federal register

July 16, 1975—Pages 29795–30036

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

Pages 29795–30036

PART I

## HIGHLIGHTS OF THIS ISSUE

**This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.**



(Continued inside)

## HIGHLIGHTS—Continued



**ATTENTION: Questions, corrections, or requests for information regarding the contents of this issue only may be made by dialing 202–523–5286. For information on obtaining extra copies, please call 202–523–5240. To obtain advance information from recorded highlights of selected documents to appear in the next issue, dial 202–523–5022.**


federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $45 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

# contents

# list of cfr parts affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1974, and specifies how they are affected.

**5 CFR**

213 (3 documents) ..... 29811, 29812

**7 CFR**

915 ..... 29812
944 ..... 29812
1438 ..... 29813

PROPOSED RULES:

29 ..... 29880
917 ..... 29881
923 ..... 29881

**10 CFR**

211 ..... 30030
212 ..... 30030

**13 CFR**

PROPOSED RULES:

121 ..... 29899

**14 CFR**

39 (3 documents) ..... 29814, 29815

**16 CFR**

1031 ..... 29815

PROPOSED RULES:

437 ..... 29892
444 ..... 29892
701 ..... 29892
702 ..... 29894
703 ..... 29795

**17 CFR**

17 ..... 29895
18 ..... 29795
240 ..... 29795

PROPOSED RULES:

230 ..... 29899
239 ..... 29899
240 ..... 29899
249 ..... 29899

**20 CFR**

405 ..... 29815

**21 CFR**

2 ..... 29817
8 ..... 29817

**23 CFR**

160 ..... 29817

**24 CFR**

53 ..... 29991

1914 (4 documents) ..... 29818, 29820–29822*
1915 (6 documents) ..... 29823, 29824
1916 (2 documents) ..... 29824, 29825

PROPOSED RULES:

888 ..... 30090

**26 CFR**

1 (2 documents) ..... 29826, 29839
53 ..... 29842

PROPOSED RULES:

1 (2 documents) ..... 29871, 29874
301 ..... 29874

**27 CFR**

PROPOSED RULES:

5 ..... 29866

**31 CFR**

345 ..... 29846
347 ..... 29846
348 ..... 29847

**40 CFR**

125 ..... 29848
180 ..... 29850
415 ..... 29850

PROPOSED RULES:

130 ..... 29882
131 ..... 29887
415 ..... 29892

**41 CFR**

101–25 ..... 29818

**47 CFR**

73 ..... 29850
74 ..... 29862

**49 CFR**

1033 ..... 29863

**50 CFR**

17 ..... 29863
32 ..... 29864

PROPOSED RULES:

20 ..... 29880

**The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during July.**

### 1 CFR

305 ..... 27925
310 ..... 27925

### 3 CFR

PROCLAMATIONS:

4381 ..... 27637

EXECUTIVE ORDERS:

2909 (Revoked by PLO 5510) ..... 27939
5277 (Revoked by PLO 5507) ..... 27659
5481 (Revoked by PLO 5507) ..... 27659

### 4 CFR

54 ..... 27929

### 5 CFR

213 ..... 27639, 27640, 27929, 28047, 28445, 28806, 29067, 29811, 29812
307 ..... 28445
551 ..... 27640
731 ..... 28047

### 7 CFR

6 ..... 29261
26 ..... 28785
246 ..... 27930
271 ..... 28786, 29531, 29701
272 ..... 28786
275 ..... 29531
722 ..... 28601
760 ..... 29067
780 ..... 27641
908 ..... 28460, 29068
910 ..... 28461, 29261
911 ..... 28462, 29262
915 ..... 28048, 29068, 29812
916 ..... 28462
917 ..... 27930, 28601
930 ..... 27931, 28602
944 ..... 29812
967 ..... 29534
999 ..... 29262
1064 ..... 27641
1131 ..... 27642
1408 ..... 29069
1438 ..... 29813
1446 ..... 28787
1464 ..... 28603, 28788
1822 ..... 28463, 29263
1823 ..... 29263
1843 ..... 27931
1964 ..... 27641

PROPOSED RULES:

29 ..... 29380
728 ..... 28093
775 ..... 28093
911 ..... 28614
915 ..... 28090, 28614
916 ..... 28090
917 ..... 29087, 29881
923 ..... 29881
930 ..... 29553
946 ..... 29725
947 ..... 29726
958 ..... 28091
980 ..... 28091, 29725
989 ..... 27691
1030 ..... 29296
1032 ..... 28618
1046 ..... 28465
1062 ..... 28618

### 7 CFR—Continued

PROPOSED RULES—Continued

1099 ..... 28807
1201 ..... 28092, 28093
1421 ..... 28094
1464 ..... 27691
1701 ..... 29087–29088
1822 ..... 28094, 29300

### 8 CFR

PROPOSED RULES:

212 ..... 28614

### 9 CFR

76 ..... 29701
83 ..... 27642
97 ..... 27643
381 ..... 29549

PROPOSED RULES:

92 ..... 28807, 29728
101 ..... 28621
112 ..... 28621
113 ..... 28621
114 ..... 28621

### 10 CFR

205 ..... 28446
211 ..... 28446, 30030
212 ..... 28447, 28448, 28637, 30030
303 ..... 28420
309 ..... 28420
860 ..... 28789

PROPOSED RULES:

205 ..... 28481
206 ..... 28481
212 ..... 28447, 28448, 28637
213 ..... 28481, 28487

### 11 CFR

Ch. II ..... 28578

PROPOSED RULES:

Ch. II ..... 28579

### 12 CFR

308 ..... 28048
339 ..... 27931
400 ..... 28449
531 ..... 29702
561 ..... 29069
563 ..... 29703
584 ..... 29703
760 ..... 29264

PROPOSED RULES:

14 ..... 29724
204 ..... 29732
217 ..... 28644, 29732
329 ..... 28099, 28100
505a ..... 29729
544 ..... 28638
545 ..... 28638
546 ..... 27953, 28640
555 ..... 28641
563 ..... 27954, 28643
571 ..... 29093

### 13 CFR

121 ..... 28603
305 ..... 29070
313 ..... 29704
315 ..... 29265

PROPOSED RULES:

121 ..... 29899

### 14 CFR

21 ..... 28603
39 ..... 27643, 27644, 28075, 28604–28605, 29269, 27270, 27272, 29549, 29704, 29814, 29815
71 ..... 28076, 28077, 28790, 29272, 29273, 29550–29551
73 ..... 29552
75 ..... 27644, 28077
91 ..... 29704
97 ..... 28606, 29070
129 ..... 29273
211 ..... 28077
217 ..... 28078
288 ..... 28078, 28450
296 ..... 28079
297 ..... 28087
399 ..... 28087
416 ..... 28095

PROPOSED RULES:

1 ..... 29410
21 ..... 29410
23 ..... 29410
25 ..... 29410
27 ..... 29410
29 ..... 29410
31 ..... 29410
33 ..... 29410
35 ..... 29410
39 ..... 28096, 29301
43 ..... 29410
45 ..... 29410
71 ..... 28628, 29302, 29728
75 ..... 28096, 28097, 28628
91 ..... 28628, 29089, 29410
93 ..... 28629
121 ..... 29410
221 ..... 28489

### 15 CFR

377 ..... 29705
1300 ..... 29534

### 16 CFR

13 ..... 27932, 28050
302 ..... 27932
1031 ..... 27934, 29815

PROPOSED RULES:

257 ..... 28489
437 ..... 29892
444 ..... 29892
701 ..... 29892
702 ..... 29894
703 ..... 29895
1016 ..... 29092

### 17 CFR

1 ..... 29085
17 ..... 29795
18 ..... 29795
240 ..... 29795
270 ..... 27644
275 ..... 27644

PROPOSED RULES:

1 ..... 29090–29091
230 ..... 29306, 29899
239 ..... 29899
240 ..... 29306, 29899
249 ..... 29899

49 CFR

172 ..... 27939
173 ..... 27939
174 ..... 27939
177 ..... 27939
256 ..... 29080
393 ..... 29292, 29723
225 ..... 29548
571 ..... 28457, 28805
575 ..... 28071, 28074
1033 ..... 27939–27941, 29294, 29863
1102 ..... 27941

PROPOSED RULES:

390 ..... 29729
571 ..... 28097
604 ..... 29729
605 ..... 29729

50 CFR

17 ..... 29863
21 ..... 28459
32 ..... 29084, 29548, 29549, 29864
33 ..... 29084

PROPOSED RULES:

17 ..... 28712
20 ..... 27943, 29725, 29880
216 ..... 28469

## FEDERAL REGISTER PAGES AND DATES—JULY

| *Pages* | *Date* |
|---|---|
| 27637–27924 | 1 |
| 27925–28045 | 2 |
| 28046–28443 | 3 |
| 28445–28599 | 7 |
| 28601–28783 | 8 |
| 28785–29065 | 9 |
| 29067–29259 | 10 |
| 29261–29530 | 11 |
| 29531–29700 | 14 |
| 29701–29794 | 15 |
| 29795–30036 | 16 |

# reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

**Rules Going Into Effect Today**

DOT/CG—Vinyl chloride; carriage requirements..... 17024; 4–16–75

USDA/APHIS—Designation of New York Under Federal Meat and Poultry Products Inspection Acts for special purposes (2 documents)..... 25202; 6–13–75

**Next Week's Deadlines for Comments On Proposed Rules**

**AGRICULTURE DEPARTMENT**

Agricultural Marketing Service—

Apricots grown in designated counties in Washington; expenses and rate of assessment; comments by 7–21–75..... 27242; 6–27–75

Handling of avocados grown in South Florida; comments by 7–18–75. 28090; 7–3–75

Handling of type 62 shade-grown cigar-type tobacco; comments by 7–18–75..... 28093; 7–3–75

Milk in Southern Illinois and St. Louis-Ozarks marketing areas; recommended decision to amendments to tentative marketing agreements; comments by 7–23–75. 28618; 7–8–75

Nectarines grown in Florida; expenses and rate of assessment; comments by 7–18–75..... 28090; 7–3–75

Onions grown in designated counties in Idaho and Malheur County, Oregon; comments by 7–18–75. 28091; 7–3–75

Onion imports; comments by 7–18–75..... 28091; 7–3–75

Type 62 cigar-leaf tobacco; suspension of certain provisions of the order; comments by 7–18–75. 28092; 7–3–75

Animal and Plant Health Inspection Service—

Animals destroyed because of scrapie; proposed payment of indemnities; comments by 7–21–75.... 25829; 6–19–75

Food and Nutrition Service—

Food stamp program; comments by 7–21–75..... 26042; 6–20–75

**ENVIRONMENTAL PROTECTION AGENCY**

California; approval and disapproval of compliance schedules; comments by 7–23–75..... 26278; 6–23–75

Georgia air quality implementation plan; comments by 7–27–75..... 27248; 6–27–75

Guidelines for establishing test procedures for analysis of pollutants; comments by 7–24–75..... 34535; 6–9–75

**FEDERAL COMMUNICATIONS COMMISSION**

Cable television, selection of signals; comments by 7–23–75..... 23317; 5–29–75

Cable television systems, program exclusivity, comments by 7–23–75. 23318; 5–29–75

Income tax differentials; deferral accounting provisions; comments by 7–21–75..... 24743; 6–10–75

Offshore radio telecommunications service; proposed creation; comments by 7–11–75; reply comments by 7–25–75..... 12678; 3–20–75

Radio broadcast services—

Frequencies for police and emergency services, comments by 7–24–75. 23319; 5–29–75

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Savings accounts by profit-making organizations in nonmember insured commercial banks; comments by 7–25–75..... 24918; 6–11–75

**FEDERAL ENERGY ADMINISTRATION**

Oil imports; administrative and general applicability procedures; comments by 7–23–75..... 28481; 7–7–75

**FEDERAL POWER COMMISSION**

Natural gas; national rate proceeding; order inviting comment re gas market; comments by 7–24–75; reply comments by 8–15–75.... 26568; 6–24–75

Partial-recovery fund; adjustment clause in wholesale rate schedules; extension of time; comments by 7–21–75. 23768; 6–2–75

**FEDERAL RESERVE SYSTEM**

Reserves of member banks and interest on deposits; proposed definition of savings deposits; comments by 7–25–75..... 25031; 6–12–75

**FEDERAL TRADE COMMISSION**

Common name and ingredient listing on detergent products; reopening of public record for comments; comments by 7–22–75..... 26283; 6–23–75

Guides concerning use of endorsements and testimonials in advertising; comments by 7–21–75.. 22146; 5–21–75

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

Food and Drug Administration—

Canned cherries; amendment to standard of identity; comments by 7–23–75..... 26276; 6–23–75

Office of Education—

Special Projects Act regulations; special or unique needs; comments by 7–25–75..... 27035; 6–26–75

Office of the Secretary—

Civil rights laws and authorities; consolidation; comments by 7–21–75. 24162; 6–4–75

Public Health Service—

Occupational safety and health investigations of places of employment; comments by 7–24–75. 26530; 6–24–75

Social Security Administration—

Federal Health Insurance for Aged and Disabled; comments by 7–21–75..... 25938; 6–19–75

Federal Health Insurance for Aged and Disabled; proposed conditions of participation by Clinics, Rehabilitation Agencies, and Public Health Agencies; comments by 7–21–75. 25939; 6–19–75

Federal Health Insurance for the Aged and Disabled; providers of services, independent laboratories, suppliers of portable X-ray services, and end-stage renal disease treatment facilities; determinations and appeals procedures; comments by 7–24–75..... 26535; 6–24–75

**INTERIOR DEPARTMENT**

Fish and Wildlife Service—

Endangered and threatened wildlife; permit provisions; comments by 7–21–75..... 21978; 5–20–75

Lists of endangered and threatened fauna; comments by 7–21–75. 17590; 4–21–75

Two species of butterflies; proposed threatened status; comments by 7–21–75..... 17757; 4–22–75

Indian Affairs Bureau—

Preparation of rolls of Indians; provide for enrollment of Warm Springs Indians; comments by 7–21–75. 26039; 6–20–75

**LABOR DEPARTMENT**

Occupational Safety and Health Administration—

Toxic substances; ketones; comments by 7–21–75..... 26045; 6–20–75

Walsh-Healey Public Contracts Act; public utility, regular dealer in uranium concentrates, uranium hexafluoride or enriched uranium; comments by 7–21–75..... 26045; 6–20–75

**NATIONAL CREDIT UNION ADMINISTRATION**

Purchase of certificates of deposit by Federal credit unions; comments by 7–26–75..... 27260; 6–27–75

**TRANSPORTATION DEPARTMENT**

Federal Aviation Administration—

Airesearch; proposed airworthiness directive; comments by 7–21–75. 25027; 6–12–75

Fort Benning, Ga.; proposed alteration of restricted area; comments by 7–23–75.

Mooney model M20 series airplanes; airworthiness directive; comments by 7–24–75.... 26542; 6–24–75

Transition area; comments by 7–21–75 ..... 26043–26045; 6–20–75

Transition area; alteration; comments by 7–24–75..... 26542; 6–24–75

Transition area; designation; comments by 7–24–75..... 26543; 6–24–75

Transition area; designation; comments by 7–24–75..... 26543; 6–24–75

Texas

Transition area; Rock Springs, Wyo.; comments by 7–27–75. 27244; 6–27–75

**TREASURY DEPARTMENT**

Alcohol, Tobacco, and Firearms Bureau—

Tax offset limitation for beer returned to brewery; comments by 7–27–75. 27240; 6–27–75

Internal Revenue Service—

Disposition of qualified low-income housing; comments by 7–21–75. 26040; 6–20–75

**VETERANS ADMINISTRATION**

Confidentiality and accuracy of personal records; comments by 7–28–75. 27261; 6–27–75

**Next Week's Meetings**

Advisory Committee on Federal Pay, to be held in Washington, D.C. (open with restrictions), 7–22 and 7–23–75. 28505; 7–7–75

**AGRICULTURE DEPARTMENT**

Forest Service—

Grand Mesa-Uncompahgre National Forest Miguel District Advisory Board; to be held in Montrose, Colorado (open), 7–22–75. 25835; 6–19–75

Gunnison Valley Forest Grazing Advisory Board; to be held in Gunnison, Colorado (open); 7–22 and 7–23–75..... 27708; 7–1–75

Rock Creek Advisory Committee; to be held in Philipsburg, Maryland (open); 7–26 and 7–27–75. 28501; 7–7–75

**AMERICAN REVOLUTION BICENTENNIAL ADMINISTRATION**

American Revolution Bicentennial Council; to be held at Los Angeles, Cal. (open with restrictions), 7–25–75. 28115; 7–3–75

**CIVIL RIGHTS COMMISSION**

Delaware State Advisory Committee; to be held in Wilmington, Del. (open), 7–25–75..... 28848; 7–9–75

New Jersey State Advisory Committee; to be held in Newark, N.J. (open) 7–27–75..... 27511; 6–30–75

Ohio State Advisory Committee; to be held in Columbus, Ohio (open), 7–25 and 7–26–75..... 27511; 6–30–75

**COMMERCE DEPARTMENT**

Domestic and International Business Administration—

Defense priorities for aluminum producers and distributors; comments by 7–21–75..... 26173; 6–20–75

Office of the Secretary—

Economic Advisory Board; to be held in Washington, D.C. (open with restrictions), 7–24–75. 26051; 6–20–75

Social and Economic Statistics Administration—

Census Advisory Committee on the Spanish Origin Population for the 1980 Census, to be held in Suitland, Md. (open), 7–24 and 7–25–75..... 25614; 6–17–75

**CONSUMER PRODUCT SAFETY COMMISSION**

Technical Advisory Committee on Poison Prevention Packaging; held in Washington, D.C. (open), 7–21 and 7–22–75..... 27289; 6–27–75

**DEFENSE DEPARTMENT**

Office of the Secretary—

Defense Science Board Task Force on Federal Contract Research Center Utilization; held in Washington, D.C. and California (open with restrictions), 7–21 through 7–25–75..... 27272; 6–27–75

Wage Committee; to be held at Washington, D.C. (closed), 7–22–75. 25235; 6–13–75

**ENVIRONMENTAL ADMINISTRATION AGENCY**

Control of Air Pollution from new motor vehicles and engines; to be held in Washington, D.C., 7–22–75. 25851; 6–19–75

Ecology Advisory Committee; to be held at Duluth, Minnesota (open, with restrictions), 7–25–75.. 27964; 7–2–75

Technical Advisory Group to the Municipal Construction Division; to be held in Los Angeles, Calif. (open), 7–21 and 7–22–75..... 27293; 6–27–75

**FEDERAL COMMUNICATIONS COMMISSION**

Domestic Land Mobile Radio Advisory Committee; to be held in Washington, D.C. (open), 7–22–75..... 28135; 7–3–75

**FEDERAL COUNCIL ON THE AGING**

Economics of Aging Committee; to be held at Washington, D.C. (open), 7–23 and 7–24–75..... 28137; 7–3–75

**FEDERAL HOME LOAN BANK BOARD**

Federal Savings and Loan Advisory Council; to be held in Washington, D.C. (open with restrictions), 7–21 through 7–23–75 ..... 27718; 7–1–75

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

Health Care Industry Labor Management Advisory Committee; to be held in Washington, D.C. (open), 7–22–75. 25852; 6–19–75

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

Food and Drug Administration—

Panel on Review of Antimicrobial Agents; to be held in Rockville, Maryland (partially open), 7–24 and 7–25 and 7–26–75. 25843; 6–19–75

Panel on Review of Contraceptives and Other Vaginal Drug Products; to be held in Washington, D.C. (partially open), 7–24 and 7–25–75..... 25843; 6–19–75

Panel on Review of Radiology Devices; to be held in Washington, D.C. (partially closed), 7–21 and 7–22–75..... 25842; 6–19–75

National Institutes of Health—

Committee on Cancer Immunotherapy; to be held in Bethesda, Maryland (open and closed) 7–24–75. 24763; 6–10–75

Office of Education—

National Advisory Council for Career Education; to be held in Washington, D.C. (open), 7–22 and 7–25–75..... 28113; 7–3–75

National Advisory Council on Indian Education; to be held in San Francisco, Calif. (open), 7–26 and 7–27–75..... 28842; 7–9–75

Office of the Secretary—

National Professional Standards Review Council; to be held in Washington, D.C. (open with restrictions), 7–21 and 7–22–75 ..... 26302; 6–23–75

National Professional Standards Review Council Technical Subcommittee; to be held in Washington, D.C. (open with restrictions), 7–21–75..... 26302; 6–23–75

Protection of Human Subjects of Biomedical and Behavioral Research National Commission; to be held in Bethesda, Maryland (open with restrictions); 7–26–75..... 28657; 7–8–75

**INTERIOR DEPARTMENT**

Bureau of Land Management—

Outer Continental Shelf Research Management Advisory Board; to be held in Washington, D.C. (open), 7–24 and 7–25–75..... 29095; 7–10–75

**NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**

National Endowment for the Arts—

Architecture & Environmental Arts Panel; to be held in Washington, D.C. (closed), 7–23 through 7–24–75..... 27985; 7–2–75

Dance Advisory Panel; to be held in Washington, D.C. (closed), 7–21 through 7–24–75.. 27985; 7–2–75

**NATIONAL SCIENCE FOUNDATION**

Ad Hoc Advisory Group on Science Programs (AGOSP) Study Committee; to be held in Los Angeles, Calif. (closed), 7–25–75 ..... 28877; 7–9–75

Ad Hoc Task Group 11 of the Advisory Committee for Research; to be held in Washington, D.C. (open) 7–21 through 7–22–75 ... 27081; 6–26–75

Advisory Panel for Earth Sciences; to be held at Kingston, Rhode Island (closed) 7–24 through 7–25–75. 27988; 7–2–75

Advisory Panel for Molecular Biology; to be held in Washington, D.C. (closed), 7–21 through 7–22–75 ..... 27081; 6–26–75

**PRESIDENTIAL CLEMENCY BOARD**

Internal personnel and practices; to be held in Washington, D.C. (closed); 7–26–75 ..... 28683; 7–8–75

**RAILROAD RETIREMENT BOARD**

Actuarial Advisory Committee on Railroad Retirement Accounts; to be held in Chicago, Illinois (open) 7–23–75. 26598; 6–24–75

**SMALL BUSINESS ADMINISTRATION**

Atlanta District Advisory Council; to be held in Fort McPherson, Georgia, 7–23–75 ..... 29137; 7–10–75

**STATE DEPARTMENT**

Ocean Affairs Advisory Committee; to be held in Brownsville, Texas (open with restrictions); 7–23 and 7–24–75. 27693; 7–1–75

U.S. Advisory Commission on International Educational and Cultural Affairs; to be held in New York, N.Y. (open with restrictions); 7–23–75. 28498; 7–7–75

**TRANSPORTATION DEPARTMENT**

Federal Railroad Administration—

Railroad Operating Rules Advisory Committee; to be held in Washington, D.C. (open), 7–21 and 7–22–75 ..... 26054; 6–20–75

**Next Week's Public Hearings**

**FEDERAL ENERGY ADMINISTRATION**

Modification of the refiner's profit margin rules; to be held in Washington, D.C., on 7–24 and 7–25–75. 28634; 7–8–75

NOTE: No acts approved by the President were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

# rules and regulations



## Title 17—Commodity and Securities Exchanges

## CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

## PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS AND FOREIGN BROKERS

## PART 18—REPORTS BY TRADERS

### Large-Trader Reporting Requirements for Foreign Brokers, Foreign Traders, and Futures Commission Merchants

The Commodity Futures Trading Commission ("Commission") has amended Parts 17 and 18 of the Regulations under the Commodity Exchange Act ("Act") to delay for a period of up to 60 days the application to foreign traders and foreign brokers of the large-trader reporting requirements for the commodities newly regulated under the Commodity Futures Trading Commission Act of 1974 ("CFTCA"),[1] and to require, for a similar period, futures commission merchants to report on a gross basis the positions in these commodities carried for omnibus accounts of foreign brokers. This action was taken after concern was expressed within the Commission about the effect of the new reporting requirements when applied to foreign-based traders and brokers.

These amendments do not affect reports required of foreign traders and foreign brokers for trades and positions in commodities regulated prior to the CFTCA, nor do they affect the July 7, 1975, effective date of the reporting requirements for futures commission merchants and domestic traders in the newly regulated commodities, including the requirement that futures commission merchants identify and report both foreign and domestic accounts in such commodities.

During this interim period of up to 60 days, the Commission intends to work with market users, exchange officials, and other interested persons to develop a better system of collecting market information relating to the activities of foreign-based traders and brokers in the newly regulated contract markets. The Commission recognizes that the reporting regulations which are being delayed for foreign traders and brokers may yet prove to be the best method of collecting the needed information. Those reporting requirements will become effective on September 4, 1975, or such earlier date as the Commission by ten days notice provides, unless an alternative method can be shown to provide a better solution to the problem of obtaining adequate information. The amendments require futures commission merchants, during this interim period, to report on a gross basis the positions in newly regulated commodities carried for omnibus accounts of foreign brokers, regardless of the requirements of the various exchanges. This reporting requirement will provide the Commission with useful information for daily market surveillance and provide an indication of the extent of foreign participation in the newly regulated contract markets. In those situations where the information reported by futures commission merchants indicates that positions carried for foreign brokers pose a threat to an orderly market, the regulations, as amended, permit the Commission by special call to require that reports be filed showing the identification of, and positions for, foreign-based individual traders in omnibus accounts of foreign brokers. The regulations further permit the Commission by special call to require reports directly from any foreign-based individual trader.

STATUTORY AUTHORITY

Because the reporting requirements respecting the newly regulated commodities, including their application to foreign traders and foreign brokers, became effective on July 7, 1975, the Commission finds that the notice and public procedure specified in 5 U.S.C. 553(b) and the publication 30 days before effective date specified in 5 U.S.C. 553(d) are impractical and unnecessary and would be contrary to the public interest. In consideration of the foregoing, Parts 17 and 18 in Chapter I of Title 17 of the Code of Federal Regulations have been amended, effective July 7, 1975, as follows:

1. Part 17 is amended by adding §§ 17.04 and 17.05 to read as follows:

**§ 17.04 Reports by Foreign Brokers.**

The requirements under Part 17 of these regulations concerning reports of foreign brokers shall be suspended until September 4, 1975, or such earlier date as the Commission upon 10 days notice provides, with respect to any commodity regulated under the Act but not specifically set forth in section 2(a) of the Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974, except that a foreign broker shall file such reports within one business day after a special call upon such foreign broker by the Commission.

**§ 17.05 Reports by Futures Commission Merchants.**

When submitting reports required by § 17.00(a) of these regulations respecting omnibus accounts of foreign brokers, each futures commission merchant shall show gross positions (i.e., the total long open contracts and the total short open contracts for all individual accounts included in any such omnibus account) in any commodity regulated under the Act but not specifically set forth in Section 2(a) of the Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974.

NOTE.—This § 17.05 shall expire on September 4, 1975, or such earlier date as the Commission upon 10 days notice provides.

2. Part 18 is amended by adding § 18.07 to read as follows:

**§ 18.07 Reports by Foreign Traders.**

Any trader located outside of the United States or its territories shall not be required, until September 4, 1975, or such earlier date as the Commission upon 10 days notice provides, to file the reports required by this Part 18 of these regulations for any commodity regulated under the Act but not specifically set forth in section 2(a) of the Act prior to the enactment of the Commodity Futures Trading Commission Act of 1974, except that any such trader is required to file such reports within one business day after a special call upon such trader by the Commission.

(7 U.S.C. 6i, 12a(5))

Issued in Washington, D.C. on July 10, 1975.

WILLIAM T. BAGLEY,
*Chairman, Commodity Futures Trading Commission.*

[FR Doc.75-18429 Filed 7-15-75;8:45 am]

[1] See 40 FR 23994-6 (June 4, 1975).

## CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-11497]

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

### Adoption of Uniform Net Capital Rule and an Alternative Net Capital Requirement for Certain Brokers and Dealers

The Securities and Exchange Commission today announced the adoption of a uniform net capital rule, Rule 15c3-1 (17 CFR 240.15c3-1), effective September 1, 1975 subject to the transitional provisions of paragraph (g) of the rule which delay the effective date of certain provisions to January 1, 1976. The delayed effective date for certain of the rule's provisions has been provided in order to insure that the broker-dealer community and all those who will be required to work with the rule will be able to become thoroughly familiar with its provisions. The adoption of the uniform net capital rule follows the Commission's consideration of comments re-

ceived in response to Securities Exchange Act Release No. 11094 (November 11, 1974). The new rule discontinues the exemption heretofore embodied in the Commission's net capital rule for members of designated national securities exchanges (other than certain specialists) required to comply with net capital rules of such exchanges.

The rule, as adopted, continues the basic net capital concept under which the securities industry has operated for many years and, in addition, introduces an alternative concept to measure the capital adequacy of broker-dealers. The approaches to capital adequacy and financial responsibility embodied in the rule are designed to balance the need for adequate protection for customer assets and the need for flexibility in efficiently using and deploying the financial resources of the securities industry.

## I. Uniform Rule 15c3-1

### A. Introduction

On November 11, 1974, the Commission published for comment revisions to the proposed uniform net capital rule and announced its intention to adopt the uniform rule after the expiration of the comment period. The rule had previously been published for comment in Securities Exchange Act Release No. 9891 (December 5, 1972) and Securities Exchange Act Release No. 10525 (November 29, 1973). In order to ease the transition to a uniform rule for many brokers and dealers, the Commission has incorporated provisions in the uniform net capital rule which currently exist in superseded capital rules of national securities exchanges, including the concepts of secured demand note capital and a modified flow through of capital from subsidiaries. The Commission will monitor carefully those provisions and strengthen them where experience dictates that such action is necessary or appropriate. In addition, because of the comoprehensive nature of the uniform net capital rule, some of its provisions have been modified from the form proposed on November 11, 1974, to clarify application of the rule. Other suggestions to further refine the rule would be carefully considered by the Commission. The following is a summary of changes in the uniform rule as adopted from the rule as now in effect. The summary also highlights changes from the rule as proposed on November 11, 1974.

### B. Minimum Net Capital Requirements

1. The rule as adopted reduces from 20:1 to 15:1 the maximum ratio of aggregate indebtedness to net capital which a broker or dealer may maintain.

2. The $5,000 minimum net capital requirement has been extended to brokers or dealers who engage in the sale of mutual funds on a direct wire order basis and certain floor brokers who effect but do not clear transactions for other brokers or dealers.

3. A $50,000 minimum net capital requirement has been established for writers and endorsers of options where such options are not listed on a registered national securities exchange.

4. Finally, for market makers the rule as adopted requires minimum net capital requirements equal to $25,000 or $2,500 per security in which such broker or dealer makes a market with a maximum requirement of $100,000 or a 15:1 ratio, whichever is greater. For securities which have a market value of less than $5 per share a minimum requirement of $500 for each such security has been retained.

### C. Exemptions

The rule as adopted separately classifies stock exchange specialists who do not deal with other than members, brokers or dealers and certain specialists and market makers in options under specified circumstances and exempts such classes from the rule. The rules, settled practices and applicable regulatory procedures of the American Stock Exchange, Boston Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, Pacific Stock Exchange, PBW Stock Exchange and the Chicago Board Options Exchange are satisfactory to the Commission to permit the separate classification of such market makers and specialists and their exemption from the provisions of the rule.

It should be noted, however, that section 15(c)(3) of the Securities Exchange Act of 1934 ("the Act") requires the establishment of minimum financial responsibility requirements for all brokers and dealers. The application of financial responsibility requirements to specialists presents unique questions which are still being explored by the Commission and, while the alternative approach adopted today appears to be a possible solution to this question, the Commission believes further study is warranted. The Commission expects to conclude its review as promptly as practicable.

The Commission also wishes to note that the recent amendments to the Act would make the net capital rule applicable to municipal securities brokers and municipal securities dealers but would not be applicable to banks as defined in the Act. The Commission welcomes any comments which municipal securities brokers and dealers may have respecting the application of these requirements, and any special problems which may be encountered by them.

### D. Aggregate Indebtedness

1. *Indebtedness Collateralized by Exempted Securities.* The rule as adopted gives brokers or dealers the option of charging net capital by an amount equal to 4% of any indebtedness collaterialized by exempted securities in lieu of including the amount of such indebtedness in the computation of aggregate indebtedness under the rule.

2. *Deferred Income Taxes.* Deferred income tax liabilities, recognized by the broker or dealer pursuant to generally accepted accounting principles, may be excluded from aggregate indebtedness under the rule.

### E. Net Capital

1. *Fixed Assets.* As revised from the November proposal, the rule permits the deduction of fixed assets and assets which cannot readily be converted to cash, net of any indebtedness adequately secured thereby, if the fixed assets have been acquired for use in the ordinary course of the trade or business of a broker or dealer; however, insofar as fixed assets are not acquired for use in the trade or business of the broker or dealer, they will be deducted net of any indebtedness secured thereby only if the lender's sole recourse in the event of a default in the payment of such indebtedness is solely to such assets.

2. *Deficits in Certain Accounts of Customers.* As adopted, the rule requires a broker or dealer who permits a customer's account to be carried on an unsecured or partly secured basis or who maintains a customer's cash account in deficit where more than one extension under Regulation T of the Board of Governors of the Federal Reserve System has been granted with respect to a specified securities transaction to treat such accounts as if they were proprietary accounts and the broker or dealer is required to apply the appropriate haircut on the securities contained in such account so that the collection risk and the resultant market risk in accounts which are unsecured or partly secured will be recognized as being borne by the broker or dealer.

3. *Good Faith Deposits.* The rule as adopted makes clear that good faith deposits must be deducted from net worth as an asset not readily convertible to cash if not returned to the broker or dealer within 11 business days subsequent to the settlement date of the underwriting with an issuer.

4. *Free Shipments of Securities.* The rule as adopted requires a deduction from net worth for receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (including mutual fund redemptions) outstanding more than 7 business days.

5. *Certain Municipal Bond Trusts and Liquid Asset Funds.* Since the maximum haircut for securities contained within the portfolio of a liquid asset fund or municipal bond unit investment trust is 5%, the rule as adopted provides for a haircut of 5% on the broker's or dealer's proprietary or other positions in such funds or trusts.

6. *Commercial Paper and Non-Convertible Debt Securities.* Under the rule as adopted commercial paper and nonconvertible debt securities will receive haircuts based on their remaining time to maturity, if rated in the appropriate categories by at least two nationally recognized statistical rating organizations rather than one such organization as proposed in Securities Exchange Act Release No. 11094.

7. *Undue Concentration.* The rule as adopted continues to require an undue

concentration haircut where any security position owned by the broker or dealer and in position for more than 11 business days exceeds 10% of the net capital of the broker or dealer before the application of haircuts. In addition, the rule as adopted permits the Examining Authority of the broker or dealer to reduce the undue concentration charge for a specialist who is subject to the rule with respect to his specialty stock where it is in the public interest to do so.

8. *Fails to Receive and Fails to Deliver.* The rule as adopted excludes from aggregate indebtedness fail to receive contracts where the broker or dealer does not carry a contra long position in such securities in a customer's account. However, in order to encourage the prompt elimination of failing contracts, the rule requires that until January 1, 1977, any fail to deliver contract outstanding more than 15 business days past settlement be treated as if it were a proprietary position of the broker or dealer by marking the contract to the market and applying a haircut. After January 1, 1977, fail to deliver contracts will be treated as proprietary positions of the broker or dealer if they are outstanding more than 11 business days. Any adverse movement of the market value of the security which is the subject of a fail to deliver is to be charged against capital and any favorable movement of the underlying security would serve to reduce the haircut.

9. *Options*—a. *Positions of Markets Makers and Specialists in Options.* The rule requires specialists, market makers, and registered traders in options who either transact business with other than members, brokers or dealers or who are clearing members of the Options Clearing Corporation ("OCC") to comply with the basic provisions of the net capital rule as they relate to options. However, the rule will continue to classify separately and exempt market makers and specialists who are not clearing members of the OCC and who do not transact a business in securities with other than members, brokers and dealers. In that connection, the rule incorporates specific net capital treatment for brokers and dealers carrying the accounts of such options specialists, market makers and registered traders. The Commission anticipates that market maker, specialist and registered trader capital requirements will be amended periodically to provide for modifications of those requirements as the option market may evolve.

b. *Determination of Net Worth and Unrealized Profits and Losses in Options.* These provisions of the rule have been substantially revised to clarify the determination of net worth and unrealized profits and losses in options and related securities positions which may be hedged by options.

These provisions provide, in part, that options positions should, for net worth purposes, be carried at their market value and, in addition, describe the manner in which the proceeds received from writing options are to be recognized. As proposed in November, the rule would have treated the cost or proceeds of listed options as if they were long or short securities positions and would not have included the proceeds received from writing options in net worth; as revised, such cost or proceeds are treated as premium expense or income where such options are related to long or short securities positions or short positions in options.

c. *Options Haircuts.* The determination of the appropriate haircuts for positions in options have not changed from the prior public exposure of the rule and may be found in Appendix A (17 CFR 240.15c3–1a) to the rule. Those haircuts follow existing industry practice; the Commission believes, however, that it is appropriate to review on a continuing basis the level of haircuts to be applied to options positions and to make further adjustments as more experience is gained with the operation of option markets. In particular, the provisions with respect to haircuts on long options may be revised to establish an appropriate relationship between haircuts applied to the securities underlying options and the relatively higher price volatility of options compared to the underlying security.

10. *U.S. Government Securities.* Under the rule as adopted, government securities subject to repurchase agreements are to be treated as if owned by the broker or dealer with an appropriate haircut applied to the market value of the security. In the case of reverse repurchase agreements for U.S. Government securities, such transactions result in the broker having a secured receivable from the person who has, in effect, borrowed funds from the broker or dealer; therefore, any capital charge will be limited ot the deficiency, if any, in the securities collateralizing the receivable. Finally, matched repurchase agreements which result in fully secured matched contractual commitments to buy or sell the U.S. government securities subject to the agreements should not normally receive a capital charge.

11. *Satisfactory Subordination Agreements.* The rule as adopted sets forth in a separate Appendix D (17 CFR 240.15c3–1d) to the rule the requirements for satisfactory subordination agreements.

The rule makes clear that subordinated capital contributions may be made only in the form of contributions of cash or securities; however, all contributions of securities must be made pursuant to a secured demand note arrangement. The Appendix defines the minimum standards for the contribution and form of secured demand notes as well as subordinated contributions of cash. Appendix D should be carefully examined by broker-dealers and their counsel in preparing subordination agreements.

12. *Flow Through Capital from Subsidiaries and Affiliates.* Appendix C (17 CFR 240.15c3–1c) to the rule sets forth the requirements which must be met to consolidate in a single net capital computation the assets and liabilities of subsidiaries and affiliates in order to obtain flow through capital benefits for a parent broker or dealer.

The rule as adopted provides that flow through capital benefits can be available to the parent only if the subsidiary or affiliate is majority-owned or controlled and only if the assets of the subsidiary or affiliate or the broker's or dealer's interest therein may be distributed to the broker or dealer within a 30 day period. In addition, subordinated obligations of the subsidiary may not serve to increase the net worth of the parent unless the obligations are also subordinated to the claims of present and future creditors of the parent. The rule as adopted also requires that liabilities which are guaranteed by the broker or dealer be reflected in the firm's net capital computation.

The rule as adopted restricts flow through capital treatment currently provided under exchange net capital rules by requiring the computation of net capital and aggregate indebtedness to be made on a fully consolidated basis as well as placing limitations on the withdrawal of capital from such consolidated subsidiaries. The Commission will carefully monitor the effect of the flow through capital provisions and may modify them where appropriate.

F. DEBT-EQUITY REQUIREMENTS

The rule as adopted requires that a broker or dealer must maintain equity, as defined, equal to 30% of its debt-equity total, as defined. For this purpose, the rule provides that a subordination agreement with an initial term of three years and a remaining term of at least 1 year contributed by a partner or stockholder of the broker or dealer may be treated as equity with respect to the rule's debt-equity requirement. At such time as the remaining term of such subordination agreement is less than 1 year, it will cease to be equity under the rule unless the term is extended by the lender.

## II. Alternative Net Capital Requirement

The Commission in adopting the alternative net capital requirement has determined to adopt a new concept to measure the capital adequacy of brokers or dealers. The Commission believes the new approach will insure the protection of investors as well as improve the ability of brokers or dealers to meet the future needs of the nation's corporate issuers to raise both equity and debt capital in the evolving central market.

The implementation of Rule 15c3–3 (17 CFR 240.15c3–3), with its objective of furnishing protection for the integrity of customers' funds and securities, has made it no longer necessary to rely solely on net capital requirements to insure the protection of investors. Ultimately, it may be possible for Rule 15c3–3 (17 CFR 240.15c3–3) in some form to replace the liquidity requirements of the net capital rule and become the primary source of protection to customer assets held by

the broker or dealer. The alternative approach adopted today moves in that direction.

The key factors which distinguish the securities industry from other industries are its custodial responsibility for customers' funds and securities and its role in facilitating capital raising for government and corporations. Accordingly, the scope and purpose of any rules and regulations concerning the fiscal responsibility of a broker or dealer should focus upon the construction of an environment in which financial miscalculations of a broker or dealer do not result in loss to its customers or the customers of another broker or dealer. The Commission believes the alternative approach will effectively create and maintain an environment of customer protection while enabling the securities industry to fulfill its function of capital raising and the maintenance of a liquid secondary market by:

1. Acting as an effective early warning device to provide reasonable assurance against loss of customer assets through a logical interface with other operation standards and existing surveillance, reporting and examination aspects of the securities industry regulatory framework;

2. Avoiding the inefficient and costly commitment of capital within the securities industry where such a commitment is not necessary for customer protection;

3. Eliminating, to the extent possible and consistent with the objective of customer protection, competitive restraints on the securities industry's ability to compete effectively with other diversified financial institutions;

4. Making the capital structures of brokers and dealers as well as their investment and operating policies more understandable to lending institutions and other suppliers of capital and to the public; and

5. Providing some reasonable and finite limitation on broker-dealer expansion to minimize the possibility of customer loss and the possibility that the SIPC Fund will have to be utilized to protect customers.

1. ALTERNATIVE NET CAPITAL REQUIREMENT

Rule 15c3–1(f) (17 CFR 240.15c3–1(f)) as adopted establishes a minimum net capital or liquidity standard which is designed to measure the general financial integrity and liquidity of a broker or dealer and the minimum net capital deemed necessary to meet the broker's or dealer's continuing commitments to its customers. The alternative also indicates to other creditors with whom the broker or dealer may deal what portion of its liquid assets in excess of that required to protect customers is available to meet other commitments of the broker or dealer. In addition, the amount of the firm's liquid assets in excess of the broker's or dealer's minimum requirement necessary to protect customers gives the Commission, self-regulators and SIPC sufficient early warning to take appropriate action to protect customers prior to the time when the broker's or dealer's assets would be insufficient to satisfy customers' claims in the event of liquidation.

While the alternative eliminates the traditional standard of limiting obligations of brokers or dealers (i.e., the ratio of aggregate indebtedness to net capital), its substitutes the aggregate dollar amount of firm assets which have as their source transactions with customers (i.e., items includable in the Formula for Determination of Reserve Requirements for Brokers and Dealers ("Reserve Formula") as the standard for determining the maximum permissible level of the broker's or dealer's customer-related activity. Rule 15c3–1(f) (17 CFR 240.15c3–1(f)), thus, requires a broker-dealer to maintain minimum net capital equal to the greater of $100,000 or 4% of aggregate debit balances includable in the Reserve Formula.

The alternative as adopted will be applicable only to brokers or dealers who have not elected to operate pursuant to an exemption from Rule 15c3–3 (17 CFR 240.15c3–3) through either subparagraphs (k)(1) or (k)(2)(i). Brokers or dealers who meet the requirements of subparagraph (k)(2)(ii) of Rule 15c3–3 (17 CFR 240.15c3–3) and introduce all customer transactions to another broker or dealer on a fully disclosed basis are eligible to operate pursuant to Rule 15c3–1(f) (17 CFR 240.15c3–1(f)), if they maintain minimum net capital of at least $100,000.

Since the alternative approach provides a carefully refined and structured measurement of customer obligations, it is appropriate to enhance the ability of brokers or dealers to engage in market making, block positioning and specializing in equity securities. To achieve this objective, the alternative approach reduces the haircut on long positions in equity securities to 15% of the market value of such securities. Generally, the rule exempts short positions in equity securities from any haircut to the extent such positions do not exceed 25% of the broker's or dealer's long positions in equity securities. However, the alternative approach requires a 30% haircut on security positions in excess of the 25% exclusion.

Because the alternative approach seeks to measure the general financial integrity of the broker or dealer, it is appropriate to adopt more stringent requirements to guard against brokers or dealers overextending themselves by unduly concentrating their assets in any one security position. Consequently, the alternative approach results in an additional 15% haircut on equity positions to the extent they exceed 10% of net capital before the application of haircuts, and such undue concentration charges would be imposed immediately rather than be delayed for 11 business days as provided in the basic rule. However, in the case of security positions which result from the broker's or dealer's underwriting activity, the additional charge would be imposed after 11 business days.

Under the alternative, specialists who deal with the public and who are, therefore, subject to the rule may be exempted from the undue concentration provisions of the rule with respect to their specialty securities upon appropriate application to the Examining Authority for such specialist if the Examining Authority finds it in the public interest to do so.

Under the alternative, the haircut on risk arbitrage transactions is the lesser of the haircut provided for equity securities generally under Rule 15c3–1 (f) (17 CFR 240.15c3–1(f)) or 30% of the greater of the long or short position in the arbitrage transaction.

In addition, the alternative approach precludes the withdrawal of equity capital if the broker's or dealer's minimum net capital is less than 7% of aggregate Reserve Formula debits, and subordinated capital may not be withdrawn if the broker's or dealer's minimum net capital would be less than 6% of aggregate Reserve Formula debits.

2. MODIFICATIONS TO RULE 15C3–3 (17 CFR 240.15C3–3

As mentioned earlier, the Commission believes that the objectives of the alternative approach can only be achieved by further strengthening the custodial requirements and Reserve Formula safeguards developed for the protection of customer assets established by Rule 15c 3–3 (17 CFR 240.15c3–3).

Thus, the alternative as adopted requires aggregate debit items in the Reserve Formula to be reduced by 3% rather than the 1% reduction of certain debit items which now exists. This reduction of debit items will thus provide, in the event of a liquidation, an additional cushion of secured debit items which will be available to satisfy customers with whom the broker or dealer effects transactions. In addition, the alternative would require that stock record differences and suspense account items be included in the Reserve Formula after 7 business days.

Finally, the alternative has been revised to provide that fails and any related receivables which arise as a result of the failure of issuers to make timely delivery of newly issued government securities or money market instruments to the broker or dealer may be excluded from the Reserve Formula for 3 business days.

3. DIVISION OF MARKET REGULATION INTERPRETATION OF ITEMS INCLUDABLE IN THE RESERVE FORMULA

The alternative requirement is founded upon the broker's or dealer's aggregate Reserve Formula debits as determined by Exhibit A to Rule 15c3–3 (17 CFR 240.-15c3–3a). Therefore, the allocation methods used to determine which fail contracts relate to proprietary accounts as opposed to customer accounts and which securities borrowed or loaned relate to proprietary or customer transactions are particularly important since they directly affect the level of aggregate debits of a broker or dealer and, consequently, determine the level of its

minimum net capital requirement. The Commission, therefore, has determined to publish the following interpretations of the Division of Market Regulation respecting the various allocation approaches to be followed under Rule 15c3–3 (17 CFR 240.15c3–3) regardless of whether the broker or dealer elects to operate under the alternative approach.

a. *Fails to Deliver vs. Fails to Receive.* Fails to receive which are not allocable to long positions in the proprietary or other accounts of the broker or dealer and fails to deliver which are not allocable to short positions in the proprietary or other accounts of the broker or dealer are customer related and should be included in the computation of the Reserve Formula.

b. *Stock Loaned vs. Stock Borrowed.* Amounts representing stock borrowed which are not allocable to short securities positions in customer accounts or other items includable in the Reserve Formula and amounts representing stock loans which are not allocable to long securities positions in customer accounts or other items includable in the Reserve Formula should be excluded from the Reserve Formula.

c. *Principal Transactions with Customers.* Where a dealer purchases securities as principal from his customer and where such securities have not been resold by the broker or dealer, the credit balance due to the customer arising from his sale of securities to the broker or dealer may be excluded from the Reserve Formula until the securities sold have been delivered by the customer.

d. *Fails to Deliver vs. Securities in Possession or Control in Excess of Segregation Requirements.* Where an amount representing securities failed to deliver is allocable to securities in the broker's or dealer's physical possession and such securities are in excess of the broker's or dealer's possession or control requirement, the fail to deliver amount should be excluded from the Reserve Formula.

### Effective Date—Transitional Provisions

As noted earlier, the Commission has determined to delay the effective date of certain of the rule's provisions in order to enable broker-dealers and the various Examining Authorities to become thoroughly familiar with the rule's provisions. The Commission also recognizes that the transition to the new rule will require broker-dealers to make significant adjustments to their recordkeeping systems in order to insure their ability to effectively accumulate the data necessary to compute net capital, aggregate indebtedness, and the alternative net capital requirement. In addition, the various designated Examining Authorities will be required to revise their reporting and surveillance systems in order to properly monitor the financial conditions of their members and their compliance with the rule. Finally, a substantial educational effort will be required over the next several months to insure that broker-dealers and their operating personnel are thoroughly trained in the operation of the rule.

Accordingly, the Commission has determined that both the minimum net capital requirements and the maximum permissible net capital ratio at which a broker-dealer may operate as set forth in paragraph (a) of the rule shall become effective on September 1, 1975. In addition, Appendix D of the rule regarding satisfactory subordination agreements will also become effective on September 1, 1975.

The effect of implementing these provisions on September 1, 1975 will be to establish minimum financial responsibility requirements for all brokers and dealers. New minimum capital requirements for floor brokers, market makers and broker-dealers who write or endorse options otherwise than on a national securities exchange will be effective on September 1, 1975. In addition, all broker-dealers will be required to operate under a uniform maximum ratio of aggregate indebtedness to net capital of 15 to 1, thereby making uniform the requirements presently applicable to broker-dealers who are members of the NASD, SECO, and the PBW with the net capital ratio requirements applicable to all other broker-dealers.

Further, the implementation of Appendix D respecting satisfactory subordination agreements on September 1, 1975 will insure that all broker-dealers will be subject to a uniform provision respecting the permanency of subordinated capital and uniform subordinated debt retention requirements.

Paragraph (g) of the rule would delay until January 1, 1976 the requirement of all brokers and dealers to compute net capital, aggregate indebtedness and the alternative net capital computation pursuant to the new rule. In this connection, the Commission has required that all Examining Authorities submit to the Commission no later than July 31, 1975 a plan setting forth the steps the Examining Authority will be required to take (including but not limited to modifications of reporting and surveillance requirements and the education of both examiners and broker-dealers) in order to provide for an orderly transition to all provisions of the rule by January 1, 1976.

