surely would be a strange twist to our Constitution.

I am not so fearful as you that school children will be terribly affected by busing during the period in which the cases wind their ways up to the Supreme Court. Last year the Minneapolis School District took a timid first step in pairing two elementary schools in adjacent neighborhoods to achieve better racial balance and quality integrated education. Since my second and third children were destined to enter my local neighborhood all white school, which in my view provided a completely inferior education to most other schools in the city, including the inner-city schools, we and many of our neighbors obtained permission to send our children on a bus to the integrated paired schools, which are less than two miles from our neighborhood. We had mixed feelings about having our children, who were once able to walk to our neighborhood school, to be forced to travel an hour a day on the bus.

Since one of them was hit by a car last year walking to his neighborhood school, despite the presence of traffic signs and traffic guards, and since the school day is somewhat shorter because all the children eat lunch at school, we felt we could make the sacrifice. The result is that our children are now getting a vastly superior education to almost any school that is located elsewhere in the city, including the all white schools in our affluent neighborhoods which, not surprisingly, vary in quality. It is even in my view vastly superior to the education in some of inner-city schools which have large amounts of Federal funding to bring quality education to them, but which somehow don't reach that quality because the racial and social economic mix of the students does not provide the kind of educational atmosphere which is conducive to a quality education.

It is not that I oppose additional school aid funds for education for poor children or any children. In fact, 2.5 billion dollars in the next year is a pitiful recommendation. What you don't seem to realize, however, is that in the large cities of our nation, there are schools so inferior even in the affluent areas, the white children who go there aren't getting a decent education.

I don't think it is necessary for me to relate to you what the suburbs do to the central city. You have an expert consultant on that in Professor Charles Alan Wright, who has written on that subject many times and who, unless he has recanted his views, should be able to give you an earful in his inimitable style.

In any event, I am certainly pleased to see that after three years in office you have come to a decision that it is time to make a national commitment to see that children in the central cities get a quality education. It is my dim recollection that there have been those in Congress (and even a few mayors) who have been trying to tell you that.

In directing all agencies and departments of the Federal government at every level to carry out the spirit of your message in all their actions, I presume that you intend that they do so regardless of acts of Congress or the Federal Constitution. Perhaps you don't intend that but certainly that is the message we get.

You tell us "experience in case after case has shown that busing is the bad means to a good end". I would really like to know where you get your "case after case". In the South as well as in the North, experience in "case after case" has shown that busing sometimes works and sometimes does not work or that it is sometimes the only way of achieving an end to segregation. Your conclusion is simply not supported by the credible evidence.

I am not so convinced that the great majority of the white Americans are in favor of desegregation or quality integrated education. I am convinced that statements of the type which you have made comfort those who are truly opposed to integrated education and truly opposed to an end to segregation. What is essentially contained in the latter part of your speech is support for separate but equal educational facilities. This kind of lip service to ending segregation with the indiscriminate attack on busing encourages the bigots in this community and elsewhere to attempt to turn the clock backward for education in this country.

I am pleased to say, however, that what

you have done along with George Wallace, has finally stirred enough fears in the hearts of men and women, old and young, Republicans and Democrats alike, that the bigots, the narrow-minded and the 19th century simpletons may well, in fact, take control of our local governmental institutions, including our school board. We are finally stirred up enough to form here a broadly based nonpartisan organization to end the meddling of politicians in educational matters for their partisan advantage.

I do not consider that you have struck a balance which is either thoughtful or just. Massive educational aids were always needed to improve the quality of education. They cannot be balanced against the harm done by the divisiveness of your position on transporting children where it is necessary to do so. You probably have expressed the views of the majority of white Americans. You certainly haven't expressed any leadership. George Wallace is leading your pack.

Very truly yours,

STANLEY EFRON.

DO NOT GIVE UP THE SHIPYARDS

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. LEGGETT. Mr. Speaker, the House Armed Services Subcommittee on Naval Ship Construction filed an excellent report 2 years ago wherein Chairman CHARLES E. BENNETT of Florida and the committee recommended as follows:

CONCLUSIONS

I. GENERAL

1. All shipyards need to have a steady flow of work in order to maintain a competent work force able to meet all possibilities. Shipyards in the past have had too many periods of "feast" or "famine." Schedules must be thoughtfully prepared and then carefully adhered to. Any other course would only increase costs which are already rapidly rising.

II. NAVAL SHIPYARDS

2. The Naval shipyards have had so many employees laid off that they are now, or will be, staffed below the "low efficient level."

3. The naval shipyards may well now have staffs cut so small that they will be unable to respond to emergency surges in the future.

4. Each naval shipyard should have some lower priority new construction to use as a buffer between crash emergency surges.

5. The naval shipyards have not been kept modern—despite the Long Range Modernization Program. Consequently, they are at a marked disadvantage in any comparison with private shipyards. The problem keeps compounding itself, for the less modernization, the less work that is given to the yards, so the less need to modernize it.

6. The Ten-Year Long Range Modernization Program had slowed to a twenty-year program at the time of the hearings. Now, with the Military Construction Authorization Bill for Fiscal Year 1972, it has been even more drastically reduced.

III. PRIVATE SHIPYARDS

7. The private shipyards need to have a steady flow of work so that they can plan for their own modernizations.

8. The profits for naval work performed in private shipyards must be increased so that the yards can survive on the work.

9. There have been too many private shipyards removed from the naval work. There should not be any effort made to further limit those yards. On the contrary every effort must be made to increase the yards available for naval work.

10. The total package procurement method of buying ships should not be continued. Prototype or lead ship construction should be followed, together with multi-year purchase of a series of ships. The procurement should be spread among yards after a thorough examination of all problems related to the construction of the particular type ship.

IV. BUY AMERICAN

11. All of the Buy American provisions of law should be written into permanent legislation—including the Byrnes (no foreign construction of a naval vessel) and Tollefson (no foreign construction of a major component of hull or superstructure) amendments—and the provisions relating to Naval ship work should be strengthened to be at least as strong as the provisions concerning the Merchant Marine.

V. NAVAL ARCHITECTS

12. Immediate steps must be taken to preserve our shrinking group of naval architects.

VI. MILITARY SPECIFICATIONS

13. The military specifications relating to ship work must be quickly and wisely reexamined to be sure that the specifications are not unnecessarily complicating the construction and repair of naval ships—thereby increasing their costs.

Unfortunately, the Navy Department and the Office of Secretary of Defense have followed but few of the committee's recommendations.

The Navy has pursued a policy of congregating 80 percent of the naval ship construction contracts in four private shipyards of the country which has led to a situation where the fat yards are so fat that they cannot digest the work allocation given them by the Navy Department.

This policy of overconcentration of work in but a few locations is dangerous for national security reasons. It has resulted in a virtual freezing out of naval shipyards for 6 years from new construction work. This policy in turn has led to a slight chilling of the small but essential private shipyard work assignments that have been admittedly reduced as a result of the need for naval shipyards to feed on available repairs and alterations.

The small private yards have erupted particularly on the west coast where the Navy has naval shipyards but virtually no new construction or conversion activities in either public or private yards.

This eruption of the small yards stimulated Ed Hood of the Shipbuilders Council to hire for money the outstanding firm of Ernst and Ernst to do a comparative analysis of public and private yards on recent Navy work.

The analysis of Ernst and Ernst contained in a fat report is based on all nonclassified information—which means it has general newspaper authority and reliability. The report is a shabby one, uses unrepresentative data, is admittedly so highly conditioned by auditors statements of disclaimer that the document is more confusing than helpful.

However, Ernst and Ernst did its job for which it was paid. The report contains enough abstract thoughts taken out of context that the lay person is certain to be confused—the press was, which is not unusual.

The Navy was not, which is fortunate.

I would include at this point in my remarks a short analysis by the Navy Department of its analysis of the Ernst and Ernst survey:

ANALYSIS OF ERNST AND ERNST REPORT ON SURVEY OF COST DIFFERENTIALS AND OTHER FACTORS—PRIVATE VERSUS NAVAL SHIPYARDS OF NOVEMBER 1971

(Prepared by Naval Ship Systems Command, Washington, D.C., March 1972)

EXECUTIVE SYNOPSIS

The Ernst and Ernst study

In February 1972, the Shipbuilders Council of America made public the report of a study conducted by the accounting firm of Ernest and Ernst. The objectives of the study were, ". . . to measure cost differentials between performing shipwork in private versus Naval shipyards and to document private industry's assessment of their capability to perform work on Navy vessels of various sizes and sophistication." Based on a comparison of naval and private shipyard manhours expended in performing certain work, on a computation of value added per production worker hour and on responses received to a capabilities questionnaire, Ernst and Ernst concluded that: (a) The cost of a production worker hour in naval shipyards is higher than in private yards, (b) The manhours required in naval shipyards exceed those in private yards for similar work, (c) Total naval shipyard costs exceed private yard costs, (d) Overhead costs in naval shipyards account for the major portion of the manhour cost differential, and (e) Private shipyards consider that they have significantly greater capabilities to perform naval shipwork than they are given credit for by Navy officials.

Results of the NAVSHIPS analysis

The Naval Ship Systems Command performed detailed analysis which revealed the *following major deficiencies* in the Ernst and Ernst Study:

A major part of the study is *neither based on nor representative of a significant portion of the naval or private shipyard complex.*

The study employs different bases for developing costs in naval and private shipyards, with the result *that private yard costs are significantly understated in comparison with the naval shipyards.*

The study *rejects the basic principle of incremental cost analysis, resulting in a misleading and unsupportable impression of possible savings to be achieved by shifting work from naval to private shipyards.*

The study employs a *"value added" concept* which is considered inappropriate for the type of analysis undertaken and which may result in further understatement of private shipyard costs in comparison with naval shipyards.

The study relies on *unaudited responses by a limited number of private firms to financial and capabilities questionnaires.*

NAVSHIPS study

NAVSHIPS has undertaken a study which addresses, among other things, the comparative cost of naval shipwork performed in both naval and private shipyards. The study covers shipwork performed by all 10 naval shipyards and by 15 private yards. It includes a large variety of ship construction, conversion, alteration and repair work. *NAVSHIPS is being assisted in the study by Booz-Allen Applied Research and by Price Waterhouse, both of whom bring nationally recognized expertise to bear on the many subject areas which must be examined in a study of this nature.* It is expected that the *study will be completed this summer.*

SECTION I—INTRODUCTION AND SUMMARY

Background

In January 1971 the Shipbuilders Council of America engaged the accounting firm of

Ernst and Ernst to update its 1962 "Survey of Cost Differentials Between Private and Naval Shipyards" and concurrently to assess the capabilities of private shipyards to undertake overhaul, conversion and repair work on all types of U.S. Navy vessels. The report of the Ernst and Ernst study, entitled "Survey of Cost Differentials and Other Factors—Private vs Naval Shipyards", dated November 1971, was provided to selected members of the Congress and to Department of Defense and Navy officials in late February 1972. The Naval Ship Systems Command performed an analysis of that report to determine the validity of the conclusions reached. This paper presents the results of that analysis.

The Ernst and Ernst Approach

In order to determine a total cost differential between naval and private shipyards, cost was divided into two components—one which addresses the difference in the amount of production worker time required to perform the work and another which concerns the difference in the cost of a production worker hour. The total cost differential is then expressed as a combination of these two components. To assess the man-hour, or performance, differential, Ernst and Ernst requested information from the Navy and from private industry on the DLG modernization and SSBN conversion programs. The assessment of cost per hour differentials was based on information contained in the *Financial and Operating Statements of the 10 naval shipyards for fiscal year 1970 and on information supplied by 21 private companies in response to a financial questionnaire which was sent to more than 200 firms.*

The Ernst and Ernst assessment of private shipyard capabilities is based on information supplied by 23 private companies (34 shipyards) in response to a questionnaire mailed to more than 200 firms.

Ernst and Ernst conclusions

The major conclusions of the Ernst and Ernst study were:

The cost of a production worker hour in naval shipyards, on a value added basis, is 49% higher than in private yards.

The manhours required in naval shipyards exceed those in private yards by 39% to 52% for similar work.

Total naval shipyard costs could exceed private yard costs by 109% to 124%.

Overhead costs in naval shipyards account for the major portion of the 49% manhour cost differential.

Private shipyards consider that they have significantly greater capabilities to perform naval shipwork than they are given credit for by Navy officials.

Validity of the Ernst and Ernst conclusions

The limited data collected and the methods used in the Ernst and Ernst study are such that their *conclusions cannot be considered valid.*

First, the computation of the "performance differential" between naval and private shipyards is based entirely on a comparison of the manhours expended by one naval shipyard and one private shipyard in performing certain DLG modernizations. *Ernst and Ernst offers no explanation as to why the SSBN conversion program data were not used.* They do, however, provide *two significant disclaimers* relative to the *"performance differential":*

"Ideally, such a measurement would be based on the experience of significant numbers of naval and private yards doing like work." (Page II–A–1).

"Additional comparisons involving more private and naval shipyards are required before this can be considered as representative of all naval shipyards compared to private yards." (Page II–C–2).

There are 10 naval shipyards engaged in conversion, alteration and repair work and approximately 200 private shipyards which hold master ship repair contracts with the Navy. *Any attempt to generalize regarding this entire complex on the basis of one naval and one private yard is not valid, as Ernst and Ernst recognizes.*

Second, Ernst and Ernst apparently *made no attempt to determine whether or not the work associated with the DLG modernizations at the naval shipyard was technically comparable to that at the private shipyard. The fact that two of the three ships modernized at the naval shipyard are of a different class than the three modernized at the private yard is dismissed out-of-hand.*

Third, the 39 to 52% "performance differential" *cited does not take into account work subcontracted.* Ernst and Ernst does note (Page II–C–5) that including the 55,000 manhours which the private yard *estimated* was subcontracted would reduce the "performance *differential" by 6 to 7%.* In addition, differences between *the make or buy policies* of the naval and *private shipyard are not addressed.* In general, naval shipyards "make" *more than private shipyards.* If that situation obtains in the specific case of the DLG modernizations, *the effect is to understate the private shipyard's manhours and thus to overstate the "performance differential."*

Fourth, because of the manner in which Ernst and Ernst requested the private shipyards to provide data, the overhead rate per production worker hour in the private shipyards is significantly understated in comparison with the naval shipyard overhead rate which was developed on a different basis.

Fifth, by using the value added concept, Ernst and Ernst may have further understated private shipyard overhead, *since costs for such items as purchased, materials and contract work are excluded.*

Sixth, the Ernst and Ernst report does *not indicate the representativeness, from a geographical or capabilities point of view, of* the 21 firms who *responded to the financial questionnaire.* All ten naval shipyards, which have extensive capabilities for performing the many highly complex and diverse types of work assigned, are covered in the computation of production worker hour costs. *The five naval shipyards located on the West Coast and Pearl Harbor have average wages which are fifty cents per hour higher than the East Coast naval shipyards due to the higher area wage rates of private industry on the West Coast. Unless the 21 private firms are equally weighted, an obvious disparity is introduced.*

Seventh, in making adjustments to naval and private shipyard costs, Ernst and Ernst used DOD Directive 4100.33 as a guide. However, their methodology did not adhere to the basic principle of incremental costing specified in the directive and the Bureau of Budget Circular A–76 on which it is based. The effect of this is to give a misleading impression that savings are assured by shifting work from naval to private shipyards.

Eighth, the private shipyard capabilities data presented in the Ernst and Ernst *report are the unaudited result of self evaluations by 23 firms* (34 shipyards) using a definition of "having capability" which not only allows, but indeed *encourages, overstatement of capabilities.* The general capabilities tabulation indicates that a large number of shipyards have a major conversion, alteration and repair capability. *However, where special qualifications are required, the number of shipyards remaining is greatly reduced.* This *does not* appear in the summary highlights.

For these reasons, as well as others cited in succeeding sections, the *conclusions reached by Ernst and Ernst are considered invalid.*

SECTION II—PERFORMANCE DIFFERENTIAL

Shipyards and shipwork considered

In their calculation of manhour "performance differential", Ernst and Ernst *considered work performed by only two shipyards—the Philadelphia Naval Shipyard and the Bath Iron Works. Ernst and Ernst themselves recognized that no general conclusion could be drawn from this comparison—quotations to this effect are cited in Section I.*

The only shipwork considered in the computation of manhour performance differentials was the mordernization and rehabilitation of *DLG–6, 15 and 16* at Philadelphia and of *DLG–17, 21 and 24 at Bath.* On the basis of the total manhours/mandays expended, as reported by the Navy and the Bath Iron Works, a performance *differential of from 39 to 52 percent was computed.*

Shipwork comparability

Of the six ships considered in the "performance differential" calculation, *two at Philadelphia (DLG–6 and 15) are of the DLG–6 class while the other four are of the DLG–16 class.* The differences in these separate ship classes and in the rehabilitation work packages associated with the individual ships are of such magnitude as *to obscure true differences in shipyard performance.* Some data relating to these two ship classes are presented below to illustrate differences:

	DLG–6 class	DLG–16 class
Length	513 feet	533 feet.
Beam	52 feet	54 feet.
Displacement	5,600 tons	7,000 tons.

	DLG–6 class	DLG–16 class
Guns	1—5 inch/54 4—3 inch/50.	4—3 inch/50.
Missiles	1—Twin Terrier launcher.	2—Twin Terrier launcher.
Age at start of modernization.	96 months (2 ship average).	59 months (4 ship average).

There are many other differences in electronics and fire control systems installed in the two classes prior to modernization which complicate the problem of finding comparable work performed during modernization. *Since Ernst and Ernst did not take such differences into account, the performance differentials cannot be considered valid.*

It might appear that, if the two DLG–6 class ships at Philadelphia cannot be compared with the DLG–16 class ships at Bath without a detailed analysis to determine work comparability, *at least the DLG–16 could be compared with the Bath modernizations. However, this would not be a valid comparison either, since the DLG–16 was the lead ship* in the modernization program and therefore *had the associated one-time costs.* While lead ship effort is not separately identified by naval shipyard accounting systems, the project development (construction plans) effort at Philadelphia for DLG–16 was reported separately and it alone amounted to 244,000 manhours. As Ernst and Ernst noted in their report, *Philadelphia provided the lead ship design for this class to Bath and therefore the Bath manhour figures do not include any lead ship effort.* If only the 244,000 manhours are excluded from the Philadelphia total figure of 1,672,000 manhours, *the performance differential drops from the stated 39%–52% to 10%–30%. While this analysis is certainly not rigorous, it does show the invalidity of simply comparing total manhour expenditures without considering work comparability.*

SECTION III—COST PER PRODUCTION WORKER HOUR

Ernst & Ernst has presented an interesting but questionable analysis of the differences in the cost of a production worker hour between naval shipyards and a limited sample of the shipbuilding and ship repair industry. This analysis implies that a production worker hour in naval shipyards costs 49% more than a production worker hour in private shipyards. However, the Ernst & Ernst

report states (on page II–A–4), *"Also, the Cost per Hour Differential cannot be used as a measure of savings to be realized. . . ." This caveat was not given any recognition by the Shipbuilders Council of America in forwording the Ernst & Ernst report to the news media and Congressional authorities, even though it recognizes that the cost per hour differential has no inherent value in workload allocation decisions.* This problem is discussed more fully under the paragraph entitled *"Failure to Make an Appropriate Cost Analysis" at the end of this section.*

Invalid comparisons

Analysis of the development of the Cost per Hour Differential reveals *technical flaws* in methodology which result in misleading conclusions. To be more specific, Ernst & Ernst *developed overhead cost per production worker hour in private shipyards on a totally different basis than that used for naval shipyards, with a resulting significant comparative understatement of the private yard overhead rate.* Consequently, any comparison with naval shipyard costs is invalid on the basis of the data presented. *For example, the following types of costs included in naval shipyard overhead and to some degree in in private shipyard overhead are excluded from the Overhead Cost Element of the Cost per Production Worker Hour for private shipyards in the Ernst & Ernst study:*

Working foremen.

All personnel engaged in: receiving, storage, handling, packing, warehousing, shipping, maintenance, repair, janitorial functions, watchman services, product development, auxiliary production for plant's own use (e.g. power plant), and record keeping and other services closely associated with production operations.

This error has a double effect since it reduces both the gross overhead cost in private shipyards and at the same time increases the production worker hour base over which the understated overhead costs are distributed on a production worker hour basis.

Ernst & Ernst perpetuated this error in their discussion of performance differential (see page II–C–5). *They indicate that productive employees constitute about 80% of the total work force in private yards, but only 60% to 65% in naval shipyards. This 15% to 20% difference results, at least in part, from the different bases used to define a production worker in naval and private shipyards.*

Inadequate reflection of capabilities

The naval shipyard complex comprised 10 activities ranging in civilian employment levels from approximately 5300 to 9900, with a ten-yard average of about 7300 employees. Each of these yards is required to maintain many highly complex and diverse types of work assigned.

On the other hand, the private respondents to the financial questionnaire are reported as 21 yards with an average total 1970 employment level of 33,679, or approximately 1600 employees per responding shipyard. The presumption must be drawn that the private shipyard overhead cost per production worker hour does not reflect, to the same degree, the higher overhead burden associated with maintaining viable capabilities for diverse, complex shipwork in the naval shipyards.

Errors in average hourly wage data

In addition, Ernst & Ernst has included in the computation of the average hourly wage for production workers in naval shipyards elements of cost which are specifically excluded from average hourly wages for production workers in private shipyards. These elements are overtime premium pay and various differentials for shift and dirty work. While these may not be significant in the overall analysis of the cost per production worker hour, they tend to overstate the dispartity in average wages between the private shipyard sample and the naval shipyards. This overstatement, on the basis of a preliminary analysis of overtime, is in excess of $.23 per hour. Accordingly, the difference in average hourly wages would more closely approximate $.18 in lieu of the $.41 reported by Ernst & Ernst. Further, the naval shipyard statistic is heavily weighted by the West Coast and Pearl Harbor wages which average $.50 higher than the East Coast. Unless the Ernst & Ernst sample is equally geographically weighted, the disparity in wages may be unduly influenced in one direction or the other by the regional bias of the sample. Ernst & Ernst makes no revelation concerning any possible bias introduced in the comparison by the geographical distribution of their respondents.

Omissions caused by use of the value added concept

The Cost per Production Worker Hour is generally recognized to include the average hourly wage of the production worker, fringe benefits, and total overhead costs per production worker hour. The use of the value added concept distorts to an unknown degree the statistical disparity in the element of overhead costs between naval and private shipyards. To the extent that actual private shipyard overhead includes purchased energy, services and materials to a significantly greater degree, proportionately than naval shipyards, the overhead of private shipyards, as computed by Ernst and Ernst on the value added basis, would be further understated in comparison with naval shipyards. This would be an additional understatement on top of the significant understatement of private shipyard overhead introduced by the faulty technique already discussed. It is considered that the use of the value added concept has no validity in an analysis of the cost of a production worker hour and its use adds further to the lack of acceptability of the data presented.

Nonacceptability of special adjustments

The overhead statistic for naval shipyards developed by Ernst & Ernst is further augmented by $1.11 per production worker hour, for cost elements (see page II–E–4) *which include military compensation, depreciation, insurance, taxes, interest, retroactive pay raise and other indirect costs* (central administrative services). While Ernst & Ernst reports that DOD Instruction 4100.33, which prescribes comparative cost procedures, was used as a guide, the fact is that, for these adjustments, *essential guiding principles of this instruction were disregarded.* It is significant that both DOD Instruction 4100.33 and Bureau of Budget (BOB) Circular A–76, also applicable, embrace the concept of incremental cost analysis * in prescribing for the comparison of costs of similar products or services in government and commercial activities, BOB Circular A–76, which is implemented by DOD 4100.33, clearly establishes the following policy for making private/Government cost comparisons: "The objectives (of the cost comparisons) should be to compute, as realistically as possible, the *incremental or additional cost* (underlining supplied) that would be incurred by the Government under the alternatives under consideration."

Incremental cost analysis is a thoroughly accepted principle which is widely applied throughout government and industry. It is universally accepted and sponsored by both the cost accounting and industrial engineering professions, and, in fact, is acknowledged by Ernst & Ernst to be applicable in specific situations.

Ernst & Ernst's rejection of the incremental costing principle prescribed by DOD 4100.33 for the purpose of their analysis is based on a relatively obscure quotation from a 1939 reference and 1968 article in a management magazine (see page II–A–4). Both of these point out that in the long run (over several decades) all costs are variable. While this long-range view is acceptable, it is not considered pertinent for this analysis. *It would be pertinent only if the following unforeseeable and improbable conditions were to be obtained:*

1. *All naval shipyards were to be either closed or turned over to private industry. Only in such an event would long-range Government costs incident to the retention of this capacity be eliminated.*

2. *Private industry would assume all the resulting workload without equivalent capital investment to replace and augment Government capabilities.*

Since disregard by Ernst & Ernst of the incremental cost principle for cost analysis prescribed by DOD 4100.33 and BOB Circular A–76 is not acceptable, *it follows that most of the adjustments which comprise the $1.11 add-on to naval shipyards overhead costs are erroneously applied. Only $28 million, covering retroactive pay increase and taxes, of the $115 million used for developing this adjustment is applicable* under the rules of DOD instruction 4100.33. *On this basis the overhead adjustment of $1.11, if at all applicable, should be reduced to $.27 per production worker hour.*

Failure to make an appropriate cost analysis

The Ernst & Ernst report states that the *objective of the analysis was to compare the cost of performing work in private versus naval shipyards.* With this as their objective, *they rejected the principles of incremental cost analysis and applied the principles of full absorption accounting. Full absorption accounting is most useful as a tool for pricing products. It has no real applicability in allocating work between naval and private shipyards.*

To be useful in work allocation decisions, a study would have to examine the complete cost implications of various allocations of work between naval and private shipyards. The Ernst & Ernst study did not do this, as recognized in the previously quoted disclaimer, "Also, the Cost Per Hour Differential cannot be used as a measure of savings to be realized. . . ."

DOD Instruction 4100.33 prescribes a procedure for such studies which is in consonance with the incremental costs concept already discussed. This prescribed procedure follows:

"If the operation is performed in-house, the amount to be reported (as a savings) represents only those costs which can be identified to the support of the operation and which would not be necessary if the function were not being performed. The amount represents the actual dollar savings of overhead costs that would be realized if the operation were discontinued."

It is obvious that the Ernst & Ernst study did not pursue this line of inquiry. However, a prior 1964 Navy study did pursue such a line of inquiry and concluded that, in consideration of the fixed costs remaining in naval shipyards, the price paid for work in private shipyards would have to be 80.4% of the costs of similar work in naval shipyards before it became economical for the Government to transfer such work to private shipyards. At the time of that Study, private shipyard prices for CAR work, with adjustment for Supervisor of Shipbuilding costs, were reported to be averaging 98.2% of naval shipyard costs. These latter data were derived from a comprehensive analysis of conversion, alteration and repair cost differen-

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* Incremental cost analysis seeks to determine how specific cost elements are affected by decisions to increase or decrease production levels. Certain costs remain fixed at all production levels and decisions are based on the incremental or added costs of the alternatives considered.

tials developed as part of the Arthur Andersen & Co. Study of 1962. There has been no similar authoritative study completed since that time. The Ernst & Ernst report does not, for reasons discussed in this analysis, meet the criteria necessary for supplanting the previous Arthur Andersen and Co. data. Based on these previous studies, the allocation of only new construction to private industry is justified on economic criteria. In general, the level of CAR work performed in private shipyards must be justified on a basis other than a strict economic analysis. The Ernst & Ernst report, because of the deficiencies described herein, cannot be used for evaluating or modifying the basis for existing workload allocation policies of the Navy.

SECTION IV—PRIVATE SHIPYARD CAPABILITIES

Background

As preamble, it should be stated that both the Navy and the Maritime Administration have a vital interest in the capability of the national shipbuilding and repair industry. This interest is embodied in law by Section 502(f) of the Merchant Marine Act of 1936, as amended, which states that, "The Secretary of Commerce, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year—survey the existing privately owned shipyards capable of merchant ship construction—to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency." This is augmented by Section 210, which includes responsibilities for ". . . . the creation and maintenance of efficient shipyards and repair capacity in the United States with adequate numbers of skilled personnel to provide an adequate mobilization base."

Two administrative steps have been taken recently to more closely and effectively assess the U.S. shipbuilding, conversion and repair industrial capabilities for both naval and merchant vessels:

a. Establishment of the Joint MARAD-NAVY Shipbuiding and Repair Committee on December 14, 1970 to, among other responsibilities, "assess and annually report on the efficiency and capacity of the shipbuilding and ship repair capabilities of the United States to file current and mobilization requirements and otherwise carry out coordinative provisions of the Merchant Marine Act of 1936."

b. DOD Directive 5030.9 dated *January 19, 1972* assigning the Commander, Naval Ship Systems Command *additional duty as Coordinator of Shipbuilding, Conversion and Repair for the Department of Defense with responsibility, interalia, to: "Serve as the DOD focal point for providing information on the total capacities and capabilities of the shipbuilding, conversion and repair facilities of Government agencies and of private industry within the United States."*

Finally, it should be noted that the Commander, Naval Ship Systems Command is also the Coordinator for Ship Repair and Conversion for the Department of Defense and the Department of Commerce by Letter or Agreement between DOD and DOC dated 9 November 1955. It is under this responsibility that the document, "Principal Shipbuilding and Repair Facilities of the United States", which describes the major physical capacities of the private and naval shipyards, is compiled and issued to interested government agencies.

Navy capabilities assessment techniques

As pointed out by *Rear Admiral Sonenshein* in his testimony before the Seapower Subcommittee of the House Committee on Armed Services in June, 1970, *capacity, as measured by physical assets, is only part of the picture. Capability to assume types of workload also includes factors such as the availability of skilled personnel, availability of long-lead components and material not originating in the shipyard, availability of special capabilities such as for work on nuclear propulsion plants, planning and ship design capability, financial viability, and a very important but often overlooked prerequisite—management capabilities in both the private shipyards and in the government supervising activities sufficient in size and experience to properly and effectively handle such work.*

The Navy assesses these additional factors in two ways: first, in conjunction with the Maritime Administration, frequent surveys of the shipbuilding and repair industry are made using the jointly developed Standard Form 17 "Facilities Available for the Construction or Repair of Ship". These forms are quite comprehensive, including space for description of the work normally subcontracted and for full narrative description of the shipyard's production experience. *The last survey of the shipbuilding industry was conducted in mid-1971, and approximately 140 replies were received from the industry.*

Secondly, through its *20 Supervisor of Shipbuilding*, Conversion and Repair activities located at major port and shipbuilding locations, the Navy *maintains intimate contact with the private sector and awareness of individual private shipyard capabilities and limitations.* Prior to issuing contracts to private shipyards for repair and alteration of navy ships, the Supervisors conduct on-site visits and assessments of these firms. These, plus the continuing contact maintained with the private yards, make the Supervisors fully cognizant of private shipyard capabilities in relation to Navy shipwork.

The Ernst and Ernst assessment of capabilities

This assessment is based on responses from 34 shipyards (23 companies) to a capabilities questionnaire which was mailed to over 200 private firms. Ernst & Ernst notes a number of qualifications which are inherent in the sample size and method of data collection:

". . . the composition or representativeness of the sample has not been evaluated."

"We did not attempt to audit the data received. Because of the self-evaluative nature of the questionnaire, there may be a problem with over-optimistic responses."

"Because the term ordnance can connote anything from small guns to guided missiles and the term electronics spans equipment from radios to computer systems, we recognize that the data received may have limitations."

"We recognize that there may be a problem of interpretation insofar as a yard rated its capability on the basis of the average size of ship within the class, rather than in relation to the total range of vessel configurations."

A few examples serve to illustrate the inadequacies of the data presented:

a. The *report lists 9 shipyards as having the capability to perform major conversion, alteration and repair work on CVAs and CVANs, but only 3 yards as having a drydocking capacity for these ship types. However, since major CAR work on these ships generally requires drydocking, it is apparent that the 9 yards do not really have the capability. Furthermore of the 3 private companies known to have drydocking capacity for carriers, two have have no remaining capabilities to carry out work of this type. Newport News Shipbuilding and Drydock Company is the only private shipyard with substantial capability in this field.*

b. In a *significant number of cases, the report lists more private* yards capable of performing *major* CAR work on a particular ship type *than* the number shown as capable of performing *minor* alteration and repair. *Certainly a yard capable of performing major work on a given ship would also be able to do minor work.*

c. The reports lists 18 shipyards as having drydocking capability for an LHA. Our records show only 11 private shipyards capable of drydocking a ship this size and only 10 companies with building ways large enough to construct this vessel.

d. The number of private shipyards capable of performing nuclear plant maintenance (including refueling) is incorrect. NAVSHIPS notes that only three private yards currently have this capability.

e. In the case of DLGNs, 15 shipyards are listed as having the capability to perform major conversion, alteration and repair, but only 5 are shown as having nuclear plant maintenance capability. The disparity is obvious. Furthermore, not even five private yards actually have this capability, as noted in d, above.

The above disparities, and others, result from two major problems with data presented by Ernst & Ernst to show private shipyard capabilities. The first is that these data are based solely on a self-evaluation by the companies which responded. Certainly if these firms are attempting to secure a larger portion of Navy work, they would tend to be overly optimistic in their assessment of their own capabilities. The second problem has to do with the definition used by Ernst & Ernst for "having capability". Under this definition, a responder could list the capability if:

1. He had done this type of work since 1965.

or 2. He believed he had the internal capability for the type of work.

or 3. He believed he could do this type of work with subcontractor assistance.

This definition not only permits, but in fact encourages, overstatement of capabilities.

Additional comments

Two final points should be made. *First, the Navy intends in no way to denigrate the actual or potential capabilities of the private shipyards of the United States.* There is no question that, over a period of time, and with the sufficient investment, the private shipbuilding industry of the United States could build itself up to handle whatever task it was confronted with. There is also no question that the nation, as well as the Navy, has much to gain from a strong and efficient private shipbuilding industry.

The other, and perhaps critical point in the entire discussion may be pin-pointed in the final paragraph of the Ernst and Ernst conclusions, in the sentencing reading, "The Navy has currently cut back the amount of CAR work assigned to private shipyards and has plans for further reductions."

The Navy has not changed its policy regarding the allocation of conversion, alteration and repair work to private shipyards. However, as the Fleet composition shifts more and more toward larger, more complex ships with highly sophisticated systems, *the capabilities of shipyards desirous of undertaking Navy CAR work will have to be upgraded.* Except when specifically justified, CAR work is not assigned to a specific private shipyard, but rather, must be bid for in active competition with other private yards. *Thus, the private shipyards do have a serious problem in deciding how much investment to make in upgrading their capabilities when there is no guarantee that they will be able to achieve a continuing workload.*

THE ALASKA HIGHWAY

HON. NICK BEGICH

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. BEGICH. Mr. Speaker, Alaskans were greatly disappointed by the Presi-

dent's recent announcement not to move forward at present with plans to pave the Alaska Highway. At a time when Canadian interest in their Northwest is at a high point, such a decision seems most untimely.

Still, even within this disappointment, there exists a possibility for action which is recognized by the Alaska Legislature in the following resolution. They, and I, would assign first priority to the paving of the 205-mile segment of the road between Haines Junction in the Yukon Territory and the Canada-Alaska border to the north, thus linking the Marine Highway to the interior road system by paved highway.

The resolution follows:

HOUSE JOINT RESOLUTION NO. 118 RELATING TO THE PAVING OF A PORTION OF THE ALASKA HIGHWAY

Be it resolved by the Legislature of the State of Alaska:

Whereas President Nixon has recently announced the cancellation of plans to go forward with the paving of the Alaska Highway; and

Whereas the reconstruction and paving of the Alaska Highway is crucially important to Alaska's continued development and progress; and

Whereas the paving of the highway would reduce the dependence of the North on seasonal transportation for bulk shipments, thus reducing the cost of living in Alaska's northern communities; and

Whereas the paving of the highway would greatly stimulate tourist traffic to Alaska and would also accelerate the construction of secondary and local roads to provide a long needed primary road network in Alaska;

Be it resolved by the Alaska Legislature that the President is urgently requested to reconsider his cancellation of plans for paving the Alaska Highway and that he direct the Department of Transportation to carry forward immediately with the review and analysis necessary to the implementation of the reconstruction and paving of the Alaska Highway; and be it

Further resolved that the initial top-priority segment of the project be the paving of the 205-mile strip of highway between Haines Junction, Yukon Territory and the Alaska border which would establish, in conjunction with the Alaska Marine Highway System, good, dependable access to Alaska from all other areas of our nation.

Copies of this resolution shall be sent to the Honorable Richard M. Nixon, President of the United States; the Honorable John A. Volpe, Secretary, Department of Transportation; and to the Honorable Ted Stevens and the Honorable Mike Gravel, U.S. Senators, and the Honorable Nick Begich, U.S. Representative, members of the Alaska delegation in Congress.

LOW COST AIR TRANSPORTATION

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. LEGGETT. Mr. Speaker, over the past few years it has become increasingly apparent that the American consumer is getting the short end of a large number of deals. Increasingly, consumers have begun to react vigorously to protect their own legitimate interests, and in many cases they have achieved excellent results.

One of the worst cases of anticonsumer regulation has been in the field of air travel. Most Americans who regularly read newspapers are vaguely aware that something is wrong here, that the Government has disgracefully cooperated with the airlines against the public interest to inflate the price of air travel. But I think very few Americans are aware of just how bad the situation is.

Consider the case of inclusive tour charters. These are arrangements whereby the traveler pays a package price for air fare, transfers, hotel room, and sometimes other extras. European and Canadian airlines are encouraged by their governments to arrange these tours in the most attractive way they can, and to set prices on a competitive basis. The results are startling.

Consider a Londoner who wishes to take his wife on a 4-day vacation to Athens. Regular coach fare would be $682 round trip for the two of them, hotel would be $103 and transfers would be $5, totaling $790.

But any London couple can buy an inclusive tour supplying all of this for only $145. Moreover, the airlines are happy to do it, because at these rates they fill their planes and make a nice profit.

Mr. Speaker, this is in no sense an atypical or out-of-context example. Similar packages are available to and from almost every major city in Europe, and will be used by more than 8.5 million Europeans. Similar arrangements are available to Canadians.

But here in the United States, inclusive tour charters are crippled by three incredible restrictions. First, the tour must last 7 days or more. The American who wants to get away for a weekend, even a 4-day weekend, must either pay through the nose or forget about it. Second, he must make at least three overnight stops at least 50 miles apart. That is, he must waste 3 days on each trip. Finally, the total cost of the tour must be at east 110 percent of the regular scheduled airline fee.

If the hypothetical London couple to whom I previously referred were subject to American regulations, their $145 vacation would cost them $750.

Their cost would be increased $605, or more than 400 percent, because of Government interfernce in the free market.

The only semipractical way for an American to circumvent these regulations is to belong to what is called an "affinity group" at least 6 months in advance. An "affinity group" must be a group which is formed for purposes unrelated to travel. If the group so much as mentions cheap charter flights in its recruiting advertising, it is disqualified from placing people thus recruited on the charter flights.

Even for those who clearly and legitimately qualify as members of an affinity group, the usefulness of inclusive tour charters is drastically reduced. Instead of having his choice of dozens or hundreds of charters, as do European citizens, the unlucky American is limited to one or two charters per year his club or society may make available. If he does not want to go to the south coast of Spain for 2 weeks in May, he may be out of luck.

Why do these inane regulations exist? The answer is obvious. They exist as a result of lobbying by the scheduled airlines who want to make inclusive charters as unattractive as possible so that people will have to pay their full exorbitant fares or do without.

Perhaps this public-be-damned attitude is acceptable conduct for a corporation. But establishment of these restrictions is not acceptable conduct on the part of a government which is supposed to represent the public interest. These regulations are neither of, by, nor for the people. They are of, by, and for a special interest group flying in large part empty airplanes.

They should be repealed entirely. If they were, we would find airlines, using late model jet aircraft such as the super DC–8 with fully qualified crews, who are eager to take a Boston couple to Cozumel, Mexico, for 2 summer weeks for $350, including hotel. A Los Angeles couple could take a 4-day weekend in La Paz, Bolivia, for $124 in the summer.

The Senate Commerce Committee is now considering such legislation. It is in the public interest, and I hope to see it enacted into law as soon as possible.

MEXICAN PATROL VETERANS BACK NIXON

HON. C. W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. YOUNG of Florida. Mr. Speaker, support for President Nixon's courageous actions in Vietnam have poured in from every corner of this Nation.

Nothing summarizes the sentiment of the majority of Americans more than a resolution recently adopted by the Suncoast Patrol 63, Mexican Border Veterans, Inc., of St. Petersburg, Fla., in my home district.

A story of the action taken by this group of former National Guardsmen who patrolled the Nation's border with Mexico against raids by Pancho Villa was carried this week in the St. Petersburg Times. The article follows:

MEXICAN VETS BACK NIXON

Suncoast Patrol 63, Mexican Border Veterans Inc., of St. Petersburg, has gone on record as supporting President Nixon's actions in Vietnam.

A resolution adopted backing the President said in part:

"Whereas our President, Richard M. Nixon, as commander-in-chief of our Army and Navy, has issued orders to prevent military supplies reaching our enemy by land or sea to force an end to this conflict and effect the release of our military personnel and prisoners of war, therefore be it resolved that Suncoast Patrol 63 . . . does completely endorse and support this action.

"It is high time the people got behind our President and gave him full support."

Organized in 1930, the Mexican Border Veterans consists of former National Guardsmen called up to patrol the nation's Mexican border in 1916 after raids into the United States by supporters of Pancho Villa.

Until 1970, members were not recognized by Congress as war veterans and thus were not eligible for veterans benefits.

But in December 1970, a new pension law gave them pension benefits and entrance to Veterans Administration hospitals.

The 43rd Annual Mexican Border Veterans Convention (state) will be held Saturday, May 27, at the Tides Hotel on Redington Beach.

Patrol 63 has 65 members and hopes to increase that number.

H.R. 15139—A BILL TO MAKE THE USE OF FIREARMS IN ALL CRIMES A FEDERAL OFFENSE

HON. ROMAN C. PUCINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. PUCINSKI. Mr. Speaker, I have today introduced H.R. 15139, a bill designed to make the use of a firearm in the commission of a crime a Federal offense.

My proposal would also prohibit the insidious practice of "plea bargaining" in every crime involving the use of a firearm.

Plea bargaining is the practice used by defense lawyers to get a reduced charge against their client on the promise that the defendant will agree to plead guilty to the reduced charge.

Governor Wallace would not have been assaulted had my bill been law. For the young man who shot Governor Wallace had been arrested by the police 2 months earlier on a charge of carrying a concealed weapon.

In court, the charge against the assailant was reduced from "carrying a concealed weapon" to a simple "disorderly conduct" after the assailant had agreed to plead guilty to the lesser charge.

Governor Wallace's assailant walked out of court a free man after paying a meager $38 fine for his "disorderly conduct."

I am thoroughly convinced that we will not be able to stop the rash of crimes committed with the illegal use of a gun until this Nation makes clear that such criminals will be fully prosecuted.

I am asking that the use of a firearm in the commission of any crime be made a Federal offense in order to assure the strongest prosecution against such criminals.

Too often, local prosecutors do not have the staff and resources to fully prosecute cases. As a result, they are inclined to agree to a reduction of charges upon a plea of guilty to the lesser charge.

I know that we will need more Federal prosecutors and I am willing to support additional appropriations if it will help get those who illegally use guns in the commission of crimes off the streets.

I am certain that my legislation can make a significant contribution toward restoring a greater degree of law and order.

My bill provides that a criminal who has been prosecuted and sentenced for a crime will be given an additional penalty up to 10 years in prison if he uses a gun in the performance of such a crime. In a second offense, the additional penalty for using a gun in a crime can be up to 25 years in prison.

Only when we make it clear to criminals that they will not be able to talk their way out of full prosecution can we stop this insidious practice of using firearms in the commission of crimes.

My bill prohibits judges placing on probation or suspending the sentence against those convicted of a crime involving the use of a gun.

I would hope that this strong legislation would give us a basis for greater prosecution of those who use a gun in the commission of a crime. I am certain that effective enforcement of this particular provision would substantially reduce the increasing demands for new methods of gun registration.

The text of my proposal follows:

H.R. 15139

A bill to amend title 18 to penalize the use of firearms in all crimes and to forbid plea-bargaining in connection with such crimes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 924(c) of title 18 of the United States Code is amended to read as follows:

"(c) Whoever uses any firearm during the commission of any crime shall be tried in a United States District Court for such offense and upon conviction, shall, in addition to the punishment provided for the commission of such crime, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two years nor more than twenty-five years. Notwithstanding any other provision of law, the court shall not suspend the sentence in the case of any conviction under this subsection or give any person so convicted a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony or crime."

SEC. 2. No officer, charged with the responsibility of prosecuting criminal offenders, who does or should reasonably believe any person has committed any offense, and that such offense was accompanied by circumstances constituting a violation of section 924(c) of title 18 of the United States Code, may effectively reduce or fail to prosecute fully any charges against such person with respect to such offense in return for such person's agreement to plead guilty or otherwise not to contend against any prosecution of that person for any other charges with respect to such offense.

PUBLIC PARTICIPATION IN HIGHWAY DECISIONS

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. DINGELL. Mr. Speaker, an ongoing problem facing citizens who seek to participate in the governmental process is the inaccessibility of information necessary to their effective participation. This problem is often most acute where a citizen desires to affect policy in the administrative branch of government, but is unfamiliar with an agency's operating procedures. Although most agencies have established procedures to govern the administration of their programs, copies of these procedures may be difficult and in some cases nearly impossible for citizens to obtain.

A good example is the Federal-aid highway program. The Federal-aid highway program is the Nation's largest continuing public works project. In 1971 alone, $4.7 billion were distributed to the States as reimbursement for highway building costs. Since 1956, these Federal expenditures have been funded through the Highway Trust Fund, a repository for various categories of Federal highway user taxes. The taxes may be used only for highway purposes.

Under the Federal-aid highway program, State highway departments are responsible for planning, designing, and constructing Federal-aid highways. The Federal Highway Administration—FHWA—within the U.S. Department of Transportation administers the Federal reimbursements. The primary responsibility of FHWA is to assure that the State highway departments have adhered to Federal standards before the States are reimbursed for a portion of the Federal-aid highways costs. This responsibility is carried out by requiring the State highway departments to obtain Federal approvals at various stages in the highway building process.

Several recent popular publications have attempted to translate the adverse environmental and social impacts of the Federal-aid highway program into terms that may be widely understood. The highway trust fund has knowledgeable and articulate critics. But very little is known about the way in which the Federal-aid highway program is actually administered.

The principal source of the confusion is not difficult to identify. The FHWA's procedures that are published are incomplete, outdated and virtually inaccessible. The U.S. Department of Transportation's formal regulations on the administration of the Federal-aid highway program fill only 8 pages in the current Code of Federal Regulations. FHWA's operating procedures are published in several categories of voluminous, obscure directives: Orders, policy, and procedure memorandums—PPM's; international memorandums—IM's; and administrative memorandums—AM's. The relative status of these directives within FHWA is difficult for an outsider to fathom.

Copies of FHWA's operating procedures and periodic indices to them are, in theory at least, available to the public for inspection and copying. However, there is no routine circulation of new or revised operating procedures outside the Federal Government, State highway agencies, and highway-related private organizations such as the American Road Builders Association and the Associated General Contractors of America. Copies of operating procedures which are out of print cost 25 cents per page, and they must be ordered specially; no public duplicating equipment is available at any FHWA office anywhere in the country.

But it is these difficult-to-discover

operating procedures which govern administrative decisionmaking in the Federal-aid highway program. If a citizen wishes to participate in that process, he must be familiar with these procedures.

For this reason I have had collected the most important of these FHWA operating procedures and now insert them in the CONGRESSIONAL RECORD.

The material follows:

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 10–1—MAY 28, 1965

FEDERAL-AID HIGHWAY SYSTEMS

Superseded Issuances:

PPM 10–1, as amended; IM 10–61, as amended; and IM 10-1-64.

1. PURPOSE

The purpose of this memorandum is to set forth policies and procedures relating to designation of the National System of Interstate and Defense Highways, the Federal-aid primary highway system and the Federal-aid secondary highway system.

2. OBJECTIVE

Highway systems are established as a means of defining the extent and characteristics of the highway plant. The classification of highways into integrated systems provides a stable framework for planning, financing and executing long-range programs on an efficient, economic and consistent basis to meet essential needs of traffic.

The Federal-aid systems are so selected as to promote the general welfare and the national and civil defense, and to become the pattern for a long-range program of highway development to serve the major classes of traffic broadly defined as (1) interstate or interregional, (2) city-to-city primary, either interstate or intrastate, (3) secondary or farm-to-market and (4) intra-urban. The designation of the Federal-aid highway systems forming integrated and connected networks in each State and nationwide, insures continuity in the direction of expenditures of available Federal-aid funds.

3. SYSTEM CLASSIFICATION

a. The National System of Interstate and Defense Highways consist of routes of highest importance to the Nation, which conduct the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in the Dominion of Canada and the Republic of Mexico.

b. The Federal-aid primary highway system consists of routes of the National System of Interstate and Defense Highways and other important routes with their urban extensions, including important loops, belt highways and spurs.

c. The Federal-aid secondary highway system consists of the principal secondary and feeder routes in rural and urban areas.

4. BASIC PRINCIPLES OF SYSTEM DESIGNATION

a. Extent of System: Each system is limited in extent, either by law or by administrative practice.

(1) The Interstate System is limited by law to 41,000 miles and is a part of the Federal-aid primary system.

(2) The Federal-aid primary system in each State is limited by law to seven percent of the 1921 total rural highway mileage of such State, except that in addition the law permits, without charge against the seven-percent limitation, mileage within Federal reservations, mileage within designated urban areas, and mileage of Interstate routes that were not a part of the primary system prior to their designation as Interstate routes. Permissible system mileage in any State may be increased by increments of one percent of the 1921 total rural highway mileage whenever provision has been made for the completion and maintenance of ninety percent of the States designated system mileage exclusive of mileage within Federal reservations and urban areas and Interstate mileage not previously a part of the primary system. The primary system may be considered as meeting the ninety-percent completion requirement if ninety percent of the mileage has been improved to provide right-of-way, geometric design, surface, base and subgrade, and structures consistent with requirements for traffic service.

(3) As provided in the Federal-aid regulations, the Federal-aid secondary system shall not exceed in any State at one time a mileage that can be initially improved within a reasonable period of years and thereafter maintained with income expected to be available.

b. Selection of Routes: In each system, routes should be designated in descending order of importance irrespective of current status of improvement, considering existing and potential traffic, the advancement of economic and social values, the conservation and development of natural resources, the promotion of desirable land utilization and other pertinent criteria. Data and findings in classification and needs studies should be utilized where available. System mileage should be distributed on a reasonable and fair basis within the area the system is designed to serve. Where systems are being expanded, no route deserves acceptance until all routes of higher importance have already been designated or selected for concurrent designation.

c. Integration of Systems: All systems shall be properly integrated, with each route connected to another Federal-aid route.

(1) Interstate and primary routes will usually have like system connections at each end, but there will be some instances where stub routes are justified.

(2) Unlike system connections of primary and secondary routes at State lines are not acceptable except in unusual circumstances where their denial might penalize or work a hardship on a State. Such cases might arise when a State is capable of handling a primary system that reaches down to include routes of a lower level of importance than are included in the primary system of an adjoining State. A route might also have changing characteristics as it penetrates an adjoining State, so that based on relative position in the separate scales of importance in the two States it might merit different classifications.

(3) Stub secondary routes in rural areas are permissible as routes reach outward from major highways and market centers to serve small local traffic-generating sources. Points where there is an appreciable break in local traffic, such as schools and road junctions, are acceptable as secondary route termini. A county line is not normally justified as a terminus. Stub or dead-end secondary routes in urban areas are permissible, but should be avoided except to serve important destinations such as a market center, stockyard, dock or industrial area, railroad terminal, airport, etc.

(4) Secondary routes entirely within urban area boundaries are permissible, but should be held to a minimum. They will normally involve the more densely populated sections of a State, where rural secondary routes and their urban extensions have been substantially improved, and additional secondary mileage in urban areas is needed to provide adequate latitude in the programing of available funds.

(5) Closely parallel routes separated by a river, railroad or other barrier, or providing different types of service as in the case of a freeway and a local service road or collector-distributor for the freeway, may be justified.

(b) Federal-aid secondary routes need not be continuous through Indian reservations, but may connect at the reservation boundaries or at points within the reservation with routes of the Indian reservation road system.

(7) Individual routes or clusters of routes in widely separated or remote areas of a State (as in Alaska), and on offshore islands are permissible without connections to other segments of the system if the routes are otherwise justified.

5. CONTROL AREAS AND CONTROL POINTS

a. A control area, as it pertains to the Interstate System, is a metropolitan area, city or industrial center, a topographic feature such as a major mountain pass, a favorable location for a major river crossing, a road hub which would result in material traffic increment on the Interstate route, a place on the boundary between two States agreed to by the States concerned, or other significant feature.

b. An intermediate control point on the Interstate System is either end of an acceptable section on the detailed location of an Interstate route and beyond which feasible detailed locations are known to exist.

c. A control point on the primary system is generally a city of some consequence, a route junction or other point of significance.

d. A control point on the secondary system is generally a town of some consequence, a route junction, or other significant point. As found necessary, control points may also be small communities, schools, clusters of farmhouses, etc., to which local service is provided.

e. Federal-aid routes in urban areas are generally identified by reference to control points in the vicinity of street intersections, without tying the route to specific streets.

6. APPROVAL AUTHORITY

Interstate routes and control areas are approved in the Washington office. Approval authority on control points, general locations and specific locations of the Interstate, Federal-aid primary and Federal-aid secondary routes is delegated to the regional engineers, as explained in paragraph 4 of AM 1–10.2.

7. GENERAL PROCEDURES

a. The State highway department has the responsibility for initiating route selections and proposing changes in routes already designated. Each proposal is to contain adequate supporting information in justification of the desired action and maps of sufficient scale and detail to show the system changes involved. In the event the proposal involves routes through Federal reservations, it shall be discussed with the appropriate Federal agency.

b. Proposals requiring approval in the Washington office are to be forwarded with appropriate comments and recommendations, either by memorandum or by endorsement on the proposal. Proposals that are approved in field offices should be forwarded to the Washington office with such documents and copies of correspondence as may be necessary to complete or correct the records.

c. The milage reporting forms prescribed by PPM 50–5.3 and discussed in the "Instruction Manual for the Compilation and Reporting of Highway Mileage" are to be used as the official mileage records.

d. Route descriptions should, in general, follow the examples shown in Enclosures 1, 2 and 3. Minor deviations from these examples are acceptable, particularly in those States having their own standard forms.

e. It is desirable that all routes be numbered in some logical manner. Single route numbers preferably should be assigned to single lines of traffic flow, with Interstate and Federal-aid primary routes normally extending for considerable distances within or across the State, and Federal-aid secondary routes normally extending for much shorter distances within or across the country. One plan is to number the routes in sequence from south to north and from west to east, with odd numbers for south-north routes,

and even numbers for west-east routes, and with some numbers reserved for possible subsequent additions to the system. This plan also is a desirable first step in route section (project) numbering procedures correlating route and project numbers. For clarity and ease in system identification under this plan, separate blocks of numbers can be assigned to the different systems. Other acceptable plans may be devised that would be equally effective.

8. PROCEDURES FOR INTERSTATE SYSTEM

a. Interstate routes shall be numbered in accordance with the numbering scheme adopted by the American Association of State Highway Officials. Route descriptions for city-to-city routes are to name all control areas. Descriptions for belts, loops and spurs into, through and around urban areas should be very broad, to avoid the necessity for revision when detailed locations are selected.

b. In support of proposals for control areas, the State highway department should forward copies of the official State highway map, or section of map, with the control areas and the affected Interstate routes marked thereon; a statement justifying control areas; and a statement indicating agreement with adjoining States on State-line connections.

c. All Interstate routes automatically become a part of the Federal-aid primary system. Interstate route mileage is charged against the permissible Federal-aid primary system mileage if the Interstate route replaces a primary route in the same general area. It is not charged when the existing primary route serving the same general area is retained on the primary system. In the latter case, if the primary route is later deleted or transferred to the Federal-aid secondary system, the Interstate mileage added without charge shall be reclassified as chargeable on the basis that the Interstate route involves a relocation of an existing primary route.

9. PROCEDURES FOR PRIMARY SYSTEM

a. Route descriptions are to cover both rural and urban portions of Federal-aid primary routes. Primary route descriptions need not be made nor primary route numbers assigned to Interstate System routings (general or detailed) that depart from Federal-aid primary routes retained on the primary system. Primary route descriptions are to be revised where designated control points are deleted, changed or new control points added. Each proposal should indicate the net change in system mileage for each approval action requested, classified as rural, Federal reservation or urban.

b. Detailed reference to control points within urban areas should be avoided as much as possible. Urban maps marked to show the general routings in all urban places of 25,000 or more population shall be forwarded as a part of the official approval documents. In some cases, maps may also be desirable for smaller urban places. When alignment changes in urban areas are of such magnitude as to involve system revision, revised maps are to be submitted by the State for system approval regardless of whether the wording of the route description requires change.

c. A general description of a route extending into or through an urban area is sufficient to cover closely parallel streets with one-way traffic.

10. PROCEDURES FOR SECONDARY SYSTEM

a. Suitable scale sketch, strip or county maps with routes marked thereon should accompany individual proposals for system revisions. For extensive revisions of the system, county planning survey maps, preferably half-scale, should be used.

b. Proposals covering system changes are to contain a statement by the State highway department that there has been compliance with section 103(c) of Title 23, U.S. Code, regarding cooperation with appropriate local authorities. The manner and extent of such cooperation are to be determined by the State. Where all public roads and highways in a county or other political subdivision of a State are under the control and supervision of the State highway department, the State highway department is considered the local road authority and cooperation with other local authorities of such political subdivisions is not required.

11. RECLASSIFICATION, DELETIONS, AND REINSTATEMENTS

a. The reclassification of a Federal-aid highway route from one Federal-aid system to another does not relieve the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects or of any other obligation included in project agreements executed for Federal-aid projects on portions of that route. When controlled access Federal-aid primary routes are transferred to the Federal-aid secondary system, all access control features are to be retained in force unless a request by the State to the contrary is approved by the Bureau of Public Roads.

b. The approved deletion of a Federal-aid highway route from any Federal-aid system, without reclassification to another Federal-aid system, relieves the State of its obligation to the Federal Government to maintain portions thereof constructed as Federal-aid projects, in accordance with section 116(a) of Title 23, U.S. Code. Such deletion also relieves the State of any other obligation included in project agreements executed for Federal-aid projects on portions of the deleted route. Where routes are transferred from one system to another, the actions for deletion and addition should be made simultaneously, if possible.

c. Requests for reinstatement of routes previously deleted from any Federal-aid system shall be approved only when the State expressly agrees to resume its obligation for the maintenance of any portion of the route constructed as a Federal-aid project. Resumption of any other obligations included in project agreements executed for Federal-aid projects on the route being considered for reinstatement shall be mutually agreed to by the State and the Bureau of Public Roads.

REX M. WHITTON,
Federal Highway Administrator.

Enclosure.*

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 20–4—AUG. 10, 1956

POLICY ON INTERSTATE SYSTEM PROJECTS

Supersedes: PPM 20–4 (Aug. 4, 1954)

1. PURPOSE

The purpose of this memorandum is to prescribe the policy of the Bureau of Public Roads in administering the Federal-Aid Highway Act of 1956 with respect to the National System of Interstate and Defense Highways, hereinafter called the Interstate System.

2. GENERAL

The Federal-Aid Highway Act of 1956 authorizes the appropriation of Federal funds over a 13-year period for completing the Interstate System and expressly provides that the standards for the system shall be adequate to accommodate the traffic expected thereon in the year 1975. Furthermore, Federal-aid Interstate funds may participate in the cost thereof to the extent of 90 percent plus sliding scale increases in the public lands States. The Interstate System is to be developed to standards including control of access and freeway characteristics justified for these important highways. Such standards shall be applied uniformly throughout the States. Its development is to be accelerated and as each section is opened to traffic it should be as nearly a completed facility as feasible. It will be the policy of the Bureau of Public Roads to accomplish these objectives by expeditiously effecting the construction of the system to the standards necessary for safe, fast, and economical travel.