### Statutory Authority and Competitive Considerations

These amendments to 17 CFR 240.15c3–1 and the adoption of 17 CFR 240.15c3–1a–d are adopted pursuant to the Securities Exchange Act of 1934 (the "Act") particularly sections 10(b), 15(c)(3), 17(a) and 23(a) thereof, effective September 1, 1975. As previously noted, adoption of a uniform net capital rule has been under consideration by the Commission since 1972; adoption of a uniform net capital rule was one of the recommendations of the Commission's *Study of Unsafe and Unsound Practices of Brokers and Dealers* (Report and Recommendations of the Securities and Exchange Commission, December 1972, House Document No. 92–231 at p. 5) prepared pursuant to section 11(h) of the Securities Investor Protection Act of 1970. The Securities Act Amendments of 1975 (Pub. L. 94–29) amended section 15(c)(3) of the Act to require promulgation of minimum financial responsibility requirements for all brokers and dealers by September 1, 1975.

The rule as adopted will have an impact on competition. In some instances the minimum amounts of net capital are the same as amounts heretofore required under Rule 15c3–1 (17 CFR 240.15c3–1) and under applicable exchange rules; however, the method of calculating net capital and aggregate indebtedness has been altered and, as noted, the permissible ratio of aggregate indebtedness to net capital has been lowered from 20:1 to 15:1 for brokers and dealers who do not (or cannot) elect the alternative capital requirement. The uniform net capital rule may, consequently, increase the amount of capital required for brokers or dealers or for prospective brokers or dealers, thereby raising entry levels for participation in the securities industry; in addition, the changes in the calculations of the net capital ratio may reduce the amount of business which some brokers or dealers will be permitted to engage in with a given amount of capital. Finally, in certain lines of business, brokers and dealers compete with other types of financial institutions which are separately regulated and may not be subject to equivalent financial requirements.

The Commission has determined, however, that any burden on competition imposed by the uniform net capital rule is necessary and appropriate in furtherance of the purposes of the Act and that the rule is necessary and appropriate to implement the provisions of the Act, and in particular section 15(c)(3) thereof, to provide safeguards with respect to the financial responsibility and related practices of brokers or dealers; to eliminate illiquid and impermanent capital; and to assure investors that their funds and securities are protected against financial instability and operational weaknesses of brokers or dealers.

In 17 CFR Chapter II, §§ 240.15c3–1, 240.15c3–1a, 240.15c3–1b, 240.15c3–1c, and 240.15c3–1d are revised to read as follows:

**§ 240.15c3–1 Net capital requirements for brokers or dealers.**

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percentum of his net capital, except as otherwise limited by the provisions of subparagraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than 4 percent of aggregate debit items as computed in accordance with § 240.15c3–3a of this Chapter, except as otherwise limited by paragraph (f) of this section, and every broker or dealer shall have the net capital necessary to comply with the following conditions, except as otherwise

provided for in paragraph (f) of this section.

(1) *Brokers or Dealers Engaging in a General Securities Business.* No broker or dealer, except one who operates under paragraph (f) of this section, shall permit his aggregate indebtedness to all other persons to exceed 800 percentum of his net capital for 12 months after commencing business as a broker or dealer and, except as otherwise provided for in paragraph (a) or paragraph (f) of this section, the broker or dealer shall at all times have and maintain net capital of not less than $25,000 or $25,000 plus the sum of each broker or dealer subsidiary's minimum net capital requirement which is consolidated pursuant to Appendix (C) (17 CFR 240.15c3-1c).

(2) *Brokers Who Do Not Generally Carry Customers' Accounts.* Notwithstanding the provisions of subparagraph (a)(1) hereof, a broker or dealer shall have and maintain net capital of not less than $5,000 if he does not hold funds or securities for, or owe money or securities to, customers and does not carry accounts of, or for, customers, except as provided for in subdivision (v) below, and he conducts his business in accordance with one or more of the following conditions and does not engage in any other securities activities;

(i) He introduces and forwards as a broker all transactions and accounts of customers to another broker or dealer who carries such accounts on a fully disclosed basis and (the introducing broker or dealer) promptly forwards all of the funds and securities of customers received in connection with his activities as a broker;

(ii) He participates, as broker or dealer, in underwritings on a "best efforts" or "all or none" basis in accordance with the provisions of 17 CFR 240.15c2-4(b)(2) and he promptly forwards to an independent escrow agent customers' checks, drafts, notes or other evidences of indebtedness received in connection therewith which shall be made payable to such escrow agent;

(iii) He promptly forwards, as broker or dealer, subscriptions for securities to the issuer, underwriter, sponsor or other distributor of such securities and receives checks, drafts, notes or other evidences of indebtedness payable solely to the issuer, underwriter, sponsor or other distributor who delivers the securities purchased directly to the subscriber;

(iv) He effects an occasional transaction in securities for his own investment account with or through another registered broker or dealer;

(v) He acts as broker or dealer with respect to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in insurance company separate accounts, whether or not registered as an investment company, and he promptly transmits all funds and delivers all securities received in connection with such activities;

(vi) He introduces and forwards all customer and all principal transactions with customers to another broker or dealer who carries such accounts on a fully disclosed basis and promptly forwards all funds and securities received in connection with his activities as a broker or dealer and does not otherwise hold funds or securities for or owe money or securities to, customers and does not otherwise carry proprietary (except as provided in subdivision (a)(2)(iv) above) or customer accounts and his activities as dealer are limited to holding firm orders of customers and in connection therewith: (A) in the case of a buy order, prior to executing such customers' order, purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order which shall be cleared through another broker or dealer or (B) in the case of a sell order, prior to executing such customers' order, sells as principal the same number of shares or a portion thereof which shall be cleared through another broker or dealer; or

(vii) He effects, but does not clear, transactions in securities as a broker on a registered national securities exchange for the account of another member of such exchange.

(3) *Brokers or Dealers Engaged Solely in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts.* Net capital of not less than $2,500 shall be maintained by a broker or dealer who engages in no other securities activities except those prescribed in this subparagraph and who meets all of the following conditions:

(i) His dealer transactions are limited to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account, except that he may also effect an occasional transaction in other securities for his own investment account with or through another registered broker or dealer;

(ii) His transactions as broker are limited to: (A) the sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account whether or not registered as an investment company; (B) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and, (C) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(iii) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(4) *Certain Additional Capital Requirements for Market Makers.* Notwithstanding the provisions of subparagraphs (a)(1), (2) and (3), a broker or dealer engaged in activities as a market maker as defined in subparagraph (c)(8) of this section shall maintain net capital in an amount not less than $2,500 for each security in which he makes a market (unless a security in which he makes a market has a market value of $5 or less in which event the amount of net capital shall be not less than $500 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date, except that under no circumstances shall he have net capital less than that required by subparagraph (a)(1), or be required to maintain net capital of more than $100,000 unless otherwise required by the provisions of paragraphs (a) or (f) of this section.

(5) *Certain Additional Capital Requirements for Brokers or Dealers Engaged in the Sale of Options.* Notwithstanding the provisions of subparagraphs (a)(1)-(4), a broker or dealer who endorses or writes options, including but not limited to puts, calls, straddles, strips, or straps otherwise than on a registered national securities exchange or a facility of a registered national securities association shall have net capital of not less than $50,000.

(b) Exemptions:

(1) The provisions of this section shall not apply to any specialist who does not transact a business in securities with other than members, brokers or dealers and who is in good standing and subject to the capital requirements of the American Stock Exchange (if he is not also a clearing member of the Options Clearing Corporation), the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Stock Exchange, the PBW Stock Exchange (if he is not also a clearing member of the Options Clearing Corporation), or the Chicago Board Options Exchange (if he is not also a clearing member of the Options Clearing Corporation) provided that this exclusion as to a particular specialist of any exchange or as to the exchange itself may be suspended or withdrawn by the Commission at any time, upon ten (10) days written notice to such exchange or specialist, if it appears to the Commission that such action is necessary or appropriate in the public interest or for the protection of investors.

(2) The Commission may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer who satisfies the Commission that, because of the special nature of its business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

(c) Definitions. For the purpose of this section:

AGGREGATE INDEBTEDNESS

(1) The term "aggregate indebtedness" shall be deemed to mean the total

money liabilities of a broker or dealer arising in connection with any transaction whatsoever and includes, among other things, money borrowed, money payable against securities loaned and securities "failed to receive," the market value of securities borrowed to the extent to which no equivalent value is paid or credited (other than the market value of margin securities borrowed from customers in accordance with the provisions of 17 CFR 240.15c3–3 and margin securities borrowed from non-customers), customers' and non-customers free credit balances, credit balances in customers' and non-customers' accounts having short positions in securities, equities in customers' and non-customers' future commodities accounts and credit balances in customers' and non-customers' commodities accounts, but excluding:

EXCLUSIONS FROM AGGREGATE INDEBTEDNESS

(i) Indebtedness adequately collateralized by securities which are carried long by the broker or dealer and which have not been sold or by securities which collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c 3–1d) to this section or indebtedness adequately collateralized by spot commodities which are carried long by the broker or dealer and which have not been sold;

(ii) Amounts payable against securities loaned, which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c

(iii) Amounts payable against securities failed to receive which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.-15c3–1d) or amounts payable against securities failed to receive for which the broker or dealer also has a receivable related to securities of the same issue and quantity thereof which are either fails to deliver or securities borrowed by the broker or dealer;

(iv) Credit balances in accounts representing amounts payable for securities or money market instruments not yet received from the issuer or its agent which securities are specified in subdivision (c)(2)(vi)(E) and which amounts are outstanding in such accounts not more than three (3) business days;

(v) Equities in customers' and non-customers' accounts segregated in accordance with the provisions of the Commodity Exchange Act and the rules and regulations thereunder;

(vi) Liability reserves established and maintained for refunds of charges required by Section 27(d) of the Investment Company Act of 1940, but only to the extent of amounts on deposit in a segregated trust account in accordance with 17 CFR 270.27d–1 under the Investment Company Act of 1940;

(vii) Amounts payable to the extent funds and qualified securities are required to be on deposit and are deposited in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" pursuant to 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934;

(viii) Fixed liabilities adequately secured by assets acquired for use in the ordinary course of the trade or business of a broker or dealer but no other fixed liabilities secured by assets of the broker or dealer shall be so excluded unless the sole recourse of the creditor for nonpayment of such liability is to such asset;

(ix) Liabilities on open contractual commitments;

(x) Indebtedness subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix (D) (17 CFR 240.15c3–1d);

(xi) Liabilities which are effectively subordinated to the claims of creditors (but which are not subject to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3–1d)) by non-customers of the broker or dealer prior to such subordination, except such subordinations by customers as may be approved by the Examining Authority for such broker or dealer;

(xii) Credit balances in accounts of general partners; and

(xiii) Deferred tax liabilities.

NET CAPITAL

(2) The term "net capital" shall be deemed to mean the net worth of a broker or dealer, adjusted by:

ADJUSTMENTS TO NET WORTH RELATED TO UNREALIZED PROFIT OR LOSS AND DEFERRED TAX PROVISIONS

(i)(A) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker or dealer;

(B)(*1*) In determining net worth, all long and all short positions in listed options shall be marked to their market value and all long and all short securities and commodities positions shall be marked to their market value.

(*2*) In determining net worth, the value attributed to any unlisted option shall be the difference between the option's exercise value and the market value of the underlying security. In the case of an unlisted call, if the market value of the underlying security is less than the exercise value of such call it shall be given no value and in the case of an unlisted put if the market value of the underlying security is more than the exercise value of the unlisted put it shall be given no value.

(C) Adding to net worth the lesser of any deferred income tax liability related to the items in (*1*), (*2*), and (*3*) below, or the sum of (*1*), (*2*) and (*3*) below;

(*1*) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with subparagraph (c)(2)(vi) and Appendices (A) and (B) (17 CFR 240.15c3–1a) and (17 CFR 240.15c3–1b) or, where appropriate, paragraph (f) of this section, the appropriate Federal and state tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

(*2*) Any deferred tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section;

(*3*) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise deducted from net worth in accordance with the provisions of this section; and,

(D) Adding, in the case of future income tax benefits arising as a result of unrealized losses, the amount of such benefits not to exceed the amount of income tax liabilities accrued on the books and records of the broker or dealer, but only to the extent such benefits could have been applied to reduce accrued tax liabilities on the date of the capital computation, had the related unrealized losses been realized on that date.

(ii) *Subordinated Liabilities.* Excluding liabilities of the broker or dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix (D) (17 CFR 240.15c3–1d).

(iii) *Sole Proprietors.* Deducting, in the case of a broker or dealer who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a broker or dealer over assets not used in the business.

(iv) *Assets Not Readily Convertible Into Cash.* Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness excluded in accordance with subdivision (c)(1)(viii) of this section) including, among other things:

(A) *Fixed Assets and Prepaid Items.* Real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and other expenses; goodwill, organization expenses;

(B) *Certain Unsecured and Partly Secured Receivables.* All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.4(c) of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in subparagraphs (c)(2)(vi) or (f) of this section or Appendix (A) (17 CFR 240.15c3–1a); receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (including mutual fund redemptions) outstanding more than 7 business days; any collateral deficiencies in secured demand notes as defined in Appendix (D) (17 CFR 240.15c3–1d);

(C) *Certain Receivables.* Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits

which shall be treated as required in subdivision (c)(2)(iv)(E) below), mutual fund concessions receivable and management fees receivable from registered investment companies, all of which receivables are outstanding longer than thirty (30) days from the date they arise; dividends receivable outstanding longer than thirty (30) days from the payable date; and good faith deposits arising in connection with an underwriting, outstanding longer than eleven (11) business days from the settlement of the underwriting with the issuer;

(D) *Insurance Claims.* Insurance claims which, after seven (7) business days from the date the loss giving rise to the claim is discovered, are not covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect; insurance claims which after twenty (20) business days from the date the loss giving rise to the claim is discovered and which are accompanied by an opinion of outside counsel described above, have not been acknowledged in writing by the insurance carrier as due and payable; and insurance claims acknowledged in writing by the carrier as due and payable outstanding longer than twenty (20) business days from the date they are so acknowledged by the carrier; and,

(E) *Other Deductions.* All other unsecured receivables; all assets doubtful of collection less any reserves established therefor; and, the funds on deposit in a "segregated trust account" in accordance with 17 CFR 270.27d–1 under the Investment Company Act of 1940, but only to the extent that the amounts on deposit in such segregated trust account exceeds the amount of liability reserves established and maintained for refunds of charges required by Sections 27(d) and 27(f) of the Investment Company Act of 1940; Provided, that any amount deposited in the "Special Reserve Bank Account for the Exclusive Benefit of Customers" established pursuant to 17 CFR 240.15c3–3 and clearing deposits shall not be so deducted.

(v) *Securities Differences.* Deducting the market value of all short securities differences (which shall include securities positions reflected on the securities record which are not susceptible to either count or confirmation) unresolved for seven (7) business days after discovery and the market value of any long security differences, where such securities have been sold by the broker or dealer before they are adequately resolved, less any reserves established therefor;

(vi) *Securities Haircuts.* Deducting the percentages specified in subdivisions (A)–(M) below (or the deductions prescribed for securities positions set forth in Appendix (A) (17 CFR 240.15c3–1a) or, where appropriate, paragraph (f) of this section) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

(A) *Government Securities.* In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

(*1*) Less than 1 year to maturity—0 percent;

(*2*) 1 year but less than 3 years to maturity—1 percent;

(*3*) 3 years but less than 5 years to maturity—2 percent;

(*4*) 5 years or more to maturity—3 percent.

(B) *Municipals.* In the case of any municipal security, as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, which is not traded flat or in default as to principal or interest, the applicable percentages of the market value on the greater of the long or short position in each of the categories specified below are:

(*1*) Less than 1 year to maturity—1 percent

(*2*) 1 year but less than 2 years to maturity—2 percent;

(*3*) 2 years but less than 5 years to maturity—3 percent;

(*4*) 5 years or more to maturity—5 percent.

(C) *Canadian Debt Obligations.* In the case of any security issued or unconditionally guaranteed as to principal and interest by the Government of Canada, the percentages of market value to be deducted shall be the same as in (A) above.

(D) *Certain Municipal Bond Trusts and Liquid Asset Funds.* In the case of securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in subdivisions (A)–(C) above or (E) below, the deduction shall be 5 percent of the market value of the greater of the long or short position.

(E) *Commercial Paper, Bankers Acceptances and Certificates of Deposit.* In the case of any short-term promissory note or evidence of indebtedness which has a fixed rate of interest or is sold at a discount, and which has a maturity date at date of issuance not exceeding nine months exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited and is rated in one of the three highest categories by at least two of the nationally recognized statistical rating organizations, or in the case of any negotiable certificate of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*1*) Less than 30 days to maturity—0 percent;

(*2*) 30 days but less than 91 days to maturity—⅛ of 1 percent;

(*3*) 91 days but less than 181 days to maturity—¼ of 1 percent;

(*4*) 181 days but less than 271 days to maturity—⅜ of 1 percent;

(*5*) 271 days but less than 1 year to maturity—½ of 1 percent; and

(*6*) With respect to any negotiable certificate of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank, as defined above, having 1 year or more to maturity, the deduction shall be on the greater of the long or short position and shall be the same percentage as that prescribed in subdivision (c)(2)(vi)(A) above.

(F) *Nonconvertible Debt Securities.* In the case of nonconvertible debt securities having a fixed interest rate and fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value on the greater of the long or short position in each of the categories specified below are:

(*1*) Less than one year to maturity—1 percent;

(*2*) One year but less than two years to maturity—2 percent;

(*3*) Two years but less than three years to maturity—3 percent;

(*4*) Three years but less than four years to maturity—4 percent;

(*5*) Four years but less than five years to maturity—5 percent; and

(*6*) Five years or more to maturity—7 percent.

(G) *Convertible Debt Securities.* In the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deductions shall be as follows: If the market value is 100 percent or more of the principal amount, the deduction shall be determined as specified in subdivision (J) below; if the market value is less than the principal amount, the deduction shall be determined as specified in subdivision (F) above if such securities are rated as required by subdivision (F) above.

(H) *Preferred Stock.* In the case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which are not in arrears as to dividends, the deduction shall be 20 percent of the market value of the greater of the long or short position;

(I) *Risk Arbitrage Positions.* In the case of each risk arbitrage transaction, the deduction shall be 30 percent (or such other percentage as required by this subdivision) on the long or equivalent short position, whichever has the greater market value. For the purposes of this subdivision (I), a "risk arbitrage transaction" shall mean the sale (either when issued, when distributed or short) of securities involved in a pending merger, consolidation, transfer of assets, exchange offer, recapitalization or other similar transaction which has been publicly announced and has not been terminated, in connection with a previous or approximately simultaneous offsetting purchase of other securities which upon consummation of the transaction will result in the equivalent of the securities sold.

(J) *All Other Securities.* In the case of all securities, except those described in Appendix (A) (17 CFR 240.15c3–1a) and, where appropriate, paragraph (f) of this section, which are not included in any of the percentage categories enumerated in subdivisions (A)–(I) above or (K)(ii) below, the deduction shall be 30 percent of the market value of the greater of the long or short position and to the extent the market value of the lesser of the long or short position exceeds 25 percent of the market value of the greater of the long or short position, there shall be a percentage deduction on such excess equal to 15 percent of the market value of such excess. Provided, that no deduction need be made in the case of (*1*) a security which is convertible into or exchangeable for other securities within a period of 90 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable, are short in the accounts of such broker or dealer or (2) a security which has been called for redemption and which is redeemable within 90 days.

(K) *Securities with a Limited Market.* In the case of securities (other than exempted securities, nonconvertible debt securities, and cumulative nonconvertible preferred stock) which are not: (*1*) traded on a national securities exchange; (2) designated as "OTC Margin Stock" pursuant to Regulation T under the Securities Exchange Act of 1934; (*3*) quoted on "NASDAQ"; or (*4*) redeemable shares of investment companies registered under the Investment Company Act of 1940, the deduction shall be as follows:

(*i*) in the case where there are regular quotations in an inter-dealer quotations system for the securities by three or more independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers to both buy and sell in reasonable quantities at stated prices, or where a ready market as defined in subdivision (c)(11)(ii) is deemed to exist, the deduction shall be determined in accordance with subdivision (J) above;

(*ii*) in the case where there are regular quotations in an inter-dealer quotations system for the securities by only one or two independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers both to buy and sell in reasonable quantities, at stated prices, the deduction on both the long and short position shall be 40 percent.

(L) Where a broker or dealer demonstrates that there is sufficient liquidity for any securities long or short in the proprietary or other accounts of the broker or dealer which are subject to a deduction required by subdivision (K) above, such deduction, upon a proper showing to the Examining Authority for the broker or dealer, may be appropriately decreased, but in no case shall such deduction be less than that prescribed in subdivision (J) above.

(M) *Undue Concentration.* In the case of money market instruments or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an insurer (other than "exempted securities"), which are long or short in the proprietary or other accounts of a broker or dealer, including securities which are collateral to secured demand notes defined in Appendix (D) (17 CFR 240.15c3–1d), for more than 11 business days and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of subparagraph (c)(2)(vi) or Appendix (A) (17 CFR 240.15c3–1a), there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in Appendix (D) (17 CFR 240.15c3–1d), equal to 50 percent of the percentage deduction otherwise provided by this subparagraph (c)(2)(vi) or Appendix (A) (17 CFR 240.15c3–1a), on that portion of the securities position in excess of 10% of the "net capital" of the broker or dealer before the application of subparagraph (c)(2)(vi) and Appendix (A) (17 CFR 240.15c3–1a). This provision shall apply notwithstanding any long or short position exemption provided for in subdivision (I) or (J) of this subparagraph (except for long or short position exemptions arising out of the first proviso to subdivision (c)(2)(vi)(J)) and the deduction on any such exempted position shall be 15% of that portion of the securities position in excess of 10% of net capital before the application of subparagraph (c)(2)(vi) and Appendix (A) (17 CFR 240.15c3–1a). Provided, that such additional deduction shall be applied in the case of equity securities only on the market value in excess of $10,000 or the market value of 500 shares, whichever is greater, or $25,000 in the case of a debt security. Provided, further, that any specialist which is subject to a deduction required by this subdivison (M), respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialists' specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in subdivision (J) above be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application.

(vii) *Non-Marketable Securities.* Deducting 100 percent of the carrying value in the case of securities in the proprietary or other accounts of the broker or dealer, for which there is no ready market, as defined in subparagraph (c)(11), and securities, in the proprietary or other accounts of the broker or dealer, which cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions.

(viii) *Open Contractual Commitments.* Deducting, in the case of a broker or dealer who has open contractual commitments (other than those option positions subject to Appendix (A) (17 CFR 240.15c3–1a)) the respective deductions as specified in subdivision (c)(2)(vi) of this paragraph or Appendix (B) (17 CFR 240.15c3–1b) from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer. In the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, the percentage deduction for contractual commitments in those securities which are treated in subdivision (f)(3)(ii) shall be 30%. Provided, that the deduction with respect to any single commitment shall be reduced by the unrealized profit, in an amount not greater than the deduction provided for by this section (or increased by the unrealized loss), in such commitment, and that in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) *Aged Fails to Deliver.* Deducting from the contract value of each failed to deliver contract which is outstanding 11 business days or longer the percentages of the market value of the underlying security which would be required by application of the deduction required by subparagraph (c)(2)(vi) or, where appropriate, paragraph (f) of this section. Provided, that such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the fail but not to exceed the amount of such deduction. Provided, however, that until January 1, 1977, the deduction provided for herein shall be applied only to those fail to deliver contracts which are outstanding 15 business days or longer.

(x) *Brokers or Dealers Carrying Accounts of Option Specialists.* With respect to any transactions in options listed on a registered national securities exchange or facility of a registered national securities association for which a broker or dealer acts as a guarantor, endorser, or carrying broker or dealer for options purchased or written by a specialist not subject to the provisions of this section, such broker or dealer shall adjust its net capital by deducting, for each class of option contracts in which such specialist is a market-maker, an amount equal to 130 percent of the market value of each option contract in a short position. Provided, however, in the case of long and short positions in option contracts for the same underlying security the deduction shall be the greater of (A) 30 percent of the market value of such long

positions or (B) 130 percent of the market value of the short positions less 70 percent of the market value of the long positions, less the amount of any equity as defined in paragraph (c)(13) in such specialist's account. Provided, that in no event shall this provision result in increasing the net capital of such guarantor, endorser, or carrying broker or dealer.

(xi) *Registered Traders in Options.* With respect to any broker or dealer who acts as a guarantor, endorser, or carrying broker or dealer for any registered trader who does not transact a business in securities with other than members, brokers, or dealers and who is subject to the provisions of this section, who has continuing market responsibilities for transactions in options listed on a registered national securities exchange or facility of a registered national securities association, deducting, for all options listed on the exchange or facility on which he has pursuant to the rules of that exchange or facility continuing market responsibilities, 130 percent of the market value of each option contract in a short position. Provided, however, in the case of long and short positions in option contracts for the same underlying security, the deduction shall be the greater of (A) 30 percent of the market value of such long positions or (B) 130 percent of the market value of short positions less 70 percent of the market value of long positions, less the amount of any equity as defined in subparagraph (c)(13) in such registered traders account. Provided, further, that in no event shall this provision result in increasing the net capital of such guarantor, endorser, or carrying broker or dealer.

(xii) *Deduction From Net Worth for Certain Undermargined Accounts.* Deducting the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the Examining Authority for the broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less.

(xiii) *Deduction From Net Worth for Indebtedness Collateralized by Exempted Securities.* Deducting, at the option of the broker or dealer, in lieu of including such amounts in aggregate indebtedness, 4 percent of the amount of any indebtedness secured by exempted securities not carried long in the proprietary or other accounts of the broker or dealer or representing exempted securities failed to deliver.

EXEMPTED SECURITIES

(3) The term "exempted securities" shall mean those securities deemed exempted securities by section 3(a)(12) of the Securities Exchange Act of 1934 and rules thereunder.

CONTRACTUAL COMMITMENTS

(4) The term "contractual commitments" shall include underwriting, when issued, when distributed and delayed delivery contracts, the writing or endorsement of puts and calls and combinations thereof, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures. A series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

ADEQUATELY SECURED

(5) Indebtedness shall be deemed to be adequately secured within the meaning of this section when the excess of the market value of the collateral over the amount of the indebtedness is sufficient to make the loan acceptable as a fully secured loan to banks regularly making secured loans to brokers or dealers.

CUSTOMER

(6) The term "customer" shall mean any person from whom, or on whose behalf, a broker or dealer has received, acquired or holds funds or securities for the account of such person, but shall not include a broker or dealer, or a general, special or limited partner or director or officer of the broker or dealer, or any person to the extent that such person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer. Provided, however, that the term "customer" shall also include a broker or dealer, but only insofar as such broker or dealer maintains a special omnibus account carried with another broker or dealer in compliance with 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934.

NON-CUSTOMER

(7) The term "non-customer" means a broker or dealer, general partner, limited partner, officer, director and persons to the extent their claims are subordinated to the claims of creditors of the broker or dealer.

MARKET MAKER

(8) The term "market maker" shall mean a dealer who, with respect to a particular security, (i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and, (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.

PROMPTLY TRANSMIT AND DELIVER

(9) A broker or dealer is deemed to "promptly transmit" all funds and to "promptly deliver" all securities within the meaning of subparagraphs (a)(2)(v) and (a)(3) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities. Provided, however, that such prompt transmission or delivery shall not be required to be effected prior to the settlement date for such transactions.

FORWARD AND PROMPTLY FORWARD

(10) A broker or dealer is deemed to "forward" or "promptly forward" funds or securities within the meaning of subdivisions (i) through (vi) of subparagraph (a)(2) only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

READY MARKET

(11) (i) The term "ready market" shall include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

(ii) A "ready market" shall also be deemed to exist where securities have been accepted as collateral for a loan by a bank as defined in Section 3(a)(6) of the Securities Exchange Act of 1934 and where the broker or dealer demonstrates to its Examining Authority that such securities adequately secure such loans as that term is defined in subparagraph (c)(5) of this section.

EXAMINING AUTHORITY

(12) The term "Examining Authority" of a broker or dealer shall mean for the purposes of 17 CFR 240.15c3-1 and 240.-15c3-1a-d the national securities exchange or national securities association of which the broker or dealer is a member or, if the broker or dealer is a member of more than one such self-regulatory organization, the organization designated by the Commission as the Examining Authority for such broker or dealer, or if the broker or dealer is not a member of any such self-regulatory organization, the Regional Office of the Commission where such broker or dealer has its principal place of business.

EQUITY

(13) For purposes of subparagraphs (c)(2)(x) and (xi), equity shall be computed by adding the credit balance (if any) in the account to the current market value of all securities (including listed options) carried long in the accounts specified in subparagraphs (c)(2)(x) and (xi) and deducting the debit balance (if any) in the account and the current market value of all securities (including listed options) carried short in such accounts.

(d) *Debt-Equity Requirements.* No broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements (other than such agreements which qualify under this paragraph (d) as equity capital) to exceed 70 percent of its debt-equity total, as hereinafter defined, for a period in excess of 90 days or for such longer period which the Commission

may, upon application of the broker or dealer, grant in the public interest or for the protection of investors. In the case of a corporation, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss or other capital accounts. In the case of a partnership, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of partners (exclusive of such partners' securities accounts) subject to the provisions of paragraph (e) of this section, and unrealized profit and loss. In the case of a sole proprietorship, the debt-equity total shall include the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of the sole proprietorship and unrealized profit and loss. *Provided, however,* That a satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least three years and has a remaining term of not less than 12 months shall be considered equity for the purposes of this paragraph (d) if: (1) it does not have any of the provisions for accelerated maturity provided for by subparagraphs (b)(9)(i), (b)(10)(i) or (b)(10)(ii) of Appendix (D) (17 CFR 240.15c3-1d) and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section or (2) the partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3-1d) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section.

(e) *Limitation on Withdrawal of Equity Capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix (C) (17 CFR 240.15c3-1c) whether in the form of capital contributions by partners (excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix (D) (17 CFR 240.15c3-1d)) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either aggregate indebtedness of any of the consolidated entities exceeds 1000 per centum of its net capital or its net capital would fail to equal 120 per centum of the minimum dollar amount required thereby or would be less than 7 percent of aggregate debit items computed in accordance with 17 CFR 240. 15c3-3a, or in the case of any broker or dealer included within such consolidation if the total outstanding principal amounts of satisfactory subordination agreements of the broker or dealer (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70 percent of the debt-equity total as defined in paragraph (d). Provided, that this provision shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(f) *Alternative Net Capital Requirement.* (1) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934 pursuant to subparagraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in subparagraph (c)(1) of this section and certain deductions provided for in subparagraph (c)(2) of this section. Provided, that in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of $100,000 or 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3 (17 CFR 240.15c3-3a) and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business in writing of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to the provisions of this paragraph (f), he shall continue to do so unless a change in such election is approved upon application to the Commission.

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix (C) [17 CFR 240.15c3-1c], such broker's or dealer's minimum net capital requirements shall be the sum of the greater of $100,000 or 4 percent of the parent broker's or dealer's aggregate debit items computed in accordance with 17 CFR 240.15c3-3a and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be the greater of $100,000 or 4 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3-3a. Where the subsidiary which has been consolidated has not elected to operate pursuant to paragraph (f), its minimum net capital requirement is the greater of its requirements under paragraph (a) of this section or 6⅔ percent of its aggregate indebtedness.

(3) A broker or dealer electing to operate pursuant to this paragraph (f) shall be subject to the deductions set forth in subparagraph (c)(2) of this section, except that he shall not be subject to the deductions required by subparagraphs (c)(2)(vi)(G), (c)(2)(vi)(J), (c)(2)(vi)(K)(i), and (c)(2)(vi)(M) and shall in lieu thereof deduct the following amounts under subparagraph (c)(2) in its computation of net capital:

(i) *Convertible Debt Securities.* In the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deduction shall be as follows: If the market value is 100 percent or more of its principal amount, the deduction shall be determined as specified in (ii) below; if the market value is less than its principal amount the deduction shall be determined as in subdivision (c)(2)(vi)(F) of this section if such securities are rated as required by subdivision (c)(2)(vi)(F);

(ii) *Other Securities.* In the case of all securities, except as provided in Appendix (A) (17 CFR 240.15c3-1a) which are not included in any of the percentage categories specifically enumerated in subdivisions (A)-(H) or (K)(ii) of subparagraph (c)(2)(vi) of this section, the deduction shall be 15 percent of the market value of the long positions. To the extent the market value of short positions exceeds 25 percent of the market value of long positions, there shall be a percentage deduction equal to 30 percent of the market value of such excess. Provided, that no deduction need be made in the case of (A), a security which is convertible into or exchangeable for other securities within a period of 90 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable are short in the account of such broker or dealer or (B) a security which has been called for redemption and which is redeemable within 90 days. Provided, further, that at the option of the broker or dealer, securities described in subdivision (c)(2)(vi)(I) of this section may be included in the computation of the deductions under this subdivision (f)(3)(ii) if a lesser deduction would result.

(iii) *Undue Concentrations.* In the case of money market instruments, or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempted securities"), and securities underwritten (in which case the deduction provided for herein shall be applied after 11 business days) which are long or short in the proprietary or other accounts of a broker or dealer and which have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of subparagraphs (c)(2)(vi), (f)(3) or Appendix (A) (17 CFR 240.-15c3-1a) there shall be an additional deduction from net worth equal to 50 percent of the percentage deduction otherwise provided by this section or Appendix (A) (17 CFR 240.15c3-1a) (in the case of securities described in subparagraph

(f)(3)(i) which receive a 30% deduction or securities described in subparagraph (f)(3)(ii) the deduction required by this subdivision (f)(3)(iii) shall be 15%) on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of subparagraphs (c)(2)(vi), (f)(3)(i) and (ii) and Appendix (A) (17 CFR 240.15c3-1a). This provision shall apply notwithstanding any long or short position exemption provided for in subparagraphs (c)(2)(vi)(I) or (f)(3)(ii) (except for a long or short position exemption arising out of the first proviso to subparagraph (f)(3)(ii)) and the deduction on any such exempted position shall be 15% of that portion of the position in excess of 10% of net capital before the application of subparagraph (c)(2)(vi), subparagraphs (f)(3)(i) and (ii) and Appendix (A) (17 CFR 240.15c3-1a). Provided, however, that any specialist who is subject to a deduction required by this subdivision (f)(3)(iii) respecting his specialty stock, who can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors may on a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased but in no case shall the deduction prescribed in subdivision (f)(3)(ii) above be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this subdivision, which shall contain a summary of the justification for the granting of the application.

(4) In the case of any deductions for open contractual commitments provided for in subparagraph (c)(2)(viii) of this section, the deduction for securities which are described in subparagraph (f)(2)(ii) shall be 30 percent.

(5) In addition to the foregoing, brokers or dealers electing this alternative shall:

(i) make the computation required by 17 CFR 240.15.3-3(e) and set forth in Exhibit A (17 CFR 240.15c3-3a) on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note B(2) in the computation of their Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(ii) include in Items 7 and 8 of Exhibit A (17 CFR 240.15c3-3a) the market value of items specified therein over 7 business days old;

(iii) exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in subdivision (c)(2)(vi) (A) and (E) of this section and any related debit items from the Exhibit A requirement for three business days.

(g) *Transitional Provisions.* (1) On September 1, 1975 the provisions of paragraph (a) of this section and Appendix D (17 CFR 240.15c3-1d) shall be applicable to all brokers or dealers subject to the provisions of this section; provided, however, that until no later than January 1, 1976 the computation of aggregate indebtedness and net capital may continue to be computed pursuant to the respective capital rules to which the broker or dealer was subject prior to September 1, 1975.

(2) Each Examining Authority shall file with the Commission no later than July 31, 1975 a plan providing for the transition to the provisions of subparagraphs (c)(1) and (c)(2), paragraphs (d), (e) and (f) of this section and Appendices A, B and C (17 CFR 240.15c3-1a, 240.15c3-1b, and 240.15c3-1c) for those brokers or dealers for which it is the Examining Authority. Such plan shall set forth the steps such Examining Authority will be required to take (including but not limited to modifications of reporting and surveillance requirements and the education of both examiners and broker-dealers) in order to provide for the orderly transition to all provisions of this section and Appendices A-D (17 CFR 240.15c3-1a, 240.15c3-1b, 240.15c3-1c and 240.15c3-1d) no later than January 1, 1976 and such Examining Authority's program for accomplishing those steps.

### § 240.15c3-1a Options (Appendix A to 17 CFR 240.15c3-1).

(a) *Certain Definitions.* (1) The term "listed option" shall mean any option traded on a registered national securities exchange or facility of a registered national securities association.

(2) The term "unlisted option" shall mean any option not traded on a registered national securities exchange or facility of a registered national securities association.

(b) *Certain Adjustments to Net Worth For Listed Options Before Computing the Deductions Specified in (c) Below.* (1) The market value of short positions in listed options shall be added to net worth and the market value of any long positions in listed options, which relate to long or short securities positions or short positions in listed options, shall be deducted from net worth, and;

(2) the amount by which the market value of a short security position, which is related to a long listed call, exceeds the exercise value of such long call, or the amount by which the exercise value of a long listed put, which is related to a long security position, exceeds the market value of the long security, shall be added to net worth, and;

(3) the amount by which the market value of the underlying security would exceed the exercise value of the short listed call, or the amount by which the exercise value of a short listed put exceeds the market value of the underlying security, shall be deducted from net worth.

(c) *Deductions From Net Worth for Uncovered Options and Securities Positions in Which the Broker or Dealer Has Offsetting Option Positions.* Every broker or dealer shall in computing net capital pursuant to 17 CFR 240.15c3-1 deduct from net worth the percentages of all securities positions or options in the proprietary or other accounts of the broker or dealer specified below. However, where computing the deduction required for a security position as if the security position had no related option position and positions in options as if uncovered would result in a lesser deduction from net worth, the broker or dealer may compute such deductions separately.

(1) *Uncovered Calls.* Where a broker or dealer is short a call, deducting, after the adjustment provided for in paragraph (b) of this Appendix (A), 30 percent (or such other percentage required by subdivisions (A)-(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3-1) of the current market value of the security underlying such option reduced by any excess of the exercise value of the call over the current market value of the underlying security. Provided, that in no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

(2) *Uncovered Puts.* Where a broker or dealer is short a put, deducting, after the adjustment provided for in paragraph (b) of this Appendix (A), 30 percent (or such other percentage required by subdivisions (A)-(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3-1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. Provided, that in no event shall the deduction provided by this subparagraph be less than $250 for each option contract for 100 shares.

(3) *Covered Calls.* Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting, after the adjustments provided for in paragraph (b) of this Appendix (A), 30 percent (or such other percentage required by subdivisions (A)-(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3-1 or 15 percent where a broker or dealer operates pursuant to paragraph (f) of 17 CFR 240.15c3-1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. Provided, that no such reduction shall have the effect of increasing net capital.

(4) *Covered Puts.* Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting, after the adjustment provided for in paragraph (b) of this Appendix (A), 30 percent (or such other percentage required by subdivisions (A)-(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3-1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. Provided that no such reduction shall have the effect of increasing net capital.

(5) *Conversion Accounts.* Where a broker or dealer is long equivalent units

of the underlying security, long an unlisted put written or endorsed by a broker or dealer and short an unlisted call in his proprietary or other accounts, deducting 10 percent (or 50 percent of such other percentage required by subdivisions (A)–(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3–1 or 5 percent where a broker or dealer operates pursuant to paragraph (f) of 17 CFR 240.15c3–1) of the market value of the underlying security.

(6) Where a broker or dealer is short equivalent units of the underlying security, long an unlisted call written or endorsed by a broker or dealer and short an unlisted put in his proprietary or other accounts, deducting 10 percent (or 50 percent of such other percentage required by subdivisions (A)–(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3–1) of the market value of the underlying security.

(7) *Long Over-the-Counter Options.* Where a broker or dealer is long an unlisted put or call endorsed or written by a broker or dealer, deducting 30 percent (or such other percentage required by subdivisions (A)–(K) of subparagraph (c)(2)(vi) of 17 CFR 240.15c3–1 or 15 percent where a broker or dealer operates pursuant to paragraph (f) of 17 CFR 240.15c3–1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of 17 CFR 240.15c3–1.

(8) *Listed Options.* Where a broker or dealer is long listed options and there is no offsetting security position, deducting 30 percent of the market value of any net long positions in options in the same underlying security, with the same exercise price and the same expiration date. Where a broker or dealer has a net short position in an option in the same underlying security, with the same exercise price and the same expiration date and for which the broker or dealer does not have a related position in the underlying security or an option position otherwise provided for in this Appendix (A), the deduction shall be determined as provided in subparagraph (c) (1) or (2) of this Appendix (A).

(9) *Certain Security Positions with Offsetting Options.* Where a broker or dealer is long a security for which he is also long a listed put (such broker or dealer may in addition be short a call), deducting, after the adjustments provided in paragraph (b) of this Appendix (A), 30 percent (15 percent in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1) of the market value of the long security position not to exceed the amount by which the market value of equivalent units of the long security position exceeds the exercise value of the put. Provided, that if the exercise value of the put is equal to or exceeds the market value of equivalent units of the long security position, no percentage deduction shall be applied.

(10) Where a broker or dealer is short a security for which he is also long a listed call (such broker or dealer may in addition be short a put), deducting, after the adjustments provided in paragraph (b) of this Appendix (A), 30 percent of the market value of the short security position not to exceed the amount by which the exercise value of the long call exceeds the market value of equivalent units of the short security position. Provided, that if the exercise value of the call is less than or equal to the market value of equivalent units of the short security position no percentage deduction shall be applied.

(11) *Certain Spread Positions.* Where a broker or dealer is short a listed call and is also long a listed call in the same class of option contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after the adjustments required in paragraph (b) of this Appendix (A), shall be the amount by which the exercise value of the long call exceeds the exercise value of the short call. Provided, that if the exercise value of the long call is less than or equal to the exercise value of the short call, no deduction is required.

(12) Where a broker or dealer is short a listed put and is also long a listed put in the same class of option contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after the adjustments required in paragraph (b) of this Appendix (A), shall be the amount by which the exercise value of the short put exceeds the exercise value of the long put. Provided, that if the exercise value of the long put is equal to or greater than the exercise value of the short put, no deduction is required.

**§ 240.15c3–1b Deductions from net worth for certain commodities transactions (Appendix B to 17 CFR 240.15c3–1).**

(a) Every broker or dealer in computing net capital pursuant to 17 CFR 240.15c3–1 shall:

(1) Deduct 30 percent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads and straddles in the same commodity and those offsetting or hedging any "spot" commodity positions) carried in the proprietary or other accounts of the broker or dealer.

(2) Deduct 30 percent of the market value of spot commodities long or short in the proprietary or other accounts of the broker or dealer and in customers' and non-customers' accounts liquidating to a deficit. Provided, that the deduction shall be 10 percent of the market value of the spot commodities to the extent they are hedged by future commodity contracts or forward spot commodity contracts in the same commodity.

(3) Deduct, after application of calls for margin, marks to market or other required deposits outstanding 5 business days or less, the total of credit lines granted by the broker or dealer in "trade" accounts with net long positions or in "trade" accounts with net short positions, whichever is greater, plus any credit lines granted on open commodity contracts in "trade" accounts with no net long or net short position. In computing the credit line granted in the case of each account, deduct the amount of the equity or deficit therein. Provided, that any deficit is deducted under other provisions of 17 CFR 240.15c3–1. For purposes of this subdivision "trade" accounts shall mean an account for a business entity which regularly is engaged in the importing or processing of the commodity or the by-products thereof for which the credit line is granted.

(4) Deduct the total amount by which the daily limit fluctuation of all future commodity contracts carried for a customer's and non-customer's account or accounts controlled by such persons exceeds 15 percent of the debt-equity total of the broker or dealer as defined in paragraph (d) of 17 CFR 240.15c3–1. Contracts in each customer's or non-customer's account representing purchases and sales of a like amount of the same commodity in the same market may be eliminated. The daily limit fluctuations for future contracts effected in foreign markets are to be considered the same as if such contracts had been effected in a domestic market.

(5) Deduct exclusive of liquidating deficits deducted under other provisions of 17 CFR 240.15c3–1, the amount of cash required to provide margin on all future commodity contracts in customer's and non-customer's accounts equal to the amount necessary, after application of calls for margin, marks to market or other required deposits which are outstanding 5 business days or less, to restore the original margin required by the relevant commodity exchange, or the clearing house requirement, per contract, if the commodity exchange has no original margin requirement, when the original margin has been depleted by 50 percent.

(6) Deduct the amount of cash required to provide margin equal to 20 percent of the market value in each customer's and non-customer's account with equity, after application of calls for margin, marks to market or other required deposits outstanding 5 business days or less, when such account contains spot commodity positions, evidenced by warehouse receipts issued by a warehouse licensed by a commodity exchange, which are the result of a future contract tendered through an exchange within the last 90 days, and are not hedged by future contracts in the same commodity.

(7) Deduct the amount of cash required to provide margin equal to 10 percent of the market value in each customer's or non-customer's combined account with equity, after application of calls for margin, marks to the market or other required deposits outstanding 5 business days or less, when such account contains spot commodity positions evidenced by warehouse receipts issued by a warehouse licensed by a commodity exchange, which are the result of a future contract tendered through an exchange within the last 90 days and are hedged by future contracts in the same commodity.

(8) Deduct an amount equal to ½ percent of the market value of the total long or total short futures contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) in each commodity, whichever is greater, carried for all customers and non-customers.

(9) Deduct the debit balance in each customer's spot (cash) commodity account (i) other than the result of a tender made on a futures contract within the past 90 days and (ii) not evidenced by warehouse receipts issued by a warehouse licensed by a commodity exchange.

**§ 240.15c3–1c Consolidated Computations of Net Capital and Aggregate Indebtedness for Certain Subsidiaries and Affiliates (Appendix C to 17 CFR 240.15c3–1).**

(a) *Flow Through Capital Benefits.* Every broker or dealer in computing its net capital and aggregate indebtedness pursuant to 17 CFR 240.15c3–1 shall, subject to the provisions of paragraphs (b) and (d) of this Appendix, consolidate in a single computation assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes directly or indirectly the obligations or liabilities. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the broker or dealer may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (b) below.

(b) *Required Counsel Opinions.* (1) If the consolidation, provided for in (a) above, of any such subsidiary or affiliate results in the increase of the broker's or dealer's net capital and/or decrease in the broker's or dealer's ratio of aggregate indebtedness to net capital or increases the broker's or dealer's net capital and/or decreases the minimum net capital requirement called for by subparagraph (f)(1) of 17 CFR 240.15c3–1 and an opinion of counsel called for in subparagraph (b)(2) has not been obtained, such benefits shall not be recognized in the broker's or dealer's computation required by this section.

(2) Except as provided for in paragraph (b)(1) above, consolidation shall be permitted with respect to any subsidiaries or affiliates which are majority owned and controlled by the broker or dealer for which the broker or dealer can demonstrate to the satisfaction of the Commission, through the Examining Authority, by an opinion of counsel that the net asset values, or the portion thereof related to the parent's ownership interest in the subsidiary or affiliate may be caused by the broker or dealer or a trustee appointed pursuant to the Securities Investor Protection Act of 1970 or otherwise, to be distributed to the broker or dealer within 30 calendar days. Such opinion shall also set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholders, employees, litigants and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the Examining Authority by rule or interpretation may require. Such opinion shall be current and periodically renewed in connection with the broker's or dealer's annual audit pursuant to 17 CFR 240.17a–5 under the Securities Exchange Act of 1934 or upon any material change in circumstances.

(c) *Principles of Consolidation.* In preparing a consolidated computation of net capital and/or aggregate indebtedness pursuant to this section, the following minimum and non-exclusive requirements shall be observed:

(1) Consolidated net worth shall be reduced by the estimated amount of any tax reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(2) Liabilities of a consolidated subsidiary or affiliate which are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall not be added to consolidated net worth unless such subordination extends also to the claims of present or future creditors of the parent broker or dealer and all consolidated subsidiaries.

(3) Subordinated liabilities of a consolidated subsidiary or affiliate which are consolidated in accordance with subparagraph (c)(2) above may not be prepaid, repaid or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provisions of Appendix (D), 17 CFR 240.15c3–1d.

(4) Each broker or dealer included within the consolidation shall at all times be in compliance with the net capital requirement to which it is subject.

(d) *Certain Precluded Acts.* No broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of net capital and/or aggregate indebtedness pursuant to 17 CFR 240.15c3–1 or this Appendix (C), except as provided in paragraph (b)(1) above.

**§ 240.15c3–1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3–1).**

(a) *Introduction.* (1) This Appendix sets forth minimum and non-exclusive requirements for satisfactory subordination agreements (hereinafter "subordination agreement"). The Examining Authority may require or the broker or dealer may include such other provisions as deemed necessary or appropriate to the extent such provisions do not cause the subordination agreement to fail to meet the minimum requirements of this Appendix (D).

(2) *Certain Definitions.* For purposes of 17 CFR 240.15c3–1 and this Appendix (D):

(i) A subordination agreement may be either a subordinated loan agreement or a secured demand note agreement.

(ii) The term "subordinated loan agreement" shall mean the agreement or agreements evidencing or governing a subordinated borrowing of cash.

(iii) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the percentage deductions specified in subparagraph (c)(2)(vi) of 17 CFR 240.15c3–1.

(iv) The term "Payment Obligation" shall mean the obligation of a broker or dealer in respect to any subordination agreement (A) to repay cash loaned to the broker or dealer pursuant to a subordinated loan agreement or (B) to return a secured demand note contributed to the broker or dealer or reduce the unpaid principal amount thereof and to return cash or securities pledged as collateral to secure the secured demand note and (C) "Payment" shall mean the performance by a broker or dealer of a Payment Obligation.

(v) (A) The term "secured demand note agreement" shall mean an agreement (including the related secured demand note) evidencing or governing the contribution of a secured demand note to a broker or dealer and the pledge of securities and/or cash with the broker or dealer as collateral to secure payment of such secured demand note. The secured demand note agreement may provide that neither the lender, his heirs, executors, administrators or assigns shall be personally liable on such note and that in the event of default the broker or dealer shall look for payment of such note solely to the collateral then pledged to secure the same.

(B) The secured demand note shall be a promissory note executed by the lender and shall be payable on the demand of the broker or dealer to which it is contributed; provided, however, that the making of such demand may be conditioned upon the occurrence of any of certain events which are acceptable to the Commission and to the Examining Authority for such broker or dealer.