3. LOCATION

a. The general locations of the Interstate System, to the statutory limitation of 40,000 miles as provided in the Federal-Aid Highway Act of 1944, have been designated by cooperation between the State highway departments and the Bureau of Public Roads. Additional routes totaling not more than 1,000 miles in length which may be designated as provided for in the Federal-Aid Highway Act of 1956, shall be designated in the same manner as were the routes constituting the original 40,000 miles, that is, by cooperation between all the State highway departments and the Bureau of Public Roads.

b. The routes of the system designated as to function and in general location on August 2, 1947, and on September 15, 1955, and the additional routes which may be designated in accordance with the 1956 Act, are continuous routes between named cities and other control areas, or are supplemental routes at urban areas such as spurs, loops, and belts. Existing highways have been used as convenient indications of the general locations of Interstate System routes. The location on which an Interstate System route is to be constructed shall be determined by means of engineering, traffic and economic studies, including consideration of local needs, and agreed upon by the State and the Bureau of Public Roads in advance of the time the route or a portion thereof between intermediate control points is proposed for improvement as an Interstate project. The location on which construction is to be performed shall be shown on appropriate maps and be subject to the approval of the Bureau of Public Roads. Maps shall be of such scale that the relation of the proposed location to the culture in the area is clearly shown. In urban areas the relation to streets, all forms of transportation and to land use and improvements should be shown.

c. Where an Interstate highway is not to be constructed on the existing highway location, the existing highway route should generally be retained on the Federal-aid system and thus be eligible for improvement with appropriate Federal-aid funds. Where an existing highway location is used, the existing highway may be utilized as a part of the Interstate improvement, if standards are adequate, or retained as a frontage road.

4. STANDARDS

a. An Interstate System project is one for the construction, reconstruction or improvement of a section of highway on the location approved for a route of the Interstate System. Such a project shall be designed and constructed to the Design Standards for the Interstate System adopted July 12, 1956, by the American Association of State Highway Officials and approved by the Commissioner of Public Roads on July 17, 1956. A copy of these standards is attached.

b. Interstate projects approved prior to July 17, 1956, may be constructed in accordance with the design standards in effect at the time of approval.

c. Bridges supporting Interstate highways shall be designed in accordance with the current Standard Specifications for Highway Bridges of the American Association of State Highway Officials using the H20–S16(44) loading except that, to overcome known deficiencies in floor systems of bridges designed with such loading, all bridges and floor systems with spans under 40 feet shall be designed using an alternate loading of two axles four feet apart with each axle weighing 75 percent of the rear loading of the H20–S16 loading.

d. Designs for all culverts and bridges over streams shall be in accord with the Standard Specifications for Highway Bridges of the

*[Ed. Note: Example of suggested forms omitted.]

American Association of State Highway Officials to accommodate floods at least as great as that for a 50-year frequency or the greatest flood of record, whichever is the greater, with the runoff based on the land development expected in the watershed 20 years hence and with backwater limited to an amount which will not result in damage to upstream property or to the highway. All other drainage facilities are to be designed to keep the traveled ways usable during storms at least as great as that for a 10-year frequency, except that a 50-year frequency shall be used for underpasses or other depressed roadways where ponded water can be removed only through the storm drain system.

e. The combined surface course, base course, and subgrade of all interstate highways shall be designed to provide adequate support for the type and volume of traffic expected in 1975. The supporting ability of the surface course, base course, and subgrade in combination shall be at least that required to support 18,000 pounds carried on any one axle, or a tandem-axle weight of 32,000 pounds, or an over-all gross weight of 73,280 pounds, with distances between axles or groups of axles equal to those corresponding to these loads in the current Policy on Motor Vehicles Sizes and Weights of the American Association of State Highway Officials, or the corresponding maximum weights permitted for vehicles using the public highways of each State under laws and regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater, as required in Section 108(j) of the Federal-Aid Highway Act of 1956.

5. PUBLIC HEARINGS

The State highway department shall comply with the provisions of Section 116(c) of the Federal-Aid Highway Act of 1956 with regard to public hearings for all Federal-aid projects including those on the Interstate System that involve the bypassing, or going through any city, town or village, either incorporated or unincorporated in accordance with procedures issued by the Bureau of Public Roads.

6. APPLICATION OF POLICY

The policy stated herein is applicable to all projects hereafter approved for construction on the approved location of the routes of the Interstate System, that are financed in whole or in part with Federal funds, regardless of the class or year of Federal funds involved.

C. D. CURTISS,
Commissioner of Public Roads.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 20-8—AUG. 10, 1956

PUBLIC HEARINGS, FEDERAL-AID PROJECTS

1. PURPOSE

The purpose of this memorandum is to prescribe the policy and procedures of the Bureau of Public Roads in administering section 116(c) of the Federal-Aid Highway Act of 1956, with respect to public hearings.

2. REQUIREMENTS AND CONDITIONS

a. Section 116(c) of the Federal-Aid Highway Act of 1956, hereafter referred to as the section, requires any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town, or village, either incorporated or unincorporated, to certify to the Commissioner of Public Roads that it has had public hearings, or has afforded the opportunity for such hearings, and has considered the economic effects of such a location. It requires further that, if such hearings have been held, a copy of the transcript of said hearings shall be submitted to the Commissioner of Public Roads, together with the certification. The intent of this requirement is to give every interested citizen an opportunity to be heard on any such proposed project, and is an opportunity for the State highway department to more fully inform the public of the advantages of such project.

b. The provisions of this memorandum apply to every Federal-aid project, including 1954 Secondary Road Plan projects, for right-of-way for, or the construction, reconstruction or improvement of, a highway bypassing or going through, including projects entering or within, any city, town, or village, included are projects as follows:

(1) those in accepted program stage 1-A on June 29, 1956, and are subsequently advanced to approved program stage 2.

(2) those in approved program stage 1-B or 2 on June 29, 1956, but for which the State had not submitted P.S. & E. to the district engineer.

(3) those programed subsequent to June 29, 1956.

c. The provisions of this memorandum do not apply to those projects that are solely for further improvement, such as resurfacing, of an existing highway on a location within the limits of the existing right-of-way and which do not change the layout or function of the road and streets that connect to the existing highway.

3. PROCEDURES

a. The State highway department shall give the officials and other citizens of a city, town, or village affected by the location of a Federal-aid project to which the requirements of the section apply, the opportunity to be heard in public hearings at a location and at a time reasonably convenient for such citizens. Where citizens avail themselves of such opportunity, a public hearing shall be held and a transcript made thereof. The State highway department shall give reasonable advance notice to the district engineer of the location, date, and time for each such public hearing. In cooperating with the State highway departments in carrying out the intent of the section, district engineers will arrange to attend such hearings or review the transcript thereof.

b. Where a Federal-aid project, or a route embodying several Federal-aid projects, to which the requirements of the section apply affects several adjacent cities, towns, or villages, one combined public hearing may be arranged provided the hearing is reasonably convenient in location and time to the citizens of all the affected cities, towns, or villages.

c. The certificate by the State highway department shall recite when and where the public hearing was held or, if a hearing was not held, when and how the opportunity for a public hearing was given and in either case shall contain the statement that the State highway department has considered the economic effects of the location of the project. A transcript of the public hearing shall accompany the certificate and shall be forwarded to the district engineer of the Bureau of Public Roads. In those instances where a public hearing was held prior to June 29, 1956, and a transcript thereof was not taken, a statement covering the gist of the discussions will be accepted as satisfying the requirement for a transcript.

d. In those States operating under the 1954 Secondary Road Plan the certificate and transcript of hearings on plan projects shall be submitted to the district engineer by the State at the time it submits the agreement estimate.

e. Where there is available to the State highway department a current master highway plan of a community on which public hearings have been held, the State highway department need not again hold hearings if it satisfies itself that such hearings had been held within a reasonable period of time and had conformed to the procedures prescribed in this memorandum and the location of the Federal-aid project does not differ materially from that in the master highway plan. Under these conditions the State may certify, when it submits plans for Federal-aid projects on highways of the master plan, that hearings have been held and it has considered the economic effects of the location. Transcripts of such hearings shall accompany the certificate unless the hearings were held prior to June 29, 1956, and transcripts are not available, in which case a statement regarding the hearings shall be submitted covering the gist of the discussions.

f. A State highway department may arrange with the appropriate city, town, or village officials for holding a hearing and obtaining a transcript of same, but the State highway department must retain responsibility for insuring that such hearing conforms to the procedures given herein and submits a certificate, accompanied by the transcript, that hearings have been held and it has considered the economic effects of the location.

g. The district engineer will authorize a State highway department to proceed with the preliminary engineering or the acquisition of right-of-way or both, of a programed Federal-aid project involving the bypassing, or going through, any city, town, or village with the understanding that the project for preliminary engineering is for the determination of the most feasible location that will reasonably well serve the over-all interests of the general public, or is for preparation of documents for right-of-way acquisition or P.S. & E. for physical construction on a location the economic effects of which have been or subsequently will be considered, and that public hearings as prescribed herein will be held and the economic effects of the location considered before the right-of-way is acquired to an extent commiting the State to the proposed location. If certification is given at the preliminary engineering of right-of-way stage that a public hearing has been held and that the economic effects of the location adopted have been considered, further public hearing will not be required.

h. The district engineer will not approve P.S. & E. or authorize advertising for the physical construction of any project covered by the provisions of this memorandum until he has received the certification and transcript and is satisfied that the State has considered the economic effects of the proposed location in the light of the matters presented at the hearing.

C. D. CURTISS,
Commissioner of Public Roads.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 20-8(1)—JUNE 16, 1959

PUBLIC HEARINGS, FEDERAL-AID PROJECTS

Supplements: PPM 20-8 (Aug. 10, 1956)

1. PURPOSE

The purpose of this memorandum is to supplement existing memoranda relating to public hearings to further describe the various elements of PPM 20-8 and other memoranda regarding the subject, in order to assure similar application in all cases and uniform recognition of the intent and purpose of the hearings required by Section 128 of Title 23, USC, hereafter referred to as Section 128.

2. OBJECTIVE AND INTENT OF PUBLIC HEARINGS

a. The responsibility for the selection or designation of Federal-aid highway routes rests with the State highway departments, as provided by Section 103. The authority to approve such State action is vested in the Secretary of Commerce, who has delegated such authority to the Federal Highway Administrator. There is no requirement under Title 23, USC, that there be a public hearing as a part of a State's action in selecting or designating a Federal-aid highway route, nor for approval of such action by the Federal Highway Administrator.

b. Section 128 requires that there be a public hearing or that there be opportunity afforded for one, prior to the time that a

State highway department may proceed with certain Federal-aid projects for the improvement of previously selected or designated Federal-aid highway routes.

c. The objective of the public hearings is to provide an assured method whereby the State can furnish to the public information concerning the State's highway construction proposals, and to afford every interested resident of the area an opportunity to be heard on any proposed Federal-aid project for which a public hearing is to be held. At the same time the hearings afford the State an additional opportunity to receive information from local sources which would be of value to the State in making its fiscal decision as to which of possibly several feasible detained locations should be selected.

d. The hearings are not intended to be a popular referendum for the purpose of determining the location of a proposed improvement by a majority vote of those present. They do not relieve the duly constituted officials of a State highway department of the necessity for making decisions in State highway matters for which they are charged with full responsibility. The public hearing procedure is designed to insure the opportunity for or the availability of a forum to provide factual information which is pertinent to the determination of the final location considered by the State to best serve the public interest and on which improvement projects are proposed to be undertaken.

3. REQUIREMENTS AND CONDITIONS

a. Section 128 requires that any State highway department which submits plans for a Federal-aid highway project involving the bypassing of, or going through, any city, town or village, incorporated or unincorporated, shall certify that it (1) has held public hearings, or has afforded the opportunity for such hearings, and (2) has considered the economic effects of such a location. Section 128 also requires that any State highway department which submits plans for an Interstate System project shall certify that it has held public hearings at a convenient location, or has afforded the opportunity for such hearings, for the purpose of enabling persons in rural areas through or contiguous to whose property the highway will pass to express any objections they may have to the proposed location of such highway. If hearings have been held, the State highway department shall submit a copy of the transcript of the hearings together with the required certification.

b. These requirements contemplate that the State highway department will fully inform the public concerning the general location and design features, and the general economic and other aspects of the proposed improvements together with possible alternate routes, all in sufficient detail to permit residents of the area to have full and reliable information as to the project.

c. Except as provided in this paragraph and in paragraph 4, a public hearing shall be held, or the opportunity for a public hearing afforded, with respect to (1) any Interstate project, and (2) any other Federal-aid highway project (including any Secondary Road Plan project) which involves the bypassing of, or going through, any city, town or village, either incorporated or unincorporated. No public hearing is required where a project is for resurfacing or widening, the addition of traffic lanes, the replacement of existing grade separation structures, or similar improvements, if the project is within the limits of the existing right-of-way, if abutting real property is not adversely affected, and if the layout or function of connecting roads or streets is not changed. Public hearings are required with respect to projects which necessitate the acquisition of additional rights-of-way (including rights of access, light, air or view) and projects which may have an adverse effect upon abutting real property, such for example as those which involve a material change of grade of an existing street or highway, the large scale removal of shade trees, or similar features of general public interest. A public hearing should be held, or the opportunity afforded therefor, in any case where doubt exists as to whether a public hearing is required by section 128.

d. As here used "economic effects" means the benefits or losses both to the motorists using the proposed improvement and the overall community affected thereby. The economic effects of a proposed location are proper matters for discussion at a public hearing held with respect to the project. However, the State highway department must certify that it has considered the economic effects of the proposed location, irrespective of whether the matter was discussed at a public hearing, or whether a public hearing was actually held.

4. PROCEDURES

a. Public hearings required by Section 128 should be held before the specific location of a proposed project is selected, but not until after the State highway department has selected a corridor location from among the alternates studied, and has developed preliminary plans in sufficient detail to enable the public and the State to consider and discuss the principal features of the proposed project at the public hearing.

b. Reasonable advance notice must be given of scheduled public hearings or of the opportunity therefor, and the purpose thereof. Such notice shall include either a description or some specific identification of the proposed route or routes to be discussed. The notice shall be published at least once each week for two successive weeks in a newspaper having general circulation in the vicinity of the proposed project and shall also be publicized through other means, such as news releases to newspapers and radio and television stations, so as to provide reasonable assurance that the notice will come to the attention of all interested or affected persons. The use of graphic illustrations is desirable though not necessarily required. Reasonable advance notice of the location, date and time of each such public hearing should be supplied to the Bureau's division engineer.

c. A State highway department may arrange with the officials of the appropriate county, city, town or village, for holding a hearing (including giving notice thereof and obtaining a transcript of the hearing) for the State highway department, but the State highway department shall retain responsibility for insuring that the notice and hearing conform to the requirements of law and the procedures given herein and shall be responsible for submitting the certificate required by Section 128.

d. In order to fully inform the public, State highway departments should make available, well in advance of the public hearing, information concerning the location and design of the project, and the general economic and other aspects thereof. It is sometimes advisable to hold informal informational meetings, clearly identified as such, well in advance of the official hearing.

e. Public hearings are to be held at a place and time generally convenient for persons affected by the proposed project. Where a Federal-aid project, or a route involving several Federal-aid projects, affects a community and a rural area, or more than one of either, and the circumstances are similar, one combined public hearing may be held provided the place and time thereof are generally convenient.

f. Information and data concerning the proposed project should be available at the public hearing. A representative of or spokesman for the State highway department should explain the proposed project, its location and design, the general economic and other aspects thereof, and alternate routes, if any, that have been considered. If the project is one involving the bypassing of, or going through a city, town or village, incorporated or unincorporated, any person of the affected area or his representative who is present at the hearing should be allowed to express his views and present data and material concerning the project. If the project is an Interstate System project in a rural area, any person, or his representative, who is present at the hearing and through or contiguous to whose property the highway will pass must be given the opportunity to express any objections he may have to the proposed location of the highway.

g. A written transcript of the proceedings must be made and shall include all statements, together with a copy of or identifying references to exhibits, data and material submitted for the record of the hearing. Tape, wire, or similar recordings will not be accepted as a transcript. If, however, a recording of the proceedings is made, such recording shall be made available to the division engineer upon his request.

h. For each public hearing held, the State highway department is to submit a certificate which recites the date, time and place of the hearing accompanied by a copy of all notices of the hearing and a written transcript thereof. If the opportunity for a public hearing was afforded but a hearing was not held, the certificate is to explain how and when such opportunity was afforded, and why no public hearing was actually held. In either case, if the project involves the bypassing of, or going through, any city, town or village, incorporated or unincorporated, the certificate must contain a statement that the State highway department has considered the economic effects of the location.

i. The certificate referred to in paragraph 4(h) must be submitted to the division engineer of the Bureau of Public Roads no later than the date upon which plans for the project are submitted to him for approval except that certificates relating to projects under an approved Secondary Road Plan are to be submitted to the division engineer by the State prior to the execution of the project agreement.

j. The State highway departments are expected to assume the cost of conducting required public hearings as an administrative function without the use of Federal-aid funds. However, data, charts, maps, models, photographs, and other documents or materials prepared or assembled with the aid of Federal funds, including highway planning survey funds, may and should be fully used in connection with public hearings.

5. ACTION BY PUBLIC ROADS

a. The division engineer may authorize a State highway department to proceed with preliminary engineering of a programed Federal-aid project before a public hearing is held. Such authorization will be given, however, for only that work necessary for the development of preliminary plans to the degree proper for presentation at a public hearing. In addition, the division engineer may approve acquisition of certain parcels necessary for right-of-way in exceptional cases as provided under paragraph 4c of PPM 21–4.1.

b. To provide coordination with the State highway department in carrying out the provisions of Section 128, it is desirable that the division engineer or his representative attend public hearings as an observer. While in attendance at a public hearing the division engineer, or his representative, may properly explain procedural and technical matters covered by Federal-aid laws and regulations, but in no case shall he indicate a preference for any proposal advanced by the State highway department or by others.

c. The division engineer may approve the location and authorize the State to proceed with the development of plans, right-of-way acquisition, and the actual construction of the proposed improvement only after (1) he

has evaluated the information and factual data presented at the hearing together with other information and data available to him, (2) he is satisfied that the requirements of Section 128 and this memorandum have been fulfilled and (3) he has concluded that the proposed location and advancement of the project are in the public interest.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 20-8 (JAN. 14, 1969)

PUBLIC HEARINGS AND LOCATION APPROVAL

1. PURPOSE

a. The purpose of this PPM is to ensure, to the maximum extent practicable, that highway locations and designs reflect and are consistent with Federal, State, and local goals and objectives. The rules, policies, and procedures established by this PPM are intended to afford full opportunity for effective public participation in the consideration of highway location and design proposals by highway departments before submission to the Federal Highway Administration for approval. They provide a medium for free and open discussion and are designed to encourage early and amicable resolution of controversial issues that may arise.

b. The PPM requires State highway departments to consider fully a wide range of factors in determining highway locations and highway designs. It provides for extensive coordination of proposals with public and private interests. In addition, it provides for a two-hearing procedure designed to give all interested persons an opportunity to become fully acquainted with highway proposals of concern to them and to express their views at those stages of a proposal's development when the flexibility to respond to these views still exists.

2. AUTHORITY

This PPM is issued under authority of the Federal-aid Highway Act, 23 U.S.C. 101 et seq., 128, 315, sections 2(a), 2(b)(2), and 9(e)(1) of the Department of Transportation Act, 49 U.S.C. 1651(a) and (a)(2), 1657(e)(1); 49 CFR § 1.4(c); and 23 CFR 1.32.

3. APPLICABILITY

a. This PPM applies to all Federal-aid highway projects.

b. If preliminary engineering or acquisition of right of way related to an undertaking to construct a portion of a Federal-aid highway project is carried out without Federal-aid funds, subsequent phases of the work are eligible for Federal-aid funding only if the nonparticipating work after the effective date of this PPM was done in accordance with this PPM.

c. This PPM shall not apply to the construction of highway projects where the Federal Highway Administrator has made a formal determination that the construction of the project is urgently needed because of a national emergency, a natural disaster or a catastrophic failure.

4. DEFINITIONS (AS USED IN THIS PPM)

a. A "corridor public hearing" is a public hearing that:

(1) Is held before the route locations is approved and before the State highway department is committed to a specific proposal;

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the need for, and the location of, a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on each of the proposed alternative highway locations and the social, economic, and environmental effects of those alternate locations.

b. A "highway design public hearing" is a public hearing that:

(1) Is held after the route location has been approved, but before the State highway department is committed to a specific design proposal;

(2) Is held to ensure that an opportunity is afforded for effective participation by interested persons in the process of determining the specific location and major design features of a Federal-aid highway; and

(3) Provides a public forum that affords a full opportunity for presenting views on major highway design features, including the social, economic, environmental, and other effects of alternate designs.

c. "Social, economic, and environmental effects" means the direct and indirect benefits or losses to the community and to highway users. It includes all such effects that are relevant and applicable to the particular location or design under consideration such as:

(1) Fast, safe and efficient transportation.
(2) National defense.
(3) Economic activity.
(4) Employment.
(5) Recreation and parks.
(6) Fire protection.
(7) Aesthetics.
(8) Public utilities.
(9) Public health and safety.
(10) Residential and neighborhood character and location.
(11) Religious institutions and practices.
(12) Conduct and financing of Government (including effect on local tax base and social service costs).
(13) Conservation (including erosion, sedimentation, wildlife and general ecology of the area).
(14) Natural and historic landmarks.
(15) Noise, and air and water pollution.
(16) Property values.
(17) Multiple use of space.
(18) Replacement housing.
(19) Education (including disruption of school district operations).
(20) Displacement of families and businesses.
(21) Engineering, right-of-way and construction costs of the project and related facilities.
(22) Maintenance and operating costs of the project and related facilities.
(23) Operation and use of existing highway facilities and other transportation facilities during construction and after completion.

This list of effects is not meant to be exclusive, nor does it mean that each effect considered must be given equal weight in making a determination upon a particular highway location or design.

5. COORDINATION

a. When a State highway department begins considering the development or improvement of a traffic corridor in a particular area, it shall solicit the views of that State's resources, recreation, and planning agencies, and of those Federal agencies and local public officials and agencies, and public advisory groups which the State highway department knows or believes might be interested in or affected by the development or improvement. The State highway department shall establish and maintain a list upon which any Federal agency, local public official or public advisory group may enroll, upon its request, to receive notice of projects in any area specified by that agency, official, or group. The State highway departments are also encouraged to establish a list upon which other persons and groups interested in highway corridor locations may enroll in order to have their views considered. If the corridor affects another State, views shall also be solicited from the appropriate agencies within that State. All written views received as a result of coordination under this paragraph must be made available to the public as a part of the public hearing procedures set forth in paragraphs 8.

b. Other public hearings or informal public meetings, clearly identified as such, may be desirable either before the study of alternate routes in the corridor begins or as it progresses to inform the public about highway proposals and to obtain information from the public which might affect the scope of the study or the choice of alternatives to be considered, and which might aid in identification of critical social, economic and environmental effects at a stage permitting maximum consideration of these effects. State highway departments are encouraged to hold such a hearing or meeting whenever that action would further the objectives of this PPM or would otherwise serve the public interest.

6. HEARING REQUIREMENTS

a. Both a corridor public hearing and a design public hearing must be held, or an opportunity afforded for those hearings, with respect to each Federal-aid highway project that:

(1) Is on a new location; or
(2) Would have a substantially different social, economic or environmental effect; or
(3) Would essentially change the layout or function of connecting roads or streets.

However, with respect to secondary road programs, two hearings are not required on a project covered by paragraph 6(a)(1) or (2) unless it will carry an average of 750 vehicles a day in the year following its completion.

b. A single combined corridor and highway design public hearing must be held, or the opportunity for such a hearing afforded, on all other projects before route location approval, except as provided in paragraph 6. c. below.

c. Hearings are not required for those projects that are solely for such improvements as resurfacing, widening existing lanes, adding auxiliary lanes, replacing existing grade separation structures, installing traffic control devices or similar improvements, unless the project:

(1) Requires the acquisition of additional right-of-way; or
(2) Would have an adverse effect upon abutting real property; or
(3) Would change the layout or function of connecting roads or streets or of the facility being improved,

d. With respect to a project on which a hearing was held, or an opportunity for a hearing afforded, before the effective date of this PPM, the following requirements apply:

(1) With respect to projects which have not received location approval:

(a) If location approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is required unless a substantial amount of right-of-way has been acquired.

(b) If location approval is requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the corridor hearing requirements is not required.

(2) With respect to those projects which have not received design approval:

(a) If design approval is not requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance

with the design hearing requirements is required.

(b) If design approval is requested within 3 years after the date of the hearing or an opportunity for a hearing, compliance with the design hearing requirements is nevertheless required unless the division engineer finds that the hearing adequately dealt with design issues relating to major design features.

e. If location approval is not requested within 3 years after the date of the related corridor hearing held, or an opportunity for a hearing afforded, under this PPM, a new hearing must be held or the opportunity afforded for such a hearing.

f. If design approval is not requested within 3 years after the date of the related design hearing held, or an opportunity for a hearing afforded, under this PPM, a new hearing must be held or the opportunity afforded for such a hearing.

7. OPPORTUNITY FOR PUBLIC HEARINGS

a. A State may satisfy the requirements for a public hearing by (1) holding a public hearing, or (2) publishing two notices of opportunity for public hearing and holding a public hearing if any written requests for such a hearing are received. The procedure for requesting a public hearing shall be explained in the notice. The deadline for submission of such a request may not be less than 21 days after the date of publication of the first notice of opportunity for public hearing, and no less than 14 days after the date of publication of the second notice of opportunity for public hearing.

b. A copy of the notice of opportunity for public hearing shall be furnished to the division engineer at time of publication. If no requests are received in response to a notice within the time specified for the submission of those requests, the State highway department shall certify that fact to the division engineer.

c. The opportunity for another public hearing shall be afforded in any case where proposed locations or designs are so changed from those presented in the notices specified above or at a public hearing as to have a substantially different social, economic, or environmental effect.

d. The opportunity for a public hearing shall be afforded in each case in which either the State highway department or the division engineer is in doubt as to whether a public hearing is required.

e. Public hearing procedures authorized and required by State law may be followed in lieu of any particular hearing requirement of paragraph 7 or 8 of this PPM if, in the opinion of the Administrator, such procedures are reasonably comparable to that requirement.

8. PUBLIC HEARING PROCEDURES

a. Notice of public hearing:

(1) When a public hearing is to be held, a notice of public hearing shall be published at least twice in a newspaper having general circulation in the vicinity of the proposed undertaking. The notice should also be published in any newspaper having a substantial circulation in the area concerned; such as foreign language newspapers and local community newspapers. The first of the required publications shall be from 30 to 40 days before the date of the hearing, and the second shall be from 5 to 12 days before the date of the hearing. The timing of additional publications is optional.

(2) In addition to publishing a formal notice of public hearing, the State highway department shall mail copies of the notice to appropriate news media, the State's resource, recreation, and planning agencies, and appropriate representatives of the Departments of Interior and Housing and Urban Development. The State highway department shall also mail copies to other federal agencies, and local public officials, public advisory groups and agencies who have requested notice of hearing and other groups or agencies who, by nature of their function, interest, or responsibility the highway department knows or believes might be interested in or affected by the proposal. The State highway department shall establish and maintain a list upon which any federal agency, local public official, public advisory group or agency, civic association or other community group may enroll upon its request to receive notice of projects in any area specified by that agency, official or group.

(3) Each notice of public hearing shall specify the date, time, and place of the hearing and shall contain a description of the proposal. To promote public understanding, the inclusion of a map or other drawing as part of the notice is encouraged. The notice of public hearing shall specify that maps, drawings, and other pertinent information developed by the State highway department and written views received as a result of the coordination outlined in Paragraph 5. a will be available for public inspection and copying and shall specify where this information is available; namely, at the nearest State highway department office or at some other convenient location in the vicinity of the proposed project.

(4) A notice of highway design public hearing shall indicate that tentative schedules for right-of-way acquisition and construction will be discussed.

(5) Notices of public hearing shall indicate that relocation assistance programs will be discussed.

(6) The State highway department shall furnish the division engineer with a copy of the notice of public hearing at the time of first publication.

b. Conduct of public hearing:

(1) Public hearings are to be held at a place and time generally convenient for persons affected by the proposed undertaking.

(2) Provision shall be made for submission of written statements and other exhibits in place of, or in addition to, oral statements at a public hearing. The procedure for the submissions shall be described in the notice of public hearing and at the public hearing. The final date for receipt of such statements or exhibits shall be at least 10 days after the public hearing.

(3) At each required corridor public hearing, pertinent information about location alternatives studies by the State highway department shall be made available. At each required highway design public hearing information about design alternatives studied by the State highway department shall be made available.

(4) The State highway department shall make suitable arrangements for responsible highway officials to be present at public hearings as necessary to conduct the hearings and to be responsive to questions which may arise.

(5) The State highway department shall describe the State-Federal relationsip in the Federal-aid highway program by an appropriate brochure, pamphlet, or statement, or by other means.

(6) A State highway department may arrange for local public officials to conduct a required public hearing. The State shall be appropriately represented at such public hearing and is responsible for meeting other requirements of this PPM.

(7) The State highway department shall explain the relocation assistance program and relocation assistance payments available.

(8) At each public hearing the State highway department shall announce or otherwise explain that, at any time after the hearing and before the location or design approval related to that hearing, all information developed in support of the proposed location or design will be available upon request, for public inspection and copying.

(9) To improve coordination with the State highway department, it is desirable that the division engineer or his representative attend a public hearing as an observer. At a hearing, he may properly explain procedural and technical matters, if asked to do so. A Federal Highway Administration decision regarding a proposed location or design will not be made before the State highway department has requested location or design approval in accordance with paragraph 10.

c. Transcript:

(1) The State highway department shall provide for the making of a verbatim written transcript of the oral proceedings at each public hearing. It shall submit a copy of the transcript to the division engineer within a reasonable period (usually less than 2 months) after the public hearing, together with:

(a) Copies of, or reference to, or photographs of each statement or exhibit used or filed in connection with a public hearing.

(b) Copies of, or reference to, all information made available to the public before the public hearing.

(2) The State highway department shall make copies of the materials described in subparagraph 8. c. (1) available for public inspection and copying not later than the date the transcript is submitted to the division engineer.

9. CONSIDERATION OF SOCIAL, ECONOMIC, AND ENVIRONMENTAL EFFECTS

State highway departments shall consider social, economic, and environmental effects before submission of requests for location or design approval, whether or not a public hearing has been held. Consideration of social, economic, and environmental effects shall include an analysis of information submitted to the State highway department in connection with public hearings or in response to the notice of the location or design for which a State highway department intends to request approval. It shall also include consideration of information developed by the State highway department or gained from other contacts with interested persons or groups.

10. LOCATION AND DESIGN APPROVAL

a. This section applies to all requests for location or design approval whether or not public hearings, or the opportunity for public hearings, are required by this PPM.

b. Each request by a State highway department for approval of a route location or highway design must include a study report containing the following:

(1) Descriptions of the alternatives considered and a discussion of the anticipated social, economic, and environmental effects of the alternatives, pointing out the significant differences and the reasons supporting the proposed location or design. In addition, the report must include an analysis of the relative consistency of the alternatives with the goals and objectives of any urban plan that has been adopted by the community concerned.

(a) Location study reports must describe the termini, the general type of facility, the nature of the service which the highway is intended to provide and other major features of the alternatives.

(b) Design study reports must describe essential elements such as design standards, number of traffic lanes, access control features, general horizontal and vertical alignment, right-of-way requirements and location of bridges, interchanges, and other structures.

(2) Appropriate maps or drawings of the location or design for which approval is requested.

(3) A summary and analysis of the views received concerning the proposed undertaking.

(4) A list of any prior studies relevant to the undertaking.

c. At the time it requests approval under

this paragraph, each State highway department shall publish in a newspaper meeting the requirements of paragraph 8.a.(1), a notice describing the location or design, or both, for which it is requesting approval. The notice shall include a narrative description of the location or design. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information submitted in support of the request for approval is publicly available at a convenient location.

d. The following requirements apply to the processing of requests for highway location or highway design approval.

(1) *Location approval.* The division engineer may approve a route location and authorize design engineering only after the following requirements are met:

(a) The State highway department has requested route location approval.

(b) Corridor public hearings required by this PPM have been held, or the opportunity for hearings has been afforded.

(c) The State highway department has submitted public hearing transcripts and certificates required by section 138, title 23, United States Code.

(d) The requirements of this PPM and of other applicable laws and regulations.

(2) *Design approval.* The division engineer may approve the highway design and authorize right-of-way acquisition, approve right-of-way plans, approve construction plans, specifications, and estimates, or authorize construction, only after the following requirements have been met:

(a) The route location has been approved.

(b) The State highway department has requested highway design approval.

(c) Highway design public hearings required by this PPM have been held, or the opportunity for hearings has been afforded.

(d) The State highway department has submitted the public hearing transcripts and certificates required by section 128, title 23, United States Code.

(e) The requirements of this PPM and of other applicable laws and regulations.

e. The division engineer, under criteria to be promulgated by the Federal Highway Administrator, may in other appropriate instances authorize the acquisition of right-of-way before a design hearing.

f. Secondary Road Plans shall be amended as necessary to incorporate procedures similar to those required for other projects. Secondary Road Plans shall include provision requiring:

(1) route location and highway design approval.

(2) preparation of study reports as described in paragraph 10(b), and

(3) corridor and highway design public hearings in all cases where they would be required for Federal-aid projects not administered under the Secondary Road Plan. Project actions by the division engineer or submissions to the division engineer which are not now required should not be established for Secondary Road Plan projects as a result of this PPM.

11. PUBLICATION OF APPROVAL

In cases where a public hearing was held, or the opportunity for a public hearing afforded, the State highway department shall publish notice of the action taken by the division engineer on each request for approval of a highway location or design, or both, in a newspaper meeting the requirements of paragraph 8.a.(1), within 10 days after receiving notice of that action. The notice shall include a narrative description of the location and/or design, as approved. Where practicable, the inclusion of a map or sketch of that location or design is desirable. In any event, the publication shall state that such maps or sketches as well as all other information concerning the approval is publicly available at a convenient location.

12. REIMBURSEMENT FOR PUBLIC HEARING EXPENSES

Public hearings are an integral part of the preliminary engineering process. Reasonable costs associated with public hearings are eligible for reimbursement with Federal-aid funds on the same basis as other preliminary engineering costs.

F. C. TURNER,
Director of Public Roads.
LOWELL K. BRIDWELL,
Federal Highway Administrator.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21-1—APRIL 15, 1958—FEDERAL-AID PROGRAMS

Supersedes: PPM 21-1.1, dated July 21, 1956; GAM 275 (Temporary Topic 10-A); GAM's 312, 326, 340 and supplement 1 thereto, and 342 (Temporary Topic 20-A); GAM 336 Revised, as it pertains to selection of secondary projects (Temporary Topic 10-C); memoranda dated November 17, 1942 (Temporary Topic 10-A), January 9, 1946 (Temporary Topic 20-L); and November 12, 1952, June 22, 1955, and March 11, 1957 (Temporary Topic 20-A); Cherry Memorandum No. 22.

1. PURPOSE

The purpose of this memorandum is to prescribe the policy of Public Roads in the submission and approval of programs of projects involving Federal-aid funds and to outline the procedure to be followed in the preparation and submission of programs. This memorandum applies to Federal-aid projects in Regions 1 to 9, inclusive.

2. REQUIREMENTS FOR PROGRAMING AND AUTHORIZATION OF FEDERAL-AID PROJECTS

a. In accordance with the Federal-aid regulations, each State highway department is to submit to Public Roads a detailed program of proposed projects for the utilization of apportionments of each class of Federal-aid funds. The programing of Federal-aid funds for any phase of a project shall be considered a definite initial commitment on the part of the State highway department and Public Roads to undertake and complete such work within a reasonable length of time. Federal-aid funds cannot participate in any project costs incurred prior to program approval of the project or prior to authorization to the State to proceed with the work.

2. Approval and authorization of a project to participate in Federal-aid funds shall not be given prior to approval of the involved route as a part of the Federal-aid system. Projects for determining the acceptable location of Federal-aid routes are exceptions to this requirement.

3. PURPOSE AND MEANING OF PROGRAM STAGES

a. In order that Public Roads may authorize the State to proceed with the project or any phase thereof with clear understanding of the State's intent to request reservation of Federal-aid funds from either apportioned funds or funds expected to be apportioned, the programs of items of work shall be identified in either Stage 1 or Stage 2 as shown herein.

b. Stage 1 indicates, insofar as preliminary engineering or acquisition of right-of-way is concerned, that the State intends to proceed with such programed work as may be approved and authorized by Public Roads, but will defer requesting reservation of available Federal-aid funds. Stage 1 indicates, insofar as construction is concerned, that the State intends, if the programed work is approved by Public Roads, to advance later the construction to contract or force account status, if approved in Stage 2 and authorized by Public Roads, and will at the time of Stage 2 submission request reservation of available Federal-aid funds.

c. Stage 2 indicates insofar as preliminary engineering or acquisition of right-of-way is concerned that the State has requested reservation of available Federal-aid funds for work that was approved in a Stage 1 program or as may be approved initially in a Stage 2 program. Stage 2 indicates insofar as construction is concerned that the State has requested approval and reservation of available Federal-aid funds for work that was approved in a Stage 1 program or as may be approved initially in a Stage 2 program.

4. PROGRAM APPROVAL, AND AUTHORIZATION TO PROCEED

a. Stage 1 Programs

(1) Projects for preliminary engineering or for acquisition of right-of-way or a combination thereof may be approved in Stage 1 provided sufficient justifying information is submitted. Written notice of approval of such projects shall be issued to the State, together with a statement of conditions, if any, controlling the advancement of the projects, or any phase thereof, to Stage 2. Written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, shall be issued to the State, together with conditions controlling the work which may be performed and the subsequent Federal-aid reimbursement. If the information submitted by the State permits, the written notice to the State should cover both program approval and authorization to proceed. If the program information submitted by the State is sufficient to permit program approval of the project, but not sufficient to permit authorization to proceed, the written notice for the latter action shall be withheld until the justifying information is presented. In all cases Federal reimbursement shall be limited to the Federal pro rata share of costs incurred after the date of authorization to proceed.

(2) Preliminary engineering may be for engineering studies, including surveys, (a) to determine a proper location whereon to perform construction or (b) to prepare designs and other plans, specifications and estimates, covering the construction upon a proper location or (c) for both. Preliminary engineering of type (a) may be authorized at the time of program approval in Stage 1. In cases where the preliminary engineering covers work of types (b) or (c), the authorization to proceed with the preparation of the PS&E is not to be issued until the location proposed by the State has been found acceptable by Public Roads. In the event of urgent need for a preliminary engineering project because of unexpected changes or additions to a State's current work schedule, the State may submit program requests therefor, and Public Roads may give immediate written approval and authorization to proceed therewith, subject to the condition that subsequent review of the proposed project establishes that said project is properly a Federal-aid project and that reimbursement of eligible costs incurred after the date of authorization is also proper.

(3) A right-of-way project may be (a) for studies to determine the relative right-of-way costs and other factors pertinent to alternate construction locations, including incidentals connected with the acquisition of rights-of-way on a selected construction location, or (b) actually to acquire rights-of-way on a selected construction location including incidentals connected therewith, or (c) for both. Right-of-way work as defined in (a) above may be authorized at the time of program approval in Stage 1. In cases where the right-of-way covers work of types (b) or (c), the authorization to proceed with the acquisition of right-of-way is not to be issued until the State has indicated on maps or by drawings or other records the proposed general location of the highway, together with the appropriate areas or limits of the right-of-way

to be acquired and they are found acceptable by Public Roads. In exceptional cases, but after program approval, the Bureau may authorize the State to acquire certain parcels prior to acceptance of the proposed general location for the entire project, when it is found that the certain parcels are within the limits of the conceived proper location, and it is agreed such action is necessary to protect the public interest.

(4) To facilitate subsequent advancement to Stage 2, projects for physical construction may also be included in Stage 1, provided sufficient justification information is submitted. Written approval of such projects in Stage 1 is to be accompanied by a statement of conditions, if any, pertaining to the advancement of the project to Stage 2. However, in no event will actual construction be authorized to proceed until and unless the project is advanced to and approved in a Stage 2 program.

(5) The written notice to a State approving any Stage 1 program shall contain the following clause: "Program approval and any authorization to proceed with a Stage 1 project shall not constitute any commitment of Federal funds nor shall it be construed as creating, in any manner, any obligation on the part of the Federal Government to provide Federal funds for the undertaking." Stage 1 program action is intended (a) to permit certain work preliminary to the physical construction of the highway to proceed prior to the availability of Federal funds, (b) to facilitate advancement of the project to Stage 2 when and if Federal funds are provided, and (c) to permit authorization of preliminary engineering or right-of-way which action establishes the date on and after which eligible costs incurred in performance of such work on Stage 1 projects may be reimbursed from available Federal funds, if the work is subsequently approved in a Stage 2 program.

b. Stage 2 Programs

(1) Projects for preliminary engineering, or acquisition of right-of-way, or construction, or any combination thereof, may be approved in Stage 2, provided sufficient justifying information is submitted and provided sufficient Federal-aid funds are available. Written notice of approval of such projects, or any phase thereof, shall be issued to the State. Written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, shall be issued to the State, together with conditions controlling the work which may be performed and the subsequent Federal-aid reimbursement, when such written notice was not given under a Stage 1 program, and such written authorization shall constitute reservation and obligation of Federal funds. When such written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, was given in a Stage 1 program, written notice to the State of program approval in Stage 2 constitutes a reservation and obligation of available Federal funds. Written authorization for the State to advertise for bids or to proceed with force account construction shall be issued by the division engineer either when he advises the State of his approval of the PS&E for the project, or at such other time as required conditions are met, and such written authorization shall constitute obligation of Federal funds. Controls on locations on which preliminary engineering may be performed or right-of-way acquired, and combined written notices of approval and authorization to proceed, are to be as outlined under Stage 1 programs, paragraph 4a.

(2) In all cases where only a part of a Stage 1 projects is advanced to Stage 2 the program submission covering such approval action must include a clear and complete description of not only the part being advanced to Stage 2 as a separate project, but also of the part of the initial Stage 1 project being retained in Stage 1. This is to be accomplished by splitting the program item as outlined in paragraph 10.

c. 1954 Secondary Road Plan Projects

(1) Projects submitted under the Plan and providing for preliminary engineering or right-of-way acquisition in either Stage 1 or Stage 2 may be given program approval and the State shall be authorized to proceed in accordance with the same provisions outlined herein for other Federal-aid projects.

(2) Projects providing for physical construction in Stage 2 may be given program approval in the same manner as other Stage 2 Federal-aid projects, as provided herein. The program approval letter to the State shall authorize the State to proceed to take all actions necessary to advance the work to completion in accordance with the provisions of the State's 1954 Secondary Road Plan approved by the Commissioner.

5. PROJECT DESIGNATION PREFIX LETTERS

a. The following prefix designations shall be used to identify projects financed with Federal-aid primary, secondary, or urban funds.

F Federal-aid primary project, not an Interstate improvement.

FI Federal-aid primary project, Interstate system improvement.

FG Railway-highway project on Federal-aid primary system, not an Interstate system improvement.

FGI Railway-highway project, Interstate system improvement, financed with primary funds.

S Federal-aid secondary project on Federal-aid secondary system.

SG Railway-highway project on secondary system.

SF Highway project on Federal-aid primary system, not an Interstate improvement, financed with secondary funds (permissible only in States having control of all public roads).

SFI Highway project, Interstate system improvement, financed with secondary funds (permissible only in States having control of all public roads).

SFG Railway-highway project on Federal-aid primary system, financed with secondary funds (permissible only in States having control of all public roads).

SFGI Railway-highway project, Interstate system improvement, financed with secondary funds (permissible only in States having control of all public roads).

U Highway project on Federal-aid primary system in an urban area, financed with urban funds.

UI Highway project, Interstate system improvement, in an urban area, financed with urban funds.

UG Railway-highway project on Federal-aid primary system in an urban area, financed with urban funds.

UGI Railway-highway project, Interstate system improvement in an urban area, financed with urban funds.

US Highway project on extension of Federal-aid secondary system into an urban area, financed with urban funds.

USG: Railway-highway project on extension of Federal-aid secondary system into an urban area, financed with urban funds.

b. The following designations shall be used for projects financed with Interstate funds.

I(52): Interstate system improvement, financed with 1952 Act Interstate funds.

IG(52): Railway-highway project, Interstate system improvement, financed with 1952 Act Interstate funds.

IN: Interstate system improvement financed with 1954 Act Interstate funds.

ING: Railway-highway project, Interstate system improvement, financed with 1954 Act Interstate funds.

I: Interstate system improvement financed with 1956 Act Interstate funds.

IG: Railway-highway project, Interstate system improvement financed with 1956 Act Interstate funds.

c. Projects jointly financed with a combination of the various funds authorized by Federal-aid highway legislation shall be identified by a combination of the prefix designations applicable to the funds involved and must be included in the program for each class of funds involved and require separate Forms PR–1 for each program. A hyphen should be used between the prefix letters which designate the different classes of Federal funds, for example, FG–UG–316 (7).

d. A jointly financed project must be described in each program involved as an entity both as to project location and character of proposed work. The length, cost, and Federal funds applicable to the particular program shall be shown on the Form PR–1 for that program. The overall totals for cost, Federal funds, and length for all classes of funds combined shall be indicated on each Form PR–1 in parentheses. The length shown to be financed with each class of funds, where not otherwise controlled, may be determined on a proportional basis in accordance with the Federal financing.

e. The above procedure similarly applies to projects covering the construction of bridges over streams which constitute the line between two States. Such projects normally jointly financed by the two States, shall also have a single project designation agreed upon by the two States and must be programmed concurrently by both States.

f. Prefix designations for projects providing solely for the establishment of temporary and permanent geodetic markers in accordance with specifications of the Coast and Geodetic Survey, shall be the same as for other Federal-aid projects, except that the letters "GM" (for Geodetic markers) shall be used as the first lettters of each project designation, such as, "GMF," "GMI(52)," "GMI," etc. Complete instructions relating to geodetic marker projects are given in PPM 20–9.

g. Prefix designations for bond issue projects on the Federal-aid primary or interstate systems to be programed under the provisions of section 5 of the Federal-Aid Highway Act of 1950 shall be the same as for other Federal-aid projects except that the letter "B" shall be used before the usual prefix such as "BF," "BI," etc. Program Forms PR–1 shall be identified by placing the words "Bond Issue" after the word "Primary" or "Interstate" as the case may be.

h. Prefix designations for Interstate projects programed for advance construction under the provisions of PPM 21–8 shall be the same as for regular Interstate projects except that the letters "AC" for advance construction shall be used as the first two letters of the prefix, i.e., "ACI."

6. NUMBERING OF PROJECTS ON THE PRIMARY AND SECONDARY SYSTEMS

a. The first step in project numbering is to designate and assign numbers to route-sections comprising each route as set forth in PPM 10–1. Route-sections are subdivisions with termini at logical points such as intersections, stream crossings, county lines, and municipal boundaries.

b. The route sections are to be numbered consecutively along each route. For primary system routes, the route-section numbers will be documented in the route report.

c. All Federal-aid improvement projects located within any route-section must be identified by the same number as the route-section, followed by a number in parenthesis (agreement numbered) to indicate in sequence the number of improvements financed from Federal-aid funds within the route-section regardless of class of funds, for example, improvements on route-section 414 within an urban area would be numbered U–414(1), FG–414(2), U–414(3), etc.

d. In some States, route and project numbering procedures have been developed to

identify the route number, section number, and agreement number, for example, F–81–1(1), F–81–1(2), etc.

e. One series of project numbers may be used for projects on the primary system and a parallel series for secondary system projects.

f. To facilitate mechanical tabulation of project data, the portion of primary and secondary system project numbers covering route and section identification shall not exceed four digits, and the portion in parenthesis covering agreement number shall not exceed three digits, for example, F–81–12(002).

g. When an improvement project involved contiguous portions of adjoining routes, separate projects with appropriate project numbers shall be submitted for the applicable portion of each route.

7. NUMBERING OF PROJECTS ON THE INTERSTATE SYSTEM

a. The Interstate project number shall consist of five elements, for example, I–70–3 (8)116.

b. The appropriate symbol, I, is as defined in paragraph 5b.

c. The route number 70, is as officially designated by the AASHO. Where routes have been designated as East, West, North, or South, the letters E, W, N, or S, as appropriate, shall be used as suffixes to the route number, without hyphen. Related or subsidiary routes are covered in paragraph 7g.

d. The route section number, 3, is the number of the subdivision of the main route. Not more than nine sections shall be selected on any one route within a State, and shall start and terminate at some logical point, such as a State or county boundary, beginning (or end) of a route within a State, intersection of Interstate Routes, stream crossing, or other appropriate point. The sections are to be numbered consecutively along the route, from west to east or from south to north.

e. The agreement number, (8) is the chronological number of the improvement project programmed within the route section.

f. The post mileage, 116, is the distance in miles, less any fraction, measured along the route easterly or northerly from (1) the point where the routes enter the State, or (2) from the beginning of a route that originates within the State, to the western or southern end of the project, and has no relation to the length of the project. While the post mileage is an essential part of the project number for Public Roads records and procedures, it may be omitted from the State's own records, if desired. Use of the post mileage as a part of the project number has no connection with mile-posts on Interstate System routes and does not in itself require that mile-posts be installed.

g. As of the date of issuance of this memorandum, the AASHO had not finalized a means of identifying subsidiary routes, such as circumferential or distributor routes at urban areas. Instructions for numbering projects on such routes will be contained in Circular Memoranda until such time as complete route numbering procedures have been established by the AASHO.

8. PREPARATION OF FORM PR–1 AND SUPPORTING DATA

a. Each project shall be shown on a separate Form PR–1, copy attached, accompanied by appropriate supporting data. Forms PR–1, if reproduced locally, shall be printed on 8½" x 11" size sheets and on a grade of paper receptive to ink notations, and shall provide a clear 1½" left hand margin.

b. Most of the entries to be made on Form PR–1 are self-explanatory but certain entries are to be made in accordance with the following:

(1) A project number (including agreement number) must be assigned to each project in a Stage program, in addition to the item number. It may not be feasible to assign project numbers to all projects in a Stage 1 program, but an item number in the regular sequence is to be assigned. When project numbers are assigned to Stage 1 projects, the portion of the number in parentheses should be shown only for those projects which the State expects to advance as an entity to a Stage 2 program.

(2) *Route Number.* Show the Federal-aid route number; also show the U.S. State, or county route number that will best serve to locate the project on a map of the general area.

(3) *Average Daily Traffic.* Indicate present traffic on existing road and estimated future traffic, whether project is on a new or an existing location, and show the year for which the future traffic is estimated.

(4) *Termini.* The description of termini should clearly relate, within reasonable accuracy, the location of at least one end of the project to an identifiable point on available maps of the general area, with an indication of the direction of the project from that point.

(5) *Character of Proposed Work*

(a) For preliminary engineering define, if for investigative work, the nature thereof, and if for the preparation of PS&E refer to the understanding between the State and Public Roads as to acceptability of the location.

(b) For acquisition of right-of-way, define the scope of the work to be undertaken plus reference to the understanding, if any, between the State and Public Roads as to acceptability of the proposed location and width of right-of-way to be acquired.

(c) For construction, show such of the following information as may be pertinent: the number and width of lanes, kind of work, type of surface, number and overall length of bridges, right-of-way width, access control (if any), and other major elements, if involved, such as parking restriction, lighting, curb and gutter, sidewalks, traffic control devices, major utility adjustments, sufficiency rating (if available), stage construction (if proposed), etc.

(6) The total estimated cost for each included phase of work shall be shown. The estimated Federal funds for each such phase shall be shown only for projects included in a Stage 2 program, as projects in Stage 1 do not involve any actual commitment of Federal funds. For projects covering only preliminary engineering, right-of-way, or both, the total estimated cost of the associated physical construction shall be shown in parentheses.

(7) *Remarks.* Show explanatory information related to the project, such as railroad benefits, requests from railroads for structure clearances for future tracks or for off track maintenance equipment, source of funds other than Federal-aid or State funds, item numbers of projects covering associated phases or stages of work previously programed, bridge projects which must be jointly financed by two States, unusual financing such as may be occasioned by projects traversing trust patent or tribal lands, etc., where such information is applicable.

c. *Supporting Data for Stage 1 Projects.* Projects proposed for inclusion in Stage 1 programs shall be supported by as much of the information outlined in paragraph 8d as is applicable and available. Approval of and authorization to proceed with a project for preliminary engineering or for right-of-way acquisition in Stage 1 will depend on the extent of the supporting data furnished.

d. *Supporting Data for Stage 2 Projects.* The following supporting data are to be shown, preferably on the back of Form PR–1. Additional sheets may be used when needed. Information listed in paragraph (1) through (4) below is pertinent to existing facilities. That listed in paragraphs (5) through (10) is pertinent to the proposed facility.

(1) Type, width, and condition of existing surfacing and roadway within the project limits and on adjacent sections at each end of project.

(2) Substandard existing alinement and grade.

(3) Existing major structures—number, overall length and condition; roadway width, estimated or posted capacity and proposed treatment of any substandard structures to remain in place.

(4) Existing railroad crossings—name of railroad, number of main tracks, number of other tracks, number and speed of trains, type and adequacy of existing and proposed protection, and data on sight distances.

(5) Railroad benefit determination and basis. Sketch map showing relationship of old and new crossing is desirable.

(6) Airway-highway data where an airport is involved.

(7) Full explanation where project is affected by any water development project or where provision for navigation is required.

(8) Federal-aid systems—is route revision or addition involved?

(9) Public Hearings—are they required? If so, have they been held?

(10) For projects providing for surfacing only on roads graded and drained or to be graded and drained without Federal-aid participation—a statement that the road to be surfaced meets or will meet approved standards.

(11) For Federal-aid secondary projects in those States operating under the 1954 Secondary Road Plan, any proposed exception to the minimum design standards or the procedures approved by the Commissioner shall be identified and reasons therefor explained by the State highway department in accordance with the procedures prescribed in PPM 20–5.

(12) For Federal-aid secondary projects which do not include surfacing in those States not operating under the 1954 Secondary Road Plan—A statement is to be included that the type of construction can be maintained at reasonable cost to provide all-weather service, or that such type of construction will be provided with or without Federal-aid participation.

(13) For expressway projects and projects having urban characteristics, the following additional information pertinent to the proposed facility should be submitted.

(a) Typical cross section if available; otherwise width and number of traffic, parking, and auxiliary lanes, and width of median and frontage roads; also parking control, highway lighting, and traffic control contemplated.

(b) At critical intersections give volume of cross traffic and method of traffic control.

(c) Location of grade separations.

(d) Reference to any preliminary engineering report previously submitted.

(e) Major utility adjustments.

(f) Buildings to be moved or demolished.

(g) Information concerning nonparticipating work.

(h) Project sketch map of adequate scale showing relation of projects in urban areas to other streets.

e. For all projects—unusual or complicated situations are to be explained if they have not been previously covered.

f. Each program submission shall include a suitable highway map of the State, or of the counties or of the sections of the State or counties involved, of sufficient scale to show clearly for each project its diagrammatic location and project number. For urban projects a map of each involved urban area, or pertinent section thereof, shall be furnished. Different symbols or colors should be used to distinguish Stage 1 projects from Stage 2 projects. Only one copy of each program map need be submitted to the Washington office.

9. PREPARATIONS, SUBMISSION, REVIEW, AND APPROVAL OF PROGRAMS

a. The preparation of a program and its review shall include a careful consideration of the merits of the program as a whole and of the individual projects composing it. Each program shall represent a definite part of the long-range plan for the adequate improvement of the particular system involved. A careful examination shall be made of previously programed projects covering preliminary engineering or right-of-way only, to assure that the associated physical construction has been programed and advanced within the period of time set forth in the project agreement for such preliminary engineering and right-of-way work. It is essential that highway planning survey data and such techniques as sufficiency ratings be applied to the maximum degree.

b. Program submissions shall be separate for each class of Federal-aid funds involved such as I, F, S, and U, and each program shall include an assembly of the Forms PR–1 and supporting data for the projects, program maps, copies of program approval documents, and other pertinent correspondence. Separate programs are also required for bond issue projects and for advance construction of interstate projects.

c. Each program shall be considered as a supplement to previous programs for the respective classes of Federal funds. The several fiscal year Federal-aid funds authorized by the 1944 Federal-aid Highway Act, and subsequent Acts, are to be pooled into single cumulative programs for each class of funds. These programs are to be identified with respect to funds, such as Federal-aid primary, secondary, urban, or 1952, 1954 or 1956 Act Interstate.

d. Subdivision of programs by State highway districts is permissible if accompanied by an alphabetical list of counties showing the district in which each county is located. If this method is used, both the district number and the item number should be shown in the space for "Item No." on Form PR–1.

e. Future program submissions for each class of funds shall continue the sequence of item numbers previously established, and the projects in both stages of a program are to be assigned item numbers in the same series. An item number, once used in a program for a specific project designation (or improvement if the project designation cannot be shown), should not later be used for any other project included in that program.

f. Federal funds cannot participate in any actual construction work started or contracted for by a State prior to the apportionment of such funds to the State unless such work is programed under the provisions of section 108(h) of the 1956 Act for under section 5 of the 1950 Act. Except in special or unusual cases no phase of a project shall be included in Stage 2 of a program unless Federal funds are requested and available for full Federal participation in the cost of that particular phase of the project or for a reasonably substantial participation which the State agrees to accept as a firm commitment. So-called token financing with Federal funds will not be approved. Special projects for necessary advance right-of-way acquisition on extensive mileage, to take advantage of lower values obtaining prior to anticipated private or business developments, which are programed initially at less than the full pro rata of Federal funds, but with the understanding Federal financing will be modified later to provide full pro rata participation, will not be subject to the above restrictions.

g. Programs should be submitted preferably annually or semiannually, and should include new projects in either Stage 1 or Stage 2 and may include projects to be advanced from Stage 1 to Stage 2. The addition of a single project to a program should be resorted to only in an unforeseen situation which requires its programing before it is practical to include it with other projects in a regular program submission.

h. The State highway department shall submit each program to the division engineer of Public Roads with complete supporting data as outlined in paragraph 8d. The division engineer shall review each program and take final action in accordance with delegated authority on programs involving Federal-aid secondary funds. Programs involving Interstate, primary, or urban funds, in those divisions which have not been redelegated full program approval authority, shall be forwarded to the regional engineer, accompanied by a report containing all of the information which may be necessary to support fully the division engineer's conclusions and recommendations concerning each project. The regional engineer will review each program and take appropriate action on the included projects, in accordance with his delegated authority as set forth in AM 1–10.2. Programs involving Interstate, primary, or urban funds, in those divisions redelegated full program approval authority, shall be reviewed and approved, when appropriate, by the division engineer. Concurrent with his notice of such approval action to the State, the division engineer shall submit the prescribed copies of his program action letter and all other program papers direct to the Washington office and to his regional office.

i. Program approval actions, either by a memorandum from the regional engineer to the division engineer, by a letter from the regional engineer to the State routed through the division engineer, or by a letter from the division engineer to the State shall be in conformity with paragraph 4 above. Programs or modifications thereof which involve a total of Federal funds exceeding the State's apportionment will not be approved.

j. All correspondence with the Washington office regarding program submissions or modifications shall be separate from other project correspondence.

10. REVISION OF PROGRAMED PROJECTS

a. Project revisions which exceed the limitations of authority redelegated to division engineers, as required or permitted in AM 1–10.2 require approval of the regional engineer. Revisions within the authority redelegated to the division engineer should be approved by him.

b. Approval of the revision of projects shall be accomplished as follows:

(1) For projects which have not advanced beyond program status, revision shall be accomplished by the approval of the State's request on Form PR-9 (copy attached), which shall provide pertinent project data and supporting justification. Approval by the regional or division engineer shall be indicated by signature thereon. This applies equally to projects in Stage 1 and Stage 2.

(2) Form PR-37 shall be used to document Stage 2 projects which have been, or are being, advanced to authorized status. Any changes in description of termini, character of work involved, or pertinent supporting information, that cannot be adequately shown on the face of the form submitted, should be clearly but concisely explained on the reverse side.

c. *Use of Item Suffix Letter.* Projects being advanced or transferred from one program stage to the other shall retain the original item number. No project identified by a project agreement number can be included in both program stages at the same time. If only a portion of a project approved in Stage 1 is advanced to Stage 2, the original item number shall be used for both the portion of the original project retained in Stage 1 and the portion advanced to Stage 2 under a separate agreement number. The suffix letter "A" shall be added to this item number for the portion of the original project retained in Stage 1, and the suffix letter "B" shall be added to this item number for the portion advanced to Stage 2. When a project is advanced from Stage 1 to Stage 2, but is split into two or more separate projects at that time, the original item number shall be used for all resulting projects with the suffix letters A, B, C, etc., added to identify the separate projects derived from the original single item. If any part of the original item remains in Stage 1, the suffix letter "A" shall be added to the original item number for that part. If the part retained in Stage 1, under the original item number with the suffix letter "A" added, is again split into two or more separate projects the resulting projects should carry the original item number with the suffix letter "A" used for one project and the next unused suffix letters, such as C, D, E, etc., added for the new project or projects resulting from the split. The above described use of item suffix letters is also applicable in all cases where a programed project in either stage is later split into two or more projects although a transfer between program stages is not involved. Item suffix letters are not to be used for any purposes other than those described above.

d. When a project is programed in Stage 2 for preliminary engineering and/or right-of-way only and, prior to execution of the project agreement, the State desires to add the construction phase to the project, this shall be accomplished as a regular major revision of the original project. However, if the project for the preliminary engineering and/or right-of-way phases only has already been placed under agreement at the time the associated construction phase is to be programed, the construction phase must be programed under a separate project agreement number and a separate item number. In such cases a reference to the item number of the project covering the other associated phases of the overall improvement should be shown in the "Remarks" space on the Form PR-1.

e. All revisions should be promptly reported to the regional and Washington offices.