(C) If such note is not paid upon presentment and demand as provided for therein, the broker or dealer shall have the right to liquidate all or any part of the securities then pledged as collateral to secure payment of the same and to apply the net proceeds of such liquidation, together with any cash then included in the collateral, in payment of such note. Subject to the prior rights of the broker or dealer as pledgee, the lender, as defined herein, may retain ownership of the collateral and have the benefit of any increases and bear the risks of any decreases in the value of the collateral and may retain the right to vote securities contained within the collateral and any right to income therefrom or distributions thereon, except the broker or

dealer shall have the right to receive and hold as pledgee all dividends payable in securities and all partial and complete liquidating dividends.

(D) Subject to the prior rights of the broker or dealer as pledgee, the lender may have the right to direct the sale of any securities included in the collateral, to direct the purchase of securities with any cash included therein, to withdraw excess collateral or to substitute cash or other securities as collateral, provided that the net proceeds of any such sale and the cash so substituted and the securities so purchased or substituted are held by the broker or dealer, as pledgee, and are included within the collateral to secure payment of the secured demand note, and provided further that no such transaction shall be permitted if, after giving effect thereto, the sum of the amount of any cash, plus the Collateral Value of the securities, then pledged as collateral to secure the secured demand note would be less than the unpaid principal amount of the secured demand note.

(E) Upon payment by the lender, as distinguished from a reduction by the lender which is provided for in subdivision (b)(6)(iii) or reduction by the broker or dealer as provided for in subparagraph (b)(7) of this Appendix (D), of all or any part of the unpaid principal amount of the secured demand note, a broker or dealer shall issue to the lender a subordinated loan agreement in the amount of such payment (or in the case of a broker or dealer that is a partnership credit a capital account of the lender) or issue preferred or common stock of the broker or dealer in the amount of such payment, or any combination of the foregoing, as provided for in the secured demand note agreement.

(F) The term "lender" shall mean the person who lends cash to a broker or dealer pursuant to a subordinated loan agreement and the person who contributes a secured demand note to a broker or dealer pursuant to a secured demand note agreement.

(b) *Minimum Requirements for Subordination Agreements.* (1) Subject to paragraph (a) above, a subordination agreement shall mean a written agreement between the broker or dealer and the lender, which (i) has a minimum term of one year, except for temporary subordination agreements provided for in subparagraph (c)(5) of this Appendix (D), and (ii) is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws) against the broker or dealer and the lender and their respective heirs, executors, administrators, successors and assigns.

(2) *Specific Amount.* All subordination agreements shall be for a specific dollar amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this Appendix (D).

(3) *Effective Subordination.* The subordination agreement shall effectively subordinate any right of the lender to receive any Payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the broker or dealer arising out of any matter occurring prior to the date on which the related Payment Obligation matures consistent with the provisions of 17 CFR 240.15c3-1 and 240.-15c3-1d, except for claims which are the subject of subordination agreements which rank on the same priority as or junior to the claim of the lender under such subordination agreements.

(4) *Proceeds of Subordinated Loan Agreements.* The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with by the broker or dealer as part of its capital and shall be subject to the risks of the business.

(5) *Certain Rights of the Broker or Dealer.* The subordination agreement shall provide that the broker or dealer shall have the right to:

(i) Deposit any cash proceeds of a subordinated loan agreement and any cash pledged as collateral to secure a secured demand note in an account or accounts in its own name in any bank or trust company;

(ii) Pledge, repledge, hypothecate and rehypothecate, any or all of the securities pledged as collateral to secure a secured demand note, without notice, separately or in common with other securities or property for the purpose of securing any indebtedness of the broker or dealer; and

(iii) Lend to itself or others any or all of the securities and cash pledged as collateral to secure a secured demand note.

(6) *Collateral for Secured Demand Notes.* Only cash and securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note. The secured demand note agreement shall provide that if at any time the sum of the amount of any cash, plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of the secured demand note, the broker or dealer must immediately transmit written notice to that effect to the lender and the Examining Authority for such broker or dealer. The secured demand note agreement shall also require that following such transmittal:

(i) The lender, prior to noon of the business day next succeeding the transmittal of such notice, may pledge as collateral additional cash or securities sufficient, after giving effect to such pledge, to bring the sum of the amount of any cash plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note, up to an amount not less than the unpaid principal amount of the secured demand note; and

(ii) Unless additional cash or securities are pledged by the lender as provided in (i) above, the broker or dealer at noon on the business day next succeeding the transmittal of notice to the lender must commence sale, for the account of the lender, of such of the securities then pledged as collateral to secure the secured demand note and apply so much of the net proceeds thereof, together with such of the cash then pledged as collateral to secure the secured demand note as may be necessary to eliminate the unpaid principal amount of the secured demand note; provided, however, that the unpaid principal amount of the secured demand note need not be reduced below the sum of the amount of any remaining cash, plus the Collateral Value of the remaining securities, then pledged as collateral to secure the secured demand note. The broker or dealer may not purchase for its own account any securities subject to such a sale.

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by (ii) above, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. Provided, that after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 per centum of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3-1, net capital would not be less than 7% of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a. Provided, further, that no single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3-1.

(7) *Permissive Prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective; provided, however, that the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of subparagraph (c)(5) of this Appendix (D). No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other

subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 per centum of its net capital or its net capital would be less than 120 per centum of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 7% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or its net capital would be less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

(8) *Suspended Repayment.* (i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200 per centum of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 including paragraph (f), if applicable. Provided, that the subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this subparagraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(ii) Whenever a subordination agreement provides that a broker or dealer shall commence a rapid and orderly liquidation, as permitted in (i) above, the date on which the liquidation commences shall be the maturity date for each subordination agreement of the broker or dealer then outstanding, but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(9) *Accelerated Maturity-Obligation to Repay to Remain Subordinate.* (i) Subject to the provisions of subparagraph (b)(8) of this Appendix, a subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Examining Authority given not earlier than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after the giving of such notice, but the right of the lender to receive Payment, together with accured interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(ii) Notwithstanding the provisions of subparagraph (b)(8) of this Appendix, the Payment Obligation of the broker or dealer with respect to a subordination agreement, together with accured interest and compensation, shall mature in the event of any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the broker or dealer but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(10)(i) *Accelerated Maturity of Subordination Agreements on Event of Default and Event of Acceleration—Obligation to Repay to Remain Subordinate.* A subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Examining Authority of the broker or dealer of the occurrence of any Event of Acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the broker or dealer and the Examining Authority for the broker or dealer. Any subordination agreement containing such Events of Acceleration may also provide, that if upon such accelerated maturity date the Payment Obligation of the broker or dealer is suspended as required by subparagraph (b)(8) of this Appendix (D) and liquidation of the broker or dealer has not commenced on or prior to such accelerated maturity date, then notwithstanding subparagraph (b)(8) of this Appendix the Payment Obligation of the broker or dealer with respect to such subordination agreement shall mature on the day immediately following such accelerated maturity date and in any such event the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Acceleration which may be included in a subordination agreement complying with this subparagraph (b)(10) shall be limited to:

(A) Failure to pay interest or any installment of principal on a subordination agreement as scheduled;

(B) Failure to pay when due other money obligations of a specified material amount;

(C) Discovery that any material, specified representation or warranty of the broker or dealer which is included in the subordination agreement and on which the subordination agreement was based or continued was inaccurate in a material respect at the time made;

(D) Any specified and clearly measurable event which is included in the subordination agreement and which the lender and the broker or dealer agree (1) is a significant indication that the financial position of the broker or dealer has changed materially and adversely from agreed upon specified norms or (2) could materially and adversely affect the ability of the broker or dealer to conduct its business as conducted on the date the subordination agreement was made; or (3) is a significant change in the senior management of the broker or dealer or in the general business conducted by the broker or dealer from that which obtained on the date the subordination agreement became effective;

(E) Any continued failure to perform agreed covenants included in the subordination agreement relating to the conduct of the business of the broker or dealer or relating to the maintenance and reporting of its financial position; and

(ii) Notwithstanding the provisions of subparagraph (b)(8) of this Appendix, a subordination agreement may provide that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commenced, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. Any subordination agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the broker or dealer has not already commenced, be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then out-

standing shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Default which may be included in a subordination agreement shall be limited to:

(A) the making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the broker or dealer are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the broker or dealer to obtain the dismissal of such application within 30 days;

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 per centum of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than 4% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

(C) The Commission shall revoke the registration of the broker or dealer;

(D) The Examining Authority shall suspend (and not reinstate within 10 days) or revoke the broker's or dealer's status as a member thereof;

(E) Any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the broker or dealer.

A subordination agreement which contains any of the provisions permitted by this subparagraph (b)(10) shall not contain the provision otherwise permitted by clause (i) of subparagraph (b)(9).

(c) *Miscellaneous Provisions*—(1) *Prohibited Cancellation.* The subordination agreement shall not be subject to cancellation by either party; no Payment shall be made with respect thereto and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of 17 CFR 240.15c3–1 and 240.15c3–1d.

(2) *Notice of Maturity or Accelerated Maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200 percentum of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1.

(3) *Certain Legends.* If all the provisions of a satisfactory subordination agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

(4) *Legal Title to Securities.* All securities pledged as collateral to secure a secured demand note must be in bearer form, or registered in the name of the broker or dealer or the name of its nominee or custodian.

(5) *Temporary Subordinations.* For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. Provided, that this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer exceeds 1000 per centum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or (ii) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than 7 percent of aggregate debits computed in accordance with 17 CFR 240.15c3–3a or less than 120% of the minimum dollar amount required by paragraph (f), or (iii) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3–1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix.

(6) *Filing.* Two copies of any proposed subordination agreement (including nonconforming subordination agreements) shall be filed at least 10 days prior to the proposed execution date of the agreement with the Commission's Regional Office for the region in which the broker or dealer maintains its principal place of business or at such other time as the Regional Office for good cause shall accept such filing. Copies of the proposed agreement shall also be filed with the Examining Authority in such quantities and at such time as the Examining Authority may require. The broker or dealer shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the broker or dealer, and whether the broker or dealer carried funds or securities for the lender at or about the time the proposed agreement was so filed. All agreements shall be examined by the Commission's Regional Office or the Examining Authority with whom such agreement is required to be filed prior to their becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the Examining Authority has found the agreement acceptable and such agreement has become effective in the form found acceptable.

(7) *Subordination Agreements in Effect Prior to Adoption.* Any subordination agreement which has been entered into prior to September 1, 1975 and which has been deemed to be satisfactorily subordinated pursuant to 17 CFR 240.15c3–1 as in effect prior to September 1, 1975 or net capital rules of a registered national securities exchange, the members of which previously had been exempted from 17 CFR 240.15c3–1, shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. Provided, that no renewal of an agreement which provides for automatic or optional renewal by the broker or dealer or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this Appendix within 6 months from September 1, 1975. Provided, further, that all subordination agreements must meet the requirements of this Appendix within 5 years of September 1, 1975.

(Sec. 15, 48 Stat. 895; 15 USC 780)

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS, *Secretary.*

[FR Doc.75-18325 Filed 7-15-75;8:45 am]

---

## Title 5—Administrative Personnel

## CHAPTER I—CIVIL SERVICE COMMISSION

## PART 213—EXCEPTED SERVICE

### Department of Commerce

Section 213.3314 is amended to show that one position of Confidential Assistant to the Administrator National Fire Prevention and Control Administration, is excepted under Schedule C.

Effective on July 16, 1975, § 213.3314 (u) is added as set out below.

* * * * *

§ 213.3314 Department of Commerce.

(u) *National Fire Prevention and Control Administration.* (1) One Confidential Assistant to the Administrator.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.75-18360 Filed 7-15-75;8:45 am]

## PART 213—EXCEPTED SERVICE

### Consumer Product Safety Commission

Section 213.3360 is amended to show that one position of Director of Congressional Relations is excepted under Schedule C.

Effective on July 16, 1975, § 213.3360 (d) is added as set out below:

§ 213.3360. **Consumer Product Safety Commission.**

* * * * *

(d) Director of Congressional Relations.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.75-18361 Filed 7-15-75;8:45 am]

## PART 213—EXCEPTED SERVICE

### Department of Housing and Urban Development

Section 213.3384 is amended to show that one position of Special Assistant to the General Manager, Community Development Corporation, is excepted under Schedule C.

Effective on July 16, 1975, § 213.3384 (j)(3) is added as set out below:

§ 213.3384 **Department of Housing and Urban Development.**

* * * * *

(j) *Community Development Corporation.* * * *

(3) One Special Assistant to the General Manager.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
*Executive Assistant to the Commissioners.*

[FR Doc.75-18359 Filed 7-15-75;8:45 am]

## Title 7—Agriculture

## CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Avocado Reg. 17, Amdt. 4]

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

### Maturity Requirements

This amendment revises the maturity requirements for the Pollock and Simmonds varieties of avocados. Weights or diameters and picking dates are indices used at harvest to assure that avocados are mature and will ripen satisfactorily after picking.

*Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation of the Avocado Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the maturity requirements for the handling of avocados, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for the amendment stems from the current avocado crop maturity situation. Maturity studies on the specified varieties completed recently indicate that avocados of such varieties are now mature at the hereinafter specified dates, minimum weights, or diameters.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of avocados.

*Order.* The provisions of subparagraph (a)(2) of § 915.317 (Avocado Regulation 17; 40 F.R. 24006; 26501; 28048; 29068) are amended by revising in Table I dates, minimum weights, or diameters applicable to the Pollock and Simmonds varieties so that after such revision the portion of Table I relating to such varieties of avocados reads as follows:

| Variety | Date | Minimum weight or diameter | Date | Minimum weight or diameter | Date | Minimum weight or diameter | Date |
|---|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) |
| Pollock | 7-7-75 | 18 oz 3 1/16 in | 7-14-75 | 16 oz 3 5/16 in | 8-4-75 | | |
| Simmonds | 7-7-75 | 16 oz 3 5/16 in | 7-14-75 | 14 oz 3 7/16 in | 8-4-75 | | |

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

Dated, July 11, 1975, to become effective July 14, 1975.

CHARLES R. BRADER,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.75-18460 Filed 7-15-75;8:45 am]

[Avocado Reg. 23, Amdt. 1]

## PART 944—FRUITS; IMPORT REGULATIONS

### Pollock Avocados; Maturity Requirements

This amendment revises the maturity requirements applicable to imported avocados of the Pollock variety. It permits the importation of such avocados at specified weights or diameters a week earlier than is now permitted. The requirements are the same as those applicable to avocados produced in south Florida and regulated pursuant to Marketing Order 915.

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the provisions of paragraph (a)(2) of § 944.15 (Avocado Regulation 23; 40 F.R. 24008) are hereby amended to read as follows:

§ 944.15 **Avocado Regulation 23.**

(a) * * *

* * * * *

(2) Avocados of the Pollock variety shall not be imported (i) prior to July 7, 1975; (ii) from July 7, 1975, through July 13, 1975, unless the individual fruit in each lot of such avocados weighs at least 18 ounces or measures at least 3 11/16 inches in diameter; and (iii) from July 14, 1975, through August 4, 1975, unless the individual fruit in each lot of such avocados weighs at least 16 ounces or measures at least 3 5/16 inches in diameter.

* * * * *

It is hereby found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective time of this regulation beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) the maturity requirements of this amended import regulation are the same as those to be in effect beginning July 14, 1975, on domestic shipments of avocados grown in south Florida under Avocado Regulation 17, Amendment 4 (§ 915.317); and (c) this amendment relieves restrictions on imports of avocados.

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

Dated July 11, 1975, to become effective July 14, 1975.

CHARLES R. BRADER,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.75-18461 Filed 7-15-75;8:45 am]

## CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

## PART 1438—NAVAL STORES

### 1975 Gum Naval Stores Loan Program

These regulations supersede the Gum Naval Stores Price Support Regulations for 1969 and Subsequent Crops (34 FR 3595) with respect to the Gum Naval Stores Loan Program for 1975 and Subsequent Crops. It is found and determined that compliance with the procedure for notice of proposed rulemaking and public participation would be impracticable and contrary to the public interest. As the market price for crude pine gum has substantially declined and the 1975 program is being reinstated at the request of producers, it is essential that detailed operating provisions of the program be put into effect on the earliest possible date. Accordingly, the regulations are revised as follows:

Sec.
1438.1636 General statement and administration.
1438.1637 Definitions.
1438.1638 Loan to ATFA
1438.1639 Advances to producers.
1438.1640 Rate of advance to producers.
1438.1641 Maturity of loan.
1438.1642 Redemption by ATFA.
1438.1643 Net gains.
1438.1644 Right of CCC upon maturity.
1438.1645 Personal liability.

AUTHORITY: (Sec. 4 (d), 62 Stat. 1070 (15 U.S.C. 714b); sec. 5 (a), 62 Stat. 1072 (15 U.S.C. 714c); and secs. 301, 401, 63 Stat. 1053, 1054 (7 U.S.C. 1421, 1447)).

### § 1438.1636 General statement and administration.

CCC will make loans available to producers of gum naval stores during the calendar year 1975 through the American Turpentine Farmers Association Cooperative (hereinafter referred to as ATFA), under the terms and conditions described in these regulations. The Grains, Oilseeds and Cotton Division, ASCS will supervise the administration of the program and the ASCS Data Systems Field Office (DSFO) will perform the accounting functions.

### § 1438.1637 Definitions.

(a) "Eligible producer" means a producer who (1) is a member of ATFA in good standing under membership requirements approved by CCC (no producer who is otherwise eligible may be excluded from membership in ATFA), (2) follows one or more forestry conservation practices established by State and Federal Forestry services, as determined by ATFA, (3) has made satisfactory arrangements to pay any indebtedness to the U.S. Department of Agriculture or any of its agencies, as evidenced by the debt records maintained by the Agricultural Stabilization and Conservation County Committees of the U.S. Department of Agriculture, and (4) has executed, and has not breached his obligations under, the Producer's Marketing Agreement (ATFA Form 1-1975), or any other similar agreement.

(b) "Eligible naval stores" means eligible rosin and the rosin content in eligible oleoresin.

(c) "Eligible oleoresin" means oleoresin (1) which was produced in 1975 in the United States by an eligible producer, (2) which is free and clear from all liens and encumbrances, (3) the rosin content in which has not been previously pledged for a loan under this or any similar program, and in which the beneficial interest is and always has been in the producer, and (4) which will yield rosin of the grades and quality prescribed in paragraph (d) of this section.

(d) "Eligible rosin" means gum rosin which (1) was processed by the Olustee or a similar method from eligible oleoresin, (2) grades "K" or better, (3) is free and clear from all liens and encumbrances, (4) has not previously been pledged for a loan under this or any similar program, and in which the beneficial interest is and always has been in the producer: *Provided*, That, when a producer's eligible oleoresin was commingled in the processing operation with oleoresin produced in the United States by other producers, the rosin tendered for advance by the producer, as representing the processed equivalent of his eligible oleoresin, will be deemed to be, if otherwise eligible, eligible rosin produced by such producer, (5) is packed to a net weight of 517 pounds, in eligible metal drums, (6) is transparent, (7) is free from visible foreign materials and contains no extraneous matter resulting from chemical or other treatment of the rosin, or of the oleoresin or the trees from which it came, and (8) conforms as to softening point to not less than Federal Specifications LLL-R-626b, to wit: 158° Fahrenheit (American Society for Testing and Materials Method No. E-28-67). Rosin must be federally graded, inspected and weighed or the weights checked by Federal Inspectors employed or licensed by CCC.

(e) "Eligible metal drums" means drums conforming to the specifications for metal drums approved by CCC, obtainable from and on file in the office of ATFA.

### § 1438.1638 Loan to ATFA.

Under a Loan Agreement, CCC will make a loan to ATFA which will enable ATFA to make loan advances to eligible producers on eligible naval stores. As security for such loan, ATFA will pledge such naval stores to CCC. CCC has the right to establish a maximum aggregate disbursement at any time upon written notice to ATFA, but no such limitation shall apply with respect to naval stores tendered to ATFA by producers prior to such notice. The loan will be in an amount equal to (a) the amount of the loan advances made by ATFA to producers, except that the loan will be made only on full drums of eligible naval stores, (b) the administrative and operating expenses, approved by CCC, incurred by ATFA in making advances available to producers, and in the handling, preservation, and redemption of pledged naval stores and (c) storage charges or other charges on pledged naval stores up to the time of acquisition of title thereto by CCC. The loan by CCC to ATFA shall bear interest at the rate of six and one-eighth (6⅛) percent per annum or such other rate as may be determined applicable by CCC to 1975 loans.

### § 1438.1639 Advances to producers.

ATFA will make advances to eligible producers on eligible naval stores only when such naval stores have been (a) processed (except where CCC and ATFA determine that unprocessed rosin content in oleoresin may be offered for advance), (b) placed in storage in the custody of an approved warehouseman who has entered into and is fully complying with a Warehouse Agreement (ATFA Form 2—1975) with ATFA, or in the custody of ATFA acting under a Storage Agreement with CCC, and (c) offered for an advance on a Producer's Offer (ATFA Form 4), the date of which, unless a first offer and dated not later than September 1, 1975, shall be not later than thirty days from the date of delivery of eligible oleoresin to a processor, but in no event later than December 31, 1975, by the producer of the oleoresin, the rosin content of which or processed rosin from which has been so placed in storage. No warehouseman will be authorized to store pledged unprocessed rosin except upon approval by CCC of ATFA's written recommendation therefor and written demonstration by ATFA that there exists an immediate and substantial need for such storage. If there are any liens or encumbrances on the naval stores offered for advance, proper waivers are required on a Lienholders' Waiver and Agreement (ATFA Form 3). All processing charges, including the cost of the eligible metal drums for rosin, and all storage and other warehouse charges to the date of tender for advance, will be borne by the producer.

### § 1438.1640 Rate of advance to producers.

ATFA will make advances to eligible producers on eligible rosin or rosin content only, based on the support level of $61.30 per standard barrel (435 lbs. net weight each) of oleoresin (crude pine gum), processed basis. Although no advance is made on turpentine, an allowance is made for the estimated 1975 market value of the turpentine content in a barrel of oleoresin in determining the advance rate for rosin or rosin content. The loan rates on rosin are $16.00 for grade WG, $16.75 for grades X and WW, $15.60 for Grade N, $15.20 for grade M, and $14.75 for grade K, per hundred pounds net, packed in eligible metal drums. CCC reserves the right to reduce rosin loan rates if the actual turpentine market price during 1975, when added to

such rosin loan rates, results in a support level for crude pine gum in excess of 90 percent of parity. Also, CCC may increase or decrease grade premiums and discounts whenever market conditions warrant. ATFA will advance to any eligible producer on the basis of the applicable advance rates in effect on the date of the applicable Producer's Offer.

**§ 1438.1641. Maturity of loan.**

The loan made by CCC to ATFA will be due and payable upon demand.

**§ 1438.1642 Redemption by ATFA.**

ATFA's right to redeem naval stores pledged by ATFA to CCC shall be subject to the terms and conditions of the Loan Agreement and any amendments thereto. Redemption shall be made upon application to CCC therefor, prior to maturity of the loan, and upon payment of the redemption cost. The redemption cost will be determined by CCC and will be the amount outstanding under the Loan Agreement, including any unpaid accrued expenses and charges, plus interest applied ratably to the naval stores to be redeemed. Any naval stores redeemed will not be thereafter eligible for loan.

**§ 1438.1643 Net gains.**

ATFA will disburse in cash on a fair and equitable basis to participating producers all net gains, less cost of disbursements, resulting from ATFA's sale of redeemed naval stores, unless a disposition other than cash disbursement has been approved by CCC. For example, when net gains are insufficient to justify disbursement expense, ATFA may upon request to and approval of CCC, utilize such net gains for and in behalf of all of its producer-members.

**§ 1438.1644 Right of CCC upon maturity.**

Upon maturity and nonpayment of the loan, CCC will take title to any unredeemed naval stores, without a sale thereof, and CCC will have no obligation to pay or account to ATFA for any market value which such naval stores may have in excess of the amount of the loan, plus interest and charges.

**§ 1438.1645 Personal liability.**

Any fraudulent representation by ATFA or the producer in the program documents will render it or him subject to criminal prosecution under applicable law, and personally liable for the amount by which the proceeds received upon the disposition of the naval stores involved are less than the amount of indebtedness incurred by ATFA with respect to such naval stores.

*Effective date*: July 16, 1975.

Signed at Washington, D.C., on July 14, 1975.

E. J. PERSON,
*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc.75-18576 Filed 7-15-75;8:45 am]

## Title 14—Aeronautics and Space

## CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 74-SO-76; Amdt. 39-2263]

## PART 39—AIRWORTHINESS DIRECTIVE

### Grumman Model G-1159 Airplanes

Amendment 39-1920, (39 FR 28611), A.D. 74-17-05 requires the deactivation of the ground spoilers on the Grumman Model G-1159 airplanes. An additional means is needed to deactivate the ground spoilers other than as specified in the AD. A statement allowing the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region to approve other means of compliance is being added.

Since this amendment relieves a restriction and imposes no additional burden on any person, notice and public procedures hereon are unnecessary, and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697) § 39.13 of Part 39 of the Federal Aviation Regulations 39-1920 (39 FR 28611), A.D. 74-17-05 is amended.

Amend the fourth paragraph to read—"Compliance required within the next 10 hours' time in service after receipt of telegram dated July 17, 1974, unless already accomplished or noted otherwise. Any equivalent method of compliance with this AD must be approved by Chief, Engineering and Manufacturing Branch, FAA, Southern Region. Deactivate the ground spoilers by accomplishing the following:"

This amendment becomes effective on July 18, 1975.

This amendment is made under the authority of Sections 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Georgia on July 8, 1975.

P. M. SWATEK,
*Director, Southern Region, ASO-1.*

[FR Doc.75-18350 Filed 7-15-75;8:45 am]

---

[Docket No. 75-SO-68; Amdt. 39-2264]

## PART 39—AIRWORTHINESS DIRECTIVES

### Grumman American Model G-1159 Airplanes

There have been failures of the in-line hydraulic filters in the stall barrier system of the Model G-1159 airplanes that could result in the stick pusher remaining activated after the stall condition has been corrected. Portions of the filters may become lodged in the stall barrier valves such that hydraulic pressure cannot be relieved. If this condition were to occur in flight, it could require as much as a 75 pound pull initially by the pilot to maintain level flight. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require replacement of the two (2) in-line filters in the stall barrier system and to inspect the stall barrier valves and cylinder if the replaced filters are found not intact. In addition, a temporary operating limitation is being applied to prohibit intentional stalls. An AFM revision will provide an emergency procedure for landing with the stick pusher jammed in the activated position.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

GRUMMAN AMERICAN AVIATION CORPORATION. Applies to Model G-1159 airplanes, Serial Number 1 through 164 and 775.

Compliance required as indicated:

(1) Flight Manual. The emergency procedure set forth in Section A is effective upon receipt of this AD and must be incorporated in the Grumman Gulfstream II AFM, unless previously incorporated by Grumman Interim Revision 16-5 dated July 2, 1975.

(2) Operating Limitation. The limitation set forth in Section B is effective upon receipt of this AD. It must be incorporated in the Grumman Gulfstream II AFM and remains effective until Grumman American Service Change 199 has been accomplished.

(3) Replacement of stall barrier filters. Compliance with the filter change outlined in Section C is required within two hundred (200) flight hours, or three months, after the effective date of this AD, whichever occurs first.

A. Emergency Procedures—Page 3-21 under Stall Barrier Malfunction, after item 5, add:

If the stick pusher actuates in flight and cannot be deactivated using the above procedures, it is probable that a hydraulic malfunction has occurred in the stall barrier system. In this event, it will be necessary to continue the flight with the stall barrier actuated. The following procedures are recommended:

1. Cruise. With gear and flaps retracted, the airplane can be trimmed at airspeeds above approximately 200 knots. For maximum aircraft nose up trim, use the manual trim available beyond electric trim limit. The trim speed is reduced to a value below 200 knots when the flaps are extended.

The trim tab deflection necessary for a trimmed condition will increase drag and reduce range by a small but undetermined amount.

2. Approach and Landing. a. The airplane CG may be adjusted as far aft as practicable, without exceeding the aft CG limit, by moving baggage and passengers rearward.

b. Burn off fuel as required for a maximum landing gross weight of 46,000 pounds.

c. With flaps 20°, gear down, the airplane can be trimmed down to approximately 180 KIAS.

d. On final approach at 170 KIAS, lower gear and landing flaps and reduce speed to 165 KIAS. This will result in a stick force of approximately 12 lbs. pull. Maintain 165 KIAS on final approach. The approach at 165 kts. and 39° flaps will result in an attitude with the nose lower than normal. All other check list procedures are unchanged.

e. At approximately 100 ft. above ground level slowly reduce the power to idle. The airplane should be flown onto the runway with a slight flare to assure that the nose wheel will not touch first. Plan to touch down at approximately 150 KIAS. Apply maximum reverse thrust and brake as necessary. Stick force during flare and touchdown will increase to about 30 lbs. Care should be taken not to flare high, thereby using more runaway than necessary.

f. Due to the higher touchdown speed, the landing distances will be increased. The required runway length has not been determined, but landings have been made in less than 7,000 feet of runway by using maximum reverse thrust and light braking.

B. Limitations—Page 1-9. Under Stall Warning/Stall Barrier System add:

INTENTIONAL STALLS ARE PROHIBITED

C. To prevent the stall barrier stick pusher from remaining energized after actuation, due to portions of the hydraulic filters becoming lodged in the stall barrier valves, accomplish the following: Replace the stall barrier hydraulic in-line filters and inspect and leak check the stall barrier valves and cylinder if the replaced filters are determined to be not intact upon removal, according to Grumman American Service Change 199, or in an equivalent manner approved by the Chief, Engineering and Manufacturing Branch, Southern Region, Atlanta, Georgia.

This amendment becomes effective July 18, 1975.

This amendment is made under the authority of Sections 313(a), 601, and 603, of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Georgia on July 8, 1975.

P. M. SWATEK,
*Director, Southern Region.*

[FR Doc.75-18351 Filed 7-15-75;8:45 am]

---

[Docket No. 13995; Amdt. 39-2265]

## PART 39—AIRWORTHINESS DIRECTIVES

### Dowty Rotol Type (c) R212/4-30-4/22 Propellers

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections of Dowty Rotol Type (c) R212/4-30-4/22 propellers for cracks and their replacement if necessary was published in the FEDERAL REGISTER (39 FR 33233).

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received.

This amendment is made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR § 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

DOWTY ROTOL. Applies to Dowty Rotol Type (c) R212/4-30-4/22 propellers incorporating hub and driving center assemblies, P/N's 601022294, 601022211, 601022105, and RA 64883, that have not been modified in accordance with Dowty Rotol Modification Nos. (c) VP2388 (SB 61-604) or (c) VP2779 (SB 61-767). These propellers are installed on, but not necessarily limited to, Hawker Siddeley Model H.S. 748 Series 2A airplanes.

Compliance is required as indicated.

To detect cracking of the propeller hub front wall/snout radius areas between the eyebolt guides, accomplish the following:

(a) Inspect the propeller hubs in accordance with Paragraph 2.A. of Dowty Rotol Service Bulletin No. 61-828, dated September 10, 1973, or an FAA-approved equivalent as follows:

(1) For those operators required to perform propeller overhauls, inspect at the next propeller overhaul and at each propeller overhaul thereafter.

(2) For all other operators, inspect within the next 4000 hours' time in service after the effective date of this AD, and thereafter inspect at intervals not to exceed 4000 hours' time in service since last inspection.

(b) Inspect those propeller hubs that have accumulated more than 10,000 hours' time in service on the effective date of this AD in accordance with Paragraph 2.B. of Dowty Rotol Service Bulletin No. 61-828, dated September 10, 1973, or an FAA-approved equivalent, unless already accomplished, as follows:

(1) For those propeller hubs that have never been inspected or that have accumulated more than 1400 hours' time in service since last inspected in accordance with Paragraph 2.A. or 2.B. of Dowty Rotol Service Bulletin No. 61-828, dated September 10, 1973, inspect within the next 600 hours time in service.

(2) For those propeller hubs that have accumulated not more than 1400 hours' time in service since last inspected in accordance with Paragraph 2.A. or 2.B. of Dowty Rotol Service Bulletin No. 61-828, dated September 10, 1973, inspect prior to the accumulation of 2000 hours' time in service since last inspected.

(c) If a cracked hub is found during an inspection required by this AD, accomplish the following:

(1) Before further flight, replace the cracked hub with a serviceable part of the same part number or a part number approved for installation on the propeller.

(2) Inspect all the operator's propeller hubs covered by this AD in accordance with Paragraph 2.B. of Dowty Rotol Service Bulletin No. 61-828, dated September 10, 1973 or an FAA-approved equivalent as follows:

(i) For those propeller hubs that have accumulated more than 1400 hours' time in service since last inspected in accordance with paragraph (a) or (b) of this AD or that have never been inspected and have accumulated over 1400 hours' time in service, inspect within the next 600 hours' time in at intervals not to exceed 2,000 hours' time service; and, thereafter, continue to inspect in service since last inspection.

(ii) For those propeller hubs that have acumulated not more than 1400 hours' time in service since new or since last inspected in accordance with paragraph (a) or (b) of this AD, inspect prior to the accumulation of 2000 hours' time in service since last inspected or since new, as applicable, and thereafter, continue to inspect at intervals not to exceed 2000 hours' time in service since last inspection.

(d) The inspections required by paragraphs (a), (b), and (c) of this AD may be discontinued upon the incorporation of Dowty Rotol Modification Nos. (c) VP 2388(SB61-604) or (c) VP2779(SB61-767) or FAA-approved equivalent modifications.

(e) Upon request of an operator, an FAA maintenance inspector subject to prior approval of the Chief, Aircraft Certification Staff, Europe, Africa, and Middle East Region, may adjust the repetitive inspection intervals specified in this AD to permit compliance at an established inspection period of the operator, if the request contains substantiating data to justify the adjustment.

This amendment becomes effective August 15, 1975.

Issued in Washington, D.C. on July 9, 1975.

J. A. FERRARESE,
*Acting Director,*
*Flight Standards Service.*

[FR Doc.75-18352 Filed 7-15-75;8:45 am]

---

## Title 16—Commercial Practices

## CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

## PART 1031—EMPLOYEE MEMBERSHIP AND PARTICIPATION IN VOLUNTARY STANDARDS ORGANIZATIONS

### Promulgation of Policy; Correction

In FR Doc. 75-16103 appearing at page 26023 in the issue of June 20, 1975, the first sentence of paragraph 14 in the third column on page 26024 is corrected to read "A comment suggests that a CPSC employee who participates in the development of a voluntary standard should be prohibited from later participating in an official CPSC capacity in the evaluation of the standard."

Dated: July 9, 1975.

SADYE E. DUNN,
*Secretary, Consumer Product Safety Commission.*

[FR Doc.75-18399 Filed 7-15-75;8:45 am]

---

## Title 20—Employees' Benefits

## CHAPTER III—SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Reg. No. 5, further amended]

## PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

### Periodic Interim Payments to Title XVIII Providers

On January 16, 1974, there was published in the FEDERAL REGISTER (39 FR 2011) a Notice of Proposed Rule Making with a proposed amendment to Subpart D of Regulations No. 5 (20 CFR Part 405), regarding Periodic Interim Payments (PIP) to title XVIII providers. Interested parties were given 30 days within which to submit written comments or suggestions on the proposed amendment. Comments and suggestions received in regard to this Notice of Proposed Rule Making, responses thereto, and changes in the proposed regulation are summarized below.

1. Many commented on the requirement that Periodic Interim Payments be made for no less than a 2-week period of services, with a payment interval of 2 weeks between the end of the period of services to which the payment applies and the date of payment, such interval creating an average lag of 3 weeks between delivery of and payment for services. These arguments stated that such a payment schedule would severely hinder the cash flow of providers and their ability to meet working capital needs since a major share of providers' costs are associated with personnel payrolls and payments to vendors that are typically paid on at least a weekly or biweekly basis, and if such a proposal is retained in the final regulations, many providers will be forced to borrow additional working capital from lending institutions, thereby incurring interest costs that will increase their overall cost of furnishing health care, a significant portion of which will be borne by Medicare. However, careful consideration of the introduction of an average 3-week payment lag into the PIP method demonstrated that such a lag compares favorably with the average lag in payment experienced by providers reimbursed under regular interim payment procedures. Therefore, suggestions to abandon the proposed amendment introducing a 3-week payment lag into the PIP method were not adopted. In addition, intermediaries will be instructed to conform the reimbursement schedules of those providers receiving payment under already existing forms of the PIP mechanism to the revised payment schedule requirements and place all these providers in payment status under the revised schedule no later than September 15, 1975. The time period for intermediaries to adjust and implement the revised schedule is necessary to effect uniformity with respect to the interval of payment as soon as is administratively feasible.

2. Others who commented recommended that the practice of completing bills in abbreviated form be retained because the detailed billing requirement would increase the provider's administrative costs and, in turn, Medicare's costs. During the period prior to September 1973, the program did allow skeleton billings under PIP, with the hospital's regular bill attached for reference. In practice, it was found the procedure created extensive claims verification problems for intermediaries. A disproportionately high percentage of the claims had to be returned to providers for additional information because of discrepancies between the statements on the skeleton bill and the charge items on the provider's regular bill form. This resulted in delays in cost settlements, multiple handling of claims, and unnecessarily added communication between providers and intermediaries. For these reasons, all providers converting to the PIP method after September 1973 have been required to use detailed billing, although providers which had been under PIP prior to that time have continued to use the abbreviated billing procedures. Because the abbreviated billing procedure has created the administrative difficulties described above, the latter group of providers, those on PIP prior to September 1, 1973, also will be required to convert from the abbreviated billing procedures they currently use to the detailed billing practices followed by all other providers under PIP.

3. The proposed amendment permitted a provider to convert to PIP if the provider agreed to the intermediary's recovery of the provider's outstanding current financing payment by offset against the provider's periodic interim payments at a rate that would have effectuated full recovery by May 29, 1974. Since the date of May 29, 1974, has passed, this has been deleted from the final regulation. The proposed amendment also permitted a provider to elect to be reimbursed under the PIP method if, in addition to meeting other criteria, the provider had repaid or agreed to repay its outstanding current financing payment in full before the effective date of its requested conversion from a regular interim payment method to the PIP method. This provision has been retained. However, to clarify in the regulation the requirement clearly set forth in the Preamble to the proposed regulation, the final regulation states that a provider requesting to convert to PIP must repay, rather than merely agree to repay, its outstanding current financing payment in full before the effective date of its requested conversion from a regular interim method to the PIP method.

4. Various editorial changes have also been made in the interest of clarity.

The amendment is adopted as proposed except for the changes mentioned above, and is set forth below.

(Secs. 1102, 1814(b), 1815, 1833(a), 1871 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 296, 297, as amended, 79 Stat. 302, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), 1395hh)

*Effective date:* August 15, 1975.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged and Disabled—Hospital Insurance, and 13.801, Health Insurance for the Aged and Disabled—Supplementary Medical Insurance.)

Dated: May 12, 1975.

J. B. CARDWELL,
*Commissioner of Social Security.*

Approved: July 11, 1975.

CASPAR W. WEINBERGER,
*Secretary of Health, Education, and Welfare.*

Regulations No. 5 of the Social Security Administration, as amended (20 CFR Part 405), are further amended as set forth below:

Section 405.454 is amended by adding a new paragraph (j) to read as follows:

§ 405.454 Payments to providers.

* * * * *

(j) *Periodic interim payment method of reimbursement.* In addition to the regular methods of interim payment on individual provider billings for covered services, the periodic interim payment (PIP) method is available for Part A hospital and skilled nursing facility inpatient services and for both Part A and Part B home health agency services.

(1) Any participating provider that establishes to the satisfaction of the intermediary that it meets the following requirements may elect to be reimbursed under the PIP method, beginning with the first month after its request that the intermediary finds administratively feasible:

(i) The provider's estimated total Medicare reimbursement for inpatient services is at least $25,000 a year computed under the PIP formula or, in the case of a home health agency, either (A) its estimated total Medicare reimbursement for Part A and Part B services is at least $25,000 a year computed under the PIP formula or (B) its estimated Medicare reimbursement computed under the PIP formula is at least 50 percent of estimated total allowable costs,

(ii) The provider has filed at least one completed Medicare cost report accepted by the intermediary as providing an accurate basis for computation of program payment (except in the case of a provider requesting reimbursement under the PIP method upon first entering the program),

(iii) The provider has the continuing capability of maintaining in its records the cost, charge, and statistical data needed to accurately complete a Medicare cost report on a timely basis, and

(iv) The provider has repaid or agrees to repay any outstanding current financing payment in full, such payment to be made before the effective date of its requested conversion from a regular interim payment method to the PIP method.

(2) No conversion to the PIP method may be made with respect to any provider until after that provider has repaid in full its outstanding current financing payment.

(3) The intermediary's approval of a provider's request for reimbursement under the PIP method will be conditioned upon the intermediary's best judgment as to whether payment can be made to the provider under the PIP method without undue risk of its resulting in an overpayment because of greatly varying or substantially declining Medicare utilization, inadequate billing practices, or other circumstances. The intermediary may terminate PIP reimbursement to a provider at any time it determines that the provider no longer meets the qualifying requirements or that the provider's experience under the PIP method shows that proper payment cannot be made under this method.

(4) Payment will be made biweekly under the PIP method unless the provider requests a longer fixed interval (not to exceed 1 month) between payments. The payment amount will be computed by the intermediary to approximate, on the average, the cost of covered inpatient or home health services rendered by the provider during the period for which the payment is to be made, and each pay-

ment will be made 2 weeks after the end of such period of services. Upon request, the intermediary will, if feasible, compute the provider's payments to recognize significant seasonal variation in Medicare utilization of services on a quarterly basis starting with the beginning of the provider's reporting year.

(5) A provider's periodic interim payment amount may be appropriately adjusted at any time if the provider presents or the intermediary otherwise obtains evidence relating to the provider's costs or Medicare utilization that warrants such adjustment. In addition, the intermediary will recompute the payment immediately upon completion of the desk review of a provider's cost report and also at regular intervals not less often than quarterly. The intermediary may make a retroactive lump sum interim payment to a provider, based upon an increase in its periodic interim payment amount, in order to bring past interim payments for the provider's current cost reporting period into line with the adjusted payment amount. The objective of intermediary monitoring of provider costs and utilization is to assure payments approximating, as closely as possible, the reimbursement to be determined at settlement for the cost reporting period. A significant factor in evaluating the amount of the payment in terms of the realization of the projected Medicare utilization of services is the timely submittal to the intermediary of completed admission and billing forms. All providers must complete billings in detail under this method as under regular interim payment procedures.

[FR Doc.75-18444 Filed 7-15-75;8:45 am]

## Title 21—Food and Drugs

### CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[Docket No. 75N-0105]

### PART 2—ADMINISTRATIVE PRACTICES AND PROCEDURES

#### Public Hearing Before a Public Advisory Committee; Standing Advisory Committees

Elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs is announcing the establishment of the Dermatology Advisory Committee by the Secretary of Health, Education, and Welfare.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371)), and under authority delegated to the Commissioner (21 CFR 2.120), § 2.340 is amended by adding a new paragraph (c)(20) to reflect the addition of the Dermatology Advisory Committee. As amended, § 2.340(c)(20) reads as follows:

§ 2.340 List of standing advisory committees.

* * * * *

(c) * * *

(20) *Dermatology Advisory Committee.* (i) Date established: June 20, 1975.

(ii) Function: Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in the practice of dermatology.

* * * * *

*Effective date.* This regulation shall become effective on July 28, 1975.

(Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371))

Dated: July 10, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-18389 Filed 7-15-75;8:45 am]

---

[Docket No. 75C-0037]

### PART 8—COLOR ADDITIVES

#### Termination of Provisional Listing of Powdered Silk

The Commissioner of Food and Drugs is terminating the postponement of the closing date of the provisional listing for the use of powdered silk as a color additive in cosmetics, effective October 14, 1975. The order is providing 90 days to allow for an orderly change in any cosmetic formulations that utilize powdered silk as a color additive.

Provisional listing for powdered silk had been continued so that the evaluation of a color additive petition (CAP 8C0073) for the use of powdered silk in cosmetics could be completed. However, the petitioner, H. R. Laboratories, Inc., a subsidiary of Helena Rubenstein, Inc., Northern Blvd., Greenvale, L.I., N.Y. 10017, has requested withdrawal of the petition without prejudice to a future filing. In order to continue provisional listing of the substance, it is necessary for some interested person to submit a color additive petition or progress reports of ongoing scientific studies in support of the continuation. The Commissioner is unaware of any other interest in the listing of powdered silk as a color additive. Accordingly, he concludes that the closing date for the provisional listing of powdered silk for use in cosmetics should not be postponed any longer.

Therefore, pursuant to transitional provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act (sec. 203(a)(2), (d)(2), Title II, Pub. L. 86-618; 74 Stat. 404 (21 U.S.C. 376, note)), and under authority delegated to the Commissioner (21 CFR 2.120), Part 8 is amended in Subpart—Provisional Regulations by deleting "Silk, powdered" from the list of color additives in the table in § 8.501(g).

Notice and public procedure are not necessary prerequisites to the promulgation of this order because section 203(d)(2) of Pub. L. 86-618 so provides.

*Effective date.* This order shall become effective October 14, 1975. Any use of powered hydrolyzed silk in cosmetics as a color additive after that date will result in the cosmetic being considered adulterated under section 601 of the act and subject to regulatory action.

(Sec. 203(a)(2), (d)(2), Title II, Pub. L. 86-618; 74 Stat. 404 (21 U.S.C. 376, note).)

Dated: July 10, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-18387 Filed 7-15-75;8:45 am]

## Title 23—Highways

### CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

### PART 160—STATE FISCAL PROCEDURES AND REPORTS

#### Transfer of Highway Safety Funds

Chapter I of Title 23, Code of Federal Regulations, is amended by adding a new Subpart B—Transfer of Highway Safety Funds—to Part 160—State Fiscal Procedures and Reports—as set forth below. The new Subpart B codifies policies and procedures pertaining to the transfer of funds among highway safety programs under 23 U.S.C. 104(g), as amended by section 227 of the Highway Safety Act of 1973.

This amendment to Title 23, Code of Federal Regulations, was prepared under the authority of 23 U.S.C. §§ 104(g) and 315, and the delegation of authority by the Secretary of Transportation at 49 CFR 1.48.

Subpart B—Transfer of Highway Safety Funds

Sec.
160.201 Purpose.
160.202 Limitation on Transfer of Funds.
160.203 Requirements and Conditions.
160.204 Submission of Request.

AUTHORITY: 23 U.S.C. §§ 104, 315; 49 CFR 1.48.

§ 160.201 Purpose.

The purpose of this subpart is to prescribe the procedure for transfer of funds among highway safety programs under 23 U.S.C. 104(g), as amended by section 227 of the Highway Safety Act of 1973.

§ 160.202 Limitation on Transfer of Funds.

Not more than 30 percent of the amount apportioned to each State for a fiscal year under sections 144 (Special Bridge Replacement Program); 152 (Projects for High-Hazard Locations), and 153 (Program for the Elimination of Roadside Obstacles) of Title 23, United States Code, or Section 203(d) (Rail-Highway Crossings) of the Highway Safety Act of 1973, may be transferred from the apportionment under one section to the apportionment under any other of such sections in accordance with the requirements and conditions of § 160.203 of this subpart.

§ 160.203 Requirements and Conditions.

(a) For the purposes of 23 U.S.C. 104(g), the terms "apportioned" and "apportionment" include the terms "allocate" and "allocation." Funds allocated under 23 U.S.C. 144 may be transferred to apportionments under 23 U.S.C. 152

and 153, and section 203(d) of the Highway Safety Act of 1973. Funds apportioned under sections 152, 153 and 203(d) may be transferred to the allocation under section 144.

(b) Funds transferred to any apportionment are to be expended under the provisions of law governing expenditure of the apportionment to which the transfer is made.

(c) Funds under project agreement are not eligible for such transfers.

(d) Requests to transfer from the Rail-Highway Crossing apportionment must specify the amount of the requested transfer to be made from the half of the apportionment reserved for installation of protective devices pursuant to section 203(b) of the Highway Safety Act of 1973, and the amount to be transferred from the remaining half of the apportionment. Not to exceed 50 percent of the amount transferred from the Rail-Highway Crossing apportionment may be transferred from the half of the apportionment reserved for installation of protective devices, unless the State provides satisfactory assurances to the Secretary that all of the rail-highway crossings in the State on the Federal-aid system have been adequately provided with signs or protective devices.

(e) All transfers to the Rail-Highway Crossing apportionment will be made to the half of the apportionment that is not reserved for installation of protective devices.

(f) The transfer may be requested by the State highway department and may be approved by the Federal Highway Administrator if he finds such transfer to be in the public interest.

(g) Transfers may be approved by the Administrator only if he has received satisfactory assurances from the State highway department that the purposes of the program from which such funds are to be transferred have been met.

**§ 160.204 Submission of Request.**

The request for transfer of funds should be addressed to the FHWA Division Engineer and forwarded through the regional office to the Office of Fiscal Services, Program Analysis Division, in the Washington Headquarters for approval, accompanied by the recommendations of the FHWA Division Engineer and Regional Federal Highway Administrator. The appropriate program office(s) in the Washington Headquarters will review the proposed transfer and will concur or not concur in the action proposed.

*Effective date:* This subpart becomes effective on the date of issuance.

Issued on July 10, 1975.

NORBERT T. TIEMANN,
*Federal Highway Administrator.*

[FR Doc.75-18434 Filed 7-15-75;8:45 am]

## Title 41—Public Contracts and Property Management

## CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

[FPMR Amdt. E-164]

## PART 101-25—GENERAL

### Use of Government Personal Property/Nonpersonal Services

This regulation provides agencies with guidance for restricting the use of Government personal property and nonpersonal services. Although this principle has been implied in other sections of the FPMR concerning certain commodities; e.g., consumable or low cost items, a positive statement concerning restrictions on such property and services has not been made.

The table of contents for Part 101-25 is amended by adding the following entry:

Sec.
101-25.100 Use of Government personal property and nonpersonal services.)

Section 101-25.100 is added as follows:

**§ 101-25.100 Use of Government personal property and nonpersonal services.**

Except in emergencies, Government personal property and nonpersonal services shall be used only for those purposes for which they were obtained or contracted for or other officially designated purposes. Emergency conditions are those threatening loss of life and property. As used in this section "nonpersonal services" means those contractual services, other than personal and professional services (as defined in 40 U.S.C. 472). This includes property and services on interagency loan as well as property leased by agencies. Agency heads shall ensure that the provisions of this § 101-25.100 are enforced to restrict the use of Government property/services to officially designated activities.

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

*Effective date.* July 16, 1975.

Dated: July 2, 1975.

DWIGHT A. INK,
*Acting Administrator of General Services.*

[FR Doc.75-18414 Filed 7-15-75;8:45 am]

## Title 24—Housing and Urban Development

## CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-623]

## PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26186-93). A list of servicing companies is also available from the Federal Insurance Administration (FIA), HUD, 451 Seventh Street, SW, Washington, D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. § 551. The entry reads as follows:

§ 1914.4 List of Eligible Communities.