11. GENERAL REQUIREMENTS

a. Governing legislation relative to the use of Federal aid secondary funds emphasizes the need for improvement of local roads. In furtherance of such policy, not less than 50 per centum of the Federal-aid secondary funds apportioned to each State for any fiscal year after deduction of the highway planning survey funds shall first be made available to the appropriate local road officials and shall remain available until the end of such fiscal year for roads not on the State highway portion of the Federal-aid secondary system. After the appropriate local road officials have been formally advised of the amount of funds available to them, and of the time during which such funds will remain available, no part thereof shall be programed for use on the State highway portion of the Federal-aid secondary system during such period of availability, unless such local road officials shall formally decline the use thereof. In any State that has full financial responsibility for the construction and maintenance of a very substantial percentage of the total local highway mileage therein, Federal-aid secondary funds in excess of 50 per centum thereof may be applied to such highways for which the State is responsible that are included in the Federal-aid secondary system, subject to the condition that the projects selected are not on routes that are potential additions to the Federal-aid primary system within a reasonable time.

b. Programs utilizing secondary funds, except in those States having such full responsibility must be accompanied by a statement from the State that the projects were selected and the specifications therefor determined in cooperation with appropriate local officials of the counties concerned and that such officials have concurred in the determination and selection as required under section 1(b) of the Federal-Aid Highway Act of 1950.

c. Improvements to be financed with Fed-

eral-aid funds authorized for expenditure only in urban areas are intended to be substantial in character and of benefit to the involved municipality. Projects which accomplish only incidental improvement, and do not result in increased traffic capacity shall not be financed with urban funds. An exception is the installation of grade crossing protective devices on extensions of secondary routes into urban areas or on portions of primary routes.

d. Contributions by counties, cities, or other local units of government to the cost of any Federal-aid project may be used in lieu of either State or Federal funds, provided that the sum of the local contributions plus the Federal funds claimed may not exceed the total cost of any such project.

e. The full 1½ percent highway planning funds for each fiscal year shall first be included in Stage 2 of the respective programs as HPS reserve items and so shown in the highway planning survey apportionment control record. Project agreement numbers are not required at this time. Then as the HPS work programs are approved regular HPS projects with agreement numbers should be set up, drawing the required Federal funds in each case from the programed HPS reserve. Whenever a programed-only balance remains under an HPS reserve item a split in the item results and item suffix letters as described in paragraph 10c shall be used. Balances in the HPS reserve at the close of each fiscal year shall be reviewed and, if not needed for current HPS purposes, released for use on construction pursuant to paragraph 4 of PPM 50–1.1.

12. RAILWAY-HIGHWAY PROJECTS

a. Under the provisions of Section 5(a) of the 1944 Act the entire construction cost of projects for the elimination of hazards of railway-highway crossings, including the separation or protection of grades at crossings, the reconstruction of existing railroad grade crossing structures, and the relocation of highways to eliminate grade crossings, may be paid from Federal funds, except that not more than 50 per centum of the right-of-way and property damage cost, paid from public funds, on any such project may be paid from Federal funds; and not more than 10 per centum of the sums apportioned to any State under the terms of that Act and subsequent Acts shall be used for such railway-highway projects. (See PPM 21–10 being prepared as of April 15.)

b. Projects which provide for the elimination of hazards of railway-highway crossings and that are to be financed as described in paragraph 12a are to be identified by the prefix "G". Projects which provide for the elimination of hazards of railway-highway crossings and that are not to be financed as described in paragraph 12a are not to be identified by the prefix "G". They are to be identified and programed in the normal manner prescribed herein for other than "G" projects.

c. The program submission documents for any project involving the elimination of hazards of railway-highway crossings shall include sufficient data to permit determination that there are or are not benefits to be received by a railway and whether or not there is to be financial liability on the part of the railway. These determinations shall be made in accordance with the provisions of General Administrative Memorandum No. 325 until such time as it is superseded by PPM 21–10.

d. If it is determined under the procedure in paragraph 12c that there is a financial liability on the part of the railway, its liability shall in the case of a "G" project be 10 percent of its total cost, or in the case of a regular Federal-aid project 10 percent of the cost of that portion of such project properly chargeable to the elimination of hazards of railway-highway crossings.

e. Contributions by railroads may be used in lieu of either State or Federal funds, provided that the Federal funds claimed may not exceed the total cost of the project less the amount contribtued by the railroad. For railway-highway improvements financed as regular highway projects involving participation of State and Federal funds, the railroad contribution shall be applied to the project in either of the following two ways: (1) by deduction from the total cost of the project and applying the authorized Federal pro rata to the remaining balance; or (2) by deduction from either the State's or the Federal Government's pro rata share of the total cost of the project.

13. STAGE CONSTRUCTION

Projects submitted for program approval may include any phase of a complete improvement such as preliminary engineering, right-of-way acquisition, adjustment of utilities, grading, drainage structures, bridge substructures, bridge superstructure, or paving. Such projects may be given program approval, and if any phase thereof is authorized and carried through to completion with Federal-aid reimbursement therefor, all subsequent further work on such projects shall conform to all Federal-aid procedures and requirements even if such work is financed without Federal-aid participation.

14. COPIES OF PROGRAM PAPERS TO BE SUBMITTED TO WASHINGTON

a. Forms PR–1 and written notice of program approval shall be submitted direct to the Washington office in duplicate at the time notice of program action is issued to the State. One copy shall have the name of the Public Roads approving official indicated thereon and shall be marked "For the Federal-aid Division, Office of Engineering." It shall be accompanied by one copy of all other papers and maps constituting the program submission by the State. The second copy of Form PR–1 and approval notice shall be marked "For the Program Analysis Division, Office of Administration."

b. A single copy of written notices of authorization to proceed when issued separately from program approval notices with the name of the Public Roads approving official indicated thereon shall be mailed to the Washington office at the same time they are issued to the State, and marked—"For the Federal-aid Division, Office of Engineering."

c. For project revisions which involve only a change in the financing, without materially affecting the scope of the work previously approved, only one copy of the PR–9 or PR–37 approval document need be submitted to the Washington office. This copy shall have the name of the Public Roads approving official indicated thereon and shall be marked—"For the Program Analysis Division, Office of Administration.

d. For project revisions involving changes in length, location, or scope of work previously approved, and other changes, such as the withdrawal of a project from the program, the transfer of a project from one program stage to the other, changes in termini or character of work, the combination of two or more projects into a single project, or the splitting of a single project into two or more projects, duplicate copies of Form PR–9 or PR–37 covering such field approval actions shall be promptly submitted to the Washington office with the name of the Public Roads approving official indicated thereon. One copy shall be marked "For the Federal-aid Division, Office of Engineering," and the other copy "For the Program Analysis Division, Office of Administration."

e. Form PR–37 is to be submitted to the Washington office marked "For the Program Analysis Division, Office of Administration," reporting change in fiscal status resulting from the authorization to the State to proceed with preliminary engineering or right-of-way acquisition for which Federal funds are being obligated, whether issued in conjunction with the State 2 program approval notices or as subsequent actions. Form PR–37 relating to authorization to the State to proceed with preliminary engineering and right-of-way acquisition for any project in a State 1 program shall not be submitted until the work is subsequently approved in a State 2 program.

15. PARTICIPATING RATIOS

a. For regular highway projects financed with Federal-aid primary, secondary, urban, or 1952 Act interstate funds the legal ratio is not to exceed 50 percent; for 1954 Act Interstate funds the legal ratio is not to exceed 60 percent, and for 1956 Act Interstate funds the legal ratio is not to exceed 90 percent of the cost of preliminary engineering right-of-way and physical construction; subject in all cases to the sliding scale increase in public lands States.

b. For projects which provide for the elimination of hazards of railway-highway crossings, see paragraph 12.

c. Projects located entirely on nontaxable Indian lands (individual or tribal) within Indian reservations or on lands within national parks or monuments under the jurisdiction of the Department of the Interior are eligible for 100 percent Federal-aid financing. Where a project is located partly on lands referred to above and partly on other lands, that part located on such other lands is ineligible for 100 percent Federal-aid financing.

d. The sliding scale rates authorized in public land States will be set forth in Circular Memoranda and will apply as follows; except that such rates do not apply to "G" projects:

(1) For preliminary engineering and right-of-way, rates in effect at the time Federal funds for such work is programed in Stage 2.

(2) For physical construction and construction engineering, except for Secondary Road Plan projects, rates in effect at the time the division engineer approves the PS&E.

(3) For physical construction and construction engineering for Secondary Road Plan projects, rates in effect at the time the division engineer receives the agreement estimate.

(4) The rates initially determined shall be retained throughout the life of the project, except that at the final voucher stage the rates then in effect may be used if the State elects.

16. REVIEW OF INACTIVE PROGRAM ITEMS

Programs should be carefully reviewed periodically to the end that inactive projects of long standing, which will not be advanced to active status with reasonable promptness, will be withdrawn from the program.

B. D. TALLAMY,
Federal Highway Administrator.

Attachments*

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21–1(1)—JULY 17, 1959

FEDERAL-AID PROGRAMS

Policy and Procedure Memorandum 21–1, dated April 15, 1958, is amended as follows:

Paragraph 8b(1) is revised to read:

(1) A project number (including agreement number) shall be assigned to each project included in either Stage 1 or Stage 2 of a program, in addition to the item number. If a Stage 1 project is not advanced as an entity to Stage 2 the agreement number initially assigned to the Stage 1 project shall be retained for that portion of the original project remaining in Stage 1, and a new agreement number shall be assigned to each Stage 2 project derived from the original single Stage 1 item. When the last part of the work covered by the original Stage 1 item is advanced to Stage 2 the agreement number initially assigned to the State 1 item is to be used for that Stage 2 project.

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* [ED. NOTE: Example copies of Forms PR–1 (6–5–56) and PR–9 (6–4–57) are deleted.]

Paragraph 10c: Revise second sentence to read:

c. An improvement identified by a single project number (including agreement number), as defined in Paragarph 6 or 7 of this memorandum, cannot be included in both program stages at the same time.

Paragraph 11b is revised to read:

b. Program utilizing secondary funds in those States not operating under the 1954 Secondary Road Plan shall be accompanied by a statement from the State that the projects were selected in cooperation with appropriate local officials of the counties concerned and that such officials have concurred in the selection as required under Section 103(c), 105(b) and 106(b) of Title 23, U.S.C.—Highways. A similar statement is required as part of a State's approved standards and procedures under the 1954 Secondary Road Plan and is, therefore, not required with program submissions from those States operating under the Plan.

Paragraph 13 is revised to read:

Stage construction projects submitted for program approval may include any phase or stage of a complete improvement such as grading, drainage structures, bridge substructure, bridge superstructures or paving. Such projects may be given program approval and if any phase thereof is authorized and carried through to completion with Federal-aid reimbursement therefor, the State shall include in the letter of submission and the project agreement shall contain a clause by which the State agrees that all subsequent stages of construction necessary to provide the initially planned complete facility, within the limits of the Federal-aid project covering a previous stage of the improvement, will conform to at least the minimum values set by approved AASHO design standards applicable to the class of highway facility involved, even if such work is financed without Federal-aid participation.

The references in paragraphs 14 a, b and d to the "Federal-Aid Division" are revised to read "Systems, Programs and Operations Division."

ELLIS L. ARMSTRONG,
Commissioner of Public Roads.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21-1(2)—OCT. 12, 1959

FEDERAL-AID PROGRAMS

Policy and Procedure Memorandum 21-1, dated April 15, 1958, is further amended as follows:

Paragraph 4c(1) is revised to read:

(1) Projects submitted under the Plan and providing for preliminary engineering and/or right-of-way acquisition in either Stage 1 or Stage 2 may be given program approval and, if so approved, the State shall be authorized to proceed to take all actions necessary to advance the work to completion in accordance with its Secondary Road Plan approved by the Commissioner. Such authorization of a Stage 1 project shall be with the understanding that it does not constitute, or in any manner create, any obligation on the part of the Federal government to provide Federal funds for the undertaking, unless and until the project is advanced and approved in Stage 2 of the program.

Paragraph 11b (revised July 17, 1959, PPM 21-1(1)): Delete the words "and that such officials have concurred in the selection" from the first sentence.

ELLIS L. ARMSTRONG,
Commissioner of Public Roads.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21-1(3)—AUG. 12, 1960

FEDERAL-AID PROGRAM

NOTE: This amendment does not change any existing procedures. It is issued solely for the purpose of putting in permanent form the procedures already established by Circular Memorandum dated July 16, 1959.

Policy and Procedure Memorandum 21-1, dated April 15, 1958, is further amended as follows:

Paragraph 8b(4) is revised to read:

(4) *Termini.* The description of termini should clearly relate, within reasonable accuracy, the location of at least one end of the project to an identifiable point such as street names, county lines, municipal boundaries, intersecting highways or stream or railroad crossings, on available maps of the general area, with an indication of the direction of the project from that point. A brief statement of location limited to 45 digits including periods, commas, and spaces between words should be shown on the first line. Additional and complete data locating and delimiting the project should be shown on the second and subsequent lines.

Paragraph 8b(5) is amended by adding subparagraph (d) as follows:

(d) The work described under subparagraphs (a), (b), or (c) shall be summarized on the same line as "Character of proposed work." This summary shall be limited to 35 digits including punctuation and spaces between words. Detailed descriptive data should be shown on the second and subsequent lines.

ELLIS L. ARMSTRONG,
Commissioner of Public Roads.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21-1(5)—FEB. 2, 1962

Policy and Procedure Memorandum 21-1, dated April 15, 1958, is further amended as follows:

Paragraph 4a(1) is revised to read: (additional wording italicized)

(1) Projects for preliminary engineering or for acquisition of right-of-way or a combination thereof may be approved in Stage 1 provided sufficient justifying information is submitted. Written notice of approval of such projects shall be issued to the State, together with a statement of conditions, if any, controlling the advancement of the projects, or any phase thereof, to Stage 2. *The optional Form PR-48 properly completed may be used as the initial program approval document if preferred.* Written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, shall be issued to the State, together with conditions controlling the work which may be performed and the subsequent Federal-aid reimbursement. If the information submitted by the State permits, the written notice to the State should cover both program approval and authorization to proceed. If the program information submitted by the State is sufficient to permit program approval of the project, but not sufficient to permit authorization to proceed, the written notice for the latter action shall be withheld until the justifying information is presented. In all cases Federal reimbursement shall be limited to the Federal pro rata share of costs incurred after the date of authorization to proceed.

Paragrph 4b(1) is revised to read: (additional wording italicized)

(1) Projects for preliminary engineering, or acquisition of right-of-way, or construction, or any combination thereof, may be approved in Stage 2, provided sufficient justifying information is submitted and provided sufficient Federal-aid funds are available. Written notice of approval of such projects, or any phase thereof, shall be issued to the State. *The optional Form PR-48 properly completed may be used as the initial program approval document if preferred.* Written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, shall be issued to the State, together with conditions controlling the work which may be performed and the subsequent Federal-aid reimbursement, when such written notice was not given under a Stage 1 program, and such written authorization shall constitute reservation and obligation of Federal funds. When such written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, was given in a Stage 1 program, written notice to the State of program approval in Stage 2 constitutes a reservation and obligation of available Federal funds. Written authorization for the State to advertise for bids or to proceed with force account construction shall be issued by the division engineer either when he advises the State of his approval of the PS&E for the project, or at such other time as required conditions are met, and such written authorization shall constitute obligation of Federal funds. Controls on locations on which preliminary engineering may be performed or right-of-way acquired, and combined written notices of approval and authorization to proceed, are to be as outlined under Stage 1 programs, paragraph 4a.

Paragraph 8a is revised to read:

a. Each project shall be reported on a separate Form PR-1, a reduced-sized copy of which is attached, and accompanied by the appropriate supporting data. If the project is to be financed with more than one class of Federal-aid funds, a separate Form PR-1 is to be prepared for each class.

Paragraph 9f is revised by adding the following sentence at the end of this paragraph: "Right-of-way projects programed under this partial financing exception, in the public interest, may also include preliminary engineering costs and any necessary advance utility adjustment work required by this protective acquisition of hardship parcels of right-of-way."

Paragraph 9h is revised to read: (additional wording underlined)

h. The State highway department shall submit each program to the division engineer of Public Roads with complete supporting data as outlined in paragraph 8d. The division engineer shall review each program and take final action in accordance with delegated authority on programs involving Federal-aid secondary funds. Programs involving interstate, primary, or urban funds, in those divisions which have not been redelegated full program approval authority, shall be forwarded to the regional engineer, accompanied by a report containing all of the information which may be necessary to support fully the division engineer's conclusions and recommendations concerning each project. The regional engineer will review each program and take appropriate action on the included projects, in accordance with his delegated authority as set forth in AM 1-10.2. Programs involving interstate, primary, or urban funds, in those divisions redelegated full program approval authority, shall be reviewed and approved, when appropriate, by the division engineer. Concurrent with his notice of such approval action to the State, the division engineer shall submit the prescribed copies of his program action letter, or *properly completed Form PR-48,* and all other program papers direct to the Washington office and to his regional office.

Paragraph 9i is revised to read: (additional wording underlined)

i. Program approval actions, either by a memorandum from the regional engineer to the division engineer, by a letter from the regional engineer to the State routed through the division engineer, by a letter from the division engineer to the State, *or by a properly completed Form PR-48,* shall be in conformity with paragraph 4 above. Programs or modifications thereof which involve a total of Federal funds exceeding the State's apportionment will not be approved.

Paragraph 11e is revised to read:

e. HPS projects will be programed in accordance with the provisions of PPM 50–1.1.

F. C. TURNER,
Assistant Federal Highway Administrator and Chief Engineer.

[ED. NOTE: Example copies of Forms PR–1 (Revised 7–61) and PR–48 (Revised 4–62) are deleted.]

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21–1(7)—OCT. 31, 1962

FEDERAL-AID PROGRAMS

1. Subsections 8(a) and 8(b) of the Federal-Aid Highway Act of 1962, approved October 23, 1962, provide as follows:

"8(a) The last sentence of subsection (c) of Section 103 of Title 23, United States Code, is amended to read as follows: 'This system may be located both in rural and urban areas, but any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area.'

"8(b) The amendment made by subsection (a) of this section shall apply to apportionments made before as well as after the date of enactment of this Act."

This amendment rescinds the former limitation that Federal participation in projects on the extensions of the Federal-aid secondary system into urban areas be only with funds authorized for use on extensions of Federal-aid primary and Federal-aid secondary systems within urban areas. Effective as of date of approval of the Act, there may be Federal participation in projects on the extensions of the Federal-aid secondary system into urban areas from any available balances of apportionments of Federal-aid secondary funds made before or after the date of approval of the Act as well as from any available balances of apportionments of Federal-aid urban funds made before or after the date of approval of the Act.

This amendment rescinds the former optional condition that in any State having a population density of more than two hundred per square mile as shown by the latest available Federal census, the system may include mileage in urban areas as well as in rural. The amendment establishes that the Federal-aid secondary system in any State regardless of its population density may be located both in rural and urban areas, and requires that any extension of the system into urban areas shall be subject to the condition that such extension pass through the urban area or connect with another Federal-aid system within the urban area.

A State highway department may at its option propose the transfer of projects on the Federal-aid secondary system in urban areas from the urban fund program to the secondary fund program for any such project for which the project agreement had not been executed prior to the date of approval of the Act. Actions on such proposed changes, if any, will be administered in accordance with provisions of PPM 21–1 as amended and AM 1–10.2 as amended, and will require supporting data under subparagraphs 8c and 8d(11) and a statement from the State under subparagraph 11b, all of PPM 21–1, to the satisfaction of Public Roads for each such project involved.

2. Paragraph 5a of PPM 21–1 dated April 15, 1958, is amended by the deletion of all prefix designations beginning with "S" and ending with "USG", and the replacement thereof by the following prefix designations:

S: Federal-aid secondary project on Federal-aid secondary system in rural area.

SG: Federal-aid secondary railway-highway project on Federal-aid secondary system in rural area.

SF: Highway project on Federal-aid primary system in rural area, not an Interstate improvement, financed with secondary funds (permissible only in States having control of all public roads).

SI: Highway project, Interstate System improvement in rural area, financed with secondary funds (permissible only in States having control of all public roads).

SFG Railway-highway project on Federal-aid primary system in rural area, financed with secondary funds (permissible only in States having control of all public roads).

SGI: Railway-highway project, Interstate System improvement in rural area, financed with secondary funds (permissible only in States having control of all public roads).

SU: Federal-aid secondary project on Federal-aid secondary system in urban area.

SUG: Federal-aid secondary railway-highway project on Federal-aid secondary system in urban area.

SUF: Highway project on Federal-aid primary system in urban area, not an Interstate improvement, financed with secondary funds (permissible only in States having control of all public roads).

SUI: Highway project, Interstate System improvement in urban area, financed with secondary funds (permissible only in States having control of all public roads).

SUFG: Railway-highway project on Federal aid primary system in urban area, financed with secondary funds (permissible only in States having control of all public roads).

SUGI: Railway-highway project, Interstate System improvement in urban area, financed with secondary funds (permissible only in States having control of all public roads).

U: Highway project on Federal-aid primary system in urban area, financed with urban funds.

UI: Highway project, Interstate System improvement in urban area, financed with urban funds.

UG: Railway-highway project on Federal-aid primary system in urban area, financed with urban funds.

UGI: Railway-highway project. Interstate System improvement in urban area, financed with urban funds.

US: Highway project on Federal-aid secondary system in urban area, financed with urban funds.

USG: Railway-highway project on Federal-aid secondary system in urban area, financed with urban funds.

3. Paragraph 15d(4) of PPM 21-1 issued April 15, 1958 is revised to read:

(4) The rates initially determined shall be retained throughout the life of the project, except (a) the State may elect to revise active projects by modification of agreements to utilize revised rates and (b) at the final voucher stage the State may elect to utilize the rate then in effect.

4. The pertinent portions of this PPM 21–1(7) will be incorporated in PPM 21–1 when it is republished.

REX M. WHITTON,
Federal Highway Administrator.

BUREAU OF PUBLIC ROADS, U.S. DEPARTMENT OF COMMERCE, POLICY AND PROCEDURE MEMORANDUM 21–1(8)—APR. 22, 1963

FEDERAL-AID PROGRAMS

Superseded issuances:

Policy and Procedure Memorandums 21–1 (4), dated November 22, 1961 and 21–1(6), dated February 9, 1962.

Policy and Procedure Memorandum 21–1, dated April 15, 1958, is further amended as follows (underlining denotes revised text):

Paragraph 4a(3) is revised to read as follows:

(3) A right-of-way project may be (a) for studies to determine the relative right-of-way costs and other factors pertinent to alternate construction locations, including incidentals connected with the acquisition of rights-of-way on a selected construction location, or (b) actually to acquire rights-of-way on a selected construction location, including incidentals connected therewith, or (c) for both. Right-of-way work as defined in (a) above may be authorized at the time of program approval in Stage 1. In cases where the right-of-way covers work of types (b) or (c), the authorization to proceed with the acquisition of right-of-way is not to be issued until the State has indicated on maps or by drawings or other records the proposed general location of the highway, together with the approximate areas or limits of the right-of-way to be acquired and they are found acceptable by Public Roads. In exceptional cases, but after program approval, the Bureau may authorize the State to acquire certain parcels prior to acceptance of the proposed general location for the entire project, when it is found that the certain parcels are within the limits of the conceived proper location, and it is agreed such action is necessary to protect the public interest. Also, right-of-way acquisition or any phase thereof such as title searching, appraisals, etc., may be programed in stage 1 and authorizations to proceed with the work may be issued on an entire route, route-section or project basis, subject to the above provisions.

Paragraph 4b(1) is revised to read as follows:

(1) Projects for preliminary engineering, or acquisition of right-of-way, or construction, or any combination thereof, may be approved in Stage 2, provided sufficient justifying information is submitted and provided sufficient Federal-aid funds are available. Written notice of approval of such projects, or any phase thereof, shall be issued to the State. The optional form PR–48 properly completed may be used as the initial program approved document if preferred. Written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both shall be issued to the State, together with conditions controlling the work which may be performed and the subsequent Federal-aid reimbursement, when such written notice was not given under a Stage 1 program, and such written authorization shall constitute reservation and obligation of Federal funds.

When such written notice of authorization to proceed with preliminary engineering or acquisition of right-of-way, or both, was given in a Stage 1 program, written notice to the State of program approval in Stage 2 constitutes a reservation and obligation of available Federal funds. With respect to acquisition of rights-of-way, or any phase there of, Stage 2 program approval shall be on a project or route-section basis, as distinguished from the entire route basis permitted for Stage 1 program items. Projects may be programed in Stage 2 covering all or any part of the right-of-way work between the project termini, with the understanding that the projects may be modified at any time to include additional work. Any work not included in a project when the agreement is executed may be programed subsequently as a separate project instead of by modification of the project agreement if desired. Written authorization for the State to advertise for bids or to proceed with force account construction shall be issued by the division engineer either when he advises the State of his approval of the PS&E for the project, or at such other time as required conditions are met, and such written authorization shall constitute obligation of Federal funds. Controls on locations on which preliminary engineering may be performed or right-of-way acquired, and combined written notices of approval and authorization to proceed, are to be as outlined under Stage 1 programs, paragraph 4a.

Paragraph 9f is revised to read as follows:

f. Federal funds cannot participate in any actual construction work started or contracted for by a State prior to the apportionment of such funds to the State unless such work is programed under the provisions of section 108(h) of the 1956 Act or under Section 5 of the 1950 Act. Except in special or unusual cases no phase of a project shall be

included in Stage 2 of a program unless Federal funds are requested and available for full Federal participation in the cost of that particular phase of the project or for a reasonably substantial participation which the State agrees to accept as a firm commitment, other than as provided in paragraph 4b(1) with respect to acquisition of rights-of-way. So-called token financing with Federal funds will not be approved. Right-of-way projects programed under this partial financing exception, in the public interest, may also include preliminary engineering costs and any necessary advance utility adjustment work required by this protective acquisition of hardship parcels of right-of-way.

F. C. TURNER,
Assistant Federal Highway Administrator and Chief Engineer.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 21-1(9)—JUNE 13, 1967

FEDERAL-AID PROGRAMS

The effective date of this amendment is July 1, 1967.

Policy and Procedure Memorandum 21-1 dated April 15, 1958, is further amended to include a new paragraph 4a(6), to read as follows:

(6) Any Stage 1 Project for preliminary engineering or right-of-way acquisition work for which the State intends to claim reimbursement for the Federal share of the cost shall be advanced from Stage 1 to Stage 2 program status on or before the date the first construction project is authorized for the section of road on which the Stage 1 PE or ROW project is located, provided, that under special circumstances and based on a justification submitted by the State and approved by the division engineer, the advancement of the PE or ROW work from Stage 1 to Stage 2 program status may be deferred until, but not later than, the date that the sections of highway involved are open to traffic. In any case where there are Stage 1 PE or ROW projects involved on sections of road already open to traffic as of the effective date of this amendment, the advancement of the Stage 1 projects to Stage 2 shall be accomplished at the earliest practicable date not later than January 1, 1968. If any State determines that it cannot fully comply with this date without serious restriction on its construction program, it may submit a request through the Division Engineer to the Director of Public Roads for an exception. Any such request shall be supported with complete details including a schedule showing the exact date on which each such Stage 1 project will be advanced to Stage 2.

F. C. TURNER,
Director of Public Roads.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 21-3—Nov. 20, 1968

PRELIMINARY ENGINEERING

1. PURPOSE AND APPLICATION

The purpose of this memorandum is to prescribe the policy of the Bureau of Public Roads with respect to the preliminary engineering phases of Federal-aid highway projects, except for Federal-aid secondary projects in those States operating under the 1954 Secondary Road Plan. The provisions of the memorandum shall apply to preliminary engineering for all projects proposed for construction with Federal-aid funds (except for the Federal-aid secondary projects excluded above) regardless of whether or not there is to be Federal participation in the financing of the preliminary engineering work.

2. DEFINITION

a. Preliminary engineering is any engineering activity executed preparatory to the letting of a contract for construction or the undertaking of construction by force account. The activities listed in the following tabulation (not necessarily complete) individually or in combination are classified as preliminary engineering when related to a specific proposed improvement:

Economic and feasibility investigations.
Surveys.
Mapping.
Route studies to determine desirable location from among several alternates.
Subsurface investigations including borings and soil profiles.
Preparation of preliminary plans and estimates, as a basis for final construction plans.
Right-of-way studies when not authorized as a part of the right-of-way phase.
Preparation of construction plans, specifications, and estimates.

b. Engineering reports prepared in connection with any of the above items are not considered a separate activity.

3. PROGRAMING

Preliminary engineering projects may be programed separately, or preliminary engineering may be programed in a project with right-of-way or construction or both. When preliminary engineering is to be following by construction without an intervening appreciable period of time, the programing of preliminary engineering as a separate project generally is not warranted. On complex projects where preliminary engineering will take considerable time, or where there is to be delay in following preliminary engineering with construction, preliminary engineering projects may be programed in either Stage 1 or 2 separately from the construction and either separately from or along with the right-of-way phase, with the understanding that construction will be undertaken within a reasonable time, generally not more than five years.

4. COORDINATION BETWEEN WASHINGTON REGIONAL DIVISION OFFICES AND OTHERS

a. All interests concerned—Federal, State, and local government agencies and public utilities and carriers—should be coordinated and the project should be the result of joint planning and understanding at appropriate stages.

b. Preliminary engineering is a direct responsibility of the State highway departments but as circumstances warrant the work may be done by city, county, or other engineering offices acting for and under the general supervision of the State highway department, or by consulting engineering firms retained for particular projects.

c. Both regional and division offices should be familiar with the State's planning and make early and careful reviews of each phase of preliminary engineering for proposed projects.

d. Before commencing preparation of plans, specifications and estimates, agreement shall be reached on essential features such as approximate location, type of highway, number of traffic lanes, degree of access control, approximate width of right-of-way, and type and approximate location of bridges.

e. The regional engineer may require that studies or advance plans resulting from any phase of preliminary engineering work prior to the preparation of construction plans, specifications and estimates be furnished for review in the regional office before division office approval is given the State.

f. For projects including unusual, movable or major bridges, and projects including tunnels, the Division Engineer shall obtain and submit to the Washington office through the Regional office preliminary plans with supporting data, including the layouts of approaches, for review and approval. For this purpose an unusual bridge is defined as one involving:

(1) Difficult or unusual foundation problems;

(2) Unusual or new designs, either structural or operational or both, or;

(3) One for which the standards and criteria might be questioned.

A major bridge is one estimated to cost $1,000,000 or more. However, if the bridge has no unusual features and only because of its length or width exceeds the $1,000,000 cost figure, the Regional Administrator may at his discretion approve the preliminary plans and is to furnish informational copies to the Washington office. In cases where the space between the travelways of dual bridges is not bridged, the dual bridges shall for this purpose be considered two bridges, and the estimated cost for each bridge shall govern. Where desired, preliminary plans for bridges or other structures not included in the above definition may be submitted to the Washington office for review and comments. Furthermore when the division office becomes aware that a major bridge is proposed to be constructed under the 1954 Secondary Road Plan, the State shall be advised that the Washington office will provide preliminary review service if requested.

g. The regional engineer should forward to the Washington office preliminary highway studies and advance plans of the types indicated in paragraph 4e (other than those required above for major structures) with special design problems such as new, unusual or controversial design features, also at intervals he should forward similar advance plans for typical case designs of higher type facilities for review as to general policy features, interpretation and application of standards and guides and national uniformity.

h. On projects deemed by the regional engineer of sufficient importance, he should arrange at an appropriate time for Washington office personnel to go over the ground, discuss the route and general concepts of design with representatives of Public Roads, the State, and local agencies connected with the improvement, and join in conferences toward agreement on details.

i. In an investigation and location of a route, including studies under consultant engineering contracts, and subsequent development of project plans, there should be a clear understanding of the steps or phases to be undertaken and of the phases that are to be approved before advancing to the next phase. In a typical case, a reconnaissance study should be made of several alternates. Then, after selection of two or more of the alternates by the State highway department, a further preliminary study should be made of these locations in sufficient detail so that the feasibility of plan and profile is readily evident. At this stage the route should not be tied down by calculations nor should the right-of-way descriptions be computed. There should be, however, for each alternate, an estimate of construction costs as developed by engineering study, of the right-of-way costs (made or approved by the State's right-of-way division whenever practicable), and where applicable economic analyses including road user and other benefits and effects on local traffic and local economy. The desirable and undesirable features of all alternates should then be listed and compared and a recommendation made of one of the alternates. The next step would be the preparation of preliminary plans on the approved location which would tie down the line, profile, cross sections, structures, and right-of-way. After approval of these plans there follows the last step, preparation of construction plans. The division engineer shall ar-

range to review these basic data and design conclusions at each significant step or phase, offer comments and suggestions as the circumstances warrant and upon resolution of design problems indicate agreement or approval of the design to that stage.

5. PRELIMINARY ENGINEERING REPORTS

Frequently, as part of preliminary engineering it is necessary or desirable to prepare reports of findings or recommendations. In such cases, these reports are an essential part of a completed preliminary plan and the State should submit copies when plans are forwarded for approval if they had not been submitted earlier. These reports are to be prepared by the State highway departments either with their own personnel or in conjunction with consultant engineers. If a State highway department has not developed outlines as guides in preparing these reports, it may obtain such guides from Public Roads.

6. PROGRESS REPORTS

The division engineer should prepare narrative reports for information of the regional and Washington offices whenever he deems it desirable, particularly during the early planning and location phases of preliminary engineering. These reports may be informal. They are particularly valuable where controversy has arisen or is anticipated. In many cases the desired information can be provided by forwarding a copy of a memorandum report from a division or staff engineer covering visits, conferences, or items noted on field trips.

7. USE OF ONE AND ONE-HALF PERCENT FUNDS

a. One and one-half percent funds provided under Section 307(c), Title 23 USC may be used for systematic and long-range planning and programing. These funds may not be used for work which is clearly preliminary engineering. It is difficult to establish precise criteria which can be uniformly applied in marginal cases to differentiate route location studies which are legitimately within the area of planning from preliminary engineering. General guidelines are offered with the expectation that application will be in accordance with the circumstances in each case.

(1) In general, subject to clarification and limitation in subsequent paragraphs, one and one-half percent funds may be used for route location studies to a degree of refinement no greater than that required for step 3 designation in the 104(b)(5) Interstate System cost estimate study; namely, a definite location based on preliminary studies adequate for presentation at a public hearing.

(2) One and one-half percent funds are frequently used for development of comprehensive transportation plans in urban areas. It is the intent of the Bureau of Public Roads to encourage by all possible means preparation of such plans. It is expected that general route location studies which are a part of these plans will be made in sufficient detail to permit estimates of costs of right-of-way and of construction adequate for capital fund budgeting. In some cases this will of necessity involve elements which in other situations, such as for the specific improvement of a route or route segment, would be classed as preliminary engineering.

(3) Studies for a single route in an urban area often involve improvement or reconstruction on an existing location with some acquisition of right-of-way to permit minor adjustments in alinement. These studies are not considered eligible for Federal participation with one and one-half percent funds. In order to qualify for one and one-half percent financing, location studies for a single route in an urban area should involve alternates which differ to a major degree. A simple example of an eligible study is one involving alternate locations on opposite sides of the central business district. One which may require some judgment in extending approval as being eligible for participation in one and one-half percent fund financing is the study of alternates passing on one side or the other of a neighborhood, large shopping center, or school district. In general, a more restrictive attitude is to be taken toward single route studies than toward comprehensive transportation plans, since it will usually be possible to program a preliminary engineering project for the former.

(4) Usually the decisions which govern the selection of the line in rural areas are limited to solution of typical engineering problems, and a preliminary engineering project is feasible. One and one-half percent funds may be used for studies involving alternates which differ in traffic service or economic impact to a degree that analysis of these factors is of major importance in arriving at a decision.

(5) The following activities are illustrative of those which may be conducted with participation in one and one-half percent funds in connection with eligible route studies:

(a) economic and feasibility investigations;

(b) aerial photography or mapping, to a scale commensurate with the objectives of the study, when adequate maps are not available;

(c) assembly and analysis of traffic data; and

(d) exploratory studies of right-of-way or subsurface conditions necessary for producing program cost estimates.

b. When both highway planning studies financed with one and one-half percent funds and preliminary engineering work are included in consultant or other service contracts, the activities chargeable to each shall be identified.

REX M. WHITTON,
Federal Highway Administrator.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 21-7—APRIL 21, 1971

PROJECT AGREEMENTS

Par.
1. Purpose
2. Form PR-2
3. Preparation of Agreement
4. Agreement Regarding Liquidated Damages
5. Modification of Agreement
6. Use of Forms for Other Work
7. Project Record

1. PURPOSE

To prescribe the form and procedures for the preparation and execution of project agreements for Federal-aid projects.

2. FORM PR-2

a. Form PR-2, Federal-aid Project Agreement, (Attachment 1) is to be prepared by the division office and used for agreements between Federal Highway Administration and the State highway departments for all Federal-aid projects, including bond issue projects and interstate projects for construction in advance of apportionment, pursuant to Sections 122 and 115, respectively, of Title 23, USC. The division engineer may, upon request, furnish such information as will enable the State to prepare and execute the project agreement at the time the State is in a position to place a project under agreement. The agreement may then be forwarded for review and execution by the division engineer.

b. Form PR-2 is designed (1) to cover the various types of projects and kinds of work to be undertaken, (2) to indicate the effective date governing reimbursement of the Federal share of eligible items of cost, (3) to show the total amount of Federal funds obligated and under agreement for the project, and (4) to set forth any special provisions relating to the project.

c. All information normally required to be typed or filled in on the form can be placed on the first page. All signatures will also appear on that page. The other pages contain various special provisions that apply to individual projects depending upon the project identification. The applicable special provision becomes automatically incorporated in the agreement by means of such project identification. Space is provided for listing other agreements or provisions that apply.

d. Form PR-2.1 is to be prepared by the Washington office and used for agreements between Federal Highways Administration and the State highway departments for all projects in each annual National Cooperative Highway Research Program.

3. PREPARATON OF AGREEMENT

a. The division office will insert the "Monthly Transaction" and "Project Report" numbers in accordance with current instructions.

b. No entry is to be made in the space indicated for the name of the county for highway planning and research projects (HP&R).

c. Information furnished in the section "Project termini" is to identify the location of the project by termini, such as "three miles east of Excell to four miles west of Clark," and by U.S. or State route number or indication that it is on a county or local road, as the case may be. Engineering stations should not be used. For highway planning and research projects, this space should be used to describe the class of work, such as "Regular planning survey," "Highway needs study," "Physical research project," or others, when separate project agreements for such work are executed.

d. The project classification or class of work is to be indicated by inserting in the appropriate space the date subsequent to which items of cost incurred are eligible for Federal participation. The term "Highway planning" is intended to cover highway planning and research projects financed with 23 USC 307(c) funds. In the space designated "Other" there should be included, and identified, any special projects that do not come under any of the enumerated classes.

e. Where the length of the project is to be given, its overall length to the nearest tenth of a mile is sufficient.

f. The amount of Federal funds entered should be the total obligated to all phases of the project. Any portion of a project being retained in "programmed only" status shall not be included in a project agreement. For construction work the estimated cost of the project and amount of Federal funds should generally be based on contract prices or force account estimates as approved by the division engineer. In the case of bond issue projects under 23 USC 122, and projects on the Interstate System constructed in advance of apportionments pursuant to 23 USC 115, the estimated amount of Federal funds that may be obligated subsequently should be entered in the space provided for the Federal fund amount.

g. The agreement required by 23 USC 129 when Federal funds are to participate in the cost of constructing a toll facility or approach thereto, will be referenced under "Additional Provisions."

h. If any additional or amended provisions should be set forth in an attachment to Form PR-2 and reference made thereto under "Additional Provisions."

i. Separate project agreements should be prepared and executed for each successive improvement or independent class of work that is not to be performed reasonably contemporaneously with other work, between the same terminal, financed with Federal funds.

j. In the case of highway planning and research projects, the project agreement (PR–2) may be executed when the State has been authorized to proceed with the work program in whole or in part. However, in the event the project agreement is executed for only part of the work program, the project agreement shall be amended at such time as the State is authorized to proceed with the remaining part.

k. Agreements between a State and a Federal agency, whereby the Federal agency undertakes the construction of a Federal-aid project and requires a deposit or payment to that Federal agency in accordance with 23 USC 132, will be referenced under "Additional Provisions."

l. Two copies of the agreement are to be forwarded by the division engineer to the State highway department for signature and return, except when the agreement is initially prepared and executed by the States. When executed by the division engineer the ribbon copy is to be retained in the project folder by the division engineer and the other executed copy transmitted to the State. Conformed copies are to be transmitted directly to the Washington office and, if required, to the regional office.

4. AGREEMENT REGARDING LIQUIDATED DAMAGES

a. Definitions: For the purposes of this memorandum the following terms shall be considered to have the following meanings.

(1) Contract Time: The number of workdays or calendar days allowed for completion of the contract, including authorized time extensions.

(2) "Calendar Day" and "Work Day" shall have the meanings set forth in the applicable State specifications but if the terms are not defined therein they shall have the following meanings:

(a) Calendar Day: Every day shown on the calendar.

(b) Workday: A calendar day, exclusive of Saturdays, Sundays and State recognized legal holidays, on which weather and other conditions not under the control of the Contractor will permit construction operations to proceed for the major part of the day with the normal working force engaged in performing the controlling item or items of work which would be in progress at that time.

(3) Liquidated Damages: The charges assessed against the contractor to cover additional costs incurred by the State because of failure of the contractor to complete the contract within the contract time. Assessment of liquidated damages will be by means of deductions at a specified rate per day for each day of overrun in contract time from payments otherwise due the contractor for performance in accordance with the contract terms.

b. Basis of participation.

(1) Where construction engineering is claimed as a participating item on the basis of actual expenses incurred, the State's total construction engineering costs for the total contract construction work eligible for Federal reimbursement shall be reduced, rather than the State's pro rata share thereof, by the appropriate amounts in the schedule of deduction set forth below for each calendar day or workday as the case may be, of overrun in contract time. Furthermore, the total contract construction amount eligible for Federal participation is to be reduced by the amount liquidated damages exceed construction engineering costs.

(2) Where the State is being reimbursed for construction engineering on the basis of an approved percentage of the participating construction cost or where construction engineering is not claimed as a participating item, the total contract construction amount that would be eligible for Federal participation without considering liquidated damages assessed against the contractor, shall be reduced by the appropriate amount in the schedule of deductions set forth below for each calendar day or workday as the case may be, of overrun in contract time.

SCHEDULE OF DEDUCTIONS FOR EACH DAY OF OVERRUN IN CONTRACT TIME

Original contract amount (or the engineer's estimate of the total construction cost		Daily charge	
From more than	To and including	Calendar day	Work day
$0	$25,000	$30	$42
$25,000	50,000	50	70
$50,000	100,000	75	105
$100,000	500,000	100	140
$500,000	1,000,000	150	210
$1,000,000	2,000,000	200	280
$2,000,000		300	420

c. Exception: When the applicable State specifications or contract provisions prescribe a schedule of liquidated damages in lesser or greater amounts than prescribed in the above schedule, the following exceptions to the rule stated in paragraph 4b are applicable:

(1) The lesser amount prescribed in the state schedule for the size of contract involved may be used instead of the corresponding amount prescribed in the schedule listed in paragraph 4b, provided the state demonstrates to the satisfaction of the FHWA division engineer that such lesser amount is adequate to cover average daily costs for construction engineering on contracts in that particular range of contract amount. The adequacy of the lesser amount prescribed in the State schedule is to be supported by facts to be presented by the State of the average daily construction engineering costs on Federal-aid highway contracts of similar scope of work and of the applicable range of contract amount.

(2) The greater amount prescribed in the state schedule for the size of contract involved shall be used instead of the corresponding amount prescribed in the schedule listed in paragraph 4b, in order that the contract construction costs in which there may be Federal-aid participation will not be in excess of the amount actually paid by the State to the contractor for the work performed under the contract.

5. MODIFICATION OF AGREEMENT

a. Form PR–2A, Modification of Federal-aid Project Agreement (Attachment 2) is to be used for any modification of the project agreement. Ordinarily, such modification will be needed only to increase the amount of Federal funds to cover approved changes. This form can also be used, as may be desired, to cover any changed conditions not otherwise handled by approved change orders, which should be explained in the space "Other revisions."

b. Any modification of the agreement at the final voucher stage to provide additional Federal funds only to cover normal overruns, or to increase the amount of Federal funds pursuant to approved change and extra work orders, will not require a revised agreement estimate in support of the modification as the final voucher will be sufficient for that purpose.

6. USE OF FORMS FOR OTHER WORK

When federally financed or assisted highway work outside the regular Federal-aid program, such as defense access projects, but excluding Forest highway projects, is handled by the State highway department under current Federal-aid procedures. Forms PR–2 and PR–2A may be used. In such cases an appropriate reference should be included under "Additional Provisions."

7. PROJECT RECORD

The project agreement and any modifications thereof will form a part of the project status records.

F. C. TURNER,
Federal Highway Administrator.

Attachments*

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 21–12—AUG. 26, 1965

CONSTRUCTION AUTHORIZATION

1. PURPOSE

To prescribe the policies and procedures under which a State highway department may be authorized to advance a Federal-aid highway project to the construction stage.

2. APPLICABILITY

The provisions of this memorandum are applicable to all Federal-aid highway construction projects, except those under the 1954 Secondary Road Plan and those to be constructed under direct Bureau of Public Roads supervision in Alaska.

3. CONSTRUCTION PHASES

For the purposes of this memorandum, the construction of a project is considered to consist of the following phases which may be authorized to proceed either independently of each other or in combination:

a. Right-of-way clearance phase—which means the removal, adjustment or demolition of buildings and other major obstructions within the right-of-way limits when performed separately from the contract for the physical construction of the project. This phase does not include (1) the acquisition of right-of-way; (2) the removal of trees and brush or any other work that is included in the contract for the physical construction of the project; nor (3) any right-of-way clearance work that, under the terms of the right-of-way acquisition agreement, is the obligation of the property owner from whom the right-of-way was acquired.

b. Utility phase—which means the removal, relocation or adjustment of publicly or privately owned utilities as necessary to accommodate the highway, except that it does not include any work that is to be performed at the expense of the utility company.

c. Railroad phase—which means the removal, relocation, or adjustment of railroad facilities as necessary to accommodate the highway. It is limited to work that is incidental and a necessary preliminary to the physical construction phase and does not include the building of grade separation structures nor the installation of protective devices under separate major contracts.

d. Physical construction phase—which means the actual construction of the highway itself with its appurtenant facilities. It includes any right-of-way clearance or utility and railroad work that is a part of the contract for the physical construction phase instead of a separate phase as described under paragraphs 3a, 3b, and 3c.

4. COORDINATION OF PHASES

The right-of-way clearance, utility, and railroad phases are to be coordinated with the physical construction phase that no unnecessary delay or cost to this last phase will occur. To accomplish this objective it will in general be desirable and in some cases necessary for all or part of each of these three former phases to be performed in ad-

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*[ED. NOTE: Example copies of Form PR–2 (Revised 2–71) (Federal-Aid Project Agreement) and PR–2A (Revised 10–68) are deleted.]

vance of beginning the physical construction phase. This may necessitate issuing the authorization to proceed with right-of-way clearance, utility and/or railroad phases separately from and well in advance of authorizing the physical construction phase to proceed.

5. MEANS OF PERFORMING WORK

a. The work involved in the right-of-way clearance phase should be performed in whichever of the following ways or combinations thereof is in the public interest:

(1) By purchasers of the buildings or structures, provided the purchase is made from the highway agency rather than from the property owner.

(2) By State or other public forces.

(3) Under a contract let by the highway agency.

b. The work involved in the utility and railroad phases will ordinarily be performed by forces of the utility company and railroad company, respectively, or under a contract let by such company. Occasionally, however, it may be in the public interest for the highway agency to perform with its own forces or to let a contract for the performance of items of work such as, clearing, grading, trench digging, pipe laying, and construction of drainage structures or of utility tunnels and manholes.

6. AUTHORIZATIONS FOR RIGHT-OF-WAY CLEARANCE, UTILITY AND RAILROAD PHASES

As soon as the highway location and design, and the acquisition of rights-of-way, have advanced sufficiently so that the buildings and structures to be removed, adjusted, or demolished and the utility and railroad facilities to be removed, relocated, or adjusted are definitely established, decision should be made as to how the work involved is to be done. Appropriate arrangements should then be made to see that to the maximum extent practicable and economical, the work is completed before the physical construction phase is ordered to proceed, and any such work to be performed during the physical construction stage is properly coordinated therewith. The division engineer, after approval of the necessity for the proposed work, after review of the eligibility of the proposed work for Federal participation, and after approval of the plans, specifications, cost estimates and performance arrangements, therefore, should immediately issue authorization to proceed with that part of the work without waiting for the physical construction phase to be ready to proceed. Authorizations should be issued separately or in combination, as may be appropriate, for each of the various phases of the work in which there is to be participation.

7. AUTHORIZATION FOR PHYSICAL CONSTRUCTION

Authorization to advertise the physical construction for bids or to proceed with force account construction thereof should normally be issued as soon as, but not until, all of the following conditions have been met:

a. The P.S.&E. therefor have been approved.

b. A statement is received from the State, either separately or combined with the information required by paragraph 7c below, that either all right-of-way clearance, utility and railroad work has been completed or that all necessary arrangements have been made for it to be undertaken and completed as required for proper coordination with the physical construction schedules. Where it is determined that the completion of such work in advance of the highway construction is not feasible or practical due to economy, special operational problems and the like, there shall be appropriate notification provided in the bid proposals identifying the right-of-way clearance, utility, and railroad work which is to be underway concurrently with the highway construction.

c. A statement is received from the State certifying that either:

(1) All necessary rights-of-way, including control of access rights when pertinent, have been acquired including legal and physical possession. Trial or appeal of cases may be pending in court but legal possession has been obtained. There may be some improvements remaining on the right-of-way but all occupants have vacated the lands and improvements and the State has physical possession and the right to remove, salvage or demolish these improvements and enter on all land.

(2) Although all necessary rights-of-way have not been fully acquired, the right to occupy and use all rights-of-way required for the proper execution of the project has been acquired. In addition to pending trial or appeal of pending cases for some parcels full legal possession has not been obtained but right of entry has been obtained, the occupants of all lands and improvements have vacated and the State has physical possession and right to remove salvage or demolish these improvements and enter on all land.

(3) Although practically all necessary rights-of-way or right of occupancy and use have been acquired, a few parcels remain for which such rights have not been acquired, but that negotiations or court actions to acquire such rights and possession for the remaining parcels are in progress and it is fully expected that full physical possession and vacation of these parcels will be obtained including right to remove, salvage or demolish improvements and enter and use all land by the time the construction contract is otherwise ready for award or the force account construction is ready to proceed.

(4) That the circumstances with respect to acquisition of a few parcels warrant proceeding with advertisement for bids or with force account construction on the basis it will be in the public interest to do so in advance of completion of the acquisition of the rights of the said few parcels.

(5) Certification under (3) or (4) above may be resorted to only in very unusual circumstances. This exception should never be allowed to become the rule. When certification (3) or (4) is used, full explanation and reasons therefor must be given including identification of right-of-way parcels where right to physically occupy and use is not obtained. Estimated date for each parcel must be given when physical occupancy and use will be obtained and substantiation that such date is realistic.

d. The certificate and copy of the transcript of public hearings as required by Section 128, Title 23 USC (formerly Section 116(c) of the Federal-Aid Highway Act of 1956) has been received from the State.

e. An affirmative finding of public interest has been made as required by Section 112(b), Title 23 USC (formerly Section 17(a) of the Federal-Aid Highway Act of 1954) in case construction by some method other than contract based on competitive bidding is contemplated.

f. In the case of projects in which Interstate funds authorized by the Federal-Aid Highway Act of 1956 are to participate, the authorization to advertise for bids shall not be issued unless a schedule of minimum wage rates determined by the Department of Labor in accordance with the provisions of Section 113, Title 23 USC (formerly Section 115 of the Federal-Aid Highway Act of 1956) are in effect and will not expire before the end of the period within which it can reasonably be expected that the contract will be awarded.

g. A statement that the steps relative to relocation advisory assistance as outlined in paragraph 9 of PPM 21-4.4 have been taken, or that they are not required.

8. FORM OF AUTHORIZATION

The authorizations to proceed may be by letter to the State highway department or by endorsement on the State's request for such authorization. When appropriate the authorization may be included in the document approving the P.S. & E. The regional and Washington offices are each to be furnished a copy of the authorization.

REX M. WHITTON,
Federal Highway Administrator.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, POLICY AND PROCEDURE MEMORANDUM 80-2—APRIL 17, 1967

Right-of-Way Procedures (Program Authorization; Engineering Coordination; Right-of-Way Plans; Titles and Closings)

Par.

1. Programming and Authorization
2. Plans
3. Project Agreements
4. Inspection
5. Title, Deeds and Closings

1. PROGRAMING AND AUTHORIZATION

a. Right-of-way shall be programed in accordance with PPM 21-1(1) and amendments thereto and may be programed separately or in conjunction with some other phase of the work. In the event right-of-way is added to another phase of work previously programed, only those right-of-way costs incurred subsequent to authorization to proceed therewith will be eligible for Federal participation. At the program stage the State shall furnish Public Roads the best possible estimate of the cost of rights-of-way to be acquired. Such estimate shall be made or approved by the right-of-way division of the State highway department and shall constitute a basis for the approval of the program.

b. Either at the time of program approval or subsequently, Public Roads shall issue a letter of authorization to the State to proceed with (1) studies to determine the relative right-of-way costs and other factors pertinent to alternate construction locations including incidentals connected with the acquisition of rights-of-way on a selected construction location, or (2) to actually acquire rights-of-way on a selected construction location including incidentals connected therewith, or (3) for both. In cases (2) or (3) the authorization to proceed with the acquisition of right-of-way is not to be issued until the State has complied with the public hearing requirements and has indicated on maps, or drawings, the proposed general location of the highway, together with the approximate areas or limits of the right-of-way to be acquired, and the estimated cost thereof, and they are found acceptable by Public Roads. In exceptional cases, but after program approval, Public Roads may authorize the State to acquire certain parcels prior to acceptance of the proposed general location for the entire project, when it is found that the certain parcels are within the limits of the conceived proper location, and it is agreed such action is necessary to protect the public interest. The cost of right-of-way actually incorporated into the final location will be eligible for Federal participation.

2. PLANS

Prior to authorization to acquire partial takings, the State shall submit for formal approval by the division engineer a right-of-way plan meeting the requirements of paragraph 4h of PPM 40-3.1. The right-of-way plan shall carry the Federal-aid project number.

3. PROJECT AGREEMENTS

a. The estimate of the cost of right-of-way required by paragraph 1a may be accepted for use in the project agreement. Such agreements may be entered into at any time after the division engineer has accepted the proposed general location of the project and the approximate right-of-way limits therefor, and has authorized the State to incur right-of-way costs.

b. Project agreements covering the acquisition of rights-of-way shall contain a clause providing for the refund of any payments

made by the Federal Government in the event that actual construction of a road on such rights-of-way is not undertaken by the close of the seventh fiscal year following the fiscal year in which the agreement is executed. Where a State, before expiration of the 7-year period, has awarded a contract for construction of a section of highway, upon a reasonable portion of the right-of-way covered by the Right-of-Way Project Agreement, and has proceeded with sufficient actual work to give visual evidence thereof at the construction site, which is in contemplation of and evidences the State's good faith, intention and plan to proceed without delay in an orderly manner to complete construction of the highway upon the entire length of right-of-way covered by the Right-of-Way Project Agreement, such action will be considered as complying with the statutory requirements.

4. INSPECTIONS

a. Right-of-way representatives of the State and Public Roads shall make field inspections on a continuing basis of a representative number of complex Interstate, Primary and Urban highway projects at preliminary and final stages of location to assure consideration of significant right-of-way elements involved in the location and design of the projects and to document the project records relative to such right-of-way elements. Desirably such inspections will be made in company with the location and design engineers of the State and Public Roads. Reports covering the results of such inspections shall be included in the project files of Public Roads.

b. The selection of projects on which right-of-way representatives are to make inspections and reviews is left to the judgment of the States and Public Roads division offices. It is advisable that right-of-way representatives and State counsel make inspections and reviews in company with the location and design engineers on those projects involving either change in location of the highway and costly or complex acquisitions of rights-of-way, or changes in the design on a location that is to be retained and which involve costly or complex acquisitions of abutting lands or interests therein. Division engineers shall evaluate all proposed projects, and especially those that involve right-of-way acquisitions including takings of improvements, and determine with their staffs those projects that will not require inspection and review by Public Roads right-of-way representatives. Division engineers are to request the State highway department to make a similar evaluation, and to coordinate reviews by State and Public Roads right-of-way representatives and engineers on those projects mutually selected as warranting such a review. A record shall be made and retained in the files of each division office of those projects for which a determination is made that Public Roads right-of-way representatives need not make inspection and review.

5. TITLE, DEEDS AND CLOSINGS

a. A State highway department may employ outside individuals and firms for abstract or title services, and closing and escrow services if it is not staffed to perform such services. The necessity for the procurement of these services must be indicated in the organization, policy and procedures submitted to Public Roads under paragraph 4a(20) and (21) of PPM 80-1.

b. Where possible all title transfer instruments should be recorded in the land records of the appropriate jurisdiction. If not recordable they should be retained as a part of the State's permanent records.

c. The State highway department shall maintain in its parcel file a closing statement itemizing all charges deducted from the purchase price, dated and certified as true and correct by the closing attorney or other person handling the closing transaction. A copy of the closing statement shall be furnished the property owner, who shall be requested to acknowledge receipt of the amount shown on the statement as due him.

F. C. TURNER,
Director of Public Roads.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, POLICY AND PROCEDURE MEMORANDUM 90-1—AUG. 24, 1971

Guidelines For Implementing Section 102 (2) (C) Of The National Environmental Policy Act of 1969, Section 1653(f) of 49 U.S.C., Section 470f of 16 U.S.C., And Section 309 of The Clean Air Act of 1970.

1. PURPOSE

To provide guidelines to highway departments and Federal Highway Administration (FHWA) field offices to assure that the human environment is carefully considered and national environmental goals are met when developing federally financed highway improvements.

2. AUTHORITY

a. Section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190) states that all agencies of the Federal Government shall:

"include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible officials on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by Section 552 of Title 5, United States Code, and shall accompany the proposal through the existing agency review processes."

b. *Section 1653(f) of 49 U.S.C.,*[1] *Section 138 of 23 U.S.C., and Section 4(f) of the Department of Transportation Act* (all of which are hereafter referred to as "Section 4(f)") permits the Secretary of Transportation to approve a program or project which requires the use of publicly owned land from a park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or land from an historic site of national, State, or local significance as so determined by such officials (hereafter "Section 4(f) land") only if:

(1) there is no feasible and prudent alternative to the use of such land, and

(2) such program includes all possible planning to minimize harm to the Section 4(f) land resulting from such use.

c. Section 470f of 16 U.S.C.[2] provides that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.

d. Section 309 of the Clean Air Act of 1970 (Public Law 91-604), as amended, provides:

"(a) The Administrator (Environmental Protection Agency) shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any . . . (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190 applies. . . . Such written comment shall be made public at the conclusion of any such review."

3. DEFINITIONS (AS USED IN THIS MEMORANDUM)

a. Highway Section—a substantial length of highway between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study. (See paragraph 6).

b. Agency Decision—FHWA approval of the location of a highway improvement. (Subsequent approval of the design; right-of-way acquisition; the plans, specifications, and estimates (PS&E) or authorization to construct a project within the highway section is not, for the purposes of this memorandum, an additional agency decision.)

(1) A determination to prepare and process a supplemental environmental statement would be the basis for a new agency decision for either a highway location or design. (See paragraph 6p).

(2) In accordance with the Secondary Road Plan as permitted by Section 117 of Title 23 U.S.C., the approvals of the location, design, right-of-way acquisition and construction (PS&E) have been delegated to

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[1] Section 1653(f) of 49 U.S.C. is identical to Sections 138 of 23 U.S.C. and 4(f) of the Department of Transportation Act as amended in Section 18 of the "Federal-Aid Highway Act of 1969."