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Arkansas | Hempstead | Hope, city of | July 3, 1975 emergency | Jan. 23, 1974 | | |
| Do. | Independence | Oil Trough, town of | do. | Mar. 22, 1974 | | |
| Do. | Desha | Reed, town of | do. | Aug. 16, 1974 | | |
| California | Los Angeles | Hermosa Beach, city of | do. | June 28, 1974 | | |
| Do. | Orange | Irvine, city of | do. | June 21, 1974 | | |
| Do. | Napa | St. Helena, city of | do. | May 31, 1974 | | |
| Colorado | Lincoln | Limon, town of | do. | June 28, 1974 | | |
| Connecticut | Litchfield | Canaan, town of | do. | Aug. 16, 1974 | | |
| Do. | Hartford | Southington, town of | do. | May 10, 1974 | | |
| Florida | Orange | Belle Isle, city of | do. | July 19, 1974 | | |
| Georgia | Gilmer | East Ellijay, city of | do. | June 28, 1974 | | |
| Do. | Putnam | Eatonton, city of | do. | Feb. 21, 1975 | | |
| Do. | Polk | Rockmart, city of | do. | June 7, 1974 | | |
| Illinois | Ogle | Polo, city of | do. | May 17, 1974 | | |
| Do. | Hardin | Rosiclare, city of | do. | Dec. 17, 1973 | | |
| Do. | Madison | South Roxana, village of | do. | | | |
| Indiana | Spencer | Gentryville, town of | do. | | | |
| Kentucky | Campbell | California, city of | do. | Mar. 15, 1974 | | |
| Do. | Green | Greensburg, city of | do. | Feb. 1, 1974 | | |
| Louisiana | Lafayette | Broussard, town of | do. | Apr. 12, 1974 | | |
| Maine | Oxford | Canton, town of | do. | Aug. 2, 1974 | | |
| Do. | Penobscot | Enfield, town of | do. | Feb. 28, 1975 | | |
| Do. | Aroostook | Crystal, town of | do. | Feb. 14, 1975 | | |
| Do. | Somerset | Madison, town of | do. | June 28, 1974 | | |
| Do. | Franklin | Rangeley, town of | do. | Feb. 7, 1975 | | |
| Do. | Knox | Union, town of | do. | Sept. 20, 1974 | | |
| Do. | Aroostook | Woodland, town of | do. | June 21, 1974 | | |
| Do. | do. | Van Buren, town of | do. | June 14, 1974 | | |
| Massachusetts | Berkshire | Egremont, town of | do. | May 31, 1974 | | |
| Do. | Hampshire | Granby, town of | do. | Sept. 6, 1974 | | |
| Missouri | Cedar | El Dorado Springs, city of | do. | Dec. 28, 1973 | | |
| Do. | Butler | Neelyville, city of | do. | Dec. 6, 1974 | | |
| Do. | Platte | Parkville, city of | do. | Jan. 10, 1974 | | |
| Do. | Carter | Van Buren, city of | do. | Jan. 23, 1974 | | |
| New Jersey | Camden | Audubon, borough of | do. | Mar. 29, 1974 | | |
| Do. | Warren | Blairstown, township of | do. | July 26, 1974 | | |
| Do. | Monmouth | Colts Neck, town of | do. | Apr. 12, 1974 | | |
| Do. | Bergen | North Arlington, borough of | do. | Mar. 29, 1974 | | |
| Do. | Monmouth | Shrewsbury, borough of | do. | June 7, 1974 | | |
| New York | Tompkins | Groton, village of | do. | Apr. 12, 1974 | | |
| Do. | Erie | Orchard Park, village of | do. | June 7, 1974 | | |
| Do. | Delaware | Tompkins, town of | do. | June 28, 1974 | | |
| Do. | Rockland | Upper Nyack, village of | do. | Mar. 15, 1974 | | |
| North Carolina | Orange | Carrboro, village of | do. | Feb. 22, 1974 | | |
| Ohio | Cuyahoga | Brooklyn, city of | do. | Mar. 22, 1974 | | |
| Do. | do. | Euclid, city of | do. | Apr. 5, 1974 | | |
| Do. | Richland | Lexington, village of | do. | Oct. 18, 1974 | | |
| Do. | Wood | North Baltimore, village of | do. | Feb. 8, 1974 | | |
| Do. | Cuyahoga | Oakwood, village of | do. | May 17, 1974 | | |
| Do. | Lorain | Sheffield, village of | do. | June 21, 1974 | | |
| Oklahoma | Woods | Alva, city of | do. | | | |
| Do. | Caddo | Anadarko, city of | do. | Feb. 15, 1974 | | |
| Do. | Osage | Barnsdall, city of | do. | Dec. 17, 1973 | | |
| Do. | Beaver | Beaver, town of | do. | June 28, 1974 | | |
| Do. | Cimarron | Boise City, city of | do. | July 26, 1974 | | |
| Pennsylvania | Butler | Brady, township of | do. | Oct. 25, 1974 | | |
| Do. | Bedford | Hopewell, borough of | do. | Jan. 3, 1975 | | |
| Do. | Centre | Millheim, borough of | do. | May 10, 1974 | | |
| Do. | Washington | Twilight, borough of | do. | Jan. 31, 1975 | | |
| South Carolina | Lancaster | Unincorporated areas | do. | Dec. 20, 1974 | | |
| Tennessee | Tipton | do. | do. | | | |
| Texas | Coke | Bronte, city of | do. | Mar. 29, 1974 | | |
| Do. | Coryell | Copperas Cove, city of | do. | Apr. 5, 1974 | | |
| Do. | Hidalgo | Edcouch, city of | do. | May 10, 1974 | | |
| Do. | Rockland | Royse City, city of | do. | | | |
| Do. | Tarrant | Blue Mound, city of | do. | Dec. 17, 1973 | | |
| Utah | Garfield | Unincorporated areas | do. | | | |
| Vermont | Lamoille | Cambridge, town of | do. | June 28, 1974 | | |
| Do. | Windsor | Chester, town of | do. | do. | do. | |
| Washington | King | Algona, city of | do. | | do. | |
| Do. | Spokane | Deer Park, city of | do. | Apr. 5, 1974 | | |
| West Virginia | Braxton | Flatwoods, town of | do. | | | |
| Wisconsin | Marathon | Athens, village of | do. | May 31, 1974 | | |
| Do. | Juneau | Unincorporated areas | do. | | | |
| Do. | La Crosse | Onalaska, city of | do. | Dec. 28, 1973 | | |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: June 26, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18234 Filed 7-15-75;8:45 am]

[Docket No. FI-624]

## PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26186–93). A list of servicing companies is also available from the Federal Insurance Administration (FIA), HUD, 451 Seventh Street, SW, Washington D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates apears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. § 551. The entry reads as follows:

**§ 1914.4 List of Eligible Communities.**

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| California | Fresno | Sanger, city of | July 7, 1975, emergency | June 28, 1974 | | |
| Illinois | Cook | Calumet Park, village of | do | Mar. 29, 1974 | | |
| Do | Coles | Charleston, city of | do | June 28, 1974 | | |
| Do | Winnebago | Rockton, village of | do | Dec. 20, 1974 | | |
| Do | Mscoupin | Virden, city of | do | June 28, 1974 | | |
| Iowa | Carroll | Dedham, town of | do | Nov. 1, 1974 | | |
| Do | Scott | Riverdale, town of | do | Jan. 23, 1974 | | |
| Kentucky | Webster | Sebree, city of | do | May 17, 1974 | | |
| Do | Powell | Stanton, city of | do | May 24, 1974 | | |
| Maine | Penobscot | Mattawamkeag, town of | do | | | |
| Massachusetts | Dukes | Edgartown, town of | do | May 31, 1974 | | |
| Do | Worcester | Westminster, town of | do | July 26, 1974 | | |
| Missouri | St. Louis | Town and Country, city of | do | Dec. 28, 1973 | | |
| Do | Carroll | Carrollton, town of | do | Jan. 9, 1974 | | |
| Do | Howard | Franklin, city of | do | | | |
| Montana | Valley | Nashua, town of | do | Apr. 5, 1974 | | |
| New Hampshire | Coos | Northumberland, town of | do | Feb. 22, 1974 | | |
| Do | Grafton | Woodstock, town of | do | June 28, 1974 | | |
| New Jersey | Bergen | Bogota, borough of | do | May 31, 1974 | | |
| Do | Sussex | Franklin, borough of | do | May 17, 1974 | | |
| New York | Saratoga | Ballston Spa, village of | do | May 31, 1974 | | |
| Do | Broome | Binghampton, town of | do | June 7, 1974 | | |
| Do | Suffolk | Branch, village of | do | | | |
| Do | Niagara | Cambria, town of | do | Apr. 12, 1974 | | |
| Do | Oswego | Central Square, village of | do | May 17, 1974 | | |
| Do | Delaware | Davenport, town of | do | July 26, 1974 | | |
| Do | Chautauqua | Falconer, village of | do | Feb. 22, 1974 | | |
| Do | Wyoming | Gainesville, town of | do | | | |
| Do | Orange | Goshen, village of | do | | | |
| Do | Delaware | Hobart, village of | do | May 24, 1974 | | |
| Do | St. Lawrence | Louisville, town of | do | Dec. 13, 1974 | | |
| Do | Sullivan | Neversink, town of | do | June 21, 1974 | | |
| Do | Westchester | Peekskill, city of | do | May 31, 1974 | | |
| Do | Nassau | Plandome Manor, village of | do | June 21, 1974 | | |
| Do | Chautauqua | Sinclairville, village of | do | May 10, 1974 | | |
| Do | Rockland | Sloatsburg, village of | do | Mar. 22, 1974 | | |
| Do | Herkimer | Warren, town of | do | June 28, 1974 | | |
| Do | Jefferson | Watertown, city of | do | Apr. 5, 1974 | | |
| North Carolina | Orange | Carrboro, town of | do | Feb. 22, 1974 | | |
| Do | Brunswick | Unincorporated areas | do | | | |
| Do | Martin | Robersonville, town of | do | June 7, 1974 | | |
| Do | Mitchell | Spruce Pine, town of | do | June 14, 1974 | | |
| Oklahoma | Washita | New Cordell, city of | do | | | |
| Do | Logan | Cresent, city of | do | May 10, 1974 | | |
| Ohio | Portage | Garrettsville, village of | do | Apr. 12, 1974 | | |
| Do | Cuyahoga | Warrensville Heights, city of | do | Mar. 15, 1974 | | |
| Do | Medina | Ledi, village of | do | do | | |
| Do | Lorain | North Ridgeville, city of | do | June 7, 1974 | | |
| Do | Monroe | Clarington, village of | do | Sept. 6, 1974 | | |
| Do | Butler | Seven Mile, village of | do | June 14, 1974 | | |
| Do | Defiance | Hicksville, village of | do | May 17, 1974 | | |
| Oregon | Coos | Unincorporated areas | do | Nov. 1, 1974 | | |
| Pennsylvania | Indiana | Armstrong, township of | do | Dec. 6, 1974 | | |
| Do | Allegheny | Avalon, borough of | do | Feb. 1, 1974 | | |
| Do | Butler | Buffalo, township of | do | Sept. 20, 1974 | | |

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| Do | Adams | Butler, township of | do | Nov. 29, 1974 | | |
| Do | Beaver | Beaver, borough of | do | Mar. 15, 1974 | | |
| Do | Allegheny | Collier, township of | do | July 19, 1974 | | |
| Do | Venango | Cooperstown, borough of | do | Aug. 9, 1974 | | |
| Do | do | Cornplanter, township of | do | Jan. 17, 1975 | | |
| Do | do | Cranberry, township of | do | | | |
| Do | Lancaster | Drumore, township of | do | Oct. 18, 1974 | | |
| Do | Juniata | Greenwood, township of | do | Dec. 13, 1974 | | |
| Do | Pike | Lackawaxen, township of | do | Jan. 3, 1975 | | |
| Do | Armstrong | Manor, township of | do | Sept. 13, 1974 | | |
| Do | Juniata | Milford, township of | do | Jan. 3, 1975 | | |
| Do | Centre | Potter, township of | do | Nov. 8, 1974 | | |
| Do | Venango | Sugarcreek, borough of | do | Apr. 12, 1974 | | |
| Do | Butler | Winfield, township of | do | | | |
| Do | Westmoreland | Youngstown, borough of | do | Aug. 9, 1974 | | |
| South Carolina | Chester | Chester, city of | do | June 28, 1974 | | |
| Do | York | Clover, township of | do | May 24, 1974 | | |
| Do | Newberry | Whitmire, township of | do | June 28, 1974 | | |
| Texas | Ward | Grandfalls, city of | do | Sept. 13, 1974 | | |
| Do | Gray | Lefors, city of | do | May 10, 1974 | | |
| Do | Hall | Memphis, city of | do | June 28, 1974 | | |
| Do | Harris | Morgan's Point, city of | do | do | | |
| Utah | Washington | Washington, city of | do | Aug. 2, 1974 | | |
| Vermont | Addison | Bridport, town of | do | Nov. 22, 1974 | | |
| Do | Rutland | Brandon, town of | do | Sept. 6, 1974 | | |
| Do | Franklin | Fairfax, town of | do | May 17, 1974 | | |
| Wisconsin | Dodge | Horicon, city of | do | Nov. 30, 1973 | | |
| Do | Richland | Lone Rock, village of | do | May 17, 1974 | | |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: June 27, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18233 Filed 7-15-75;8:45 am]

[Docket No. FI-625]

## PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26186–93). A list of servicing companies is also available from the Federal Insurance Administration (FIA), HUD, 451 Seventh Street, SW, Washington, D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. § 551. The entry reads as follows:

**§ 1914.4 List of Eligible Communities.**

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Florida | Levy | Yankeetown, town of | Nov. 13, 1970, emergency<br>Aug. 20, 1971, regular<br>Sept. 15, 1972, suspension<br>June 30, 1975, reinstated | | | |
| Georgia | Heard | Franklin, city of | July 7, 1975, emergency | May 10, 1974 | | |
| Illinois | Du Page | West Chicago, city of | do | Apr. 12, 1974 | | |
| Kansas | Doniphan | Elwood, city of | do | June 28, 1974 | | |
| Maryland | Washington | Williamsport, town of | do | Feb. 15, 1974 | | |
| Massachusetts | Suffolk | Boston, city of | do | Nov. 22, 1974 | | |
| Do | Worcester | Athol, town of | do | Mar. 8, 1974 | | |
| Do | Franklin | Buckland, town of | do | May 31, 1974 | | |
| Do | Berkshire | Monterey, town of | do | Mar. 15, 1974 | | |
| Minnesota | Wabasha | Elgin, city of | do | May 17, 1974 | | |
| Nebraska | York | Henderson, city of | do | Jan. 17, 1975 | | |
| New Jersey | Atlantic | Hammonton, town of | do | May 31, 1974 | | |
| Do | Warren | Lopatcong, township of | do | | | |
| New York | Livingston | Celedonia, town of | do | Jan. 10, 1975 | | |
| Do | do | Celedonia, village of | do | Feb. 7, 1975 | | |
| Do | Cortland | Cincinnatus, town of | do | Apr. 5, 1974 | | |
| Do | Rockland | Grand View-on-Hudson, village of | do | Oct. 18, 1974 | | |

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| Do | Ulster | Olive, town of | do | June 7, 1974 | | |
| Do | Lewis | Leyden, town of | do | July 19, 1974 | | |
| Do | Orleans | Medina, village of | do | May 24, 1974 | | |
| Do | Livingston | York, town of | do | Nov. 29, 1974 | | |
| North Carolina | Cabarrus | Unincorporated areas | do | Dec. 27, 1974 | | |
| North Dakota | Hettinger | do | do | | | |
| Ohio | Hamilton | Harrison, village of | do | Feb. 15, 1974 | | |
| Do | Trumbull | McDonald, village of | do | May 17, 1974 | | |
| Do | Athens | Nelsonville, city of | do | May 10, 1974 | | |
| Oklahoma | Osage | Avant, town of | do | Sept. 13, 1974 | | |
| Oregon | Columbia | Rainier, city of | do | May 24, 1974 | | |
| Pennsylvania | Westmoreland | Mount Pleasant, borough of | do | | | |
| Do | Luzerne | Laurel Run, borough of | do | | | |
| Do | Juniata | Thompsontown, borough of | do | Apr. 12, 1974 | | |
| Do | Crawford | Bloomfield, township of | do | Jan. 31, 1975 | | |
| Do | Venango | President, township of | do | Jan. 10, 1975 | | |
| Rhode Island | Washington | Richmond, town of | do | May 31, 1974 | | |
| South Carolina | Spartanburg | Campobello, town of | do | Nov. 15, 1974 | | |
| Tennessee | Sullivan | Bristol, city of | do | Mar. 8, 1974 | | |
| Texas | Kleberg | Kingsville, city of | Oct. 10, 1970, emergency<br>Feb. 26, 1971, regular<br>May 19, 1972, suspension<br>June 30, 1975, reinstated | | | |
| Washington | Lewis | Pe Ell, town of | July 7, 1975, emergency | | | |
| Wisconsin | Eau Claire | Augusta, city of | do | May 10, 1974 | | |
| Do | Oconto | Lena, village of | do | May 24, 1974 | | |
| Do | Washington | Kewaskum, village of | do | Dec. 28, 1973 | | |
| Do | Kanawha | Clendenin, town of | do | June 28, 1974 | | |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: June 27, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18232 Filed 7-15-75;8:45 am]

---

[Docket No. FI-626]

## PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

### Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at 39 FR 26186–93). A list of servicing companies is also available from the Federal Insurance Administration (FIA), HUD, 451 Seventh Street, SW., Washington, D.C. 20410.

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. § 551. The entry reads as follows:

**§ 1914.4 List of Eligible Communities.**

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| California | San Mateo | Atherton, town of | July 8, 1975, emergency | Mar. 8, 1974<br>Sept. 6, 1974 | | |
| Do | Santa Clara | Cupertino, city of | do | Feb. 15, 1974 | | |
| Do | Kings | Unincorporated areas | do | Aug. 23, 1974 | | |
| Colorado | Otero | Manzanola, town of | do | May 24, 1974 | | |
| Georgia | Butts | Jackson, city of | do | May 17, 1974 | | |
| Illinois | Tazewell | Hopedale, village of | do | Apr. 5, 1974 | | |
| Iowa | Cass | Atlantic, city of | do | May 3, 1974 | | |
| Do | Butler | Greene, city of | do | May 17, 1974 | | |
| Do | Guthrie | Guthrie Center, city of | do | do | | |
| Do | Woodbury | Hornick, town of | do | Oct. 18, 1974 | | |
| Do | Crawford | Manilla, city of | do | June 28, 1974 | | |
| Do | Taylor | Bedford, town of | do | Feb. 1, 1974 | | |
| Kansas | Stanton | Johnson City, city of | do | May 24, 1974 | | |
| Do | Lyon | Americus, city of | do | Feb. 1, 1974 | | |
| Do | Phillips | Phillipsburg, city of | do | June 28, 1974 | | |
| Kentucky | Marshall | Calvert City, city of | do | Feb. 1, 1974<br>Feb. 14, 1975 | | |
| Do | Magoffin | Salyersville, city of | do | Feb. 22, 1974 | | |
| Louisiana | Evangeline Parish. | Pine Prairie, village of | do | Aug. 30, 1974 | | |

| State | County | Location | Effective date of authorization of sale of flood insurance for area | Hazard area identified | State map repository | Local map repository |
|---|---|---|---|---|---|---|
| Maine | Waldo | Belfast, city of | do | July 19, 1974 | | |
| Do | Cumberland | Scarborough, town of | do | May 17, 1974 | | |
| Massachusetts | Berkshire | Hinsdale, town of | do | Aug. 30, 1974 | | |
| Missouri | St. Louis | Ballwin, city of | do | June 7, 1974 | | |
| Minnesota | Anoka | Ramsey, city of | do | | | |
| Nebraska | Saline | Friend, city of | do | | | |
| New Jersey | Hunterdon | Glen Gardner, borough of | do | June 28, 1974 | | |
| Do | Bergen | Hasbrouck Heights, borough of. | do | Nov. 30, 1973 | | |
| Do | Warren | Oxford, township of | do | June 21, 1974 | | |
| New Mexico | Colfax | Unincorporated areas | do | | | |
| New York | Livingston | Lima, town of | do | Jan. 3, 1975 | | |
| North Carolina | Watauga | Blowing Rock, town of | do | June 21, 1974 | | |
| Do | Catawba | Catawba, town of | do | June 28, 1974 | | |
| Do | Gates | Gatesville, town of | do | Feb. 22, 1974 | | |
| North Dakota | Burke | Powers Lake, city of | do | June 28, 1974 | | |
| Ohio | Delaware | Powell, village of | do | Oct. 18, 1974 | | |
| Oklahoma | Oklahoma | Luther, town of | do | | | |
| Oregon | Curry | Brookings, city of | do | May 13, 1974 | | |
| Do | Klamath | Chiloquin, city of | do | Nov. 30, 1973 | | |
| Do | Baker | Huntington, city of | do | do | | |
| Do | Benton | Monroe, city of | do | Nov. 8, 1974 | | |
| Utah | Sevier | Monroe City, city of | do | June 28, 1974 | | |
| Vermont | Chittenden | Essex, town of | do | Sept. 20, 1974 | | |
| Do | Windsor | Stockbridge, town of | do | Nov. 1, 1974 | | |
| Virginia | Shenandoah | Edinburg, town of | do | | | |
| Do | Page | Shenandoah, town of | do | Nov. 1, 1974 | | |
| Do | Charlotte | Phenix, town of | do | Nov. 15, 1974 | | |
| Washington | King | Pacific, city of | do | June 28, 1974 | | |
| Do | Whitman | Palouse, city of | do | May 24, 1974 | | |
| West Virginia | Upshur | Buckhannon, city of | do | June 28, 1974 | | |
| Do | Calhoun | Unincorporated areas | do | Nov. 29, 1974 | | |
| Do | Fayette | Pax, town of | do | Dec. 20, 1974 | | |
| Do | Boone | Sylvester, town of | do | Nov. 15, 1974 | | |
| Wisconsin | Ashland | Butternut, village of | do | Sept. 6, 1974 | | |
| Do | Juneau | New Lisbon, city of | do | Dec. 17, 1973 | | |
| Wyoming | Fremont | Unincorporated areas | do | | | |

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: June 30, 1975.

FRANCIS V. REILLY,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18231 Filed 7-15-75;8:45 am]

---

[Docket No. FI-289]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On June 19, 1974, in 39 F.R. 21147, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Eugene, Oregon, as an eligible community and included Map No. H 410122 03, which indicates that the subdivision called Meadowbrook, as recorded in Plat Book 60, Page 5, and Lots 1, 2, and 39–54 in the subdivision called First Addition to Meadowbrook, as recorded in Plat Book 65, Page 14, in the Plat Records of Lane County, Oregon, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above mentioned property is not within the Special Flood Hazard Area. Accordingly, effective June 7, 1974, Map No. H 410122 03 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: June 24, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18455 Filed 7-15-75;8:45 am]

---

[Docket No. FI-384]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On October 23, 1974, in 39 F.R. 37647, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Tacoma, Washington, as an eligible community and included Map No. H 530148 18 which indicates that Lots 1, 3, 51, 52, 67, and 73 through 76, Swan Creek Subdivision, Tacoma, Washington as recorded in Volume 38, Pages 49 and 50, in the records of the Auditor of Pierce County, Washington, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective October 18, 1974, Map No. H 530148 18 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974).

Issued: June 24, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18453 Filed 7-15-75;8:45 am]

---

[Docket No. FI-443]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On January 10, 1975 in 40 F.R. 2199 the Federal Insurance Administrator published a list of communities with Special

Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Dallas, Texas as an eligible community and included Map No. H 480171 24 which indicates that Lot 2, Block U/8120, Laurel Valley Addition, Dallas, Texas, as recorded in Volume 45, Page 497 of the Plat Books of Dallas County, Texas, is in its entirety within the Special Flood Hazard Area. It has been detemined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective December 13, 1974, Map No. H 480171 24 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974).

Issued: June 18, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18372 Filed 7-15-75;8:45 am]

---

[Docket No. FI-443]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On January 10, 1975, in 40 F.R. 2199, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Dallas, Texas, as an eligible community and included Map No. H 480171 24 which indicates that Lot 21, Block F/1820, Laurel Valley Addition, Second Installment, being 9647 Fieldcrest Drive, Dallas, Texas, as recorded in Volume 50, Page 27 of the Map Records of Dallas County, Texas, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective December 13, 1974, Map No. H 480171 24 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974).

Issued: June 24, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18452 Filed 7-15-75;8:45 am]

---

[Docket No. FI-631]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On July 18, 1970, in 35 F.R. 11586, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included Chesapeake, Virginia, as an eligible community and included Map No. H 510034 02 which indicates that Lots 8 through 12, Block 68, and Lots 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, and 23, Block 70, Norfolk Highlands Subdivision 1, Chesapeake, Virginia, as recorded in Map Book 10, Pages 63 and 65 in the office of the Clerk of Chesapeake, Virginia, are in their entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective July 18, 1970, Map No. H 510034 02 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974.)

Issued: June 24, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18454 Filed 7-15-75;8:45 am]

---

[Docket No. FI-443]

## PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

### Correction

On January 10, 1975, in 40 F.R. 2199, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map number and locations where Flood Hazard Boundary Maps were available for public inspection. This list included the City of Dallas, Texas, as an eligible community and included Map No. H 480171 24 which indicates that Lot 1, Block Y/8122, White Rock North, Fifth Installment, being 9505 Highedge, Dallas, Texas, as recorded in Volume 46, Page 137 in the Map Records of Dallas County, Texas, is in its entirety within the Special Flood Hazard Area. It has been determined by the Federal Insurance Administration, after further technical review of the above map in light of additional, recently acquired flood information, that the above property is not within the Special Flood Hazard Area. Accordingly, effective December 13, 1974, Map No. H 480171 24 is hereby corrected to reflect that the above property is not within the Special Flood Hazard Area.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 F.R. 2680, February 27, 1969, as amended by 39 F.R. 2787, January 24, 1974).

Issued: June 20, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18372 Filed 7-15-75;8:45 am]

---

[Docket No. FI-629]

## PART 1916—CONSULTATION WITH LOCAL OFFICIALS

### Changes Made in Determinations of Galveston County, Tex., Base Flood Elevations

On April 8, 1971, at 36 FR 6747, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map numbers and locations where Flood Insurance Rate Maps were available for public inspection. The list included Flood Insurance Rate Maps for portions of Galveston County.

The Federal Insurance Administrator, after consultation with the Chief Executive Officer of Galveston County, has determined that modification of the base (100-year) flood elevations of some locations in Galveston County, Texas, is appropriate. These modified elevations are currently in effect and amend the Flood Insurance Rate Map. A revised rate map will be published as soon as possible. The modifications are made in accordance with section 206 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 P.L. 90-448) 42 U.S.C. 4001–4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 485470 B and must be used for all new policies and renewals.

The changes in base flood elevations are as follows:

| Previous FIA zone (as on map) | Previous base flood elevation (as on map) (MSL) | New FIA zone | New base flood elevation (MSL) |
|---|---|---|---|
| Zone A11..... | 18.5 | Zone A12..... | 15 |

These changes apply only to the area described as follows:

All or part of that land which is contained in Zone C and Zone of the County of Galveston, Texas, and which lies East of the City of Dickinson, Texas, and is more particularly described by the following:

*Beginning* at a point for corner of the perimeter of said area of land in the intersection of Galveston, Houston and Henderson Railroad (G. H. & H. R. R.) and 16th Street and continuing in a Northeasterly direction along 16th Street to the intersection of 16th Street and F. M. 1266 (Dickinson Avenue);

*Thence* continuing in an Easterly direction in a line which is perpendicular to F. M. 1266, to the intersection of said line and Oasis Road to a point for corner;

*Thence* South and along the entire length of Oasis Road;

*Thence* continuing South in a line which is an extension of Oasis Road to a point for corner at the intersection of said line and a County Road which is the First Road South of Dickinson Bayou, and is an approximate distance of 1,250 feet from the end of Oasis Road;

*Thence* West in a line which is approximately perpendicular to Oasis Road and parallel and approximately 50 feet to the South of Park Avenue and continuing parallel to and approximately 50 feet to the South of Park Avenue to the intersection of Park Avenue and Nichols Street to a point for corner;

*Thence* Southwest in a line which is perpendicular to Nichols Street to a point for corner at the intersection of said line and S. H. 3 (Avenue "E");

*Thence* North and along S. H. No. 3 to the Second County Road, from previous point for corner, which is the intersection of S. H. No. 3 and said County Road in which S. H. No. 3 turns toward a Northwesterly direction and is an approximate distance of 600 feet to a point for corner;

*Thence* Northeast and perpendicular to G. H. & H. R.R. to the intersection of said County Road and G. H. & H. R.R. to a point for corner;

*Thence* Northwest and along the G. H. & H. R.R. to the Place of Beginning.

Under the above mentioned Acts of 1968 and 1973 the Administrator must develop criteria for flood plain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevations to carry out the flood plain management measures of the Program. These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

From the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific and technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any person having knowledge or wishing to comment on these changes should immediately notify:

Mr. William D. Decker, Attorney for the Commissioners, Court of Galveston County, Texas, 504 First Hutchings-Sealy National Bank Building, Galveston, Texas 77550.

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to the Federal Insurance Administrator, 34 F.R. 2680, February 27, 1969, as amended 39 F.R. 2787, January 24, 1974.)

Issued: June 30, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18374 Filed 7-15-75;8:45 am]

---

[Docket No. FI-630]

## PART 1916—CONSULTATION WITH LOCAL OFFICIALS

### Notice of Changes Made in Determinations of Fairfax County, Virginia, Base Flood Elevations

On January 8, 1972, at 37 FR 281, the Federal Insurance Administrator published a list of communities with Special Flood Hazard Areas and the map numbers and locations where Flood Insurance Rate Maps were available for public inspection. The list included Flood Insurance Rate Maps for portions of Fairfax County.

The Federal Insurance Administrator, after consultation with the Chief Executive Officer of Fairfax County, has determined that modification of the base (100-year) flood elevations of some locations in Fairfax County, Virginia, is appropriate. These modified elevations are currently in effect and amend the Flood Insurance Rate Map. A revised rate map will be published as soon as possible. The modifications are made in accordance with Section 206 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) and the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 P.L. 90-448) 42 U.S.C. 4001-4128, and 24 CFR Part 1916.

For rating purposes, the new community number is 515525 A and must be used for all new policies and renewals.

The changes in base flood elevations are as follows:

| Previous FIA zone (as on map) | Previous base flood elevation (MSL) | New FIA zone | New base flood elevation (MSL) |
|---|---|---|---|
| FIA Map No. H 515525 08 (Trippe Run—1300 feet north of U.S. route 50) | | | |
| Zone A?..... | 260 | Zone A..... | 258 |

Under the above mentioned Acts of 1968 and 1973 the Administrator must develop criteria for floodplain management. In order for the community to continue participation in the National Flood Insurance Program, the community must use the modified elevation to carry out the flood plain management measures of the Program. This modified elevation will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and contents.

However, from the date of this notice, any person has 90 days in which he can request through the community that the Federal Insurance Administrator reconsider the changes. Any request for reconsideration must be based on knowledge of changed conditions or new scientific and technical data. All interested parties are on notice that until the 90-day period elapses, the Administrator's new determination of elevations may itself be changed.

Any person having knowledge or wishing to comment on these changes should immediately notify:

Office of the Director
Public Works Department
Fairfax County, Virginia
4100 Chain Bridge Road
Fairfax, Virginia 22030

(National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968); effective January 28, 1969 (33 F.R. 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and Secretary's delegation of authority to the Federal Insurance Administrator, 34 F.R. 2680, February 27, 1969, as amended 39 F.R. 2787, January 24, 1974.)

Issued: June 24, 1975.

J. ROBERT HUNTER,
*Acting Federal Insurance Administrator.*

[FR Doc.75-18451 Filed 7-15-75;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7364]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

### Intercompany Pricing Rules, Including Marginal Costing Rules, for DISC's

*Preamble.* By two notices of proposed rule making, one notice appearing in the FEDERAL REGISTER for Thursday, September 21, 1972 (37 F.R. 19625) and the other notice appearing in the FEDERAL REGISTER for Wednesday, December 20, 1972 (37 F.R. 28065), amendments to the Income Tax Regulations (26 CFR Part 1) under section 994 of the Internal Revenue Code of 1954 were proposed in order to provide intercompany pricing rules for DISC's. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, certain changes were made, and the proposed amendments of the regulations, subject to such changes, are adopted by this document. The general intercompany pricing rules are provided by § 1.994–1 and the marginal costing rules are provided by § 1.994–2.

The contents of § 1.994–1 and the more important changes in such section made by this document may be summarized as follows:

1. Paragraph (a) describes the scope of the section and defines the terms "related party" (which has been substituted for "related person") and "related supplier". It is made clear that the DISC's taxable income does not include amounts attributable to the profits of related parties who supply the related supplier.

2. Paragraph (b) describes the types of transactions involving the DISC, a related supplier, and a third party customer to which the intercompany pricing rules may be applied. These transactions do not include sales of property to the DISC which the DISC in turn leases to third parties or leases of property to the DISC which the DISC in turn subleases to third parties for a period or upon terms of payment which are not comparable to the principal lease to the DISC.

3. Paragraph (c) sets forth the three methods by which intercompany prices may be determined. These methods are the 4-percent gross receipts method, the 50–50 combined taxable income method, and the section 482 method. Special rules are provided with respect to incomplete transactions which have the effect of postponing the realization of taxable income until a transaction with a third party customer is consummated. With respect to incomplete transactions, in the case of taxable years ending after August 15, 1975, the transfer price paid by the DISC to the related supplier for the year must be the related supplier's cost of goods sold for the property transferred. For earlier years such transfer price may exceed the related supplier's cost of goods sold for the property. The provision sets forth the manner of determining the combined taxable income of the DISC and its related supplier which determination is necessary to application of both the 4-percent gross receipts method and 50–50 combined taxable income method. Such combined taxable income does not include interest derived from postponed payment of sales prices from third parties. Concerning timber to which an election under section 631 applies (relating to cutting of timber considered as a sale or exchange), cost of goods sold must be determined by reference to the fair market value as of the beginning of the year of the standing timber cut during the year. The rules with respect to grouping of transactions for purposes of determining intercompany prices on the basis of aggregations of transactions have been expanded to permit groupings on the basis of two-digit major groups, or inferior classifications or combinations within a major group, of the Standard Industrial Classification of products and product lines as prepared by the Statistical Policy Division of the Office of Management and Budget. It is believed that such rule for grouping will provide taxpayers a greater degree of certainty in their selection of a grouping system and will permit sufficiently broad groupings of products or product lines to promote efficiency in determining intercompany prices. Subdivision (v) of paragraph (c)(6), which is reserved and is the subject of an additional notice of proposed rule making published elsewhere in today's Federal Register, deals with a transfer of accounts receivable by a related supplier to a DISC for an amount less than face value.

4. Paragraph (d) describes the application of the intercompany pricing rules to leases, commission transactions, and services. In general, rents, commissions, and compensation for services are determined under the same theories and similar rules as are involved in determining intercompany prices on sales. However, lease and sale transactions may not be grouped together for purposes of determining transfer prices and rents. Rules for grouping of related and subsidiary services have been liberalized to permit grouping of such services the income from which is reportable for a year following the year in which the income from the export transaction is reportable.

5. Paragraph (e) sets forth in subparagraph (1) a limitation on DISC income (the "no loss" rule). Subdivision (ii) of subparagraph (1) makes explicit that the special rule of that subdivision for applying the 4-percent gross receipts method to sales may apply even where there is no loss to a related supplier determined under subdivision (i) of such subparagraph. Paragraph (e)(2) describes the relationship between sections 482 and 994. Subparagraphs (3), (5), and (6) of paragraph (e) are reserved and are the subject of an additional notice of proposed rule making published elsewhere in today's FEDERAL REGISTER. These subparagraphs deal, respectively, with initial payment of transfer price by a DISC or commission to a DISC, procedure for adjustment to transfer price or commission, and examples which illustrate initial payments of and later adjustments to transfer prices and commissions. Subparagraphs (3) and (5) as published in the notice of proposed rule making on September 21, 1972, are withdrawn by this document.

6. Paragraph (f) defines in some length the term "export promotion expenses". Provision is made for allocation of expenses or costs where only a portion of an expense or cost may qualify as an export promotion expense. It is made clear that contributions or compensations deductible under section 404 of the Code may be treated as export promotion expenses, but State and local income and franchise taxes may not be so treated. One-half of freight expense attributable to carriage pursuant to a single bill of lading by one or more U.S. flag carriers may be claimed as an export promotion expense even though the freight is shifted between carriers. An expense may still qualify as an export promotion expense even if it is accounted for and paid by a related party if the DISC reimburses the related party for its payment of the expense. The time export promotion expenses may be claimed with respect to transactions which are not consummated is set forth in an added rule.

7. Paragraph (g) illustrates the various rules of the section through a series of examples.

The contents of § 1.994–2 (relating to marginal costing rules) and the more important changes in such section made by this document may be summarized as follows:

1. Paragraph (a) describes the scope of the marginal costing section and the transactions to which the marginal costing rules may not be applied. Marginal costing may be applied in the determination of combined taxable income where the 50–50 combined taxable income method is used to determine intercompany prices, whether or not the related supplier of the DISC manufactures, produces, grows, or extracts the export property sold. Marginal costing may not be applied to transactions giving rise to foreign base company sales income under section 954(d) of the Code, except as provided to the contrary.

2. Paragraph (b) sets forth the marginal costing rules for allocations of costs. Only costs for direct material and direct labor and export promotion expenses claimed by the DISC which costs and expenses are attributable to the export property sold are taken into account in determining combined taxable income of the DISC and its related supplier. The overall profit percentage limitation has been retained without substantial change.

3. Paragraph (c) defines the terms "establishing or maintaining a foreign market", "overall profit percentage", and "full costing method". Under the overall profit percentage limitations, the combined taxable income of the DISC and its related supplier may not as a per-

centage of gross receipts, when marginal costing is applied, exceed the percentage which such persons' combined taxable income from all sales is of gross receipts from all sales. The overall profit percentage may be determined by taking into account sales of persons related to the DISC or its related supplier. Of course, rules for grouping of transactions are provided with respect to application of marginal costing rules.

4. Paragraph (d) sets forth a limitation on DISC income (the "no loss" rule). A similar limitation appears at § 1.994–1(e)(1) with respect to the application of the general intercompany pricing rules.

5. Paragraph (e) illustrates the various rules of the marginal costing section through a series of examples.

Where these regulations under section 994 refer to regulations under section 993 of the Code, the reference is intended to refer to such regulations as will be finally adopted. This procedure is being followed because of the need for immediate guidance with respect to the provisions contained in this Treasury decision. Proposed regulations corresponding to a reference to regulations under section 993, which can be used for informational purposes, have been published with a notice of proposed rule making in the FEDERAL REGISTER for Wednesday, October 4, 1972 (37 F.R. 20853). Section 1.993–1(l)(1) of such regulations was amended by a further notice of proposed rule making published in the FEDERAL REGISTER for Friday, March 9, 1973 (38 F.R. 6395). In addition, new proposed regulations under § 1.861–8, which can be used for informational purposes, have been published with a notice of proposed rule making in the FEDERAL REGISTER for Monday, June 18, 1973 (38 F.R. 15840).

*Adoption of amendments to the regulations.* On Thursday, September 21, 1972, and Wednesday, December 20, 1972, notices of proposed rule making were published in the FEDERAL REGISTER (37 F.R. 19625 and 37 F.R. 28065, respectively) in order to conform the Income Tax Regulations (26 CFR Part 1) to section 994 of the Internal Revenue Code of 1954. After consideration of all such relevant matters as were presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed in both such notices is hereby adopted, subject to the changes set forth below, except that paragraph (e) (3) and (5) of § 1.994–1 are withdrawn and proposed regulations in lieu thereof are published elsewhere in today's FEDERAL REGISTER:

PARAGRAPH 1. Section 1.994–1, as set forth in the appendix to the notice of proposed rule making appearing in the FEDERAL REGISTER for Thursday, September 21, 1972 (37 F.R. 19625) and as revised by amendment set forth in paragraph 1 of the appendix to the notice of proposed rule making appearing in the FEDERAL REGISTER for Wednesday, December 20, 1972 (37 F.R. 28065), is amended by—

1. Revising paragraph (a) by adding a sentence at the end of paragraph (a)(1) and revising paragraph (a)(3),

2. Revising paragraph (b) (1), (2), and (4),

3. Revising paragraph (c),

4. Revising paragraph (d),

5. Revising paragraph (e)(1)(ii), adding a sentence at the end of paragraph (e)(1)(iii), revising paragraph (e)(2), reserving paragraph (e)(3), adding a sentence at the end of paragraph (e)(4), and by reserving paragraph (e) (5) and (6),

6. Revising paragraph (f) (1), (2), (3), (4) (i), (iv), and (v), (5), and (7) (ii), (iii), and (v), adding a new paragraph (f)(7)(vi), and revising paragraph (f) (8), and

7. Revising paragraph (g) by revising examples (3), (4), and (5) and by adding additional material at the end of example (6).

PAR. 2. Section 1.994–2, as set forth in paragraph 2 of the appendix to the notice of proposed rule making appearing in the FEDERAL REGISTER for Wednesday, December 20, 1972 (37 F.R. 28065), is amended by revising paragraph (a), paragraph (b)(2), and paragraph (c)(2)(i)(a) and (iii) and (3)(ii).

(Sec. 7805, Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

Approved: June 20, 1975.

FREDERIC W. HICKMAN,
*Assistant Secretary of the Treasury.*

In order to conform the Income Tax Regulations (26 CFR Part 1) to section 994 of the Internal Revenue Code of 1954, as added by section 501 of the Revenue Act of 1971 (85 Stat. 543), such regulations are amended by adding the following new sections immediately after § 1.992–4. The amendments in general are effective for taxable years ending after December 31, 1971.

**§ 1.994 Statutory provisions; intercompany pricing rules.**

SEC. 994. *Intercompany pricing rules*—(a) *In general.* In the case of a sale of export property to a DISC by a person described in section 482, the taxable income of such DISC and such person shall be based upon a transfer price which would allow such DISC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 4 percent of the qualified export receipts on the sale of such property by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts,

(2) 50 percent of the combined taxable income of such DISC and such person which is attributable to the qualified export receipts on such property derived as the result of a sale by the DISC plus 10 percent of the export promotion expenses of such DISC attributable to such receipts, or

(3) Taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

(b) *Rules for commissions, rentals, and marginal costing.* The Secretary or his delegate shall prescribe regulations setting forth—

(1) Rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) Rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a DISC is seeking to establish or maintain a market for export property.

(c) *Export promotion expenses.* For purposes of this section, the term "export promotion expenses" means those expenses incurred to advance the distribution or sale of export property for use, consumption, or distribution outside of the United States, but does not include income taxes. Such expenses shall also include freight expenses to the extent of 50 percent of the cost of shipping export property aboard airplanes owned and operated by U.S. persons or ships documented under the laws of the United States in those cases where law or regulations does not require that such property be shipped aboard such airplanes or ships.

[Sec. 994 as added by sec. 501, Rev. Act 1971 (85 Stat. 543)]

**§ 1.994–1 Inter-company pricing rules for DISC's.**

(a) *In general*—(1) *Scope.* In the case of a transaction described in paragraph (b) of this section, section 994 permits a person related to a DISC to determine the allowable transfer price charged the DISC (or commission paid the DISC) by its choice of three methods described in paragraph (c) (2), (3), and (4) of this section: The "4 percent" gross receipts method, the "50–50" combined taxable income method, and the section 482 method. Under the first two methods, the DISC is entitled to 10 percent of its export promotion expenses as additional taxable income. When the gross receipts method or combined taxable income method is applied to a transaction, the Commissioner may not make distributions, apportionments, or allocations as provided by section 482 and the regulations thereunder. For rules as to certain "incomplete transactions" and for computing combined taxable income, see paragraph (c) (5) and (6) of this section. Grouping of transactions for purposes of applying the method chosen is provided by paragraph (c)(7) of this section. The rules in paragraph (c) of this section are directly applicable only in the case of sales or exchanges of export property to a DISC for resale, and are applicable by analogy to leases, commissions, and services as provided in paragraph (d) of this section. For rules limiting the application of the gross receipts method and combined taxable income method so that the supplier related to the DISC will not incur a loss on transactions, see paragraph (e) (1) of this section. Paragraph (e) (2) of this section provides for the applicability of section 482 to resales by the DISC to related persons. Paragraph (e) (3) of this section provides for the time by which a reasonable estimate of the transfer price (including commissions and other payments) should be paid. The subsequent determination and further adjustments to transfer prices are set forth in paragraph (e) (4) of this section. Export pro-

motion expenses are defined in paragraph (f) of this section. Paragraph (g) of this section has several examples illustrating the provisions of this section. Section 1.994–2 prescribes the marginal costing rules authorized by section 994 (b)(2).

(2) *Relationship to section 993.* If the minimum requirements of paragraph (1) of § 1.993–1 that must be met for a DISC to be subject to section 994 have been satisfied, the application of section 994 (a) (1) or (2) does not depend on the extent to which the DISC performs substantial economic functions, except with respect to export promotion expenses.

(3) *Related party and related supplier.* For the purposes of this section—

(i) The term "related party" means a person which is owned or controlled directly or indirectly by the same interests as the DISC within the meaning of section 482 and § 1.482–1(a).

(ii) The term "related supplier" means a related party which singly engages in a transaction directly with the DISC which is subject to the rules of section 994 and this section. However, a DISC may have different related suppliers with respect to different transactions. If, for example, X owns all the stock of Y, a corporation, and of Z, a DISC, and sells a product to Y which is resold to Z, only Y is the related supplier of Z, and, thus, only the resale from Y to Z is subject to section 994 and this section. If, however, X sells directly to Z and Y also sells directly to Z, then, as to the transactions involving direct sales to Z, each of X and Y is a related supplier of Z.

(b) *Transactions to which section 994 applies.* Section 994(a)(3) may be applied, as described in paragraph (a) of this section, to any transaction between a related supplier and a DISC. Section 994(a) (1) or (2) may be applied, as described in paragraph (a) of this section, to a transaction between a related supplier and a DISC only in the following cases:

(1) Where the related supplier sells export property to the DISC for resale or where the DISC is commission agent for the related supplier on sales by the related supplier of export property to third parties whether or not related parties. For purposes of this section, references to sales include exchanges.

(2) Where the related supplier leases export property to the DISC for sublease for a comparable period with comparable terms of payment or where the DISC is commission agent for the related supplier on leases by the related supplier of export property to third parties whether or not related parties.

(3) Where services are furnished by a related supplier which are related and subsidiary to any sale or lease by the DISC, acting as principal or commission agent, of export property under subparagraph (1) or (2) of this paragraph.

(4) Where engineering or architectural services for construction projects located (or proposed for location) outside of the United States are furnished by a related supplier where the DISC is acting as principal or commission agent with respect to the furnishing of such services to a third party whether or not a related party.

(5) Where the related supplier furnishes managerial services in furtherance of the production of qualified export receipts of an unrelated DISC where the related DISC is acting as principal or commission agent with respect to the furnishing of such services to an unrelated DISC.

Transactions are included, for purposes of this paragraph, only if they give rise to qualified export receipts (within the meaning of section 993(a)) in the hands of the related DISC. If a transaction is not included in subparagraph (1), (2), (3), (4), or (5) of this paragraph, the rules of section 994(a) (1) or (2) do not apply. Thus, for example, the rules of section 994(a) (1) or (2) would not apply if a DISC purchased export property from its related supplier and leased such property to a third party.

(c) *Transfer price for sales of export property*—(1) *In general.* Under this paragraph, rules are prescribed for computing the allowable price for a transfer from a related supplier to a DISC in the case of a sale of export property described in paragraph (b)(1) of this section.

(2) *The "4-percent" gross receipts method.* Under the gross receipts method of pricing, the transfer price for a sale by the related supplier to the DISC is the price as a result of which the taxable income derived by the DISC from the sale will not exceed the sum of (i) 4 percent of the qualified export receipts of the DISC derived from the sale of the export property (as defined in section 993 (c)) and (ii) 10 percent of the export promotion expenses (as defined in paragraph (f) of this section) of the DISC attributable to such qualified export receipts.

(3) *The "50–50" combined taxable income method.* Under the combined taxable income method of pricing, the transfer price for a sale by the related supplier to the DISC is the price as a result of which the taxable income derived by the DISC from the sale will not exceed the sum of (i) 50 percent of the combined taxable income (as defined in subparagraph (6) of this paragraph) of the DISC and its related supplier attributable to the qualified export receipts from such sale and (ii) 10 percent of the export promotion expenses (as defined in paragraph (f) of this section) of the DISC attributable to such qualified export receipts.

(4) *Section 482 method.* If the rules of subparagraphs (2) and (3) of this paragraph are inapplicable to a sale or a taxpayer does not choose to use them, the transfer price for a sale by the related supplier to the DISC is to be determined on the basis of the sale price actually charged but subject to the rules provided by section 482 and the regulations thereunder.

(5) *Incomplete transactions.* (i) For purposes of the gross receipts and combined taxable income methods, where property (encompassed within a transaction or group chosen under subparagraph (7) of this paragraph) is transferred by a related supplier to a DISC during a taxable year of either the DISC or related supplier, but some or all of such property is not sold by the DISC during such year—

(*a*) The transfer price of such property sold by the DISC during such year shall be computed separately from the transfer price of the property not sold by the DISC during such year,

(*b*) With respect to such property not sold by the DISC during such year, the transfer price paid by the DISC for such year shall be the related supplier's cost of goods sold (see subparagraph (6)(ii) of this paragraph) with respect to the property, except that, with respect to such taxable years ending on or before August 15, 1975, the transfer price paid by the DISC shall be at least (but need not exceed) the related supplier's cost of goods sold with respect to the property.,

(*c*) For the subsequent taxable year during which such property is resold by the DISC, an additional amount shall be paid by the DISC (to be treated as income for such year by the related supplier) equal to the excess of the amount which would have been the transfer price under this section had the transfer to the DISC by the related supplier and the resale by the DISC taken place during the taxable year of the DISC during which it resold the property over the amount already paid under (*b*) of this subdivision.

(*d*) The time and manner of payment of transfer prices required by (*b*) and (*c*) of this subdivision shall be determined under paragraph (e) (3), (4), and (5) of this section.

(ii) For purposes of this paragraph, a DISC may determine the year in which it receives property from a related supplier and the year in which it sells property in accordance with the method of identifying goods in its inventory properly used under section 471 or 472 (relating respectively to general rule for inventories and to LIFO inventories). Transportation expense of the related supplier in connection with a transaction to which this subparagraph applies shall be treated as an item of cost of goods sold with respect to the property if the related supplier includes the cost of intracompany transportation between its branches, divisions, plants, or other units in its cost of goods sold (see subparagraph (6)(ii) of this paragraph).

(6) *Combined taxable income.* For purposes of this section, the combined taxable income of a DISC and its related supplier from a sale of export property is the excess of the gross receipts (as defined in section 993(f)) of the DISC from such sale over the total costs of the DISC and related supplier which relate to such gross receipts. Gross receipts from a sale do not include interest with respect to the sale. Combined taxable income under this paragraph shall be determined after taking into account under paragraph (e)(2) of this section all adjustments required by section 482 with respect to transactions to which such sec-

tion is applicable. In determining the gross receipts of the DISC and the total costs of the DISC and related supplier which relate to such gross receipts, the following rules shall be applied:

(i) Subject to subdivisions (ii) through (v) of this subparagraph, the taxpayer's method of accounting used in computing taxable income will be accepted for purposes of determining amounts and the taxable year for which items of income and expense (including depreciation) are taken into account. See § 1.991–1(b)(2) with respect to the method of accounting which may be used by a DISC.

(ii) Cost of goods sold shall be determined in accordance with the provisions of § 1.61–3. See sections 471 and 472 and the regulations thereunder with respect to inventories. With respect to property to which an election under section 631 applies (relating to cutting of timber considered as a sale or exchange), cost of goods sold shall be determined by applying § 1.631–1 (d) (3) and (e) (relating to fair market value as of the beginning of the taxable year of the standing timber cut during the year considered as its cost).

(iii) Costs (other than cost of goods sold) which shall be treated as relating to gross receipts from sales of export property are (*a*) the expenses, losses, and other deductions definitely related, and therefore allocated and apportioned, thereto, and (*b*) a ratable part of any other expenses, losses, or other deductions which are not definitely related to a class of gross income, determined in a manner consistent with the rules set forth in § 1.861–8.

(iv) The taxpayer's choice in accordance with subparagraph (7) of this paragraph as to the grouping of transactions shall be controlling, and costs deductible in a taxable year shall be allocated and apportioned to the items or classes of gross income of such taxable year resulting from such grouping.

(v) [Reserved]

(7) *Grouping transactions.* (i) Generally, the determinations under this section are to be made on a transaction-by-transaction basis. However, at the annual choice of the taxpayer some or all of these determinations may be made on the basis of groups consisting of products or product lines.

(ii) A determination by a taxpayer as to a product or a product line will be accepted by a district director if such determination conforms to any one of the following standards: (*a*) A recognized industry or trade usage, or (*b*) the 2-digit major groups (or any inferior classifications or combinations thereof, within a major group) of the Standard Industrial Classification as prepared by the Statistical Policy Division of the Office of Management and Budget, Executive Office of the President.

(iii) A choice by the taxpayer to group transactions for a taxable year on a product or product line basis shall apply to all transactions with respect to that product or product line consummated during the taxable year. However, the choice of a product or product line grouping applies only to transactions covered by the grouping and, as to transactions not encompassed by the grouping, the determinations are made on a transaction-by-transaction basis. For example, the taxpayer may choose a product grouping with respect to one product and use the transaction-by-transaction method for another product within the same taxable year.

(iv) For rules as to grouping certain related and subsidiary services, see paragraph (d)(3)(ii) of this section.

(d) *Rules under section 994(a) (1) and (2) for transactions other than sales.* The following rules are prescribed for purposes of applying the gross receipts method or combined taxable income method to transactions other than sales:

(1) *Leases.* In the case of a lease of export property by a related supplier to a DISC for sublease by the DISC to produce gross receipts, for any taxable year the amount of rent the DISC must pay to the related supplier shall be determined under the DISC's lease with its related supplier but must be computed in a manner consistent with the rules in paragraph (c) of this section for computing the transfer price in the case of sales and resales of export property under the gross receipts method or combined taxable income method. For purposes of applying this subparagraph, transactions may not be so grouped on a product or product line basis under the rules of paragraph (c)(7) of this section as to combine in any one group of transactions both lease transactions and sale transactions involving the same product or product line.

(2) *Commissions.* If any transaction to which section 994 applies is handled on a commission basis for a related supplier by a DISC and such commissions give rise to qualified export receipts under section 993(a)—

(i) The amount of the income that may be earned by the DISC in any year is the amount, computed in a manner consistent with paragraph (c) of this section, which the DISC would have been permitted to earn under the gross receipts method, the combined taxable income method, or section 482 method if the related supplier had sold (or leased) the property or service to the DISC and the DISC in turn sold (or subleased) to a third party, whether or not a related party, and

(ii) The maximum commission the DISC may charge the related supplier is the sum of the amount of income determined under subdivision (i) of this subparagraph plus the DISC's total costs for the transaction as determined under paragraph (c)(6) of this section.

(3) *Receipts from services*—(i) *Related and subsidiary services attributable to the year of the export transaction.* The gross receipts for related and subsidiary services described in paragraph (b)(3) of this section shall be treated as part of the receipts from the export transaction to which such services are related and subsidiary, but only if, under the arrangement between the DISC and its related supplier and the accounting method otherwise employed by the DISC, the income from such services is includible for the same taxable year as income from such export transaction.

(ii) *Other services.* In the case of related and subsidiary services to which subdivision (i) of this subparagraph does not apply and other services described in paragraph (b) (4) or (5) of this section performed by a related supplier (relating respectively to engineering and architectural services and certain managerial services), the amount of taxable income which the DISC may derive for any taxable year shall be determined under the arrangement between the DISC and its related supplier and shall be computed in a manner consistent with the rules in paragraph (c) of this section for computing the transfer price in the case of sales for resale of export property under the gross receipts method or combined taxable income method. Related and subsidiary services to which subdivision (i) of this subparagraph does not apply may be grouped, under the rules for grouping of transactions in paragraph (c)(7) of this section, with the products or product lines to which they are related and subsidiary, so long as the grouping of services chosen is consistent with the grouping of products or product lines chosen for the taxable year in which either the products or product lines were sold or in which payment for such services is received or accrued. The rules for grouping of transactions in paragraph (c)(7) of this section shall not apply with respect to the determination of taxable income which the DISC may derive from other services described in paragraph (b) (4) or (5) of this section performed by a related supplier or commissions on such services, and such determination shall be made only on a transaction-by-transaction basis.

(e) *Methods of applying paragraphs (c) and (d) of this section*—(1) *Limitation on DISC income ("no loss" rule)*—(i) *In general.* Except as otherwise provided in this subparagraph, neither the gross receipts method nor the combined taxable income method may be applied to cause in any taxable year a loss to the related supplier, but either method may be applied to the extent it does not cause a loss. A loss to a related supplier would result if the taxable income of the DISC would exceed the combined taxable income of the related supplier and the DISC. If, however, there is no combined taxable income of the DISC and the related supplier (because, for example, a combined loss is incurred), a transfer price (or commission) will not be deemed to cause a loss to the related supplier if it allows the DISC to recover an amount not in excess of its costs (if any).

(ii) *Special rule for applying "4 percent" gross receipts method to sales.* A transfer price or commission, determined under the "4 percent" gross receipts method (determined without regard to subdivision (i) of this subparagraph), for a sale of export property referred to in paragraph (b)(1) of this section, will not be considered to cause a loss for the related supplier if for the

DISC's taxable year, the ratio that (*a*) the taxable income of the DISC derived from such sale by using such price or commission bears to (*b*) the DISC's gross receipts from such sale is not greater than the ratio that (*c*) all of the taxable income of the related supplier and the DISC from all sales of the same product or product line (domestic and foreign) to third parties whether or not related parties bears to (*d*) the total gross receipts of the related supplier and the DISC from such sales. For purposes of the preceding sentence, sales between the DISC and its related suppliers shall not be taken into account under (*c*) or (*d*) of this subdivision. For example, assume that for a taxable year of a DISC the total costs of the related supplier and the DISC with respect to all sales ($150 for domestic and $44 for foreign) of a product line are $194 and the total gross receipts of the related supplier and the DISC with respect to such sales are $200 so that the total taxable income of the related supplier and the DISC with respect to such sales is $6. The parties would thus be entitled to compute a transfer price determined under the gross receipts method on any given sale of product A of such product line by the related supplier to the DISC which would allocate to the DISC taxable income equal to not more than 3 percent (i.e., $6/$200) of its gross receipts derived from its resale of such product. If the DISC were to resell an item of product A for $10, the transfer price paid by the DISC to the related supplier determined under the gross receipts method could be as low as $9.70.

(iii) *Grouping transactions.* For purposes of subdivision (i) of this subparagraph, the basis for grouping transactions chosen by the taxpayer under paragraph (c)(7) of this section for the taxable year shall be applied. For purposes of making the computations of subdivision (ii) (*c*) and (*d*) of this subparagraph, however, the taxpayer may choose any basis for grouping transactions permissible under paragraph (c)(7) of this section, even though it may not be the same basis as that already chosen under paragraph (c)(7) of this section for computing transfer prices or commissions to a DISC. If, for example, the taxpayer has chosen to group transactions on a product basis for computing transfer prices or commissions to a DISC for a taxable year, the taxpayer may still group transactions on a product line basis for purposes of computing taxable income and total gross receipts under subdivision (ii) (*c*) and (*d*) of this subparagraph. For a further example, if the taxpayer computes taxable income for one group of transactions under the gross receipts method and computes taxable income for a second group of transactions under the combined taxable income method, the taxpayer may aggregate these transactions for purposes of computing taxable income and total gross receipts under subdivision (ii) (*c*) and (*d*) of this subparagraph.

(2) *Relationship to section 482.* In applying the rules under section 994, it may be necessary to first take into account the price of a transfer (or other transaction) between the DISC (or related supplier) and a related party which is subject to the arm's length standard of section 482. Thus, for example, where a related supplier sells export property to a DISC which the related supplier purchased from related parties, the costs taken into account in computing the combined taxable income of the DISC and the related supplier are determined after any necessary adjustment under section 482 of the price paid by the related supplier to the related parties. In applying section 482 to a transfer by a DISC, however, the DISC and its related supplier are treated as if they were a single entity carrying on all the functions performed by the DISC and the related supplier with respect to the transaction and the DISC shall be allowed to receive under the section 482 standard the amount the related supplier would have received had there been no DISC.

(3) [Reserved]

(4) *Subsequent determination of transfer price or commission.* The DISC and its related supplier would ordinarily determine under section 994 and this section the transfer price payable by the DISC (or the commission payable to the DISC) for a transaction before the DISC files its return for the taxable year of the transaction. After the DISC has filed its return, a redetermination of the transfer price (or commission) may only be made if permitted by the Code and the regulations thereunder. Such a redetermination would include a redetermination by reason of an adjustment under section 482 which affects the amounts which entered into the determination of the transfer price or commission.

(5) [Reserved]

(6) [Reserved]

(f) *Export promotion expenses*—(1) *Purpose of expense.* (i) In order for an expense or cost of a type described in subparagraph (2) of this paragraph to be an export promotion expense, the expense or cost must be incurred or treated as incurred by the DISC (under subparagraph (7) of this paragraph) to advance the sale, lease, or other distribution of export property for use, consumption, or distribution outside the United States. Costs of services in performing installation (but not assembly) on the site and for meeting warranty commitments if such services are related and subsidiary (within the meaning of § 1.993-1(d)) to any qualified sale, lease, or other distribution of export property by the DISC (or with respect to which the DISC received a commission) will be considered to advance the sale, lease, or other distribution of export property. General and administrative expenses attributable to billing customers, other clerical functions of the DISC, or generally operating the DISC, will also be considered to advance the sale, lease, or other distribution of export property.

(ii) Where an expense or cost incurred or treated as incurred by the DISC qualifies only in part as an export promotion expense, such expense or cost must be allocated between the qualified portion and such other portion on a reasonable basis. See § 1.994-2(b)(2) for the option of the related supplier not to claim expenses as export promotion expenses.

(2) *Types of expenses.* The only expenses or costs which may be export promotion expenses are those expenses or costs meeting the test of subparagraph (1) of this paragraph which constitute—

(i) Ordinary and necessary expenses of the DISC paid or incurred during the DISC's taxable year in carrying on any trade or business, allowable as deductions under section 162, such as expenses for market studies, advertising, salaries and wages (including contributions or compensations deductible under section 404) of sales, clerical, and other personnel, rentals on property, sales commissions, warehousing, and other selling expenses,

(ii) A reasonable allowance under section 167 for exhaustion, wear and tear, or obsolescence of the property of the DISC,

(iii) Costs of freight (subject to the limitations of subparagraph (4) of this paragraph),

(iv) Costs of packaging for export (as defined in subparagraph (5) of this paragraph), or

(v) Costs of designing and labeling packages exclusively for export markets (under subparagraph (6) of this paragraph).

(3) *Ineligible expenses.* Items ineligible to be export promotion expenses include, for example, interest expenses, bad debt expenses, freight insurance, State and local income and franchise taxes, the cost of manufacture or assembly operations, and items of cost of goods sold (except as otherwise provided in this paragraph in the case of certain freight, packaging, and designing and labeling expenses). Income or similar taxes eligible for a foreign tax credit under sections 901 and 903 are also not eligible to be export promotion expenses.

(4) *Freight expenses*—(i) *In general.* Export promotion expenses include one-half of the freight expense (not including insurance) for shipping export property aboard a U.S.-flag carrier in those cases where law or regulation of the United States or of any State or political subdivision thereof or of any agency or instrumentality of any of these does not require that the export property be shipped aboard a U.S.-flag carrier. For purposes of this paragraph, the term "freight expense" includes charges paid for c.o.d. service, miscellaneous ground charges, such as charges incurred for services normally performed by U.S.-flag carriers, charges for services of loading aboard U.S.-flag carriers normally performed by such carriers, freight forwarders, or independent contractors engaged in loading property, and charges attributable to a freight consolidation function normally performed by freight forwarders. In order for one-half of

freight expenses paid to the owner (or the agent of the owner) of a U.S.-flag carrier to be claimed as an export promotion expense, the DISC must obtain a written statement (such as, for example, a bill of lading) from the owner (or the agent) disclosing that the export property was shipped aboard the owner's U.S.-flag carrier or another U.S.-flag carrier, and the DISC must have no reasonable basis for disbelieving such statement of the owner (or the agent). For the requirement of a written statement from a freight forwarder, see subdivision (iv) of this subparagraph.

(ii) *U.S.-flag carrier defined.* For purposes of this paragraph, the term "U.S.-flag carrier" is an airplane owned and operated by a U.S. person or persons (as defined in section 7701(a)(30)) or a ship documented under the laws of the United States. Shipment initiated by delivery to the U.S. Postal Service shall be considered shipment aboard a U.S.-flag carrier, but not if shipped to a place to which mail shipments from the United States are ordinarily accomplished by land transportation, such as to Canada or Mexico, unless airmail is specified.

(iii) *Shipment pursuant to law or regulation.* Shipment pursuant to law or regulation includes instances where a U.S.-flag carrier must be used in order to obtain permission from the Government to make the export. If the law or regulation requires a fixed portion of the export property to be shipped aboard a U.S.-flag carrier, the freight expense on that portion of such export property that was so shipped in order to satisfy such requirement cannot qualify as an export promotion expense.

(iv) *Freight forwarders.* A payment to a freight forwarder shall be considered freight expense within the meaning of this paragraph to the extent the forwarder utilizes a U.S.-flag carrier. For purposes of this paragraph, the term "freight forwarder" includes air freight consolidators and carriers owned and operated by U.S. persons utilizing U.S.-flag carriers such as non-vessel-owning common carriers. In order for one-half of freight expenses paid to a freight forwarder to be claimed as export promotion expenses, the DISC must obtain a written statement (such as, for example, a bill of lading) from the freight forwarder disclosing that the export property was shipped aboard a U.S.-flag carrier, and the DISC must have no reasonable basis for disbelieving such statement of the freight forwarder.

(v) *Freight within the United States.* A DISC may not claim as export promotion expense any amount that is attributable to carriage of export property between points within the United States. If, however, export property is carried from the United States to a foreign country on a through shipment pursuant to a single bill of lading or similar document aboard one or more U.S.-flag carriers, the freight expense of such carriage shall not be apportioned between the domestic and foreign portions of such carriage, even though a carrier may stop en route within the United States or the export property may be shifted from one carrier to another, and one-half of such freight expense may be claimed as an export promotion expense. Freight expense does not include the cost of transporting the export property to the depot of the U.S.-flag carrier or freight forwarder for shipment abroad. The expense of shipment of export property initiated by delivery to the U.S. Postal Service for ultimate delivery outside the United States shall be considered as attributable entirely to carriage of such property outside the United States.

(5) *Packaging for export.* (i) Export promotion expenses include the direct and indirect cost of packaging export property (including the cost of the package) for export whether or not the packaging is the same as domestic packaging. Such packaging costs do not include costs of manufacturing (as defined in the regulations under section 993) and assembly. Thus, if a DISC buys and packages export property for resale, its costs of packaging the export property are export promotion expenses. If, however, the process of such packaging by the DISC is physically integrated with the process of manufacturing the export property by the related supplier, the costs of such packaging are not export promotion expenses.

(ii) The cost of containers leased from a shipping company to which the DISC also pays freight for the property packaged is not a cost of packaging. However, in such circumstances, one-half of the rental charge may be allowable as a freight expense if permitted under subparagraph (4) of this paragraph.

(6) *Designing and labeling packages.* Export promotion expenses include the direct and indirect costs of designing and labeling packages, including bottles, cans, jars, boxes, cartons, or containers, to the extent incurred for export markets. Thus, for example, to the extent incurred for supplying export markets, the cost of designing labels in a foreign language and the cost of printing such labels are export promotion expenses.

(7) *DISC must incur export promotion expenses*—(i) *In general.* In order for an expense to be an export promotion expense it must be incurred or treated as incurred under this subparagraph by the DISC. For example, an expense is incurred by a DISC if the expense results from (*a*) the DISC incurring an obligation to pay compensation to its employees, (*b*) depreciation of property owned by the DISC and used by its employees, (*c*) the DISC incurring an obligation to pay for office supplies used by its employees, (*d*) the DISC incurring an obligation to pay space costs for use by its employees, or (*e*) the DISC incurring an obligation to pay other costs supporting efforts by its employees.

(ii) *Payments to independent contractors.* A payment to an independent contractor, directly or indirectly, is treated as incurred by the DISC if the cost of performing the function performed by the independent contractor would be considered an export promotion expense described in subparagraphs (1) and (2) of this paragraph if performed by the DISC, and if, in a case where the services of the independent contractor were engaged by a party related to the DISC, such related party and such DISC agreed in writing before the contract was entered into that a specified portion or all of the contract was for the benefit of the DISC and that all of the expenses of the contract (eligible to be considered as export promotion expenses) with respect to such portion would be borne by the DISC.

(iii) *Expenses incurred by related parties.* Reimbursements or other payments by a DISC to a related party are export promotion expenses only if the expenses of the related party for which reimbursement is made are for space in a building actually used by employees of the DISC or for export property owned by the DISC. Except as otherwise provided in the preceding sentence, expenses incurred by a foreign international sales corporation (FISC) or a real property holding company (as defined in section 993(e)(1) and (2), respectively) shall not be treated as export promotion expenses of its DISC.

(iv) *Selling commissions paid by a DISC.* A commission paid by a DISC to a person other than a related person, with respect to a transaction which gives rise to qualified export receipts of the DISC, is an export promotion expense of the DISC. A commission paid by a DISC to a related person is not an export promotion expense.

(v) *Sales of promotional material.* If a DISC sells promotional material to a buyer of export property from the DISC at a price which is greater than the costs of the DISC for such material, such costs are not export promotion expenses. If, however, the DISC sells promotional material at a price which is less than its costs for such material, the excess of such costs over such price is an export promotion expense. For rules relating to the status of promotional material as qualified export assets and export property, see § 1.993–2 and § 1.993–3, respectively.

(vi) An expense may be incurred by the DISC under subdivisions (i) through (v) of this subparagraph even if the accounting for and payment of such expense is handled by a related party and the DISC reimburses the related party for such expenses.

(8) *Incomplete transactions.* Expenses eligible to be treated as export promotion expenses which are attributable to the sale, lease, or other distribution of export property and which are incurred prior to the taxable year of sale, lease, or other distribution by the DISC are not treated as export promotion expenses until the taxable year of sale, lease, or other distribution or until the taxable year in which it is first determined that no transaction is reasonably expected to result from the expense incurred (whether or not a transaction subsequently results). Thus, for example, if a DISC incurs a packaging cost which is otherwise eligible to be treated as an export promotion expense, the DISC may not include such charge as an export promo-

tion expense until the year in which the export property with respect to which the packaging cost was incurred is actually sold by the DISC. If no transaction is reasonably expected to result from the packaging cost, such cost should be allocated as an export promotion expense to the group of transactions to which such cost is most closely related.

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example* (1). J and K are calendar year taxpayers. J, a domestic manufacturing company, owns all the stock of K, a DISC for the taxable year. During 1972, J manufactures only 100 units of a product (which is eligible to be export property as defined in section 993(c)). J enters into a written agreement with K whereby K is granted a sales franchise with respect to exporting such property and K will receive commissions with respect to such exports equal to the maximum amount permitted to be received under the intercompany pricing rules of section 994. Thereafter, the 100 units are sold for $1,000. J's cost of goods sold attributable to the 100 units is $650. J's direct selling expenses so attributable are $100. Although J has other deductible expenses, for purposes of this example assume that J has no other deductible expenses. K pays $230 to independent contractors which qualify as export promotion expenses under paragraph (f)(7)(ii) of this section. K does not perform functions substantial enough to entitle it to an allocation of income which meets the arm's length standard of section 482. The income which K may earn under section 994 under the franchise is $20, computed as follows:

| | | | |
|---|---|---|---|
| (1) Combined taxable income: | | | |
| (a) K's sales price | | | $1,000 |
| (b) Less deductions: | | | |
| J's cost of goods sold | $650 | | |
| J's direct selling expenses | 100 | | |
| K's export promotion expenses | 230 | | |
| Total deductions | | | 980 |
| (c) Combined taxable income | | | 20 |
| (2) K's profit under combined taxable income method (before application of loss limitation): | | | |
| (a) 50 percent of combined taxable income | | | 10 |
| (b) Plus: 10 percent of K's export promotion expenses (10% of $230) | | | 23 |
| (c) K's profit | | | 33 |
| (3) K's profit under gross receipts method (before application of loss limitation): | | | |
| (a) 4 percent of K's sales price (4% of $1,000) | | | 40 |
| (b) Plus: 10 percent of K's export promotion expenses (10% of $230) | | | 23 |
| (c) K's profit | | | 63 |

Since combined taxable income ($20) is lower than both K's profit under the combined taxable income method ($33) and under the gross receipts method ($63), the maximum income K may earn is $20. Accordingly, the commissions K may receive from J are $250, i.e., K's expenses ($230) plus K's profit ($20).

*Example* (2). M and N are calendar year taxpayers. M, a domestic manufacturing company, owns all the stock of N, a DISC for the taxable year. During 1972, M produces and sells a particular product line of export property to N for $75, a price which can be justified as satisfying the standard of arm's length price of section 482. N performs substantial functions with respect to the transaction and resells the export property for $100. M's cost of goods sold attributable to the export property is $60. M's direct selling expenses so attributable (relating to advertising of the product line in foreign markets) are $12. Although M has other deductible expenses, for purposes of this example, assume that M has no other deductible expenses. N's expenses attributable to resale of the export property are $22 of which $20 are export promotion expenses. The maximum profit which N may earn with respect to the product line is $6, computed as follows:

| | | | |
|---|---|---|---|
| (1) Combined taxable income: | | | |
| (a) N's sales price | | | $100 |
| (b) Less deductions: | | | |
| M's cost of goods sold | $60 | | |
| M's direct selling expenses | 12 | | |
| N's expenses | 22 | | |
| Total deductions | | | 94 |
| (c) Combined taxable income | | | 6 |
| (2) N's profit under combined taxable income method (before application of loss limitation): | | | |
| (a) 50 percent of combined taxable income | | | 3 |
| (b) Plus: 10 percent of N's export promotion expenses (10% of $20) | | | 2 |
| (c) N's profit | | | 5 |
| (3) N's profit under gross receipts method (before application of loss limitation): | | | |
| (a) 4 percent of N's sales price (4% of $100) | | | 4 |
| (b) Plus: 10 percent of N's export promotion expenses (10% of $20) | | | 2 |
| (c) N's profit | | | 6 |

(4) N's profit under section 482 method:

| | | |
|---|---|---|
| (a) N's sales price | | 100 |
| (b) Less deductions: | | |
| N's cost of goods sold (price paid by N to M) | 75 | |
| N's expenses | 22 | |
| Total deductions | | 97 |
| (c) N's profit | | 3 |

Since the gross receipts method results in greater profit to N ($6) than does the combined taxable income method ($5) or section 482 method ($3), and does not exceed combined taxable income ($6), N may earn a maximum profit of $6. Accordingly, the transfer price from M to N may be readjusted as long as the transfer price is not readjusted below $72, computed as follows:

(5) Transfer price from M to N:

| | | |
|---|---|---|
| (a) N's sales price | | $100 |
| (b) Less: | | |
| N's expenses | 22 | |
| N's profit | 6 | |
| Total subtractions | | 28 |
| (c) Transfer price | | 72 |

*Example* (3). Q and R are calendar year taxpayers. Q, a domestic manufacturing company, owns all the stock of R, a DISC for the taxable year. During 1972, Q produces and sells a product line of export property to R for $170, a price which can be justified as satisfying the standards of arm's length price of section 482, and R resells the export property for $200. Q's cost of goods sold attributable to the export property is $115 so that the combined gross income from the sale of the export property is $85 (i.e., $200 minus $115). Q's expenses incurred in connection with the property sold are $35. Q's deductible overhead and other supportive expenses allocable to all gross income are $6. Apportionment of these supportive expenses on the basis of gross income does not result in a material distortion of income and is a reasonable method of apportionment. Q's gross income from sources other than the transaction is $170 making total gross income of Q and R (excluding the transfer price paid by R) $255 (i.e., $85 plus $170). R's expenses attributable to resale of the export property are $20, all of which are export promotion expenses. The maximum profit which R may earn with respect to the product line is $16, computed as follows:

(1) Combined taxable income:

| | | | |
|---|---|---|---|
| (a) R's sales price | | | $200 |
| (b) Less deductions: | | | |
| (i) Q's cost of goods sold | | 115 | |
| (ii) Q's expenses incurred in connection with the property sold | | 35 | |
| (iii) Apportionment of Q's supportive expenses: | | | |
| Q's supportive expenses | $6 | | |
| Combined gross income from sale of export property | 85 | | |
| Total gross income of Q and R | 255 | | |
| Apportionment | $\frac{6 \times 85}{255}$ | 2 | |
| (iv) R's expenses | | 20 | |
| Total deductions | | | 172 |
| (c) Combined taxable income | | | 28 |

(2) R's profit under combined taxable income method (before application of loss limitation):

| | |
|---|---|
| (a) 50 percent of combined taxable income | 14 |
| (b) Plus: 10 percent of R's export promotion expenses (10% of $20) | 2 |
| (c) R's profit | 16 |

(3) R's profit under gross receipts method (before application of loss limitation):

| | |
|---|---|
| (a) 4 percent of R's sales price (4% of $200) | 8 |
| (b) Plus: 10 percent of R's export promotion expenses (10% of $20) | 2 |
| (c) R's profit | 10 |

(4) R's profit under section 482 method:

| | | |
|---|---|---|
| (a) R's sales price | | 200 |
| (b) Less deductions: | | |
| R's cost of goods sold (price paid by R to Q) | 170 | |
| R's expnses | 20 | |
| Total deductions | | 190 |
| (c) R's profit | | 10 |

Since the combined taxable income method results in greater profit to R ($16) than does the gross receipts method ($10) or section 482 method ($10), and does not exceed combined taxable income ($28), R may earn a maximum profit of $16. Accordingly, the transfer price from Q to R may be readjusted as long as the transfer price is not readjusted below $164 computed as follows:

| | | |
|---|---|---|
| (5) Transfer price from Q to R: | | |
| (a) R's sales price | | $200 |
| (b) Less: | | |
| R's expenses | $20 | |
| R's profit | 16 | |
| Total | | 36 |
| (c) Transfer price | | 164 |

*Example (4).* S and T are calendar year taxpayers. S, a domestic manufacturing company, owns all the stock of T, a DISC for the taxable year. During 1972, S produces and sells 100 units of a particular product to T under a written agreement which provides that the transfer price between S and T shall be that price which allocates to T the maximum permitted to be received under the intercompany pricing rules of section 994. Thereafter, the 100 units are sold by T for $950. S's cost of goods sold attributable to the 100 units is $650. S's other deductible expenses so attributable are $300. Although S has other deductible expenses, for purposes of this example, assume that S has no deductible expenses not definitely allocable to any item of gross income. T's expenses attributable to the resale of the 100 units are $50. S chooses not to apply the section 482 method. T may not earn any income under the gross receipts or combined taxable income method with respect to resale of the 100 units because combined taxable income is a negative figure, computed as follows:

| | | |
|---|---|---|
| (1) Combined taxable income: | | |
| (a) T's sales price | | $950 |
| (b) Less deductions: | | |
| S's cost of goods sold | 650 | |
| S's expenses | 300 | |
| T's expenses | 50 | |
| Total deductions | | 1,000 |
| (c) Combined taxable income (loss) | | ($50) |

Under paragraph (e)(1)(i) of this section, T is permitted to recover its expenses attributable to the 100 units ($50) even though such recovery results in a loss or increased loss to the related supplier. Accordingly, the transfer price from S to T may be readjusted as long as the transfer price is not readjusted below $900, computed as follows:

| | | |
|---|---|---|
| (2) Transfer price from S to T: | | |
| (a) T's sales price | | $950 |
| (b) Less: T's expenses | | 50 |
| (c) Transfer price | | 900 |

*Example (5).* Assume the same facts as in example (4) except that S chooses to apply the section 482 method and that under arm's length dealings T would have derived $10 of income. Accordingly, the transfer price from S to T may be set at an amount not less than $890, computed as follows:

| | | |
|---|---|---|
| (1) Transfer price from S to T: | | |
| (a) T's sales price | | $950 |
| (b) Less: | | |
| T's expenses | 50 | |
| T's profit | 10 | |
| Total deductions | | 60 |
| (c) Transfer price | | 890 |

*Example (6).* X and Y are calendar year taxpayers. X, a domestic manufacturing company, owns all the stock of Y, a DISC for the taxable year. During March 1972, X manufactures a particular product of export property which it leases on April 1, 1972, to Y for a term of 1 year at a monthly rental of $1,000, a rent which satisfies the standard of arm's length rental under section 482. Y subleases the product on April 1, 1972, for a term of 1 year at a monthly rental of $1,200. X's cost for the product leased is $40,000. X's other deductible expenses attributable to the product are $900, all of which are incurred in 1972. Although X has other deductible expenses, for purposes of this example, assume that X has no other deductible expenses. Y's expenses attributable to sublease of the export property are $450, all of which are incurred in 1972 and are export promotion expenses. X depreciates the property on a straight line basis without the use of an averaging convention, assuming a useful life of 8 years and no salvage value. The profit which Y may earn with respect to the transaction is $2,895 for 1972 and $1,175 for 1973, computed as follows:

COMPUTATION FOR 1972

| | | |
|---|---|---|
| (1) Combined taxable income: | | |
| (a) Y's sublease rental receipts for year ($1,200×9 months) | | $10,800 |
| (b) Less deductions: | | |
| X's depreciation ($40,000×⅛×9/12) | 3,750 | |
| X's other expenses | 900 | |
| Y's expenses | 450 | |
| Total deductions | | 5,100 |
| (c) Combined taxable income | | 5,700 |
| (2) Y's profit under combined taxable income method (before application of loss limitation): | | |
| (a) 50 percent of combined taxable income | | 2,850 |
| (b) Plus: 10 percent of Y's export promotion expenses (10% of $450) | | 45 |
| (c) Y's profit | | 2,895 |
| (3) Y's profit under gross receipts method (before application of loss limitation): | | |
| (a) 4 percent of Y's sublease rental receipts for year (4% of $10,800) | | 432 |
| (b) Plus: 10 percent of Y's export promotion expenses (10% of $450) | | 45 |
| (c) Y's profit | | 477 |
| (4) Y's profit under section 482 method: | | |
| (a) Y's sublease rental receipts for year | | $10,800 |
| (b) Less deductions: | | |
| Y's lease rental payments for year | 9,000 | |
| Y's expenses | 450 | |
| Total deductions | | 9,450 |
| (c) Y's profit | | 1,350 |

Since the combined taxable income method results in greater profit to Y ($2,895) than does the gross receipts method ($477) or section 482 method ($1,350), Y may earn a profit of $2,895 for 1972. Accordingly, the monthly rental payable by Y to X for 1972 may be readjusted as long as the monthly rental payable is not readjusted below $828.33, computed as follows:

| | | |
|---|---|---|
| (5) Monthly rental payable by Y to X for 1972: | | |
| (a) Y's sublease rental receipts for year | | $10,800.00 |
| (b) Less: | | |
| Y's expenses | 450.00 | |
| Y's profit | 2,895.00 | |
| Total | | 3,345.00 |
| (c) Rental payable for 1972 | | 7,455.00 |
| (d) Rental payable each month ($7,455÷9 months) | | 828.33 |

COMPUTATION FOR 1973

| | | |
|---|---|---|
| (1) Combined taxable income: | | |
| (a) Y's sublease rental receipts for year ($1,200×3 months) | | $3,600 |
| (b) Less: X's depreciation ($40,000×⅛×3/12) | | 1,250 |
| (c) Combined taxable income | | 2,350 |
| (2) Y's profit under combined taxable income method (before application of loss limitation): | | |
| (a) 50 percent of combined taxable income | | $1,175 |
| (b) Y's profit | | 1,175 |
| (3) Y's profit under gross receipts method (before application of loss limitation): | | |
| (a) 4 percent of Y's sublease rental receipts for year (4% of $3,600) | | 144 |
| (b) Y's profit | | 144 |
| (4) Y's profit under section 482 method: | | |
| (a) Y's sublease rental receipts for year | | 3,600 |
| (b) Less: Y's lease rental payments for year | | 3,000 |
| (c) Y's profit | | 600 |

Since the combined taxable income method results in greater profit to Y ($1,175) than does the gross receipts method ($144) or section 482 method ($600), Y may earn a profit of $1,175 for 1973. Accordingly, the monthly rental payable by Y to X for 1973 may be readjusted as long as the monthly rental payable is not readjusted below $808.33, computed as follows:

| | |
|---|---|
| (5) Monthly rental payable by Y to X for 1973: | |
| (a) Y's sublease rental receipts for year | $3,600.00 |
| (b) Less: Y's profit | 1,175.00 |
| (c) Rental payable for 1973 | 2,425.00 |
| (d) Rental payable for each month ($2,425÷3 months) | 808.33 |

§ 1.994–2 Marginal costing rules.

(a) *In general.* This section prescribes the marginal costing rules authorized by section 994(b)(2). If under paragraph (c)(1) of this section a DISC is treated for its taxable year as seeking to establish or maintain a foreign market for sales of an item, product, or product line of export property (as defined in § 1.993–3) from which qualified export receipts are derived, the marginal costing rules prescribed in paragraph (b) of this section may be applied to allocate costs between gross receipts derived from such sales and other gross receipts for purposes of computing, under the "50–50" combined taxable income method of § 1.994–1(c)(3), the combined taxable income of the DISC and related supplier derived from such sales. Such marginal costing rules may be applied whether or not the related supplier manufactures, produces, grows, or extracts (within the meaning of § 1.993–3(c)) the extent property sold. Such marginal costing rules do not apply to sales of export property which in the hands of a purchaser related under section 954(d)(3) to the seller give rise to foreign base company sales income as described in section 954(d) unless, for the purchaser's year in which it resells the export property, section 954(b)(3)(A) is applicable or such income is under the exceptions in section 954(b)(4). Such marginal costing rules do not apply to leases of property or the performance of any services whether or not related and subsidiary services (as defined in § 1.994–1(b)(3).

(b) *Marginal costing rules for allocations of costs*—(1) *In general.* Marginal costing is a method under which only marginal or variable costs of producing and selling a particular item, product, or product line are taken into account for purposes of section 994. Where this section is applicable, costs attributable to deriving qualified export receipts for the DISC's taxable year from sales of an item, product, or product line may be determined in any manner the related supplier (as defined in § 1.994–1(a)(3)(ii)) chooses, provided that the requirements of both subparagraphs (2) and (3) of this paragraph are met.

(2) *Variable costs taken into account.* There are taken into account in computing the combined taxable income of the DISC and its related supplier from sales of an item, product, or product line the following costs: (i) Direct production costs (as defined in § 1.471–11(b)(2)(i)) and (ii) costs which are export promotion expenses, but only if they are claimed as export promotion expenses in determining taxable income derived by the DISC under the combined taxable income method of § 1.994–1(c)(3). At the taxpayer's option, all, a part, or none of the costs which qualify as export promotion expenses may be so claimed as export promotion expenses.

(3) *Overall profit percentage limitation.* As a result of such determination of costs attributable to such qualified export receipts for the DISC's taxable year, the combined taxable income of the DISC and its related supplier from sales of such item, product, or product line for the DISC's taxable year does not exceed gross receipts (determined under § 1.993–6) of the DISC derived from such sales, multiplied by the overall profit percentage (determined under paragraph (c)(2) of this section).

(c) *Definitions*—(1) *Establishing or maintaining a foreign market.* A DISC shall be treated for its taxable year as seeking to establish or maintain a foreign market with respect to sales of an item, product, or product line of export property from which qualified export receipts are derived if the combined taxable income computed under paragraph (b) of this section is greater than the combined taxable income computed under § 1.994–1(c)(6).

(2) *Overall profit percentage.* (i) For purposes of this section, the overall profit percentage for a taxable year of the DISC for a product or product line is the percentage which—

(*a*) The combined taxable income of the DISC and its related supplier plus all other taxable income of its related supplier from all sales (domestic and foreign) of such product or product line during the DISC's taxable year, computed under the full costing method, is of

(*b*) The total gross receipts (determined under § 1.993–6) from all such sales.

(ii) At the annual option of the related supplier, the overall profit percentage for the DISC's taxable year for all products and product lines may be determined by aggregating the amounts described in subdivision (i) (*a*) and (*b*) of this subparagraph of the DISC, and all domestic members of the controlled group (as defined in § 1.993–1(k)) of which the DISC is a member, for the DISC's taxable year and for taxable years of such members ending with or within the DISC's taxable year.

(iii) For purposes of determining the amounts in subdivisions (i) (*b*) and (ii) of this subparagraph, a sale of property between a DISC and its related supplier or between domestic members of the controlled group shall be taken into account only during the DISC's taxable year (or taxable year of the member ending within the DISC's taxable year) during which the property is ultimately sold to a person which is neither the DISC nor such a domestic member.

(3) *Grouping of transactions.* (i) In general, for purposes of this section, an item, product, or product line is the item or group consisting of the product or product line pursuant to § 1.994–1(c)(7) used by the taxpayer for purposes of applying the intercompany pricing rules of § 1.994–1.

(ii) However, for purposes of determining the overall profit percentage under subparagraph (2) of this paragraph, any product or product line grouping permissible under § 1.994–1(c)(7) may be used at the annual choice of the taxpayer, even though it may not be the same item or grouping referred to in subdivision (i) of this subparagraph, as long as the grouping chosen for determining the overall profit percentage is at least as broad as the grouping referred to in such subdivision (i).

(4) *Full costing method.* For purposes of this section, the term "full costing method" is the method for determining combined taxable income set forth in § 1.994–1(c)(6).

(d) *Application of limitation on DISC income ("no loss" rule).* If the marginal costing rules of this section are applied, the combined taxable income method of § 1.994–1(c)(3) may not be applied to cause in any taxable year a loss to the related supplier, but such method may be applied to the extent it does not cause a loss. For purposes of the preceding sentence, a loss to a related supplier would result if the taxable income of the DISC would exceed the combined taxable income of the related supplier and the DISC determined in accordance with paragraph (b) of this section. If, however, there is no combined taxable income (so determined), see the last sentence of § 1.994–1(e)(1)(i).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* X and Y are calendar year taxpayers. X, a domestic manufacturing company, owns all the stock of Y, a DISC for the taxable year. During 1973, X manufactures a product line which is eligible to be export property (as defined in § 1.993–3). X enters into a written agreement with Y whereby Y is granted a sales franchise with respect to exporting such product line from which qualified export receipts will be derived and Y will receive commissions with respect to such exports equal to the maximum amount permitted to be received under the intercompany pricing rules of section 994. Commissions are computed using the combined taxable income method under § 1.994–1(c)(3). For purposes of applying the combined taxable income method, X and Y compute their combined taxable income attributable to the product line of export property under the marginal costing rules in accordance with the additional facts assumed in the table below:

| | | |
|---|---|---|
| (1) Maximum combined taxable income (determined under paragraph (b)(2) of this section): | | |
| (a) Y's gross receipts from export sales | | $95.00 |
| (b) Less: | | |
| (i) Direct materials | 40.00 | |
| (ii) Direct labor | 20.00 | |
| (iii) Y's export promotion expenses claimed in determining Y's DISC taxable income | 5.00 | |
| (iv) Total deductions | 65.00 | |
| (c) Maximum combined taxable income | | 30.00 |
| (2) Overall profit percentage limitation (detmerined under paragraph (b)(3) of this section): | | |
| (a) Gross receipts of X and Y from all domestic and foreign sales | | 400.00 |
| (b) Less deductions: | | |
| (i) Direct materials | 160.00 | |
| (ii) Direct labor | 80.00 | |
| (iii) Other costs (of which $8 are costs of the DISC including $5 of export promotion expenses claimed in determining Y's taxable income) | 40.00 | |
| (c) Total deductions | | 280.00 |
| (d) Total taxable income from all sales computed on a full costing method | | 120.00 |
| (e) Overall profit percentage (line (d) ($120) divided by line (a) ($400)) (percent) | | 30% |
| (f) Multiply by gross receipts from Y's export sales (line (1)(a)) | | $95.00 |
| (g) Overall profit percentage limitations | | 28.50 |

Since the overall profit percentage limitation under line (2)(g) ($28.50) is less than maximum combined taxable income under line (1)(c) ($30), combined taxable income under marginal costing is limited to $28.50. Since under the franchise agreement Y is to earn the maximum commission permitted under the intercompany pricing rules of section 994, combined taxable income on the transactions is $28.50. Accordingly, the costs attributable to export sales (other than for direct material, direct labor, and export promotion expenses) are $1.50, i.e., line (1)(c) ($30) minus line (2)(g) ($28.50). Under the combined taxable income method of § 1.994–1(c)(3), Y will have taxable income attributable to the sales of $14.75, i.e., the sum of ½ of combined taxable income (½ of $28.50) and 10 percent of Y's export promotion expenses claimed in determining Y's taxable income (10 percent of $5). Accordingly, the commissions Y receives from X are $22.75, i.e., Y's costs ($8, see line (2)(b)(iii)) plus Y's profit ($14.75).

*Example (2).* (1) Assume the same facts as in example (1), except that gross receipts from export sales are only $85 and gross receipts from all sales remain at $400. For purposes of applying the combined taxable income method, X and Y may compute their combined taxable income attributable to the product line of export property under the marginal costing rules as follows:

| | | |
|---|---|---|
| (1) Maximum combined taxable income (determined under paragraph (b)(2) of this section): | | |
| (a) Y's gross receipts from export sales | | $85.00 |
| (b) Less: | | |
| (i) Direct materials | 40.00 | |
| (ii) Direct labor | 20.00 | |
| (iii) Y's export promotion expenses claimed in determining Y's taxable income | 5.00 | |
| (iv) Total deductions | | 65.00 |
| (c) Maximum combined taxable income | | 20.00 |
| (2) Overall profit percentage limitation (determined under paragraph (b)(3) of this section): | | |
| (a) Gross receipts from Y's export sales (line (1)(a)) | | 85.00 |
| (b) Multiply by overall profit percentage (as determined in example (1)) (percent) | | 30% |
| (c) Overall profit percentage limitation | | 25.50 |

Since maximum combined taxable income under line (1)(c) ($20) is less than the overall profit percentage limitation under line (2)(c) ($25.50), combined taxable income under marginal costing is limited to $20. Since under the franchise agreement Y is to earn the maximum commission permitted under the intercompany pricing rules of section 994, combined taxable income on the transactions is $20. Accordingly, no costs (other than for direct material, direct labor, and export promotion expenses) will be attributed to export sales. Under the combined taxable income method of § 1.994–1(c)(3), Y will have taxable income attributable to the sales of $10.50, i.e., the sum of ½ of combined taxable income (½ of $20) and 10 percent of Y's export promotion expenses claimed in determining Y's taxable income (10 percent of $5). Accordingly, the Commissions Y receives from X are $18.50, i.e., Y's costs ($8, see line (2)(b)(iii) of example (1)) plus Y's profit ($10.50).

(2) If export promotion expenses are not claimed in determining taxable income of Y under the combined taxable income method,

the taxable income of Y would be increased to $12.50 and commissions payable to Y would be increased to $20.50, computed as follows:

| | | |
|---|---|---|
| (3) Maximum combined taxable income (determined under paragraph (b)(2) of this section): | | |
| (a) Y's gross receipts from export sales | | $85.00 |
| (b) Less: | | |
| (i) Direct materials | 40.00 | |
| (ii) Direct labor | 20.00 | |
| (iii) Total deductions | | 60.00 |
| (c) Maximum combined taxable income | | 25.00 |
| (4) Overall profit percentage limitation (line (2)(c)) | | 25.50 |

Since maximum combined taxable income under line (3)(c) ($25) is less than the overall profit percentage under line (4) ($25.50), combined taxable income under marginal costing is limited to $25. Since under the franchise agreement Y is to earn the maximum commission permitted under the intercompany pricing rules of section 994, combined taxable income on the transactions is $25. Accordingly, no costs (other than for direct material and direct labor) will be attributed to export sales. Under the combined taxable income method of § 1.994–1(c)(3), Y will have taxable income attributable to the sales of $12.50, i.e., ½ of combined taxable income (½ of $25). Accordingly, the commissions Y receives from X are $20.50, i.e., Y's costs ($8, see line (2)(b)(iii) of example (1)) plus Y's profit ($12.50).

*Example (3).* (1) Assume the same facts as in example (1), except that gross receipts from export sales are only $85, gross receipts from all sales remain at $400, and Y has costs of $40 consisting of Y's export promotion expenses of $35 and costs of $5 other than for direct material, direct labor, or export promotion expenses. For purposes of applying the combined taxable income method, X and Y may compute their combined taxable income attributable to the product line of export property under the marginal costing rules as follows:

| | | |
|---|---|---|
| (1) Maximum combined taxable income (determined under paragraph (b)(2) of this section): | | |
| (a) Y's gross receipts from export sales | | $85.00 |
| (b) Less: | | |
| (i) Direct materials | 40.00 | |
| (ii) Direct labor | 20.00 | |
| (iii) Y's export promotion expenses claimed in determining Y's taxable income | 35.00 | |
| (iv) Total deductions | | 95.00 |
| (c) Maximum combined taxable income (loss) | | (10.00) |
| (2) Overall profit percentage limitation (as determined in example (2)) | | 25.50 |

Since maximum combined taxable income under line (1)(c) (which is a loss of $10) is less than the overall profit percentage limitation under line (2)(c) ($25.50), combined taxable income under marginal costing is a loss of $10 and, under the combined taxable income method of § 1.994–1(c)(3), Y will have no taxable income or loss attributable to the sales. Accordingly, the commissions Y receives from X are $10, i.e., Y's costs ($40).

(2) If export promotion expenses are not claimed in determining Y's taxable income under the combined taxable income method, the taxable income of Y would be increased to $12.50 and commissions payable to Y would be increased to $52.50 computed as follows:

| | |
|---|---|
| (3) Maximum combined taxable income (determined under paragraph (b)(2) of this section) (line (3)(c) of example (2)) | $25.00 |
| (4) Overall profit percentage limitation (as determined in example (2)) | 25.50 |

The results would be the same as in part (2) of example (2), except that the commissions Y receives from X are $52.50, i.e., Y's costs ($40) plus Y's profit ($12.50).

[FR Doc.75-16997 Filed 7-15-75;8:45 am]

[T.D. 7369]

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

### Treatment of Letters, Memorandums, and Similar Property and of Gains and Losses From Involuntary Conversions

By a notice of proposed rule making appearing in the FEDERAL REGISTER for December 15, 1970 (35 FR 18973), amendments to the Income Tax Regulations (26 CFR Part 1) were proposed in order to conform those regulations to the amendments of the Internal Revenue Code of 1954 made by section 514, relating to letters, memorandums, and similar property, and section 516(b), relating to certain casualty losses, of the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 643, 646). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed are adopted by this document, subject to the changes indicated below.

Proposed § 1.341-6(b)(2)(iv), relating to categories of subsection (e) assets, has been revised by the addition of a rule to make clear that letters, memorandums, or similar property prepared by personnel who are under the administrative control of an individual, such as a corporate executive, will be deemed to have been prepared or produced for him whether or not such letters, memorandums, or similar property are reviewed by him. The purpose of this change was to forestall the possibility that such letters, memorandums, or similar property might be excluded on the ground that they were neither created by the personal efforts of the individual or prepared or produced for him.

Several changes have been made in proposed § 1.1221-1(c). The term "person" in the first sentence of subparagraph (1) of paragraph (c) has been replaced by the term "taxpayer." References to an "individual" in subparagraph (2) have been replaced by references to a "person" in order to make clear that the references include corporations also. The definition of "similar property" in subparagraph (2) has been revised to make clear that the phrase includes an oral recording of any type, a transcript of an oral recording, and a transcript of an oral interview or of dictation. This latter change is in keeping with the announcement made by the Assistant Secretary of the Treasury for Tax Policy on May 20, 1974, that the regulations under section 1221(3) of the 1954 Code would treat Presidential tapes as "similar property" for purposes of that section. A new provision has been added to subparagraph (2) to provide that the rule on letters, memorandums, or similar property does not apply to property, such as a corporate archive, office correspondence, or a financial record, sold or disposed of as part of a going business if such property has no significant value separate and apart from its relation to and use in such business. Subparagraph (2) has also been revised to make clear that it does not apply to any property to which subparagraph (1) (relating to copyrights or literary, musical, or artistic compositions) applies, priority thus being given to the application of subparagraph (1) in any situation where there is a possibility of overlap between subparagraphs (1) and (2).

A new subparagraph (3) has been added to proposed § 1.1221-1(c) in order to coordinate the provisions of § 1.341-6(b)(2)(iv) and § 1.1221-1(c), which are *pari materia*.