[2] This requirement is also found in Section 106 of the National Historic Preservation Act of 1966.

the appropriate State highway department for highway improvements on the Federal-Aid Secondary System.

c. Environmental Statement—a written statement containing an assessment of the anticipated significant beneficial and detrimental effects which the agency decision may have upon the quality of the human environment for the purposes of:

(1) assuring that careful attention is given to environmental matters,

(2) providing a vehicle for implementing all applicable environmental requirements, and

(3) to insure that the environmental impact is taken into account in the agency decision.

d. Negative Declaration—a written document in support of a determination that, should the proposed highway section improvement be constructed, the anticipated effects upon the human environment will not be significant.

e. Highway Agency (HA)—the agency with the primary responsibility for initiating and carrying forward the planning, design, and construction of the highway. For highway sections financed with Federal-aid highway funds, the HA will normally be the appropriate State highway department. For highway sections financed with other funds, such as Forest highways, Park roads, etc., the HA will be the appropriate Federal or State highway agency.

f. Human Environment—the aggregate of all external conditions and influences (aesthetic, ecological, biological, cultural, social, economic, historical, etc.) that affect the life of a human.

4. POLICY

It is a national policy that all Federal agencies promote efforts for improving the relationship between man and his environment and to make special effort for preserving the natural beauty of the countryside and public park and recreational lands, wildlife and waterfowl refuges, and historic sites. It is also national policy that Federal agencies consult with other appropriate Federal, State, and local agencies; assess in detail the potential environmental impact in order that adverse effects are avoided and environmental quality is restored or enhanced, to the fullest extent practicable, and utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking which may have an impact on man's environment. The environmental assessments include the broad range of both beneficial and detrimental effects.

5. APPLICATION

a. An environmental statement or combined environmental/Section 4(f) statement or negative declaration, whichever is appropriate, shall be prepared and processed in accordance with this memorandum for each highway section proposed for construction with funds administered by the Federal Highway Administration, including in appropriate cases any section financed from funds transferred to the Federal Highway Administration from other agencies, which receives or received design approval (see paragraph 5e) on or after February 1, 1971.

b. An environmental statement or combined environmental/Section 4(f) statement, whichever is appropriate, shall be prepared and processed in accordance with this memorandum for each highway section which received design approval on or after January 1, 1970, and before February 1, 1971, and which constitutes a major action significantly affecting the environment (see Appendix F, paragraphs 2 and 3) if, in the judgment of the FHWA division engineer, implementation of the National Environmental Policy Act to the fullest extent possible requires preparation and processing of an environmental statement. In making his judgment the FHWA division engineer should consider, in addition to the written reassessment prepared by the HA (see paragraph 5c) for each such highway section, the status of the design; right-of-way acquisition including demolition of improvements within the right-of-way; number of families already rehoused and those yet to be rehoused; construction scheduling; benefits to accrue from the proposed highway improvement; significant impacts; and measures to minimize any adverse impacts of the highway.

c. Highway sections which received design approval on or after January 1, 1970, and before February 1, 1971, that are classed as a major action are to be reassessed by the HA in consultation with the FHWA division engineer or his representative. The written reassessment should consider if the highway reassessment should consider if the highway plans were developed in such a manner as to minimize adverse environmental consequences.

d. A highway section involving an historic site included in the National Register of Historic Places shall be coordinated with the State Liaison Officer for Historic Preservation and representatives of the Office of Archeology and Preservation of the National Park Service, Department of the Interior, as set forth in Appendix A. The provisions of Section 470f, 16 U.S.C., should be satisfied before submitting the final environment/Section 4(f) statement to the FHWA (see paragraph 2c).

e. Design approval may be regarded as having been obtained prior to February 1, 1971, if any one of the following conditions is satisfied.

(1) Prior to the issuance of revised PPM 20–8 dated January 14, 1969, procedures of the FHWA (then the Bureau of Public Roads) did not require a HA to receive a formally documented FHWA design approval before undertaking right-of-way acquisition and/or preparation of the plans, specifications and estimate (PS&E). Therefore, design approval was that action or series of actions by which the FHWA indicated to the HA that the essential elements of the highway as set out in paragraph 10 of PPM 20–8 were satisfactory or acceptable for preparation of the PS&E. Such actions may have consisted of review and comments upon preliminary plans, schematic drawings, design studies, layouts or reports or unconditional approval to acquire all the right-of-way for a project. The HA shall identify those projects (both Federal-aid and non-Federal-aid) in the above category which it anticipates Federal-aid funds will be requested for a subsequent stage and furnish the FHWA division engineer for his concurrence a letter similar to Appendix B of this memorandum citing the document(s) or action(s) which it believes are equivalent to design approval. The FHWA division engineer's concurrence in the HA's determination will serve as verification that the previous actions or approvals were in effect design approval.

(2) Written approval by the FHWA of the design submitted in accordance with paragraph 10 of PPM 20–8 dated January 14, 1969.

(3) Similar type evidence that an official of the State highway department approved the design prior to February 1, 1971, for projects administered under an approved Secondary Road Plan. Such evidence need not be submitted to the FHWA division engineer for concurrence but shall be available in the State highway department's files.

f. A single environmental statement, or negative declaration, is applicable to jointly planned undertakings between the FHWA and other Federal agencies. The lead agency will be responsible for the appropriate document (i.e. the HA for a proposed highway section that also requires a U.S. Coast Guard action for bridge clearance over navigable water). Highway section proposals submitted for an FHWA approval shall include a copy of the statement prepared and processed by another Federal agency or reference to such a statement previously furnished to FHWA. A highway section in this category will generally be of the nature where there is no actual transfer of funds to the FHWA and the FHWA acts only in the capacity of a review agency or consultant advisor to the other Federal agency.

g. An environmental statement shall not be required in connection with any highway section that is urgently needed because of a national emergency, a disaster, a catastrophic failure, or similar great urgency. The HA may request and the FHWA may exempt such urgently needed highway sections from the environmental statement requirement after consultation with the Office of the Secretary of Transportation and the Council on Environmental Quality.

6. PROCEDURES (SEE APPENDIXES C AND D FOR A FLOW CHART)

The highway section included in an environmental statement should be as long as practicable to permit consideration of environmental matters on a broad scope. Piecemealing proposed highway improvements in separate environmental statements should be avoided. If possible, the highway section should be of substantial length that would normally be included in a multi-year highway improvement program.

a. A proposal to develop or improve a highway section should be coordinated in the early stages with appropriate local, State, and Federal agencies (paragraph 5a of PPM 20–8 and paragraph 4 of IM 50–1–70). Initiation of coordination at the beginning of the location study will assist in identifying natural and cultural areas of significance, agency and public concerns and help in determining the need for and preparation of an environmental statement. Existing coordination mechanisms, such as above cited (public hearings, Office of Management and Budget Circular No. A–95 reviews) and other established procedures for coordination should be used to the greatest extent practicable. The information obtained through coordination and the highway studies (technical, engineering, social, economic, and environmental, as appropriate) should also be used in evaluating the potential environmental impact (both beneficial and detrimental) of the highway section proposal.

(1) The environmental statement and/or Section 4(f) statement may be a part of the study report for the highway location, if desired; however, if included in the study report, the statements are to be consolidated in one place in the report and in a form that can be reproduced separate from the report.

b. Draft environmental statements, when required (see paragraph 5), including Section 4(f) information, shall be prepared by the HA (see Appendix E for contents and format) and circulated for comment during the location study. The environmental statement should be prepared utilizing a systematic, interdisciplinary, approach which will assure that environmental impacts are described in detail. A representative of the FHWA division office shall indicate that the draft statement has been cleared for circulation and comment by signing and dating the draft statement. An environmental statement is required only for those sections which the HA and division engineer determine that construction and operation of the highway section will have a significant impact upon the environment. Appendix F lists guidelines to assist in determining significant impacts associated with the construction and operation of a highway. In addition, the HA may wish to consult other local, State, and Federal agencies with specific impact expertise when determining the significance of an impact.

c. The draft environmental statement, including necessary Section 4(f) information when required, is to be circulated by the HA to the appropriate agencies (see Appendix G) for comment, and made available to the public not later than the first required notice of location public hearing (30 to 40 days before date of hearing) or notice of opportunity for a public hearing as set out in PPM 20-8 (see Appendix H). The comments as received from other agencies are to be made available at either the FHWA Division or HA office for public review and copying. If the highway section qualified for exemption from public hearings procedures (PPM 20-8) and a public hearing is not afforded a draft environmental statement if required (including necessary Section 4(f) information) is to be prepared and circulated for comment, and made available to the public as early as practicable. The HA shall request a determination of significance from the Section 4(f) lands agency and include the letter requesting such determination and the determination, if received, as exhibits to the draft statement. An additional location or design public hearing will not be required for the sole purpose of presenting and receiving comments on the draft environmental statement for those projects which were processed in accordance with procedures in affect at the time.

d. The HA shall furnish 17 copies of each draft environmental statement to the FHWA division engineer who shall distribute 16 copies to the following recipients:

FHWA Regional Office, 1.

FHWA (to the Office of Environmental Policy, EV-1), 2.

DOT's Office of Environment and Urban Systems (TEU), 3.

Council on Environmental Quality (CEQ), 10.

(722 Jackson Place, NW., Washington, D.C. 20006).

NOTE: The HA is to make distribution to all other required local, State, and Federal agencies (see Appendix G).

e. The HA shall announce the availability of and briefly explain the draft environmental statement or negative declaration in its presentation at the location public hearing (or at the highway design hearing when a draft statement is prepared and circulated in conjunction with design studies).

f. The HA may establish a date not less than 30 days from the date of transmittal, plus a normal time for mail to reach and be returned from the recipient, for return of the comments, except 45 days plus mailing time shall be allowed for the Environmental Protection Agency (EPA) to comment. The FHWA should include a similar time period (30 days plus mailing) for return of comments from FHWA Office of Environmental Policy (EV-1), DOT's Office of Environment and Urban Systems (TEU), and the Council on Environmental Quality (CEQ). If an agency does not respond by the indicated date, the HA may assume the agency had no comments. The HA should endeavor to grant requests for a time extension of up to 15 days for return of comments unless a 45 day review period, plus mailing time, was originally established.

g. Draft environmental statements shall be available for review by the public at the HA headquarters; the State, regional, and metropolitan clearinghouses; the FHWA division, regional, and headquarters offices; and at the appropriate public hearings. The HA and FHWA may charge non-governmental individuals and organizations for copies of environmental statements in accordance with established fee schedules.

(1) The public and private organizations may also order copies of draft and final environmental statements from the National Technical Information Service, U.S. Department of Commerce (See Appendix I).

h. Similar procedures apply to highway sections which have received location approval but did not have design approval before February 1, 1971. In such instances the environmental statement, combination environmental/Section 4(f) statement or negative declaration shall be prepared and processed during the design studies. The final environmental statement or negative declaration for such highway sections shall be furnished to FHWA before or with the request for design approval. If the design public hearing was held prior to the issuance of this memorandum, an additional design public hearing will not be required for the sole purpose of presenting and receiving comments on the draft statement. All other requirements for circulation for comment and availability to the public will apply.

i. The HA shall prepare a final environmental statement or combined environmental/Section 4(f) statement for each project for which it prepared and circulated a draft environmental statement following the format in Appendix E. The final statement shall include a copy of all comments received and reflect the HA's consideration and disposition of the environmental comments at the public hearing and comments received on the draft statement.

j. FHWA review and acceptance of the final environmental statement shall be the responsibility of the Regional Federal Highway Administrator. The Regional Federal Highway Administrator shall indicate his acceptance by signature thereon, and forward 15 signed copies of the final statement as follows:

FHWA (to the Office of Environmental Policy, EV-1), 15.

A copy of a signed statement may also be returned to the originating office. The HA and FHWA may, upon request of an individual or organization, make a copy of the statement as signed by the Regional Federal Highway Administrator available, but such document should be marked "NOT Official—Subject to Approval by U.S. Department of Transportation."

k. FHWA's Office of Environmental Policy shall be responsible for:

(1) submitting the necessary copies of the final statement to TEU for concurrence,

(2) informing the Regional Federal Highway Administrator of such concurrence (at which time the final statement may be considered to be an officially approved U.S. DOT statement), and

(3) informing the Regional Federal Highway Administrator when CEQ is furnished copies of the final statement.

l. The Regional Federal Highway Administrator shall be responsible for:

(1) assuring that a copy of the final statement as sent to CEQ is furnished (by the HA when appropriate) for public inspection at the HA headquarters; the appropriate State, regional, and metropolitan clearinghouses; and the FHWA division and regional offices following TEU's approval or assumed concurrence, and

(2) assuring that the following time limitations have expired prior to FHWA's approval of the location (or design if the location was previously approved).

(a) Ninety (90) days have expired since the draft environmental statement was circulated for comment sent to CEQ (postmarked), and made available to the public as described in 6g.

(b) Thirty (30) days have expired since the final environmental statement was made available to both CEQ and the public. This time period may run concurrently with the ninety (90) day period.

m. Negative declarations shall be prepared by the HA when the anticipated impact of construction and operation of a highway section is determined to be not significant (not of major importance). Appendix F outlines several types of highway section improvements which may warrant a negative declaration; however, each highway section should be evaluated to determine whether its impact is significant. The time of preparation outlined previously for environmental statements also apply to negative declarations. Their purpose is to include in the written record evidence that the highway section was evaluated and a determination made that it would have no significant effect upon the quality of human environment. They should be based on the information developed during the highway study and coordination with local, State, and Federal agencies.

n. A negative declaration need not be circulated for comment, but its availability should be included in the notice of the public hearing or opportunity for public hearing. The FHWA division engineer shall concur in the negative declaration before he approves the location or design, whichever is appropriate.

o. The HA and FHWA may, based upon comments at the public hearing, rescind a negative declaration and prepare and process an environmental statement if in their judgment significant impacts have been identified which were not previously considered. It would not be necessary in such instances to hold additional public hearings for the purpose of presenting the draft environmental statement.

p. The HA shall include reference to the previous environmental statement, negative declaration, or design approval exemption, if applicable, when requesting design approval, authorization for right-of-way acquisition, approval of PS&E, and construction authorization.

(1) A new environmental statement, or a supplemental statement will be necessary for a highway section when the proposal being processed introduces a new or changed environmental effect of significance to the quality of environment. The FHWA may also request an environmental statement for a highway section which received design approval before February 1, 1971, when in its judgment changes in the highway subsequent to the reassessment (see paragraph 5c) introduce significantly different impacts on the environment.

(2) A supplemental statement is to be processed in the same manner as a new environmental statement. Where the need for a supplemental statement results from the use of Section 4(f) land only, a Section 4(f) statement may be prepared in lieu of a supplemental environmental statement and coordinated with the Departments of the Interior and Housing and Urban Development by the HA. The coordinated Section 4(f) statement, with comments and suggestions and the HA disposition of same, shall be furnished to the FHWA for appropriate processing.

q. In accordance with the Secondary Road Plan, as permitted by Section 117 of Title 23, U.S.C., State highway departments operating under an approved Secondary Road Plan have the responsibility for reviewing and approving the location and design of Federal-aid secondary improvements. However, the FHWA division engineer is to concur in negative declarations, where applicable. Environmental statements are to be prepared and processed in accordance with the provisions of this memorandum.

F. C. TURNER,
Federal Highway Administrator.

PROCEDURES FOR HISTORIC PRESERVATION

1. The provisions of 16 U.S.C. 470(f) require that all proposed highway sections that are federally assisted be developed with consideration to effected districts, sites, buildings, structures, or objects that are included in the National Register for Historic Preservation. This authority derives from Section 106 of the National Historic Preservation Act. Procedures for compliance have been implemented by the Advisory Council on

Historic Preservation, and the National Park Service, Department of the Interior, as follows:

a. At the earliest stage of planning or consideration of any undertakings carried out, licensed, or financially assisted by the Federal Government, an agency should follow these steps:

(1) Consult the National Register of Historic Places to determine if a National Register property is involved in the undertaking. The National Register is maintained by the Office of Archeology and Historic Preservation, National Park Service, and monthly addenda are published in the Federal Register.

(2) Apply the "Criteria for Effect." If there is no effect, the undertaking may proceed.

(a) Criteria for Effect

1 A federally financed or licensed undertaking shall be considered to have an effect on a National Register listing (districts, sites, buildings, structures, and objects, including their settings) when any condition of the undertaking creates a change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register criteria for listing in the National Register.

2 Generally, adverse effect occurs under conditions which include but are not limited to:

a Destruction or alteration of all or part of a property;

b Isolation from or alteration of its surrounding environment;

c Introduction of visual, audible, or atmospheric elements that are out of character with the property and its setting (i.e. introduction of a new highway or a higher type functional highway, such as a freeway for an arterial, into the environment of a historic site).

(3) If there is an effect, regional, or State officials of the agency [1] in consultation with the State Liaison Officer and a representative of the Office of Archeology and Historic Preservation shall:

(a) Determine if the effect is adverse—if not, the undertaking may proceed;

(b) Upon finding an adverse effect, select and agree upon a prudent and feasible alternative to remove the adverse effect, in which case the undertaking may proceed;

(c) Failing to find and agree upon an alternative, recommended all possible planning to minimize the adverse effect and delay further processing of the undertaking pending the receipt of comments from the Advisory Council.

(4) Provide written notice affording the Advisory Council an opportunity to comment upon doubtful or unresolved situations of adverse effect and upon request submit a report of the undertaking.

2. The procedures call for applying the "Criteria for Effect" to determine whether a proposed highway section will have an effect on an historic place. This determination of effect should be made by the HA in consultation with the division engineer and the State Liaison Office.[2] The State Liaison Officer should act as liaison between the HA and the Office of Archeology and Preservation of the National Park Service when this is necessary. If there is documented agreement that a project will not have an effect on the National Register Historic Site, no further review is required under the National Historic Preservation Act. However, if the highway section uses land from a historic site, a Section 4(f) review will be required.

[1] When the agency has no regional or State officials, the Office of Archeology and Historic Preservation will perform this service.

[2] State Liaison Officers are appointed by the Governors to be responsible for State activities under the National Historic Preservation Act.

3. If there is a finding of adverse effect, the proposed highway section is to be processed in accordance with these procedures and the Office of Environmental Policy should be notified and kept informed of further developments. If it becomes necessary to provide a written notice affording the Advisory Council on Historic Preservation an opportunity to comment in doubtful or unresolved situations of adverse effect, the Office of Environmental Policy will act as the coordinating element for the Federal Highway Administration.

[Ed. Note: Appendices B–D are omitted.]

Environmental Statements—Contents and Format

1. Environmental statements and combination environmental/Section 4(f) statements (draft and final) shall have a title page similar to the examples attached to this Appendix.

2. The following sections, as a minimum, are to be covered in environmental statements:

a. A description of the proposed highway improvement and its surroundings. The description should include the following type information: type of facility; length; termini; basic traffic data, including trips for the design year and anticipated new trips generated two years after completion of the highway section; right-of-way (including existing ROW); lengths on existing and new location; major design features such as number of lanes, access control, location of bridges and interchanges, etc.; a general description of the surrounding terrain, existing land use and proposed land use (a map preferable), and other existing environmental features; existing highway facilities including their deficiencies; the need for the proposal; the benefits to the State, region, and community; an estimate of when the proposal will be constructed; and the current status of the proposal with a brief historical resume. Inventory of economic factors such as employment, taxes, property values, etc., should be included as appropriate. The description should also include any involvement with Section 4(f) land (Paragraph 3 of this Appendix). A vicinity map(s) shall be furnished which will show the proposed highway section and its relationship to surrounding natural and cultural features such as towns, lakes, streams, mountains, historic sites, landmarks, institutions, developed areas, principal roads and highways and similar features that are pertinent to a highway study. Detailed maps, sketches, pictures, and other visual exhibits should be used to show specific environmental involvements as necessary. Maps and layouts of the proposed highway/Section 4(f) land involvement should be sufficiently detailed to give a layman reviewer a reasonable understanding of the highway impact and proposed measures to minimize harm.

b. The probable impact of the proposed development or improvement. The evaluation and discussion should specifically emphasize significant beneficial and detrimental environmental consequences upon the State or region or community, as appropriate, of building a new highway into or through an area, or modernizing the existing highway by upgrading and/or relocation.

(1) This section, for instance, would discuss and evaluate the broad impacts on the area or region such as the problems relating to anticipated increase in urbanization or the probable impact of displacing people (if these are significant elements of the highway proposal). Efforts to minimize impact should also be discussed in broad items. For example, measures necessary to insure proper rehousing should be discussed rather than evaluating specific number of people displaced by different alternatives and other differences of the alternatives. The significant environmental impacts of alternative locations and, as appropriate, designs, include a "do nothing" alternative is a proper subject for discussion under "Alternatives" paragraph 2d of this Appendix.

(2) Impacts upon the narrow band (i.e., about 1000 feet) adjacent to the highway may be included when significant to the whole of the region or community. However, the discussions under this section should address the probable significant impacts of the highway proposal (as opposed to individual alternative locations or designs) which might include the probable impact upon such elements, factors, and features listed in paragraph 3 of Appendix F.

c. Any probable adverse environmental effects which cannot be avoided should the proposal be implemented such as water or air pollution, effect upon Section 4(f) land, damage to life systems, urban congestion, threats to health or other consequences adverse to the environment identified under paragraph 2b of this Appendix. Adverse effects should include those which cannot be reduced in severity and those which can be reduced (but not eliminated) to an acceptable level unless the reduction is a result of a different location in which case it should be included in the discussion of alternatives (paragraph 2d of this Appendix).

d. Alternatives: The locations and/or designs studied in detail by the HA are to be described (narratively and with maps and other visual aids, as necessary) and the probable beneficial and/or adverse effects of each alternate (including a do-nothing alternative) identified to the extent practicable consistent with the scale of the proposed highway improvement and significance of the impact. The exploration of alternatives should include an objective evaluation and analysis of estimated costs (social and transportation), engineering factors, transportation requirements, and environmental consequences. The description of alternatives will include information, as appropriate, similar to that suggested in Section A of this Appendix. The discussion of environmental impacts will include more detailed impacts for each alternative than the broad environmental consequences for the corridor identified in paragraphs 2b and 2c of this Appendix. The draft environmental statement should indicate that all alternatives are under consideration and that a specific alternative will be selected by the HA following the public hearing. The final environmental statement will be prepared for the selected alternative. Unless the final statement is included in the location study report (design report when prepared and circulated during design study), the final statement should include a brief discussion of the data supporting the selected alternative. This section should also include a discussion of alternatives to the use of Section 4(f) lands.

e. The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity. The short-term uses should be evaluated (construction, changes in traffic patterns, the taking of natural features such as trees, etc., and man-made features such as homes, churches, etc.) as compared to the long-term effects (foreseen changes in land use resulting from the highway improvement or other similarly related items that may either limit or expand land use, affect water, air, wildlife, etc., and other environmental factors).

f. Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Highways require use of natural resources such as forest or agricultural land, however, these are generally not in sufficient quantity to be significant. The improved access and transportation afforded by a highway may generate other related actions that could reach major proportion and

which would be difficult to rescind. An example would be a highway improvement which provides access to a nonaccessible area, acting as a catalyst for industrial, commercial, or residential development of the area.

g. Where unavoidable adverse environmental effects are encountered, planning and measures taken and proposed to minimize harm should be identified. These include procedural and standard measures which are required by standard specifications or standard operating procedures such as erosion control, stream pollution prevention, borrow pit screening or rehabilitation, fencing, relocation of people and businesses, land acquisition procedures, joint development, etc. Measures unique to a specific project should be discussed in detail. Examples of such would be depressing an urban highway to minimize audio and visual effects, providing buffer zones for esthetic purposes, replacement of parklands, etc.

h. Final statements shall incorporate all comments received on the draft (including environmental comments contained in the public hearing transcript) along with a discussion of the comments and suggestions. The HA shall describe its disposition of the comments and suggestions (e.g., revisions to the proposed development or improvement to overcome anticipated problems or objections; reasons why specific comments and suggestions could not be accepted; factors of overriding importance prohibiting the incorporation of suggestions, etc.). This section may be added at the end of the review process in the final text of the environmental statement.

i. Measures to minimize harm to Section 4(f) lands should be included under a separate paragraph even though discussed elsewhere in the final statement.

j. Each copy of draft and final environmental statements should be accompanied by a summary sheet prescribed as attached to this Appendix.

3. The following information, when pertinent and available, should be included in the combination environmental/Section 4(f) statements. (See paragraphs 2a, 2c, 2d, and 2i of this Appendix.) To the extent practicable, this information should be included in the draft to initiate the necessary interagency review.

a. The description of the project (see paragraph 2a of this Appendix) shall include information about the Section 4(f) land in sufficient detail to permit those not acquainted with the project to have an understanding of the relationship the highway and park and the extent of the impact, such as:

(1) Size (acres or square feet) and location (maps or other exhibits such as photographs, slides, sketches, etc., as appropriate).

(2) Type (recreation, historic, etc.)

(3) Available activities (fishing, swimming, golf, etc.).

(4) Facilities existing and planned (description and location of ball diamonds, tennis courts, etc.).

(5) Usage (approximate number of users for each activity if such figures are available).

(6) Patronage (local, regional, and national).

(7) Relationship to other similarly used lands in the vicinity.

(8) Access (both pedestrian and vehicular).

(9) Ownership (city, county, State, etc.)

(10) If applicable, deed restrictions or reversionary clauses.

(11) The determination of significance by the Federal, State, or local officials having jurisdiction of the Section 4(f) land.

(12) Unusual characteristics of the Section 4(f) land (flooding problems, terrain conditions, or other features that either reduce or enhance the value of portions of the area).

(13) Consistency of location, type of activity, and use of the Section 4(f) land with community goals, objectives, and land use planning.

(14) If applicable, prior use of State or Federal funds for acquisition or development of the Section 4(f) land.

b. A description of the manner in which the highway will affect the Section 4(f) land (include within paragraph 2c of this Appendix) such as:

(1) The location and amount of land (acres or square feet) to be used by the highway.

(2) A detailed map or drawing of sufficient scale to discern the essential elements of the highway/Section 4(f) land involvement.

(3) The facilities affected.

(4) The probable increase or decrease in physical effects on the Section 4(f) land users (noise, fumes, etc.).

(5) The effect upon pedestrian and vehicular access to the Section 4(f) land.

c. A specific statement (with supporting reasons) that there is no feasible and prudent alternatives. (Include in discussion of alternative paragraph 2d of this Appendix.)

d. Information to demonstrate that all possible planning to minimize harm is or will be included in the highway proposal. (See paragraph 2i of this Appendix.) Such information should include:

(1) The agency responsible for furnishing the highway right-of-way.

(2) Provisions for compensating or replacing the Section 4(f) land and improvements thereon, including the status of any agreements. (Include agreed upon compensation, replacement acreages, and type land, etc., when known.)

(3) Highway design features developed to enhance the Section 4(f) land or to lessen or eliminate adverse effects (improving or restoring existing pedestrian or vehicular access, landscaping, esthetic treatment, etc.).

(4) Coordination of highway construction to permit orderly transition and continual usage of Section 4(f) land facilities (new facilities constructed and available for use prior to demolishing existing facilities, moving of facilities during off-season, etc.).

e. Evidence that the provisions of Section 470(f) of 16 U.S.C. (Section 106 of the Historic Preservation Act of 1966) have been satisfied when National Register Properties are involved.

EVALUATING HIGHWAY SECTION ENVIRONMENTAL EFFECTS

1. Draft and final environmental statements should be prepared and processed in accordance with the procedures required by this memorandum for all highway sections falling under one or more of the following three categories:

a. Highway sections where organized opposition has occurred or is anticipated to occur.

b. Highway sections significantly affecting historic or conservation lands (public or private) independent or whether they are Section 4(f) cases.

c. Highway sections which are classed as major actions and are also likely to significantly affect the quality of the human environment. This category requires a two-step analysis. First, it must be determined if the proposed highway section is a major action (paragraph 2 of this Appendix); secondly, the significance of the effects upon the human environment must be determined (paragraph 3 of this Appendix).

2. The following should be used to determine whether a proposal to construct or improve a highway section is a major action.

a. Highway sections entirely or generally on new location.

b. Major up-grading of an existing highway section resulting in a functional characteristic change (e.g., a local road becoming an arterial highway). Such changes usually result by adding lanes, interchanges, access control, medians, etc., and require extensive right-of-way acquisition and construction (grading, base, paving, bridges, etc.) which have the potential of significantly affecting the human environment.

3. Any of the following highway sections should ordinarily be considered as significantly affecting the quality of the human environment.

a. A highway section that is likely to have a significantly adverse impact on natural, ecological, cultural, or scenic resources of national, State or local significance.

b. A highway section that is likely to be highly controversial regarding relocation housing resources.

c. A highway section that divides or disrupts an established community or disrupts orderly, planned development or is inconsistent with plans or goals that have been adopted by the community in which the project is located or causes increased congestion.

d. A highway section which involves inconsistency with any national standard relating to the environment; has a significantly detrimental impact on air or water quality or on ambient noise levels for adjoining areas; involves a possibility of contamination of a public water supply system; or affects ground water, flooding, erosion or sedimentation.

The comments, suggestions and information obtained during the highway studies, including the coordination and evaluation required by paragraphs 5a and 4c of PPM 20-8 will in most instances supply the information necessary to make the determination required above.

4. Negative declarations shall be prepared for all highway sections which are not major actions and for highway sections, even though classed as major actions, where it is determined there is no significant effect upon the quality of human environment as a result of the study and early coordination. Highway improvements of the following types are not likely to have significant impacts upon the environment:

a. Signing, marking, signalization and railroad protective devices.

b. Acquisition of scenic easements.

c. Modernization of an existing highway by resurfacing; less than lane width widening; adding shoulders; auxiliary lanes for localized purposes (weaving, climbing, speed-changing, etc.)

d. Correcting substandard curves,

e. Reconstruction of existing stream crossings where stream channels are not affected.

f. Reconstruction of existing highway/highway or highway/railroad separations,

g. Reconstruction of existing intersections including channelization,

h. Reconstruction of existing roadbed (existing curb to curb for urban cross sections), including minor widening, shoulders and additional right-of-way,

i. Rural two-lane highways on new or existing location which are found to be generally and local, State, and Federal officials.

[ED. NOTE: Appendices G-I are omitted.]

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, INSTRUCTIONAL MEMORANDUM 20-1-69—APR. 8, 1969

Interim Criteria Promulgated Under Paragraph 10e, PPM 20-8,

Public Hearings and Location Approval, Relating to Right-of-Way Acquisition

Paragraph 10e of PPM 20-8, dated January 14, 1969, provides that the division engineer may authorize the acquisition of right-of-way before a design hearing under criteria

to be promulgated by the Federal Highway Administrator.

The criteria to be followed are as follows:

1. *Full Takings.* Approvals of full takes may be authorized by the division engineer subsequent to the holding of the corridor hearing and his approval of a final location. Such approval location should be positively fixed to the degree that there is assurance that the entire parcel will be required for the highway right-of-way and the takings are necessary to provide orderly and humane relocation of displacees under the provisions of Section 30, Title 23, U.S.C.

2. *Partial Takes.* Partial takings may not be made prior to the design hearing except under the conditions described in the following paragraph.

3. *Protective Buying.* Whole and partial takings may be made subsequent to the corridor hearing and approval of the location by the division engineer in those instances where it is demonstrated to the satisfaction of the division engineer that such action is necessary in the public interest to (a) forestall proposed commercial and residential development which would utilize the proposed highway right-of-way or adversely affect the highway design or (b) result in a substantial dollar savings in the cost of right-of-way acquisition over that which would have been incurred had the right-of-way been acquired at a later date.

4. *Hardship Cases.* Whole takes may be made following the corridor public hearing and the division engineer's approval of the highway location where it is demonstrated that the property owner would suffer undue hardship if acquisition were deferred until after the design public hearing.

F. C. TURNER,
Federal Highway Administrator.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, INSTRUCTIONAL MEMORANDUM 20-1-69(1)—MAY 27, 1969

Interim Criteria Promulgated under Paragraph 10e, PPM 20-8, Public Hearings and Location Approval, Relating to Utility Relocations

This supplements the provisions of IM 20-1-69 dated April 8, 1969, as follows:

The division engineer may authorize the relocation or adjustment of utility facilities before a design hearing under the following conditions:

(1) Where the utility facilities to be adjusted or relocated occupy, in part or in whole, any rights-of-way authorized pursuant to IM 20-1-69, dated April 8, 1969, and

(2) Any relocation or adjustment of facilities under the provisions of paragraph 3d of PPM 30-4 dated February 14, 1969.

F. C. TURNER,
Federal Highway Administrator.

FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, BUREAU OF PUBLIC ROADS, INSTRUCTIONAL MEMORANDUM 20-1-69(2)—JUNE 11, 1969

Interim Criteria Promulgated under Paragraph 10e, PPM 20-8, Public Hearings and Location Approval, Relating to Right-of-Way Acquisition

Numbered paragraphs 2 and 4 of IM 20-1-69 are revised to read as follows:

2. *Partial Takes.* Partial takings may not be made prior to the design hearing except under the conditions described in the following paragraphs.

4. *Hardship Cases.* Whole or partial takes may be made following the corridor public hearing and the division engineer's approval of the highway location where it is demonstrated that the property owner would suffer undue hardship if acquisition were deferred until after the design public hearing.

F. C. TURNER,
Federal Highway Administrator.

POSTAL SERVICE

HON. ELWOOD HILLIS

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HILLIS. Mr. Speaker, in 1968, the President's Commission on Postal Reorganization found that—

The postal system as presently organized (is not) capable of meeting the demands of our growing economy and our expanding population.

The Commission attributed a major share of the blame for the postal crisis to "decades of low priorities assigned to modernization and management needs" and to "years of lagging productivity."

I myself have long been concerned about the quality of mail service, and what the Postal Service intends to do to meet the challenges that it is faced with. This concern has heightened since my appointment to the House Committee on Post Office and Civil Service.

It was my duty on May 19 to inspect the Postal Service's prototype "electronic" post office at Cincinnati. It is in this facility that the Postal Service is striving to overcome the "decades of low priorities assigned to modernization" and to greatly increase productivity through a specially designed letter mail processing system.

The system is built around codes imprinted on letter mail envelopes. The codes are "read" by computers, much as bank computers "read" checks and credit them to the proper account.

Letters are successively sorted, stacked, faced, canceled, and "escorted" to the carrier's delivery case at the rate of 43,300 an hour—per machine.

The speed factor is vital, Mr. Speaker. The Postal Service is currently processing some 250 million pieces of mail a day, and the total is expected to exceed 300 million during this decade. So, obviously, the old-fashioned manual processing methods will no longer do.

Once the prototype at Cincinnati proves itself, the Postal Service will then mechanize some 200 of the largest post offices in the Nation. The cost of the nationwide program is estimated at $3.9 billion, but, I am told, the return on investment will approximate a billion dollars a year.

It should be noted also that the system will relieve individual employees of many repetitive and fatiguing tasks while opening up more rewarding positions in the Nation's post offices.

Let me point out that the United States trails many nations of the world in postal mechanization. For example, mail coding systems date back to the 1940's and are being used in Australia, Denmark, France, South Africa, Germany, England, Canada, and several other countries.

The U.S. Post Office began research on mail coding systems as early as 1956 and, by 1968, prototype models of code keyboards and code sorting machines had been developed. The facility at Cincinnati has been operational since September 1970.

I am delighted to report that a number of major mailers in Cincinnati are cooperating in this experimental program—some are even encoding their own mail as an accommodation to the Postal Service.

OPERATION DRUG ALERT PROGRAM

HON. NICK GALIFIANAKIS

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. GALIFIANAKIS. Mr. Speaker, today I want to recognize and commend Kiwanis International and the Kiwanis Clubs around the world for the exemplary service they provide to our States and Nation. I wish to draw special attention to this service organization's awareness of current problems as evidenced by their Operation Drug Alert program.

Kiwanis International has recognized the danger to our country, the damage to our citizens, and the waste, brutality, and sorrow wrought by the misuse of drugs throughout our society.

This is a massive problem the Kiwanians have chosen to confront. It involves both physical and mental dependency; it knows no economic, racial, or geographical boundaries, and it is symptomatic of a deeply rooted, badly misshapen approach to seeking pleasure or solving problems. Such things are not easily changed.

But Kiwanis International has, as always, faced up to the challenge of finding solutions to complex problems. This organization has taken a determined stand on the drug problem and has brought to bear the pragmatic idealism and expertise of its members. By tackling this problem they inspire others in their community and Nation to involve themselves.

In February 1969, the Kiwanis International Board of Trustees designated Operation Drug Alert, a program directed toward the prevention of drug abuse, as its major emphasis program for all Kiwanis Clubs in the United States during the 1969-70 year. This program was similarly designated as an emphasis program for the succeeding year—1970-71, and for the current year—1971-72.

The program's main objectives are:

To educate as many people as possible to the nature and consequences of the use, abuse, and misuse of drugs, especially concentrating upon the prerisk group of youth of elementary and junior high age;

To inhibit, reduce, or eliminate drug abuse within the community; and

To safeguard the community against further incidence.

This year's program places special emphasis on prevention and remedial action.

To assist local Kiwanis Clubs in working toward these objectives, Kiwanis International provides each club with a planning manual and other support materials, including booklets, recorded spot announcements, suggested newspaper releases, et cetera.

Reports from 4,709—88 percent—Ki-

wanis Clubs in the United States and Canada revealed that for 1 year alone, from October 1970 through September 1971, 2,056 of these clubs had played a substantial role in a communitywide program and an additional 913 had carried out projects independently. These clubs had distributed to youth more than 2 million copies of the two drug education booklets available from Kiwanis International and, in addition to that, distributed nearly 4 million copies of drug education materials available from other sources or produced by themselves.

These Kiwanis Clubs had sponsored a total of 12,678 public meetings or forums and 63,574 members had given at least 1 hour of their time to the program.

These clubs had either helped to initiate, assisted financially, or in some other way significantly supported: 685 drop-in centers, 764 hotlines, 164 methadone maintenance programs, 600 halfway houses, and 1,843 other counseling or rehabilitation programs.

These impressive figures do not even include the various other kinds of involvement of Kiwanis Clubs in the program, such as the purchase of books for libraries, billboards, bumper strips, and so forth. Nor do they reflect the substantial contribution made by the Kiwanis-sponsored youth organization, the Key Clubs, and Circle K Clubs, on more than 4,000 high school and college campuses, which had their own drug abuse prevention programs or cooperated with Kiwanis Clubs in theirs.

There are over 100 Kiwanis Clubs in my own home State and according to Dr. Cecil Cooper, district governor of the Carolinas district, and Mr. Carl Hyatt, Jr., secretary-treasurer for the district, 90 percent of the 100 clubs have been actively involved in Operation Drug Alert.

I wish I could site them all individually, but to give you an idea of what they have been doing, I want to mention just two here.

The Kiwanis Club of High Point, N.C., promoted the film "Way Out" which depicts the dangers of drug abuse. There were 3,000 copies of the Kiwanis Club booklet "Deciding About Drugs" and 15,000 copies of the article "But Mom—Everyone Smokes Pot," distributed to schools, shopping centers, and business firms. Under Kiwanis sponsorship, Scott Ross, former New York disc jockey and drug addict, spoke to over 12,000 people at public meetings in the community, and over 250,000 in the television viewing audience heard Mr. Ross on three special taped programs. The club actively participated in the formation of the High Point Drug Task Force, composed of representatives of local schools, churches, parent-teacher, civic, and professional groups.

In Goldsboro, N.C., Operation Drug Alert Day was officially proclaimed by the mayor, and the Kiwanis Club there conducted an intensive drug education program for the entire community. Three separate assemblies were held in local schools for students in grades 6 through 10, and a meeting for the general public was conducted in the evening. Each of the four sessions centered on the appearance of a former drug addict and pusher, backed up by a panel of experts; 3,000 copies of an educational booklet on drugs were distributed to those attending the sessions.

I am heartened and hopeful for our future when I see the energy and ideals of an outstanding organization such as Kiwanis International being put into action. It is through the resourcefulness, drive, and commitment of such organizations and private citizens that we are able to strengthen the present, and build our tomorrows on a sturdier foundation.

I think to get a clear picture of what Kiwanis International is really all about, one has only to look at a few of its stated objectives:

To cooperate in creating and maintaining that sound public opinion and high idealism, which make possible the increase of righteousness, justice, patriotism, and good will;

To develop, by precept and example, a more intelligent, aggressive, and serviceable citizenship; and

To encourage the daily living of the Golden Rule in all human relationships.

I think we all owe a debt of gratitude to these Kiwanians, who give so much of their time and of themselves, and I am proud to commend Kiwanis International for the fine work it is doing. It is a very special honor for me to be a member of the Kiwanis Club in my own hometown of Durham, N.C., and to be a part of this worldwide service organization.

SALT PRIMER

HON. CRAIG HOSMER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HOSMER. Mr. Speaker, under today's date I am issuing a memorandum to the House membership in my capacity as chairman of the Republican Conference Committee on Nuclear Affairs which deals with some of the semantics and some of the substance of the strategic arms limitation talks and such agreement as might flow therefrom. Previously I had asked the press to hold the memorandum for release until Friday, but I have cancelled the hold due to the fact that Congress will not be meeting anymore this week and I wanted to communicate the memorandum to colleagues this week by means of the Appendix of the RECORD. The document, which may prove timely, follows:

MEMORANDUM

From: Rep. Craig Hosmer, Chairman, GOP Task Force on Nuclear Affairs
To: House Membership
Subject: SALT Primer

Superpower: The U.S. or U.S.S.R.

SALT: Strategic Arms Limitation Talks between superpowers, thus SALT Treaty.

Strategic Systems: Defensive: Anti-ballistic Missile (ABM).

Offensive: Bombers, Intercontinental Ballistic Missile (ICBM), Submarine Launched Ballistic Missile (SLBM).

Passive: Civil Defense, hardening.

NCA: National Command Authority—the seat of governmental authority.

NOTE: The existing Moscow ABM system is designed to protect the USSR's NCA, whereas the U.S. Safeguard installation near Omaha is designed to protect elements of the American strategic retaliatory force.

MRV: Multiple Re-entry Vehicle—more than one warhead to an ICBM or SLBM rocket, but with warheads separately pre-targeted and not thereafter guided.

MIRV: Multiple Individually Guided Re-entry Vehicle—multiples which can can be individually guided to various targets, take evasive action, etc.

Warhead: The nuclear bomb components of a strategic weapons system.

Throw Weight: The total weight of the warheads, guidance packages and associated payload which a rocket can lift or "throw." The heavier the throw weight, the more megatons an individual ICBM, SLBM or ABM can be assumed to carry.

Strategic Sufficiency: A capability by one superpower to survive the other's surprise first strike nuclear attack with sufficient undamaged strategic power remaining to retaliate with unacceptable damage.

Overkill: Capabilities obviously in excess of sufficiency.

Counter Force Strategic: Targeting of one side's strategic weapons against the other side's strategic forces.

Counter Value Stratgey: Targeting against cities and productive capacity.

Vulnerability: Subject to destruction by surprise attack; i.e., a manned strategic bomber down for repairs at a known airbase is more "vulnerable" than a Poseidon submarine patrolling deep under the high seas.

National Means of Inspection: A capability by one party to a SALT treaty to monitor the other side's adherence by its own means, such as spies, satellites, etc.

Quantitative Limitations: Restrictions imposed by an arms limitation agreement in terms of numbers or quantity.

Qualitative Limitations: Restrictions which have to do with yield, accuracy, number of MIRVs and other qualitative features of an arms control agreement.

NOTE: A treaty written primarily in terms of quantitative limitations could inspire reasonable confidence inasmuch as national means of inspection can be fairly well relied upon to monitor it. Contrast a treaty written in qualitative terms which is not capable of being monitored except by intrusive inspection which is not allowed.

MT: Megaton—explosive power equivalent to one million tons of TNT (KT: one thousand tons equivalent).

Total MT: Aggregate megatonnage of each superpower's strategic arsenal. By this measure the Soviet arsenal exceeds the American arsenal.

Equivalent MT: A measure of destructive capability. The destructive effect of an explosion diminishes by the square of the distance from Point Zero. Therefore a KT yield closer to the target may do more damage than a MT yield further away. Thus, if a power has smaller yield warheads, but has more of them, or can deliver them more accurately, or both, it might pack an equal or greater destructive capability than a power with very large yield warheads. By this measure the U.S. and Soviet arsenals are comparable.

Note (1): Thus a SALT treaty which allows one side more ICBMs than another side may still not be lopsided. The total number of one side's individually guided warheads nested within fewer ICBMs may add up to as many or more equivalent MTs of destruction than the other side's larger number of ICBMs packing fewer individual warheads. Or, the same difference may result from variations in each side's mix of total ICBMs, SLBMs, bombers, varying accuracies, and throw weights, etc., etc.

Note (2): For similar reasons, a SALT treaty which allows one side more Polaris/Poseidon type submarines than the other is not necessarily lopsided.

Note (3): What is omitted from an arms limitation agreement must also be knowledgeably noted when assessing its overall effect, i.e., such things as no limitations on forward based systems or bombers, etc.

Note (4): Additional factors which cannot be ignored in evaluating superpower relative strength include (a) the strategic potentialities of their respective allies—for example, U.S. allies or near allies operate nine Polaris-type submarines and a number of strategic bombers; and, (b) the strategic potentialities of U.S. non-bomber aircraft stationed at overseas bases and aboard ships.

MISCELLANEOUS FACTORS

Forget "strategic superiority"—that went out with the Soviet buildup of the 1960's which could not have been stopped short of starting a pre-emptive war.

Strategic relationships need not be calculated in shorter than five year spans since their size and complexity inhibits rapid change. In this light, the interruption of one side's arming trend has great arms control significance because it actually stops weapons from coming into being. Contrast the situation of permitting the continuance of R&D, which does no more than satisfy one of several conditions, for weapons to be brought into being at some indefinite future time, and thus has considerably less significance.

Within a specified ceiling on strategic systems, the replacement of individual ICBM, SLBM, etc. units by qualitatively improved units can be permitted without immediate cause for alarm since it is unlikely to upset mutual sufficiency as quickly as the opposite side can substitute its own improved replacements. Substitutions tend to be stabilizing since they retain one's confidence in one's own capabilities.

The foregoing has been written at a fast pace without reference to research material. It can be generally depended upon as to concepts, reasonably relied upon as to substance, but accuracy of detail is subject to memory.

You may be hearing lots of "experts" pontificating on SALT in the near future and since most are unlikely in actually to be experts, take it with a grain of salt.

AN HONEST REVIEW OF AMERICAN-SOVIET UNION SUMMIT AGREEMENTS

HON. JOHN H. ROUSSELOT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. ROUSSELOT. Mr. Speaker, many segments of the news media, the academic community, various business leaders, and others are hailing the potential agreements that are proposed to be achieved at the Moscow summit meeting as major steps toward "world peace" Before the American public is again misled into hoping for more than is possible—or led into a false sense of security by so-called proposed treaties—it is, in my opinion, highly important to review the results—or achievements—that have occurred from past agreements with the Soviet Union. Therefore, I commend to my colleagues, and especially to the news media, a thoughtful study done by the staff for the Senate Judiciary Committee of past summit meeting agreements between U.S. Presidents and Soviet leaders. U.S. News & World Report, in the May 29 issue—page 29—did a brief review of these "accomplished agreements" between our country and Communist dictators. I urge my colleagues to review this record and try to seriously consider whether any agreements coming out of a Moscow meeting are really worth the paper on which they are written. The record follows:

SOVIET RECORD IN 25 SUMMIT AGREEMENTS

(Honored: 1—Broken: 24)

In seven summit meetings between a U.S. President and a Soviet leader, 25 agreements have been reached. The Soviets have violated 24 of those 25 agreements, according to a staff study for the Senate Judiciary Committee. Here is their record:

1943. At Teheran, in a meeting with British Prime Minister Winston Churchill and U. S. President Franklin D. Roosevelt, Joseph Stalin made four major agreements. Russia broke all of them.

1945. At Yalta, in another wartime Big Three meeting, Russia entered into six major agreements, of which five were violated. The only pledge kept was to enter the war against Japan—and that was done only after the outcome was decided.

1945. At Potsdam, where President Harry Truman represented U. S. in a summit meeting after Germany's surrender, Stalin made 14 major agreements. All were broken.

1955. At Geneva, in a Big Four meeting including France, Russia agreed that Germany's reunification problem should be settled by free elections. Moscow later refused to permit such elections.

No hard agreements were reached at the last three summit meetings—in 1959 when President Dwight Eisenhower met with Nikita Khrushchev in Camp David, Md.; in 1961 when President John F. Kennedy met with Krushchev in Vienna, and in 1967, when Premier Alexei Kosygin conferred with President Lyndon B. Johnson in Glassboro, N. J.

The Russians similarly have failed to keep many other international agreements with the U. S. Examples:

In World War II, the Soviets promised Western allies they were seeking no territorial aggrandizement. But Russia by 1948 controlled 11 countries—plus East Germany—and 750 million people.

Russia repeatedly promised the U. S. between 1942 and 1946 that it would guarantee freedom and free elections in Hungary, Bulgaria, Poland, Czechoslovakia and Rumania. All those countries wound up with Communist dictatorships.

The Kremlin pledged to repatriate World War II prisoners, but instead sent millions of them to slave-labor camps.

Russia gave the U. S. a promise that Korea would be free and independent—then set up a Communist government in the northern half of the country and masterminded an attempt to invade and conquer the rest of Korea. That broken promise cost of the lives of 33,629 Americans.

The Soviet Foreign Minister traveled to New York in 1946 and repeated a previous Kremlin promise that the Danube River would be opened to free navigation and trade. Today, the lower Danube, behind the Iron Curtain, is still a controlled Communist waterway.

The Soviet Union promised the U.S. that it would treat Germany as one country after World War II—then sealed off its occupation zone, turned it into a separate country and is now seeking to make Germany's division permanent.

Russia's promise of free travel between Berlin and the West has been broken repeatedly. Outstanding examples of this were the Berlin blockade of 1948–1949 and the 1961 construction of the Berlin Wall.

Russia repeatedly assured the U.S. in 1962 that the arms build-up in Communist Cuba was purely defensive in character—then secretly put in offensive missiles aimed at the U.S. When this action was met by a firm U.S. challenge and naval blockade, Russia promised to remove the missiles.

Faced with Russia's long history of breaking agreements, the U.S. attempted a tacit rather than a formal agreement to halt nuclear testing in 1958. In 1961 the Soviets broke this understanding and resumed testing.

In signing a nonproliferation treaty in 1969, Russia promised to end the nuclear arms race and work toward disarmament. Instead, Russia accelerated its missiles construction, overtook the U.S. and is now challenging in almost every category of nuclear weaponry.

In 1970 Russia approved of a U.S. cease-fire plan in the Middle East, then helped Egypt violate it by moving SA–2 and SA–3 antiaircraft missiles up to the Suez Canal.

Other countries, as well as the U.S., have learned by experience that they could not rely on agreements with the Kremlin. Examples:

In joining the League of Nations in 1934, Russia pledged not to resort to war. In 1939, Russia was expelled from the League for acts of aggression, including the invasion of Poland and Finland—both countries with which Moscow had signed treaties of nonaggression.

In violation of nonaggression pacts, Russia invaded Estonia, Latvia and Lithuania in 1940 and incorporated them into the Soviet Union.

ILLINOIS QUESTIONNAIRE

HON. JOHN N. ERLENBORN

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. ERLENBORN. Mr. Speaker, a lot of water has been going under the bridge this spring, so that the questions which I sent to my constituents in March have answers which must now be interpreted in a new light. I refer principally to the question about the Vietnam war.

It seems to me that the people of the 14th Congressional District in Illinois are united in their desire to get out of the war, but can't agree which door leads to the exit.

This questionnaire was sent to 80,384 postal patrons, and 7,065 of them were returned. This is a little less than 9 percent, one of the best returns in 2 or 3 years.

The higher returns may be partly explained by the fact that both husbands and wives could make their replies.

(The questionnaire follows:)

QUESTIONNAIRE

A quick summary of the most popular answers:

1. How to get out of Vietnam: 48 per cent said to follow our present course of gradual withdrawal, contingent upon a stable South-Vietnam, able to defend its people; and upon the return of our prisoners of war.

2. The New Economic Policy: Only 13 per cent believe it is working well, the rest being divided between "mediocre" and "unsatisfactory."

3. Amnesty to draft dodgers and deserters: 42 per cent want trials for all who have avoided military service; only 6 per cent want unconditional amnesty.

4. Priorities (that is, where should the federal government spend more? and where less?): The least popular programs are farm subsidies, foreign aid and space exploration. The most popular are crime prevention, medical and drug research, and protection of the environment.

5. Compulsory arbitration of crippling transportation strikes: 83 per cent favor it.

6. The new his-and-hers format: 82 per cent of the men and 86 per cent of the women replying prefer it.

On the War, the questionnaire asked:

Which statement most closely approximates your position on the War in Vietnam?

a. Our present program: Withdrawal by stages, contingent upon a stable South Vietnam, able to defend its people; and upon the return of our prisoners of war. Preferred by 50 per cent of the men, 45 per cent of the women, 48 per cent of the total.

b. A date certain: Agree to withdraw by a specified time, contingent only upon release of our prisoners and the safe departure of our troops. Preferred by 33 per cent of men, 40 per cent of women, 37 per cent of the total.

c. A play for victory: Greater military and naval pressure on North Vietnam. Preferred by 5 per cent of men, 3 per cent of women, 4 per cent of total.

d. Get out: Withdraw unconditionally and stop all help to the government of South Vietnam. Preferred by 11 per cent of men, women and total.

The second question asked: How do you rate the New Economic Policy? That is, has Phase II succeeded in slowing inflation?

a. Good—16 per cent of men, 10 per cent of women, 13 per cent of total.

b. Mediocre—49 per cent of men, 46 per cent of women, 47 per cent of total.

c. Unsatisfactory—35 per cent of men, 44 per cent of women, 40 per cent of total.

Respondents were given a choice of four preferences on amnesty. Which statement most nearly approximates your opinion about amnesty for draft dodgers and deserters?

a. No general amnesty: trials for all who have avoided military service—47 per cent of men, 37 per cent of women, 42 per cent of total.

b. Require the most flagrant violators to stand trial and face possible prison; but amnesty for most who agree to some form of public service for, say, two or three years—26 per cent of men, 29 per cent of women, 28 per cent of total.

c. Amnesty for all who agree to some type of military or civilian service for a specified period of time—21 per cent of men, 27 per cent of women, 24 per cent of total.

d. Unconditional amnesty and pardon—6 per cent of men, women and total.

Twelve categories of federal spending were listed in the questionnaire, asking citizens to express their preferences. Representative Erlenborn said that, on this question, the variations between men and women were so slight that the effort to distinguish between them was abandoned.

Here is the phrasing of the question:

Federal spending involves your tax dollars. Should we spend more in the following categories? Or less? Or the same?

[In percent]

	More	Less	Same
a. Aid to the poor	23	34	43
b. Consumer protection	50	14	36
c. Crime prevention and control	69	4	27
d. Defense (other than Vietnam)	21	39	40
e. Education, Federal aid	45	22	33
f. Environmental protection	62	10	28
g. Farm program	11	51	38
h. Foreign aid	4	83	13
i. Health care	45	16	39
j. Mass transportation	51	20	29
k. Medical and drug research	65	7	28
l. Space exploration	12	55	33

Those responding to the questionnaire could answer "Yes," "No," or "Undecided" to the question: Do you favor compulsory arbitration of strikes in the transportation industries?

The men's answers were 85 per cent yes, 9 per cent no, and 6 per cent undecided.

The women's replies were 82 per cent yes, 7 per cent no, and 11 per cent undedided.

The totals were 83–8–9.

The final question was concerned with the space for two replies to the questions:

Formerly, my questionnaires had space for only one answer, the presumption being that husband and wife usually agree. This time, there is space for both husband and wife to be heard. How do you like the innovation?

Said Erlenborn: "This is one question which never should have been asked." The answers:

a. Liked the old way better—2 per cent of men, 2 per cent of women, and 2 per cent of total.

b. It makes no difference—16 per cent of men, 12 per cent of women, 14 per cent of total.

c. Like the new format better—82 per cent of men, 86 per cent of women, 84 per cent of total.

The questionnaires were mailed March 20. Most were returned by March 30, all were in by April 10.

The North Vietnamese invasion of South Vietnam started March 31, and the American bombing of the North followed almost immediately.

SIXTEEN-INCH SHELLS: THE LAST THING THE LAOTIAN VILLAGES NEED

HON. ROBERT L. LEGGETT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. LEGGETT. Mr. Speaker, it appears the Military Establishment is developing fantasies of taking the battleship *New Jersey* out of mothballs and sending it to Vietnam. The idea is that the battleship's 16-inch main batteries can throw shells as heavy as Volkswagens 23 miles. With modifications, the range of the guns could be extended to the point where the battleship could lob shells all the way across the narrow part of Vietnam into Laos.

Mr. Speaker, it should be evident by now that the answer to our problems in Southeast Asia does not lie in greater firepower. If it did, we would have won long ago.

We have dropped three times the tonnage of bombs on these primitive little countries as we dropped in both theaters of World War II combined. We have used our heaviest bombers, our hottest fighters, and our best small arms in immense quantities.

We have shelled out more than $150 billion, more than 10 times the $5.26 billion the Defense Department says North Vietnam has received from all outside sources combined, even allowing a two-for-one correction for the lower cost of production in Communist countries.

The challenge lies now with the South Vietnamese Army and the Vietnamese people. Such that they can show their allegiance and determination under Vietnamization, I think the United States should now phase down, not phase up; the Vietnamese destiny should now be up to the people.

We would be foolish to increase our firepower. While firepower cannot win the war, it can go a long way toward losing the peace. The Vietnamese still speak with bitterness of November 23, 1946, when a French cruiser sailed into Haiphong harbor and spent the night dropping shells into the city, killing 20,000.

Now we are considering doing the same thing. But, instead of 5-inch guns, we would use 16-inchers. Instead of bombarding for one night, we would do it for months or years. Instead of shelling one city, we would shell all of Vietnam and part of Laos as well.

If we want the eventual governments in these countries to be neutralist and free of Soviet or Chinese domination, I cannot imagine a more counterproductive course than introduction of a battleship.

At the conclusion of my remarks, I insert an article favoring activation of the *New Jersey*. The article, from the current issue of Armed Forces Journal, is by Robert Heinl. Mr. Heinl's previous column was devoted to the thesis that the Army is discriminating against high-ranking West Pointers by making them bear an unfair share of the blame for atrocities in Vietnam. Certainly, Mr. Heinl deserves credit for imagination.

The article follows:

RETURNING "NEW JERSEY" TO VIETNAM WILL SAVE PLANES, PILOTS, MONEY

(By Col. Robert D. Heinl, Jr.)

It is a pity Defense Secretary Laird, Navy Secretary Chafee, and several admirals (notably including ex-Chief of Naval Operations D. L. McDonald) who blackballed the battleship *New Jersey* into premature retirement or stubbornly roadblocked its activation weren't sitting along the DMZ last week when the weather was so bad that our air power was either grounded or blinded.

In those grim first days of the communist Easter offensive, all the U.S. firepower we had along the DMZ amounted to a pickup assortment of sandlot fire-support ships from a U.S. Navy which (unlike the Russians) turned its back on the gun as a modern weapon, and shovelled the *New Jersey* into mothballs because battleships don't sit well with the Navy's notions of professional image.

The situation—during the first five days grave, critical, desperate, were some of the adjectives that correctly described it—was a classic one for Naval gunfire.

Major enemy units in massed formation, columns of armor, trucks, supplies, were streaming southward along a coastal plain, flanks wide open to warships offshore, hardly an American airplane flying—and what was the Seventh Fleet able to produce?

Not much.

The puny gunfire-support force (maybe detachment is a better word: "force" might be misleading) amounted (and still amounts) to one ancient 1943-model light cruiser stripped of three-fourths of her 12 original 40-year-old 6-inch guns; and five assorted destroyers, mostly World War II vintage, mounting 5-inch guns dating from the mid-1930's.

The total broadside (weight of fire) of the above ships—which in the crunch proved unable, despite valiant efforts, even to stop Russian-model amphibious light tanks from crossing the Cua Viet river under their guns—amounts in aggregate to less than one ton, 1,455 pounds to be fairly exact.

The longest-range gun the Navy had (and has) on the DMZ was aboard one modern destroyer—the 5-inch 54 caliber gun that fires a 75-pound shell over 12 miles.

In contrast with the foregoing feeble capabilities, the *New Jersey*'s comparable broadside—primarily nine mighty 16-inch guns, largest in the world—amounts to a little over nine tons (18,300 pounds). With those same big guns, the battleship can

throw a shell that weighs more than a Volkswagen complete with accessories, over 23 miles.

Put in other terms, our one battleship (which Mssrs. Laird, Chaffee, and their subaltern admirals hastily deployed home from Vietnam in 1969 to the mothball fleet at Bremerton, Washington) would have had about 13 times the firepower and double the range of the said little aggregation of ships the Navy was able to scrape up in this direst emergency of the war.

To modernize and activate the *New Jersey* (as well as to accuratize its fire-control system for the pinpoint bombardment shooting we so badly needed last week and this one, too) cost $21-million.

SIX DOWNED PHANTOMS

For $21-million, you have just about the price of ten B–52 strikes, or of six downed Phantoms, not including the added cost and agony of 12 more hostage American POW's assuming anyone walks away from the crashes.

In terms of operating costs, it would have cost the Navy 20–25 percent more money to keep the *New Jersey* on the active list than it does to operate the *USS Oklahoma City*, the one cruiser (with three pitiful 6-inch guns) now off the DMZ.

The *Oklahoma City's* total broadside is 425, pounds, part of which can reach about 11 miles. For 25 percent more, we could have had the *New Jersey* (18,300 pounds, 23 miles range), which at this juncture of events might seem to have been a considerably better bargain.

In 1967, when the late Sen. Richard Russell and other members of Congress forced former Defense Secretary McNamara and an aviation-dominated Navy hierarchy into bringing back the *New Jersey* from mothballs, it lay within the Navy's power to more than double the range of the battleship's 16-inch guns.

SECRET DEVELOPMENT

For the cost of two shot-down Phantoms, the Navy could have pushed a development (since proven with brilliant success for the eight-inch guns of the cruiser *St. Paul*) that would have enabled the *New Jersey* to shoot its big guns all the way to Laos.

That this still secret (though simple and inexpensive) development was not quickly and energetically applied to the *New Jersey* reflected the die-hard resistence of carrier-minded admirals who abominated the efficient, cost-effective old battleship as a symbolic put-down to their costly way of warfare.

Wouldn't it make sound military—let alone money—sense to reactivate the already modernized and paid-for *New Jersey* and keep her with the Seventh Fleet until every American is out of Vietnam and Hanoi has finally learned that she cannot smash her way into the south?

NIXON ADMINISTRATION CHANGES STAND ON CRIME DEATH BENEFIT BILL

HON. JAMES V. STANTON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. JAMES V. STANTON. Mr. Speaker, as the author of H.R. 12629, which has 21 cosponsors among the Members of this House, I am highly pleased to report to my colleagues a significant development with respect to this legislation, which occurred only this morning and which, apparently, has greatly improved the prospects for approval of this measure by the Congress.

The distinguished gentleman from Virginia, Mr. RICHARD POFF, appeared as the first witness before Subcommittee No. 1 of the House Judiciary Committee as this panel opened hearings on a number of bills, including Mr. POFF's as well as my own, that would authorize payment of a $50,000 death benefit to the family survivors of certain public officials who get killed in line of duty. Until this morning, Mr. POFF's bill, H.R. 9139, was known as the Police Officers Benefit Act of 1971. However, the gentleman asked that his bill be amended and assigned a new title—the Public Safety Officers Benefit Act of 1971. The amendment would extend eligibility for the death benefit beyond the families of police officers to those of other law enforcement officers, firemen, and court and correctional personnel.

As my colleagues here know, I have repeatedly urged legislation of this kind and, in fact, I introduced H.R. 12629 in order to move us toward this goal. The main difference between the original version of Mr. POFF's bill and the measure I had offered was that mine was broader in terms of coverage. With the amendments introduced by Mr. POFF, the principal distinction between the two bills may now be viewed as having been reconciled.

Because of Mr. POFF's high rank on the Judiciary Committee and because he has so ably presented the administration point of view on other occasions, I am assuming that he spoke for the administration this morning when he offered his amendment. If such be the case, then this action reflects a significant change of posture by the administration, which earlier had opposed the inclusion of firemen in death benefit legislation on the ground that "by and large, they are not the victims of felonious assaults," according to testimony given earlier at a Senate hearing by a Justice Department spokesman. That official, Mr. Richard Velde of the Law Enforcement Assistance Administration, had also warned that inclusion of firemen in the legislation would open the door for inclusion of other officials—such as court and correctional personnel—and that this make the program too expensive. I gather, then, that the administration has now decided that to do this very thing would be a small price to pay for improving the morale of public officials whose duties place them in hazardous proximity to criminals.

I want to commend Mr. POFF and the administration for taking this new approach. I said this in my own testimony this morning before the subcommittee, and I want to reiterate it here before the Members of this House. I hope that we will move speedily now toward enactment of this very important piece of legislation, which will help to bring some peace of mind to the Nation's crimefighters by assuring them that their families will be taken care of, at least financially, should tragedy strike.

There remains one important distinction between my bill and the revised version of the administration bill. The latter authorizes the death benefit only when it can be shown that the deceased public official had been the victim of a felonious assault. H.R. 12629 authorizes automatic payment of the death benefit, whatever the cause of death. I shall continue to advocate my own bill because I fear that, otherwise, payments will not be made to families when a killing results indirectly from some criminal act. For example, a policeman who is killed in an automobile accident while answering a call for assistance is just as much the victim of a crime, in my opinion, as the policeman who gets shot. Similarly, a fireman who loses his life while working at the scene of an arson, or while answering a false alarm, is also undoubtedly the victim of a crime. My legislation would cost more in terms of dollars and cents, but my feeling, from contacts with my constituents, is that the taxpayers are perfectly willing to accept this extra burden which, relatively speaking, is not large.

At this point, I would like to insert in the RECORD the testimony I gave this morning to the members of the subcommittee:

STATEMENT OF CONGRESSMAN JAMES V. STANTON BEFORE HOUSE JUDICIARY SUBCOMMITTEE NO. 1, MAY 24, 1972

Members of the committee, I am highly pleased with this opportunity to appear before you on behalf of the Public Safety, Criminal Justice and Correctional Personel Benefits Act (HR 11993, HR 12629), of which I am the author and to which 21 of our colleagues have added their names as cosponsors.

While this bill is similar to others now under consideration by this panel—in that it would pay a $50,000 indemnity to the family survivors of certain public servants who lose their lives in the line of duty—its distinguishing feature is the larger number of persons that it covers. It insures not only the families of policemen and policewomen but also the families of firemen, *all* law enforcement officers and *all* public officials with duties that involve them in the administration of justice. Specified in the bill, on Page 3, Line 12, are "police, sheriffs, deputy sheriffs, highway patrolmen, firemen, parole and probation officers, investigatory and correctional personnel, alcoholic beverage control agents, judges, magistrates, justices of the peace, and other officers of the court."

The reasons that justify our launching such a program in the first place—whether it be a narrow one limited only to policemen and perhaps a few others, or the broader programs that I advocate most strongly—have already been outlined for you by earlier witnesses. It is a tragedy of our time that persons whose professional duties place them in proximity with criminals are, more and more, finding their lives imperiled. The most current annual figures available—and these pertain to law enforcement officers alone—I quote from the 1970 Uniform Crime Report of the Federal Bureau of Investigation—are as follows:

"During 1970, 100 law enforcement officers were killed by felonious criminal action. This is a 16 percent increase over 1969, when 86 law enforcement officers were slain. During the period 1961–1970 (10 years) 633 officers were murdered. The average number of police officers slain was 59 a year during the period 1961–1969. Specifically, there were 37 killed in 1961; 48 in 1962; 55 in 1963; 57 in 1964; 53 in 1965; 57 in 1966; 76 in 1967; 64 in 1968; 86 in 1969; and 100 in 1970."

I might add, Mr. Chairman, that 1971 was an even worse year. In its first nine months, 112 law enforcement officers were killed around the country.

Why should this be a matter of federal concern? Because, to begin with, state and local death benefits for this purpose are uneven across the nation—and, in fact, as of

October, 1970, there were 18 states that provided no financial assistance at all to the survivors of law enforcement officers. We need uniformity, assurance of coverage and adequate benefits.

But even more to the point, Mr. Chairman, is the fact that the federal government through this Congress has already asserted an interest in the efficient operation of state and local agencies dealing with law enforcement and the judicial and correctional processes. We have done this through the Omnibus Crime Control and Safe Streets Act of 1968, which is an instrument for dispensing several categories of federal aid to these agencies. If we are interested, then—to cite just one example—in raising the educational level of police, court and correctional personnel, then surely it follows that we are concerned about the morale of these public officials. And I submit that one of the most important contributions we can make to their morale in these lawless and troubled times is to assure them that the federal government *is* concerned about their welfare and that of their families that their government stands behind them as they risk their lives in the course of performing their routine duties.

Mr. Chairman, it is this same Omnibus Crime Control and Safe Streets Act which gives us the rationale for extending the death benefits included in these separate bills beyond law enforcement officials so that they cover also court and correctional personnel. Underlying the Safe Streets Act is a recognition of the fact that the safety of our citizens depends as much on the successful operation of the courts and correctional institutions as it does on the efficient operation of police departments. In other words, judges, prosecutors, probation and parole officers and prison guards play a role that is on a par with—and in no way secondary to—the role played by police officers in protecting the public. Therefore, it would be a refutation of the Safe Streets Act if we were to amend it here—as these several bills, including mine, propose to do—and restrict the new benefits offered to policemen alone.

There can be no doubt that these other officials feel the need for coverage—and in fact *do* need it. To include them in the legislation is no mere act of appeasement or frivolity. In California, in the case in which Angela Davis is a defendant, we have seen the killing of a jurist—Judge Harold Haley of the Marin County Court. In New York State, there was the Attica prison riot in which several guards lost their lives. And, more recently, in nearby Maryland, Governor Wallace was shot, and an Alabama state trooper and a Secret Serviceman assigned to him were also struck by bullets. If these incidents show anything at all, it is that *no public official today is safe*—and therefore they should know that they need feel no anxiety about the security of their families if tragedy strikes.

Statements I have received from local officials since my introduction of this bill show clearly, Mr. Chairman, that these persons do experience anxiety. For example, Judge Walter Whitlatch of the Cuyahoga County Juvenile Court summed up the situation in his court when he wrote to me: ". . . When one considers the deranged, angry, hostile individuals, youth and adults, who daily come before the Court there is just no way to belittle the very dangerous situation of the judge who must rule on the cases of these individuals."

John Flanagan, Bailiff of the Cleveland Municipal Court, reinforced this view, writing: "In this age, when reason and understanding of the judicial processes are sadly lacking, a guarantee of financial survival must be considered for dependents of court attaches."

Probation officials are confronted with a similar situation. As John Alden, probation officer of the Cuyahoga County Juvenile Court, pointed out: "Assaults which have occurred on our people and incipient threats in the form of concealed weapons taken from juveniles and adults worry staff in direct contact with an increasingly militant public. Our direct service to probationers and in neglect cases has been affected by underlying fears our probation officers have expressed for their safety."

David Rogers of the Ohio Adult Parole Authority wrote: "As you have indicated, the Criminal Justice System is not only composed of policemen. There are others: Parole and Probation Officers, Investigatory and Correctional personnel, Alcoholic Beverage Control Agents, Judges, Magistrates, and Officers of the Court whose role is providing protection to this great nation and all that it stands for."

Now as to firemen, Mr. Chairman, why should they be included in this program? Some would say that firemen are not, after all, law enforcement officers, nor are they part of the criminal justice apparatus. Others say that firemen do not need the coverage.

For example, Richard Velde, Associate Administrator of the Law Enforcement Assistance Administration told a Senate judiciary subcommittee last November 30: "By and large, they (the firemen) are not victims of felonious assaults." I take strong exception to this statement, Mr. Chairman. I would like to know how many more firemen will have to lose their lives, or be wounded, or be shot at, or become the target of rocks and other missiles, before the administration will bring itself to admit that what we are dealing with may safely be defined as "felonious assaults"? I, for one—and I am certain this is true of most of my colleagues here—became convinced of this fact a long time ago. I have statistics which I am about to produce but I want to say first that, long before I obtained these figures, I was aware of what what was happening. In fact, virtually every citizen knows this. Is it possible that the administration is ignorant of what is going on?

As a citizen of Cleveland, Ohio, I know that about a dozen bullets were sent crashing into a fire station at East 105th Street and Superior Avenue about a year and a half ago. I know that the men working out of that station were returning from a false alarm a short time afterward and were fired at four times by snipers. I know that a fire station at East 66th Street and Chester Avenue twice became the target of snipers, the first assault occurring while two firemen stood on the sidewalk in front of the station. I know that firemen working out of the station at East 79th and Holton Avenue were stoned when they responded to still another alarm.

I know too, Mr. Chairman, that on September 14, 1970, in Cincinnati, the station house of Engine Company No. 32 came under attack by machine guns. Two firemen were wounded by rapid bursts of gunfire through the plate glass windows of a closed door at the station. Fireman Tom Donovan was shot in the left arm. Fire Lieutenant John Hammersmith was hit twice in the right leg. This, Mr. Chairman, was an unprovoked assault.

Mr. Chairman, on the same day that Mr. Velde gave his testimony on behalf of the administration, a statement was submitted to the Senate Subcommittee on Criminal Laws and Procedures by the International Association of Firefighters. This statement asserted:

"The Federal Government's own investigation into the loss of life and injury during the riots of Watts, Detroit, Newark and Cleveland showed that firefighters suffered more casualties than police officers."

One year ago, a House judiciary subcommittee was advised by this same organization:

"Any discussion of firefighting today must include acknowledgement of a new hazard. Fire fighters are prime targets—sitting ducks—to those who foment and promote civil disorders. Virtually every city in the land is experiencing a fantastic increase in the number of false alarms to which fire fighters must respond. A fire fighter is just as dead when killed by a fall from his truck as he is when killed in a burning building. And every additional false alarm increases the chances of such a fatal accident. A fire fighter is just as dead when killed by a sniper's bullet as he is when killed in a burning building. And our newspapers and other news media have been filled with stories of sniping attacks on fire-fighters during times of civil disorder. Indeed, one study of civil disturbances in 11 cities reported four fire fighters killed and some 400 injured, a greater toll than that suffered by police."

Mr. Velde also said, Mr. Chairman, that to extend coverage to firemen "would lead to pressures for other public service groups to also want coverage on these benefits . . . This would tend to open the door for other civil servants for coverage and when all is said and done, it could be a very expensive program."

I emphatically agree with Mr. Velde on this portion of his testimony. Certainly, the inclusion of firemen would cause other groups to insist on having coverage. As I have said, they *should* have coverage, so I am not at all disturbed by this prospect. As to this becoming an expensive program, this would certainly be true—if the present rate of the killing of public officials persists. If it does persist, however, then this would strengthen the justification for spending public funds in this fashion—because the need for the program would be demonstrably great.

How much would it cost? I would say, Mr. Chairman, about $12 million at the present rate of killing. In addition to the policemen who were killed in 1970, some 120 firemen lost their lives while performing their duties. The number of prison guards and court officials who met with death is not immediately available but, of course, it was much smaller.

I say $12 million is not too large a price to pay. The proposed Law Enforcement Assistance Administration budget for fiscal year 1973 is $850,000,000—$152,000,000 more than it is for the current year. Personally, I don't mind adding a little more to it—especially when we learn, as the recent report of the House Government Operations Committee show, that a great deal of this money has been wasted on questionable purchases of equipment for law enforcement officials. I would much rather spend money on human beings than for gadgets—and the expenditures I propose might in the end prove more productive for the taxpayers, if indeed morale is a factor that we must consider.

One further observation, Mr. Chairman. The bill I have placed before you provides benefits only in the event of the death of a peace officer. But I have pending before this committee another piece of legislation, subsequently introduced (HR 14482), which also would grant compensation to public officials, as well as to private citizens for injuries sustained when they come under criminal attack. This measure would reimburse crime victims for medical bills and income lost because of hospitalization. I recommend to you that the two bills be combined—reserving the $50,000 indemnity for public officials only but extending the other benefits to private citizens *and* to public officials.

Again, I would like to thank you for this opportunity of appearing before you, and I would be happy to answer any questions you might have.

THE FLAG

HON. CARLETON J. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. KING. Mr. Speaker, the 14th of June is the anniversary of the day in 1777 when the Continental Congress adopted a resolution designating the Stars and Stripes as our flag—the flag of freedom.

As we all know, the Stars and Stripes flew over General Washington's headquarters at Valley Forge. It was carried into action at the siege of Fort Stanwix, later at the Battle of Brandywine and it was carried by our victorious troops at Saratoga. The Stars and Stripes has flown over the scene of every battle the United States has fought for freedom.

Because of the historical significance of Flag Day and the many observances which will take place throughout the country, I would like to call my colleagues attention to an article which appeared recently in the Troy Record Newspaper of Troy, N.Y., written by Mr. James Pasinella, chairman of the flag day committee for that city.

In my opinion, Mr. Pasinella has attributed special significance to the Stars and Stripes by reminding us that we honor on this occasion not merely the flag, but what it represents and that we should all commit ourselves again to the achievement of its ideals and continuation of its traditions.

Mr. Pasinella, known to many as simply "Jimmy," was the founder and continues to be chairman of the Flag Day Committee. It has largely been due to his inspiration and efforts that the annual Flag Day Parade has grown from a small veterans post and single band parade to one in which there are now 20 bands, about 5,000 marchers, and the parade is viewed by upward of 75,000 people. It is the outstanding Flag Day event in northeastern New York, and we are all proud of Jimmy, his patriotism, and his work. Mr. Pasinella is a longtime employee of the U.S. Post Office in Troy.

Under leave to extend my remarks, it is a great pleasure for me to include the article by Mr. James A. Pasinella:

THE FLAG

Editor The Record: It seems as though over the past ten years, people have been so busy defending their rights and quoting what the United States Constitution gives them the right to do, that they have forgotten something very important. I am writing this letter in defense of our American Flag, which I have a right to do. Our Flag has been burned, stomped on, mutilated, worn as patches by some people and even used as a cover to drape a nude couple in a stage play in New York City.

With all the demonstrations, dissent, and disenchantment among our young people, what has the American Flag got to do with the decisions made by our law makers and leaders, on our foreign policies, or anything else? Why should foreign flags, especially, be carried by our own people? Why can't they carry the American Flag?

May I ask and can anyone tell me, why must a piece of cloth, Red, White, and Blue which stands out as symbol of our country since 1777 be the target for anyone who disagrees with our foreign policy etc.

When we show our respect by removing our hats, or saluting the American Flag as it passes by in a parade, we are showing respect to a symbol of our country. Since 1777, it has been an inspiration to Americans of all races, colors and creeds, in defending our country against all its enemies, but remember one thing. It is only a piece of cloth of Red, White and Blue, which we all cherish. It has nothing to do with making decisions or setting any policy, or starting any war.

I have an only son, who is approaching draft age, and I certainly do not want to see him go to war, but in the event he is called to serve his country, should a piece of cloth be held responsible for his having to serve. When we gather on Flag Day, U.S.A., we gather as a mixture of all groups of Americans. Political Actions are not a part of our show of respect for our Flag.

If I did not have the cooperation of all the people, Democrats, Republicans, Citizens Party, as far as politicians are concerned, and the many fraternal, Government and military organizations, who committed themselves for this show of respect for a piece of cloth, our American Flag, then there would be no Flag Day Parade. May I add that many of my young friends helped me tremendously.

These parades were received by the public with great enthusiasm and pleasure, and added the necessary mix of events that make parades an important part of our American tradition.

So, when Flag Day, U.S.A., comes around, remember that we are honoring only a symbol, the symbol of our country. On Flag Day no other flag will be honored—only our American Flag. No political signs of any nature even was entered, and I thank the main political leaders in respecting our rules.

So on June 11, 1972, our Flag Day celebration, let us all be Americans, and if you have to wave anything, pick up a piece of cloth of Red, White and Blue, and join in with all of us.

May I add that if the American Flag could talk—and I quote from a poem I once read, that piece of cloth would ask "What have I done" "What Have I Done" to deserve this desecration to me."

JAMES A. PASINELLA,
Flag Day Committee.

TROY.

FOR STRICT GUN CONTROL

HON. FRANK THOMPSON, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. THOMPSON of New Jersey. Mr. Speaker, the brutal and senseless attempt on the life of Gov. George C. Wallace of Alabama has again focused public attention on the need in this country for effective gun control legislation on the national level. The argument for gun control legislation was compellingly made in an editorial which appeared in the Sunday, May 21, edition of the New Brunswick Home News. I am pleased to place that editorial before my colleagues for their attention and consideration:

FOR STRICT GUN CONTROL

It is bitterly and tragically ironic that Gov. George C. Wallace of Alabama, a bitter foe of gun control, should have been cut down by shots from a snub-nosed revolver in the hands of a man who should never have been permitted to carry a gun.

The accused criminal had owned a .38 caliber revolver last year. When he was arrested for carrying a concealed weapon near Milwaukee, and was convicted on a lesser charge of misdemeanor, police confiscated the weapon. But five weeks after that he had no trouble whatever in buying an identical revolver from a dealer in Milwaukee, and that was the weapon he used to gun down Gov. Wallace in Maryland on Monday.

Once again pressures will rise for effective federal legislation against handguns. And federal legislation is the only effective legislation. New Jersey has a strong gun licensing law, but it is ineffective because it is so easy for people to buy guns elsewhere. New York, despite its stringent Sullivan Law, has many homicides by handgun because it is so easy to carry guns across state lines.

Estimates are that there are something like 30 million handguns in the United States, perhaps one for every other household. Annual sales, despite bans on import of some types of small arms, run about 2.5 million annually.

Only a small fraction of the handguns in the United States are in police or other legitimate use.

Nor is the only menace of the handgun its use in assassinations or in purposeful criminal use. The majority of gun homicides in the United States occur within the family circle or are perpetrated among people who have been friends or acquaintances. In these cases it is the easy killer at hand that leads to the homicide.

We are probably the most heavily armed large nation in the world and we suffer grievously from that fact. In Britain, for instance, last year there were only 1-300th as many gun-murders as in the United States, and Britain has one-fourth our population.

Ending the traffic in handguns (and even the recall and destruction of handguns now in public possession) would be a monumental task. The gun lobby is tremendously powerful. Hunters, who only on the rarest occasions have use for handguns, see in control of small arms a threat to their sport. And there is a strange part of the American ethic which seems somehow to equate the ownership of guns with masculinity and the ancient spirit of Americans needing firearms to defend their homes.

No sensible person claims that gun control will end killing in this country, or prevent assassinations. But strict gun control at the federal level can save lives, and improve the quality of living in our country.

It is time for our legislators to wake up to their responsibility and effectively control guns.

McLAUGHLIN: A STORY OF POWER

HON. JAMES ABOUREZK

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. ABOUREZK. Mr. Speaker, the progressive people of McLaughlin, S. Dak., in my district, have published a small booklet, "McLaughlin: A Story of Power," which describes their success in 2 years of operation of their own municipal electric utility system.

The city of McLaughlin, after its people voted to create their own electric utility, built an entirely new electric distribution system underground. The old overhead poles and wires were removed. As far as I am able to determine, McLaughlin is the first and only city in the

Nation that has its entire electric distribution system underground, with no unsightly poles and wires marring the horizon.

This community of about 900 people in western South Dakota has, in the first 2 years of operation of its electric system, earned $67,489 in net earnings over and above the cost of service, a desirable source of revenue to any city hard pressed for needed income.

McLaughlin's experience is a testimony to a number of dedicated people in that community, including Otto Schneider, Mayor Ed Walker, former Mayor Carl Stockert and a number of others who resisted heavy pressure and led the effort to bring the municipal electric utility into being.

The story of McLaughlin, S. Dak., is a story for other communities feeling the financial pinch between the need to adequately fund their services to their citizens, and their simultaneous inability to raise already confiscatory property taxes.

Mr. Speaker, I include the text of the booklet as an extension of my remarks at this point in the RECORD:

MCLAUGHLIN: A STORY OF POWER

(McLaughlin, South Dakota; pop. 863; el. 2,006; date inc. 1909; a trade center for ranching and small grain farming.)

Two lines of tiny, cramped print in the big book tell you the bare-bones of it about McLaughlin—a tiny prairie town out there on the South Dakota plains, a rural community in the 1970's trying to hold on.

Is that it? Is that McLaughlin's story?

Sure, that's the McLaughlin story. That's the bare-bones of it.

Really, it's a story of thousands of other "two-liners" all over rural America—farm communities up against it, struggling to uphold and continue a style of life, a dignity, deep-rooted in the American experience.

But every rural town in all regions of rural America has its own peculiar dilemma. Each town has its own tale to tell. McLaughlin's is a heartening one. It is a success story.

It is a success story revolving around a long, hard-fought battle for public power. And like all stories of great achievement, it begins with people power.

It began in 1963 when the private utility serving McLaughlin with electricity approached the city council, suggesting that a franchise election be called to renew the contract.

But some residents of the town had another idea. They wanted the city to investigate the idea of a municipally-owned electric system. Other cities of similar size in the region owned and operated their own system. They were doing well. Why didn't McLaughlin do the same?

The council, then headed by Mayor Carl Stockert, listened to the advocates of the city-owned system, then voted to postpone action on calling a franchise vote.

Visits were made to towns in the region with their own power systems. All reports were favorable. The U.S. Bureau of Reclamation was contacted. The citizens were assured that the Bureau would supply electric power upon proper application.

A McLaughlin Power Committee was organized. It was headed by Otto Schneider, a long-time advocate and pioneer of rural electrification in the region.

The investor-owned utility serving McLaughlin fought hard to retain its small, but profitable service. The opposition to municipal ownership was well-manned and well-financed. It took five years, four elections and one recount before McLaughlin finally voted to go "municipal."

The first two elections in 1966 and 1967 were standoffs. The municipal power committee, in analyzing these elections, felt the people needed more facts in order to make the right decision.

The committee went to work. First, a go-ahead for an engineering study was obtained from the city council. Findings of the study showed that a municipal system for McLaughlin was indeed feasible and would no doubt net the town an annual profit.

The Committee used the results of the engineering study and collected facts about other municipal systems in the area for a booklet entitled, "Twenty-one Questions About a Municipal Power System."

Copies of the booklet were made available to all voters in the community. Public meetings were held to adequately air the private vs. public power question, financial feasibility and service issues.

In April of 1968, the private power company again asked for a 20-year extension on its franchise. The franchise was rejected by a vote of 277 against, 170 in favor.

The election was made more significant by a city alderman contest with pro-public and pro-private slates. The pro-public slate, headed by present Mayor Ed Walker, was victorious.

Final decision was made in December, 1968, when voters gave approval to $162,000 in revenue bonds to finance construction of a new municipal power distribution system.

The margin was narrow—60.6 percent in favor in a state where law requires 60 percent approval for bond issues.

The vote, 279 in favor, 181 against, was contested by the private utility, but a recount showed no change.

Public power went on the line for McLaughlin December 24, 1969, but there was a difference. When the switch was pulled, the transmission lines overhead did not sing with the surge of this "new" electricity. McLaughlin, you see, had put its electric distribution system underground, becoming the first city in the United States to have an all-underground electric system. Today, there are no unsightly utility poles and lines in McLaughlin.

After opponents had stated time and again that the cost of underground installation was prohibitive, the members of the city council were surprised and pleased to receive construction bids which were actually less for underground installation compared to standard overhead systems.

What's the financial picture after two years of operation? Excellent, as indicated below:

1970	
Revenues	$94,447
Expenses	57,106
Net income	28,971
Equity from Dec. 1969	2,235
Equity from Jan. 1, 1970	31,206
1971	
Revenues	$94,447
Expenses	58,164
Net income	36,283
Equity Dec. 31, 1970	31,206
Equity Dec. 31, 1971	67,489

The city of McLaughlin, in its first two years of system operation, has repaid indebtedness of $7,000 on the original bonded indebtedness of $162,000.

On April 3, 1970, the people of McLaughlin turned out to dedicate their new power system. It was a day of double rejoicing, for the new municipal hall was also officially opened that day. There were a lot of important people there that day. They said a lot of important things. It was McLaughlin's day.

McLaughlin continues to build. In 1971 an indoor-outdoor swimming pool, the first of its kind in the U.S., was completed and dedicated. An airport facility with a lighted runway and beacon came into operation in 1970. Production is now going forward in the manufacture of prefabricated housing units by a private development corporation, Standnig Rock Industries, Inc., located at McLaughlin.

The city improvement projects have been made possible, city officials feel, to a substantial degree, by the better financial condition of the city brought about by the new municipal electric system.

It's not just the fiscal aspect of the city-owned power system alone, however. Says Otto Schneider: "The experience we gained in the struggle for our own electricity in the '60's gave us the confidence to move ahead. We cut our teeth there."

Is the McLaughlin experience unique? It is, in the sense that each community has its own set of problems and has its own way of attacking them.

Beyond that, the people of McLaughlin have shared a similar experience in the 1960's and 1970's. Just ask the people of Glasgow, Princeton, Hickman, Fulton, and Paducah, Kentucky; Mountain View, Nixa, and Granby, Missouri; Elbow Lake, Minnesota; Alton, Iowa; and Los Alamos, New Mexico; as well as Colman, Aurora, and the Heartland Consumers Power District in South Dakota.

You'll find every community experience, every struggle, for publicly-owned power different, unique. But you'll find every community achievement began with people power.

WIDOWS OF POLICEMEN AND FIREMEN

HON. SEYMOUR HALPERN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HALPERN. Mr. Speaker, each day we call upon our policemen, firemen, and corrections officers to subject themselves to danger and put their lives on the line.

These men are on the frontlines of our domestic war—a war whose casualty rate has increased dramatically in the past few years. In recent months eight firemen, policemen, and corrections officers have been killed during the performance of their duty.

While steps must be taken to protect these fearless public servants we must also be certain that in case of tragedy, the families of those who have died in the line of duty are cared for in the same way they would have been had not their husband or father been killed.

We have long provided benefits for the widows of veterans who have fought in foreign wars; we can do no less for the men who protect us here at home.

The dangers in our city streets is far greater today than ever before. Let us give courage to the men and families who are on the frontlines of that war.

Yesterday, in the New York Times, Judy Klemesrud wrote an outstanding article in which she examines the lives of the widows and families of policemen and firemen who have died in service to their community. They say nobody cares.

I think Mrs. Klemesrud's article points to a very real problem that must be reckoned with.

Therefore, later this month, I will be offering testimony in support of legislation which I have sponsored which will deal more equitably with the widows and

families of firemen, policemen, and corrections officers killed in the line of duty.

At this time, Mr. Speaker, I would like to include into today's RECORD, the New York Times article so that my colleagues in the Congress can be made aware of the real need for this important legislation so they too can offer their assistance in providing adequate care for the wives and families of public servants killed while they were protecting us.

The article follows:

WIDOWS OF POLICE AND FIREMEN—THEY SAY NOBODY CARES

(By Judy Klemesrud)

They call themselves "New York's forgotten women." They break into tears easily, they proudly wear their husbands' medals of bravery pinned to their dresses, and they receive a pension check once a month—a check they feel is not nearly enough for the family of a man who gave his life protecting the residents of New York City.

The women, 432 in all, are members of the Police and Fire Line of Duty Widows of New York City, Inc.

Founded in April, 1961, for the "mutual benefit" of the members, the group now numbers 236 widows of firemen and 196 widows of policemen. They range from modly dressed, long-haired women in their early 20's to 90-year-olds who reside in nursing homes. Ten of the widows are black.

"Sometimes you feel that nobody even cares about you," said Mrs. Doris Campisi, 40 years old, of Glendale, Queens, whose policeman husband, Anthony, was stabbed to death six years ago while making an arrest at 38th Street and Eighth Avenue.

"In the beginning, the city gives you medals," the yellow-haired mother of two went on, "but after a while you begin to feel just like just a number on a pension check."

The city hasn't forgotten entirely. Once a year, there are separate memorial services for deceased policemen and firemen. The police memorial service will be held tomorrow at 11 A.M. in the Police Academy auditorium, 235 East 20th Street. An official contingent of 14 police widows from the widows' association plan to attend.

And the pension situation, as of last week, isn't quite as bleak as it was. Mrs. Campisi and 21 other members of the Police and Fire Line of Duty Widows went to Albany last week and lobbied successfully for the passage of a bill that would increase their $4,420 yearly pensions by about $1,000 a year, their first cost-of-living increase since 1965. The bill passed both houses last Friday, and now awaits the signature of Governor Rockefeller.

In another development, Mayor Lindsay yesterday instructed his legislative representative in Albany, Richard Brown, to send a memo to the Governor urging him to sign the "widow's bill," as it is known, into law. The Mayor also issued a separate statement supporting the bill.

The widows' group was founded by Mrs. Florence Churchill, now 75, of Manhattan, a policeman's widow, at a time when the majority of the widows were receiving only $28 a week. While the group's major objective has always been to better the members' financial condition, it also serves as a social organization.

The members, who pay $5 in annual dues, meet four times a year, in October, November, April and May. Their projects include writing letters to politicians, pointing out such things as the fact that police and fire widows in San Francisco and Boston receive their husbands' full pay, as opposed to the half-pay they get in New York presently based on the 1965 pay scale, and baking cookies for the members who live in nursing homes. There is also an annual Christmas party, "where we pay some guy $20 to come and play the accordion," one member said.

The widows frequently talk of their struggles to make ends meet, their loneliness, how hard it is for them to get a loan or credit, and the indifference of former friends. But in this respect, how are their lives any different from those of other widows?

"There is one big difference," said Mrs. Helen Venturelli, 58, of the Bronx, a policeman's widow who is the group's vice president. "Someone killed our husbands, and that's a very difficult thing to bear." (Most of the firemen, of course, were killed while fighting fires.)

Like many of the widows, Mrs. Venturelli altered her life-style drastically after the death of her husband. She went to work part-time for the Honest Ballot Association for 16 years, and then, when she left, found it rather difficult for a woman her age to find a job.

NECESSARY ECONOMIES

Living entirely on her pension, she gave up reading newspapers, because she couldn't afford them, as well as loin lamb chops, English muffins and bananas. She said today she eats mostly spaghetti or hamburger ("A pound and a half makes five patties"), makes her own clothes and gives herself her own home permanents.

The pension plans are financed by deductions from the men's paychecks. Some of the widows are also eligible for Social Security benefits—if their husbands signed up after the plan was first offered to them in 1958.

The police and fire widows generally receive the same benefits—with one exception. In 1964, a group of anonymous businessmen founded an organization called the Hundred Club of the City of New York, Inc., to help the widows and children of policemen killed in the line of duty.

Headed by Michael J. Murphy, a former Police Commissioner of New York, the group has distributed about $165,000 among 30 families since its formation. Each widow received $1,000 for immediate expenses—often invaluable as it can take months for a pension check to arrive.

The Hundred Club, at 654 Madison Avenue, also pays outstanding debts, "whether it be a $15,000 mortgage, a $500 furniture loan, or both," Mr. Murphy said. At Christmas, the club sends each child under the age of 18 a $100 savings bond.

Widows who remarry automatically relinquish their membership in the Police and Fire Line of Duty Widows, and they lose their pensions as well. However the children continue to receive them. The group has no statistics on the number of widows who have remarried.

"I just don't know whether I could get married again," said Mrs. Carol Cosgrove, of Massapequa, L.I., an attractive 29-year-old mother of four who "occasionally" dates. "It would really be a gamble—you'd always worry how the new husband is going to treat your children. How do you know he won't start beating them up?"

Several of the women mentioned that their husbands' deaths had had tragic effects on their children. Mrs. Esther Weisse, 62, of the Bronx, a fireman's widow, said that her 26-year-old daughter, a secretary, telephoned from her office at noon every day to see if Mrs. Weisse is all right.

"If I'm going out, I have to phone her before I leave," Mrs. Weisse said. "She goes out of her mind that something might happen to me, too."

Nothing angers these women quite as much as the insults and epithets and rocks and bottles that have been hurled at New York's finest and firemen lately.

"These men are prepared to go through hell for the people," said Mrs. Cecilia Meyer, 59, of Cambria Heights, Queens, a policeman's widow. "All right, so maybe they have a few bad eggs. But the public just does not appreciate them the way that they should."

Most of the widows seemed opposed to the idea of having a son go into the same line of work as his late father.

KILLED IN FIRE

"Over my dead body would my son be a fireman!" said Mrs. Kathleen Roche, 56, of the Bronx, a seamstress whose husband was killed in a fire in an abandoned building in 1951. "I'd rather have my son dig ditches—and I wouldn't let my daughter marry a fireman either."

And although some of the widows have married men who, like their first husbands, were policemen or firemen, the sentiment seems to be against this practice.

"I would never, never want to go through all that again," said Doris Campisi, "the bell ringing in the middle of the night, the priest standing there, the shock, the nightmares. I tell you, it is just awful."

OFFSHORE DRILLING—THE COMING BATTLE

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HARRINGTON. Mr. Speaker, the plans of the Nixon administration to initiate offshore oil development on the Atlantic coast have provoked more serious citizen action and scientific and economic study than any comparable environmental problem in New England that I can remember. What is at stake includes a whole coastline that serves as a recreation area for millions of people in the metropolitan corridor, and that contributes to our economy through fisheries and tourist industries.

A New England coalition has been formed, including many citizen groups that share a concern for the New England coast, and for its value to the region. One of the organizers of this coalition, Barbara Heller, outlined the problems that face New England in the offshore oil proposal in the May 1972 issue of Not Man Apart, published by Friends of the Earth.

Mrs. Heller proposes a five-point requirement before oil development is allowed in New England: First, elimination of the oil import quota system; second, development of an energy policy that places proper stress on conservation of energy; third, proof by the Interior Department and the oil companies that drilling will not be against the public interest; fourth, assumption by the oil companies of full liability for damages caused by spills; and fifth, bringing cleanup and tanker technologies up to date. Mrs. Heller's suggestions are excellent ones.

Offshore drilling confronts many of us in the House. For the information of my colleagues, I include the article from Friends of the Earth in the RECORD at the conclusion of my remarks.

[From Not Man Apart, May 1972]

THE COMING BATTLE AGAINST OFFSHORE DRILLING

The Atlantic coast of New England, from Maine's cliff-strewn coast to Connecticut's Long Island Sound, is one of the nation's great natural resources—providing beaches, clean air, fishing—an escape for the millions

of people who live in the most densely populated area of the country. Aside from this, New England's coast provides real economic strength in its tourist and fishing industries. Indeed, the Georges Bank area off Massachusetts is one of the nation's most productive fishing grounds. But in one important respect, New England is a handicapped land—it does not have enough natural resources of its own to supply its energy needs. Therefore most of New England's power is generated from imported oil.

These diverse regional characteristics were brought into sharp focus when Secretary of the Interior Rogers Morton announced last November that Georges Bank was one of three priority areas on the Atlantic Coast targeted for future oil development leases. The announcement sparked a flurry of activity by state officials, agencies, and conservation groups. Massachusetts State Senator William Bulger held a series of hearings under the aegis of his special Legislative Commission on Marine Boundaries and Resources. The New England River Basins Commission and the New England Regional Commission plan to fund a study focussing on the effect oil and gas development will have on the balance between the regional economic situation and the environment. Senator Edward Kennedy introduced a bill in the Congress which would authorize a study by the National Academy of Sciences on the ecological impact of oil in the Georges Bank area.

In addition, a New England Coalition has been formed, which consists of environmental and fishing interests, and which hopes to include tourist and consumer groups. The Coalition's policy is to oppose any leasing of Continental shelflands until there is proof that offshore drilling would be in the New England public's interest both environmentally and economically. The Coalition will publish a bulletin detailing the status of the proposed leasing, and will discuss various research efforts into the ecological and economic effects of oil.

To understand the offshore drilling issue we must examine several related issues and view the total in perspective. If environmentalists learned anything from the SST fight, it was that we are much more creditable and considerably stronger when we approach an issue from all angles. We can no longer operate in a vacuum, but must consult scientists, engineers, economists, and any other experts who can help in the battle for the environment. The oil question, especially, is one involving diverse areas of interest and expertise. If conservationists insist on limiting their arguments against offshore drilling to its effects on clams and birds and beaches, then we will lose, and deservedly so.

Let's examine some of the issues involved in the oil controversy:

ENERGY USE IS THE BASIC ISSUE

Recent testimony before the House Interior and Insular Affairs Committee by Secretary Morton focused attention on the energy situation when he said, "We must convince the public of the imminent crisis and the urgent need to take action now." The Federal Power Commission predicted in mid-April that the nation's demand for electric power will quadruple by 1990. The electric utilities in New England have initiated a massive TV and news media blitz of advertising, largely anti-environmentalist. In addition, the Massachusetts Electric Company has been sending with its regular monthly bills an addendum marked "Your share of clean air" which consists of the cost of the low sulfur fuel which Massachusetts law now requires it to use. These pronouncements and propaganda clearly show that the public is on the receiving end of a conscious effort by public officials, public utilities, and public agencies to create an energy crisis much greater than the facts would support.

The energy issue, which previously has been barely visible, will assume a high priority in this and the coming few years. Now it is being seen by most of the public from a completely unbalanced viewpoint, and the environmental opponents hope to keep it that way by this massive campaign to create an energy crisis. I do not deny that there is one; only that its scope, significance, and solutions are not what those who advertise it would have us believe. One of their main purposes is to push through legislation to facilitate rapid construction of power plants. The other major purpose is to prevent delays in oil exploitation. Secretary Morton criticized environmentalists' lawsuits blocking oil leasing in the Gulf of Mexico and delaying the trans-Alaskan pipeline as "arbitrary actions." We are told that we need oil, from the Altantic coast, from oil shale, from wherever we can obtain it, to satisfy our energy needs. Thus we must realize that the oil question is intimately related to the larger energy problems. But if we redirect our technology, if we design better insulated buildings with more fluourescent than incandescent lights, and windows that open so that office people don't have to use air conditioners on warm winter days—then we will diminish our demand for electrical energy, and thus our need for oil.

ECONOMICS OF THE OIL IMPORT QUOTA SYSTEM

New England pays the highest prices in the nation for electricity because it pays the highest prices for oil. Why? The answer is simple. The import quota system restricts the free market mechanisms which should govern the world oil market. We simply cannot obtain anything over a certain specified amount of foreign oil. This could be quickly remedied by a Presidential order. Arguments have been made for keeping the quota system on grounds of national security. Those arguments were most effectively demolished by the President's Cabinet Task Force "Report on Oil Import Control," (February, 1970) which recommended elimination of the quota system. The President, however, disbanded the task force instead of the quota system, and promptly appointed another committee which obligingly recommended that he retain the system.

In addition to the import quota system we have the depletion allowance, the underwriting of drilling costs, and other tax incentives for domestic oil production. These devices are, very simply, a huge bonanza to the oil companies paid by the consumer. The Cabinet Task Force estimated that in 1969 the nation's consumers "paid about $5 billion more for oil products than they would have paid in the absence of import restrictions."

What would happen if the import quota system were suddenly lifted? Chances are reasonably good that New England's oil prices would decrease. If, in addition, the tax breaks to the oil companies were discontinued, there is a possibility that they would lose interest in leasing the offshore areas. Their tax incentives for domestic production are so great that without them, companies might very well find it unprofitable to drill off New England's coast.

ECOLOGY VERSUS TECHNOLOGY

Numerous studies, notably those of Dr. Max Blumer and others at Woods Hole Oceanographic Institute in Massachusetts, have shown that oil has long-term effects on the biota of areas where oil spills have occurred. Any major spills in the New England area would be disastrous to the fishing industry which is already in serious financial trouble, and to the resort-tourist interests which comprise a substantial portion of the coastal economy. Considering the known effects of oil on ocean organisms (there is still much that is unknown such as the effects of oil on phytoplankton), and considering the medieval state of drilling and oil clean-up technology, it seems reasonable for New England to expect solid assurances that it will not be the site for a new "Santa Barbara" or for Gulf-type platform fires.

The New England Governors have repeatedly stressed their concern to the Interior Department. After some reassuring words on how careful they would be, the Interior Department is now talking about sharing profits with the states. In more realistic language—they would like to buy off the Governors. The Governors have so far been adamant in their demands for assurances of environmental protection. In a concerted effort they have initiated a suit challenging the import quota system on the grounds that it unfairly discriminates against New England consumers. With enough public support Governors will hold to their solid line of reasoning. They will be strongly supported by the newly formed Coalition and by diverse groups in New England.

New England should not assume the risks of offshore development until:

1. The import quota system and tax incentives have been eliminated so that the large oil companies are competing in a free market.
2. The nation has developed a rational energy policy which includes plans for research and development of future energy sources and for energy conservation.
3. The Interior Department and oil companies can prove that drilling will not be counter to the public interest.
4. The oil companies are held completely liable for cleanup of any spills which might occur and will compensate for any damage to the fisheries or other economic interests.
5. Cleanup and tanker technologies are brought up-to-date.

COMMEMORATIVE STAMP TO HONOR PUERTO RICAN PATRIOT: LUIS MUÑOZ RIVERA

HON. HERMAN BADILLO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. BADILLO. Mr. Speaker, very few men—particularly in the world of politics—become legends in their own times or enjoy the unique status of being the fathers of their countries. Most Americans are familiar with the accomplishments and contributions of such great patriots as George Washington, Sun Yat-sen, Simon Bolivar, William Tubman, Mahatma Gandhi and other world famous political figures. Yet there is one man who certainly ranks in the forefront of this distinguished group but to whom tributes are neither as frequent nor as well publicized. This man is the famous Puerto Rican patriot Luis Muñoz Rivera.

Poet, newspaper writer and publisher, civil rights activist, and political leader, Luis Muñoz Rivera can truly be considered as the father of Puerto Rican independence and one of the greatest men Puerto Rico has produced. This outstanding patriot devoted his life to fighting for Puerto Rican rights and in striving to achieve just and fair treatment for Puerto Ricans. As the founder and editor of three Puerto Rican newspapers, Muñoz Rivera effectively utilized the pen rather than the sword in championing his cause and he devoted his life to the struggle for autonomy for Puerto Rico and equality for his people. His work

was carried forward by his son, Luis Muñoz Marin, the first elected Governor of Puerto Rico.

Born into a proud Spanish family in the mountain town of Barranquitas in 1859, Luis Muñoz Rivera was a bright and able student. As a young man he energetically pursued a deep and abiding interest in politics and in equal rights and justice for Puerto Ricans. He soon became a leader of the Liberal Party and through his many writings, a leading spokesman for freedom for Puerto Rico.

Although Muñoz Rivera did not originally favor a complete separation from Spain, he was a leader of the movement to gain autonomy and some degree of self-government from the mother country. He was instrumental in achieving the Charter of Autonomy from the new Spanish Republic in 1897.

Following the Spanish-American War, the great Puerto Rican leader valiantly defended the rights of his people when military rule was imposed by the United States and after civilian government was instituted following the passage of the Foraker Act in 1900.

In 1901, Don Luis and his family came to the United States and in the same year he founded the Puerto Rico Herald in New York, the first Puerto Rican newspaper published in English. Using the paper as a forum, his attacks on what was being done to his beloved Puerto Rico were forceful and direct, and as he once wrote:

> We affirm the right of Puerto Rico to assert its own personality.

This was a theme he was to continue stressing throughout his public life.

Following his return to Puerto Rico a number of years later, Muñoz Rivera was elected as the Resident Commissioner from Puerto Rico in 1910, a position he was to hold for 6 years. During his tenure as Resident Commissioner, the Jones bill—granting full American citizenship to Puerto Ricans—was introduced and Muñoz Rivera, enlisting the support of President Wilson, fought long and hard for its passage. Unfortunately, his death in 1916 robbed Muñoz Rivera of the opportunity to see the Jones Act signed into law the following year.

Mr. Speaker, we can all take great pride in the life of Luis Muñoz Rivera and the many accomplishments he made to our people. His memory remains alive today in Puerto Rico and all Boricuas are justifiably proud of his outstanding contributions to them. The official proclamation of the Commonwealth of Puerto Rico in 1952 can be properly considered as the culmination of the efforts which Muñoz Rivera initiated some five decades earlier.

Mr. Speaker, I believe it would be a fitting and proper tribute to the courage, integrity, and patriotism of this great leader to have a commemorative stamp issued in his honor. I have written to the Postmaster General, urging that he and the Citizens' Stamp Advisory Council give this proposal full and careful consideration and that such a stamp be issued on December 12, 1973 to coincide with the 75th anniversary of the signing of the Treaty of Paris which marked Puerto Rico's independence from Spain.

In addition, I am today introducing legislation authorizing the issuance of such a commemorative stamp in order to focus attention of our colleagues on Luis Muñoz Rivera's life and accomplishments. I welcome the participation of our colleagues in this effort and in urging the U.S. Postal Service to take appropriate steps to issue a Luis Muñoz Rivera commemorative stamp next year.

The letter and resolution follow:

HOUSE OF REPRESENTATIVES,
Washington, D.C., May 23, 1972.

Hon. ELMER T. KLASSEN,
Postmaster General,
U.S. Postal Service,
Washington, D.C.

DEAR MR. POSTMASTER GENERAL: I am writing to propose that the U.S. Postal Service issue a commemorative stamp in honor of the famous Puerto Rican patriot and statesman, Luis Muñoz Rivera.

Luis Muñoz Rivera was long a champion of Puerto Rican independence and his life, both public and private, was devoted to the cause of autonomy for Puerto Rico and equality for our people. In addition to his political activities he was also a noted poet, newspaper writer and publisher.

During his tenure as Resident Commissioner of Puerto Rico, a position he held for six years, the Jones Bill—which granted full American citizenship to Puerto Ricans—was introduced in the Congress and enacted into law. Muñoz Rivera was instrumental in this measure's passage.

While I realize that many commemorative stamp proposals are currently pending, I believe a stamp to honor Muñoz Rivera deserves special consideration. To the best of my knowledge, no Puerto Rican has ever been so honored, although countless other nationality groups have been represented by commemorative stamps.

I suggest that a Luis Muñoz Rivera commemorative stamp be issued on December 12, 1973 to coincide with the 75th anniversary of the signing of the Treaty of Paris whereby Puerto Rico secured her independence from Spain.

I urge that you and the Citizens' Stamp Advisory Committee give this proposal your fullest, most careful and sympathetic consideration with a view toward authorizing the issuance of a special stamp to honor Luis Muñoz Rivera's life and important contributions.

Sincerely,

HERMAN BADILLO,
Member of Congress.

H.J. RES. —

Joint resolution to provide for the issuance of a special postage stamp in commemoration of Luis Muñoz Rivera

Whereas Luis Muñoz Rivera was an outstanding patriot who devoted his life to achieving fair and just treatment for Puerto Ricans; and

Whereas Luis Muñoz Rivera is considered as the father of Puerto Rican independence and one of the most distinguished statesmen produced by Puerto Rico; and

Whereas Luis Muñoz Rivera served as the Resident Commissioner of Puerto Rico in the United States Congress; and

Whereas Luis Muñoz Rivera's tireless energy and dedication secured the passage of the Jones Act and the granting of U.S. citizenship to Puerto Ricans; and

Whereas Luis Muñoz Rivera symbolizes the many outstanding accomplishments of and contributions to American society by more than four million Puerto Rico Americans; Now, therefore, be it

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That the Postmaster General is authorized and directed to issue a special postage stamp in commemoration of the late Luis Muñoz Rivera. Such stamp shall be of such denomination and design as the Postmaster General shall determine, shall be first placed on sale on December 12, 1973 and shall be sold thereafter for such period as the Postmaster General shall determine.

COMMENDS KIWANIS

HON. NICK GALIFIANAKIS

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. GALIFIANAKIS. Mr. Speaker, today I want to recognize and commend Kiwanis International and the Kiwanis Club around the world for the exemplary service they provide to our States and Nation. I wish to draw special attention to this service organization's awareness of current problems as evidenced by their Operation Drug Alert program.

Kiwanis International has recognized the danger to our country, the damage to our citizens, and the waste, brutality and sorrow wrought by the misuse of drugs throughout our society.

This is a massive problem the Kiwanians have chosen to confront. It involves both physical and mental dependency; it knows no economic, racial or geographical boundaries, and it is symptomatic of a deeply rooted, badly misshapen approach to seeking pleasure or solving problems. Such things are not easily changed.

But Kiwanis International has, as always, faced up to the challenge of finding solutions to complex problems. This organization has taken a determined stand on the drug problem and has brought to bear the pragmatic idealism and expertise of its members. By tackling this problem they inspire others in their community and nation to involve themselves.

In February 1969 the Kiwanis International board of trustees designated Operation Drug Alert, a program directed toward the prevention of drug abuse, as its major emphasis program for all Kiwanis Clubs in the United States during the 1969–70 year. This program was similarly designated as an emphasis program for the succeeding year, 1970–71, and for the current year, 1971–72.

The program's main objectives are:

To educate as many people as possible to the nature and consequences of the use, abuse, and misuse of drugs, especially concentrating upon the prerisk group of youth of elementary and junior high age;

To inhibit, reduce, or eliminate drug abuse within the community;

To safeguard the community against further incidence.

This year's program places special emphasis on prevention and remedial action.

To assist local Kiwanis clubs in working toward these objectives, Kiwanis International provides each club with a planning manual and other support materials, including booklets, recorded spot announcements, suggested newspaper releases, and so forth.

Reports from 4,709—88 percent—Kiwanis clubs in the United States and Canada revealed that for 1 year alone, from October 1970 through September 1971, 2,056 of these clubs had played a substantial role in a communitywide program and an additional 913 had carried out projects independently. These clubs had distributed to youth more than 2 million copies of the two drug education booklets available from Kiwanis International, and, in addition to that, distributed nearly 4 million copies of drug education materials available from other sources or produced by themselves.

These Kiwanis clubs had sponsored a total of 12,678 public meetings or forums and 63,574 members had given at least 1 hour of their time to the program.

These clubs had either helped to initiate, assisted financially, or in some other way significantly supported: 685 drop-in centers, 764 hotlines, 164 methadone maintenance programs, 600 halfway houses, and 1,843 other counseling or rehabilitation programs.

These impressive figures do not even include the various other kinds of involvement of Kiwanis clubs in the program, such as the purchase of books for libraries, billboards, bumper strips, and so forth. Nor do they reflect the substantial contribution made by the Kiwanis-sponsored youth organization, the Key clubs and Circle K clubs, on more than 4,000 high school and college campuses, which had their own drug abuse prevention programs or cooperated with Kiwanis clubs in theirs.

There are over 100 Kiwanis clubs in my own home State and according to Dr. Cecil Cooper, district governor of the Carolinas district, Mr. Carl Hyatt, Jr., secretary-treasury for the district, 90 percent of the 100 clubs have been actively involved in operation drug alert.

I wish I could site them all individually, but to give you an idea of what they have been doing, I want to mention just two here.

The Kiwanis Club of High Point, N.C., promoted the film, "Way Out" which depicts the dangers of drug abuse. There were 3,000 copies of the Kiwanis Club booklet "Deciding About Drugs" and 15,000 copies of the article, "But Mom—Everyone Smokes Pot," distributed to schools, shopping centers, and business firms. Under Kiwanis sponsorship, Scott Ross, former New York disc jockey and drug addict, spoke to over 12,000 people at public meetings in the community, and over 250,000 in the television viewing audience heard Mr. Ross on three specially taped programs. The club actively participated in the formation of the High Point Drug Task Force, composed of representatives of local schools, churches, parent-teacher, civic, and professional groups.

In Goldsboro, N.C., Operation Drug Alert Day was officially proclaimed by the mayor, and the Kiwanis Club there conducted an intensive drug education program for the entire community. Three separate assemblies were held in local schools for students in grades 6 through 10, and a meeting for the general public was conducted in the evening. Each of the four sessions centered on the appearance of a former drug addict and pusher, backed up by a panel of experts; 3,000 copies of an educational booklet on drugs were distributed to those attending the sessions.

I am heartened and hopeful for our future when I see the energy and ideals of an outstanding organization such as Kiwanis International being put into action. It is through the resourcefulness, drive, and commitment of such organizations and private citizens that we are able to strengthen the present, and build our tomorrows on a sturdier foundation.

I think to get a clear picture of what Kiwanis International is really all about, one has only to look at a few of its stated objectives:

To cooperate in creating and maintaining that sound public opinion and high idealism, which make possible the increase of righteousness, justice, patriotism, and good will.

To develop, by precept and example, a more intelligent, aggressive and serviceable citizenship, and

To encourage the daily living of the Golden Rule in all human relationships.

I think we all owe a debt of gratitude to these Kiwanians, who give so much of their time and of themselves, and I am proud to commend Kiwanis International for the fine work it is doing. It is a very special honor for me to be a member of the Kiwanis Club in my own hometown of Durham, N.C., and to be a part of this worldwide service organization.

FAMILY FARM AND SMALL BUSINESSMEN DESERVE PROTECTION

HON. GRAHAM PURCELL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. PURCELL. Mr. Speaker, today I am forced to reintroduce a measure that I put before the Congress as far back as 1967 and also in each subsequent session. The fact that this bill has not been enacted into law grows more deplorable with each week that passes.

The bill I refer to is intended to relieve the American farmer and small businessman from an economic stranglehold improvidently imposed by senseless Internal Revenue Service regulations. Each year thousands of American farmers are being forced from their land due to irrational policies promulgated by the IRS and because the Congress of the United States refuses to heed their cries for assistance.

I put this bill before the Congress once again because the Internal Revenue Service continues to assess, for estate tax purposes, agricultural land at the value for which it could be sold on the speculative market, rather than for what it is worth as farmland. Playing openly into the hands of the self-enriching profit speculators, this Revenue Service policy is systematically destroying a vast segment of American agriculture and at the same time is accelerating the uncontrolled spread of the megalopolis into rapidly degenerating rural areas.

Current IRS policy is to appraise and tax a farmer's land holdings at its value for development—often five to 10 times higher than its worth as farmland. As a result, farmland must often be sold to waiting speculators in order to cover the unbearable inheritance taxes.

A common occurrence today is the situation where a young farmer attempting to continue on family owned land, located on the outskirts of the burgeoning suburbs, must assume a tremendous mortgage with 9 or 10 percent interest in order to pay the inheritance taxes. In thousands of instances repeated all over the country, the young farmer will not be able to carry the burden. So, he has to sell. Any way you look at it, it comes out the same—foolish IRS policy and lack of governmental response has forced another farmer off land his family has worked for decades.

The bill I am reintroducing provides the drastically needed revisions to the valuation criteria used by the IRS and would establish a more reasonable and practical estate tax. In effect it would assure and protect the future of the agricultural areas of the United States.

Not only is congressional action needed on this measure to prevent the disintegration of the family farm as we know it today, but appropriate action now would help put an end to the hodge podge of State and county statutes that have cropped up in the search for methods of circumventing IRS regulations. For example, in Florida, farmers by the thousands have been forced to incorporate thereby utilizing tax exempt corporate gift tax statutes. In California, New Jersey, and Maryland, the trend has been toward setting up agricultural land use districts. Farmers in various other States have chosen to enter into special contractual relationships with county governments which enable the State to enter its own tax assessments for Federal purposes.

Makeshift expedients have been devised throughout the country. This is in my opinion a dangerous and undesirable consequence which in the long run makes a mockery out of our goal to provide reasonable, practical, and uncomplicated laws for the governing of society. In light of such developments, it is no wonder to me that public mistrust and widespread disrespect for governmental institutions is running rampant in our society.

I offer this bill once again in the interest of securing the future of the family farm in this country and in the hope of renewing credibility and respect for Government.

MOORHEAD BILL TO CREATE STATUTORY SECURITY CLASSIFICATION SYSTEM AND TO PROVIDE FOR ACCESS BY CONGRESS TO INFORMATION FROM THE EXECUTIVE

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. MOORHEAD. Mr. Speaker, I have today introduced a bill to correct the

many deficiencies and abuses connected with the operation of the Nation's security classification system and problems relating to access to information by the Congress from the executive branch.

The key feature of this legislation is the establishment of an independent Classification Review Commission, composed of nine members who would be provided broad regulatory and quasi-adjudicatory authority over the administration of the security classification system in the executive branch. The commission would also have the responsibility of settling disputes between the Congress and the executive over access to both classified and unclassified types of information requested by Congress or the Comptroller General of the United States. The commission's decisions in this latter area would be subject to judicial review.

Three members of the Classification Review Commission are to be appointed by the Speaker of the House, three by the President pro tempore of the Senate, and three by the President. Terms would be fixed at 3, 5, and 7 years, but no member could be reappointed, and not more than six members may be from the same political party.

Mr. Speaker, the statutory security classification system established in this legislation would replace the Presidential Executive order approach to this problem which our hearings have shown to be unworkable and which has resulted in the massive overclassification and needless classification of documents and undermined the integrity of our entire security classification effort. Obviously, it is impossible to write language—either in an Executive order or in a statute—to cover all situations in this complex field. But the machinery that would be established by this legislation would provide the flexibility to deal with security classification problem areas on a case-by-case basis, while providing the overall independent administration and regulation of the system to properly enforce its provisions and insure its effectiveness within the framework of our representative system of government.

The Foreign Operations and Government Information Subcommittee over the years has held numerous hearings and conducted investigations into these same subject matters, spanning a period of more than 15 years and four national administrations—two Republican and two Democratic. Additional hearings are currently being held on security classification problems and instances of denial of information requested by Congress from the executive branch—information needed by Congress to discharge its constitutional duties and responsibilities.