Several changes have been made in the proposed amendment of § 1.1231-1. Paragraph (a)(1) of such section has been revised to make clear that the reference to letters and memorandums applies also to property similar to letters and memorandums. A minor technical change has been made in the material following paragraph (c)(5). The proposed amendment to example (1) in § 1.1231-1(g) has been revised to reinstate language which was deleted by the proposed amendment. This change has been made to eliminate the possibility that the deletion may be found misleading; however, it has been made clear that the rule applies for taxable years beginning after December 31, 1957, and before January 1, 1970. In the process of making the change the existing reference to taxable years ending after December 31, 1957, has been changed to read as taxable years beginning after December 31, 1957.

In view of the foregoing, the amendments of the regulations as proposed are hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. The amendment of § 1.341, as set forth in paragraph 1 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 2. The amendment of § 1.341-6(b)(2)(iv), as set forth in paragraph 2 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 3. The amendment of § 1.1221-1(c), as set forth in paragraph 5 of the notice of proposed rule making, is changed to read as set forth below.

PAR. 4. The amendment to § 1.1231-1, as set forth in paragraph 7 of the notice of proposed rule making, is changed by revising paragraph (a), so much of paragraph (c) as follows subparagraph (5), and so much of example (1) in paragraph (g) as follows the tabulation therein to read as set forth below.

(Section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

[SEAL] DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

Approved: July 10, 1975.

FREDERIC W. HICKMAN,
*Assistant Secretary of Treasury.*

PARAGRAPH 1. Section 1.341 is amended as follows:

**§ 1.341 Statutory provisions; collapsible corporations.**

SEC. 341. *Collapsible corporations*—(a) *Treatment of gain to shareholders.* Gain from—

(1) The sale or exchange of stock of a collapsible corporation,

(2) A distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under this part as in part or full payment in exchange for stock, and

(3) A distribution made by a collapsible corporation which, under section 301(c)(3)(A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 6 months shall, except as otherwise provided in this section, be considered as gain from the sale or exchange of property which is not a capital asset.

* * * * *

(e) *Exceptions to application of section.* * * *

(5) *Subsection (e) asset defined.* (A) * * *

(iv) Property (unless included under clause (i), (ii), or (iii), which consists of a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of, or (in the case of a letter, memorandum, or similar property) was prepared, or produced in whole or in part for, any individual who owns more than 5 percent in value of the stock of the corporation.

* * * * *

(12) *Nonapplication of section 1245(a).* For purposes of this subsection, the determination of whether gain from the sale or exchange of property would under any provision of this chapter be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231(b) shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), 1251(c), and 1252(a).

(f) *Certain sales of stock of consenting corporations*—(1) *In general.* Subsection (a)(1) shall not apply to a sale of stock of a corporation (other than a sale to the issuing corporation) if such corporation (hereinafter in this subsection referred to as "consenting corporation") consents (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have the provisions of paragraph (2) apply. Such consent shall apply with respect to each sale of stock of such corporation made within the 6-month period beginning with the date on which such consent is filed.

(2) *Recognition of gain.* Except as provided in paragraph (3), if a subsection (f) asset (as defined in paragraph (4)) is disposed of at any time by a consenting corporation (or, if paragraph (3) applies, by a transferee corporation), then the amount by which—

(A) In the case of a sale, exchange, or involuntary conversion, the amount realized or

(B) In the case of any other disposition, the fair market value of such asset,

exceeds the adjusted basis of such asset shall be treated as gain from the sale or exchange of such asset. Such gain shall be recognized notwithstanding any other provision of this subtitle, but only to the extent such gain is not recognized under any other provision of this subtitle.

(3) *Exception for certain tax-free transactions.* If the basis of a subsection (f) asset in the hands of a transferee is determined by reference to its basis in the hands of the transferor by reason of the application of section 332, 351, 361, 371(a), or 374(a), then the amount of gain taken into account by the transferor under paragraph (2) shall not exceed the amount of gain recognized to the transferor on the transfer of such asset (determined without regard to this subsection). This paragraph shall apply only if the transferee—

(A) Is not an organization which is exempt from tax imposed by this chapter, and

(B) Agrees (at such time and in such manner as the Secretary or his delegate may by regulations prescribe) to have the provisions of paragraph (2) apply to any disposition by it of such subsection (f) asset.

(4) *Subsection (f) asset defined.* For purposes of this subsection—

(A) *In general.* The term "subsection (f) asset" means any property which, as of the date of any sale of stock referred to in paragraph (1), is not a capital asset and is property owned by, or subject to an option to acquire held by, the consenting corporation. For purposes of this subparagraph, land or any interest in real property (other than a security interest), and unrealized receivables or fees (as defined in subsection (b)(4)), shall be treated as property which is not a capital asset.

(B) *Property under construction.* If manufacture, construction, or production with respect to any property described in subparagraph (A) has commenced before any date of sale described therein, the term "subsection (f) asset" includes the property resulting from such manufacture, construction, or production.

(C) *Special rule for land.* In the case of land or any interest in real property (other than a security interest) described in subparagraph (A), the term "subsection (f) asset" includes any improvements resulting from construction with respect to such property if such construction is commenced (by the consenting corporation or by a transferee corporation which has agreed to the application of paragraph (2)) within 2 years after the date of any sale described in subparagraph (A).

(5) *5-year limitation as to shareholder.* Paragraph (1) shall not apply to the sale of stock of a corporation by a shareholder if, during the 5-year period ending on the date of such sale, such shareholder (or any related person within the meaning of subsection (e)(8)(A)) sold any stock of another consenting corporation within any 6-month period beginning on a date on which a consent was filed under paragraph (1) by such other corporation.

(6) *Special rule for stock ownership in other corporations.* If a corporation (hereinafter in this paragraph referred to as "owning corporation") owns 5 percent or more in value of the outstanding stock of another corporation on the date of any sale of stock of the owning corporation during a 6-month period with respect to which a consent under paragraph (1) was filed by the owning corporation, such consent shall not be valid with respect to such sale unless such other corporation has (within the 6-month period ending on the date of such sale) filed a valid consent under paragraph (1) with respect to sales of its stock. For purposes of applying paragraph (4) to such other corporation, a sale of stock of the owning corporation to which paragraph (1) applies shall be treated as a sale of stock of such other corporation. In the case of a chain of corporations connected by the 5-percent ownership requirements of this paragraph, rules similar to the rules of the two preceding sentences shall be applied.

(7) *Adjustments to basis.* The Secretary or his delegate shall prescribe such regulations as he may deem necessary to provide for adjustments to the basis of property to reflect gain recognized under paragraph (2).

[Sec. 341 as amended by sec. 20, Technical Amendments Act 1958 (72 Stat. 1615); sec. 13(f)(4), Rev. Act 1962 (76 Stat. 1035); sec. 231(b)(4), Rev. Act 1964 (78 Stat. 105); sec. 1(a), Act of Aug. 22, 1964 (Pub. Law 88-484, 78 Stat. 596); sec. 1(b)(4), Act of Sept. 12 1966 (Pub. Law 89-570, 80 Stat. 762); secs. 211(b)(4) and 514(b)(1), Tax Reform Act 1969 (83 Stat. 570, 643)]

PAR. 2. Section 1.341-6 is amended by revising (b)(2)(iv) as follows:

**§ 1.341-6 Exceptions to application of section.**

* * * * *

(b) *Subsection (e) asset defined.* * * *

(2) *Categories of subsection (e) assets.* * * *

(iv) The fourth category of subsection (e) assets is property (unless included under subdivision (i), (ii), or (iii) of this subparagraph) which consists of a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, or any interest in any such property, if the property was created in whole or in part by the personal efforts of, or, in the case of a letter, memorandum, or property similar to a letter or memorandum, was prepared, or produced in whole or in part, for, any individual actual or constructive shareholder who is considered to own more than 5 percent in value of the outstanding stock of the corporation. For items included in the phrase "similar property" see paragraph (c) of § 1.1221-1. In general, property is created in whole or in part by the personal efforts of an individual if such individual performs literary, theatrical, musical, artistic, or other creative or productive work which affirmatively contributes to the creation of the property, or if such individual directs and guides others in the performance of such work. An individual, such as a corporate executive, who merely has administrative control of writers, actors, artists, or personnel and who does not substantially engage in the direction and guidance of such persons in the performance of their work, does not create property by his personal efforts. However, a letter or memorandum, or property similar to a letter or memorandum, which is prepared by personnel who are under the administrative control of an individual, such as a corporate executive, shall be deemed to have been prepared or produced for him whether or not such letter, memorandum, or similar property is reviewed by him. In addition, a letter, memorandum, or property similar to a letter or memorandum, addressed to an individual shall be considered as prepared or produced for him. In the case of a letter, memorandum, or property similar to a letter or memorandum, this subdivision applies only to sales and other dispositions occurring after July 25, 1969.

* * * * *

PAR. 3. ection 1.817-2 is amended by revising (b)(1)(i)(c) as follows:

**§ 1.817-2 Treatment of capital gains and losses.**

* * * * *

(b) *Modification of sections 1221 and 1231.* (1) * * *

(i) * * *

(c) A copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property held by a taxpayer described in section 1221(3). In the case of a letter, memorandum, or property similar to a letter or memorandum, this subdivision (c) applies only to sales and other dispositions occurring after July 25, 1969.

* * * * *

PAR. 4. Section 1.1221 is amended by revising paragraph (3) of section 1221 and the historical note to read as follows:

**§ 1.1221 Statutory provisions; capital asset defined.**

SEC. 1221. *Capital asset defined.* * * *

(3) A copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by—

(A) A taxpayer whose personal efforts created such property,

(B) In the case of a letter, memorandum, or similar property, a taxpayer for whom such property was prepared or produced, or

(C) A taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange in whole or part by reference to the basis of such property in the hands of a taxpayer described in subparagraph (A) or (B);

* * * * *

[Sec. 1221 as amended by sec. 514(a), Tax Reform Act 1969 (83 Stat. 643)]

PAR. 5. Section 1.1221-1 is amended by revising paragraph (c) as follows:

**§ 1.1221-1 Meaning of terms.**

* * * * *

(c)(1) A copyright, a literary, musical, or artistic composition, and similar property are excluded from the term "capital assets" if held by a taxpayer whose personal efforts created such property, or if held by a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference to the basis of such property in the hands of a taxpayer whose personal efforts created such property. For purposes of this subparagraph, the phrase "similar property" includes for example, such property as a theatrical production, a radio program, a newspaper cartoon strip, or any other property eligible for copyright protection (whether under statute or common law), but does not include a patent or an invention, or a design which may be protected only under the patent law and not under the copyright law.

(2) In the case of sales and other dispositions occurring after July 25, 1969, a letter, a memorandum, or similar property is excluded from the term "capital asset" if held by (i) a taxpayer whose personal efforts created such property, (ii) a taxpayer for whom such property was prepared or produced, or (iii) a taxpayer in whose hands the basis of such property is determined, for purposes of determining gain from a sale or exchange, in whole or in part by reference

to the basis of such property in the hands of a taxpayer described in subdivision (i) or (ii) of this subparagraph. In the case of a collection of letters, memorandums, or similar property held by a person who is a taxpayer described in subdivision (i), (ii), or (iii) of this subparagraph as to some of such letters, memorandums, or similar property but not as to others, this subparagraph shall apply only to those letters, memorandums, or similar property as to which such person is a taxpayer described in such subdivision. For purposes of this subparagraph, the phrase "similar property" includes, for example, such property as a draft of a speech, a manuscript, a research paper, an oral recording of any type, a transcript of an oral recording, a transcript of an oral interview or of dictation, a personal or business diary, a log or journal, a corporate archive, including a corporate charter, office correspondence, a financial record, a drawing, a photograph, or a dispatch. A letter, memorandum, or property similar to a letter or memorandum, addressed to a taxpayer shall be considered as prepared or produced for him. This subparagraph does not apply to property, such as a corporate archive, office correspondence, or a financial record, sold or disposed of as part of a going business if such property has no significant value separate and apart from its relation to and use in such business; it also does not apply to any property to which subparagraph (1) of this paragraph applies (i.e., property to which section 1221(3) applied before its amendment by section 514(a) of the Tax Reform Act of 1969 (83 Stat. 643)).

(3) For purposes of this paragraph, in general property is created in whole or in part by the personal efforts of a taxpayer if such taxpayer performs literary, theatrical, musical, artistic, or other creative or productive work which affirmatively contributes to the creation of the property, or if such taxpayer directs and guides others in the performance of such work. A taxpayer, such as corporate executive, who merely has administrative control of writers, actors, artists, or personnel and who does not substantially engage in the direction and guidance of such persons in the performance of their work, does not create property by his personal efforts. However, for purposes of subparagraph (2) of this paragraph, a letter or memorandum, or property similar to a letter or memorandum, which is prepared by personnel who are under the administrative control of a taxpayer, such as a corporate executive, shall be deemed to have been prepared or produced for him whether or not such letter, memorandum, or similar property is reviewed by him.

(4) For the application to section 1231 to the sale or exchange of property to which this paragraph applies, see § 1.1231–1. For the application of section 170 to the charitable contribution of property to which this paragraph applies, see section 170(e) and the regulations thereunder.

* * * * *

PAR. 6. Section 1.1231 is amended by revising so much of section 1231(a) as follows paragraph (1), by revising section 1231(b)(1)(C), by revising section 1231(b)(3), and by revising the historical note as follows:

**§ 1.1231 Statutory provisions; property used in the trade or business and involuntary conversions.**

SEC. 1231. *Property used in the trade or business and involuntary conversions*—(a) *General rule.* * * *

(2) Losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 6 months shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) *Definition of property used in the trade or business.* * * *

(1) *General rule.* * * *

(C) A copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221.

* * * * *

(3) *Livestock.* Such term includes—

(A) Cattle and horses, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 24 months or more from the date of acquisition, and

(B) Other livestock, regardless of age, held by the taxpayer for draft, breeding, dairy, or sporting purposes, and held by him for 12 months or more from the date of acquisition.

Such term does not include poultry.

* * * * *

[Sec. 1231 as amended by sec. 49, Technical Amendments Act 1958 (72 Stat. 1642); sec. 227, Rev. Act 1964 (78 Stat. 97); secs. 212(b)(1), 514(b)(2), and 516(b), Tax Reform Act 1969 (83 Stat. 571, 643, 646)]

PAR. 7. Section 1.123–1 is amended by revising paragraphs (a), (c)(1)(ii), so much of paragraph (c) as follows subparagraph (5), and (e), by revising so much of example (1) in paragraph (g) as follows the tabulation therein, and adding examples (4) through (8) to paragraph (g) as follows:

**§ 1.1231–1 Gains and losses from the sale or exchange of certain property used in the trade or business.**

(a) *In general.* Section 1231 provides that, subject to the provisions of paragraph (e) of this section, a taxpayer's gains and losses from the disposition (including involuntary conversion) of assets described in that section as "property used in the trade or business" and from the involuntary conversion of capital assets held for more than 6 months shall be treated as long-term capital gains and losses if the total gains exceed the total losses. If the total gains do not exceed the total losses, all such gains and losses are treated as ordinary gains and losses. Therefore, if the taxpayer has no gains subject to section 1231, a recognized loss from the condemnation (or from a sale or exchange under threat of condemnation) of even a capital asset held for more than 6 months is an ordinary loss. Capital assets subject to section 1231 treatment include only capital assets involuntarily converted. The noncapital assets subject to section 1231 treatment are (1) depreciable business property and business real property held for more than 6 months, other than stock in trade and certain copyrights and artistic property and, in the case of sales and other dispositions occurring after July 25, 1969, other than a letter, memorandum, or property similar to a letter or memorandum; (2) timber, coal, and iron ore, but only to the extent that section 631 applies thereto; and (3) certain livestock and unharvested crops. See paragraph (c) of this section.

* * * * *

(c) *Transactions to which section applies.* * * *

(1) * * *

(ii) A copyright, a literary, musical, or artistic composition, or similar property, or (in the case of sales and other dispositions occurring after July 25, 1969) a letter, memorandum, or property similar to a letter or memorandum, held by a taxpayer described in section 1221(3); or

* * * * *

For purposes of section 1231, the phrase "property used in the trade or business" means property described in this paragraph (other than property described in subparagraph (2) of this paragraph). Notwithstanding any of the provisions of this paragraph, section 1231(a) does not apply to gains and losses under the circumstances described in paragraph (e)(2) or (3) of this section.

* * * * *

(e) *Involuntary conversion*—(1) *General rule.* For purposes of section 1231, the terms "compulsory or involuntary conversion" and "involuntary conversion" of property mean the conversion of property into money or other property as a result of complete or partial destruction, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof. Losses upon the complete or partial destruction, theft, seizure, requisition, or condemnation of property are treated as losses upon an involuntary conversion whether or not there is a conversion of the property into other property or money and whether or not the property is uninsured, partially insured, or totally insured. For example, if a capital asset held for more than 6 months, with an adjusted basis of $400, but not held for the production of income, is stolen, and the loss which is sustained in the taxable year 1956 is not compensated for by insurance or otherwise, section 1231 applies to the $400 loss. For certain exceptions to this subparagraph, see subparagraphs (2) and (3) of this paragraph.

(2) *Certain uninsured losses.* Notwithstanding the provisions of subparagraph (1) of this paragraph, losses sustained during a taxable year beginning after December 31, 1957, and before January 1, 1970, with respect to both property used in the trade or business and any capital asset held for more than 6 months and held for the production of income, which losses arise from fire, storm, shipwreck, or other casualty, or from theft, and which are not compensated for by insurance in any amount, are not losses to which section 1231(a) applies. Such losses shall not be taken into account in applying the provisions of this section.

(3) *Exclusion of gains and losses from certain involuntary conversions.* Notwithstanding the provisions of subparagraph (1) of this paragraph, if for any taxable year beginning after December 31, 1969, the recognized losses from the involuntary conversion as a result of fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months exceed the recognized gains from the involuntary conversion of any such property as a result of fire, storm, shipwreck, or other casualty, or from theft, such gains and losses are not gains and losses to which section 1231 applies and shall not be taken into account in applying the provisions of this section. The net loss, in effect, will be treated as an ordinary loss. This subparagraph shall apply whether such property is uninsured, partially insured, or totally insured and, in the case of a capital asset held for more than 6 months, whether the property is property used in the trade or business, property held for the production of income, or a personal asset.

* * * * *

(g) *Examples.* * * *

*Example (1).* * * *

Since the aggregate of the recognized gains ($12,500) exceeds the aggregate of the recognized losses ($9,000), such gains and losses are treated under section 1231 as gains and losses from the sale or exchange of capital assets held for more than 6 months. For any taxable year beginning after December 31, 1957, and before January 1, 1970, the $5,000 loss upon theft of bonds (item 6) would not be taken into account under section 1231. See paragraph (e)(2) of this section.

* * * * *

*Example (4).* A, an individual, makes his income tax return on a calendar year basis. During 1970 trees on A's residential property which were planted in 1950 after the purchase of such property were destroyed by fire. The loss, which was in the amount of $2,000 after applying section 165(c)(3), was not compensated for by insurance or otherwise. During the same year A also recognized a $1,500 gain from insurance proceeds compensating him for the theft sustained in 1970 of a diamond brooch purchased in 1960 for personal use. A has no other gains or losses for 1970 from the involuntary conversion of property. Since the recognized losses exceed the recognized gains from the involuntary conversion for 1970 as a result of fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months, neither the gain nor the loss is included in making the computations under section 1231.

*Example (5).* The facts are the same as in example (4), except that A also recognized a gain of $1,000 from insurance proceeds compensating him for the total destruction by fire of a truck, held for more than 6 months, used in A's business and subject to an allowance for depreciation. A has no other gains or losses for 1970 from the involuntary conversion of property. Since the recognized losses ($2,000) do not exceed the recognized gains ($2,500) from the involuntary conversion for 1970 as a result of fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months, such gains and losses are included in making the computations under section 1231. Thus, if A has no other gains or losses for 1970 to which section 1231 applies, the gains and losses from these involuntary conversions are treated under section 1231 as gains and losses from the sale or exchange of capital assets held for more than 6 months.

*Example (6).* The facts are the same as in example (5) except that A also has the following recognized gains and losses for 1970 to which section 1231 applies:

| | *Gains* | *Losses* |
|---|---|---|
| Gain on sale of machinery, used in the business and subject to an allowance for depreciation, held for more than 6 months | $4,000 | |
| Gain reported in 1970 (under sec. 453) on installment sale in 1969 of factory premises used in the business (including building and land, each held for more than 6 months) | 6,000 | |
| Gain reported in 1970 (under sec. 453) on installment sale in 1970 of land held for more than 6 months, used in the business as a storage lot for trucks | 2,000 | |
| Loss upon the sale in 1970 of warehouse, used in the business and subject to an allowance for depreciation, held for more than 6 months | | $5,000 |
| Total gains | 12,000 | |
| Total losses | | 5,000 |

Since the aggregate of the recognized gains ($14,500) exceeds the aggregate of the recognized losses ($7,000), such gains and losses are treated under section 1231 as gains and losses from the sale or exchange of capital assets held for more than 6 months.

*Example (7).* B, an individual, makes his income tax return on the calendar year basis. During 1970 furniture used in his business and held for more than 6 months was destroyed by fire. The recognized loss, after compensation by insurance, was $2,000. During the same year B recognized a $1,000 gain upon the sale of a parcel of real estate used in his business and held for more than 6 months, and a $6,000 loss upon the sale of stock held for more than 6 months. B has no other gains or losses for 1970 from the involuntary conversion, or the sale or exchange of, property. The $6,000 loss upon the sale of stock is not a loss to which section 1231 applies since the stock is not property used in the trade or business, as defined in section 1231(b). The $2,000 loss upon the destruction of the furniture is not a loss to which section 1231 applies since the recognized losses ($2,000) exceed the recognized gains ($0) from the involuntary conversion for 1970 as a result of fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months. Accordingly, the $1,000 gain upon the sale of real estate is considered to be gain from the sale or exchange of a capital asset held for more than 6 months since the gains ($1,000) to which section 1231 applies exceed the losses ($0) to which such section applies.

*Example (8).* The facts are the same as in example (7) except that B also recognized a gain of $4,000 from insurance proceeds compensating him for the total destruction by fire of a freighter, held for more than 6 months, used in B's business and subject to an allowance for depreciation. Since the recognized losses ($2,000) do not exceed the recognized gains ($4,000) from the involuntary conversion for 1970 as a result of fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 6 months, such gains and losses are included in making the computations under section 1231. Since the aggregate of the recognized gains to which section 1231 applies ($5,000) exceeds the aggregate of the recognized losses to which such section applies ($2,000), such gains and losses are treated under section 1231 as gains and losses from the sale or exchange of capital assets held for more than 6 months. The $6,000 loss upon the sale of stock is not taken into account in making such computation since it is not a loss to which section 1231 applies.

[FR Doc.75-18470 Filed 7-15-75;8:45 am]

---

[T.D. 7368]

## PART 53—FOUNDATION EXCISE TAXES

### Administration of Private Foundation Excise Taxes

On June 17, 1974, notice of proposed rule making with respect to the amendment of the Foundation Excise Tax Regulations (26 CFR Part 53) relating to the administration of the private foundation excise taxes, which taxes were added by the Tax Reform Act of 1969 (83 Stat. 524), was published in the FEDERAL REGISTER (39 FR 20975).

The amendments to the regulations provide rules for the filing of returns for the excise taxes imposed by chapter 42. In general, returns must be filed by all persons liable for tax at the time and place the private foundation files its annual information or tax return. A taxpayer may, by signing the foundation's annual return designate it as his return. Rules providing for the extension of time to file returns and to pay the tax due are also provided.

*Adoption of amendments to the regulations.* After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the Foundation Excise Tax Regulations (26 CFR Part 53) is hereby adopted, subject to the changes set forth below:

PARAGRAPH 1. Section 53.6011-1 as set forth in the appendix to the notice of proposed rule making is changed to read as set forth below.

PAR. 2. Section 53.6071-1 as set forth in the appendix to the notice of proposed

rule making is changed to read as set forth below.

PAR. 3. Section 53.6601 is amended to read as set forth below.

PAR. 4. Section 53.6651 is added immediately after § 53.6601–1 as set forth in the appendix to the notice of proposed rule making as set forth below.

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805))

DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

Approved: July 10, 1975.

FREDERIC W. HICKMAN,
*Assistant Secretary of the Treasury.*

The following sections are inserted immediately before the end of Part 53:

**Subpart J—Procedure and Administration**

**§ 53.6001 Statutory provisions; notice or regulations requiring records, statements, and special returns.**

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

**§ 53.6001–1 Notice or regulations requiring records, statements, and special returns.**

(a) *In general.* Any person subject to tax under chapter 42, Subtitle D, of the Code shall keep such complete and detailed records as are sufficient to enable the district director to determine accurately the amount of liability under chapter 42.

(b) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under chapter 42.

(c) *Retention of records.* The records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained so long as the contents thereof may become material in the administration of any internal revenue law.

**§ 53.6011 Statutory provisions; general requirement of return, statement, or list.**

SEC. 6011. General requirement of return, *statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

**§ 53.6011–1 General requirement of return, statement, or list.**

(a) Every private foundation liable for tax under section 4940 or 4948(a) shall file an annual return with respect to such tax on the form prescribed by the Internal Revenue Service for such purpose and shall include therein the information required by such form and the instructions issued with respect thereto.

(b) Every person liable for tax imposed by sections 4941(a), 4942(a), 4943(a), 4944(a) or 4945(a), and every private foundation and every trust described in section 4947(a)(2) which has engaged in an act of self-dealing (as defined in section 4941(d)) (other than an act giving rise to no tax under section 4941(a)) shall file an annual return on Form 4720 and shall include therein the information required by such form and the instructions issued with respect thereto. In the case of any tax imposed by sections 4941(a), 4942(a), 4943(a), and 4944(a), the annual return shall be filed with respect to each act (or failure to act) for each year (or part thereof) in the taxable period (as defined in sections 4941(e)(1), 4942(j)(1), 4943(d)(2), and 4944(e)(1)). In the case of a tax imposed by section 4945(a), the annual return shall be filed with respect to each act for the year in which such act giving rise to liability occurred.

(c) If a Form 4720 is filed by a private foundation or trust described in section 4947(a)(2) with respect to a transaction to which other persons are required to file under paragraph (b) of this section, such persons may by their signature designate such organization's Form 4720 (to the extent applicable) as their return for purposes of compliance with such paragraph. However, this paragraph shall not apply to a person whose taxable year is other than the taxable year of the foundation or trust.

**§ 53.6061 Statutory provisions; signing of returns and other documents.**

SEC. 6061. *Signing of returns and other documents.* Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

**§ 53.6061–1 Signing of returns and other documents.**

Any return, statement, or other document required to be made with respect to a tax imposed by chapter 42 or the regulations thereunder shall be signed by the person required to file such return, statement or document, or by such other persons required or duly authorized to sign in accordance with the regulations, forms or instructions prescribed with respect to such return, statement or other document. The person required or duly authorized to make the return may incur liability for penalties provided for erroneous, false or fraudulent returns. For criminal penalties see sections 7201, 7203, 7206, and 7207.

**§ 53.6065 Statutory provisions; verification of returns.**

SEC. 6065. *Verification of returns*—(a) *Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. * * *

**§ 53.6065–1 Verification of returns.**

(a) *Penalties of perjury.* If a return, statement, or other document made under the provisions of chapter 42 or subtitle F of the Code or the regulations thereunder with respect to any tax imposed by chapter 42 of the Code, or the form and instructions issued with respect to such return, statement, or other document, requires that it shall contain or be verified by a written declaration that it is made under the penalties of perjury, it must be so verified by the person or persons required to sign such return, statement, or other document. In addition, any other statement or document submitted under any provision of chapter 42 or subtitle F of the Code or regulations thereunder with respect to any tax imposed by chapter 42 of the Code may be required to contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* Any return, statement, or other document required to be submitted under chapter 42 or subtitle F of the Code or regulations prescribed thereunder with respect to any tax imposed by chapter 42 of the Code may be required to be verified by an oath.

**§ 53.6071 Statutory provisions; time for filing returns and other documents.**

SEC. 6071. *Time for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

**§ 53.6071–1 Time for filing returns.**

(a) *General rule.* Except as provided in paragraph (b) of this section, a return required by § 53.6011–1 shall be filed at the time the private foundation or trust described in section 4947(a)(2) is required to file its annual information or tax return under section 6033 or 6012 (as may be applicable).

(b) *Exception.* The Form 4720 of a person whose taxable year ends on a date other than that on which the taxable year of the foundation or trust ends shall be filed on or before the 15th day of the fifth month following the close of such person's taxable year.

**§ 53.6081 Statutory provisions; extension of time for filing the return.**

SEC. 6081 *Extension of time for filing returns*—(a) *General rule.* The Secretary or his

delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

**§ 53.6081–1 Extension of time for filing the return.**

(a) District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, statement, or other document which relates to any tax imposed by chapter 42 and which is required under the provisions of chapter 42 or the regulations thereunder. However, except in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months. An extension of time for filing a return shall not operate to extend the time for the payment of the tax or any part thereof unless specified to the contrary in the extension.

(b) The application for an extension of time for filing the return shall be addressed to the district director or director of the service center with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made before the expiration of the time within which the return otherwise must be filed, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

**§ 53.6091 Statutory provisions; place for filing returns or other documents.**

SEC. 6091. *Place for filing returns and other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Persons other than corporations*—(a) *General rule.* Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or

(ii) At a service center serving the internal revenue district referred to in clause (i), as the Secretary or his delegate may by regulations designate.

(B) *Exception.* Returns of—

(i) Persons who have no legal residence or principal place of business in any internal revenue district,

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) Nonresident alien persons, shall be made at such place as the Secretary or his delegate may by regulations designate.

(2) *Corporations*—(A) *General rule.* Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate—

(i) In the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or

(ii) At a service center serving the internal revenue district referred to in clause (i), as the Secretary or his delegate may by regulations designate.

(B) *Exception.* Returns of—

(i) Corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) Corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) Foreign corporations, shall be made at such place as the Secretary or his delegate may by regulations designate.

* * * * *

(4) *Hand-carried returns.* Notwithstanding paragraph (1) or (2), a return to which paragraph (1)(A) or (2)(A) would apply, but for this paragraph, which is made to the Secretary or his delegate by hand carrying shall, under regulations prescribed by the Secretary or his delegate, be made in the internal revenue district referred to in paragraph (1)(A)(i) or (2)(A)(i), as the case may be.

(5) *Exceptional cases.* Not withstanding paragraphs (1), (2), * * * or (4) of this subsection, the Secretary or his delegate may permit a return to be filed in any internal revenue district, and may require the return of any officer or employee of the Treasury Department to be filed in any internal revenue district selected by the Secretary or his delegate.

(Sec. 6091 as amended by sec. 1(a), Act of Nov. 2, 1966 (Public Law 89–713, 80 Stat. 1107))

**§ 53.6091–1 Place for filing chapter 42 tax returns.**

Except as provided in § 53.6091–2 (relating to exceptional cases)—

(a) *Persons other than corporations.* Chapter 42 tax returns of persons other than corporations shall be filed with the district director for the internal revenue district in which is located the legal residence or principal place of business of the person required to make the return.

(b) *Corporations.* Chapters 42 tax returns of corporations shall be filed with the district director for the internal revenue district in which is located the principal place of business or principal office or agency of the corporation.

(c) *Returns filed with service centers.* Notwithstanding paragraphs (a) and (b) of this section, unless a return is filed by hand carrying, whenever instructions applicable to chapter 42 tax returns provide that the returns be filed with a service center, the returns must be so filed in accordance with the instructions. Returns which are filed by hand carrying shall be filed in accordance with paragraphs (a) or (b) of this section, whichever is applicable.

**§ 53.6091–2 Exceptional cases.**

Notwithstanding the provisions of § 53.6091–1, the Commissioner may permit the filing of any chapter 42 tax return in any internal revenue district.

**§ 53.6151 Statutory provisions; time and place for paying tax shown on returns.**

SEC. 6151. *Time and place for paying tax shown on returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * *

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

* * * * *

(Sec. 6151 (a) and (c) as amended by sec. 1 (b), Act of Nov. 2, 1966 (Pub. Law 89–713, 80 Stat. 1108))

**§ 53.6151–1 Time and place for paying tax shown on returns.**

The chapter 42 tax shown on any return shall, without assessment or notice and demand, be paid to the internal revenue officer with whom the return is filed at the time and place for filing such return (determined without regard to any extension of time for filing the return). For provisions relating to the time and place for filing such return, see §§ 53.6071–1 and 53.6091–1. For provisions relating to the extension of time for paying the tax, see § 53.6161–1.

**§ 53.6161 Statutory provisions; extension of time for paying tax.**

SEC. 6161. *Extension of time for paying tax*—

(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months (12 months in the case of estate tax) from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

* * * * *

(b) *Amount determined as deficiency.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1, 12, or 42, for a period not to exceed 18 month from the date fixed for payment of the deficiency, and, in exceptional cases, for

a further period not to exceed 12 months. * * *

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1 or 42, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

* * * * *

[Sec. 6161 as amended by sec. 1801(j)(37), Tax Reform Act 1969 (83 Stat. 530); sec 101 (h), Excise, Estate and Gift Tax Adjustment Act 1970 (84 Stat. 1838)]

**§ 53.6161–1 Extension of time for paying tax or deficiency.**

(a) *In general*—(1) *Tax shown or required to be shown on return.* A reasonable extension of the time for payment of the amount of any tax imposed by chapter 42 and shown or required to be shown on any return, may be granted by the district directors and directors of the service centers at the request of the taxpayer. The period of such extension shall not be in excess of 6 months from the date fixed for payment of such tax, except that if the taxpayer is abroad the period of the extension may be in excess of 6 months.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 42 may, at the request of the taxpayer, be extended by the internal revenue officer to whom the tax is required to be paid for a period not to exceed 18 months from the date fixed for payment of the deficiency, as shown on the notice and demand, and, in exceptional cases for a further period not in excess of 12 months. No extension of the time for payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof unless so specified in the extension.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of the time for payment of the tax shown or required to be shown on any return, or for the payment of any amount determined as a deficiently shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. Such application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the three months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed on or before the date prescribed for payment of the amount with respect to which the extension is desired with the internal revenue officer to whom the tax is to be paid. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request therefor must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the amount the time for payment of which is so extended shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of the time for payment of the tax or deficiency does not relieve the taxpayer from liability for the payment of interest thereon during the period of the extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

**§ 53.6165 Statutory provisions; bonds where time to pay tax or deficiency has been extended.**

SEC. 6165. *Bonds where time to pay tax or deficiency has been extended.* In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

**§ 53.6165–1 Bonds where time to pay tax or deficiency has been extended.**

If an extension of time for payment of tax or deficiency is granted under section 6161, the district director or the director of the service center may, if he deems it necessary, require a bond for the payment of the amount in respect of which the extension is granted in accordance with the terms of the extension. However, such bond shall not exceed double the amount with respect to which the extension is granted. For provisions relating to form of bonds, see the regulations under section 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

**§ 53.6601 Statutory provisions; interest on underpayment, nonpayment, or extension of time for payment, of tax.**

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax*—(a) *General rule.* If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at an annual rate established under section 6621 shall be paid for the period from such last date to the date paid.

* * * * *

(Sec. 6601(a) as amended by sec. 7(a)(2), Act of January 3, 1975 (Pub. L. 93–625, 88 Stat. 2115))

**§ 53.6601–1 Interest on underpayment, nonpayment, or extensions of time for payment, of tax.**

For regulations concerning interest on underpayment, nonpayment, or extensions of time for payment of tax, see § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

**§ 53.6651 Statutory provisions; failure to file tax return or to pay tax.**

SEC. 6651. *Failure to file tax return or to pay tax*—(a) *Addition to the tax.* In case of failure—

(1) To file any return required under authority of subchapter A of chapter 61 (other than part III thereof), subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

(2) To pay the amount shown as tax on any return specified in paragraph (1) on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount shown as tax on such return 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate; or

(3) To pay any amount in respect of any tax required to be shown on a return specified in paragraph (1) which is not so shown (including an assessment made pursuant to section 6213(b)) within 10 days of the date of the notice and demand therefor, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax stated in such notice and demand 0.5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof during which such

failure continues, not exceeding 25 percent in the aggregate.

(b) *Penalty imposed on net amount due.* For purposes of—

(1) Subsection (a)(1), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax on which may be claimed on the return,

(2) Subsection (a)(2), the amount of tax shown on the return shall, for purposes of computing the addition for any month, be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return, and

(3) Subsection (a)(3), the amount of tax stated in the notice and demand shall, for the purpose of computing the addition for any month, be reduced by the amount of any part of the tax which is paid before the beginning of such month.

(c) *Limitation and special rule.*

(1) *Additions under more than one paragraph.*

(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2).

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) which is attributable to the tax for which the notice and demand is made and which is not paid within 10 days of notice and demand.

(2) *Amount of tax shown more than amount required to be shown.* If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, subsections (a)(2) and (b)(2) shall be applied by substituting such lower amount.

* * * * * *

(Sec. 6651 (a), (b), and (c) as amended by sec. 943(a), Tax Reform Act 1969 (83 Stat. 727))

**§ 53.6651–1 Failure to file tax return or to pay tax.**

(a) *General rules.* For general rules relating to the failure to file tax return or to pay tax, see the regulations under section 6651 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

(b) *Special rule where foundation files return.* (1) Except as provided in paragraph (b)(2) of this section, in the case of tax imposed by section 4941(a)(1) on any disqualified person, reasonable cause shall be presumed, for purposes of section 6651(a)(1), where the private foundation or trust described in section 4947(a)(2) files a return in good faith and such return indicates no tax liability with respect to such tax on the part of such disqualified person.

(2) Paragraph (b)(1) of this section shall not apply where the disqualified person knew of facts which, if known by the foundation, would have precluded the foundation from making the return, as filed, in good faith.

**§ 53.7101 Statutory provisions; form of bonds.**

SEC. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803(a)(1)), or the rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) *United States bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U.S.C. 15.

**§ 53.7101–1 Form of bonds.**

For provisions relating to form of bonds, see the regulations under section 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

[FR Doc.75-18471 Filed 7-15-75;8:45 am]

---

## Title 31—Money and Finance: Treasury

## CHAPTER II—FISCAL SERVICE, DEPARTMENT OF THE TREASURY

## PART 345—REGULATIONS GOVERNING 5-PERCENT TREASURY CERTIFICATES OF INDEBTEDNESS—REA SERIES

### Payment of Interest

Department of the Treasury Circular, Public Debt Series No. 11–73, dated December 19, 1973 (31 CFR, Part 345), is hereby amended to provide for the payment of interest on the 5 Percent Treasury Certificates of Indebtedness—R.E.A. Series, by credit through a Federal Reserve Bank or Branch; to authorize the submission of subscriptions to such facility; and, to redesignate § 345.5 as § 345.6 and to insert a new § 345.5 that provides customary tax information, as shown below:

Section 345.1(b) is revised as follows:

**§ 345.1 Description of certificates.**

* * * * *

(b) *Terms and rates of interest.*—The certificates, bearing interest at the rate of 5 percent per annum, will be issued in multiples of $1,000 and will mature one year from issue date. Interest on the certificates will be computed on an annual basis and, unless redeemed prior to maturity, will be payable six months from issue date and at maturity. Interest may be paid to an owner by having the amount thereof credited by a Federal Reserve Bank or Branch, acting as fiscal agent of the United States, to the reserve account of a member bank servicing such owner and for the latter's account. Such action will be taken at the owner's option. If not exercised, payment of interest will be made by Treasury check.

Section 345.2 is revised as follows:

**§ 345.2 Subscription for purchase.**

The recipient of a 5 percent loan from the Rural Electrification Administration or Rural Telephone Bank may subscribe for certificates under this offering, up to the amount of the unexpended portion of the loan, by submitting a subscription, together with the remittance, to the Federal Reserve Bank or Branch of the district in which the subscriber is located. The subscription form must show the amount of certificates desired, and give the title of the designated official of the subscriber authorized to redeem them.

The present § 345.5 is redesignated as § 345.6 and a new § 345.5 is added as follows:

**§ 345.5 Taxation.**

The income derived from the certificates is subject to all taxes imposed under the Internal Revenue Code of 1954. The certificates are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State or any of the possessions of the United States, or by any local taxing authority.

The foregoing amendments were effected under authority of 31 U.S.C. 754, 754b and 5 U.S.C. 301 for the purpose of facilitating the payment of interest and the submission of subscriptions for 5 Percent Treasury Certificates of Indebtedness—R.E.A. Series. Notice and public procedures thereon are unnecessary as the fiscal policy of the United States is involved.

Dated: July 10, 1975.

JOHN K. CARLOCK,
*Fiscal Assistant Secretary.*

[FR Doc.75-18317 Filed 7-15-75;8:45 am]

---

## PART 347—REGULATIONS GOVERNING 2-PERCENT TREASURY BONDS—REA SERIES

### Issuance

The regulations in Department of the Treasury Circular No. 1046, dated June 27, 1960, are hereby revised and amended to provide for the issuance of 2 Percent Treasury Bonds—R.E.A. Series in book-entry form and for their automatic reinvestment at maturity. As so revised and amended, they are issued, as shown below, in codified form (31 CFR, Part 347), as Department of the Treasury Circular, Public Debt Series No. 20–75, under authority of 31 U.S.C. 752, 754b and 5 U.S.C. 301. Notice and public procedures thereon are unnecessary as the fiscal policy of the United States is involved.

Dated: July 10, 1975.

JOHN K. CARLOCK,
*Fiscal Assistant Secretary.*

Part 347 is added to read as follows:

Sec.
347.0 Offering of bonds.
347.1 Description of bonds.
347.2 Procedure for purchase.
347.3 Issue date.
347.4 Redemption/reinvestment.
347.5 Taxation.
347.6 General provisions.

AUTHORITY: 31 U.S.C. 752-754b; 5 U.S.C. 301.

§ 347.0 Offering of bonds.

The Secretary of the Treasury under authority of the Second Liberty Bond Act, as amended, offers to borrowers from the Rural Electrification Administration, U.S. Department of Agriculture, 2 percent Treasury Bonds—R.E.A. Series. The bonds will be sold to such borrowers with the specific approval of the Rural Electrification Administration for each transaction. This offering will continue until terminated by the Secretary of the Treasury.

§ 347.1 Description of bonds.

(a) *General.*—The bonds will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, D.C. 20026.

(b) *Terms and rate of interest.*—The bonds, bearing interest at the rate of 2 percent per annum, payable on a semiannual basis on January 1 and July 1 in each year, will be issued in multiples of $1,000, and will mature twelve years from issue date. Interest will be paid by Treasury check.

(c) *Nontransferability.*—2 Percent Treasury Bonds—R.E.A. Series are not transferable nor entitled to any privilege of conversion, and they may not be sold, discounted or pledged as collateral for a loan or as security for the performance of an obligation, or for any other purpose.

§ 347.2 Procedure for purchase.

Subscriptions for approved borrowers shall be submitted by the Rural Electrification Administration, together with the remittances, to the Bureau of the Public Debt, Securities Transactions Branch, Washington, D.C. 20226.

§ 347.3 Issue date.

The issue date of a bond shall be the date on which funds in full payment therefor are received by the office described in § 347.2.

§ 347.4 Redemption/reinvestment.

(a) *Before maturity.*—A bond may be redeemed either at the option of the United States or the owner, in whole or in multiple $1,000 amounts, at par and accrued interest, at any time, upon not less than 30 nor more than 60 days' notice in writing given by either party to the other. From the date of redemption designated in any such notice, interest on the bonds to be redeemed shall cease, and the unredeemed portion, if any, shall continue to be held in book-entry form with the original issue date. Any such notice of redemption given by an owner shall be addressed to the Department of the Treasury, Bureau of the Public Debt, Washington, D.C. 20226.

(b) *At maturity.* Unless the Department of the Treasury, Bureau of the Public Debt, has received from the owner, at least one week prior to the maturity date of a bond, a written request for payment at maturity, it shall automatically redeem the same at maturity, and reinvest in the owner's name the principal amount in a new bond having the same description in all material respects as the one redeemed. In all such instances, interest will not be paid on the redemption date but on the next regular interest payment date, unless the redemption date coincides with the interest payment date.

§ 347.5 Taxation.

The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954. The bonds are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State or any of the possessions of the United States, or by any local taxing authority.

§ 347.6 General provisions.

(a) *Regulations.*—2 Percent Treasury Bonds—R.E.A. Series shall be subject to the general regulations with respect to United States securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (31 CFR, Part 306), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Department of the Treasury, Washington, D.C. 20226, or a Federal Reserve Bank or Branch.

(b) *Reservations.*—The Secretary of the Treasury reserves the right to reject any application for the purchase of bonds hereunder, in whole or in part, and to refuse to issue or permit to be issued any such bonds in any case or any class or classes of cases if he deems such action to be in the public interest, and his action in any such respect shall be final. The Secretary of the Treasury may also at any time, or from time to time, supplement or amend the terms of these regulations, or of any amendments or supplements thereto.

[FR Doc.75-18318 Filed 7-15-75;8:45 am]

---

## PART 348—REGULATIONS GOVERNING 2-PERCENT DEPOSITARY BONDS

### Issuance

The regulations in Department of the Treasury Circular No. 660, dated May 23, 1941, as amended, are hereby revised and amended to provide for the issuance of 2 Percent Depositary Bonds in book-entry form, and for their automatic reinvestment at maturity. As so revised and amended, they are issued, as shown below, in codified form (31 CFR, Part 348), as Department of the Treasury Circular, Public Debt Series No. 21-75, under authority of 31 U.S.C. 752, 754b and 5 U.S.C. 301. Notice and public procedures thereon are unnecessary as the fiscal policy of the United States is involved.

Dated: July 10, 1975.

JOHN K. CARLOCK,
*Fiscal Assistant Secretary.*

Part 348 is added to read as follows:

Sec.
348.0 Offering of bonds.
348.1 Description of bonds.
348.2 Subscription for purchase and issue date.
348.3 Redemption/reinvestment.
348.4 Taxation.
348.5 Reservations.

AUTHORITY: 31 U.S.C. 752, 754b; 5 U.S.C. 301.

§ 348.0 Offering of bonds.

The Secretary of the Treasury under authority of the Second Liberty Bond Act, as amended, offers, at par, 2 Percent Depositary Bonds to depositaries and financial agents designated under the provisions of section 5153 of the Revised Statutes of 1873, as amended (12 U.S.C. 90); the Act of May 7, 1928, 45 Stat. 492 (12 U.S.C. 332); the Act of June 19, 1922, 42 Stat. 662 (31 U.S.C. 473); and section 10 of the Act of June 11, 1942, 56 Stat. 356 (12 U.S.C. 265), which have executed a depositary, financial agency and collateral agreement satisfactory to the Secretary of the Treasury. The bonds will be sold to such depositaries and financial agents in an amount not to exceed in any case the amount for which the depositary and financial agent is qualified. This offering will continue until terminated by the Secretary of the Treasury.

§ 348.1 Description of bonds.

(a) *General.*—The bonds will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, D.C. 20026.

(b) *Terms and rate of interest.*—The bonds, bearing interest at the rate of 2 percent per annum, payable by Treasury check on a semiannual basis on June 1 and December 1 in each year, will be issued in multiples of $1,000, and will mature twelve years from issue date.

(c) *Nontransferability.*—2 Percent Depositary Bonds are not transferable, but they will be acceptable to secure deposits of Federal funds with, and the faithful performance of duties by, depositaries and financial agents designated under the statutory provisions shown in § 348.0, and may not be obtained or used for any other purpose.

§ 348.2 Subscription for purchase and issue date.

Eligible investors may subscribe for bonds under this offering through submission of a subscription to the Department of the Treasury, Domestic Banking Staff, Bureau of Government Financial Operations, Washington, D.C. 20226, which office will determine the appropriate amount and issue date of bonds to be issued. A confirmation of the issuance, in the form of a written advice, which shall specify the amount and describe the bonds by title and maturity date, shall be sent to the subscriber.

§ 348.3 Redemption/reinvestment.

(a) *Before maturity.*—A bond may be redeemed either at the option of the

United States or the owner, in whole or in multiple $1,000 amounts, at par and accrued interest, at any time, upon not less than 30 days' notice in writing given by either party to the other. From the date of redemption designated in such notice, interest on the bonds to be redeemed shall cease, and the unredeemed portion, if any, shall continue to be held in book-entry form with the original issue date. Any such notice of redemption given by an owner shall be addressed to the Department of the Treasury, Domestic Banking Staff, Bureau of Government Financial Operations, Washington, D.C. 20226.

(b) *At maturity.*—Unless the Department of the Treasury, Bureau of the Public Debt, Division of Public Debt Accounts, Washington, D.C. 20226, or the office specified in (a) above, has received from the owner at least two weeks prior to the maturity date of a bond, a written request for payment at maturity, the bond shall be automatically redeemed at maturity and the principal amount reinvested in the owner's name in a new bond having the same description in all material respects as the one redeemed. In all such instances, interest will not be paid on the redemption date but on the next regular interest payment date, unless the redemption date coincides with the interest payment date.

**§ 348.4 Taxation.**

The income derived from the bonds is subject to all taxes imposed under the Internal Revenue Code of 1954, but the bonds are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State or any of the possessions of the United States, or by any local taxing authority.

**§ 348.5 Reservations.**

The Secretary of the Treasury reserves the right to reject any application for the purchase of bonds hereunder, in whole or in part, and to refuse to issue or permit to be issued any such bonds in any case or any class or classes of cases if he deems such action to be in the public interest, and his action in any such respect shall be final. The Secretary of the Treasury may also at any time, or from time to time, supplement or amend the terms of these regulations, or of any amendments or supplements thereto.

[FR Doc.75-18319 Filed 7-15-75;8:45 am]

---

## Title 40—Protection of the Environment

### CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 397-8]

### PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

### Miscellaneous Amendments

On October 18, 1974, notice was published in the FEDERAL REGISTER (39 FR 37215) that the Environmental Protection Agency was proposing to amend § 125.12(h), to amend and add a new paragraph (c) to § 125.24, and to add a new § 125.28 to the National Pollutant Discharge Elimination System regulations contained in 40 CFR Part 125 and promulgated pursuant to sections 402 and 405 of the Federal Water Pollution Control Act, as amended (the Act). The purpose of the regulations contained in Part 125 was described at 38 FR 1362 (January 11, 1973).

Written comments on the proposed rulemaking were invited and received from interested parties. The Environmental Protection Agency has carefully considered all submitted comments. All written comments are on file with the Agency. Certain of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to the regulations. These and other principal changes are discussed below.

Several commenters pointed out that administrative oversight had occurred in the proposed amendments to § 125.12 (h)(1). The Agency intended to amend this subparagraph solely to make reference to the submission of "Short Form D" for municipal-type discharges (i.e., subdivisions, shopping centers). The purpose of this change is to indicate that those required to file Short Form D, primarily commercial establishments, may be required to file a Standard Form A when the enumerated criteria are present. However, while proposing the aforementioned change, the Agency neglected to incorporate the amendments previously made to § 125.12(h)(1) on July 24, 1973 (38 FR 19894). For this reason the Agency today is repromulgating the entire § 125.12(h) including subparagraphs (1), (2), (3), and (4) to reflect the current change and all previous changes made in this subsection. This should clarify the current status of the language of this subsection.