Mr. Speaker, I stress the fact that this matter is not a partisan one. The weaknesses of Executive orders in the administration of our security classification system have been obvious to the past five Presidents. Over the past 25 years, we have had two Executive orders in operation and the most recent inadequate attempt to deal with the problem is Executive Order 11652, issued by President Nixon on March 8 of this year, and scheduled to take effect on June 1, 1972.

The dimensions of this difficult problem were eloquently described in President Nixon's statement on March 8:

> Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations.

The long-range effects of such a system were also listed:

> The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies.

All Americans should be able to agree on these fundamental principles on which any free nation's security classification must be predicated. We can also agree on other requirements of such a system, as similarly described in President Nixon's statement:

> Yet since the early days of the Republic, Americans have also recognized that the Federal Government is obliged to protect certain information which might otherwise jeopardize the security of the country. That need has become particularly acute in recent years as the United States has assumed a powerful position in world affairs, and as world peace has come to depend in large part on how that position is safeguarded. We are also moving into an era of delicate negotiations in which it will be especially important that governments be able to communicate in confidence.
>
> Clearly, the two principles of an informed public and of confidentiality within the Government are irreconcilable in their purest forms, and a balance must be struck between them.

Mr. Speaker, these are the basic premises on which we all can concur in the formulation of a system to safeguard our legitimate national defense and foreign policy secrets, while, at the same time providing the American public with the information required to preserve unity of purpose.

As I have pointed out on several occasions on the House floor, the new Executive order does not, in my carefully considered judgment, meet the basic criteria laid down in the President's own statement. It is unworkable, contains massive technical defects, and contains major loopholes that will only make the problem of overclassification worse, while seriously jeopardizing the integrity of vital defense and foreign policy secrets that do require the utmost protection.

These conclusions have been reached after hearing testimony before our subcommittee from witnesses of the Defense, State, and Justice Departments who were all involved in the creation of the new security classification Executive order. It was for this reason that I publicly called upon the President on May 3 to suspend indefinitely the June 1 effective date of the new order.

Mr. Speaker, I have felt that those who criticize an existing program or policy have an obligation to propose viable alternatives if their criticism is to be seriously considered by others. The bill I am introducing today provides that viable alternative which meets the fundamental criteria spelled out by President Nixon in his March 8 statement and the criteria developed during our extensive hearings on the security classification system and the need for Congress to obtain information from the executive branch.

This legislation would establish, for the first time, a sound, flexible statutory system to deal effectively with the dual need to safeguard our truly vital defense and foreign policy secrets, while assuring the Congress and the public to information required to preserve our representative system of government. The "tilt" should always be toward disclosure. Full details are described in the section-by-section analysis of the measure and the full text of the bill, which follow my remarks. For reference purposes, I will also list the citations in the RECORD to my previous remarks on this subject and appendix insertions I have included.

Other highlights of the proposal, embodied in the Freedom of Information Act Amendments of 1972, are summarized below:

Strictly confines classification of national defense information to "Top Secret", "Secret", and "Confidential", depending on the level of damage to the national defense that would be caused by its unauthorized disclosure;

Limits original "Top Secret" classification to only the Departments of State, Defense (including the Army, Navy and Air Force), the Central Intelligence Agency, the Atomic Energy Commission, and designated offices within the Executive Office of the President;

Limits original "Secret" classification to only the Departments and agencies listed above and the Departments of Justice, Treasury, and Transportation;

Limits original "Confidential" classifications to the Departments and agencies listed above and the Department of Commerce and the National Aeronautics and Space Administration;

Provides for a strict limitation upon those top officials in each of the Departments and agencies listed above as to who can exercise the authority to classify information. Such officials shall be held fully accountable and shall be subject to reprimand and other disciplinary action for overclassification or other violations of regulations;

Requires a three-year downgrading procedure for most types of classified national defense information—one year from "Top Secret" to "Secret" one year from "Secret" to "Confidential"; and one year from "Confidential" to a declassified state, and transfer to the National Archives, where it would then be subject to disclosure provisions of the Freedom of Information Act;

It authorizes a procedural "savings clause" that could be applied narrowly to certain types of highly sensitive national defense information when invoked by the Executive department or the President, subject to the approval of the independent Classification Review Commission created under the legislation;

National defense information previously classified is subject to an automatic declassification procedure after a period of 15 years, except for highly sensitive data subject to the "savings clause" procedure.

Mr. Speaker, in summary, this legislation strikes that delicate balance between the conflicting needs of the Congress and the Executive, and the public as a whole in this vital area. But it also requires as

rapid disclosure of information as possible, consistent with the national interest. It would replace the unworkable and unmanageable Executive order approach to the security classification system and would provide a practical, enforceable, meaningful administrative mechanism to safeguard the Nation's truly vital defense secrets, while preserving the constitutional need of Congress for information to investigate and to legislate, and maintaining the public's right to know that is essential in our representative system of government.

I invite comments and suggestions from my colleagues here in the Congress for improvements in this legislation, as well as those from the executive branch and the public. Hopefully, other Members of the House and Senate bill, after carefully considering the measure, join in cosponsoring it with me:

CONGRESSIONAL RECORD CITATIONS TO SECURITY CLASSIFICATION REMARKS AND INSERTIONS BY REPRESENTATIVE WILLIAM S. MOORHEAD

"Hearings on the Freedom of Information Act to Begin Monday, March 6", March 1, 1972, CONGRESSIONAL RECORD, page 6335.

"Moorhead Hits Nixon Action on Security Classification Executive Order", March 8, 1972, CONGRESSIONAL RECORD, page 7594.

"Foreign Aid Funds May Be Cut Off Tomorrow Because of Refusal to Provide Congress with Vital Information on Cambodia", March 14, 1972, CONGRESSIONAL RECORD, page 8366.

"U. S. Assistance Program in Cambodia", March 16, 1972, page 8694.

"Section-by-Section Comparison and Analysis of Executive Orders 10501 and 11652, 'Classification and Declassification of National Security Information and Material' ", March 21, 1972, page 9377.

"New Security Classification Executive Order Perpetuates Censorship and Secrecy", article by William G. Florence, March 27, 1972, page 10345

"Muddled Secrecy System", editorial in St. Louis *Post Dispatch*, April 26, 1972, page 14551.

"Moorhead Urges Postponement of Effective Date of New Presidential Executive Order on Security Classification System", May 3, 1972, page 15692.

"Expert Urges Statutory Security Classification System to End Dangerous Overclassification and Administration Chaos", testimony by William G. Forence, May 4, 1972, page 16007.

"Senator Gravel Attacks Secrecy in Government, Urges Congress to Exercise Its Legitimate Power as a Coequal Branch", testimony by Senator Mike Gravel, May 9, 1972, page 16467.

"Government Secrecy Costs Twice as Much as Government Public Information," summary of GAO study on costs of security classification system, May 15, 1972, page 17340.

H.R. 15172

A bill to amend section 552 of title 5 of the United States Code to clarify certain exceptions from its disclosure requirements, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Freedom of Information Act Amendments of 1972".

SEC. 2. Section 552(a)(3) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The court shall award reasonable attorneys' fees and court costs to the complainant if it issues any such injunction or order against the agency."

SEC. 3. Section 552(b) of title 5, United States Code, is amended by—

(1) striking out "(b) This section" and inserting in lieu thereof "(b)(1) Subsection (a)";

(2) redesignating paragraphs (1) through (9) as subparagraphs (A) through (I), respectively;

(3) striking out subparagraph (A) (as so redesignated) and inserting in lieu thereof the following:

"(A) required under subsection (d), in the interest of national defense, to be kept secret;";

(4) striking out "or" at the end of subparagraph (H) (as so redesignated), by striking out the period at the end of subparagraph (I) (as so redesignated) and inserting "; or" in lieu thereof, and by inserting after subparagraph (I) (as so redesignated) the following new subparagraph:

"(J) related to the foreign policy of the United States."; and

(5) inserting at the end thereof the following new paragraph:

"(2) If any matter falls within paragraph (1) and is classified under subsection (d) as Top Secret, Secret, or Confidential and is subsequently declassified under subsection (e), then subsection (a) applies to such matter."

SEC. 4. Section 552 of title 5, United States Code, is amended by adding at the end thereof the following new subsections:

"(d)(1) Official information may, in the interest of national defense, be classified as—

"(i) Top Secret;

"(ii) Secret; or

"(iii) Confidential;

by appropriate agencies as described in subparagraph (A) of paragraph (2). Such classified information shall be known as national defense information. Official information may be classified as Top Secret only if its unathorized disclosure could cause exceptionally grave damage to the national defense the United States. Official information may be classified as Secret only if its unauthorized disclosure could cause serious damage to the national defense of the United States. Official information may be classified as Confidential only if its unauthorized disclosure could cause damage to the national defense of the United States.

"(2)(A)(i) Official information may be originally classified as Top Secret by the following agencies: the Department of State, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Central Intelligence Agency, the Atomic Energy Commission, and by such offices within the Executive Office of the President as the President may designate by Executive order.

"(ii) Official information may be originally classified as Secret by any agency which may originally classify official information as Top Secret and by the Department of the Treasury, the Department of Justice, and the Department of Transportation.

"(iii) Official information may be originally classified as Confidential by any agency which may originally classify official information as Top Secret or Secret and by the Department of Commerce and the National Aeronautics and Space Administration.

"(B)(i) Within the agencies described in subparagraph (A), the classification, in the interest of national defense, of official information may only be done by the head of each such agency, and such other senior principal deputies, assistants, and subordinate officials within each such agency who are designated in writing by the head of each such agency. However, subordinate supervisory officials below the level of section chief or its equivalent may not be designated to classify official information as Top Secret, Secret, or Confidential. Nor may any individual be designated to classify such information unless his day-today operational responsibilities make it imperative that he have such authority. The head of each such agency shall semiannually review each individual whom he has designated in writing as having authority to classify official information in order to take away such authority from any individual whose operational responsibilities no longer make it imperative that he have such authority.

"(ii) Individuals who are designated in writing by the head of an agency pursuant to clause (i) as having authority to classify official information may not redelegate such authority to any other individual.

"(3)(A) Except as otherwise provided by statute, the head of each agency described in subparagraph (A) of paragraph (2) shall compile and maintain a full and complete list of the names and addresses of all individuals within such agency who have the authority to classify official information as Top Secret, Secret, or Confidential, including a breakdown identifying individuals who have the authority to classify official information into each such category. A copy of such list shall be submitted by each such head quarterly to the Classification Review Commission. A copy of each such list shall also be made available, upon written request to the appropriate agency head by any committee of Congress or by the Comptroller General of the United States, to such committee or the Comptroller General.

"(B) Any individual who, acting in a clerical capacity, handles any classified information need not have authority to classify official information pursuant to subparagraph (A) in order to put markings on material containing any such information to identify its category of classification.

"(4) No agency other than an agency described in subparagraph (A) of paragraph (2) may, in the interest of national defense, classify official information, and no such authority may be delegated to any other agency except by statute.

"(5)(A) The classification of official information shall be strictly based upon the definitions of Top Secret, Secret, and Confidential, as defined in paragraph (1).

"(B) Each individual who has the authority pursuant to paragraph (2)(B)(i) to classify official information as Top Secret, Secret, or Confidential shall be held accountable, under regulations prescribed by the Commission, for his failure to accurately classify such information.

"(C) Such individuals shall not classify official information in order to conceal incompetence, inefficiency, wrongdoing, administrative error, to avoid embassassment to any individual or agency, to restrain competition or independent initiative, or to prevent or delay for any reason the release of official information in violation of subsection (e). Any such individual who classifies official information in violation of this subparagraph shall be subject to administrative reprimand, including suspension or such other disciplinary action as shall be prescribed under regulations of the Commission.

"(D) Classified information furnished to the United States by a foreign government or international organization shall be classified by an appropriate agency described in subparagraph (A) of paragraph (2) as Top Secret, Secret, or Confidential, depending upon its category of classification by such foreign government or international organization. However, the provisions of such information to any appropriate committee of Congress shall not be denied, upon the written request of such committee to the appropriate agency.

"(e)(1)(A) Whenever—

"(i) any official information which has been classified on or after the effective date of the Freedom of Information Act Amend-

ments of 1972 pursuant to subsection (d) as Top Secret, Secret, or Confidential; and

"(ii) such information no longer satisfies the criterion (as described in subsection (d) (1)) for classification in such category;

then such information shall be promptly downgraded to an appropriate less stringent category or declassified by an individual within the agency concerned who has authority to classify such information.

"(B) Except as provided by paragraph (3)—

"(i) any official information which is originally classified pursuant to subsection (d) as Top Secret, Secret, or Confidential on or after the effective date of the Freedom of Information Act Amendments of 1972; and

"(ii) any official information which was originally classified, in the interest of national defense, as Top Secret, Secret, or Confidential during the fifteen-year period immediately preceding the effective date of the Freedom of Information Act Amendments of 1972 pursuant to any Executive order and which is classified as Top Secret, Secret, or Confidential on such effective date; shall be downgraded or declassified, as the cause may be, by an individual within the agency concerned who has the authority to classify such information according to the schedule in paragraph (2).

"(C) Except as provided by paragraph (3), any official information which was originally classified, in the interest of national defense, prior to the fifteen-year period immediately preceding the effective date of the Freedom of Information Act Amendments of 1972 pursuant to any Executive order, directive, memoranda, or other authority and which is classified as Top Secret, Secret, or Confidential on such effective date shall be automatically declassified by an individual within the agency concerned who has the authority to classify such information within six months after the effective date of the Freedom of Information Act Amendment of 1972.

"(2) Official information which is classified as Top Secret, Secret, or Confidential and which is described in subparagraph (B) of paragraph (1) shall be downgraded or declassified, as the case may be, by an individual within the agency concerned who has the authority to classify such information according to the following schedule:

"(A) (i) Official information classified as Top Secret and described in paragraph (1) (B) (i) shall be downgraded to Secret twelve months after the date of its original classification as Top Secret.

"(ii) Official information classified as Top Secret and described in paragraph (1) (B) (ii) shall be downgraded to Secret within twelve months after the effective date of the Freedom of Information Act Amendments of 1972.

"(B) (i) Official information classified as Secret and described in paragraph (1) (B) (i) shall be downgraded to Confidential twelve months after the date of its original classification as Secret.

"(ii) Official information classified as Secret and described in paragraph (1) (B) (ii) shall be downgraded to Confidential within twelve months after the effective date of the Freedom of Information Act Amendments of 1972.

"(iii) Official information which is downgraded to the category of Secret pursuant to the provisions of paragraph (1) (A) or pursuant to the provisions of clause (i) or (ii) of subparagraph (A) of this paragraph shall be downgraded to the category of Confidential twelve months after the date of its downgrading to the category of Secret.

"(C) (i) Official information classified as Confidential and described in paragraph (1) (B) (i) shall be declassified twelve months after the date of its original classification as Confidential.

"(ii) Official information classified as Confidential and described in paragraph (1) (B) (ii) shall be declassified within twelve months after the effective date of the Freedom of Information Act Amendments of 1972.

"(iii) Official information which is downgraded to the category of Confidential pursuant to the provisions of paragraph (1) (A) or pursuant to the provisions of clause (i), (ii), or (iii) of subparagraph (B) of this paragraph shall be declassified twelve months after the date of its downgrading to the category of Confidential.

"(3) Official information which is classified as Top Secret and which is described in subparagraph (B) or (C) of paragraph (1) shall not be downgraded to a less stringent category or declassified, other than in accordance with procedures described in paragraph (4), if such information—

"(A) is specifically exempted from disclosure by statute;

"(B) pertains to cryptologic systems;

"(C) would disclose intelligence sources or methods; or

"(D) would disclose a defense plan, project, or other specific defense matter, the continuing protection of which is of vital importance to the United States and the unauthorized disclosure of which could cause exceptionally grave damage to the national defense of the United States.

"(4) (A) Official information which is classified as Top Secret, is described in subparagraph (B) or (C) of paragraph (1), and is within the purview of subparagraph (A), (B), (C), or (D) of paragraph (3) shall be downgraded to Secret by an individual within the agency concerned who has the authority to classify such information twelve months after the date of its original classification as Top Secret in the case of information described in paragraph (1) (B) (i) and twelve months after the effective date of the Freedom of Information Act Amendments of 1972 in the case of information described in paragraph (1) (B) (ii) or paragraph (1) (C). Immediately after its downgrading, such information shall be transmitted by the head of the agency concerned to the Chairman of the Commission.

"(B) The Commission may, by a majority vote of its full membership, allow such information to continue to be classified as Secret for a period of twenty-four months beginning as of the date of the downgrading of such information by the agency concerned to Secret. Prior to the end of such twenty-four-month period, the Commission may, by a majority vote of its full membership, allow such information to continue to be classified as Secret for a period of twelve months beginning as of the end of such twenty-four-month period. Prior to the end of such twelve-month period, the Commission may, by a two-thirds vote of its full membership, allow such information to continue to be classified as Secret for an additional twelve-month period beginning as of the end of the preceding twelve-month period. At the end of this additional twelve-month period, such information shall be downgraded to Confidential by an individual within the agency concerned who has the authority to classify such information, and twelve months after the date of its downgrading to Confidential, such information shall be declassified by any such individual. However, if prior to the end of such second twelve-month period the President informs the Commission, in writing, of the detailed justification for the continued safeguarding of such information based upon national defense interests of the United States of the highest importance, then such information shall continue to be classified as Secret unless the Commission, within fifteen calendar days of its receipt of the President's written justification, by a two-thirds vote of its full membership, rejects such justification. If the Commission does not so vote to reject such justification, then such information shall continue to be classified as Secret until the Commission, by a two-thirds vote of its full membership, rejects such justification. If the Commission does so vote to reject such justification, then such information shall be downgraded to Confidential by an individual within the agency concerned who has the authority to classify such information, and twelve months after the date of its downgrading to Confidential, such information shall be declassified by any such individual.

"(C) If the Commission does not vote under subparagraph (B) to allow any information within the purview of subparagraph (A) to continue to be classified as Secret for such twenty-four month period or for the first or second twelve-month period described in subparagraph (B), then such information shall be downgraded to Confidential and thereafter declassified according to the schedule provided under paragraph (3), except that if such information is described in subparagraph (C) of paragraph (1), then it shall be promptly declassified by an individual within the agency concerned who has authority to classify such information.

"(5) (A) Any official information which is downgraded or declassified under this subsection shall be marked as soon as practicable in order to clearly identify its new category of classification or the fact that it has been declassified, the date of such downgrading or declassification, the name of the person who authorized such change, and the name of the individual who executed such change.

"(B) In cases where—

"(i) classified information has been transferred from one agency to another agency;

"(ii) the agency which originally classified such information has ceased to exist; or

"(iii) such information has been transferred to the General Service Administration in order to be placed in the Archives of the United States;

the Commission shall prescribe regulations which delineate who shall have the authority to downgrade such information to a less stringent category and to declassify it.

"(f) (1) There is established a commission to be known as the Classification Review Commission (referred to in this section as the 'Commission').

"(2) (A) The Commission shall be composed of nine members as follows:

"(i) Three appointed by the Speaker of the House of Representatives. Not more than two members appointed under this clause may be of the same political party.

"(ii) Three appointed by the President pro tempore of the Senate. Not more than two members appointed under this clause may be of the same political party.

"(iii) Three appointed by the President. Not more than two members appointed under this clause may be of the same political party.

A vacancy in the commission shall be filled in the manner in which the original appointment was made.

"(B) Not more than six members of the Commission appointed shall be of the same political party. All members of the Commission must be citizens of the United States.

"(C) (i) Of the members first appointed—

"(I) one appointed by the Speaker of the House, one appointed by the President pro tempore of the Senate, and one appointed by the President shall be appointed for a term of three years;

"(II) one appointed by the Speaker of the House, one appointed by the President pro tempore of the Senate, and one appointed by the President shall be appointed for a term of five years; and

"(III) one appointed by the Speaker of the House, one appointed by the President pro tempore of the Senate, and one appointed by the President shall be appointed for a term of seven years.

"(ii) Any member appointed to fill a vacancy occurring prior to the expiration of the term or which his predecessor was appointed shall be appointed only for the remainder of such term. A member may not serve more than one term on the Commission, except that a member may serve after the expiration of his term until his successor has taken office.

"(D) No member of the Commission shall actively engage in any business, vocation, or employment other than that of serving as a member of the Commission.

"(3) (A) Six members of the Commission shall constitute a quorum.

"(B) The Chairman and Vice Chairman of the Commission shall be elected from the membership by the members of the Commission. The term of office of the Chairman and Vice Chairman shall be two years.

"(C) The Commission shall meet at the call of the Chairman or six of its members.

"(4) (A) Members (including the Chairman and Vice Chairman) of the Commission shall each be paid at the annual rate of basic pay in effect for level II of the Executive Schedule of section 5315 of title 5, United States Code.

"(B) (i) The Commission shall have an Executive Secretary who shall be hired by the Commission and who shall be paid at a rate not to exceed the rate of basic pay in effect for level IV of the Executive Schedule of section 5315 of title 5, United States Code.

"(ii) Subject to such rules as may be adopted by the Commission, the Chairman may appoint such personnel as he deems desirable.

"(iii) The staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(5) (A) The Commission shall prescribe such regulations as it considers necessary or appropriate to effectuate the provisions of subsections (d) through (g) of this section including such regulations as are described in subsection (d) (5) (B), subsection (d) (5) (C), subsection (e) (5) (B), and subsection (g) (6).

"(B) The Commission shall prescribe standards and procedures concerning the handling of official information which is classified in the interest of national defense which shall be applied uniformly by the agencies concerned (including the Commission) and shall include, but not be limited to, the following—

"(i) assuring that (I) knowledge and possession of such information shall be limited to individuals who are trustworthy and whose official duties require such knowledge or possession, that (II) such information shall not be disseminated outside of the originating or controlling agency except under such conditions and by such methods as are authorized by the President or the head of disseminating agency, and that (III) no individual may withhold or authorize withholding such information from Congress;

"(ii) assuring that such information shall be appropriately and conspicuously marked or otherwise identified in order to show its category of classification;

"(iii) assuring that such information shall be marked in order to identify the agency which classified it, the date of its preparation and classification (including the date of its subsequent downgrading and declassification), and the name and title of the highest ranking person authorizing its classification (and subsequent downgrading and declassification);

"(iv) assuring that such information shall be used, possessed, transmitted, and stored only under conditions which will prevent dissemination to or access by unauthorized persons; and

"(v) assuring that appropriate accountability records shall be established and maintained with respect to such information.

"(6) (A) The Commission may for the purpose of carrying out its duties under subsections (d) through (g) hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable. The Commission may administer oaths or affirmations to witnesses appearing before it.

"(B) The Commission may secure directly from any agency information necessary to enable it to carry out its duties under subsection (d) through (g). Upon request of the Chairman or Vice Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

"(C) The Commission may use the United States mails in the same manner and upon the same conditions as other agencies.

"(D) The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

"(E) (i) The Commission shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing within the United States.

"(ii) If a person issued a subpena under clause (i) refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district within which the hearing is conducted or within the judicial district within which such person is found or resides or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(iii) The subpenas of the Commission shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

"(iv) All process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

"(F) The Commission shall carry out its functions with respect to the downgrading and declassification of official information as described in subsection (e) (4) and (e) (5) (B).

"(G) The Commission may issue decisions, orders, and directives, and distribute reports, administrative memorandums, and other information in order to assure that the provisions of subsections (d) through (g) are carried out.

"(H) The Commission shall publish annual reports of its activities and shall make available for public inspection at reasonable times in its office a record of its proceedings and hearings. However, the Commission shall not make public any classified information prior to its declassification.

"(I) The Commission shall conduct a thorough and continuing investigation and appraisal of the policies, standards, and operations of agencies classifying information, in the interest of national defense, under subsection (d).

"(J) The Commission shall investigate, upon the vote of at least three of its members, inquiries initiated by private citizens, officers or employees of the United States, or any other person concerning any allegation of improper classification of official information within the purview of subsection (d) or (e) or concerning any allegation of the failure of any agency, or of any officer or employee thereof, to comply with the provisions of subsection (d) or (e), or any regulation prescribed by the Commission under paragraph (5) (A) of this subsection, or any standards or procedures prescribed by the Commission under paragraph (5) (B) of this subsection, or any decisions, orders, or directives issued by the Commission under subparagraph (G) of this paragraph. The Commission shall have a report published which describes the results of each investigation. The Commission shall, when appropriate, refer such matters to the Attorney General of the United States.

"(K) The Commission shall, pursuant to the provisions of subsection (g), furnish to Congress, committees of Congress, and the Comptroller General of the United States, upon request, certain classified and unclassified information necessary for Congress to discharge fully and properly all of its constitutional responsibilities.

"(g) (1) (A) The Commission shall promptly consider any written request transmitted to it for the issuance of an order directing any agency to transmit official information held by such agency which is classified or unclassified to—

"(i) either House of Congress, if such request is made upon the direction of a majority vote of the Members of such House;

"(ii) any committee of Congress, if such request is made upon the direction of a majority vote of the members of such committee and the subject matter of the information requested relates to the jurisdiction of such committee; or

"(iii) the Comptroller General of the United States, if the request is made by him.

"(B) For the purposes of this section, the term 'committee of Congress' means any committee of the Senate or House of Representatives or any subcommittee of any such committee or any joint committee of Congress or any subcommittee of any such joint committee.

"(2) Any request transmitted to the Commission under paragraph (1) (A) shall state with reasonable particularity the information or category of information requested and include a description of any efforts made to obtain access to such information, identifying the agency to which such request was made, the date of such request, and a copy of all correspondence with any such agency with respect to such request.

"(3) When the Commission receives any request under paragraph (1) (A), it shall immediately inform, in writing, the head of the appropriate agency and the President of such request, including a description of the information requested.

(4) (A) The agency which is informed under paragraph (3) of such request shall transmit the information requested to the Commission within three calendar working days of the date upon which such agency is so informed by the Commission. The head of such agency shall transmit to the Commission, along with such requested information, a letter containing a statement setting forth the recommendations of the agency as to whether such information should be made available by the Commission to the person requesting it under paragraph (1) (A).

"(B) If the agency concerned fails to transmit such requested information to the Commission pursuant to the provisions of subparagraph (A), the Commission shall immediately issue a subpena under subsection (f) (6) (E) (i) requiring the production of such information.

"(5) (A) If the agency concerned transmits such information to the Commission pursuant to paragraph (4) (A) and the recommendation of such agency is to release such information to the person requesting it, then the Commission shall transmit such information to such person.

"(B) If, however, the recommendation of such agency is not to release such information to the person requesting it, the agency shall transmit to the Commission a detailed justification in writing setting forth the specific reasons for its recommendation. The Commission shall conduct an investigation to determine whether such information shall be transmitted to the person requesting it. In making such determination, the Commission shall weigh the constitutional rights and powers of the parties concerned, including (i) the extent to which such information is necessary to Congress so that Congress may fully and properly discharge its constitutional responsibilities, and (ii) the extent to which the disclosure of such information to Congress would be contrary to the public interest or would seriously endanger the national defense of the United States. The Commission shall publish its determinations in the Federal Register. The proceedings of the Commission shall be recorded.

"(6) (A) The Commission shall prescribe regulations to govern its proceedings under paragraph (5) of this subsection.

"(B) In any case within the purview of paragraph (5) (B), the Commission shall hold a hearing at which a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Such hearing shall be public, unless, because of the sensitive nature of the information in dispute, the Commission decides by a two-thirds vote that the hearing shall be closed.

"(C) The Commission shall meet immediately after the conclusion of the hearing to begin deliberations. The Commission shall render its decision in writing to each party within three calendar working days after the conclusion of the hearing. Such decision shall set forth in detail the reasons for the determination of the Commission.

"(7) (A) In carrying out the provisions of paragraph (5), the Commission is authorized to enter an order in each case either granting or denying the request. The Commission shall prescribe such terms and conditions as it deems necessary to protect the security of the information concerned, including but not limited to, requiring that the person requesting such information or his agent—

"(i) take adequate measures to guard the physical security of the information received;

"(ii) assure that access to the information be limited to Members of Congress whose responsibilities require access to such information, or to appropriate staff members of either House of Congress, or of any committee of Congress, or to the Comptroller General of the United States or any employee of the General Accounting Office who possesses proper security clearance; and

"(iii) take adequate measures to assure that all discussions with respect to such information shall take place in executive session of a committee of Congress and closed sessions of either the Senate or the House of Representatives, as provided in the rules of each such body.

"(B) The requirements imposed in clauses (i) through (iii) of subparagraph (A) shall apply only to classified information which the person requesting such information obtains through an order of the Commission and where the hearing described in paragraph (6) (B) with respect to such information is closed by vote of the Commission.

"(8(A) There is vested in the United States Court of Appeals for the District of Columbia exclusive original jurisdiction to review any final decision of the Commission under paragraph (6) upon complaint filed by a party to the proceeding at which such decision was made within fifteen calendar days of the date of publication of such decision by the Commission in the Federal Register pursuant to paragraph (5) (B). The decision of the Commission shall be upheld if there is substantial evidence on the record to sustain that decision. Such case shall be immediately considered and shall have precedence over all other cases pending before such court.

"(B) There is vested appellate jurisdiction in the Supreme Court of the United States to review by appeal as a matter of right any decision made by the United States Court of Appeals for the District of Columbia pursuant to this paragraph. The Supreme Court shall act promptly in considering such appeal and rendering its judgment thereon.

"(C) The judicial review provided for by this paragraph shall be the exclusive mode of judicial review."

SEC. 5. It is the sense of the Congress that the President, in conformity with article II, section 3, and article I, section 8 of the Constitution of the United States, shall keep Congress fully and currently informed with respect to all of the activities of agencies covered under this Act.

SEC. 6. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

SEC. 7. (a) Except as provided by subsection (b), the foregoing provisions of this Act shall take effect at the beginning of the sixth month that commences after the date of its enactment.

(b) Section 552(f) (1) through (5) and (g) (6) (A) as added by section 4 of this Act and section 6 of this Act (to the extent necessary) shall take effect upon the enactment of this Act.

SECTION-BY-SECTION ANALYSIS OF "FREEDOM OF INFORMATION ACT AMENDMENTS OF 1972"—SECURITY CLASSIFICATION SYSTEM AND ACCESS BY CONGRESS TO INFORMATION FROM THE EXECUTIVE BRANCH

Section 1 designates this Act as the "Freedom of Information Act Amendments of 1972."

Section 2 amends Section 552 (a) (3) of title 5, United States Code by authorizing the Federal courts to award reasonable attorneys' fees and court costs to complainant member of the public in suits under the Freedom of Information Act in such cases where the government's position in denying the information requested is not sustained.

Section 3 contains technical amendments renumbering and rephrasing exemptions under Section 552(b) (1) of the Freedom of Information Act. It also provides that classified information subsequently declassified under the Act shall be subject to the same disclosure provisions of the Freedom of Information Act.

Section 4 adds new subsections to Section 552, title 5 of the United States Code to provide for the establishment of a security classification system to safeguard classified information known as National Defense Information.

Subsection (d) (1) authorizes such information to be classified "Top Secret" only if its unauthorized disclosure could cause exceptionally grave damage to the national defense of the United States; "Secret" only if its unauthorized disclosure could cause serious damage to the national defense of the United States; and "Confidential" only if its unauthorized disclosure could cause damage to the national defense of the United States.

Subsection (d) (2) (A) authorizes original "Top Secret" classification by the Departments of State, Defense (including the Army, Navy, and Air Force), the Central Intelligence Agency, the Atomic Energy Commission, and by such offices within the Executive Office of the President that he may designate by Executive Order. It also authorizes original "Secret" classification by those Departments and agencies having "Top Secret" classification authority and by the Departments of Justice, Treasury, and Transportation. The subsection also authorizes original "Confidential" authority by those Departments and agencies having "Top Secret" and "Secret" classification authority and by the Department of Commerce and the National Aeronautics and Space Administration.

Subsection (d) (2) (B) specifies that such classification may only be done by the head of each department or agency and such other senior principal deputies, assistants, and subordinate officials within each who are designated in writing by the head of such department or agency, provided that such subordinate supervisory officials are not below the level of section chief or its equivalent. It further requires that such classification authority shall not be granted unless his day-to-day operational responsibilities make it imperative that he have such authority. The head of each department or agency is required to review semiannually the list of those having classification authority and to remove such authority from those whose operational responsibilities no longer make it imperative that they have such authority. Authority may not, in turn, be redelegated by any individual designated in writing by a department or agency head.

Subsection (d) (3) (A) requires each department and agency head to compile and maintain a full and complete list of names and addresses of all individuals within such agency who have authority to classify within each of the three classification categories. A copy of such list is to be submitted quarterly to the Classification Review Commission and shall be made available, upon written request to the appropriate department or agency head by any committee of Congress or by the Comptroller General of the United States.

Subsection (d) (3) (B) applies to individuals acting in a clerical capacity, who do not need classification authority to place markings on such information to properly identify its category of classification.

Subsection (d) (4) provides that classification of National Defense Information shall not be exercised by any other department or agency except those listed in subsection (d) (2) (A) of this Act, except by statute.

Subsection (d) (5) (A) specifies that the classification of official information shall be strictly based on the definitions of "Top Secret," "Secret," and "Confidential," as defined in subsection (d) (1) of this Act.

Subsection (d) (5) (B) specifies that each individual having the authority to classify official information pursuant to subsection (d) (2) (B) as "Top Secret," "Secret," or "Confidential" shall be held accountable for his failure to accurately classify such information under regulations prescribed by the Classification Review Commission.

Subsection (d) (5) (C) provides that such individuals shall not classify official information under the Act in order to conceal incompetence, inefficiency, wrongdoing, administrative error, to avoid embarrassment to any individual or agency, to restrain competition or independent initiative, or to prevent or delay for any reason the release of official information in violation of subsection (e) of this Act. Violators shall be subject to administrative reprimand, including suspension or such other disciplinary action as prescribed under regulations by the Classification Review Commission.

Subsection (d) (5) (D) provides that classified information furnished to the United States by a foreign government or international organization shall be classified by an appropriate agency described in (d) (2) (A) of this Act as "Top Secret," "Secret," or "Confidential," depending upon its category of classification by such foreign government or international organization. However, the provision of such information to any appropriate Congressional committee shall not be denied, if requested by such committee in writing to the appropriate agency.

Subsection (e) (1) (A) provides for the continuous downgrading and declassification

of official information classified on or after the effective date of this Act pursuant to subsection (d) as "Top Secret," "Secret," or "Confidential" and which no longer satisfies the criterion described in subsection (d)(1) for classification in such category. Such information shall be promptly downgraded to an appropriate less stringent category or declassified by an individual within the agency concerned who has authority to classify such information.

Subsection (e)(1)(B) provides an automatic downgrading and declassification schedule (except for information contained in (e)(3) below) for (i) official information classified on or after the effective date of this Act pursuant to subsection (d) as "Top Secret," "Secret," or "Confidential" and (ii) official information originally classified, in the interest of national defense, as "Top Secret," "Secret," or "Confidential" during the 15-year period immediately preceding the effective date of this Act and which is still classified as "Top Secret," "Secret," or "Confidential" on such effective date. Such information shall be downgraded or declassified, as the case may be, in accordance with the schedule described in subsection (e)(2) below.

Subsection (e)(1)(C) provides that except for information contained in subsection (e)(3) below, any official information which was originally classified, in the interest of national defense, prior to the 15-year period immediately preceding the effective date of this Act pursuant to any Executive Order, directive, memoranda, or other authority and which is classified "Top Secret," "Secret," or "Confidential" on such effective date shall be automatically declassified within 6 months after the effective date by an individual within the agency concerned who has the authority to classify such information.

Subsection (e)(2) provides for a downgrading and declassification schedule for official information classified as "Top Secret," "Secret," or "Confidential" that is described in subsection (e)(B)(1) above, to be exercised by an individual within the agency concerned who has the authority to classify such information.

Subsection (e)(2)(A)(i) provides that official information classified as "Top Secret" and described in (e)(1)(B)(i) above shall be downgraded to "Secret" 12 months after the date of its original classification as "Top Secret."

Subsection (e)(2)(A)(ii) provides that official information classified as "Top Secret" and described in (e)(1)(B)(ii) above shall be downgraded to "Secret" within 12 months after the effective date of this Act.

Subsection (e)(2)(B)(i) provides that official information classified as "Secret" and described in (e)(1)(B)(i) above shall be downgraded to "Confidential" 12 months after the date of its original classification as "Secret."

Subsection (e)(2)(B)(ii) provides that official information classified as "Secret" and described in (e)(1)(B)(ii) above shall be downgraded to "Confidential" within 12 months after the effective date of this Act.

Subsection (e)(2)(B)(iii) provides that official information which is downgraded to "Secret" pursuant to (e)(1)(A) or the provisions of (e)(2)(A)(i) or (ii) shall be downgraded to "Confidential" 12 months after the date of its downgrading to "Secret."

Subsection (e)(2)(C)(i) provides that official information classified as "Confidential" and described in (e)(1)(B)(i) above shall be declassified 12 months after the date of its original classification as "Confidential."

Subsection (e)(2)(C)(ii) provides that official information classified as "Confidential" and described in (e)(1)(B)(ii) above shall be declassified within 12 months after the effective date of this Act.

Subsection (e)(2)(C)(iii) provides that official information downgraded to "Confidential" pursuant to (e)(1)(A) or the provisions of (e)(2)(B)(i), (ii), or (iii) shall be declassified 12 months after the date of its downgrading to "Confidential."

Subsection (e)(3) provides a "savings" procedure for certain types of highly sensitive classified material so that official information classified as "Top Secret" and described in (e)(1)(B) and (C) above shall not be downgraded or declassified, other than in accordance with the procedures described in (e)(4) below, if such information—

(A) is specifically exempted from disclosure by statute;

(B) pertains to cryptologic systems;

(C) would disclose intelligence sources or methods; or

(D) would disclose a defense plan, project, or other specific defense matter, the continuing protection of which is of vital importance to the United States and the unauthorized disclosure of which could cause exceptionally grave damage to the national defense of the United States.

Subsection (e)(4)(A) provides that official information classified as "Top Secret", is described in (e)(1)(B) or (C), and within the purview of (e)(3)(A), (B), (C), or (D) above shall be downgraded to "Secret" by an individual within the agency concerned who has the authority to classify such information 12 months after the date of its original classification as "Top Secret" (in the case of information described in (e)(1)(B)(i) above) and 12 months after the effective date of this Act (in the case of information described in (e)(1)(B)(ii) or (e)(1)(C) above). Immediately after its downgrading to "Secret", such information shall be transmitted by the head of the agency concerned to the Chairman of the Classification Review Commission for consideration.

Subsection (e)(4)(B) provides for Commission procedures to permit, when it deems warranted, the extension of security classification protection to the types of sensitive information described in (e)(3) above. When initially transferred to the Commission pursuant to (e)(4)(A) above, the Commission may, by majority vote of its full membership, extend for 24 months the "Secret" classification to such information in individual cases, if the information warrants continued protection at that level in its judgment.

Prior to the expiration of this 24-month period, the Commission may again, by a majority vote of its full membership, extend the "Secret" classification to such information for an additional 12 months.

Prior to the expiration of this additional 12-month period, the Commission may again extend the "Secret" classification to such information for an additional 12 months, but in this instance a two-thirds vote of its full membership is required.

At the end of this second 12-month extension period, such information shall be downgraded to "Confidential" by an individual within the agency concerned who has the authority to classify such information and 12 months later shall be declassified by any such individual; except, however, that if the President informs the Commission in writing prior to the expiration of the second 12-month extension of the "Secret" classification of such information and providing a detailed justification for the continued safeguarding of such information based upon national defense interests of the United States of the highest importance. Under such procedure, the information shall then continue to be classified as "Secret", unless the Commission rejects such Presidential justification by a two-thirds vote of its full membership within 15 calendar days of its receipt of such justification.

If the Commission upholds the Presidential justification for continued safeguarding of such information, then such information shall continue to be classified as "Secret" until the Commission, by a two-thirds vote of its full membership, subsequently rejects such justification.

If the Commission rejects the Presidential justification for continued "Secret" classification of such information, then such information shall be downgraded to "Confidential" by an individual within the agency concerned who has the authority to classify such information. After 12 months of the date of its downgrading to "Confidential," such information shall be declassified by any such individual.

Subsection (e)(4)(C) provides that if the Commission does not agree to grant the extensions permitted under the provisions of (e)(4)(B) above, such information will be downgraded to "Confidential" and thereafter declassified according to the regular schedule. If such information falls within the type of information described in (e)(1)(C) (15 years or older), it shall be promptly declassified by an individual within the agency concerned who has authority to classify such information.

Subsection (e)(5)(A) provides that official information that is downgraded or declassified shall be marked as soon as practicable to clearly identify its new category of classification or its declassification. The date of such action, the name of the person authorizing the change, and the name of the person who executed such change shall also be shown.

Subsection (e)(5)(B) provides that the Commission shall prescribe regulations to delineate who shall have authority to downgrade or to declassify classified information in cases where (i) it has been transferred from one agency to another; (ii) where the original classifying agency has ceased to exist; or (iii) where such information has been transferred to the General Services Administration to be placed in the Archives of the United States.

Subsection (f)(1) established a Classifition Review Commission.

Subsection (f)(2)(A) provides for the composition of the 9 member Commission, with 3 members to be appointed by the Speaker of the House, 3 members to be appointed by the President pro tem of the Senate, and 3 members to be appointed by the President. No appointing authority may name more than 2 of the 3 members from the same political party. A vacancy shall be filled in the same manner as the original appointment.

Subsection (f)(2)(B) provides that not more than 6 members of the Commission shall be of the same political party. All members of the Commission must be citizens of the United States.

Subsection (f)(2)(C) provides that of the members first appointed, one from each appointing authority shall be for a term of 3 years; one from each appointing authority shall be for a term of 5 years; and one from each appointing authority shall be for a term of 7 years.

It also provides that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member of the Commission may not serve more than one term, except that a member may serve after the expiration of his term until his successor has taken office.

Subsection (f)2)(D) provides that no member of the Commission shall actively engage in any business, vocation, or employment other than that of serving as a member of the Commission.

Subsection (f)(3)(A) provides that 6 members of the Commission shall constitute a quorum.

Subsection (f)(3)(B) provides that the Chairman and the Vice Chairman of the

Commission shall be elected from the membership by the members of the Commission. The term of office of the Chairman and Vice Chairman shall be 2 years.

Subsection (f)(3)(C) provides that the Commission shall meet at the call of the Chairman or 6 of its members.

Subsection (f)(4)(A) provides that members of the Commission (including the Chairman and Vice Chairman) shall each be paid at the annual rate of basic pay in effect for Level II of the Executive Schedule of section 5315, title 5, United States Code.

Subsection (f)(4)(B) provides for an executive Secretary, to be hired by the Commission and who shall be paid at the annual rate of basic pay in effect for Level IV of the Executive Schedule of section 5315, title 5, United States Code. The Chairman may also appoint other Commission personnel, subject to rules adopted by the Commission. The Commission staff shall be appointed under the provisions of title 5, United States Code governing appointments in the competitive service. They shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

Subsection (f)(5)(A) provides that the Commission shall prescribe such regulations as it considers necessary or appropriate to effectuate the provisions of subsection (d) through (g) of this section, including those specifically described in subsections (d)(5)(B), (d)(5)(C), (e)(5)(B), and (g)(6).

Subsection (f)(5)(B) provides that the Commission shall prescribe standards and procedures concerning the handling of official information, classified in the interest of national defense which shall be applied uniformly by the agencies concerned, including the Commission. These standards and procedures shall include, but not be limited to, the following:

(i) assuring that (I) such information be limited to trustworthy individuals whose official duties require such access; (II) such information not be disseminated outside of the originating or controlling agency except as authorized: (III) no individual may withhold or authorize withholding such information from Congress;

(ii) assuring that such information shall be appropriately and conspicuously marked or otherwise identified to show its category of classification;

(iii) assuring that such information shall be marked to identify the agency which classified it, the date of preparation and classification (including the date of its subsequent downgrading and declassification), and the name and title of the highest ranking person authorizing its classification (and subsequent downgrading and declassification);

(iv) assuring that such information shall be used, possessed, transmitted, and stored only under conditions which will prevent dissemination to or access by authorized persons; and

(v) assuring that appropriate accountability records shall be established and maintained with respect to such information.

Subsection (f)(6)(A) provides that for carrying out the purpose of its duties under subsections (d) through (g) the Commission may as it deems advisable hold hearings, take testimony, administer oaths, receive evidence, and carry out other such types of functions.

Subsection (f)(6)(B) provides that the Commission may secure directly from any agency the information necessary for it to carry out its duties under subsections (d) through (g). The head of such agency shall furnish such information upon the request of the Chairman or Vice Chairman of the Commission.

Subsection (f)(6)(C) provides that the Commission may use the United States mails in the same manner and conditions as other agencies.

Subsection (f)(6)(D) provides that the Administrator of General Services shall provide the Commission on a reimbursable basis such administrative support services as it requests.

Subsection (f)(6)(E)(i) provides that the Commission shall have the power to issue subpenas requiring attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation by the Commission; (ii) provides that if a person issued a subpena under clause (i) above refuses to obey such subpena or is guilty of contumacy, any court of the United States within the judicial district where the hearing is held or within the judicial district where such person is found, resides, or transacts business may (upon application by the Commission) order such person to appear before the Commission to produce evidence or to give testimony on the matter under investigation. Failure to obey such order of the court may be punished by such court as contempt thereof; (iii) provides that the subpenas of the Commission shall be served in the manner provided for subpenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts; (iv) provides that all process of any court to which application may be made under this section may be served in the judicial district wherein the person required to be served resides or may be found.

Subsection (f)(6)(F) provides that the Commission shall carry out its functions with respect to the downgrading and declassification of official information as described in subsections (e)(4) and (e)(5)(B).

Subsection (f)(6)(G) provides that the Commission may issue decisions, orders, and directives, and distribute reports, administrative memoranda, and other information in order to assure that the provisions of subsections (d) through (g) are carried out.

Subsection (f)(6)(H) provides that the Commission shall publish annual reports of its activities and shall make available for public inspection at reasonable times in its office a record of its proceedings and hearings. However, the Commission shall not make public any classified information prior to its declassification.

Subsection (f)(6)(I) provides that the Commission shall conduct a thorough and continuing investigation and appraisal of the policies, standards, and operations of agencies classifying information, in the interest of national defense under subsection (d).

Subsection (f)(6)(J) provides for an inquiry procedure, initiated by private citizens, officers or employees of the United States, or any other person, whereby the Commission shall investigate (upon the vote of at least 3 of its members) allegations of improper classification of official information within the purview of subsections (d) or (e); allegations of the failure of any agency, or any officer or employee thereof, to comply with the provisions of subsections (d) or (e); or any regulations prescribed by the Commission under subsection (f)(5)(B); or any decisions, orders, or directives issued by the Commission under subsection (f)(6)(G).

The Commission shall also publish a report which describes the results of each investigation and, when appropriate, shall refer such matters to the Attorney General of the United States.

Subsection (f)(6)(K) provides that the Commission shall, pursuant to the provisions of subsection (g) below, furnish to Congress, committees of Congress, and the Comptroller General of the United States, upon request, certain classified and unclassified information necessary for Congress to discharge fully and properly all of its Constitutional responsibilities.

Subsection (g) spells out the procedure by which the Commission shall handle requests for information from Congress, Congressional committees, and the Comptroller General of the United States as provided for in Subsection (f)(6)(K) above.

Subsection (g)(1)(A) provides that the Commission shall promptly consider any written request transmitted to it for the issuance of an order directing any agency to transmit official information (classified or unclassified) held by such agency to (i) either House of Congress, if such request is made upon the direction of a majority vote of the Members of such House; (ii) any committee of Congress, if such request is made upon the direction of a majority vote of the members of such committee and the subject matter of the information requested relates to the jurisdiction of such committee; or (iii) the Comptroller General of the United States, if the request is made by him.

Subsection (g)(1)(B) provides that for the purposes of this section, the term 'Committee of Congress' means any committee of the House of Representatives or the Senate or any subcommittee of any such committee, or any joint committee of Congress or any subcommittee of such joint committee.

Subsection (g)(2) provides that any request transmitted to the Commission under (g)(1)(A) above shall state with reasonable particularity the information or category of information requested and include a description of efforts made to obtain access to such information, identifying the agency to which such request was made, the date, and a copy of all correspondence with any such agency with respect to such request.

Subsection (g)(3) provides that when the Commission receives any such request under (g)(1)(A) above, it shall immediately inform, in writing, the head of the appropriate agency and the President of such request, including a description of the information requested.

Subsection (g)(4)(A) provides that the agency informed of the request under (g)(3) above shall transmit the information requested to the Commission within 3 calendar working days of the date when it is informed by the Commission. The head of the concerned agency shall also transmit to the Commission a letter containing a statement of the recommendations of the agency as to whether such information should be made available by the Commission to the requesting Congressional authority.

Subsection (g)(4)(B) provides that if the agency concerned fails to transmit such requested information as provided in (g)(4)(A) above, the Commission shall immediately issue a subpena under subsection (f)(6)(E)(i) above, requiring the production of such information.

Subsection (g)(5)(A) provides that if the agency concerned transmits the requested information pursuant to (g)(4)(A) above, and its recommendation is to release such information to the Congressional authority requesting it, then the Commission shall transmit such information to that authority.

Subsection (g)(5)(B) provides that if, however, the recommendation of the concerned agency is not to release such information to the Congressional requesting authority, the agency concerned shall transmit to the Commission a detailed justification in writing setting forth the specific reasons for its adverse recommendation. The Commission shall then conduct an investigation to determine whether such information shall be transmitted to the Congressional authority requesting it. In making such determination, the Commission shall weigh the Constitutional rights and powers of the parties con-

cerned, including (i) the extent to which such information is necessary to Congress so that it may fully and properly discharge its Constitutional responsibilities, and (ii) the extent to which the disclosure of such information to Congress would be contrary to the public interest or would seriously endanger the national defense of the United States.

The Commission shall publish its determination in the Federal Register. The proceedings of the Commission shall be recorded.

Subsection (g)(6)(A) provides that the Commission shall prescribe regulations to govern its proceedings under (g)(5) above.

Subsection (g)(6)(B) provides that in any case within the purview of (g)(5)(A) above, the Commission shall hold a hearing at which a party is entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Such hearing shall be public, unless the Commission decides by a two-thirds vote that the hearing shall be closed because of the sensitive nature of the information in dispute.

Subsection (g)(6)(C) provides that the Commission shall meet immediately after the conclusion of its hearing to begin deliberations and shall render its decisions in writing to each party within 3 calendar working days after the conclusion of the hearing. The Commission's decision shall set forth in detail the reasons for its determination.

Subsection (g)(7)(A) provides that in carrying out the provisions of (g)(5) above, the Commission is authorized to enter an order in each case either granting or denying the request. The Commission shall prescribe such terms and conditions as it deems necessary to protect the security of the information concerned, including, but not limited to, requiring that the Congressional authority requesting such information or his agent (i) take adequate measures to guard the physical security of the information received; (ii) assure that access to the information be limited to Members of Congress whose responsibilities require access to such information, or to appropriate staff members of either House of Congress, or any Congressional committee, or the Comptroller General of the United States or any employee of the General Accounting Office who possesses proper security clearance; and (iii) take adequate measures to assure that all discussions with respect to such information shall take place in executive session of a committee of Congress and closed sessions of the House of Representatives or the Senate, as provided in the rules of each such body.

Subsection (g)(7)(B) provides that the requirements imposed in (g)(7)(A) (i) through (iii) shall apply only with respect to official information classified under subsection (d) above and where the hearing described in (g)(6)(B) above shall have been closed by vote of the Commission.

Subsection (g)(8)(A) provides that the United States Court of Appeals for the District of Columbia shall be vested with original jurisdiction to review any final decision of the Commission under (g)(6) above, upon complaint filed by a party to the proceeding at which such decision was made within 15 days of the date of publication of such decision by the Commission in the Federal Register as provided in (g)(5)(B) above. The decision of the Commission shall be upheld if there is substantial evidence on the record to sustain that decision. Such case shall be immediately considered and shall have precedence over all other cases pending before such court.

Subsection (g)(8)(B) provides that the Supreme Court of the United States shall be vested with appellate jurisdiction to review by appeal as a matter of right any decision made by the United States Court of Appeals for the District of Columbia pursuant to (g)(8)(A) above. The Supreme Court shall act promptly in considering such appeal and rendering its judgment thereon.

Subsection (g)(8)(C) provides that the judicial review provided herein shall be the exclusive mode of judicial review in such cases.

Section 5 provides that it is the sense of Congress that the President, in conformity with Article II, Section 3, and Article I, Section 8, of the Constitution of the United States, shall keep Congress fully and currently informed with respect to all of the activities of agencies covered under this Act.

Section 6 provides that funds necessary to carry out the provisions of this Act are authorized to be appropriated.

Section 7 provides that (a) except as provided by subsection 7(b) below, the foregoing provisions of this Act shall take effect at the beginning of the 6th month that commences after the date of its enactment.

Section 7(b) provides that Section 552(f)(1) through (5) and (g)(6)(A) as added by sections 4 and 6 of this Act (to the extent necessary) shall take effect upon the enactment of this Act.

"THERE IS NOTHING INVIOLATE"

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HARRINGTON. Mr. Speaker, yesterday there occurred another shift of U.S. policy in Vietnam. In addition to the vast quantities of bombs being dropped on the people and land of North Vietnam under "Operation Linebacker"—more bombs have been dropped on Hanoi and Haiphong in the last 2 weeks than in the entire 1965–68 period—the President has now authorized the bombing of nonmilitary targets.

According to one field officer:

There is nothing inviolate. If someone says we want that target up there . . . we go get it.

It is obvious that President Nixon is growing more and more desperate as he receives the inconclusive results of his previous acts of desperation. The question that must be asked is: when and how will it end? Each escalation could bring us closer to direct confrontation with the Soviets and the Chinese despite Mr. Nixon's trips, and no closer to a settlement of this tragic war.

The only way to end the war is to withdraw our troops and let the people of Vietnam settle their problems among themselves. This most recent escalation of the airwar was reported in a story by Peter Osnos in the Washington Post of May 24, and I commend it to the attention of my fellow Members.

Bombing of North Spreads to Nonmilitary Targets

(By Peter Osnos)

Saigon, May 24.—U.S. Air Force and Navy jet fighters carried out their heaviest raids so far on North Vietnam over the weekend, expanding again the scope of their targets and the range of the attacks, the U.S. Command said Tuesday.

An average of more than 330 strikes a day were flown in a three-day period ending Monday evening, the command said, including attacks on bridges and rail lines only 40 miles from the border of China.

In addition to the strictly military installations and transportation facilities that had been the principal targets up to now, the command confirmed that a power transformer eight miles northwest of Hanoi had also been attacked.

[Several thousand South Vietnamese marines launched a combined amphibious and helicopter assault Wednesday on the coastal strip called the "Street Without Joy" east of Quangtri City, AP reported.]

Senior U.S. officers said the justification for hitting the power plant was that it supplied electricity to many truck repair shops and small factories in the Hanoi area providing war-related services. They said the transformer was 75 per cent destroyed.

Well-informed American sources said a cement factory in the vicinity of the port city of Haiphong was also hit, but this raid was not included in the command's latest listing of bomb damage.

[In Washington, Defense Department spokesman Jerry W. Friedheim confirmed the bombing of nonmilitary installations and said U.S. bombers "will be hitting some of the other targets, such as power plants and some of the industrial facilities which support the military effort of the north."

[Friedheim told newsmen that U.S. commanders "probably have more flexibility in their targeting than was exercised in the 1967–1968 period."]

The renewed regular bombing of North Vietnam, code-named "Linebacker" by the Pentagon, coupled with the mining of the country's seven ports and heavy naval bombardment has now surpassed anything mounted by the United States in past years.

Despite failures in the previous bombing campaign to stop the flow of men and equipment to the South, officers believe this time the effect will be greater. "We are doing better," said one very senior commander. The greatest impact on Hanoi's war-making capability, U.S. officers believe, will be the failure to get supplies from the sea routes, a direct result of the U.S. mining of harbors.

[The official North Vietnam News Agency said antiaircraft crews and planes shot down eight American warplanes over North Vietnam, four of them over Habac Province, UPI reported.

[U.S. Air Force and Navy fighters shot down four Soviet-built Mig interceptors over North Vietnam Tuesday, AP reported, citing U.S. military sources.

[Communist gunners fired 14 rockets into Bienhoa airbase, 15 miles north of Saigon, overnight, Reuter reported. First reports said one South Vietnamese soldier was killed and 15 persons, including four U.S. servicemen, were wounded.]

In the two weeks since "Linebacker" began, Hanoi and Haiphong have been hit as many times as they were in the 1965–1968 period, according to the informal records of military statisticians.

"There is nothing inviolate," said one ranking officer responsible for the conduct of the air war. "If someone says we want that target up there . . . we go get it."

Moreover, the commanders maintain that the bombing is substantially more effective than it was in the past because of improvements on the conventional 2,000–3,000-pound bombs that have been fitted with laser-guided and electro-optical homing devices. These bombs can be released from altitudes as high as 20,000 feet and still score accurate hits in up to 80 per cent of the strikes, Air Force journals have reported.

The "smart bombs" have been responsible for the success in knocking out bridges, rail lines and other targets that had once proved troublesome to pilots who kept having to come back to them.

The important rail and vehicular Thanh Hoa Bridge, 80 miles south of Hanoi, for

example, was struck many times in 1965–68, but never rendered useless for a significant time period.

The bridge was hit again on May 13 and the Air Force maintains it has been put out of action for the foreseeable future.

"The simple fact is that he (North Vietnam) can still repair these things," said a senior Air Force officer, "but I can take them out in just a few minutes. It takes about two minutes for each bridge. It's a relatively clean, surgical operation. Bombing is very precise with these weapons."

The officer said that the attacks 40 miles from China destroyed six bridges with only eight planes.

"Smart bombs" have been in the Air Force and Navy arsenals for as long as two years, but they were not used extensively in operations over the Ho Chi Minh Trail or inside South Vietnam. Other high-priced equipment—computers, sensors and the like—is also credited with improving results.

While commanders maintain that fewer planes are now necessary to accomplish greater objectives, they are at no loss for assets. Since the buildup began in mid February, air strength in Southeast Asia has risen to the level of the peak years of "Rolling Thunder."

Fighters and bombers operate from six bases in Thailand, (one was recently reopened), anywhere from five to seven aircraft carriers and some B-52s are based on Guam. There are Air Force and Marine squadrons based at Danang and Bienhoa, inside South Vietnam.

Through careful manipulation of the manpower committee, Pentagon planners have managed to avoid sending so many people to South Vietnam that the steadily dropping troop strength figures would be reversed.

Many of the additional planes (the overall total is about 1,100) are deployed inside South Vietnam where the air offensive also continues to expand. The total number of sorties in May is likely to come close to the figure for May, 1968, the highest of the war. That month, the daily average was about 400.

Tuesday, Air Force and Navy jets flew 426 sorties. For the entire month of January, 1972, 169 U.S. sorties were flown inside South Vietnam.

THE PRESIDENT OF CHINA

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. CRANE. Mr. Speaker, this coming Saturday one of the most viable and valuable members of the free nations of our world will inaugurate its renowned President for his fifth 6-year term. That nation is the Republic of China and its President is Chiang Kai-shek.

To show how viable the ROC is in the world today, two-way trade showed a 41.6 percent increase in the first quarter of 1972 over the first 3 months of 1971. This, Mr. Speaker, despite prognostication by some so-called experts following the ouster of the ROC from the United Nations last fall that the island's economy would falter.

The January–March totals showed exports of $574 million and imports of $526 million, leaving a trade surplus of $48 million. In that same quarter, industry showed a growth of 26.1 percent, compared to the same period of 1971. Wholesale prices climbed 1.42 percent while consumer prices went up 2.13 percent. Foreign investment amounted to $16 million in the first 3 months of this year, a gain of 1.08 percent over last year's corresponding period.

Is this the economy of a nation faltering? Under the guidance of President Chiang over the past 24 years this island nation has far surpassed most larger nations to become a worldwide economic marvel.

A nation so economically independent, the ROC under President Chiang has not forgotten the people who inhabit the island. Illiteracy has been virtually wiped out under his administration. There are some 85 universities, independent colleges, and junior colleges throughout the ROC. Government expenditures for education are high on the list of national priorities.

The ROC Government is fundamentally democratic and most public officeholders were born and raised on Taiwan, as opposed to the misconception that mainlanders are given preference at the expense of so-called Taiwanese.

The majority of the nation's highly trained 600,000-man military forces were also native born on Taiwan.

Second only to Japan in Asia, the ROC economy is booming with an annual gross national product growth rate in excess of 10 percent. Its per capita income in 1971 was $330, as compared with $60–$90 in Red China. Per capita income for 1972 is currently running at $418.