The proposed amendments to § 125.24 will be promulgated unchanged. As previously indicated, language has been added to paragraph § 125.24(a), which is now designated as paragraph (a)(1), in order to exclude publicly owned treatment works. New paragraph § 125.24(a)(2), which applies only to publicly owned treatment works, is identical to paragraph (a)(1) except that it removes the requirements for maximum and daily effluent limitations and makes no reference to effluent limitations for multiproduct operations. The purpose of these changes is to make these regulations consistent with the Agency's secondary treatment regulations, 40 CFR 133, which do not require permits for municipal treatment works to specify maximum or daily quantitative limitations for the level of pollutants in the authorized discharge. As was proposed, the final amendments contain a new paragraph § 125.24(c) which expresses agency policy that, unless new § 125.28 (see following paragraphs) provides otherwise, effluent limitation in permits shall be expressed in gross terms. Paragraph (b) of § 125.24 has not been altered in any way since original promulgation and is being included with these amendments so that the entire section appears below for the sake of convenience.

The proposed addition of § 125.28 indicated that all permits were to be issued in gross rather than net terms (1) unless the applicable effluent limitations or standards of performance (contained in Subchapter N of 40 CFR, Chapter I) provided that they were to be applied on a net basis (§ 125.28(a)(1)), or (2) unless meeting effluent limitations or standards of performance on a gross rather than net basis would be of major significance to the applicant in terms of cost or technical feasibility of achieving the prescribed levels of abatement (§ 125.28(a)(2)). Subparagraph § 125.28 (a)(1) is today promulgated substantially as proposed. However, many commenters pointed out that the phrase "of major significance to the applicant in terms of the cost or technical feasibility" created an unduly vague standard for the Agency to apply. Therefore, this promulgation of § 125.28(a)(2) has eliminated the "major significance" language quoted above. Instead, § 125.28(a)(2) now provides that a permit applicant seeking net limits who is not covered by § 125.28(a)(1) (i.e., whose discharge is not subject to effluent guidelines or standards of performance which provide that they be applied on a net basis) must demonstrate to the Regional Administrator, before his permit is either issued, modified, or denied, that pollutants present in his intake water are not removed by a wastewater treatment system designed to remove process wastewater pollutants and other added pollutants to the levels required by applicable limitations or standards. Thus, a discharger will be responsible for removing only those pollutants he adds to the waters of the United States by receiving credit for the specific pollutants which are present in his intake water and are not removed through the application of the required level of technology (provided the other requirements of § 125.28 are met).

Numerous commenters were uncertain as to how the partial credit provision of proposed § 125.28(a)(2) would be applied by the Agency. Again, the use of vague language was believed to impose an undue burden upon the discharger to prove "major significance." For this reason, the Agency has deleted in this promulgation any reference to partial credit.

One portion of the proposed § 125.28 (a), which was extensively commented upon, limits the availability of credit for pollutants found in an applicant's water supply to those applicants who discharge their effluent into the same body of water from which they received their influent. This language is promulgated today with minor revisions made solely for purposes of clarity. While an applicant should not be held responsible for pollutants already existing in his water supply when he discharges into that same water body, the same reasoning does not apply when he discharges into another body of water because of water quality and other considerations. However, the Agency does recognize, as several commenters have indicated, that there may exist situations in which it is difficult to determine whether the applicant's source of intake

water is the "same body of water into which the discharge" of the applicant is made. The Regional Administrator is, therefore, encouraged to make these determinations on a case-by-case basis as the facts in each situation warrant.

Proposed § 125.28(c) is today promulgated as the first sentence in § 125.28(b). Again, changes were made only to clarify the Agency's intent that credit would be granted only for pollutants in an applicant's intake water which remained after any water supply treatment steps have been performed by or for the applicant. An applicant who removes pollutants in order to upgrade the quality of his intake water so that it is suitable for his needs will not be allowed to place additional pollutants of a similar nature in his discharge in amounts greater than those permitted by the effluent limitations or standards of performance.

Also, many commenters interpreted proposed § 125.28(c), promulgated now as the first sentence of § 125.28(b), to mean that the reintroduction of the pollutants removed during water supply treatment steps was prohibited. It is the general policy of the Agency that once a pollutant (e.g., silt or similar pollutants) is removed by water supply treatment steps, it should not be reintroduced into the applicant's effluent. Such reintroduction or redepositing, where allowed, will be governed by water supply effluent regulations now being prepared by the Agency and is not subject to the amendments promulgated today. Until final water supply effluent regulations are promulgated, effluent limitations in water treatment supply situations will be established pursuant to section 402(a)(1) on a case-by-case basis. Where an applicant believes his situation so merits, he should consult with the appropriate Regional Administrator prior to the issuance, denial, or modification of his permit.

The last sentence of the proposed § 125.28(a)(2) is today promulgated in somewhat modified form as the second sentence of § 125.28(b). Changes were made for clarification. In addition, the promulgated version was changed substantively to compel the Regional Administrator to deny credit for pollutants which would vary from the pollutants originally existing in the applicant's water supply. The provision now indicates that credit cannot be given where the chemical or biological character of the pollutants discharged is different from the chemical or biological character of the pollutants in the applicant's untreated intake water even though such pollutants are measured by the same analytical technique (e.g., total suspended solids).

Proposed § 125.28(b) is being promulgated today as § 125.28(c). The promulgated language grants broad discretion to the Regional Administrator to require such additional monitoring as he deems appropriate when an applicant receives a permit with net limitations or standards. Many commenters felt it economically unjustifiable and burdensome to require monitoring of intake water during the period that a permit with net limitations or standards is in effect. However, it is implicit in the concept of net limitations or standards that monitoring of the intake water be done to assure compliance with the conditions of such permits. It is the intent of the Agency that such additional monitoring be kept to the minimum necessary to determine compliance with the permit.

Finally, several commenters indicated that the policy of granting credit for certain pollutants found in a qualifying applicant's intake water should be imposed on those States which have been authorized to issue NPDES permits. However, Section 510 of the Act reserves to the States the right to adopt and enforce more stringent effluent limitations than those applied by the federal government. Accordingly, the Agency cannot compel any State to adopt the less stringent net effluent limitations authorized by § 125.28 as promulgated today. Of course, any State wishing to implement the policies in § 125.28 may do so.

These regulations shall be effective August 15, 1975.

AUTHORITY: Sections 402, 405, and 501 of the Federal Water Pollution Control Act, as amended. (86 Stat. 816 et seq., Pub. L. 92-500; 33 U.S.C. § 1251 et seq.)

Dated: July 9, 1975.

JOHN QUARLES,
*Acting Administrator.*

1. Paragraph (h)(1) of § 125.12 of Subpart B, Processing of Permits, is revised to read as follows:

2. Paragraphs (h)(2), (3), and (4) of § 125.12, as previously amended on July 24, 1973, continue to read as follows:

§ 125.12 Application for a permit.

* * * * *

(h) (1) If the information submitted by an applicant for an NPDES permit in Short Form A (relating to municipal wastewater treatment facilities) or Short Form D when submitted for a municipal-type discharge (e.g., subdivision, shopping center) or any other information available to the Regional Administrator or the Director indicates any of the following, the applicant shall be required to cmoplete, sign, and submit a Standard Form A:

(i) The discharges from the facility have a total volume of more than five million gallons on any day of the year;

(ii) The facility serves a population in excess of 10,000; or

(iii) The facility receives wastes from an industrial user and such wastes:

(A) Have a total volume of more than 50,000 gallons on any day of the year,

(B) Contain toxic pollutants,

(C) Have a total volume which constitutes more than 5 percent of the volume of the total discharge from the facility on any day of the year, or

(D) Alone or in combination with other discharges into the facility interfere with the operation of the facility or adversely affect the quality of the discharge from the facility.

(2) If the information submitted by an applicant for a permit on Short Form C (relating to manufacturing establishments and mining) or in Short Form D (relating to services, wholesale and retail trade, and all other commercial establishments, including vessels, not engaged in manufacturing or agriculture) or any other information available to the Regional Administrator or the Director indicates any of the following, the applicant shall be required to complete, sign, and submit a Standard Form C:

(i) The discharges (except those to municipal wastewater treatment facilities) from the facility have a total volume of 50,000 gallons on any day of the year;

(ii) The discharges (except those to municipal wastewater treatment facilities) contain toxic pollutants.

(3) In addition to paragraph (h)(1) or (2) of this section, an applicant shall complete, sign, and submit the appropriate standard form if the Regional Administrator or the Director determines that such submission is necessary to determine whether or not and upon what conditions a permit should be issued for the discharges identified in the short form.

(4) Any applicant may submit a standard form without prior submission of a short form if he complies with all applicable filing dates and requirements.

* * * * *

3. Section 125.24 of Subpart C, Terms and Conditions of Permits, is revised to read as follows:

§ 125.24 Effluent Limitations in Permits.

(a) (1) In the application of effluent standards and limitations, water quality standards, and other applicable requirements, the Regional Administrator shall, for each permit, except those for publicly owned treatment works, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Regional Administrator may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for the level of pollutants in the authorized discharge. Effluent limitations for multi-product operations shall provide for appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(2) The Regional Administrator shall, for each permit for publicly owned treatment works, specify average quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not ap-

propriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight. The Regional Administrator may, in his discretion, in addition to the specification of average quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits or maximum daily quantitative limitations by weight for the level of pollutants in the authorized discharge. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(b) Notwithstanding any other provision in the regulations in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance (as defined in section 306 of the Act) shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or section 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

(c) Except as provided in § 125.28, effluent limitations included in permits shall be expressed in gross terms.

4. Subpart C of Part 125 is amended by adding a new § 125.28 to read as follows:

**§ 125.28 Adjustment of Effluent Limitations.**

(a) The Regional Administrator shall adjust the effluent limitations or standards in permits to reflect credit for pollutants in the applicant's water supply if the source of the applicant's water supply is the same body of water into which the discharge is made and if:

(1) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(2) The applicant demonstrates to the Regional Administrator, prior to the issuance, denial, or modification of his permit, that specified pollutants which are present in the applicant's intake water will not be removed by wastewater treatment systems designed to reduce process wastewater pollutants and other added pollutants to the levels required by applicable limitations or standards.

(b) Effluent limitations or standards adjusted pursuant to this section shall be calculated on the basis of the amount of pollutants present in the water after any water supply treatment steps have been performed by or for the applicant. Effluent limitations or standards shall not be adjusted when the pollutants which would be discharged, if credit were allowed, would vary either chemically or biologically from the pollutants found in the applicant's water supply.

(c) Any permit which includes effluent limitations or standards adjusted pursuant to this section shall also contain conditions requiring the permittee to conduct additional monitoring (i.e., flow and concentration of the pollutants therein) in the manner and locations determined appropriate by the Regional Administrator for those specific pollutants for which the effluent limitations or standards have been adjusted.

[FR Doc.75-18376 Filed 7-15-75;8:45 am]

[PP5F1556/R42; FRL 401-2]

## PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

### N-(1-Ethylpropyl)-3,4-Dimethyl-2, 6-Dinitrobenzenamine

On November 15, 1974, notice was given (39 FR 40325) that American Cyanamid Co., PO Box 400, Princeton NJ 08540, had filed a pesticide petition (PP5F1556) with the Environmental Protection Agency (EPA). This petition proposed the establishment of a tolerance for combined negligible residues of the herbicide *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitro benzyl alcohol in or on the raw agricultural commodities corn grain, fodder, and forage, and cottonseed at 0.1 part per million.

The data submitted in the petition and other relevant material have been evaluated. The herbicide is useful for the purposes for which the tolerance is sought, and there is no reasonable expectation of residues, in eggs, meat, milk, or poultry and § 180.6(a)(3) applies. It has been concluded, therefore, that the tolerance should be established as set forth below, and that this tolerance will protect the public health.

Any person adversely affected by this regulation may on or before August 15, 1975, file written objections with the Hearing Clerk, Environmental Protection Agency, 401 M Street, SW, East Tower Room 1019, Washington DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on July 16, 1975, Part 180, Subpart C, is amended by adding Section 180.361 as set forth below.

Dated: July 10, 1975.

EDWIN L. JOHNSON,
*Deputy Assistant Administrator for Pesticide Programs.*

AUTHORITY: Section 408(d)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(2)).

Part 180, Subpart C, is amended by adding § 180.361.

**§ 180.361 *N*-(1-ethylpropyl)-3,4-dimethyl - 2,6 - dinitrobenzenamine; tolerance for residues.**

Tolerances are established for combined negligible residues of the herbicide *N* - (1 - ethylpropyl) - 3,4 - dimethyl - 2,6-dinitrobenzenamine and its metabolite 4 - [(1 - ethylpropyl) amino] - 2-methyl - 3,5 - dinitro benzyl alcohol in or on the raw agricultural commodities corn grain, fodder, forage, and cottonseed at 0.1 part per million.

[FR Doc.75-18379 Filed 7-15-75;8:45 am]

[FRL 400-2]

## PART 415—INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

### Extension of Comment Period and Notice of Availability

On May 22, 1975 the Agency published a notice of interim final rule making establishing best practicable control technology currently available effluent limitations and guidelines (40 CFR 22402) for the inorganic chemicals manufacturing point source category. The due date for comments provided in the notice was June 23, 1975.

The Agency anticipated that the document entitled "Development Document for Interim Final and Proposed Limitations Guidelines and Proposed New Source Performance Standards for the Significant Inorganic Products Segment of the Inorganic Chemicals Point Source Category," which contains information on the analysis undertaken in support of the regulations, would be available to the public throughout the comment period. Production delays have delayed the availability of this document. Copies of the document are now available and are being distributed to those persons who have submitted written requests to the Office of Public Affairs.

Accordingly, the date for submission of comments is hereby extended thirty days from the date of publication of this notice.

Dated: July 9, 1975.

JAMES L. AGEE,
*Assistant Administrator for Water and Hazardous Materials.*

[FR Doc.75-18377 Filed 7-15-75;8:45 am]

## Title 47—Telecommunication

## CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 20265; FCC 75-759; 35822]

## PART 73—RADIO BROADCAST SERVICES

### AM Station Assignment Standards

1. The purpose of this proceeding, which was initiated by a *Notice of Proposed Rule Making*, adopted on November 27, 1974, FCC 74-1307, 39 Fed. Reg. 42920, is to examine the rules regulating the assignment of new facilities, and the modification of existing facilities in the standard broadcast service, and to determine, in the light of existing conditions,

what, if any, amendments should be made in these rules. The rules principally under consideration are those in § 73.37, which govern the acceptability of applications for new and changed facilities, and which, in their present form, were adopted on February 21, 1973 (*Report and Order* in Docket 18651, FCC 73–220, 39 F.C.C. 2d 1945). Proposed in the *Notice* is an amendment of the rule governing the acceptability of applications proposing power increases for existing stations, so as to delete certain acceptability criteria which had been designed to insure that any power increase authorized would remedy a demonstrated service deficiency, either to the city to which the station is assigned or to outlying areas without standard broadcast service. However, we also indicated that we would accept comments in this proceeding going to other aspects of the 1973 amendments and of other rules which parties might consider as unnecessarily restrictive and burdensome, and suggestions for appropriate relaxations to accommodate documented needs for new service. Because our "suburban policy" (*Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 F.C.C. 2d 190, reconsideration denied, 2 F.C.C. 2d 866 (1965)), obviously stands as an impediment to power increases of stations in suburban communities whose 5 mV/m contours encompass or would encompass part or all of a larger nearby community, we invited comments as to whether this policy should be modified as it applies to major changes in existing operations.

2. As noted, § 73.37 prescribes the showings required of applicants proposing new or modified AM broadcast facilities. The first major change in this section was made in 1964 (Docket No. 15084, FCC 64–609, 45 F.C.C. 1515), at which time, concerned with the erosion of the service of existing stations under an allocations system which, in effect, sanctioned the imposition of measured amounts of interference on such stations, we adopted the "go-no-go" rules, which, inserted in 73.37, proscribed the acceptance of any application involving overlap of daytime service and interference contours. At this time, we also adopted, for nighttime operation, as an amendment to § 73.24, the requirement that each new nighttime proposal serve 25% "white area," (later amended to apply to area or population) as a result of our apprehension that new unlimited time stations, which, in the great majority of cases were being assigned to communities already having nighttime service, although nominally not causing objectionable interference under our rules, were nevertheless eroding the nighttime service actually provided by previously authorized stations.

3. The "25% white area" requirement served as an effective (and, it has been frequently suggested, an all too effective) brake on the previously burgeoning number of nighttime operations. However, daytime proposals continued to be filed in large numbers. In July, 1968, convinced that new daytime assignments were, in general, doing little but adding services to areas already enjoying multiple signals, and that the trend, if continued, would exhaust the resources of the standard broadcast band with little new service being afforded to those areas and communities where it is most needed, we imposed a partial "freeze" on new assignments and on major changes in existing assignments, and in September 1969 began a new proceeding to determine what rule amendments were necessary to govern the assignment of AM stations in the future. This proceeding, the previously mentioned rule making in Docket 18651, resulted in the adoption of the rules which are here under consideration.

4. The present rules incorporate a concept missing from previous rules of this nature—the recognition of AM and FM as co-equal services, each of which were to be relied on in the future in remedying aural service deficiencies. However, in furtherance of our aim of avoiding the unnecessary proliferation of new AM stations, preference was accorded FM, where it was available, for bolstering inadequate service.

5. The present rules, besides requiring adherence to daytime and nighttime interference standards, contained in or alluded to in the 1964 version of § 73.37, impose additional requirements governing the acceptability of applications for new standard broadcast stations, or changes in existing stations. In summary, they are as follows:

(1) The "25% white area" or population criterion is maintained as a required showing for new nighttime proposals, or proposals for increased nighttime power for existing stations, and is applied, for the first time, to new daytime stations, and to daytime power increases of existing stations.

(2) Alternative showings may be made, however:

(a) A new station may show that it proposes to provide a first or second "adequate" service to the community for which it is proposed.[1]

(b) an existing station proposing an increase in power may show that during that portion of the day for which the power increase is proposed, that its present service to its community is inadequate.

(3) Except in the case of existing stations seeking a power increase, "white area" is that determined as having neither AM primary service nor the FM equivalent. In determining whether a community has fewer than two adequate services, existing service from both AM and FM stations are taken into consideration (disregarding service from existing stations more than 50 miles distant). Furthermore, even if there are fewer than two adequate aural services to the communities, a new AM proposal to serve the community will not be accepted absent a showing that no FM channel is available to serve the community.

6. Since the adoption of these rules, evidence has accumulated that they may be unnecessarily restrictive in controlling the rate of expansion of the standard broadcast service, and that they fail to afford, in some cases, reasonable opportunities to satisfy developing needs for new and additional aural service. Accordingly, in this proceeding we have provided a forum for the discussion by interested parties of this matter, and an avenue through which suggestions as to appropriate changes in the rules might be offered.

7. A total of 273 pleadings were filed bearing directly or peripherally on the matters under consideration within the deadlines set for such filings, which, as extended, were March 3, 1975, for comments, and May 5, 1975, for reply comments. The list of the parties submitting this material is contained in Appendix A to this document.

8. In addition, the Docket contains in excess of one hundred letters from members of Congress and the Commission replies thereto, virtually all dealing with a single subject, the allegation that the possibility of nighttime power increases for Class IV stations has been unfairly excluded from consideration in this proceeding.

9. A summary of the views of the parties as set forth in their comments follows.

### Summary of Comments Concerning Amendments of §73.37 and Related Rules

10. More than half of the comments were addressed, in whole or in part, to the proposal to amend Section 73.37 (e)(3), concerning changes in existing facilities (other than changes in frequency). Of these, all but four favored some relaxation of the present restrictions on such applications. Also, most approved of retention of the present interference standards. In support of these favorable comments, most parties cited one or more of the reasons outlined in the *Notice*, *i.e.*, urban expansion, population growth, the increasing viability of FM, and non-availability of adequate antenna sites.[2] With respect to urban expansion, parties described a variety of population trends which, according to them, should provide a basis for amend-

[1] Adequate service is deemed to be provided to the community by an AM station if 80 percent or more of its area or population lies within the 5 mV/m contour of that station, or by an FM station if a similar portion of the community is included within its 3.16 mV/m (70 dBu) contour.

Service of an existing AM station to a community is considered to be inadequate if less than 80% of the community lies within the 5 mV/m contour, or its interference-free contour, whichever is of a higher magnitude.

[2] Numerous demographic, statistical and engineering exhibits were included to demonstrate the validity of these reasons.

ing the present allocation standards. While some emphasized the expansion of particular city limits, others focussed on suburbanization, and still others on "sub-suburbanization" (*i.e.*, a community, previously considered a suburb of a major urban center, which has itself become a major population center independent of the urban center, with its own surrounding "sub-suburban" communities). Each of these circumstances, according to the parties, justifies relaxation of the rules. This approach is in some ways similar to the appeals to localism expressed by some other parties, who felt that improvement to local services should not be blocked by signals from independent, and occasionally distant, communities which happen to penetrate the proposed gain area. In addition, a number of parties asserted generally that a less restrictive policy toward power increases would result in the more efficient use of the AM spectrum. While many argued that FM service was fully viable and in many cases competitively superior in several ways to AM, others claimed that the proposal was justified because of the lack of FM penetration, attributed to both lack of available FM channels and lack of receivers. Similarly, some parties asserted that the proposal would result in few applications, while one party saw the salvation of the economy flowing from the vast amount of work to be generated by a general revision of Section 73.37(e). A variety of other relatively general factors was offered in support of the proposal. These included provision of better service, usually to a wider area;[3] promotion of competition among existing stations; increased programming diversity;[4] and parity of treatment, with respect to applications for changes in FM and TV. Several parties suggested that new assignments, power increases and frequency changes authorized by other North American countries warranted similar action by the United States, in order to prevent the possible deterioration of our own AM service as a result of the increase in foreign signals. Finally, in supporting the proposal, one comment argued that the present major change rules stunt the natural growth of developing broadcast businesses.

11. While supporting the proposal generally, several parties suggested further amendments with respect to improvements to existing facilities. Some claimed that it would be appropriate to relax the present daytime interference standards to insure the ability of many stations to take advantage of the proposed deletion of the aural services/unserved area restrictions. These suggestions were for the most part non-specific. For example, one comment, filed jointly by thirteen parties, proposed that interference be permitted over "empty places far outside a station's natural market." Similarly, the Grace/Wolpin Broadcasting Company would permit interference over areas which do not include "significant population" and which the station subject to the interference does not seek to serve. The Paramount Broadcasting Company, Inc., not only would allow any interference that was *"de minimis"*, but would further presume that interference was *de minimis* if the station adversely affected did not object. Other variations on the interference theme included the suggestion that, in order not to preclude new stations, any existing station taking advantage of the proposed relaxation be required to accept interference from new stations in its gain area. Under one plan, new stations would also be permitted to accept interference up to their 1 mV/m contour. Thus, the number of mutually exclusive situations would be reduced. With more limited scope, some parties suggested that Class III stations adjacent to Class IV channels be permitted to increase their power as long as no new overlap with Class I, II, or III stations, or to the Class IV's interference-free area, would be created. Such a move would tend to counteract the effects of the general daytime power increase previously authorized to Class IV stations.

12. A number of other parties argued that the most appropriate way of achieving the goals set forth in the *Notice* would be to increase maximum power limits. One party, for example, noting the technical difficulties inherent in operation at its frequency, suggested that stations operating at 1600 kHz be authorized to operate with 10 kW. In the same vein, others suggested an increase of all Class III stations to 10 kW. Still others suggested an across-the-board or "horizontal", power increase, raising the maximum permissible power levels of all classes of stations. This, in conjunction with the proposed amendment, would assure adequate service by existing stations. While various specific power levels, and accompanying, revised, protection standards, were suggested, the most notable was that of A. Earl Cullum, Jr. and Associates (Cullum), who asserted that an increase in all levels by a factor of nine was called for, since, accoridng to Cullum, the Commission's proposal alone would in fact benefit very few parties. It was argued that such a parallel increase would solve the adequacy of service problem discussed in the *Notice* while enabling the Commission to retain its present interference standards. In addition, it was noted that the Commission's experience with Class IV operations established the feasibility of such an approach. Cullum asserted that any international problems arising from such revision would "not present too much difficulty." Four parties filed comments specifically supporting Cullum's proposal. Two parties specifically opposed it, noting that such an across-the-board increase would raise significant treaty problems, and would further work a hardship on any station which, by choice or by economic (or other) necessity, would be unable to take advantage of the increased levels. In a general comment, The Association for Broadcast Engineering Standards, Inc. (ABES) approved the proposed Section 73.37(e)(3), but argued that increases in maximum power levels and relaxation of the present interference and overlap rules should be avoided.

13. The possibility of incremental power increases within the existing structure of maximum levels was also raised in several comments. Virtually all parties making this suggestion supported an intermediate power level of 2.5 kW between the present authorized levels of 1 kW and 5 kW.[5] Some also suggested specific levels at 0.25 kW, 0.75 kW, 1.5 kW, 3.75 kW, and 10 kW, or, more generally, "intermediate levels between the present levels." In support of the idea of intermediate levels, it was pointed out that such would make it easier to improve signal strength without the necessity of complex, and expensive, directional arrays. It was asserted that no technical barriers to such a proposal exist, and that Commission experience with reduced power in pre-sunrise operations has demonstrated its feasibility. In addition, it was pointed out by several parties that a 2.5 kW level is not prohibited by either NARBA or our Mexican agreement. Finally, one party suggested that the simplified directional antenna proposals resulting from institution of a 2.5 kW level would help to reduce the Commission's processing load.

14. Only four parties objected to the proposed Section 73.37(e)(3). Two of these, KDEN Broadcasting Company, Inc. (KDEN), and Bloomington Broadcasting Corporation, argued that the effect of the proposal would be to put Class IV operations at a significant competitive disadvantage and that, in light of this discrimination against Class IVs, the proposal should be rejected.[6] Ray Odom, general manager of KJJJ, Phoenix, Arizona, merely stated that "it is the opinion of this licensee that a power increase can not be effected without some interference to the already existing facilities." On the basis of this alone, with no supporting data, he opposed the proposal. Finally, the National Black Media Coalition NBMC, or the Coalition) raised a number of questions, ranging from certain procedural inefficacy of the proposal. Specifically, NBMC asserted that, by virtue of the Commission's failure to solicit comments from minorities and consumers, the records developed from the comments filed is inadequate. A court opinion in Prime Time Access Rule litigation is cited in support

[3] Several parties who cited this factor indicated that power increases were necessary to overcome low soil conductivity not predicted by the values on FCC Figure M-3.

[4] See also paragraph 24, *infra*, regarding specialized programming.

[5] Several parties noted that a petition for rule making, RM-1371, concerning this proposal was already on file at the Commission, and suggested that any action on it be incorporated into this proceeding.

[6] It should be noted that more than sixty comments raised the question of Class IV exclusion. Of these, however, approximately 25% specifically indicated that they either generally supported, or at least did not object to the proposal (while also noting a desire for inclusion of Class IV operations), and, with the exception of the two parties mentioned in the text, the rest expressed no opinion on the proposal.

of this argument.[1] NBMC also claimed that this rulemaking is procedurally defective because the *Notice* lacked any data supporting the proposal. With respect to the proposal itself, the Coalition argued that relaxation of the restrictions on power increase would only serve to preclude new "drop-in" station assignments, and thus would prevent Blacks from applying for any new stations. As a result, in order to acquire broadcast interests, Blacks would be required to pay expensive prices for existing operations, rather than have the opportunity to build and develop a new station. Noting that there are only twenty-one Black-owned AM stations, NBMC asserted that the proposal would merely "carve in granite a system of separate but unequal use of the AM band." Further, the Coalition saw the proposal as being primarily a response to broadcast lobbyists seeking to maintain control of the aural media in their respective markets. The factors mentioned in the *Notice* (*e.g.*, urban expansion) were viewed by NBMC as irrelevant to the situations of the "small-town operators" who, according to the Coalition, would be the primary beneficiaries of the proposal. As a result of the above, NBMC urged that this entire proceeding be begun all over again, and rejected.

15. In response to paragraph 6 of the *Notice*, approximately 108 comments discussed in whole or in part the subject of new AM assignments, and, particularly, new nighttime assignments for existing daytime-only stations. As detailed in paragraph 18, *infra*, only one of these parties objected to relaxation of the present restrictions of Section 73.37(e)(2) (ii) and (iii). Most comments merely indicated support for some general relaxation, or deletion, of those restrictions, without providing any more detailed proposals. The general need for broader, full time service in various areas of the country was one of the factors most often mentioned in these comments. Variations of this broad argument included the claims that *local* nighttime service is necessary, that daytime-only service is, by its very nature, inadequate, or that, regardless of technical considerations, *some* nighttime coverage is better than none at all. Several parties noted that the needs and problems sought to be answered by daytime programming do not go away at sunset. Other factors cited included the viability, inadequacy, and/or lack of penetration of FM services in many areas; the public's general interest in diversity of nighttime programming; and the likely increase in competition among stations. Some parties asserted that more nighttime assignments are necessary to insure efficient utilization of the AM band[2], and that the Commission should make all possible means of affecting such utilization available to its licensees. Several comments argued that the number of applications generated by relaxation or deletion of Section 73.37(e)(2) (ii) and (iii) would not be great, and that the Commission need not fear the preclusionary effect discussed in earlier reports on allocation policy. Further, according to these comments, the limited negative effects resulting from relaxation of the rules would easily be offset by the benefits of improved service. Other preclusion arguments included the notion that daytime-only stations themselves have a preclusionary effect, and that new nighttime services will not add to that significantly. In the same vein, one party argued that the effect of creating a number of new 500W nighttime services would be no more preclusionary than permitting substantial power increases for existing nighttime stations under the proposed Section 73.37(e)(3). A number of parties specifically challenged the rationale of the present rules that large numbers of new nighttime assignments will result in the overall deterioration of all nighttime service. They asserted that there is, in fact, no proven basis for the Commission's claim. One party claimed that technology now available to broadcasters has in large measure eliminated the Commission's concerns. It must also be noted that, again, most parties supported retention of the present technical standards regarding "objectionable interference" as outlined in Section 73.182(o) of the Rules.

16. A number of proposals, varying from general to specific, were submitted with respect to relaxation of the present restrictions on new facilities, and especially new nighttime authorizations. Some were willing to retain the notion of "available aural services" as a criterion, but sought to revise the definition of that term. For example, one party suggested that its meaning be expanded to include the notion of *actual*, rather than authorized, hours of operation. In this way, for instance, an FM station which in fact signs off at midnight would not represent an "available aural service" from sign-off until sign-on, thus possibly creating unserved area during that time. It was also suggested that the number of services specified by the rule be enlarged to three. The Mutual Broadcasting System, Inc. (Mutual), proposed that new nighttime authorizations be granted if the "network market" in which the applicant operates has three or fewer full time standard broadcast stations.[3] McKenna, Wilkinson & Kittner (MWK) supported this proposal, but would prefer to use the more specific "standard metropolitan statistical area," as defined by the Census Bureau, rather than "network market." Other parties willing to retain the existing rule suggested lowering the minimum nighttime power level to permit interference-free, albeit limited, nighttime service. Several noted, in this regard, that power at or lower than presently authorized pre-sunrise authority levels would be acceptable, based on the successful operation of most stations at their PSA power. It was suggested that the Commission's experience with pre-sunrise, and also the 1974 temporary 50W pre-sunrise, operations established the feasibility of such low power service. Another suggestion raised in a small number of comments was the relaxation of interference standards. As with similar suggestions raised in the context of power increases, and discussed above in paragraph 11, these were neither specific nor technical. Several parties advocated case-by-case analyses of applications. According to some, this would involve balancing the need for the new facility against the benefits underlying the rules. "Need" in this sense could encompass such factors as general diversity of programming, competition among stations, or specialized, or minority, programming needs. A variation of the balancing technique would carve out specific exemptions from the present restrictions, so that, for example, an application for a first, or first competitive, AM nighttime service to "a substantial segment of the community having special needs" would only have to meet interference standards. Other exemptions proposed included applications: by "single market" daytime-only stations; by stations, near a border or a coast, whose proposed main radiation lobe would be directed away from the U.S. mainland; or which would help create a competitive situation of at least two standard broadcast and two FM stations in each city. One party would permit waiver of the aural services/unserved area rules for new nighttime applications if it were shown that no FM channel was available in the community.

17. Finally, several parties proposed more or less wholesale revisions of the rules governing new nighttime authorizations. Cohen & Dippell, P.C., and WGBA, Inc. would retain the present format, including the objectionable interference criterion of § 73.182(o), but would lower the "unserved area" requirement from 25% to 15%, while restricting the definition of "unserved area" to places not receiving interference-free primary service or "a combination of first and second services" from authorized *standard broadcast* stations. In addition, their proposed aural services rule, to replace the present Section 73.37(e)(2)(iii), also would be limited to AM services. And a final alternative sub-section, suggested as Section 73.37(e)[2](iv), would permit new nighttime authorizations on a showing that the proposed operation would not affect any possible establishment of a future nighttime operation in any area with less AM and FM service. MWK, taking the view that nighttime service is merely a complement to daytime service, would permit any

[1] Although the case relied on is not precisely identified, the Coalition appears to be referring to *National Association of Independent Television Producers and Distributors, et al. v. F.C.C.*, 502 F. 2d 249 (2d Cir. 1974).

[2] The "fair, efficient and equitable" language of Section 307(b) of the Act was cited by several as mandating such action.

[3] Mutal's proposal included modified service requirements consistent with the general notion of licensing stations to "areas," rather than particular cities or communities. It must be noted that several other parties suggested similar redefinitions of the "community of license" concept in light of demographic trends. None, however, was as detailed as those of Mutual and MWK.

new nighttime proposal if daytime requirements were satisfied and no objectionable interference would result. Perhaps the most radical suggestion was that of Contemporary Media, Inc. (CMI), who urged establishment of an AM Table of Assignments similar to those used in FM and TV allocations. CMI also suggested that, if the licensee of a daytime-only AM station could not receive a nighttime authorization, that licensee should be granted a fulltime FM in its community of license. In addition, any FM channels still available after this initial distribution would then be offered to any AM licensees with "inadequate facilities."

18. As noted above, only one party specifically opposed relaxation of the rules regarding new nighttime authorizations for existing daytime-only stations. Sanford Schafitz, licensee of WFAR, Farrell-Sharon, Pennsylvania, argued that the introduction of "flea power operation(s) on regional or clear channels for the sole purpose of accommodating daytime stations would be a 'slap in the face' " to those broadcasters who have been using "complicated and expensive" directional antennae. In addition, Schafitz asserted that, in light of the number of FM stations in operation, no compelling need for more nighttime AM service exists, and, in any case, very little interference-free nighttime service is likely to result from any relaxation of the rules.

19. The question of relaxation of restrictions on frequency changes was discussed in approximately twenty-five comments. Support for relaxation or deletion of the present rules was unanimous, with most comments seeking equivalent treatment of frequency changes and power increases. Almost all parties raising this issue cited either general or specific needs for new nighttime service or overall improved service which could only be achieved by changes in frequency. Many claimed that relaxation or deletion of the aural services/unserved area rules with respect to such changes would promote more efficient use of the spectrum, since they would result in both improved service to one area, and the freeing of a channel which might likewise be put to better use elsewhere. Several parties asserted that, if such changes had any negative impact on the Commission's allocation policy, such impact would be minor, particularly relative to the benefits of improved service to be gained. Others noted that a maximum number of options by which to improve service, including frequency switches, should be made available to broadcasters. It was suggested by several parties that to relax the rules governing power increases without equivalent treatment for frequency changes would be illogical. Other factors cited in support of facilitation of such improvements were increases in competition and diversity, inadequacy of existing FM nighttime service, and the general factors of urban sprawl mentioned in the *Notice*. E. W. Bie (Bie) suggested that the "other than frequency" restriction be removed from Note 2 of Section 73.37, since, according to Bie, a frequency change is simply another way of serving more people, and thus, should be treated as a power increase. The Progressive Broadcasting Corporation advocated liberalization of the frequency change policy, but added that new nighttime authorizations resulting from such changes could be limited to 1 kW, with a directional array, if necessary. KDEN urged that Class IV operators in particular be given favorable consideration in seeking frequency changes in order to overcome presently inadequate service. One party sought a frequency change because its own frequency, 910 kHz, is subject to the "characteristic 910 squeal", and thus is "not ideal." Finally, two parties suggested that, if the licensee of a daytime-only station could not gain a nighttime authorization on its station's channel, the licensee should be authorized to broadcast at night on a different frequency while maintaining its normal daytime operation. It was submitted that this situation would be roughly equivalent to that faced by the owner of an FM and daytime-only AM combination who, in signing off the AM, indicates that the same or similar programming is available on the FM. Thus, according to the parties, it would not be overly burdensome to the audience, and it would serve to increase efficiency of spectrum use.

20. As an alternative to full nighttime authorizations, seven parties suggested that daytime stations be permitted to operate for a limited period of time after sundown. This "post-sunset authorization", modeled after the existing pre-sunrise rules, would involve low power operations and, according to some of the parties, could extend to 6 p.m. without violating the present Mexican Agreement. Such a service would satisfy the need for programming in the evening drive time, it was argued, and would serve to maximize utilization of the spectrum. FM penetration into cars, it was pointed out in one comment, is not substantial. One party suggested that powers higher than PSA authorizations be permitted, as long as no derogation of service would result. Another urged careful study of the Commission's 50W minimum temporary pre-sunrise authority experience of January–April, 1974, with the idea that, in light of that experience, higher powered pre-sunrise and post-sunset operations might be deemed advisable.

CONCERNING CHANGES IN POLICY STATEMENT ON 307 (b) CONSIDERATIONS

21. Approximately 67 comments discussed the possible revision of the Commission's *Policy Statement on 307(b) Considerations for Standard Broadcast Applications Involving Suburban Communities*, 2 F.C.C. 2d 190, reconsideration denied, 2 F.C.C. 2d 866 (1965). Many concurred with the observation in the *Notice* that continuation of the present policy would appear to countervail the more liberal allocation policy which is the heart of this proceeding. It was also suggested by most parties that the current 307(b) policy, independent of this rule making, is not a beneficial rule. The bases for these statements were varied. Several parties argued that the validity of the presumption itself is suspect, and that, generally, a service contour is not indicative of a licensee's intent. Other parties attacked the underlying assumptions of the policy, *i.e.*, that a suburban community must have unique problems and needs, or that a licensee cannot meet a suburb's problems and needs while providing a secondary service to the metropolitan area. It was submitted that the nature of many suburban areas is such that the problems and needs of city and suburb often merge, and to set up a barrier to service to the whole area is unrealistic and an inefficient use of the AM band, tending to frustrate the goal of maximum utilization of the spectrum. Some argued that the policy, in general terms, has failed to achieve its purpose. Many parties raised more specific questions about the theory and application of the policy. Citing several Commission opinions, one claimed that the policy is presently applied inconsistently. Some asserted that application of the policy is particularly unfair in situations involving rapidly expanding, or irregularly shaped, cities, where improvement of suburban service may be effectively stopped by the vagaries of the nearby city's changing borders. Others argued that the 307(b) policy is inconsistent with the Commission's policy on dual city identification, and with the general policy of required service to the licensee's community *and* service area.[10] It was also suggested that the policy unreasonably discriminates against AM broadcasters in favor of FM and TV licensees, and that, in light of the present restrictions on new and improved stations, it is obsolete. Finally, abandonment or relaxation of the policy was seen by some as increasing competition among broadcasters while easing the administrative burden on the Commission.

22. On the basis of the above-described observations, many parties proposed alternatives to the present policy. Some, apparently willing to retain the present format, suggested that certain exceptions be instituted, *e.g.*, with respect to irregularly shaped cities, or stations featuring specialized, or minority, programming. One party proposed that the policy be retained in the form of a standard for acceptance of applications, with 25 mV/m penetration, rather than 5 mV/m, as the relevant factor. Most, however, sought the elimination of the presumption, at least with respect to applications for the improvement of existing facilities. Two parties, however, noted that, if such limited relaxation occurred, any continuing restrictions on new applications might be easily circumvented by a two-step approach. These two parties were among the many who proposed the total elimination of the *Policy Statement*. In

[10] The Commission's *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 F.C.C. 2d 650 (1971), was cited by several parties in support of this particular argument.

most comments it was suggested that the number of abuses would probably be slight, and that a case-by-case approach would be more appropriate than the present, across-the-board presumption. Many argued that the Commission's renewal process, particularly in conjunction with the ascertainment requirements set forth in the *Primer* [11], would be sufficient to detect, and prevent, such abuses. A small number of parties suggested that the policy should be applied only in the context of hearing cases, "as originally intended when the policy initially was adopted."

23. Three parties felt that the present policy is valid and should therefore be retained. KDEN argued that relaxation of the policy statement restrictions would lead to abandonment of suburban audiences and advertisers. Similarly, the Circle Corporation viewed the existing policy as a deterrent to the "opportunistic few" who might reorient their service toward the central city. ABES found that the policy "fulfills an essential function in discouraging the shoehorning of new stations into large urban areas", and although reluctant to set up a barrier to improved facilities, still approved the present system of rebuttable presumptions.

CONCERNING OTHER MATTERS

24. Several comments, some of which have been briefly described in previous paragraphs, proposed generally that the Commission's allocation rules should take into account the need for unique, specialized or minority program formats. Some suggested specific exemptions to the present restrictions, and sought the codification of these exemptions as subsections of Section 73.37(e). Others were less specific, and would apparently approve of consideration of "need" as a basis for case-by-case waiver of the rules. While some of the comments contained very limited substantive discussion, others cited a variety of precedents assertedly establishing the legal basis for such an approach, as well as its consistency with the public interest. The cases cited included primarily the recent line of "format" cases [12] together with the *WAIT* decisions [13] and the Commission's opinion in *Alabama Educational Television Commission*, 50 F.C.C. 2d 461 (1975). In most instances the parties sought to establish that there is a clearly recognizable need for minority programming and that, in light of the format cases, the nature of a station's programming is no longer a transitory element. According to several of the parties, these two factors are sufficient to justify an overall allocation policy based in part on programming format.

25. Despite the fact that the scope of this proceeding was limited to revisions of both Section 73.37(e) and, to the extent necessary, the 307(b) policy statement numerous parties attempted to raise a wide variety of additional issues. The exclusion from this proceeding of any revisions of the rules governing Class IV operations was the question raised most frequently. Most parties asserted that this was "blatant discrimination" which would put Class IV operators at a significant competitive disadvantage. Other issues discussed in the comments included revision of the clear channel rules, revision of various technical standards (*e.g.*, Sections 73.182(o) and 73.150), revision of FCC Figure M-3, and revision of certain pre-sunrise operation requirements. Some put forward alternative means of assigning priorities to applications, while at least one party offered a more or less comprehensive re-working of our general allocation policies. Inasmuch as these proposals and others not otherwise discussed in this *Report and Order* were outside the scope of this proceeding, they will be rejected without further comment.

DISCUSSION

26. This proceeding was intended to be quite limited in scope, concerning itself primarily with possible amendments of Section 73.37, that portion of the standard broadcast rules which establishes the criteria governing the acceptance of applications for new and changed broadcast facilities. In addition to standards either set forth in or referred to, which prescribe the permissible limits of inter-station interference, this section establishes various other requirements aimed at controlling the direction and pattern of station growth.

27. The rules contained in § 73.37 were formulated in 1973 on the basis of an assumption that, at the rate of growth in the number of stations then current, the standard broadcast band was approaching saturation, without a sufficient attendant improvement in the provision of service to areas and communities without adequate service. Accordingly, these rules were designed to restrict the assignment of new stations, and increases in power of existing stations, to situations where the addition of new facilities or the augmentation of existing facilities would result in the improvement of clearly inadequate service. The rules also, for the first time, fully equated AM and FM as a single aural service, and accorded priority to FM where channels were available on which needed new service could be established.

28. We believed then, and continue to believe, that the most pressing need is to extend aural service to areas in the United States (which are vast) which have no primary aural service, and, in the 1973 rules, the provision of service to "white areas," daytime and nighttime, was made a primary goal. At the same time, recognizing that, because stations must be based on population centers capable of providing adequate financial support, service to outlying "white areas," while highly desirable, is often difficult to achieve, we aimed our rules toward an alternative, a somewhat less pressing, but nevertheless desirable objective, the improvement of service to those generally smaller communities located outside of metropolitan areas, which have little or no local or locally oriented service.

29. For existing stations, the rules permit increases in power, up to the ceilings for the classes of stations involved, on the basis of a showing that, with its authorized power, a station fails to provide adequate service to the community to which it is licensed, or that, with increased power, it will serve areas or populations hitherto without primary standard broadcast service.

30. We have reviewed the rate and pattern of station growth during the period of more than two years which has elapsed since the present rules were adopted, as evidenced by applications filed with and accepted by the Commission during that period. If the number of such filings had remained at a high level, the indication would have been that these rules were efficiently achieving the service objectives toward which they were aimed, and we would have been loathe to consider measures which would, in any way, reduce or dilute their effectiveness. On the other hand, if their implementation has had the effect of slowing the rate of AM growth to such a degree that the feared saturation of the band is moved into the indefinite future, we would conclude that even though the ends sought to be achieved remain of primary importance, their practical realization is to be achieved only slowly, and in limited degree. If this is the case, it seems reasonable to consider the ways in which the present rules may be relaxed, so that while station growth will still be held within reasonable limits, service objectives of somewhat lower priority may be attained.

31. For a 21 month period since our 1973 rules went into effect, we have accepted approximately 113 applications for new or augmented facilities, have granted 59 (or at the rate of 34 per year), and have designated 14 for hearing. Of the 59 applications granted, new daytime service is provided in 31 instances, and new nighttime service in 17. While it is encouraging to see that this many facilities have been able to meet the service objectives set forth in our present rules, it is evident that these rules are so restrictive as to have slowed the rate of station growth to an unnecessarily low level, and that a considerably higher rate of growth may be accommodated without an immediate or even distant danger of

[11] See fn. 10, *supra*.

[12] These cases include: *Citizens Committee to Preserve the Voice of the Arts in Atlanta* v. *F.C.C.*, 141 U.S. App. D.C., 109, 436 F. 2d 263 (D.C. Cir. 1970); *Hartford Communications Committee* v. *FCC*, 151 U.S. App. D.C. 354, 467 F. 2d 408 (D.C. Cir. 1972); *Lakewood Broadcasting Service, Inc.* v. *FCC*, 156 U.S. App. D.C. 9, 478 F. 2d 919 (D.C. Cir. 1973); *The Citizens Committee to Keep Progressive Rock* v. *FCC*, 156 U.S. App. D.C. 16, 478 F. 2d 926 (D.C. Cir. 1973); *Citizens Committee to Save WEFM* v. *FCC*, —— U.S. App. D.C. ——, 506 F. 2d 246 (D.C. Cir. 1974).

[13] *WAIT Radio* v. *FCC*, 135 U.S. App. D.C. 317, 418 F. 2d 1153 (D.C. Cir. 1969), appeal after remand, 148 U.S. App. D.C. 179, 459 F. 2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972).

standard band saturation. We would also note that the FM band, to which we look as a primary source of needed new aural service, is not a resource capable of indefinite expansion, and in many areas where a legitimate need exists for new or expanded aural service, unused FM channels are not assigned, and new channels cannot be assigned on which to provide this service.

32. This being the case, the question is presented as to the best way of amending our rules, so that, while the number of new and augmented facilities granted may be increased, these facilities will contribute in some meaningful way to the rendition of improved broadcast service to the public.

33. The amendment of our rules to remove certain of the present restrictions on increases in power of existing stations, as proposed in the *Notice* herein, we believe is a relaxation which should promote early improvements in broadcast service.

34. The great majority of the parties who have addressed themselves to this proposal favor its adoption. Those who do not, see it as facilitating the further expansion of facilities of entities already occupying entrenched positions in the broadcast band, and as making more difficult the task of those, including minority applicants, who seek suitable channel space for new stations.

35. With respect to this latter contention, we are of the opinion that the impact of channel occupancy of the adoption of this rule amendment would be quite limited, and certainly not sufficient to exert a substantially preclusive effect on the ability to assign new broadcast stations. Indeed, many of those who support the adoption of the proposal, *per se*, believe that the relaxation of those restrictions on power increases now contained in § 73.37 is, alone, insufficient to permit meaningful increases in a significant number of cases, and other rules should be amended, both those which restrict the flexibility of the applicant in achieving incremental power increases, and those which limit the extent to which service may be improved with increased power.

36. Those proposals which appear to contemplate that some compromise in our present rules controlling interstation interference should be tolerated in the interest of facilitating power increases, we would reject out of hand. We have no intention of reverting either wholly or partially to the kind of situation which obtained prior to 1964 when our rules permitted the imposition of interference on existing stations on the basis of a showing "that the need for the proposed service outweighs the need for the service which will be lost by reason of such interference." Under these rules, the erosion of the service of existing stations to outlying areas proceeded apace, until brought to a virtual halt by the adoption of the "go-no-go" rules (73.37 (a)), which prohibit the overlap of service and interference contours. We believe that these rules have contributed greatly to the orderly growth of the standard broadcast service, and, at the same time, have reduced the tremendous comparative hearing load which the previous system engendered. We would not, absent the most compelling circumstances, consider the substantial modification, much less abandonment, of such rules.

37. Other proposals look toward the raising of the power ceilings for the various classes of stations beyond those set in 73.21 of the rules, either selectively or on a general basis. While the first mentioned approach would generally be implemented with due attention to the maintenance of interference protection for other stations, Cullum's plan for a ninefold increase in the power of all stations would be accomplished without regard for the increased level of interstation interference resulting from such higher power operation (in each case, the stronger interfering signals would be counter-balanced by the stronger service signal). Generally, the gains resulting from the implementation of such a plan would be in the improvement in the quality of service rendered by each station over its present service area, although appreciable gains would result in the extent of daytime service provided, in instances where the service is not presently interference-free.

38. The pending petition of the Community Broadcasters Association seeking an increase in nighttime power of all Class IV stations to 1 kilowatt, an action sought by many of the licensees of such stations which filed comments in this proceeding, exemplifies this kind of approach with respect to a single class of standard broadcast station. The Cullum proposal would apply the principle of "concurrent" power increases completely across the board—to all stations on all channels.