For many years the United States has been the principal private investor in the ROC's economy. Now the government has embarked on a campaign to interest Western European industrialists, particularly those in West Germany, to help Taiwan's expansion and enjoy the tax benefits, lower labor costs, and proliferating development under the ROC's generous and attractive program for capital.

The growth of foreign trade suggests that by the end of this year, the ROC will be reporting a total volume in excess of $5 billion.

Mr. Speaker, these facts speak for themselves. Here is a nation, under the leadership of President Chiang, which has been growing by leaps and bounds during the past two decades. It is a nation that was, until last fall, one of the most respected and faithful members of the United Nations—until its ouster in favor of Red China. The ROC was a charter member of this same United Nations and one of its stanchest supporters. The ROC, under President Chiang, has never since its inception committed a single act of aggression against any other nation. It is and will remain a true member of the freedom-loving and peaceful nations of the world.

Mr. Speaker, I want to congratulate President Chiang on his upcoming inauguration, and to say that all men in all nations can learn the ways to peace and progress through the great example of President Chiang Kai-shek and his people. I hope my colleagues and the American people will join with me in extending the warmest of congratulations to the President and his wonderful people.

FAA PRINCIPAL OPERATIONS INSPECTORS—QUALITY CONTROL AND SAFETY

HON. CHARLES H. WILSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. CHARLES H. WILSON. Mr. Speaker, on December 8, 1971, I had the privilege of inserting in the CONGRESSIONAL RECORD an article pertaining to the duties and responsibilities of an elite corps of Federal employees known as the FAA air carrier inspectors. This article was succinctly summarized by the Administrator of the FAA, Mr. John H. Shaffer, in his letter to me of December 29 wherein he stated:

As bigger and faster aircraft impose increased demands upon airmen, I am confident that the FAA's air carrier inspectors will continue to successfully meet the challenge of making aviation as safe and efficient as humanly possible.

Mr. Shaffer makes the further point that the FAA utilizes many professional skills in carrying out its worldwide aviation functions and that it is difficult to single out any one group of employees in what is essentially a team effort. I agree wholeheartedly that air transportation safety is a team effort and in line with that thought I am today inserting an article pertaining to another group of FAA professionals known as the principal operations inspectors—POI's. The POI is an FAA systems manager experienced and trained to insure quality control within the air transportation industry. This article was written by Capt. Ed Mack Miller with the assistance of the Air Carrier Operations Inspectors Society, together with Mr. Robert W. Prescott, founder and president of the Flying Tiger Line, and his able vice president, Mr. Ed Pinke. I commend these gentlemen on providing us with a profile of the POI and his counterpart in the air transportation industry.

Mr. Speaker, I cannot overemphasize the important role these professionals play in providing us with a team effort combined to insure a safe and efficient air transportation system.

The article follows:

THE SUPER-MOVERS

(By Ed Mack Miller)

Months before the Japanese attack on Pearl Harbor, a small group of former Army Air Corps, Navy and Marine pilots were having their own private war with Japan.

These "soldiers of fortune," called the American Volunteer Group (AVG) had been formed by an American flying officer, Claire Lee Chennault, who had gone to China in 1937, after early retirement (as a Captain) to serve as an advisor to that country's air force.

With a total strength of only 90 obsolete Curtiss P–40 Tomahawk fighters, 250 men and practically no spare parts, supplies or logistical aid, Chennault welded his rag-tag group into a fantastically successful tactical air command.

A brilliant tactician, Chennault had gained fame in his 15 years as a stateside Air Corps pilot by his innovations in aerial tactics and his radical advocacy of new air-war concepts.

In China he got a chance to prove his tactics—and for awhile his Flying Tigers were the only bright patch on a desultory spread of defeats the U.S. was sustaining.

From the summer of 1941 until the spring of 1942, with the prime mission of defending the Burma Road, the Tigers shot down the fantastic number of 286 Japanese aircraft, although greatly outnumbered and facing technically superior Japanese planes. It was conservatively estimated that they took a toll of Japanese personnel that included 1,500 pilots, navigators, gunners and bombardiers.

The noses of the P–40s the Japanese came to fear so much were painted with the pointed-tooth mouth of a tiger shark, hence the name "Flying Tigers."

After the United States entered the war early in 1942, Chennault was recalled to active duty as a Brigadier General and given command of the China Task Force, which a year later, when he was promoted to Major General, became the 14th Air Force.

Expanding the nucleus of the AVG, the 14th continued to blast the enemy with devastating effectiveness, reaching a peak of efficiency by the end of 1944 where, in one month, the 14th destroyed 241 enemy planes.

The Flying Tigers have been compared to the Lafayette Escadrille in World War I, in that they flew and fought in the service of a friendly nation before the entrance of their own country into the war.

As had been said of them, " . . . facing overwhelming odds in the air, underequipped and poorly supplied, the Flying Tigers, like their predecessors, bought time for the Allies and secured a place for themselves in history."

After World War II, a number of the original AVG members, along with other veteran fighter and transport pilots and a Los Angeles businessman raised $178,000 and formed one of the first all-cargo airlines—in a small, two-car garage in Long Beach, California.

Robert Prescott, who is still guiding the Flying Tigers' fortunes, had acquired a fleet of 14 twin-engine "Conestoga" planes. Shortly thereafter, the Flying Tiger Lines, as it was called, got into the blue.

In 1946, FTL was awarded a contract to supply American occupation forces in Japan. The Conestogas were not the planes for the job, and so soon the airline acquired 42 DC–4s, reducing this fleet in 1949, but adding 25 C–46 Commandos for domestic routes.

The first all-cargo operation scheduled, Route 100, was awarded to the Tigers in October, 1949, and as things began warming up in South Korea, FTL was given contracts to supply U.S. troops in this far outpost.

By 1953, Tiger gross revenues had reached some $25 million annually. Soon DC–6As were phased into the fleet, and the company became the nation's largest carrier of air freight. Shortly thereafter, Tigers placed the largest single order to date for Lockheed "Super H Constellations."

Next in the expansion plans of FTL came the bigger and more versatile Canadair CL–44, with a purchase of 16 of the "swing-tail" planes in 1961.

It was quickly becoming a jet world, however, and FTL began its transition to Boeing 707s in 1965, and DC–8s in 1968. Its fleet was modified to "all-jet," with the total acquisition of nineteen "stretched" DC–8–63 aircraft worth $250 million.

Currently, the company employs approximately 1,000 certified airmen, including pilots, navigators, dispatchers, and mechanics.

Tigers currently fly two scheduled routes: Route 100 across the U.S. and Route 163 linking the U.S. with eight nations and territories in Asia. Its route system extends 17,500 miles, stretching from Boston to Bangkok, and in terms of frequencies across the Pacific, it is the second most active airline. Last year, it airlifted well over 500 million tons of cargo and its revenues totaled in excess of $140 million. Its commercial business, domestic and international, has more than tripled its military business. Tigers today is far less dependent on military contract flights than it has been at any time in its 26-year history. Much of this growth is the result of Bob Prescott's tough-minded approach to gaining leadership in the air cargo industry.

He is especially outspoken on the need for an airline to have top-drawer regulatory supervision, the key to efficient operation and the key to growth.

"We aim for professionalism on our airline," Prescott says. "We demand the highest degree. We give our people as much training as they can absorb. We are not corner-cutters. We have gone to one type of plane, the excellent DC–8–63, for efficiency . . . because efficiency will keep us in business and let us make a profit.

"Efficiency is why we are both lucky and proud to have qualified regulatory people who understand our everyday problems. These people must be highly professional, too. We insist on it. And you can't get these top-drawer managerial people for peanuts . . .

"I feel that it is healthy to have outside regulatory people look at our airline. I'll be frank. I'm glad that we have good inspectors to look over our shoulders; it gives us sound assurance that we are doing what we ought to be doing. I don't have time to go into all corners of the airline to see if we're doing the right thing. I don't want anything to go wrong. A $12 million piece of equipment is . . . well, it's damned costly. We want . . . expect it to be right.

"We get fair treatment from the FAA, no doubt about it. In the early days the Tigers didn't feel that the old CAA was truly cooperative. Now the Flying Tigers look to the FAA Air Carrier as a partner."

Senior Vice President of FTL is Ed Pinke, who, 20 years ago, was chief pilot. He was promoted to Director of Operations in 1955.

"FAA quality control is a good thing," says Pinke. "It's a basic. As a corporation, we don't need to have an internal audit to the extent that we would if we didn't have the FAA. We want quality control. We want the POI in here.

"It's a healthier system than if you set up your own internal auditors. The internal auditors system doesn't work because internal auditors are working for the company. Eventually a 'Buddy System' develops; they make friends in the company, and they get brainwashed as to how to do a thing . . . or they overlook some things because they don't want to get a fellow employee in trouble.

"With an outside audit . . . or FAA quality control, if it is done properly, we welcome it. We think it's great. We feel we are getting some of our tax dollars back by having an outside group come in and look at us coldly, carefully. It gets all of our people thinking."

The Principal Operations Inspector Prescott and Pinke are talking about is a key man in the "audit" scheme. The POI is an FAA Systems Manager, trained to work at the top management level. He makes inputs into the FAA rule-making process, and is the prime point of contact between the FAA and the air carrier on flight operations matters. It has been said that a good POI is a manager, technician, a pilot, a diplomat, an "Ombudsman" for the public, and is a trained analyst. To be topnotch, he must also be a good speaker, writer . . . and something of a practicing humanist, even a sort of minor prophet . . . and certainly he must have legal understanding and some of the mental attributes of a compassionate judge.

Men like this in top FAA positions are comparable with the private sector, because their occupations require equal specialized training and experience. Included in this group are those in administrative support positions, in the professional categories, in the physical sciences, engineering and social sciences, and the paraprofessional or technological positions that support full professional positions.

If the FAA cannot keep pace in these areas . . . if the men sent to be "opposite numbers" to dynamic executives in industry are not of equal caliber, the whole industry suffers.

Ed Pinke likes the system:

"The FAA is able to furnish standardization for training departments and check pilots. One thing a lot of people miss is that we get cross-pollination from the FAA technical people, if they are good men and doing their job well. It causes good techniques and procedures to be disseminated among all operators. It is a terrific safety factor to have cross-pollination.

"I personally am very proud of the Tigers' relationship with the FAA. I have been in management for 17 years, and I can say we've had good relations with the POI's all that time."

Pinke also points out that what had begun as a $178,000 investment only 26 years ago has grown into a corporation of major proportions. A short time ago, management reorganized the company and formed the Flying Tiger Corporation, a holding company, and the Flying Tiger Line has become a wholly-owned subsidiary. The entire corporation now has assets of $700 million, nearly 3,800 employees, and a future which should be as bright as our past.

From the time of the AVG and its courageous exploits in China, the Flying Tigers' name has been a name to be proud of.

"Getting airborne with the Tigers," said one observer, "is definitely an uplifting experience. Those guys can hitch on to anything and carry it any place; they really are supermovers."

This outstanding record must be read in conjunction with Bob Prescott's previous statement wherein he said, "The key to efficient operation and the key to growth are both intertwined with the need for an airline to have top-drawer regulatory supervision. I'm glad we have good inspectors to look over our shoulders; it gives us sound assurance that we are doing what we ought to be doing." This statement in itself proves the fact that a good POI must be a manager, technician, pilot, diplomat, prophet and judge.

SALEM LEADS IN PRESERVATION EFFORTS

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HARRINGTON. Mr. Speaker, when the urban renewal programs first began many of the finest historic buildings in our Nation's cities were razed without a thought to their intrinsic value and to preserving the individuality of the city. As a result, in many urban renewal areas we now see modern blah unrelieved by a sense of a city's past.

The time has long since come to reexamine these attitudes, and Salem, Mass., in my district, is a leader in this area. As Gil Scott wrote in the Christian Science Monitor of May 3, 1972:

Historic Salem has turned around its urban renewal approach from bulldozing its past to preserving the best of its antiquity.

Salem's mayor, Samuel Zoll, deserves a great deal of credit for getting the new plan accepted. As Scott wrote, the mayor "asserts that Salem 'contains more authenticity in a historical sense than any other community in the country' and that the new project emphasizes its sensitivity to that heritage."

The Salem plan is both innovative and farsighted. I commend Mr. Scott's article "Urban Renewal About-Face: Salem Restores Antiquity" to those interested in preserving our past while moving toward a better future in our cities:

URBAN RENEWAL ABOUT-FACE: SALEM RESTORES ANTIQUITY

(By Gil Scott)

SALEM, MASS.—Historic Salem has turned around its urban renewal approach from bulldozing its past to preserving the best of its antiquity.

And where factions squabbled for 10 years over this issue, now a workable agreement has emerged in this community of 40,000 between the business sector, politicians, and those with a historical bent.

Many old buildings were razed under an old urban renewal plan that began in 1962 and then fizzled.

Significant aspects of the redevelopment plan include building low-rise apartments and bringing new life into the commercial district.

William J. Tinti, vice-chairman of the city's Redevelopment Authority, says the plan's thrust is to blend residential, commercial, and retail uses in the project area.

Under the old plan, not only were large numbers of buildings to be demolished but also a four-lane road was to slice through the redevelopment area.

EXTERIOR RIGHTS BOUGHT

Now, buildings will be preserved and restored with the help of a facade easement program that allows the city to purchase the exterior rights to a building, and then provide the building owner with money to restore the structure.

The four-lane-road plan, which many argue would have been an eyesore, has been abandoned in favor of a periphery traffic plan that would prevent traffic from moving through the project area. And they are even thinking of restoring an old trolley line, which could deliver passengers only minutes from historic sites.

"This is a radical departure from the old plan," says Mr. Tinti. "Instead of having another planner who would give us a new plan, we decided to find the best developers in and out of the country and to try to interest them in the development potentials of Salem: its maritime lore, an unused harbor, Salem's close relationship to Boston."

Salem got 27 proposals from developers, many of them "remarkably similar" to the city's aspirations, Mr. Tini explained. Finally, the city designated three developers, who have combined their efforts in the city's new plan.

REALISTIC PLAN SOUGHT

"We took the end of the urban renewal process and made it the beginning in Salem," Mr. Tinti enthuses. "We tried to sell Salem as a whole and built a realistic plan based on the best market we could find."

The plan helped to build bridges among various community factions which had become bitter and frustrated because for a long time it seemed nothing would be done for the city.

Much of the credit for selling the new redevelopment plan goes to Mayor Samuel E. Zoll, who is in his 30's and was elected mayor in 1969. He asserts that Salem "contains more authenticity in a historical sense than any other community in the country" and that the new project emphasizes its sensitivity to that heritage.

"In many cities throughout the country, urban renewal has been a colossal failure," he argues. "This particular project illustrates that a city can pull itself up by its boostraps and deal with contemporary urban problems."

NATIONAL SIGNIFICANCE

The Mayor says Salem's plan has national significance because Washington thinks local governments are incapable of dealing responsibly with such programs.

Mayor Zoll is proud of Salem's maritime heritage, pointing out that it once was one of the busiest ports in the United States, sending out ships and adventurous skippers who bartered New England products for spices, pepper, silks, and other rich cargoes.

Its old customs house is a national shrine; its Peabody museum has one of the nation's finest collections of maritime memorabilia. Still awaiting restoration is Salem's Derby Wharf, from whence little ships and their youthful crews went to far corners of the world, opening new trade routes and returning with cargoes that made Salem one of the richest cities in America.

It was this seaborne wealth that gave Salem its classic mansions; there are more homes in Salem dating from the early 1800's than in any other city in the country, the mayor says.

REVENUE SHARING IN SOUTH DAKOTA

HON. JAMES ABOUREZK

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. ABOUREZK. Mr. Speaker, the revenue-sharing proposal which we will be debating shortly has been the subject of a great deal of national attention. A large number of figures have been tossed about showing this community getting so many dollars and that county getting so many dollars, but frankly, Mr. Speaker, my study of this bill leaves me convinced that States like South Dakota are left holding the bag. As long as this bill discriminates against South Dakota, I cannot support it.

This is a simple matter of looking out for South Dakota. The revenue-sharing bill we are looking at in Congress would gyp my State. It would return $5.52 per person to the State of South Dakota and $17.23 per person to the State of New York. It would give $20 per person to South Dakota localities, and $35.29 per person to New York communities. This kind of return discriminates against South Dakota. It places us 40th of the 50 States in return to State government and 45th in return to local government.

If the $30 billion that will be poured into this revenue-sharing scheme over the next 5 years were just put into existing programs, with all their inadequacies, South Dakota would still get some $43.6 million more than it will under revenue sharing. Further, this plan also ignores the fact that South Dakota's revenue-sharing effort is the eighth greatest in the Nation. Even though we try harder than 42 other States to meet our tax obligations, practically every one of the 42 States who are not doing as much as we are to raise money are going to get more Federal aid than we are under revenue sharing.

This seems to me to be an upside down, reward the lazy approach to revenue sharing. It does not encourage those States and localities that having been making the strongest effort to continue to do all they can to raise their revenue needs locally and it encourages those who have not been doing all they can to continue to sit back and wait for the Federal Government to rescue them.

This plan must either be rejected or significantly rewritten so that States like South Dakota get a fair shake. The people of South Dakota pay their taxes. They badly need Federal help in the areas of education, public works, and farm programs. Yet under this revenue-sharing bill they are handed the very short end of the stick. I think that is unfair, and I oppose this revenue-sharing bill for that reason.

PROBLEMS OF CONGRESS IN OBTAINING INFORMATION FROM THE EXECUTIVE BRANCH—CONSTITUTIONAL LAW EXPERT DESTROYS THE MYTH OF "EXECUTIVE PRIVILEGE"

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. MOORHEAD. Mr. Speaker, the Foreign Operations and Government Information Subcommittee's continuing hearings on the problems of Congress in obtaining information from the executive branch received highly significant testimony yesterday from Prof. Raoul Berger, Charles Warren senior fellow in legal history at the Harvard Law School. He is the author of a comprehensive study, published in 1965, entitled "Executive Privilege v. Congressional Inquiry."

Professor Berger has had a long and distinguished career in the law. He received his law degree from Northwestern University and an LL.M. degree from Harvard University. His Government service included the Securities and Exchange Commission, where he was in charge of appellate matters; service as special assistant to the Attorney General; and associate and then general counsel of the Alien Property Custodian during World War II.

He served as regents professor of law at the University of California, Berkeley, and in recent years has devoted himself to study and writing. He is the author of "Congress v. the Supreme Court—1969" and his book "Impeachment: Some Constitutional Problems" will be published this fall by the Harvard University Press.

Professor Berger has been a member of the American Law Institute for many years. He served as chairman of the section on administrative law and as chair-

man of the Special Committee on Special Courts, both of the American Bar Association.

Mr. Speaker, for many years we have heard Members of this body lament the erosion of power in the legislative branch and the corresponding growth of the power of the Executive that has gradually distorted our status as a coequal branch of Government. I recently pointed out the fantastic growth of the White House staff and the centralization of decisionmaking in the White House and Executive Office of the President. The subcommittee headed by the distinguished gentleman from Arizona (Mr. UDALL) has likewise been studying the results of this trend.

To whom are these all-powerful White House policymakers responsible? Unlike other executive branch officials at the Cabinet or sub-Cabinet level they refuse to testify before congressional committees charged with oversight or legislative responsibilities. A significant number of such "immune" policymakers have been requested to present testimony before the Foreign Operations and Government Information Subcommittee on matters within our jurisdiction. We did not want to question them about their personal conversations with the President, but about technical matters in which they have been involved. In every case, they have not been permitted to appear, because of some vague doctrine, manufactured for the purpose of preserving their immunity. I am sure that other committees and subcommittees of this body have had similar experiences.

Mr. Speaker, for many years the Executive has cited "Executive Privilege" to deny information or witnesses from the Congress. Many Members probably think that this so-called "doctrine" has some deeprooted constitutional basis which dates back to our colonial period. This is not the case, as is so ably documented by Professor Berger's testimony before our subcommittee.

He points out, Mr. Speaker, that the so-called "historical precedent" refusing the appearance before congressional committees of the President's "intimate advisers" dates back only to 1950 or 1951 and has no constitutional basis at all.

Professor Berger also completely demolishes the myth of "Executive Privilege" as it relates to two incidents during the Washington administration often claimed to be its historical precedents—the 1792 investigation of the House of Representatives into the St. Clair expedition against the Indians and the Jay Treaty papers case in 1796. He likewise effectively destroys other "historic precedents" for "Executive Privilege" advanced in a 1957 memorandum by former Attorney General William Rogers and those presented last June by then Assistant Attorney General William Rehnquist in testimony before our subcommittee.

Mr. Speaker, I commend a careful reading of Professor Berger's revealing testimony to all of our colleagues who believe, as I do, that the time has come for Congress to reassert its constitutional prerogatives as a coequal branch of our Federal Government:

STATEMENT OF RAOUL BERGER

It is a privilege to respond to your invitation to appear before you. You are grappling with a grave national problem—the growing and dangerous practice of the Executive branch to withhold vital information from both the public and the Congress. My concern will be with the legal problems that attend the assertion of executive privilege to shut off Congressional inquiry. About the need of Congress to know if it is not to legislate and appropriate in the dark, you know full well. Much of what I shall say is familiar to this Committee. But our task is to bring the entire Congress up to the informed level of this Committee, and to educate the American people as to the flimsiness of executive privilege claims.

Let me begin with the most recent example of how history is being manufactured under our noses, the claim of privilege for Peter Flanigan on the ground that he is a member of the White House staff. Counsel for the President, Mr. John W. Dean III, explained that Mr. Flanigan's immunity was grounded on "long established historical precedent." What are these precedents? When Assistant Attorney General William Rehnquist appeared before you in June, 1971, the instances he mustered for the refusal of the President's "intimate advisers to appear" went back no further than the Truman administration, i.e. about 1950 or 1951. These refusals were based on the principle, said Mr. Rehnquist, that the advisers "ought not to be interrogated as to conversations . . . with the President or advice given or recommendations made to the President." III 363.[1] It required only twenty years to transform those incidents into "long established historical precedents." It will hardly be presumed that President would claim that he discussed the settlement of the ITT antitrust case with Mr. Flanigan. So the claimed immunity for Flanigan constitutes a brand-new "historical precedent," mere membership in the White House staff immunizes from Congressional inqury. Let me postpone the immunity claimed for Presidential advisers to my discussion of the case of Henry Kissinger.

I shall discuss a number of basic problems, beginning with executive reliance on the separation of powers; then I shall delineate the historical basis of the Congressional power of inquiry which, at the adoption of the Constitution, was deemed to extend to surveillance of executive performance. Then I shall show that there is no comparable history for executive privilege, and that the earliest precedents invoked by Executive spokesmen, which were incidents in the Washington administration, will not withstand scrutiny. Next I shall comment on the recent shelter claimed for "candid interchange" of opinions by subordinates, and then upon the shaky basis for the claim of immunity for confidential advice to the President. Finally, I shall comment on the refusal of the Defense Department to comply with your request for information under the Act of 1928, and on the measures open to Congress to bring executive refusals of information to a test.

The first appeal of the Executive branch, repeated before you by Assistant Attorney General Rehnquist, is to the separation of powers, II 359, which postulates that Congress is encroaching on the Executive prerogative. Was there an executive prerogative to withhold information from Congress at the adoption of the Constitution? Only if there was such a prerogative can it claim the protection of the separation of powers. In other words, it is necessary to demark the attributes of each department before the separation of powers comes into play. To look to the Article II "executive power" for the answer is like looking into a crystal ball. When former Justice Arthur J. Goldberg testified before you in March, 1972 that—

"It is true that Article 2, vesting the Executive power of the United States in the President, necessarily implies that certain activities he conducts, either directly or through his staff and the Executive Departments are privileged."[2]

He assumed the answer.

For what the Framers meant when they employed the terms "legislative power," "executive power," we must look to history, exactly as the Supreme Court did when it inquired whether the "judicial power" included a power to hold in "contempt."

History discloses an established, virtually untrammeled parliamentary power of inquiry; whereas the Executive Branch has *not advanced a single precedent prior to the Washington administration* which shows the existence of executive power to refuse information to Parliament. Nor do the Washington incidents stretch so far.

The great William Pitt, speaking in 1742 to the proposed investigation of the ousted Premier, Robert Walpole, said:

"We are called the Grand Inquest of the nation, and as such it is our duty to inquire into every step of public management, either abroad or at home, in order to see that nothing is done amiss."

RB 1058.[3] Remember the words "grand inquest." Pitt's statement was echoed in 1774 by James Wilson, second only to Madison among the Framers:

"The House of Commons have checked the progress of arbitrary power, and have supported with honor to themselves, and with advantage to the nation, the character of grand inquisitors of the realm. The proudest ministers of the proudest monarchs have trembled at their censures, and have appeared at the bar of the house, to give an account of their conduct."

RB 1288n. Reference to the "grand inquest" was made in the Massachusetts Ratification Convention by Fisher Ames, 2 Elliot's Debates 11, and in North Carolina by Archibald Maclaine, 4 Elliot's Debates 44. In the Second Congress, Elias Boudinot stated in 1792, respecting a proposed investigation of the affairs of the Secretary of the Treasury, Alexander Hamilton, that "we're now exercising the important office of the grand inquest of the nation," and noted that the inquiry was "into the conduct of an officer of the Government in a very important and highly responsible station." 3 Ann. Cong. 947–948. The investigation, I may add, was welcomed by Washington. RB 1081 n. 200.

That the separation of powers interposed no obstacle to such inquiry may be gathered from the high priest of the doctrine, Montesquieu, who was endlessly cited by the Founders. The legislature, he said, should "have the means of examining in what manner its laws have been executed by the public officials." RB 1059–60.

All this was summarized by the Supreme Court in *McGrain* v. *Daugherty*, 273 U.S. 135, 161 (1927) in the wake of the Teapot Dome scandals:

"Power to secure information by such [investigatory means] has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American Revolution."

"A legislative body," said the Court, "cannot legislate usefully or effectively in the absence of information . . . and where the

[1] References are to hearings before this Subcommittee in June 1971, and the volumes I, II, and III will merely be cited as I, etc.

[2] CONGRESSIONAL RECORD, March 24, 1972, page 10150.

[3] Berger, Executive Privilege v. Congressional Inquiry, 12 UCLA Law Rev. 1044 (1965), hereafter cited as RB.

legislature does not itself possess the requisite information . . . recourse must be had to others who do possess it," as Roger Sherman had said with respect to the Act of 1789. That Act made it the duty of the Secretary of the Treasury to furnish information required of him by either branch of Congress, and Sherman said, "we must procure it where it is to be had." RB 1061.

The Court also declared that an investigation "of the administration of the Department of Justice . . . and particularly whether the Attorney General and his assistants were performing or neglecting their duties" was within the jurisdiction of Congress. 273 U.S. at 177. True, there the brother of the Attorney General, an Ohio banker, sought to resist the investigation; but it is absurd to argue, as did Attorney General Rogers, that the Attorney General himself could not be called in an investigation of his own derelictions. RB 1055.

The Act of 1789 specifically provided that the Secretary of the Treasury must appear in person. That Act, drafted by Alexander Hamilton, enacted by the First Congress, virtually an adjourned session of the Convention, and approved by President Washington, who had presided over the Convention, made it the duty of the Secretary of the Treasury "to give information to either branch of the legislature in person or in all matters . . . which shall appertain to his office." 1 Stat. 65–66, 5 U.S.C. § 242. Both writing (as he may be required) respecting the Secretaries of War and of the Treasury appeared before the House in the St. Clair investigation. 3 Ann. Cong. 1106 (1792). RB 1060.

Where is the comparable history of executive privilege? When Assistant Attorney General Rehnquist appeared before you in June, 1971, he stated that the privilege is "firmly rooted in history and precedent." II 360. He avouched no pre-Constitution precedent to show that legislative surveillance of the executive was in any wise limited; instead he relied on two incidents during the Washington administration: the St. Clair investigation and the Jay Treaty incident. Neither constitutes a precedent.

In 1792 the House examined into the failure of General St. Clair's expedition against the Indians and called on the Secretary of War for documents. According to what Mr. Rehnquist described as "an excerpt from Jefferson's notes of the cabinet meeting," II 360, it was agreed that the "house was an inquest, therefore might institute inquiries," but that the President had discretion to refuse papers, "the disclosure of which would injure the public." RB 1079. However, all the details of the disastrous expedition were in fact turned over, so that the case is hardly a case for a *claim* of the Executive to withhold information from Congress.

Jefferson's "notes" did not find their way into the executive files; there was no evidence that the meditations of the cabinet were ever disclosed to Congress. Indeed, it would have been unsettling and unwise to excite the House by a claim of discretion to withhold when all the information was in fact turned over. The Jefferson "notes" were found amongst his papers after his death and first published many years later, under his "Anas," what he described as "loose scraps," and "unofficial notes." RB 1089n. There this "precedent" slumbered until it was exhumed in a memorandum submitted to the Senate in 1957 by Attorney General Rogers. What a "precedent!" If it is a precedent, it teaches that Washington would not claim privilege to hide a shameful failure within his administration.

The second "historical precedent" invoked by Assistant Attorney General Rehnquist is Washington's refusal to turn over the Jay Treaty papers to the House. II 360–361. The papers had been delivered to the Senate, but were refused to the House because, said Washington, the House had no part in treaty making and hence no "right" to the papers. But he emphasized that he had no disposition to withhold "any information . . . which could be requested of him as a right," as for example, had the House required the papers for purposes of impeachment. RB 1086. In sum, this was not a case where executive privilege defeated a "right" of inquiry, for the papers were delivered to the Senate, but an alleged absence of a "right" of the House to inquire. Indeed, the very terms "executive privilege" are a relatively late newcomer on the scene.

The "executive power" was conceived by the Framers as a power to "execute the laws," RB 1071–76, and the legislature necessarily, in the words of Montesquieu, "should have the means of examining in what manner it laws have been executed." We need to recall that the prevalent belief at the end of the Colonial period was that the executive, in the words of Edward Corwin, "was the natural enemy, the legislative assembly, the natural friend of liberty." RB 1070. And despite Madison's disenchantment with State legislative excess in the post-Revolutionary period, he concluded that "in republican government, the legislative authority necessarily predominates." Federalist, No. 51. Today the Executive branch tells Congress, the senior partner in government, that disclosure to it of certain information is "inappropriate" or not in the "national interest."

Another "precedent" cited by Assistant Attorney General Rehnquist arose in 1953, *Reynolds v. United States*, 345 U.S.1. II 360. There a private litigant in a suit against the government sought disclosure of an Air Force report respecting secret electronic equipment. The claim of a private litigant to such disclosure stands far lower than that of Congress. Concealment of departmental derelictions, for example, the Teapot Dome frauds, or of foreign commitments, may be far more damaging to the national interest than a failure of justice in a private litigation.

Then too, there is a long history of parliamentary inquiry into executive conduct, which is much older than, and entirely independent of, the right of a litigant to executive disclosure in the courts. *Reynolds*, in fact, speaks against the exaggerated executive claims, for the Supreme Court said that it is for the Court, not the Executive, to "determine whether the circumstances are appropriate for the claim of privilege." 345 U.S. at 8. Although the Court found that the litigant had not proven the need for disclosure in light of an "available alternative," it was yet at pains to state that "judicial control over evidence in a case cannot be abdicated to the caprice of executive officers." Indeed, Mr. Rehnquist concedes that the "President's authority to withhold information is not an unbridled one," but concludes that the "potential for abuse" must still be left "for the exercise of presidential discretion." II 361. A "bridle" on the Executive which he alone can check is no bridle at all. In short, the Executive branch asserts a right finally to determine what is "appropriate" for Congress to see after the Supreme Court decided that the Executive has no such right against a private litigant.

The claim of privilege for "candid interchange" among officials is illustrated by your own recent experience. You had requested "Country Field Submissions" for Cambodia, the type of information the "past three administrations" have routinely furnished. (Press release, Chairman Moorhead, March 16, 1972). These submissions, your Chairman explained, "describe the real political and economic situation in a country, what the goals and objectives of the United States assistance program are," and the like. When access to these submissions was refused, the Committee invoked the statutory cut-off for aid to Cambodia. At the last minute President Nixon forestalled the cut-off by an appeal to executive privilege. A similar rebuff was experienced by the Senate Foreign Relations Committee.

President Nixon explained that "unless privacy of preliminary exchange of views between personnel of the Executive Branch can be maintained, the full frank and healthy expression of opinion which is essential for the successful administration of government would be muted." Hearings before the Senate Subcommittee on Separation of Powers on Executive Privilege (July–Aug. 1971) p. 46.

No trace of this branch of privilege appears in history until it was put forth in 1954 by President Eisenhower in defense of the Army against the onslaughts of Senator McCarthy. RB 1309–10. It is therefore a recent made-to-order doctrine, altogether without historical foundation, which cannot be justified as the exercise of a *constitutional* power to withhold. Moreover, this principle of "candid interchange" was laughed out of court by the highest judicial tribunal of England, the House of Lords, in *Conway* v. *Rimmer* [1968] 1 All.E.R. 874, a private litigation. In the words of Professor Wade of Oxford, "The flimsiness (as Lord Reid called it) of this overworked argument has long been obvious and their Lordships have now shattered it without mercy." 84 L.Q.R. 173. Nevertheless, the President solemnly invokes as a sufficient reason for withholding from Congress information as to how the Defense Department plans to spend appropriated funds an excuse which the Lords rejected for withholding from a private litigant.

Such presidential frustrations of Congressional attempts to obtain information vital for the performance of its functions reveal how futile it is to make a cut-off of funds turn on presidential invocation of executive privilege. A Department determined to withhold information, as these incidents disclose, will generally procure presidential concurrence.

I would therefore recommend that all future cut-offs be made dependent *solely* on departmental refusal of information to Congress. As the President's abandonment of the claim of executive privilege for Peter Flanigan, in order to save the appointment of Richard Kleindienst as Attorney General indicates, the President may conclude that some claims of privilege are too dearly bought.

We have seen that the claim of privilege for members of the White House staff, according to the "precedents" mustered by Assistant Attorney General Rehnquist, is new-minted. Suppose Peter Flanigan were charged with violation of the Corrupt Practices Act and that Congress launched an investigation to ascertain whether there were grounds for impeachment. Can it be maintained that Mr. Flanigan's plea of immunity from investigation would be sustained? Impeachment lies against "all civil officers" regardless of location in the government; and Congress, as President Washington recognized, may investigate before it impeaches.

I propose to show that even the claim for confidential advice to the President, for example, by Mr. Henry Kissinger, has very shaky underpinning. There is no need to rehearse Mr. Kissinger's omnipresence in foreign affairs. That he has taken over high-level functions of the Secretary of State is open and notorious. Although the Secretary, in the words of Chief Justice Marshall in *Marbury v. Madison*, is a "confidential agent" of the President, he enjoys no blanket immunity from inquiry. Mr. Kissinger, however, is claimed to be unaccountable to Congress.

This area of privilege has been highly overrated. In the memorandum Attorney General Rogers submitted to the Senate, he claimed "uncontrolled discretion" in a department head to withhold "confidential" information, citing *Marbury* v. *Madison*. RB 1101, 1110. But Mr. Rogers himself quoted

Chief Justice Marshall as saying on the trial of Aaron Burr that "the principle decided there [Marbury] was that communications *from* the President to the Secretary of State could not be extorted from him." RB 1110. Even this much was pure dictum, because *Marbury* involved a claim to delivery of a commission which had been signed by the President and sealed by the Secretary of State, about which there was nothing confidential at all. So far as *Marbury* is a precedent, it does not, according to Marshall himself, shelter a communication from a high officer *to the President*. A private letter from General James Wilkinson to President Jefferson was in fact held subject to subpoena by Marshall on the *Burr* trial and it was turned over to the court by Jefferson.

In truth, *Marbury* is altogether irrelevant to Congressional inquiry. It was a litigation by a private individual, and Marshall stated that the "province of the court . . . is not to inquire how the executive or executive officers perform their duties." Precisely that function lies within the province of the legislature, as Pitt, Montesquieu and James Wilson made clear, and as the Supreme Court held in *McGrain* v. *Daugherty*. In 1792 Washington welcomed an investigation of the Secretary of the Treasury; RB 1081n; and he turned over all documents in the investigation of General St. Clair, thus recognizing the inquiring function of Congress.

It also needs to be remembered that a number of British Ministers were impeached for giving "pernicious advice" to the King, Berger, Impeachment for "High Crimes and Misdemeanors," 40 So.Cal. Rev. 395, 413 (1971), and that in the Virginia and South Carolina Ratification Conventions Francis Corbin and Henry Pendleton alluded to such "advice" as within the scope of impeachment. Id. at 431. If such "advice" be impeachable, inquiry whether it was given cannot be barred on *constitutional* grounds whatever may be the merits of the practical arguments for confidentiality. Practical desiderata cannot be translated into constitutional dogma.

Now I come to what seems to me the most glaring example of bureaucratic recalcitrance—the refusal of the Defense Department to comply with the request of this Committee for information under the Act of 1928, now codified in 5 U.S.C. § 2594. The Act provides that upon request of the Committee on Government Operations every executive department shall "furnish *any* information requested of it relating to *any* matter within the jurisdiction of said Committee." (emphasis added). Senate Report No. 1320 (70th Cong., 1st Sess.) recites that the Bill repealed the requirements of a large number of statutes covering certain listed reports on the ground that the "requirements are obsolete . . . have no value and serve no useful purpose . . . To save any question as to the right of the House of Representatives to have furnished any of the information contained in the reports proposed to be abolished a provision has been added to the bill requiring such information to be furnished . . . " On the basis of this report, the Assistant to the President, Mr. John D. Erlichmann, argues that the Act was merely designed to apply to the "discontinued reports." III 785, 788.

On this interpretation, the Act preserves the right of Congress to require obsolete and valueless reports while barring access to reports of immediate value and need. It reads a statute designed by Congress for its own benefit against Congress and in favor of the Executive. In effect, the Executive would revise the Act of 1928 to read, "notwithstanding the provisions of this repealer, the Committee may require the discontinued reports." But the Congress went beyond this: it provided for the requirement of "*any* information . . . relating to *any* matter within the jurisdiction of said Committee.

The prototype of this provision is the Act of September 2, 1789 (1 Stat. 65–66, 5 U.S.C. § 242), which made it the duty of the Secretary of the Treasury "to give information . . . respecting *all* matters . . . which shall pertain to his office." In 1854, Attorney General Caleb Cushing advised the President that "by legal implication" every branch of the Executive Department is under the same duty." 6 Ops. Atty. Gen. 326,333. The broad language of the Act of 1928 may be read as declaratory of this duty.

Mr. Erlichmann admitted that the language of the 1928 Act "unquestionably is rather broad," III 788; and Assistant Attorney General Rehnquist "cheerfully conceded" that "the extremely broad purpose . . . is a permissible interpretation of the language." III 785. Why must we prefer a narrow to a broad reading of a statute designed by Congress for its own benefit? Our guide rather should be the statement of Chief Justice Marshall:

"It is not enough to say, that this particular case was not in the mind of the Convention, when the article was framed . . . It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it . . ."

Dartmouth College v. Woodward, 4 Wheat 518,644 (1819). Would the Congress have excluded a request for the SST report from the words "*any* information . . . relating to *any* matter" and have restricted the request to "obsolete and valueless" reports? The answer is self-evident. It follows, in my judgment, that a refusal of information required by your Committee under the Act of 1928 is a violation of law.

It would be unrealistic to expect that the Attorney General would take action against members of the Executive branch who are carrying out executive policies in defiance of law. Congress must therefore undertake to enforce its own rights. Does Congress have a judicially enforceable right? In my 1965 article I examined in detail the questions whether a suit between Congress and the Executive constitutes a "case or controversy," Whether it presents a "political question," and whether Congress has "standing to sue," and concluded that these doctrines interpose no obstacle to suit. RB 1333–62.

Marbury v. Madison teaches that one in whose favor a duty is imposed upon an officer has a right to sue for breach of the duty. There it was held that the Secretary of State was under a duty to deliver a commission which had been signed to the judicial appointee, and that the appointee could bring mandamus to enforce the duty to deliver the commission. 1 Cranch 137,166 (1803). An action under the Act of 1928 would be even clearer, for the statute unmistakably requires the Executive branch to furnish the information required by the Committee. If there would be a question whether a requirement lay within the "jurisdiction" of the Committee, that cannot be unilaterally decided by the Executive.

The Congress ought by statute authorize a suit on behalf of the Congress against a member of the Executive branch for failure to comply with a duty imposed by statute to the detriment of Congress, or indeed, for any impairment of its functions, in order to dispel doubts raised in *Reed* v. *County Commissioners*, 277 U.S. 376 (1928), when a Senate Committee sought to sue in the absence of such authorization. And the statute ought to provide for the appointment of counsel to represent Congress. You might also consider a permanent attorney who would screen Committee applications for such suits. The relevant House, I suggest, should in each instance approve the institution of a suit, in order to prevent a future Senator McCarthy from plunging Congress into a discreditable action. You can do no less after insisting that the President alone must invoke executive privilege.

A more immediate way of raising the issue before the courts is by resort to the Congressional contempt power, recognized in *Jurney* v. *McCracken*, 294 U.S. 125 (1935). The procedure, described in *McGrain* v. *Daugherty*, 273 at 153, is issuance of a subpoena, and on refusal of the witness to appear or to testify, issuance of a warrant by the presiding officer of the House, commanding the Sergeant at Arms to take the recusant into custody, to bring him before the bar of the House, and keep him in custody for contempt. The *Jurney* and *McGrain* contempts ran against private individuals; but in his testimony before you Assistant Attorney General Rehnquist stated that a "member of the executive branch who himself has custody of the documents . . . would have to respond to a subpoena." II 385. And he agreed that Congress has power to punish "a contempt of the Congress by an officer of the Government who refused to appear and supply information." II 379.

I am aware of reluctance to invoke the contempt power; indeed, when I considered the matter in 1965, I shrank from what might be a violent confrontation. RB 1333. But experience and further reflection have persuaded me that I was mistaken. President Andrew Johnson besought the Congress to submit the issue which led to his impeachment—his failure to comply with a statute which he believed invaded his prerogative—to the courts. When the two branches are engaged in a boundary dispute, that is, as to the extent of their several powers, the issue Madison said cannot be decided by either. Decision, said Justices Jackson and Frankfurter must be left to an independent arbiter. Such issues, said the Supreme Court in *Luther* v. *Borden*, are for the courts.

There is no need to regard a contempt proceeding as merely punitive; it may be viewed as a means of getting the dispute into court through the medium of a writ of habeas corpus sought by the officer, as was the case in *Jurney* and *McCracken*. Only if the officer is in the custody of the Congress will the writ lie. Until Congress faces up to the fact that the swelling tide of executive privilege claims can be stemmed only by decisive Congressional action, executive claims will continue to clog Congressional performance of vital functions.

POWER SHORTAGE

HON. MICHAEL HARRINGTON

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HARRINGTON. Mr. Speaker, New England is currently facing the worst power shortage in its history. Utility engineers are predicting a 3-million-kilowatt shortage of electricity in the New England region this summer. This will plunge reserve rates to a disastrously low 8.8 percent. This means that blackouts, brownouts, and voltage reductions will occur with alarming frequency.

In addition, the cost of power in New England is rising at a tremendous rate—Boston's electric rates rose 11.3 percent in 1971 compared with 6.3 percent nationally—while Boston Edison reported the highest earnings and dividends in its history. The future is no brighter with an estimated $500 million in rate increases being projected over the next 4 years.

There is an alternative to the chaotic system that has retarded New England's economic development and cost New

England consumers more than those in any other region of the country. That alternative is to create a public agency to coordinate the generation and transmission of electricity in the entire region. Over the years, the private utilities have fought each and every attempt to introduce public power in New England. And the public has suffered the consequences.

While the private utilities have claimed that a public agency would not substantially lower the cost of power in New England, it now can be shown that a regional generation and transmission agency would save the people of New England $695 million over the next 10 years. This was the conclusion of a recently published study "Cost of Electricity in New England," prepared by R. W. Beck & Associates, a nationally based firm of analytical and consulting utility engineers.

In light of the current power situation in New England and the fact that a regional generation and transmission authority will, in addition to saving over half a billion dollars, provide regional planning, research and development, and a mandate to reduce the environmental impact of powerplants in the region, I will shortly be introducing legislation to establish a New England Regional Power and Environmental Protection Agency to assume responsibility for all new power generation and transmission in the region.

At this point, I would like to introduce into the RECORD the summary report of the R. W. Beck study, so its conclusions can be studied by my fellow colleagues:

SUMMARY REPORT—COST OF ELECTRICITY IN NEW ENGLAND

(R. W. Beck and Associates Analytical and Consulting Engineers)

SECTION I—INTRODUCTION, CONCLUSIONS AND SUMMARY

Introduction

This report is directed toward answering questions that are being asked about the cost of electric power in New England.

1. Why are power costs high and going higher?

2. What can be done to reduce power costs?

3. Are the private power companies doing everthing possible to reduce the cost of electricity to the consumer?

4. Why are the publicly-owned electric utilities so interested in obtaining Revenue Bond financing?

5. Why do the private power companies oppose the publicly-owned electric utilities' owning and operating large generating projects?

6. Does the rate regulation now imposed on electric utilities by state and federal regulatory commissions require the utilities to provide power at the lowest cost?

7. Would a regional public power authority really reduce power costs in New England?

Scope of analysis

In this report, we have presented our analysis of the trends in power costs and how major decisions made by the private companies regarding methods of obtaining power to serve New England power needs have affected power costs. These analyses have not been directed at an evaluation of the increases in operating costs, such as fuel costs, that the private companies are claiming to support their requests for a rate increase. However, the results of our analyses do show that if the publicly-owned electric utilities had been provided with the authority necessary to undertake the financing of a portion of the power supply facilities needed and planned for in New England that the over $500 million in rate increases which are projected to occur in the next four years would be substantially reduced if not completely unnecessary.

Electric power reliability in New England is not directly related to power costs, so it has not been discussed in this report. However, during the course of the analysis we have made, it has become very clear that the power supply problems in New England have reached the crises level and that major efforts and cooperation are needed between all sectors of the electric utility industry and regulation commissions to avert future limitations in power supply. It is also questionable if the private companies alone can provide the over $5 billion investment funds needed to construct the generating facility additions scheduled between now and 1980. Therefore, if New England's power needs are to be met, the publicly-owned electric systems as well as the federal government must assist in financing of the region's major generating and transmission facilities.

This report also sets forth alternatives available in planning and financing future power supply facilities and the possible savings with these alternatives.

Conclusions

Our review of (1) the historical and projected trends in power costs, (2) the programs of power supply developed in the past and proposed for the future and (3) alternatives available to reduce power costs have caused us to conclude the following:

1. The cost of power in New England would be much lower today if projects supported by the publicly-owned utilities, but opposed by the private companies, had been developed as a source of power supply for New England. Two of these sources of power supply and the amounts by which they would have reduced costs are as follows:

	Possible annual savings
(a) Canadian Base Load Power	$36,000,000
(b) Dickey-Lincoln Project	2,000,000

(Reference Section IV of this report)

2. Public financing of major generating projects such as Maine and Vermont Yankee would result in substantial savings on power supply costs. The annual average savings estimated by public financing of these Yankee Projects are:

	Possible annual savings
(Reference Section II, page 5 of this report)	$13,000,000

3. If the publicly-owned systems were allowed a means of financing just their own power supply needs with Public Revenue Bonds, their estimated annual savings in power costs would be:

	Possible annual savings
(Reference Section V, page 4 of this report)	$16,000,000

4. A regional public power authority could if it developed and financed the future power supply facilities of the area, effectively reduce future power costs. The annual average savings in power costs from 1976–1985 is estimated to be:

	Possible annual savings
(Reference Section V, page 6 of this report)	$69,000,000

5. The average annual reductions in power costs summarized above total $136,000,000. This would more than offset the average annual $125,000,000 increase projected for New England residential consumers over the next four years.

(Reference Section III, page 4 of this report.)

6. A significant reason for the high cost of power and its continuing increase is due to the private power companies opposition to power supply programs which did not allow them to invest their own funds and obtain an investment return.

7. Power costs in New England can be reduced by establishing a regional public power agency and allowing the publicly-owned electric utilities to participate in the financing of major generating projects with Public Revenue Bonds.

8. The private power companies are continuing to oppose programs which would reduce power costs in New England as evidenced by their filing of the New England Pool Agreement with the Federal Power Commission before a joint program of power supply development had been worked out with the publicly-owned electric utilities.

9. If the publicly-owned electric utilities had the ability to finance major power supply facilities with Revenue Bonds, they could supply their customers' power needs for much less cost than they now are required to pay to the private companies for wholesale power.

10. The private companies have opposed the publicly-owned systems' owning and operating large generating plants and using Revenue Bonds for financing because this would allow the publicly-owned systems to provide their consumers' power needs for a cost much lower than the cost they now must pay to the private companies for wholesale power.

11. In those regions of the country where the publicly-owned systems and other public agencies have contributed to the cost of financing major power supply facilities, power costs are lower and the consumer of both the public and private utilities has benefited from low cost power.

12. The regulatory commissions which impose regulations on the private companies, do not include any requirement that the companies develop the lowest cost power supply program.

13. The public systems have, in the past, provided a limited means of measuring what power supply costs should be. However, the major increases in wholesale power costs now being imposed on the public systems by the private companies are causing the publicly-owned systems' costs to be unrealistically inflated.

14. If a regional public power agency is not established and the publicly-owned electric utilities are not allowed to provide a measure of competition through their own means of financing, power costs in New England will continue to increase. The now projected $500 million increase in residential rates to New England customers for the period 1972–1985 can only be considered an example of increases that will follow.

Summary

In summary, our analysis clearly indicates that the only positive programs for reducing power costs in New England are those programs supported by the publicly-owned (municipal and cooperative) electric utilities. These programs for low cost power have been opposed by the large private companies and unless the publicly-owned utilities can obtain the authorization to finance these programs independently with Public Revenue Bonds and a regional public power authority is established, New England will never be able to obtain electric power at the lowest possible cost.

SECTION II—ELECTRIC UTILITY INDUSTRY IN NEW ENGLAND GROWTH AND FINANCING REQUIREMENTS

General

The average use of electricity by the New England consumers is less than elsewhere in the nation largely due to the higher than average cost of power. However, despite high costs, competition from other energy sources and the dampening effects of increasing rates, there is very good reason to believe that electric power use will continue to increase at an impressive rate in New England. The growth in per capita electric energy production in New England and a comparison of this

production with the total United States and other leading power usage countries are shown on Figure 1 in the Appendix.

New England Electric Industry Growth

The electric utility industry is the largest industry in New England and affects the lives of nearly every person in the region. Its size and growth can be illustrated by the historical and projected growth in total revenues from ultimate consumers. This growth is summarized in the following table and shown graphically on Figure 2 in the Appendix.

New England electric industry

Year	Annual revenue from ultimate consumer
Historic	
1950	$353,000,000
1955	496,000,000
1960	677,000,000
1965	873,000,000
1970	1,204,000,000
Projected	
1975	1,750,000,000
1980	2,500,000,000
1985	3,600,000,000

The great amounts of money which electric consumers in New England will pay for electric service in the future should alert the industry, consumer groups, and most of all, regulatory agencies and legislatures that there is a crucial need to find the most economical way to provide the electric power the people of this region will require.

Power production facilities must be doubled by 1980

Through the eight-year period 1972 to 1980, the electric utility industry plans to bring into service over 17,500,000 kilowatts of new generating capacity. This will more than double the existing electrical generating capacity now serving the area. The private utilities have projected that a major portion of this capacity will be nuclear and pumped storage hydro projects. Therefore, the overall conservative estimate of the cost of this investment is $300 per kilowatt, or over $5,250,000,000 in generating facility additions. Other major investments will also be needed in transmission, substation and distribution facilities.

The projected electric power requirements of New England and the new generating installations being considered to supply these requirements are shown on Figure 3 in the Appendix. It should be noted that due to the lead time required to construct electric generating facilities, all of the generating projects shown on Figure 3 will need to be committed for construction before the end of 1972, if the electric power consumers of the region are to be assured that electrical generating capacity will be available to provide service when needed.

Financing—a major cost item

The cost of financing is one of the significant components of electric rates and a difference of one or two percent in the cost of money can have a major effect on total power cost when investments of $5,000,000,000, as discussed above, are involved.

One major source of low interest money which is used to assist in the financing of major power supply projects in most of the other areas of the country—but not in New England—is low interest public Revenue Bonds. This type of financing is normally made available through the publicly-owned electric systems (municipals and cooperatives). The municipally-owned electric utilities in Massachusetts have tried, for several years, to obtain the privately-owned electric companies, support for a program which would allow the municipally-owned systems to contribute to the financing of major projects with lower cost Revenue Bond funds—without success.

Although Revenue Bond financing (bonds issued against the earnings of a public agency instead of the credit of the community) is available and has been used in nearly every state in the nation, including Massachusetts, the private companies have actively opposed legislation which would allow the municipally owned electric departments in Massachusetts to use this type of financing. A Bill to allow the municipally owned electric systems to issue Revenue Bonds is again before the legislature this year. Revenue Bonds are also required to ensure that the municipally owned systems in Massachusetts can become active participants in the New England Power Pool, discussed later in this Report.

If Revenue Bond financing could be utilized on a major generating project, it would ensure a substantial cost savings in the cost of power from the project due to the 1.5% to 2.5% lower interest rate these Bonds bring in the financial market. Also, public ownership and financing of major projects by publicly owned systems offer savings which occur because non-profit municipal systems are not required to pay income taxes. The public systems do, in most instances, transfer money to their communities or pay an in lieu tax. These payments often exceed the amount a private company would be required to pay for local property taxes.

The savings possible from lower financing cost and no income tax payment due to municipal ownership and financing have been estimated over the thirty-year projected life of the Maine and Vermont Yankee Nuclear Projects. This savings amounted to nearly $400,000,000. The total annual cost of power from these Yankee Projects under existing private ownership and alternately municipal ownership is summarized in the following table.

Comparison of estimated power cost over total 30-year project life Maine and Vermont Yankee—1,389,000 kilowatts

	Total estimated annual cost
Existing Private Financing, Average Cost—0.766 cents/kwh	$2,026,374,000
Public Financing, Average Cost—0.615 cents/kwh	1,628,961,000
Savings with Public Ownership and Financing	397,413,000
Annual Average Saving Over 30 Years	13,200,000

Utility regulation does not require low cost power supply

The charge an electric utility collects for the electric energy it sells to its consumers is allowed through regulation to be equal to its costs of providing the electric service plus an amount which represents a return on its investment. The items evaluated and ruled upon in the rate proceeding before regulatory commissions are which costs can be included in the cost of providing service and the amount of return to be allowed.

A major item which is generally disregarded in rate regulation proceedings, but which has a significant effect on the cost the private utilities charge for electricity, is the management decision to undertake a certain program for power supply as opposed to an alternate program or programs. Therefore, the regulation which is currently imposed on the electric utilities appears to create more incentive to follow programs which will result in a greater return on investment than to select power supply programs which will provide the lowest cost power.

SECTION III—ELECTRIC POWER USAGE AND COST

Electric power usage

The cost of electric power in New England has, historically, been among the highest in the nation, causing electric consumers in the region to utilize other types of fuels or energy sources which, in many cases, are considerably less convenient. Nevertheless, electric power consumption in New England has more than tripled in the past twenty years with per capita electric energy production following a similar growth pattern. This also indicates the New England consumer is becoming increasingly more interested in the conveniences possible with electric energy. The total New England electric energy sales and per capita energy production for 1950, 1960 and 1970 are shown on the following table.

ELECTRICAL ENERGY SALES AND PER CAPITA PRODUCTION IN NEW ENGLAND

[In kilowatt-hours]

Year	Total energy sales	Per capita electric energy production
1950	1,341,000,000	1,740
1960	2,530,000,000	2,741
1970	4,883,000,000	5,145

Therefore, while it can be anticipated that the New England per capita consumption of electric energy will continue to lag behind the national average, as shown on Figure 1 in the Appendix, it can also be assumed that the growth rate will continue to keep pace with or be greater than the national average. For this reason, it is our opinion that the projected increases in electric requirements, as developed by electric utility companies' representatives who comprise the New England Planning Committee, are a realistic minimum.

New England retail rates compared to others in the nation

A comparison of retail electric rates in each state is published by the Federal Power Commission in its annual publication, "Typical Electric Bills". In 1970, the lowest average rate for a residential customer who used 500 kwh per month was found in the State of Washington where this customer paid $6.03. New York was the highest of the 48 contiguous states with a cost of $13.51 for an average residential use of 500 kwh per month. The rankings for the New England States for the past nine years are shown in the following table:

NATIONAL RANKING OF TYPICAL AVERAGE RESIDENTIAL BILLS IN THE NEW ENGLAND STATES FROM HIGH TO LOW FOR MONTHLY USAGE OF 500 KW.-HR.[1]

	National ranking								1970	
	1962	1963	1964	1965	1966	1967	1968	1969	Rank	Average bill
Connecticut	37	41	40	37	38	38	39	38	36	$10.94
Maine	47	47	47	48	48	48	46	46	45	11.85
Massachusetts	42	46	48	46	46	46	45	43	42	11.61
New Hampshire	46	45	42	42	42	44	43	41	40	11.41
Rhode Island	38	37	39	40	40	40	35	33	32	10.61
Vermont	32	32	32	35	34	26	27	27	26	10.26
Total U.S. average for 1970										10.51

[1] Does not include rate adjustments due to fuel clause increases.

As the table indicates, up to this time, Vermont has been able to maintain the best ranking—the lowest power costs—in New England, although the state is sparsely settled which normally requires a higher cost investment per consumer than the more populous states. Credit for Vermont's lower power costs can be given to the low cost hydroelectric power obtained from the St. Lawrence and Niagara developments and the jointly-owned and state regulated transmission system of the Vermont Electric Company (VELCO).

Reasons for high power costs

The reasons for high power costs in New England have been the subject of numerous reports. One such report was recently undertaken for the New England Regional Commission and titled, "A study of the Electric Power Situation in New England, 1970–1980". This report which is often referred to as the "Zinder Report" identified the high cost of power in New England as being due to high operating costs that resulted from large numbers of small systems who have produced their power and supplied their own needs without the benefit of regional planning and joint construction of large, low unit cost facilities.

The electric companies identify the reasons for high power costs as high taxes, high fuel cost and high general operating cost. These costs, which are high, could be offset to a large degree, by the savings possible with the assistance of the publicly-owned systems in the financing of large projects, or the purchase of low cost hydro power from Canada. These methods of reducing power costs have been supported by the publicly-owned electric utilities (municipals and cooperatives) and could have resulted in substantial savings in power costs to the electric consumers in New England.

Trends in electric rates

Retail rates—residential rates up $500,000,000 in four years

Recently filed and approved rate increases plus fuel cost adders are projected to increase the cost of power to residential consumers in New England by nearly $500,000,000 during the next four year period, 1972–1975 for an annual average increase of $125,000,000.

The major portion of the increase will be due to basic increases in retail rates while a less, but still significant amount, will be attributable to fuel cost adders. These increases which represent an average annual increase of nearly 18 percent in the cost of electricity to residential consumers in New England are shown on Figure 4 in the Appendix.

Wholesale rates—40 municipals to pay $97,000,000 more in four years

Despite continuous efforts by the publicly-owned systems to reduce wholesale power costs, or prevent their increase, wholesale power costs to the publicly-owned systems who must purchase their power from the private companies have increased as much as 70 percent to some communities. Based upon information contained in wholesale rate filings by the New England Power Company and the Boston Edison Company, and general information on power costs and fuel costs, the average cost of wholesale power to the Massachusetts municipal electric systems will increase over the period from 1972 to 1975 by an estimated $96,840,000.

Table I in the Appendix summarizes the increases which are expected in the average cost of power to the 40 Massachusetts municipally-owned electric systems and shows how this average cost is now expected to increase from 0.925 cents per kilowatt-hour to 1.543 cents per kilowatt-hour, in 1972, due to the increase in wholesale rates. These projected increases in power costs are shown graphically on Figure 4 in the Appendix.

SECTION IV—OPPORTUNITIES TO REDUCE POWER COSTS THAT WERE OPPOSED BY THE PRIVATE COMPANIES

Introduction

The lack of joint planning, the general fragmentation which has existed in the New England power industry and the generally high costs are reasons for the high cost of electricity in New England. However, major programs which could have offset these high costs have been opposed by the private companies. These included opposition to Federal development of water resources for energy purposes and the purchases of low cost hydro electric power from outside New England.

Canadian hydro power rejected in favor of nuclear generation

In 1966, a program to import up to 2,100,000 kilowatts of low cost Canadian hydro power was rejected because the private electric companies opposed this plan and proposed that the development of large nuclear projects would be more economical. The power which was available from Canada was high load factor power equivalent to that available from a nuclear project and would have made over 14,700,000,000 kilowatt-hours of baseload energy available annually at an average cost of less than 0.5 cents per kilowatt-hour

The nuclear power plants proposed to take the place of this low cost Canadian energy are still in the construction stage but the average cost of power from two of these alternative nuclear plants is now estimated to be over 0.75 cents per kilowatt-hour.

Based on the projected cost of 0.75 cents per kilowatt-hour for power from these and other nuclear projects it can be estimated that power costs in New England will be increased by more than $36,000,000 annually because nuclear plants are being constructed instead of buying hydro power from Canada. This can be projected to be an increase of over $1,188,000,000 over the thirty-year life of the nuclear projects.

Dickey-Lincoln School hydro project

The Dickey-Lincoln School Project is proposed to consist of two dams and generating stations, one peaking installation near the Town of Dickey, and a second dam, 11 miles downstream on the St. John River, at Lincoln School, for purposes of regulating discharges from the Dickey Project and baseload generation.

The power output of the project was proposed by the United States Army Corps of Engineers to make available 105,000 kilowatts of 40% load factor power in the Maine area and 725,000 kilowatts of power at 12% load factor in other New England areas. Annual energy from the project is estimated to be 782,000,000 kilowatt-hours.

The project has one of the highest benefit-to-cost ratios of any Corps project, estimated to be 1.9:1.0 based on 1970 price levels. However, delay in the project's development is causing the project's costs to increase and will cause the cost of power to the consumer from the project to increase. Between 1965 and 1971, this increase has been estimated to be over $94,000,000. It is interesting to note that this has not seriously changed the benefit-to-cost ratio because the alternatives to the project have increased in cost also.

The project is estimated to take six and one-half years to build, although power will come on line incrementally starting one year previously. Therefore, if the proposed development had proceeded as initially proposed, it would now be available to meet the current power shortage. The original estimated cost for the project would also have resulted in substantial savings over alternatives now being developed.

The cost of capacity from the Dickey-Lincoln Project compares closely with pumped storage projects now being developed—with one significant difference. Energy obtained from the pumped storage projects must first be generated by some type of thermal plane to transfer the water from the project's lower to upper reservoir. The Dickey-Lincoln Project has a natural water flow and pumping is not required. This makes the annual cost of energy from Dickey-Lincoln in the range of $2,000,000 less than any of the pumped storage alternatives presently being developed.

The cost advantage of hydro power is dramatic today when compared to fossil fuel prices for use in electric generating plants which have gone up more than 100% from price levels of two years ago. Because hydroelectric dams convert falling water to electrical energy, they do not depend on any fuel. Therefore, the cost of electricity to consumers who received their electric power from systems using hypdro power have not been subject to the large fuel cost increases.

SECTION V—ALTERNATIVES AVAILABLE TO THE ELECTRIC UTILITY INDUSTRY

Introduction

New England is at a crucial point in the development of its electric energy system. Increases in fossil fuel costs, which can only be described as fantastic, pressure on the industry to overcome the inefficiency of operating a multitude of systems which did little effective joint planning, continuing increases in the demand for electric power, tougher environmental regulations, action by various groups to delay the installation of generating units and the inflation in all costs—labor, materials and money—all spell extreme difficulties for the electric industry. Power shortages of one sort or the other seem nearly unavoidable in the near future.

Under these pressures, there are three alternatives which appear available to the electric industry. Each alternative will significantly affect the cost consumers must pay for electric service and the reliability of the region's power supply. These three alternatives, which are discussed below with respect to their probable effects on the cost of power are: (a) the private power companies' continued domination of the industry with possible merging of control into a few or one large company, (b) a successful NEPOOL Agreement resulting in a regional power pool which accepts public and consumer-owned systems as participants without compromising their integrity, and (c) the institution of a regional agency, or authority, solely responsible for supplying all bulk power to private, public and cooperative distribution systems.

Alternative I—continued domination by private companies

The private power companies have opposed the publicly-owned electric utilities obtaining an effective means of providing financial support for the development of power projects in New England. The regulatory commissions or legislative bodies responsible for the contalnuation of decisions which would allow this limitation of the publicly-owned systems' operations to continue should understand this will increase future power costs in New England and prolong the shortage of electric capacity.

The additional generating capacity planned by the private companies to meet the projected electric requirements of New England, as proposed by the New England Planning Committee, was referred to earlier and is shown on Figure 3 in the Appendix. As indicated, fossil fired steam power plants are proposed to provide the majority of the capacity needs of the region between 1973 and 1977. After 1977, it is proposed that New England will rely heavily on nuclear units. In reviewing the plans for future power supply facilities proposed by the private companies several decisions are apparent:

(1) No significant hydroelectric power from Canada is planned.

(2) No major consumer-owned development of generating facilities is included.

(3) No Federal project, such as Dickey-Lincoln, described earlier.

Should this planning, which does not include the low cost alternatives proposed by the publicly-owned systems continue, it can be assumed the increases in power cost will continue. The present increases filed or pending in residential electric rates are projected to increase costs to the New England consumers by nearly $500,000,000 in the short period 1972–1975. Increases that will develop over a longer period are staggering to the imagination.

Alternative II—successful integration of public and private sectors through NEPOOL

Improved working relationships between the private companies and the publicly-owned systems, enabling the joint planning and joint development of power projects would assure greater protection of consumer interests and lower cost power.

The publicly-owned electric systems' capacity requirements in the region represent approximately 9% of the total load. However, the electric generating capacity these publicly-owned systems are scheduled to develop under the plan proposed by the private companies will amount to less than 1% of the regional requirements in 1975.

If the consumer-owned systems were able to use public Revenue Bonds and develop just their own power requirements, substantial savings to the New England electric consumer would result. A study of developing a publicly-financed power system versus a privately-owned power supply system for the State of Maine resulted in a projected cost savings to Maine electric consumers of over $25,000,000 over a fourteen-year period. The total electric requirements of the State of Maine are nearly equal to those of the consumer-owned systems, so it can be concluded the same magnitude of savings is possible if the publicly-owned systems in New England were allowed a means of providing their share of generating plant financing.

A benefit which may not be ascribed directly to lower rates, but which is important to legislatures and regulatory agencies is that active participation of consumer-owned systems in generation and transmission facilities provides a comparison of the costs of developing the region's power systems. The "yardstick" principle can be demonstrated as effective because private companies charge less for electric power in those areas where publicly-owned systems have developed power projects. A comparison of average power costs and percent of ownership of electric generating capacity for Massachusetts and other parts of the country is shown on Table 3 in the Appendix.

Alternative III—regional wholesale electric power agency

The New England Regional Commission's study of the electric utility industry in the region, the Zinder Report, recommended the establishment of a regional agency which would be responsible for the production and transmission of all bulk power in the region. It is not necessary to review that report here, but only to point out the consequences that would result from financing future generation and transmission facilities with Revenue Bonds.

To translate into power cost savings the effect of a single agency taking over the responsibility for all bulk power production and transmission, one has to look at two assumptions:

(a) That agency would *not* purchase existing generating facilities but would build all future additions and purchase the output from existing generating facilities pretty much as companies now purchase it from the NEPOOL dispatching operation, NEPEX. That is, the lowest cost units operate first and are the last to be curtailed as power demands go down.

(b) That the agency would purchase all existing power supply facilities and make all future additions.

Since the first assumption is the more likely alternative to be selected, the savings possible if a public, non-profit, Regional Wholesale Electric Power Agency were created and were to build all the new generating and transmission facilities in New England, can be estimated. The estimated savings to New England electric consumers is estimated to amount to the following:

Estimated savings in power cost if all power supply facilities put into production from 1976 to 1985 were owned and financed by a public power authority

1976	$10,000,000
1977	20,000,000
1978	30,000,000
1979	45,000,000
1980	60,000,000
1981	75,000,000
1982	90,000,000
1983	105,000,000
1984	120,000,000
1985	140,000,000
Ten-year total savings	695,000,000
Annual average	69,500,000

The private power companies may find the idea of a regional wholesale power agency more and more attractive as they experience financial strain because of delays in getting large nuclear generating station power projects into service along with other fiscal problems. Furthermore, the smaller private companies would find this type of agency would offer more assurance that they could obtain power from large generating projects.

Should legislation be written providing for the usual powers required for a regional electric power authority and, in addition, for meeting the increasingly stringent environmental requirements protection, such an agency might well become very attractive to a wide segment of the public and a persuasive idea in the U.S. Congress and state legislatures.

SECTION VI—PUBLICLY-OWNED ELECTRIC SYSTEMS

The electric systems in New England, both public and private, for the most part, had the same type of beginning. They started as small, independent generating utilities serving local areas. Over the years, most of the private companies have merged into larger companies but the municipal systems generally serve the same local areas.

The merging of the companies has been a slow process and the competition between the private companies led to the independent construction of a large number of small and medium size generating plants in New England, while other parts of the country were constructing larger size and more efficient generating on a joint basis. The small public systems financing authority allowed them to also construct small generating stations which some of the public systems did until recently, thereby retaining a comparative cost standard in the region.

However, the economies and efficiencies available from large size generation units have caused private utilities of the area to join together to plan and construct large generating projects. Large size joint projects are now the only type of generating project being planned in the region.

Most of the publicly-owned systems have not had the opportunity to participate in the ownership of the major generating projects, and the small generating units they have available are no longer good alternatives except for peaking power. Therefore the public systems have not continued to install their own generation and have become, with limited exceptions, fully dependent on the power companies for their power supply. The inability of the public systems to join together to construct large projects appears to be one of the major reasons there is not any real competition or incentive for the private companies to reduce the cost of supplying electricity in New England.

Power cost is major item of expense

The cost of purchased power represents the major item of a publicly-owned system's cost. In 1970, the publicly-owned systems in Massachusetts paid an average of $5.69 out of every $10.00 of revenue for purchased power. Rate increases will cause this amount to increase to nearly $7.00 out of every $10.00 of revenue for some systems.

Other operating costs experienced by the publicly-owned systems are very comparable with the private companies in the region. A graphic comparison of the allocation of total gross revenues for the private companies and municipally-owned electric systems in Massachusetts, for 1970, is shown on Figure 5 in the Appendix.

Illustration 2 on Figure 5 shows the cost allocation for the municipally-owned systems revenues if the $5.69 paid to the Companies is reallocated to those items the private companies indicate are covered by the wholesale power revenue they receive. This reallocation illustrates how the companies assign a major amount of the revenue received from the municipals to taxes and return to the companies. These are the items of cost the publicly-owned systems could effectively reduce if they were allowed to develop their own power supply facilities.

Public systems keep power cost down

The publicly-owned systems in New England and particularly the municipally-owned systems in Massachusetts can be credited as the only ones who over the years have proposed, supported and taken positive actions to hold down the cost of electricity in New England. As illustrated on Figure 4 in the Appendix, the rate proceeding initiated by the Massachusetts municipal systems in the early 1960's caused a definite reduction in the cost trend line of wholesale power. Their activities can also be credited with reducing power costs by over $19,000,000 to the consumers of these publicly-owned systems over the 1964–1971 period. Retail power cost has also been affected by the programs of the publicly-owned systems. This effect is illustrated by a comparison of the curves showing the average cost of power to residential customers and wholesale customers on Figure 4.

Public systems offered capacity but can't obtain it

The need for joint planning of power supply on a regional basis has caused the total electric industry of New England to work toward the development of regional pooling and power supply planning. The publicly-owned systems have worked with the private companies in this power supply planning, and they have requested and been offered output (entitlements) in large generating units proposed in the region. The sources of power now proposed to be available to the publicly-owned systems and its relationship to their total load requirement is shown on Figure 6 in the Appendix.

The publicly-owned systems ability to actually obtain and utilize the entitlements, which have been offered, has been a point of discussion between the public systems and private companies for several years. The publicly-owned systems need the ability to finance the purchase of the project entitlements which have been offered, but the companies have opposed the public systems obtaining this authority. Other problems which the public systems have not been able to resolve with the private companies include the transmission arrangements for getting the power to their systems and integrating this power with that which they now obtain from the companies.

Plans supported by public systems could reduce cost

Two of the power supply programs supported by the publicly-owned systems in New England were the development of the Federally approved Dickey-Lincoln School Project in Maine and the purchase of power from Canada. If the projects had been developed as originally proposed, power from them would now be available in New England and the savings associated with these projects would have been helping to reduce power costs. To illustrate the amount of savings possible from these sources of power, we have calculated the amount that the Massachusetts municipal systems will be expected to pay for power from 1972–1975 as proposed under the wholesale rate schedules of the companies and compared this cost to the current cost estimated from these alternate sources of power which were supported by the public systems, but not developed. These sources of power are estimated to have been able to reduce the cost of power to the municipal systems from $210,000,000 to $105,000,000 or cut the cost of power in half over this four year period. These savings, for the public systems, could be expected to go towards reducing power costs of the consumer. The tabulation of these savings is shown on Figure 7 in the Appendix.

The public systems have also proposed to construct major generating projects on sites they have available and share the output with the power companies and help relieve the current power shortage. These efforts have also been rejected by the private companies.

Public systems provide a cost standard

Publicly-owned electric systems constitute a substantial amount of the funds needed for facility expansion in areas of the country where power costs are low. In these low cost power areas, major projects are constructed by the public systems who together or individually issue Revenue Bonds.

Opposition to the publicly-owned systems efforts to obtain Revenue Bonds has been a major issue in the negotiations of a New England Power Pool. The private power companies have claimed anything that would allow the publicly-owned systems to construct low cost generation would put the companies out of business. If this were the case, the six major power companies that operate in the Pacific Northwest would not be in existence.

An objection to public ownership of electric systems is often stated on the basis that the public systems do not pay their share of taxes. A review of the revenue allocation shown on Figure 5 in the Appendix, shows that the total public systems tax burden after allocation of purchased power expenses (Illustration 2) is nearly equal to that of the private companies. The payment of local taxes or in lieu taxes is also very comparable. Table 2 in the Appendix shows how the municipals in Massachusetts make an in lieu tax payment to the local community equal to 4.47 percent of their net plant investment. This compares to local tax payment equal to 4.67 percent of net plant investment for the private companies in Massachusetts and 3.89 percent of net plant investment for private companies in New England.

LET STATES KEEP NO-DISCHARGE REGULATIONS FOR BOATS

HON. DONALD M. FRASER

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. FRASER. Mr. Speaker, the Senate-House conference committee will meet again next week on the Federal Water Pollution Control Act Amendments of 1972. When this bill passed the House of Representatives on March 29, 1973, we were successful in including an amendment permitting individual States to prohibit the discharge of sewage from vessels into their rivers and lakes. Without this amendment, the bill would preempt all State laws of this type. I ask Members of this House to urge the conferees to retain the House amendment in the water pollution control bill.

The Minnesota-Wisconsin Boundary Area Commission has forwarded a resolution to the Environmental Protection Agency urging that Agency to issue regulations requiring holding tanks on boats. Let us not take a step backward and enact a law that allows inadequate Federal standards to prevail. Let us not wipe out good State laws already in existence. Let us not write off efforts of hardworking citizens and elected officials in States throughout the Nation to clean up our waters.

The resolution of the Minnesota-Wisconsin Boundary Area Commission follows:

RESOLUTION

Whereas, It is in the public interest to maintain and improve the quality of large bodies of water, such as the St. Croix and Mississippi Rivers and Lake Superior in Minnesota and Wisconsin, which offer outstanding recreational opportunities for millions of persons, and which serve other important public purposes; and,

Whereas, The use of said Minnesota-Wisconsin Boundary Waters for commercial shipping and recreational boating by watercraft equipped with marine toilets has increased dramatically in the last several years, and is expected to increase substantially in the future; and,

Whereas, The random discharge of untreated or poorly-treated wastes from such marine toilets endangers the health and recreational enjoyment of persons and degrades the habitat of fishes and waterfowl in such waters; and,

Whereas, In order to effectively maintain and improve the quality of these public waters, the States of Wisconsin and Minnesota have each enacted laws requiring watercraft with onboard toilets to have state-approved devices, such as holding tanks, to preclude any discharge of wastes into these and other public waters from such marine toilets; and,

Whereas, The Federal Environmental Protection Agency has proposed Federal standards, as required by the "Water Quality Improvement Act of 1970", which will preempt all state and local laws governing the design, manufacture, installation or use of marine sanitation devices beginning in 1973 (for new watercraft constructed after June 26, 1971) and in 1976 (for existing watercraft); and,

Whereas, Said proposed Federal standards will permit discharge of marine toilet wastes into these and other interstate waters provided said wastes are first subjected to a level of treatment "which will be approximately the equivalent of the secondary waste treatment standards for municipal waste facilities", unless a state applies to the Administrator of the Federal Environmental Protection Agency for issuance of a regulation completely prohibiting the discharge from a vessel of any sewage into particular waters of that state, and;

Whereas, After several years of study, consultation with state and federal agencies and public discussion, the Minnesota-Wisconsin Boundary Area Commission has concluded that the most practicable and reasonable way to maintain and improve the quality of public waters with respect to control of waste discharges from marine toilets is to require onboard devices which will retain such wastes for disposal in approved shore facilities;

Now, therefore, be it resolved, by the Minnesota-Wisconsin Boundary Area Commission, That the Commission recommends to the Administrator of the Federal Environmental Protection Agency that the proposed Standards of Performance for Marine Sanitation Devices (18 CFR Part 640) be revised to require that any vessel with a marine toilet onboard have attached to such marine toilet a device which meets standards approved by the Secretary of Transportation which will retain the wastes from the marine toilet for disposal in approved shore facilities, and which will preclude any discharge of such wastes from the vessel directly into the waters of the United States; and,

Be it further resolved, That the Commission advises the Administrator of the Federal Environmental Protection Agency of its reasons for the above recommendation, as follows:

(1) There should be no question that the retention devices recommended by the Commission would be acceptable for compliance with the federal regulations, even as they are presently proposed, since the Administrator of the Environmental Protection Agency, in his statement accompanying the publication of the proposed rules in the FEDERAL REGISTER dated May 12, 1971, said, in part, "Holding tanks and other devices which preclude any discharge are presently on the market and are capable of providing compliance with the standards."

(2) It is a fact, also acknowledged by the Administrator of the Environmental Protection Agency, that there probably is no device currently available which will provide the so-called "secondary treatment" of marine toilet wastes now proposed as the minimum standard in the new regulations for use on most of the watercraft covered by the rules. The agency only hopes that some kind of economical, reliable, easy-to-operate-and-maintain device will be developed, tested, proven, produced, marketed and sold by mid-1973 when its rules take effect for "new vessels". The Commission believes the Agency, the boat owners, the public and the public waters would be much better off if they relied on the already developed, tested, proven, produced and marketed retention systems rather than betting on a mythical device.

(3) The Commission further believes that by continuing to allow random discharges of wastes from marine toilets violates the spirit of the present federal-state pollution control effort which seeks to consolidate and make more efficient and effective the treatment of sewage and other wastes which are degrading the quality of lakes and streams.

(4) The Commission, after years of observation of the problems of recreational boaters relative to proper maintenance and operation of their onboard waste disposal systems, has serious doubts that every private onboard treatment plant will work properly with any degree of consistency. Reliability is a primary factor in assuring that a vessel, whose machinery happens to be discharging wastes near a swimming area (which doesn't even have to be a designated beach on many waters) or fishing ground or water intake, will not "accidentally" foul such an area. The superiority of retention devices over direct-discharge systems relative to this matter is obvious.

(5) The question of how to provide sufficient numbers of receiving facilities for disposal of wastes from retention devices appears to be academic, based upon our experience in the Upper Mississippi-St. Croix waterway. Where the onboard retention regulations have been effected in this area, a total of a

privately-owned, commercial marinas have voluntarily installed and maintained approved pumping stations in response to the desires and needs of area boaters.

And, be it further resolved, That, in the event the proposed federal Standards of Performance for Marine Sanitation Devices are not amended to require onboard retention devices which would preclude any discharge of wastes from vessels directly into the waters of the United States, the Commission calls upon the Governor of the State of Minnesota and the Governor of the State of Wisconsin to make a written application to the Administrator of the Environmental Protection Agency, under the provisions of Section 15(f) of the Federal Water Pollution Control Act, for issuance of a regulation completely prohibiting the discharge from a vessel of any sewage into the Minnesota and Wisconsin waters of the Mississippi River, of the St. Croix River, and of Lake Superior.

HOUSTON CHRONICLE COMMENDS JOHN CONNALLY

HON. OLIN E. TEAGUE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. TEAGUE of Texas. Mr. Speaker, former Secretary of the Treasury John Connally's sudden announced retirement was a surprise to all of us, and I for one was sorry to see him leave. I feel that many in this body share my feelings that he is a great American and public servant who has served his country well. I could say no more however than has the following editorial from the May 19, 1972, Houston Chronicle and wish to include it as a part of my remarks:

JOHN CONNALLY SERVED WELL

John Connally has obviously served the nation with distinction. The former Texas governor took Washington by storm during the 18 months he spent as secretary of the treasury.

Rarely has any man received as lavish praise from a president as Connally did from President Nixon on the occasion of his resignation announcement earlier this week. These comments were especially significant since President Nixon is the head of the Republican Party and Connally is a top figure in the Democratic Party.

Connally has certainly given no indication that he will cease to be a Democrat. The Chronicle does not read into Connally's resignation any kind of dissension within the administration or any great secret plans for the future.

One of the statements the President made in commenting upon Connally's resignation seems to have been largely overlooked. Nixon said that when he returns from the Moscow summit meeting around the end of this month he will have an announcement of a temporary assignment for Connally.

The Chronicle believes the broad speculation about Connally resigning to put himself in a position to be the vice-presidential nominee on the Republican ticket this year is highly inaccurate. Neither Nixon nor Connally has given the slightest indication that this is so. And it would be a rather crudely contrived situation if they had any such plans.

John Connally has served Texas well, has served his nation well and The Chronicle is pleased President Nixon intends to use in the future Connally's great leadership abilities.

POLL OF CONSTITUENCY

HON. JOSHUA EILBERG

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. EILBERG. Mr. Speaker, each year since being elected to Congress, I have conducted a poll of my constituency. The survey has become a useful and important instrument of exchange between myself and the nearly half-million people I am proud to represent.

Once again I am mailing the questionnaire to every household in my congressional district, some 153,000 homes.

At this time I enter into the RECORD my 1972 congressional questionnaire:

MAY 20, 1972.

DEAR FRIEND: Every year I have been in Congress I have asked you for help in deciding how I should vote on the issues facing this country.

Because the Fourth Congressional District is so large (471,271 persons according to the last census), it is impossible for me to meet more than a small percentage of you, even though I am home every weekend.

That is why this questionnaire is so important. It lets me know what you are thinking so I can do my job, representing you in Congress, better.

It will only take a few minutes to answer the questions. When you are done, please fold the questionnaire according to the instructions and return it to me. Your answers will be confidential. If you have any additional comments to make, please do not hesitate to add them to the questionnaire. As in the past, I will send the results to every household in the district, when they are tabulated.

If you want more than one questionnaire for your family, please contact my district office, 216 First Federal Building, Castor and Cottman Avenues (RA 2-1717).

With best wishes,

Sincerely,

JOSHUA EILBERG.

1. Do you believe the President's program of wage and price controls is working?

2. Do you favor the President's method of giving big business tax breaks so extra money can "trickle down" to the average taxpayer or do you favor direct tax relief for the individual taxpayer as one means of stimulating the economy?

3. Nonessential government spending must be cut. If you were writing the Federal budget which program would you cut first? (*check one*)

(a) Crime.
(b) Defense.
(c) Education.
(d) Foreign aid.
(e) Health.
(f) Highways.
(g) Housing.
(h) Pollution control.
(i) Space.
(j) Welfare.

4. Do you have more money to spend for luxuries now than you did in past years?

5. Federal revenue sharing is about to become a reality. Which of the following problems facing Philadelphia do you think the funds should be used to help solve?

1) Police and fire protection.
2) Environmental protection.
3) Public transportation.
4) Capital improvements.

6. a. Should the Federal government administer a comprehensive national health care insurance plan?

b. If yes, which plan do you favor?

1) Federal health insurance for the poor; government payments to help all other families meet costs of catastrophic illnesses.

2) Comprehensive national health insurance for all Americans, financed partially from increased social security taxes and partially from Federal general revenues.

3) Health care plan similar to Medicare for entire population; option for individuals to purchase approved private insurance plans instead of national plan.

4) Voluntary income tax credit for purchase of private health insurance; free health benefits for the poor.

5) Establishment of Federal standards for health benefits provided by private insurers; benefits for poor subsidized by Federal and State funds.

7. a. Law enforcement officials agree that 40 to 60 percent of all crime is caused by drug addicts who need money to support their habits. Do you think a system of government operated clinics—similar to the present system in England—which supply drugs to addicts free or for a small charge would help to solve this problem?

b. Congress has given the President the power to cut off aid and use other economic weapons against countries which do not act effectively to break the drug pipeline which operates within their borders and ends in this country. Do you think we should cut off aid to such countries as Thailand, Laos, Cambodia and Vietnam if they do not cooperate in this area?

c. Would you favor economic sanctions against France, Turkey and Middle Eastern and South American countries if they do not cooperate fully in solving this problem?

8. a. Elimination of penalties for the possession of marijuana if it is only for personal use was recently recommended by a Federal commission headed by former Governor Raymond P. Shafer. Do you approve of this idea?

b. Do you favor the legalization of marijuana?

9. Do you approve of busing as a means of integrating children?

10. a. Would you support additional controls over air and water pollution and increased use of Federal funds for such programs?

b. Are you satisfied with the program being made to clean up the environment?

c. Are you prepared to bear some of the cost of cleaning up the environment either in the form of increased taxes or higher prices for some goods and services?

11. a. Were you upset by the charges that the Justice Department approved the takeover of the Hartford Fire Insurance Company by ITT after ITT promised to give a political party $400,000?

b. Do you think this indicates that big business has too close a relationship with government?

c. Do you feel Richard G. Kleindienst should be confirmed as Attorney General?

12. a. Do you believe you are being told the truth by the Administration about the war in Indo-China?

b. Do you feel the media are reporting the war accurately?

c. Do you support the President's policy in Vietnam and the rest of Indo-China?

d. Would you support an immediate pull out from Vietnam if the North Vietnamese release the Americans they are holding prisoner?

13. Do you feel Russia and the United States should try to impose a settlement on Israel and the Arab countries?

14. What do you think are the three most pressing problems facing America today? Please list in order of urgency.

15. What is the one local problem which troubles you the most?

FUTURE OF THE FBI

HON. LAWRENCE J. HOGAN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. HOGAN. Mr. Speaker, with the passing of J. Edgar Hoover have come many debates over the past and future of the Federal Bureau of Investigation, and I was privileged to join that debate recently on "The Today Show." In a discussion conducted by Edwin Newman of the NBC network, I was interviewed along with former Attorney General Ramsey Clark and Bernard F. Conners, a former FBI agent.

Mr. Speaker, because the interview brings out many important points about the FBI, I insert a transcript of the program into the RECORD:

GUESTS ASSESS FUTURE OF FBI

EDWIN NEWMAN. The death of J. Edgar Hoover led to a rash of suggestions and arguments and counter-arguments about what will now happen to the FBI. Well, we thought it would be appropriate to talk with three men who are certainly in a position know about the FBI, about its future and any changes that should be made in its functions, in its way of operating and the manner in which it's regulated.

First, we have Ramsey Clark, who was Attorney General from 1967 to '69 during the administration of President Johnson. Mr. Clark is now in private law practice.

Next, Representative Lawrence Hogan, Republican of Maryland, who served for ten years as an FBI special agent. And Bernard F. Conners is a businessman from Albany, New York, who was an FBI agent for eight years and who's the author of a novel based on his experience in the FBI, called "Don't Embarass the Bureau."

We asked the Federal Bureau of Investigation whether it wanted to be represented here this morning. It declined, but said that the Acting Director, L. Patrick Gray, III, would make himself available for an appearance on "Today" in the near future.

Let's begin by asking this question. Is this a matter that should be talked about? Is the FBI a problem? Should changes be made?

Mr. Clark.

RAMSEY CLARK. Well, I think the FBI's very important to this country, and I think changes need to be made. I would put three in the primary positions. First, I think there needs to be a new public accountability. This agency must serve the people, and the people, therefore, must know about its activities.

Second, there needs to be a democratization and involvement of all sorts of our people—blacks and minority, and poor and young—in the Bureau's performance if it is to serve all the people.

And, third, there desperately. I believe, needs to be an updating of enforcement priorities and investigative practices.

NEWMAN. Representative Hogan, do you agree?

Representative LAWRENCE J. HOGAN. Well I agree in part. I would like to see at this juncture—because we are at a turning point in the FBI's history—I'd like to see an analysis made of the statutes over which the FBI has legislative purview. There are a number of statutes which the FBI really, I don't think, has any business investigating. There are some one hundred and eighty-five in total, but they include the interstate transportation of unsafe refrigerators, the Migratory Bird Act, applicant investigations. I'd like to see the FBI become the investigative agency which it was designed to be. And I don't think there'd be much disagreement on the part of FBI agents or officials that many of these matters do not warrant the specialized investigative skills of FBI agents and perhaps could be transferred to some other agency.

NEWMAN. Well, do those activities really take a lot of time at the FBI . . .

Representative HOGAN. No, they don't . . .

NEWMAN. . . . a lot of manpower?

Representative HOGAN. . . . Well, they don't. Well, applicant investigations, for example, do. Now I don't see why most of your applicant investigations, other than the Bureau's own, couldn't be transferred, totally and completely, to the Civil Service Commission. The way it stands now the Civil Service Commission conducts an investigation until they find some derogatory information, and then they turn it over to the FBI. And the FBI conducts special applicant type investigations for the White House.

But I'd rather see a concentration of the FBI's energy and skills on the really serious criminal offenses.

NEWMAN. Mr. Conners.

BERNARD F. CONNERS. Well, I think that possibly before we start prescribing the solutions to the problem, it might be in order to suggest what I think the problem is. And in my estimation as an agent of the Bureau for several years and a man who has researched the Bureau considerably—I've written a book on it—I feel that the problem is that during the past fifty years, the FBI has been expanding its role in the—in the field of domestic intelligence to the point that it poses serious problems in terms of constitutional principle.

I think I would be the first to say that I think J. Edgar Hoover exercised great restraint in the use of these powers. But the point I would like to make is that we have no assurance that his successor would act as propitiously. Few countries have ever permitted law enforcement and internal security matters to be concentrated in the hands of one individual. The exigencies of these affairs have to place an enormous demand on the integrity and the restraint of the one who administers them. And notwithstanding President Nixon's comments of a few days ago that he does not want the FBI to become political, he's a very sincere, honorable man and I know he means that. But in a free society the citizens have a right to expect more than the professed good will of its leaders.

And as it stands now, there's absolutely no control of the FBI. The inner workings of the FBI are beyond any outside scrutiny.

NEWMAN. Mr. Clark, is that what you meant when you talked about accountability? You said the FBI must be made accountable to the public.

CLARK. Yes, I think that's a major part of it. We really have great difficulty knowing what the FBI does and why.

NEWMAN. Did you have great difficulty when you were Attorney General knowing what the FBI was doing?

CLARK. Yes.

NEWMAN. You did?

CLARK. Yes. The Attorney General's position is a busy place, and I don't think that the Attorney General should endeavor to be in daily control of the FBI. I think that would be terribly harmful. I don't think the President of the United States ought to try to be the chief of police. I don't think our free society can function that way. He can't do very well as commander-in-chief, much less chief of police.

So I think we need public accountability in that office. We need a commitment to freedom and liberty that the people can see. And we need the involvement of all sorts of our people so the public will feel represented in its police agencies.

NEWMAN. But when you wanted to know something about what the FBI was doing, could you find out?

CLARK. Yes. [Technical difficulties.] . . . And then you'd find out. I never encountered any refusal to obey a command, but sometimes the commands weren't fulfilled with great heart.

NEWMAN. Mr. Hogan.

Representative HOGAN. Yes, I'd like to comment on something that Mr. Conners and Mr. Clark said. Mr. Clark said there's no outside scrutiny of the FBI. Now, that's absurd. The Congress approves all the money which the FBI spends. The Appropriations Committee has the power to check into any aspect of the FBI's operation. The Department of Justice, as Mr. Clark has just observed, has the authority to find out anything the FBI is doing. So Mr. Clark had the power to know everything that's going on there. The fact that he was busy with other things, it seems to me, would be a criticism of the Department of Justice's overseeing rather than the FBI.

NEWMAN. Mr. Conners.

CONNERS. Well, I would answer Mr. Hogan in this way. Unlike law enforcement—and I think we all agree that the Bureau has done admirable—at least I think they've done an admirable job in the law enforcement field. They have a wonderful elite corps, which I must say I feel has not had the proper leadership the last few years. But unlike law enforcement work, investigations in the internal security field rarely come to the attention of the public. Therefore, we have found that the Bureau, by virtue of its expandable concept of its role in the security field, has brought us to the point that we have an organization investigating citizens for all manner of things for which there is really no statutory basis. And this, to me, has been a great usurpation of authority.

I should think it would be obvious to the most obtuse or blunted observer of the national scene that once we have an organization which is beyond any outside supervision, which has been under the absolute control of one individual, however great, for forty-seven years, and which is conducting unlimited investigations into the character, loyalty and integrity of its citizens, then we have to have something which infringes on democratic principles. Because such an organization will find no opposition to its policies, for in time everyone will fear it, particularly the legislators. The politicians will find it far more propitious to extol the virtues of such an organization rather than stand up and take it on.

NEWMAN. Gentlemen, we'll be back with more of this discussion of the FBI. . . .

* * * * *

NEWMAN. We're talking about the future of the FBI with a former Attorney General, Ramsey Clark, with Representative Lawrence Hogan of Maryland, who was a G-man, if I may use that phrase, if it's not out-of-date, and with Bernard Conners, a businessman and author, who also was a G-man.

Mr. Hogan, you wanted to say something.

Representative HOGAN. Yes. I wonder if Mr. Conners and I were in the same organization. And to say that there is no statutory basis for the FBI's internal security investigations is just ridiculous. There's a number of violations. The Espionage statute, the Internal Security Act, the Anti-Bombing statute: all these things are related to investigation of subversive activities.

Now should the FBI just ignore these responsibilities to protect the internal security and to know that there are revolutionaries in the country? And anyone who says there are not just doesn't know the facts.

NEWMAN. Well, let's focus on this question

then, because I think this is perhaps the basic question that bothers—concerns people about the FBI: its activities in building up dossiers of information about private citizens.

Now where should the line be drawn on whom the FBI investigates and why?

Mr. Clark.

CLARK. Well, I think that there should be no investigation by the FBI in enforcement of criminal statutes except where there is some probable cause to believe that a crime has been committed. I don't think you can have target people or target areas and go out and gather intelligence with electronic surveillance, and things like that, with impunity in a free society. I think to try to do that is very harmful. For twenty years Mr. Hoover himself refused to use wiretapping. And then over a period of years he succumbed to the temptation, and I think to the great detriment of the FBI, both in terms of its performance and in terms of the confidence that the people have in the system.

I think their responsibility is to seek facts and to seek them only where there is reason to believe that there is some violation or potential violation of . . .

NEWMAN. Well, is it correct that there are millions of dossiers in the FBI files that have nothing to do with possible committing of crimes?

CLARK. Well, dossier is an easy word, and people have . . .

NEWMAN. A loaded word.

CLARK. . . . different ideas. I think it is. And people have different ideas of what it means. I don't know. I remember when I was Attorney General, though—one time twenty or thirty congressmen—and it was closer to thirty than twenty—called me to ask for a meeting to see whether there were dossiers. I met with them, and then I inquired of the Director, and he said, no, there are no dossiers on members of Congress.

But they're concerned. They don't know. There is no method of public accountability, so even the Congress can't find out . . .

Representative HOGAN. Well, Mr. Clark . . .

CLARK. . . . And to say that—to say that the Congress is a watchdog of the FBI is to deny all history. They have never watched the FBI. There has never been scrutiny of their budget. It is essentially a lump sum budget. It has never been cut by the Congress. And we need a public scrutiny, an official scrutiny, from the Congress as well.

NEWMAN. Mr. Hogan.

Representative HOGAN. I'd like to comment on two things that Mr. Clark said—first of all, that no investigations should be conducted unless there is a violation. Mr. Clark himself, at the time of the 1968 race riots after the assassination of Martin Luther King, instructed the FBI to conduct an investigation to penetrate the black revolutionary organizations so we could get advance knowledge of when race riots might occur so we could act accordingly. So I think that's a legitimate exercise of statutory authority of the FBI.

CLARK. It's a misinterpretation of history and fact, however. I was there, and that did not happen in that fashion. We were seeking facts of criminal activity or potential criminal activity and not merely trying to develop dossiers or anything . . .

Representative HOGAN. Yes. No, I understand that. No, I didn't mean to imply that. But to develop information on potential criminal activity is what I'm talking about. And this is the penetration of an organization that is a revolutionary group.

I'd like to comment quickly on wiretapping. I respect Mr. Clark's view of wiretapping. I don't agree with it. But while he was in office, because of his feelings about wiretapping they couldn't be used. And now that they are being used, we have doubled our number of convictions of Mafia figures, largely, according to the present Attorney General and the late Director of the FBI, because of the information gained from wiretapping.

So it is helping us to cope with organized crime.

NEWMAN. Mr. Conners.

CONNERS. Notwithstanding what Mr. Hogan says, I think that obviously there's enough divergence of opinion, insofar as the FBI is concerned. We started off our conversation, and you asked us what we thought should be done.

Well, I've heard many whimsical observations made that there should be a domestic intelligence review or an ombudsman, or whatever. But I would like to take this occasion on the "Today" show this morning to suggest to President Nixon—and I understand he watches the "Today" show—to appoint a committee composed of eminent jurists, constitutional lawyers, civil libertarians, prominent law enforcement officials and intelligence experts to study the FBI in a scholarly way, with a view toward making available to Congress the results of their study in the hopes that legislation will result which will enable the Bureau to have a statutory basis for their undertaking in the security field, as well as have, hopefully, restrictive legislation insofar as any secret police organizations in government to insure that they operate within constitutional principles.

NEWMAN. We have perhaps a little more than a minute left.

Mr. Clark, you've said the FBI developed an ideology, and you objected to that. What was the ideology?

CLARK. Well, I think it was the ideology of Mr. Hoover and it diverted it from fact seeking; it encumbered it. The specter of communism. When I think of the resource that we wasted in the investigation of the Communist Party, U.S.A. in this country when organized crime was fluorishing and the FBI itself, as late as the late 1950's, was denying that there was a Cosa Nostra or organized crime, it just—it boggles the mind. And that was the result of an ideology. And if there is anything a pursuer of fact cannot be, it's ideological. They're antithetical. He has to seek the facts, however they are, and he's got to enforce priority. And that—that's where we failed.

I think the Director should have a limited term. I think there should be a civilian review board of eminent people across the country reflecting all walks of life who know the priorities and publish the priorities and who receive complaints about the Bureau in an ongoing evaluation—examination of the performance of the FBI. But I don't think we should wait until that report comes in.

NEWMAN. I'm going to give you the last word, Mr. Hogan.

Representative HOGAN. As long as there's an organization, the Communist Party or any other group, which has as its avowed purpose the overthrow and the destruction of the United States government, I think the FBI would be derelict if it didn't conduct investigations to know when that revolution might occur.

As far as organized crime, the FBI didn't even begin to have the tools to cope with organized crime until September of 1961 when Congress enacted laws which enabled them to investigate the Mafia.

NEWMAN. Well, there, unfortunately, we must bring this discussion to a close.

Our thanks to Bernard Conners and Representative Lawrence Hogan, both of them former FBI agents, and to Ramsey Clark, the former Attorney General. . . .

TO AID OUR SENIOR CITIZENS IN VARIOUS AREAS

HON. JOHN C. CULVER

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. CULVER. Mr. Speaker, we live in a world of sensationalism—one in which the fastest mile, the biggest headline, or the longest moon walk, catch and hold our attention. As a consequence, we find our efforts directed toward solving problems which are considered to be crises and which are presented with overwhelming statistical certainty. Sagging economic growth, rising crime, mushrooming world population, increasing pollution—all of these can be measured and quantified.

But as we race to keep ahead of our next breath, what happens to those persistent but less dramatic human problems which may easily be overlooked in the scramble to solve the emergencies?

The elderly are a sad case in point of this neglect. Once a decade we have a White House Conference on the Aging, and on occasions we are told of a nursing home fire or a medicare abuse. But in the periods between these calls for help, the country proceeds on a schedule of "business as usual" as far as the elderly are concerned.

With Senior Citizens Month upon us, it is proper that we evaluate our past achievements and rededicate our future efforts toward making the needs of our senior citizens a priority effort in our national policy. Toward this end I am pleased to introduce a package of four bills in several of the areas which I feel are of critical importance.

THE WHITE HOUSE CONFERENCE ON AGING

The White House Conference on Aging held last November focused again on the crucial needs of the Nation's 20 million Americans 65 and older. As a result of the week of meetings, the delegates arrived at recommendations including minimum income standards, goals for the construction of housing units for the elderly as well as improvement and expansion of health care facilities, funded transportation programs and retirement policies.

The mood of the Conference was one of hope tempered by the disillusionment resulting from the lack of progress made since many of these same goals were articulated during the 1961 conference. A majority of the recommendations from this earlier Conference had not been achieved for a variety of reasons, including lack of organization as well as practical techniques and methods.

EARLIER LEGISLATIVE ACCOMPLISHMENTS

The primary concern voiced at 6,000 forums conducted in September 1970, as an introduction to the White House Conference on Aging, was income and health problems. Certainly the legislation which we have passed in this area is a step in the right direction.

Beginning July 1, 1966, nearly every

American 65 and over became eligible for two important types of health insurance protection—hospitalization insurance financed through social security contributions and an attractive practical plan of medical insurance available on a voluntary basis.

Also, social security benefits have increased steadily since 1965, since the 7 percent increase at that time, Congress has passed:

A 13 percent increase in 1967; a 15 percent increase in 1969; and a 10 percent increase passed last session of Congress and made retroactive to the beginning of the year.

In addition, a legislative proposal which passed the House last June and is now under consideration in the Senate provides an additional 5 percent increase and an automatic cost-of-living benefit for social security recipients.

Also included in the legislative proposal which I just mentioned is a measure which would raise the amount which a social security recipient can earn yearly as well as increase payments to widows and to the blind and disabled.

However, changes in social security benefits lag behind the immediate and crucial needs. The five senior citizens who contact my office every day with problems related to the present confusing and inadequate system do not need help in 10 years when another conference rolls around; they need an answer today.

For this reason, I have consistently supported social security increases, in addition, I contacted the chairman of the Ways and Means Committee in February urging that he give serious attention to enactment of a 20-percent increase for social security recipients.

LOOPHOLES IN THE LAW

Because I believe we must go beyond an increase in benefits, I introduced legislation which would tighten two of the loopholes in present law which currently cause problems for many of Iowa's citizens.

One of these bills would improve the operation of medicare by authorizing advance approval for extended care facilities. This would eliminate the heartbreaking problems faced by many medicare patients who are assessed retroactively for medical benefits weeks or months after they thought they were covered. Hopefully this would provide relief for people such as 80-year-old John Wantz from Maquoketa who received notice 2 years after his wife had died that medicare had changed its mind about paying for her care and instead billed him for $1,621.

The other legislation which I introduced in February would assure that old age assistance recipients will not lose all of their State assistance when a social security increase is enacted. Many States, including Iowa, have used this increase in social security benefits as an opportunity to cut other State elderly assistance programs and put this increase in the State treasury.

One particularly outrageous example came to my attention when Birdie Oliphant from Cedar Rapids ended up $49 poorer as a result of an increase in social security benefits. Her $11 increase in social security benefits raised her income just enough that she was no longer eligible for $60 of State old age assistance.

These problems are particularly urgent in a State such as Iowa which has the largest percent of population over 65 than any State in the Union other than Florida. Over 12 percent of Iowa's population is 65 and older and 14,000 people are currently receiving both social security and old age assistance payments.

Yet these are but small efforts on behalf of those people who have laid the groundwork for this generation, who have sacrificed many years of their lives only to be forgotten as they grow older.

We have made a step in the right direction but we have not yet begun to come close to adequate solutions in many areas. Certainly in a society which allocates $3.2 billion per year for our total space budget and which exerts the research efforts of our Nation's finest experts. it is unacceptable that we do not channel a greater amount of our energy into problems of the elderly.

However, we cannot make adequate progress by simply funding present programs at a higher level; we must combine appropriations with attitudes.

CULVER PROPOSALS FOR THE ELDERLY

As part of my own efforts in this regard I introduced legislation during the first week of Senior Citizen Month which I hope will meet some of the needs articulated in the White House conference. It includes:

First. Housing for the Elderly Act which would provide for an Assistant Secretary of Housing who can coordinate all existing programs for the elderly as well as provide a central source for information with respect to housing for the elderly. It would also authorize grants for the planning and construction of multipurpose facilities to demonstrate the utility of such facilities in meeting the special needs of the elderly.

Second. Older Persons Transportation Act to improve transportation opportunities for older persons by providing them with reduced fares on local and interstate transportation systems and by providing grants and loans to provide new transportation services planned and designed to meet needs of persons 65 and older.

Third. Older American Community Service Employment Act which establishes a comprehensive midcareer development service program and authorizes loans and grants to public and private agencies for training designed to upgrade the work skills and capabilities of middle-aged and older persons.

Fourth. Finally, many of these needs would be combined in a community center for the elderly and I thereby propose to fund the development of such centers, places where elderly people could gather to share meals and conversation as well as a possible center for employment, retraining, and transportation facilities. The center could provide the coordination so badly needed in many communities by serving as the center of activity for senior citizens.

I do recognize, however, that we must go beyond legislative proposals and our good intentions to give substance to these programs by implementing them fully and creatively. We must think through a realistic and comprehensive policy on aging and seek to integrate the particular needs of the elderly into our national planning and policy.

INADEQUATE TRANSPORTATION

One particular area in which these efforts could be successfully and imaginatively carried out is in the overall transportation crisis, listed as the second most serious concern of senior citizens in the White House conference forums.

Our transportation service has badly deteriorated nationwide, imposing particular burdens on senior citizens. Many small towns in Iowa do not have a bus system; oftentimes senior citizens cannot afford to take a taxi and, according to a recent study, 76 percent of the elderly nationwide are not licensed to drive.

It is certainly conceivable to provide reduced transportation rates as one part of the solution of this problem so that our elderly citizens who find more time available to visit friends, can also find the monetary resources to make the trip. This is why I introduced legislation in 1968 and again in 1970 to provide reduced air fares for the elderly on a standby basis. And this is why I included this measure as part of this legislative package.

But I have since realized that a variety of other problems exist which cause inconvenience and hardships for the elderly such as narrow aisles and steps on buses which make it difficult for those in wheelchairs or poor health to utilize the public transportation systems.

This encourages the situation in which the person finds it easier just to stay at home, who then has a meal consisting solely of a bowl of ice cream as was recently reported in a Washington newspaper article on problems of the elderly—instead of enjoying a meal with a friend.

With a little of the kind of imaginative thinking which has led the United States to the pinnacle of scientific achievement, we could redesign our antiquated buses to meet the special needs of the elderly.

Why not put the motor on top of the bus? This would eliminate troublesome and hazardous steps and has been proven workable. Why not widen aisles and add more poles to facilitate movement?

Although innovative demonstration projects have been funded in this area, including the use of computer-directed mini-buses which pick up riders at their doors and deliver them to destinations throughout a given city, many of these programs face the threat of termination or have already been discontinued after the Federal demonstration grants were completed.

The discontinuance of these valuable programs just when the elderly were beginning to feel new flexibility in their lives and learned to rely on the services they provided has left frustration and disappointment.

In Dubuque, a progressive city in my district, a transportation project has been successfully started by project concern which picks up individuals and delivers them to the grocery store, drug

store, or wherever they may need to go. Project concern has already successfully integrated such projects as hot meal delivery, leisure learning centers, pre-retirement courses and food and friendship groups into the city's existing agencies, thus providing for their continued existence.

I understand that the associated groups of elderly in Cedar Rapids have recently focused on the plans for a new housing complex for the elderly which would provide about 500 units to meet the needs of senior citizens. It is certainly commendable that they have set the groundwork in this area.

I believe that this city and this Nation has the will, the energy, and the talent to carry these goals forward. We must redirect our energies and rededicate our efforts toward fulfilling the declaration of aging rights which reads:

Humanity's fundamental rights are life, liberty and the pursuit of happiness. They are rights that belong to all, without regard for race or creed or sex. We declare that all people also inalienably possess these rights without regard for age.

TRIBUTE TO SAK YAMAMOTO

HON. GLENN M. ANDERSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. ANDERSON of California. Mr. Speaker, each of us has heard the mythical story of Horatio Alger, and how he overcame great obstacles to reach the "American Dream;" how he started with nothing, except faith, ambition, a burning pride and a desire to succeed.

Such a man is Sak Yamamoto.

Originally from Tacoma, Wash., Sak and his wife, Greta, moved to California in 1937.

After the beginning of World War II, in May 1942, Sak and his wife were placed in a relocation camp in Arizona. After a year, they were offered their freedom, provided they could find employment outside the west coast area.

Mr. Yamamoto found employment in Illinois, where the family resided for 11 years.

In 1954, the Yamamoto family returned to California and established their home in Carson.

There, in Carson, Mr. and Mrs. Yamamoto unselfishly devoted their time and their energy to the service of their community and their fellow man.

The parents of four children—Glenn Lee, Mrs. Karen Gillespie, Mrs. Brenda Joyce Moore, and Janice Yamamoto—and the proud grandparents of four grandchildren, Mr. and Mrs. Yamamoto are active in youth affairs.

In 1957, Mr. Yamamoto founded the Caballeros Youth Band. He is a life member of the Avalon Council PTA, and he is on the Board of Managers for the Wilmington, Carson, Dominguez YMCA.

In addition, Sak has served on the advisory board of Carnegie Junior High School and Del Amo Elementary School.

To aid in the fight of diseases that cripple and kill, he has served 3 years as the local chairman of the March of Dimes for the city of Carson.

An active business family, Mr. and Mrs. Yamamoto are the owners and operators of the Paradise Trailer Lodge in the city of Carson. For over 10 years, Mr. Yamamoto has served on the board of directors of the chamber of commerce, an organization he presided over between 1966 and 1968.

When the residents of the areas were working to incorporate the city of Carson, Sak was in the forefront of the fight, and upon incorporation as a city, he was elected to serve on the first city council in 1968.

This past month, Sak was reelected to the city council for a 4-year term.

Mr. Speaker, those of us who know Mr. Yamamoto's dedication to the community and to his neighbors cannot adequately express our gratitude for his service. He is a tremendous asset to our country and to our community, and I am proud to call him a friend.

WGR, BUFFALO'S PIONEER RADIO STATION, MARKS 50TH YEAR

HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 24, 1972

Mr. DULSKI. Mr. Speaker, last Monday, May 22, marked the 50th anniversary of broadcast radio in my home city of Buffalo, N.Y. It was in 1922 that WGR went on the air with a makeshift studio. Now it operates from a $400,000 downtown broadcast center. Over the years it has had only three owners, presently being a unit of the Taft Broadcasting chain.

Many personalities, many pioneering programs, and many, many air hours have come and gone in the past half century. For instance, who can forget the radio antics of Colonel Stoopnagle and Bud?

"Buffalo Bob" Smith started on WGR and went on to national recognition with the Howdy Doody show. He was Ralph Snyder while an announcer at WGR, but he changed his name to Ralph Story when he joined the network program "$64,000 Question."

WGR has had a continuing impact upon our community and richly deserves the nostalgic plaudits that are coming its way at this time. There have been many changes in format over the years, as the station kept up with the ever-improving technical developments as well as the broadcasting techniques.

So, it is happy golden anniversary to WGR—showing its age only in years, not in programming and service to the community. Mayor Sedita very properly proclaimed this week in Buffalo "WGR 50th Anniversary Week."

One of the guests at the anniversary luncheon the other day was Dr. Joseph Manch, Buffalo superintendent of schools, a veteran broadcaster who disclosed that he was moderator of one of the first live local programs on WGR.

Mr. Speaker, as part of my remarks I include an excellent May 23 article on WGR's anniversary by the radio-TV editor for the Buffalo Courier-Express, Jack Allen:

BUFFALO RADIO INDUSTRY TURNS 50 WITH LITTLE FUSS

(By Jack Allen)

Buffalo radio and its pioneer station, WGR, celebrated its 50th anniversary Monday with a minimum of fuss and fanfare.

Present at an anniversary luncheon were a number of Taft Broadcasting Corp. officials from the Cincinnati headquarters of the big outfit that now controls the destinies of both WGR radio and TV (Ch. 2).

Greetings were offered by Mayor Frank Sedita, who recalled he was 15 years old when WGR–AM went on the air on May 22, 1922.

"What a different kind of radio it was in those days," said the mayor, challenging those present to admit they were around at that time, too.

"Those were the days of crystal sets," he said, "when WGR was born. You used to pick a crystal until you came up with some kind of music and a lot of static."

Maybe things haven't changed that much, after all, except for the crystal, and the static could at times be the music.

But Sedita hit a cogent point when he said that the little box you used at that time cost about $200. This is comforting to know in a day when we all bleed under the whip of inflation.

A luncheon guest also was Dr. Joseph Manch, the Buffalo schools superintendent, who told us confidentially that he was the moderator of one of the first live local programs on WGR radio. Of all things, it was a program of Italian cultural background emanating from the West Side, "And I," said Manch, "was one of the few around who could handle the accents needed."

NEW $400,000 RADIO CENTER

He had difficulty explaining this to Police Commissioner Frank Felicetta and Sheriff Michael Amico, present at the table. Manch, really a veteran broadcaster, for many years moderated the "High School Forum" on WBEN radio before Dan Kubiltz took over the chores.

Present also were Charles S. Mechem Jr., Taft board chairman, who spoke of the company's commitment to this area in the new television station to open this summer on Delaware Ave., and the $400,000 radio broadcast center at 464 Franklin St. which has eliminated a lot of the static that from time to time reduced the station's signal at 550 kc. on the AM dial.

The radio station has indeed seen many changes from its inception in 1922 in a makeshift studio on Elmwood Ave., both good and bad depending upon your outlook.

Its latter-day history has been plagued with labor troubles, but Taft officials seem confident that these days are gone and a new, peaceful era lies ahead.

The station has changed hands twice since it belonged, with WKBW, to the Buffalo Broadcasting Corp. It was sold to the Transcontinent Television Corp. and then Taft.

Its programming has followed and sometimes set the everchanging trends in radio formats through the years.

PERSONALITIES OF OTHER DAYS

Personalities ran the gamut, from the days of Ralph Snyder, Col. Stoopnagle and Bud, John "Old Bones" Lascelles, Bill Mazer and Frank Dill, through Fred Gage, John Otto (still present), Phil Soisson, Bob Wells, Cy Buckley and others to the current Frank Benny and company.

Formats in turn varied from rock to "good music," all-talk to middle of the road, as WGR's position in the highly competitive Buffalo radio market changed through the years.

Its ownership also varied from the WGR Corp., almost entirely owned by Buffalo and

Western New York residents, to that of the giant Taft corporation, with its radio-television properties, amusement-park facilities, real estate, animation studio (Hanna-Barbera) and a multitude of other financial interests across the country.

This too, is either good or bad, depending on whether you look at things from a hometown viewpoint, as far as services, community control and interest are concerned, or the greater financial stability of a national company.

Taft officials at the luncheon were optimistic as to the future, with pledges of cooperation and boosts to the future of Buffalo as a good place to do business.

Current broadcast personnel who put in some time at WGR include WBEN's Clint Buehlman, the station's "Muscial Clock" watcher in the early '30's; George Torge, former WGR announcer who now is station manager at Ch. 4; Dick Shepard, Ch. 7 sales manager who was a high-school reporter at WGR and later station manager; Ralph Hubbell; and Jack Eno of WEBR.

Under program director Dave Hammond, WGR now runs a ship with fairly pleasant "middle-of-the-road" music, a happy-talk air and a generally upbeat format that is not hard to take.

Following is a May 23 article from the Buffalo Evening News by its radio-TV editor, Gary Deeb:

WGR MARKS 50TH BIRTHDAY IN CIVIC EVENT

(By Gary Deeb)

Niagara Square ceremonies, a civic luncheon and a gathering of past and present employes marked the golden anniversary celebration of WGR Radio Monday. The occasion also served as the observance of a half-century of radio in Buffalo, as WGR was the area's first station in 1922.

Mayor Sedita proclaimed "WGR 50th Anniversary Week" during noon festivities alongside the McKinley Monument. There were brief remarks by Charles Mechem, board chairman of WGR's parent Taft Broadcasting Co., and Leon Lowenthal, vice president and general manager of WGR Radio.

Then John McClay, executive vice president of Taft, pushed a gold button activating a cartridge tape that officially began the station's second 50 years. WGR morning man Frank Benny was master of ceremonies for the brief outdoor ceremony.

A Plaza Suite luncheon followed, with a number of city and county officials in attendance. Board Chairman Mechem toasted WGR's new $400,000 radio facility on Franklin St. as "probably one of the finest in the United States."

Current and former WGR employes capped the day's events with an informal party Monday night in the Four Seasons Motor Inn, Town of Tonawanda.

Since getting airborne as Buffalo's pioneer station, WGR has been the springboard to nationwide success for dozens of radiomen, among them Buffalo Bob Smith, Col. Stoopnagle & Bud, Jack Smart, Fran Striker, the Modernaires, Roger Baker, Foster Brooks, Ralph Story, Bill Mazer and Frank Dill.

HOUSE OF REPRESENTATIVES—*Tuesday, May 30, 1972*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

O that men would praise the Lord for His goodness and for His wonderful works to the children of men.—Psalms 107: 8.

Almighty and Everlasting God, in whom we live and move and have our being, help us to live through the days of this week with peace and with joy. Direct us with Thy wisdom, support us by Thy power, sustain us in Thy love that we may come to the end of each day unashamed, unafraid, and with a quiet mind.

Bless our President in his efforts for peace and justice. May he return successful in his endeavors to foster cooperation among the nations of the world.

Bless our Speaker as he leads this House of Representatives. Together may we work for a greater unity in our country, a greater faith in our Nation, and a greater good among the people of our land.

In the spirit of Christ, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House the approval thereof.

Without objection, the Journal stands approved.

There was no objection.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 659) entitled "An act to amend the Higher Education Act of 1965, the Vocational Education Act of 1963, the General Education Provisions Act (creating a National Foundation for Postsecondary Education and a National Institute of Education), the Elementary and Secondary Education Act of 1965, Public Law 874, 81st Congress, and related acts, and for other purposes."

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title.

H.R. 7117. An act to amend the Fishermen's Protective Act of 1967 to expedite the reimbursement of U.S. vessel owners for charges paid by them for the release of vessels and crews illegally seized by foreign countries, to strengthen the provisions therein relating to the collection of claims against such foreign countries for amounts so reimbursed and for certain other amounts, and for other purposes.

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 1295. An act to establish the Amistad National Recreation Area in the State of Texas;

S. 3230. An act to provide for the disposition of funds appropriated to pay a judgment in favor of the Assiniboine Tribes of Indians in Indian Claims Commission docket No. 279–A, and for other purposes;

S. 3568. An act to designate the Federal Bureau of Investigation building now under construction in Washington, District of Columbia, as the "J. Edgar Hoover Building," and

S. 3607. An act to authorize appropriations to the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

APPOINTMENT OF CONFEREES ON H.R. 11350, INTERNATIONAL CRIMINAL POLICE ORGANIZATION

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 11350) to increase the limit on dues for U.S. membership in the International Criminal Police Organization, with the Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate on the disagreeing votes of the two Houses.

The SPEAKER. Is there objection to the request of the gentleman from California? The Chair hears none, and appoints the following conferees: Messrs. EDWARDS of California, CONYERS, and WIGGINS.

NEW ECONOMIC POLICY

(Mr. CONABLE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. CONABLE. Mr. Speaker, last Thursday the Department of Commerce reported that the index of leading economic indicators, which often anticipates broad movements in the economy, showed exceptional strength during the month of April. The index rose 1.4 percent last month, to 140.2 percent of the 1967 average, up from March's 138.2 percent. In addition, the Commerce Department reported that the March gain, which was originally estimated at 0.9 percent, has been revised sharply upward to 1.9 percent above the February level. The March rise was the largest monthly rise in the index since the 2.1 percent increase in March 1971.

The April performance was encouraging for reasons other than just its large size. Of the 12 leading indicators, eight are now available for April. Of the eight, seven strengthened, which was the first time in 3 years that such a high proportion of the eight indicators initially available improved. The April increase in the index was the 17th in the last 18 months, and indicates, according to Harold C. Passer, Assistant Secretary of Commerce for Economic Affairs, that continuing "strong economic growth is ahead."

At the same time that the leading indicator figures were announced by the Department of Commerce, the Department of Agriculture reported that during the month of April the typical "market basket" of groceries cost 0.7 percent less than in March. This was the second month of decline in grocery costs. Retail beef prices fell about 3.8 percent, which was the first time that they have declined since last October.