39. The question of raising existing power ceilings, either selectively or generally is one which is beyond the scope of this proceeding, and accordingly, any extended critique of proposals of this nature would serve no useful purpose. It is sufficient to note that their implementation would require the solution of many problems, both domestic and international, although it is rather obvious that proposals falling in the first category present fewer problems than those in the second. We would only remark that domestically, the implementation of a system for "concurrent" increases in power would depend on the willingness and ability of the vast majority of station licensees to take this step, where, in many cases, the gains in the quality of service might be considered unnecessary, and in its extent, minimal. Neighboring countries would also have to take parallel action, or suffer the effects of greatly increased interference to their stations. Obviously, we would have to negotiate major changes in existing treaties before undertaking any amendment in our rules to adopt such a system for internal use.[14] [15]

40. Other comments concerning station power suggest we abandon, either wholly or partially, the rules requiring that each station operate at one of the discrete power levels set forth in Section 73.41 of our rules, and license each station to operate at a power level restricted in the individual case to that necessary to afford the required degree of interference protection to other stations. The latter procedure, if implemented, would undoubtedly allow many new stations which could not meet the "go-no-go" rules under the present system of power classification, to be "shoehorned in", and permit nighttime non-directional operation, possibly only with highly restricted power, by stations which otherwise either could not operate during these hours, or could operate only with complicated and expensive directional antennas. It may be that the authorization of "odd" power levels for pre-sunrise operation has convinced many of the feasibility of such an approach.

41. Assuming the adoption of such a system were found to be in the public interest, and did not impose intolerable administrative difficulties, our adherence to the North American Regional Broadcasting Agreement, which prescribes a power hierarchy similar to that set forth in our rules, would preclude our adoption of such a system. However, even if this were not the case, we remain to be convinced that the adoption of such a system, which would encourage the proliferation of many stations of extremely limited coverage, would be consonant with an efficient use of channel resources, and produce a result in the public interest.

42. We have similar problems with proposals that we establish a number of intermediate levels in the power classification table of § 73.41—not only would such an action conflict with the NARBA, but its adoption would tend to lead to the undesirable result cited above. However, while we will not undertake to adopt additional intermediate power classifications on any general basis, we believe

[14] For discussion of the matter of nighttime power increases for Class IV stations, see the Commission's *Orders* of April 26, 1972, and July 19, 1972, in RM-1955, FCC 72-640.

[15] It is suggested by two parties that nighttime power increases for Class IV stations might be implemented in connection with the installation of "tall" towers—approximately 5/8 wavelength in height—which could be expected to afford an approved ratio of groundwave to skywave signal, and, if employed by all stations, result in an actual increase in the nighttime interference-free area served by each station. This is an appealing and technically sound proposal, but could involve practical problems in its implementation. Moreover, it would not appear to cope with the principal impediment to Class IV nighttime power increases—the increased interference which would result to foreign broadcast stations from higher power operation of domestic Class IV stations.

that the creation of a single new classification at 2.5 kilowatts should be considered. The ratio between the powers presently specified immediately above and below this level, 5 kilowatts and 1 kilowatt, respectively, is considerably greater than that which exists between adjacent values in any other portion of the table. The provision of an intermediate step between 1 and 5 kilowatts is not only logical, but useful, as it would facilitate the maximum employment of facilities in instances where power greater than 1 kilowatt is feasible, but operation at the much higher power of 5 kilowatts is not. Furthermore, the adoption of the 2.5 kilowatt classification presents no treaty problem—the NARBA presently provides for this power step. Even though a rule change of this nature, strictly speaking, is beyond the scope of this proceeding, we deem it unlikely that it would be opposed by any party, and its adoption would further the objectives herein. Accordingly, we are adopting such a rule amendment.

43. AFCCE has asked for consideration in this proceeding of a proposed amendment to the rules governing the design and adjustment of directional antennas, relative to the control of antenna input power in the determination of the size of the radiation pattern of the antenna. It holds its proposal to be pertinent to the matters discussed herein, since the feasibility of power increases of existing stations in individual cases may depend, to some extent, on the degree of flexibility afforded by our rules in adjusting radiation pattern size to meet the interference and service considerations which are unique to each case. While this is, of course, true, we do not believe that this proposal, which involves a change in the highly technical and specialized rules on directional antenna design, can be given proper consideration in a proceeding dealing principally with allocation policies. The proposal appears to have substantial merit, but we wish to examine it more closely in a separate proceeding instituted for that purpose. We will endeavor to expedite such consideration when the matters directly involved in the instant proceeding are disposed of.

44. Those proposals, usually put forward in behalf of licensees of daytime stations which look toward nighttime operation with facilities other than those required to accord protection to other stations—such as operation with daytime facilities until at least 6 PM on a year-round basis, or nondirectional operation during the nighttime period with some lower, but arbitrarily set power, usually cite the alleged satisfactory functioning of our rules permitting pre-sunrise operation as evidence that operating modes sanctioned during this period can be instituted for post-sunset operation.

45. It should be unnecessary to again review the situation that exists with regard to the extent of groundwave service rendered by stations operating at night on the standard broadcast band—it is, by almost any standard, inadequate. With the exception of the few Class I stations, every station provides a far less extensive service nighttime than during daytime hours, and, in very many cases, interference-free service at night is available barely beyond the confines of the community to which a station is assigned. From the standpoint of the licensees of such stations, this situation, although undesirable, is tolerable—they are still able to serve the densely populated centers which provides the bulk of the advertising revenue which supports them. However, to those many millions of people who reside in areas more than a few miles from any station, nighttime standard broadcast service remains at a highly unsatisfactory level.

46. The nature of the skywave interference problem is such that little can be done to improve this situation, but the Commission has been concerned that no action be taken which would worsen it. It has been reluctant to authorize new nighttime assignments, even in instances where protection is afforded existing stations in accordance with our technical standards, because it believes that the incremental interference which new stations impose on existing stations inevitably results in a further diminution of the already limited service rendered by those stations. The operation of perhaps many daytime stations during some or all nighttime hours with facilities which do not even afford the degree of protection to existing stations which our technical standards require would result in incalculable damage to such nighttime service as is presently available from standard broadcast stations.

47. Moreover, we must categorically reject, at least within the context of this proceeding, the concept of post-sunset operation by daytimers holding pre-sunrise service authorizations (PSA's), using the reduced-power facilities specified therein. The rules under which PSA operations are conducted stem directly from a 1967 agreement with Canada (TIAS-6268), under which that country agreed to protection standards which enable more than 2,000 U.S. stations (mostly daytimers assigned to regional channels) to operate immediately prior to local sunrise with their authorized daytime facilities, but with power reduced to 500 watts (or less if necessary to provide co-channel Canadian protection under an agreed family of curves). Domestic interstation skywave interference among U.S. stations assigned to the same channels was ignored, under the PSA program, on the ground that remote regions of the country would continue to be served during all nighttime hours by the clear channel stations, and because the 500-watt PSA power ceiling provides a means of interference control during the early morning transitional hours. The use of PSA facilities after local sunset is not provided for in the 1967 agreement with Canada, nor would such modes of operation be notifiable internationally by the United States. Because of the severity of nighttime skywave interference problems among the hundreds of fulltime stations presently operating on these channels throughout the North American Region, there is little likelihood that the 1967 agreement with Canada, which has virtually no daytime-only stations, can be further relaxed to accommodate post-sunset operation by daytimers in the United States. Finally, our rule making proceeding which implemented the existing agreement—*Report and Order* in Docket 14419, 8 F.C.C. 2d 698 (1967)—established an overriding need in many communities for early morning service, notably for weather information and for school cancellation announcements. No parallel need has been established for the post-sunset hours, nor is it likely that any such need, if established, could outweigh the resulting co-channel nighttime skywave interference problems.

48. The implementation of any proposed scheme which would permit individual stations to operate on two frequencies, one for daytime, and another for nighttime operation, would require basic changes in the standard broadcast allocation plan, as incorporated in our rules, and parallel revisions of the NARBA and the U.S./Mexican Agreement. Even if we believed htat such a proposal had merit, these treaties would stand as a long-term obstacle to any action aimed toward effecting it. However, while the ability ot operate on two frequencies might offer a solution to the particular problems of certain daytime stations seeking to extend their periods of operation into the nighttime hours, we believe any general application of the concept to standard broadcast allocations would be extremely wasteful of the resources of this band, and produce a result at odds with our aim to conserve these resources, and direct their future exploitation into avenues where the greatest public benefit would redound.

49. For the reasons we have set forth, generally we are rejecting, at this time, those proposals which look toward major changes in fundamental rules and policies regarding standard broadcast stations, and are adhering to our original intention of making such amendments of § 73.37, as will lower or remove certain of the barriers which it presents to the expansion of AM service. The only exception is with respect to § 73.41 of the rules, which is amended to incorporate a new power level of 2.5 kilowatts (and with a parallel amendment of § 73.14, which also lists the present power classification scale), and, as discussed subsequently, limitations in the sweep for the "suburban policy" as it applies to uncontested applications for new and augmented facilities.

50. A study of the comments filed herein has convinced us of the wisdom of proceeding with the proposed amendment of § 73.37 so as to remove the special showings presently required by applications seeking power increases for existing stations, and we are taking this action, although, as described later, the textual changes made in the rules to accomplish this end differ from those proposed in the *Notice*.

51. To accommodate, to the extent possible, the need for new daytime and nighttime transmission facilities for developing suburban centers of population, and to facilitate the provision of truly community-oriented services to as many separate towns and cities as possible, we are altering the basic acceptability criteria to permit new nighttime or daytime assignments to communities which have fewer than two aural transmission facilities during the relevant portion of the broadcast day.

52. When we last considered this matter, we determined that each community was entitled to two, but not necessarily more than two competing aural "voices" and decided at that time that this complement of services would be considered to have been attained if such services were provided by stations which were located outside, but sufficiently close to the community that technically good service would be provided, and that the program service could be expected to be oriented, to a considerable extent, to serve the needs of the community. We adopted this formulation, even though we recognized that service provided to a community from stations not assigned to the community is not a fully adequate substitute for service provided by community-assigned stations, because we believed that any more permissive approach would result in a too rapid occupancy of available standard broadcast channel space. However, as we have stated, our experience with the application of the present rule indicates the feasibility of applying more relaxed standards to the determination of the circumstances in which new facilities may be assigned, and we are accordingly raising our sights to permit such new assignments as are necessary to provide each community with two independent aural transmission facilities.

53. Thus, under the rules as we have revised them, an application for a new daytime or unlimited time standard broadcast station, or for nighttime facilities for an existing daytime station will be accepted on the basis of a satisfactory showing that the community for which the station is proposed presently has fewer than two independent aural transmission facilities during the portion of the day for which the new service is proposed.

54. As these rules are applied, a proposal for a new unlimited time station would be accepted, if it would provide a first or second nighttime transmission facility for the community, even though, during daytime hours, its operation might result in the provision of more than two transmission services to the community.

55. We are continuing to maintain, as an alternative showing to the above, the same alternative available in our present rules, a demonstration that at least 25% of the area or population served by the new station will, for the first time, receive primary aural service.

56. It should be emphasized that we are not abandoning our policy, duly established in the 1973 *Report and Order*, of considering both AM and FM in determinations of existing aural service, and in favoring FM, where channels are available, for providing new aural service. Certainly, the promotion and extension of FM service to the greatest possible degree is necessary if any substantial improvement is to be made in the extent of presently inadequate nighttime aural service, and we believe that the public interest requires that we maintain rules and policies directed toward this end. However, in the amended rules, we continue to treat commonly owned FM and AM stations, assigned to the same community, as a single source of aural service.

57. Pursuant to our present rules, an application seeking authority to change an existing station to a new frequency, besides being subject, as it must be, to the same limitations on interference caused and received as would a new station applying for that frequency, must also meet those criteria designed to restrict the number of services available to the community to which the station is assigned. This, many parties allege, places an unreasonable and unnecessary burden on a licensee seeking, by an appropriate frequency change, to improve the service which its station may render. In the typical case, an existing station may provide one of the two aural services to which a community is entitled. As the present rule operates, its existing operation stands as a bar to the acceptance of an application for a change in frequency, since such an application, treated in the same manner as an application for a new station, in effect contemplates the addition of a service to the community above the permitted maximum. This, in fact, could occur, since the application for frequency change by an existing station is subject to comparative consideration with conflicting applications, one of which, after hearing, might be granted in lieu of the application of the existing station. Under such circumstances, the existing station would continue to operate on its present frequency, and a new station, operating on the frequency which was sought by the existing station, might be assigned to the community, with the result that the number of services provided would exceed the prescribed ceiling. It is to avoid this kind of occurrence that existing rules provide for parallel treatment of new stations and changes in frequency of existing stations.

58. We have thoroughly reviewed the considerations with respect to this matter in the light of the comments, and are of the opinion that the rules may be modified without a substantial hazard being incurred that our policies, designed to prevent the undue multiplication of stations serving the same community, will be frustrated. Granted, that should we change our rules so that applications for changes in frequency, like applications for increases in power, are required only to meet the standards governing daytime and nighttime interference, occasions may arise when *de facto* violations of service ceilings may occur. However, it does not appear that the opportunities for moving to more favorable frequencies will be so numerous, and conflicts leading to the untoward results described above will occur so often that the aims sought to be achieved will be compromised substantially.

59. Accordingly, we are amending our rules so that henceforth the acceptability criteria applying to applications by existing stations for changes in frequency will be the same as those applicable to power increases—namely, a demonstration of compliance with the "go-no-go" rules, and, for nighttime operation, that objectionable interference will not result as determined pursuant to § 73.182(o).

60. While the adoption of rule amendments which contemplate the provision of two transmission facilities for each community should create opportunities heretofore unavailable for daytime stations to qualify for nighttime operation, undoubtedly many prospective applicants for such facilities will be disappointed that we have not relaxed our technical rules to make it easier and less expensive to engage in such operation. We have hereinbefore explained why we are unable or unwilling to take such a step.

61. Be that as it may, the rules we are adopting in § 73.37, particularly regarding nighttime operation, are less restrictive than any which have obtained in the last thirteen years, and we are in some degree concerned that their adoption may result in a too rapid proliferation of new nighttime assignments, leading to an undue concentration of such facilities, with adverse effects on overall service. We do not believe this will happen, but should such a trend develop, it may be necessary for us to reconsideration our decision herein. In any event, we intend to review, on a continuing basis, the rate and pattern of station growth under these rules. Should it appear that assignments of new stations and the augmentation of the facilities of existing stations are contributing too little to needed improvements in service to the public, in view of the attendant depletion of the resources of the standard broadcast band, we will institute further proceedings looking to the adoption of corrective measures.

### THE POLICY STATEMENT ON 307(b) CONSIDERATIONS

62. As noted both in the comments and in the *Notice*, it is apparent that the continued application of our *Policy Statement on 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 F.C.C. 2d 190, Recon. Denied, 13 F.C.C. 2d 866 (1965), would tend to countervail the more liberal allocation policy which forms the basis for the rule revisions previously discussed. By amending the rules as indicated while continuing to impose the significant burden of the 307(b) presumption, particularly on applications for improvements to existing facilities, we would merely be removing one so-called artificial barrier while leaving an-

other in its place. This is not to say that the presumption has been ineffective. On the contrary, as a device to assist in complex determinations between or among competing applicants, it has proved successful. However, for those uncontested applications swept within the broad reach of the presumption, it has often resulted in unnecessary complications which have served only to hinder the initiation or expansion of service. Accordingly, we have decided that a significant relaxation of the 307(b) presumption is appropriate, and we have concluded that the presumption described in our 1965 *Policy Statement* will henceforth be applicable only in situations involving competing applications in a hearing context. Inasmuch as the presumption serves to raise issues which would perforce be raised in a hearing between applicants competing for a 307(b) preference, we believe that retention of the presumption in that limited class of cases will continue to be beneficial. However, in light of our experience during the last ten years, it appears to us that any attempted abuses by uncontested applicants may be readily detected during standard review procedures, and nothing will be gained by retaining such applications within the presumption's scope. Although we will not then invoke the presumption, the factors underlying the original *Policy Statement* will continue to be of concern to us with respect to all AM authorizations. Since the essential element in our 307(b) considerations will therefore continue to be the *intent* of the applicant with respect to service to the community of license, our analysis will focus on those facts and circumstances in the application which may bear on this question of intent. Obviously, such factors will vary from case to case, and no comprehensive list can be assembled. Applicants should be on notice that applications proposing power clearly in excess of that necessary to serve the proposed community of license and its immediate surrounding areas will be examined with care. Such scrutiny will also be accorded to any application the timing of which is inherently suspect.[16] In any case, we emphasize that we will continue to guard against those situations, described in the 1965 *Policy Statement*, which the presumption was designed to prevent.[17] We note also that other parties may seek to raise such an issue by filing objections to the application, pursuant to Sections 1.580(i), 1.587 and 1.106 of our rules. Of course, the sections will be applicable to all parties.[18]

MINORITY OR SPECIALIZED PROGRAMMING

63. We are rejecting proposals seeking to carve out more or less permanent exemptions for specialized or minority programming. As we have consistently held, program formats are by their nature transitory, and we have accordingly refused to consider them in designing and implementing our allocation system. See, *e.g.*, *Mel-Lin, Inc.*, 22 F.C.C. 2d 165 (1970). We are, of course, aware of the format cases cited to us for the proposition that programming is no longer a transitory consideration. However, those cases arose in the narrow context of the assignment or transfer of a license. The holdings in those cases were also narrow, and it should be noted that no court has held that the Commission must *require* a licensee to provide any particular programming format. Rather, the format cases merely held that, in reviewing an application for assignment or transfer of a broadcast license, the Commission may be required to institute an evidentiary hearing to inquire into the effect on the public interest of a proposed change of format if it appears that the proposed change would significantly lessen the available diversity of programming within the subject station's service area. Further, the present context, that of a broad rule making proceeding, is significantly different from that of any of the cited cases, since we are now focusing on general, nationwide goals rather than the needs of any particular community. As a result, we continue to believe that the transitory nature of programming makes programming a particularly inappropriate factor to consider in the context of the adoption of such generally applicable rules as are under consideration here. Accordingly, those suggestions regarding allocation by format are rejected.[19]

PROCEDURAL QUESTIONS

64. With respect to the two procedural points raised by the National Black Media Coalition,[20] we are of the opinion that the "defects" relied on by the Coalition are not, in fact, defects. The *Notice* of this proceeding was duly published in the FEDERAL REGISTER, as required by the Administrative Procedure Act[21] and contained all the information stipulated by that Act.[22] It must be noted that the Prime Time Access Rule decision cited by the NBMC did *not* create any further necessary procedures. Rather, the court indicated that any public interest determination must include consideration of the needs of the public as well as those of particular representatives of the broadcast industry then before the Commission. And, in light of the particularly immediate impact of the Prime Time Access Rule on the viewing public, the court *suggested* that the Commission make some affirmative efforts to involve members of the public in the proceeding. This clearly did not constitute a judicial revision of the Administrative Procedure Act. Nor does the fact that we did issue further notice in response to the court's suggestion bind us to issue such notice in all rule making proceedings.[23] It should also be noted that the rules presently in question, albeit significant in terms of allocation policy, will hardly have the immediate impact on the general public that the Prime Time Access Rule would.[24] Finally, we point out that, in response to the *Notice* that was published, we received approximately 273 comments from a total of 294 parties.[25] Among these were several private citizens as well as a number of Black licensees. In addition, many of the comments included exhibits containing numerous letters from a broad range of individuals, Black and White, interested in the outcome of this proceeding. Although not expressly directed to the Commission as comments in this docket, these letters have nonetheless provided us with an indication of the public's sentiments. It does not appear to us that we have "utterly failed" to develop an

[16] The most obvious example of such suspect timing would be an application for a power increase before construction of the originally authorized facility is completed. Other, more subtle, attempts to circumvent the remaining restrictions on new facilities may also arise, and will be dealt with as the circumstances warrant.

[17] The new policy announced herein will apply to all applications currently pending before the Commission. Broadcast Bureau counsel will, of course, be free to request the addition of appropriate issues in those ongoing hearings where the presumption no longer applies.

[18] These requirements include the burden, imposed by Section 309 of the Act, of raising a substantial and material question of fact before a pleading will result in the designation of an application for hearing.

[19] In addition, we recognize the recent opinion of the U.S. Court of Appeals for the District of Columbia Circuit in *Garrett v. F.C.C.*, —— F. 2d ——, No. 73-1840, decided June 2, 1975, which holds, *inter alia*, that Black ownership, participation and programming are relevant factors in making a determination of public interest, citing *TV 9, Inc. v. F.C.C.*, 161 U.S. App. D.C. 349, 495 F. 2d 929 (1973), *cert. denied*, 419 U.S. 986 (1974). Again, however, the nature of this proceeding is fundamentally different from the situations posed in *Garrett* and *TV 9*, and we do not read either case to require us to incorporate minority ownership and/or programming as a determinative aspect of the overall allocation policy presently under consideration.

[20] See paragraph 14, *supra*.

[21] See 5 U.S.C. § 553 (1970). The *Notice* may be found at 39 Fed. Reg. 42920.

[22] In relevant part, the Act requires that the Notice of a rule making shall include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(a)(3). It is clear that the notice in the instant proceeding satisfied this requirement.

[23] We note, however, that we are presently investigating a variety of alternate means of informing the public of Commission proposals. A staff committee has been formed and its preliminary findings in this matter should be prepared shortly.

[24] In discussing that impact, the Court said: "These dictates [regarding consideration of the public's interest] should apply with even greater force where the Commission's rule has as broad an impact on the public as the Prime Time Access Rule. The rule directly affects what millions of Americans watch on television for an hour every night and, indirectly, may affect all prime time programming." 502 F. 2d at 257.

[25] The total number of parties that had participated in the Prime Time Access Rule proceeding at the time of the court's opinion was significantly less than 100. See *Prime Time Access Rule*, 44 F.C.C. 2d 1081, 1161 (Appendix B). Even this number was *not* held to be "insufficient as a matter of law." 502 F. 2d at 258.

adequate record and thus the Coalition's threshold procedural arguments must be rejected.

AMENDMENT OF THE RULES

65. The text of the rule amendments which we are adopting is set forth below.

66. It should be observed that, while we have, among other things, adopted and expanded the substance of the rule change proposed in the *Notice*, we have somewhat altered the organization of paragraph (e) of 73.37, so that (e) together with paragraph (a) establish the basic interference standards which all applications for new facilities, or for major changes in existing facilities must meet. Since increases in power of existing stations and changes in frequency of existing stations are major changes, which henceforth will be subject only to these standards, applications for increased power or changes in frequency will be acceptable if they meet the requirements of (a), and of (e), if appropriate.

67. We have revised the language of paragraph (e) and succeeding subparagraphs to eliminate the employment of the phrase "other than Class IV stations," which, it appears, has been a source of misunderstanding in the past.

68. Present Note 6 of § 73.37 which deals with the circumstances in which an FM channel is to be considered "available" or "not available" to serve a particular community has been amplified to identify the point in time at which a newly assigned channel is to be deemed "available."

69. In determining the number of transmission facilities available to a particular community, the treatment of stations proposed in pending applications for that community becomes a matter of sometimes critical importance. We are adding a new Note 8 which defines the status of such proposed stations in accordance with previous Commission precedent in similar matters.

70. In rather common usage, a broadcast station is a "transmission facility" for the community to which it is licensed, and provides a "transmission service" for that community. Since these terms, while employed in the section, are not elsewhere in the rules, we consider it advisable to define them herein. We have appended a new Note 9 for this purpose.

71. The implementation of these rule amendments should provide many opportunities, unavailable since the adoption of the restrictive amendments of 1964, for the assignment of new standard broadcast stations, and the expansion of facilities of existing stations, and can be expected to result in an increased flow of applications seeking new or augmented facilities. We are unable to forecast the rate at which such applications may be filed, and, accordingly, anticipate whether the Commission's processing staff will be able to dispose of these applications without inordinate delays. In the event a large backlog of unprocessed applications appears to be developing to the point where it is administratively burdensome, we may find it necessary to impose measures controlling the rate of application filing. These measures will probably involve the declaration of "open" and "closed" seasons for the filing of applications. If it becomes necessary to institute such measures, they will be temporary in nature, and advance notice will be given, so all parties will have ample time to complete and submit any applications which are in preparation.

72. Accordingly, IT IS ORDERED, That effective August 22, 1975, Part 73 of the Rules and Regulations IS AMENDED as set forth in Appendix B hereto. Authority for this action is found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

73. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: June 27, 1975.

Released: July 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,[*]

[SEAL] VINCENT J. MULLINS, *Secretary.*

APPENDIX A

The following is a list, in alphabetical order, of the parties filing comments in this docket. The numbers in parentheses which follow some names indicate the number of separate comments filed by those parties.

Adler Communications Co., Inc.
AHB Broadcasting Corporation.
Annapolis Broadcasting Corporation.
Artlite Broadcasting Company.
Asheboro Broadcasting Company.
Association for Broadcast Engineering Standards, Inc. (2).
Association of Federal Communications Consulting Engineers.
Edward G. Atsinger, III.
Auburn Broadcasters, Inc.
Baker Broadcasting Company.
Bangor Broadcasting Corporation.
Batavia Broadcasting Corporation.
Beacon Broadcasting Corporation.
Lawrence Behr Associates, Inc.
Belo Broadcasting Corporation.
Benay Corporation.
Serge Bergen.
E. W. Ble.
Big Brother/Big Sister.
Blacksburg-Christiansburg Broadcasting Company.
Bloomington Broadcasting Corporation.
Boman Broadcasting, Inc.
Booth and Freret.
Roger P. Brandt.
Jack L. Breece.
Bride Broadcasting, Inc.
Broadcast House Inc.
Brokensword Broadcasting Co.
Call of Houston, Inc.
Campbell Broadcasting Corporation.
Central Nebraska Broadcasting Company, Inc.
Christian Enterprises, Incorporated.
The Circle Corporation.
Clear Channel Broadcasting Service (2).
Clinch Valley Broadcasting Company.
Cloverleaf Broadcasting Corporation.
Coastal Broadcasting Corporation.
Cohen and Dippell, P. C.
Commonwealth Broadcasters, Inc.
Communications Properties, Inc. (4).
Communico Broadcasting (3).
Community Broadcasters Association, Inc. (2).
Contemporary Media, Inc
Corbin Times-Tribune.
Cosmopolitan Enterprises of Victoria, Inc.
Cove Broadcasting Company, Inc.
Oscar Leon Cuellar.
A. Earl Cullum, Jr., and Associates (4).
Richard Culpepper.
DAE Broadcasting Company (3).
Dairyland Managers Inc.
Deep South Radio, Inc.
Dome Broadcasting, Inc.
Doubleday Broadcasting Company, Inc.
Eagle Enterprises, Inc.
Edgefield-Saluda Radio Company, Inc.
Educational FM Associates.
El Dorado Broadcasting Company.
Elektra Broadcasting Corporation.
Eureka Broadcasting Company, Inc.
Everbach Broadcasting Co., Inc.
Fairbanks Broadcasting Company of Massachusetts, Inc.
Fairview (Tenn.) High School.
Fetzer Broadcasting Company.
Walter L. Follmer, Inc.
Forjay Broadcasting, Inc.
Fort Wayne Broadcasting Co., Inc.
Gaffney Broadcasting, Inc.
Emanuel Garrett.
Garrett Broadcasting Service (2).
Gatorland Broadcasting, Inc.
Golden West Broadcasters, Inc.
Golden West Broadcasters.
Curt Gowdy Broadcasting Corp.
Gowdy Florida Broadcasting.
Grace/Wolpin Broadcasting Company.
Grass Roots American, Inc.
Great Southern Broadcasting Company, Inc.
Great Trails Broadcasting Corporation.
Green Bay Broadcasting Company.
Gulf Broadcasting Company.
Hall Communications, Inc.
Happy Acres Broadcasting Co., Inc.
Hartsville Broadcasting Company, Inc.
Harvit Broadcasting Corporation.
Hastings Broadcasting Company.
Hatfield and Dawson.
Hearst Corporation.
HEB Broadcasting Company, Inc.
Hedberg Broadcasting Group.
Henderson Broadcasting Company, Inc.
Hi-Desert Broadcasting Corporation.
H-M-S Broadcasting Company.
Holiday Broadcasting Company
Holy Name Union of Portland, Oregon
Home Service Broadcasting Corporation.
Mathew and Maria Huber.
Independent Music Broadcasters, Incorporated.
Vir James.
Jet Broadcasting Co., Inc.
Johnson Communications, Inc.
Johnson County Broadcasting Co.
Juniper Broadcasting, Inc.
KACY, Inc.
KASI, Radio.
KATY Radio.
KBGN.
KBMN.
KBMR Radio, Incorporated.
KBON.
KBW Associates, Inc.
KCLA.
KDEN Broadcasting Company, Inc. (3).
Radio Station KDKO, Inc.
KDRS.
Ken-Sell, Inc.
Keynote Broadcasting, Inc.
KEZY Radio, Inc.
KFBR.
KFJB.
KFLI, Inc.
KFLS.
KFML Broadcasting, Inc.
KFYO, Inc.
KGMS.

[*] Statement of Commissioner Hooks to be released at a later date.

KGRI.
KGVO Broadcasters, Inc.
K-HRT Broadcasting Corp.
Orman L. Kimbrough.
KIRO, Incorporated.
KITN-KITI Corporation.
KIXI, Inc.
KLAT.
KNBA, Inc.
KND Corporation.
Knott County Broadcasting Corporation.
Knoxville Ra-Tel, Inc.
KNUJ, Inc.
KOAK.
KOKO Radio.
KOLT.
KONI.
KOWL.
KPOP Radio, A Partnership.
KSEI Broadcasters, Inc.
KSFA.
KSLO Broadcasting Co., Inc.
KSUE.
KSWA, Inc.
KTAE.
KTNT.
KTOB.
KUHL Broadcasting.
KUTI Communicators, Inc.
KWHO.
KWOR.
KYOU.
LaGrange Broadcasting Company.
Lancaster-Palmdale Broadcasting Corp.
Alf M. Landon Radio Stations.
Lansing Broadcasting Company.
Stephen R. Lewis.
Lewistown Broadcasting Company.
Lexington County Broadcasting, Inc.
Lotus Radio Corp.
Magic City Communications Corp.
Mairite Broadcasting Company.
Mark Media, Inc.
John R. McAdam.
McKenna, Wilkinson and Kittner (2).
Bob McRaney Enterprises, Inc.
Mena Broadcasting Company.
Mid America Media, Inc.
Mid-Indiana Broadcasting Corporation.
Midland Valley Investment Co., Inc.
Miller Broadcasting Company.
Moshannon Valley Broadcasting Co.
Mount Carmel Broadcasting Company.
Mt. Toro Broadcasting Corporation.
E. Harold Munn, Jr. and Associates, Inc. (2).
Mutual Broadcasting System, Inc.
National Black Media Coalition.
National Enterprises, Inc.
William B. Neal Broadcasting Company.
Nebraska Rural Radio Association.
New Boston Broadcasting Corporation.
New Laurel Radio Station Inc.
960 Radio, Inc. (2).
Normandy Broadcasting Corporation.
Norrell Broadcasting Group, Inc.
North America Radio, Inc.
North Caddo Broadcasting Company (2).
North Carolina Electronics, Inc.
North County Broadcasting Company.
Northeast Radio, Inc.
Northwestern College.
Northwestern Indiana Radio Company, Inc.
Nutmeg Broadcasting Company.
Pacific FM Incorporated.
Palmer Broadcasting Company.
Paramount Broadcasting Company, Inc.
James C. Parker.
Pathfinder Communications Corporation.
Paxton Radio, Inc.
People Communications Corporation.
Piedmont Broadcasting, Inc.
Piedmont Broadcasting Company, Inc. (2).
Pikes Peak Broadcasting Co.
Pilgrim Broadcasting Company.
Pocahontas Broadcasting Company.
Portorican American Broadcasting Co., Inc.
Jack L. Powell.
Prairie Dog Broadcasting Inc.
Progressive Broadcasting Corporation.
Progressive Broadcasting System, Inc.
Progress Valley Broadcasting, Inc.
Radio Asheville, Inc.
Radio Corning, Inc.
Radio Newark, Inc.
Radio Norwich, Inc.
Garo W. Ray.
Renda Broadcasting Corporation.
Daniel C. Richardson, Sr.
Richey Airwaves, Inc.
Ring Radio Company.
Angel M. Rivera.
Riverside Amusement Park Company.
F. W. Robbert Broadcasting Co., Inc.
Gordon A. Rogers (2).
Rounsaville of Cincinnati, Inc.
Rounsaville of Nashville, Inc.
Rousaville of Tampa, Inc.
Salina Radio, Inc.
Sandhills Broadcasting Co., Inc.
S and M Broadcasting Co., Inc.
San Francisco Wireless Talking Machine Company, Inc.
San Joaquin Broadcasting Company, Inc.
Sanford Schafitz.
Scripps-Howard Broadcasting Company.
Sea Broadcasting Corporation.
Silliman, Moffet, and Kowalski.
Smith and Powstenko.
Southern Vermont Broadcasters, Inc.
Southland, Inc.
Southland of Alabama, Inc.
Southwestern Broadcasters, Inc.
Stateline Broadcasting Company.
Steel, Andrus and Adair.
Stereo Broadcasting, Inc.
STL, Inc.
Summers Broadcasting, Inc.
Sunrise Broadcasting Corporation.
Susquehanna Broadcasting Company.
Swannanoa Valley Broadcasting Co.
Tazewell Broadcasting Company.
Techeland Broadcasting, Inc.
Norman A. Thomas.
Paul L. Thomas.
Three Rivers Communications, Inc.
Tourtelot Broadcasting Company.
Town and Country Radio, Inc.
Trans America Broadcasting Corporation.
T/R, Inc. (2).
Tri-State Broadcasting Company.
Richard Tuck Enterprises.
Turner Broadcasting Corporation.
Twin Ten Radio, Inc.
Voice of Charlotte Broadcasting Company.
Watertown Broadcasting Corporation.
WBZB Broadcasting Service, Inc.
WCLW.
WCSV.
WDUN.
WGBA, Inc.
WHJB, A Limited Partnership.
WHMT.
WHOT, Inc.
WHYZ, Inc. (2).
Williamsburg County Broadcasting Corp.
WINF Radio.
WIOO, Inc.
WIRD, Inc.
WKFI.
W.M.F.S., Inc.
WMPX Radio.
WNAR, Inc.
WPLA Broadcasting Company.
WQOK.
WSJM Radio.
WSKI.
WTAW.
WWJC, Inc.
Wycom Corporation.
York-Clover Broadcasting Company, Inc.
Young Radio, Inc.

1. Section 73.14 is amended to read as follows:

**§ 73.14 Technical definitions.**

* * * * *

(c) Nominal power. "Nominal power" is the power of a standard broadcast station, as specified in a system of classification which includes the following values: 50 kW, 25 kW, 10 kW, 5 kW, 2.5 kW, 1 kW, 0.5 kW, 0.25 kW.

2. Section 73.37(e) and notes 5 through 8 are amended, and Note 9 added at end of section to read as follows:

**§ 73.37 Applications for broadcast facilities; showing required.**

* * * * *

(e) In addition to a demonstration of compliance with the requirements of paragraph (a), and, as appropriate, paragraphs (b), (c) and (d) of this section, an application for a new standard broadcast station, or for a major change (see § 1.571(a)(1) of this chapter) in an authorized standard broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class II or Class II station is proposed, that objectionable interference will not result to any authorized station, as determined pursuant to § 73.182(o) of this chapter, and, for all classes of station, a satisfactory showing as indicated below for the kind of application submitted.

(1) Application for a new daytime station:

(i) That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized standard broadcast station, or receive service from an authorized FM broadcast station with a signal strength of 1 mV/m, or greater, or,

(ii) That the proposed station would provide the community designated in the application with a first or second authorized aural transmission service, and that no FM channel is available for use in that community.

(2) Application for a new unlimited time station, or for nighttime facilities by an authorized daytime station.

(i) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized standard broadcast station or service from an authorized FM broadcast station with a signal strength of 1 mV/m, or greater, or,

(ii) That the proposed station would provide the community designated in the application with a first or second authorized nighttime aural transmission service, and that no FM channel is available for use in that community.

* * * * *

NOTE 5: Where an application for a new unlimited time station proposes to provide a first or second nighttime aural transmission service to the community designated in the application, and daytime operation of the station would result in the provision of more than two aural transmission services for that community during daytime hours, the latter fact does not render the

application unacceptable for filing. However, under such circumstances, the proposed daytime power shall not exceed the proposed nighttime power, absent a showing that, with higher daytime power, new daytime service would be provided pursuant to (e)(1)(i).

NOTE 6: No FM channel is available for use in the community (see paragraphs (e)(1)(ii) and (e)(2)(ii) of this section) if no channel is assigned to the community for commercial use in the FM Table of Assignments (§73.202(b)), as amended by Commission action as of the date the application is tendered, or, if assigned, is occupied by an authorized facility, and no unoccupied channel can be utilized to serve the community pursuant to § 73.203(b). For the purpose of determining the availability of a newly assigned FM channel when the Commission has recently amended the FM Table of Assignments, the governing date shall be that on which the Report and Order amending the Table is published in the FEDERAL REGISTER.

NOTE 7: Where a standard broadcast station and an FM broadcast station assigned to the same community are commonly owned, these stations shall be considered as providing a single aural transmission service to that community for the purpose of determining the acceptability of applications pursuant to (e)(1)(ii) and (e)(2)(ii). Noncommercial educational FM stations and standard broadcast stations assigned to the community shall not be included in this determination.

NOTE 8: In determining the number of "authorized" aural transmission facilities in a given community, applications for that community in hearing or otherwise having protected status under specified "cut-off" procedures shall be considered as existing stations. In the event that there are two or more mutually exclusive protected applications seeking authorization for the proposed community it will be assumed that only one is "authorized."

NOTE 9: A "transmission facility" for a community is a station licensed to the community. Such a station provides a "transmission service" for that community.

4. Section 73.41 is amended to read as follows:

**§ 73.41 Maximum rated carrier power; tolerances.**

The maximum rated carrier power of a transmitter shall be at a power step recognized by the Commission's plan of allocation (250 watts, 500 watts, 1 kW, 2.5 kW, 10 kW, 25 kW, 50 kW) and shall not be less than the authorized power nor shall be greater than the value specified in the following Table:

| Class of station | Maximum power authorized to station | Maximum rated carrier power permitted to be installed |
|---|---|---|
| Class IV | 250, 500, or 1,000 watts | 1,000 |
| Class III | 500 or 1,000 watts | 1,000 |
| | 2,500 or 5,000 watts | 5,000 |
| Class II | 250, 500 or 1,000 watts | 1,000 |
| | 2,500 watts | 5,000 |
| | 5,000 or 10,000 watts | 10,000 |
| | 25,000 or 50,000 watts | 50,000 |
| Class I | 10,000 watts | 10,000 |
| | 25,000 or 50,000 watts | 50,000 |

5. Section 73.51(f)(2)(ii) is amended to read as follows:

**§ 73.51 Antenna input power; how determined.**

* * * * *

(f)(2)(ii) By reference to the following table:

| Factor (F) | Method of modulation | Maximum rated carrier power | Class of amplifier |
|---|---|---|---|
| 0.70 | Plate | 0.25 to 1.0 kW | |
| .80 | Plate | 2.5 kW and over | |
| .35 | Low level | 0.25 kW and over | B |
| .65 | Low level | 0.25 kW and over | BC |
| .35 | Grid | 0.25 kW and over | |

[1] All linear amplifier operation where efficiency approaches that of Class C operation.

NOTE: When the factor F is obtained from the table, this value shall be used even though the antenna input power may be less than the maximum rated carrier power of the transmitter.

* * * * *

[FR Doc.75-18393 Filed 7-15-75;8:45 am]

---

[Docket No. 19917; FCC 75-798]

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

### FM Translator Stations; Polarization of Transmitting Antennas

In the Matter of amendment of Part 74, Subpart L of the Commission's Rules pertaining to polarization of transmitting antennas of FM broadcast translator stations.

1. In a *Notice of Proposed Rule Making* adopted January 3, 1974, in Docket 19917 (FCC 74-23, 39 Fed. Reg. 1643), we invited comments on proposed amendments of Subpart L of Part 74 of our rules and regulations governing the authorization and operation of FM broadcast translator stations and FM broadcast booster stations, so as to permit service to a single community to be rendered by a combination of vertically and horizontally polarized signals. As we proposed to amend them, the rules would permit the radiation of vertically and horizontally polarized signal components from a single, appropriately designed antenna, or the employment of two antennas, each fed by a separate radio frequency amplifier, to provide the vertically and horizontally polarized signals.

2. Within the deadlines set for the submission of comments and reply comments, February 19, 1974 and February 28, 1974, respectively, only one comment was filed; there were no reply comments.

3. The single comment was filed by Robert A. Jones. While generally supporting the purposes of the proceeding, he states that the most efficient and economical procedure is to radiate vertically and horizontally polarized signals (which, if properly phased, and of equal amplitude, combine to produce a circularly polarized signal) from a single antenna, fed by a single amplifier. He urges, for such use, that the rules permit the amplifier to deliver to the antenna double the presently authorized power, 20 watts or 2 watts, as appropriate, rather than 10 watts or 1 watt.

4. While, when circular polarization is employed by a station in the FM broadcast service, we permit an effective radiated power in the vertically polarized component of the radiated signal to equal the authorized power in the horizontal plane, all aspects of the design and installation of the transmitting antenna and associated equipment are fully disclosed and subject to review by the Commission. Accordingly, reasonable assurance exists that the authorized parameters of the station will not be exceeded.

5. We exercise no such detailed surveillance over the technical aspects of FM translator radiating systems. Under such circumstances, we believe that the authorization of higher amplifier power, to be employed only for transmissions which are ostensibly circularly polarized, but which, in actuality, may depart substantially from this condition, creates an undue hazard that the objectives intended to be achieved by limitations on amplifier power will be frustrated. Therefore, we will not modify the rules in accordance with Mr. Jones' proposal, but will proceed to adopt the amendments we had proposed.

6. Accordingly, IT IS ORDERED, That effective August 18, 1975, Part 74, Subpart L of the Commission's Rules and Regulations IS AMENDED, as set forth below.

7. Authority for the adoption of these rule amendments is found in Section 4(i) and 303(r) of the Communications Act of 1934, as amended.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

Adopted: July 2, 1975.

Released: July 10, 1975.

(Secs. 4, 303, 48 Stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

FEDERAL COMMUNICATIONS COMMISSION[1]

[SEAL] VINCENT J. MULLINS, *Secretary.*

1. In § 74.1235, paragraph (a) (1) and (2) are amended to read as follows:

**§ 74.1235 Power limitations.**

(a) * * *

(1) Each such amplifier shall be used to serve a different community or area. More than one final radio frequency amplifier shall not be authorized to provide service to all or part of the same community or area, except as provided in subparagraph (2) of this paragraph.

(2) The transmitting antennas or antenna arrays shall be so designed and installed that the radiated fields from the separate antennas shall not combine in any direction in any single plane of polarization to achieve the effect of radiated power in excess of that which would be produced by a single antenna or antenna array fed by a radio frequency amplifier with power output no greater than that authorized pursuant to paragraph (a) of this section. Two radio frequency amplifiers may be used to serve the same community if one is used to feed an antenna designed to produce a horizontally polarized signal, and the other a vertically polarized signal.

* * * * *

(4) No limit is placed upon the effective radiated power which may be obtained by the use of horizontally or

[1] Chairman Wiley concurring.

vertically or horizontally and vertically polarized directive transmitting antennas.

* * * * *

2. In § 74.1250, paragraph (i) is amended to read as follows:

§ 74.1250 Equipment and installation.

* * * * *

(i) The transmitting antenna may be designed to produce either horizontal or vertical polarization, or a combination of horizontal and vertical polarization. Separate transmitting antennas are permitted if both horizontal and vertical polarization is to be provided.

[FR Doc.75-18394 Filed 7-15-75;8:45 am]

## Title 49—Transportation

## CHAPTER X—INTERSTATE COMMERCE COMMISSION

[Rev. S.O. 1156; Amdt. 4]

## PART 1033—CAR SERVICE

### Chicago, Rock Island, and Pacific Railroad Co.

JULY 11, 1975.

At a Session of the INTERSTATE COMMERCE COMMISSION, Railroad Service Board, held in Washington, D.C., on the 10th day of July, 1975.

Upon further consideration of Service Order No. 1156 (38 F.R. 29220, 35002; 39 F.R. 7792, 24510, 35573; and 40 F.R. 2990), and good cause appearing therefor:

*It is ordered*, That: § 1033.1156 Service Order No. 1156 (Chicago, Rock Island and Pacific Railroad Company authorized to operate over tracks of Missouri Pacific Railroad Company and over Tracks of Union Pacific Railroad Company) be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., October 15, 1975, unless otherwise modified, changed, or suspended by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., July 15, 1975.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17 (2). Interprets or applies Secs. 1(10-17), 15 (4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

*It is further ordered*, That a copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-18484 Filed 7-15-75;8:45 am]

## Title 50—Wildlife and Fisheries

## CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

## PART 17—ENDANGERED AND THREATENED WILDLIFE

### "Threatened" Status for Three Species of Trout

The Lahontan cutthroat trout (*Salmo clarki henshawi*), Paiute cutthroat trout (*Salmo clarki seleniris*) and Arizona trout (*Salmo apache*) currently are classified as "Endangered" species. They were listed originally as "Endangered" under the Endangered Species Conservation Act of 1969, and evidence on hand at that time indicated that they were endangered owing to the destruction, drastic modification or severe curtailment of their habitat; hybridization with introduced species of trout was also a factor.

We now have evidence to indicate that the Lahontan cutthroat trout, Paiute cutthroat trout and Arizona trout are not "Endangered" as defined by the Endangered Species Act of 1973, but are more properly classified as "Threatened" species under the Act. All three species have been cultured extensively and reintroduced successfully into areas where they were extirpated; efforts at eliminating introduced trout with which they hybridize are succeeding; and none are in danger of extinction throughout all or a significant portion of their ranges. Specifically, the evidence is as follows:

I. Lahontan cutthroat strout (*Salmo clarki henshawi*). a. The Lahontan cutthroat has been reintroduced into several stream systems throughout the Lahontan Basin, its original range. It has been reestablished in the two remnant lakes in the Lahontan Basin, Pyramid and Walker Lakes. The California Department of Fish and Game has transplanted the trout successfully into East Fork Creek of Yuba River drainage, outside the Lahontan Basin. A successful transplant of unknown origin has also been made into Macklin Creek of the Yuba drainage. These are all strong, viable populations at the present time.

b. The Lahontan National Fish Hatchery in Gardnerville, Nevada, has developed cultural techniques which produce 1-million Lahontan cutthroat trout annually. California and Nevada State hatcheries also are producing pure stock of Lahontan cutthroat. These cultured trout have been, and are being, introduced successfully into the wild.

c. Restoration of habitat and reintroduction in several stream systems should result in additional populations, further increasing the present range of this species. Restoration plans include the removal of brook and rainbow trout and rainbow—Lahontan cutthroat trout hybrids. Habitat restoration programs have been successful in several streams.

II. Paiute cutthroat trout (*Salmo clarki seleniris*). a. The removal of the introduced eastern brook trout, a serious competitor of the Paiute cutthroat, has permitted an increase of the Paiute cutthroat in Delaney Creek in Yosemite National Park.

b. The Paiute cutthroat has hybridized with the introduced rainbow trout in some streams. In these streams the removal of rainbow trout and hybrid rainbow—Paiute trout has resulted in good populations of pure stock of Paiute cutthroat in several streams.

c. A successful transplant of pure Paiute cutthroat stock into Cottonwood Creek has resulted in a self-sustaining population with good densities in this stream system in Mono County, California. There are no known threats to the species in this stream system.

d. Most of the streams in which the Paiute cutthroat trout occurs flow through land which is owned or controlled by the U.S. Forest Service or the U.S. National Park Service. Both of these agencies must operate, under the requirements of section 7 of the Endangered Species Act of 1973, to conserve the trout.

III. Arizona trout (*Salmo apache*). a. At present good populations of pure stock of Arizona trout exist in several headwater streams of the east fork of the White River and headwaters of Bonito Creek, tributary to the Black River in east central Arizona.

b. To further increase the population and distribution of the species, the hatcheries of the Arizona Department of Game and Fish have cultured the Arizona trout and stocked them into waters formerly inhabited. Stream renovation projects also are planned for tributaries of the upper Salt River which will provide additional habitat and extend its distribution.

Despite the fact that available evidence suggests that the Lahontan cutthroat trout, Paiute cutthroat trout, and Arizona trout are not "Endangered" species as defined by the Endangered Species Act of 1973, there is ample reason to consider them as "Threatened" species. Section 4(a) of the Act states as follows:

The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification, or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or manmade factors affecting its continued existence.

Specifically, we have evidence that conditions (1) and (5) above are pertinent to a determination that these three trout be classed as "Threatened."

(1) The present or threatened destruction, modification, or curtailment of its habitat or range.

*Lahontan cutthroat*—This fish formerly occupied most streams of the Truckee, Carson, and Walker River drainages in western Nevada and east central California. Today it occupies much of the same area but is less abundant in the headwaters than it formerly was. Water diversions within its native range continue to be a threat to this species. This problem is especially evident in Pyramid Lake where the diversion of water from the Truckee River has resulted in a lowering of the water level in the lake. The lower water-levels in the lake and the siltation of the mouth of the Truckee River (at its entry into the lake) due to lack of flow has eliminated much of the spawning run of the species in this area.

*Paiute cutthroat*—The native range of this species is Silver King Creek and its tributaries above Snodgrass Creek in Alpine County, California, which are not blocked by natural barriers. The present distribution is much the same and, through introductions, the Paiute cutthroat has been established outisde of its native range into North Fork Cottonwood Creek, Cabin Creek and Birchin Lake in Mono and Inyo Counties, California. Livestock grazing practices and recreation developments could possibly pose threats to this species within its range.

*Arizona trout*—This trout originally inhabited the headwaters of the Salt and Little Colorado Rivers in the White Mountains of east central Arizona. Within its native range, logging operations have declined but continue to pose a threat to this species. Erosion, siltation, and increased temperatures connected with logging processes can reduce the populations of Arizona trout in certain areas, and they have done so in the past.

(5) Other natural or manmade factors affecting its continued existence.

*Lahontan cutthroat*—The introduction of non-native trouts in past years within the native range of this species presents a threat to its continued existence. The introduced brook trout is a strong competitor for food and space with the Lahontan cutthroat. Although the State is making efforts to remove rainbow trout from Lahontan cutthroat habitat, hybridization is occurring between the two species and remains a cause for concern.

*Paiute cutthroat*—In the past, rainbow trout have been introduced into streams inhabited by the Paiute cutthroat. Subsequent hybridization has reduced the pure stock of Paiute cutthroat in some areas and remains a cause for concern.

*Arizona trout*—The introduced rainbow trout has hybridized with the Arizona trout in some streams. The possible introductions into other streams by individuals with good intention present a continued threat to this species.

In spite of the above acknowledged problems, there is good evidence that all three species would benefit now from regulated taking by sport-fishing. The States, in cooperation with the U.S. Fish and Wildlife Service have succeeded in culturing all three species, and they have been widely restocked to the point at which most streams with suitable habitat have reached their carrying capacity.

Based on the above evidence, the Fish and Wildlife Service proposed in the FEDERAL REGISTER (49 FR 17847), on April 23, 1975, that these three trout be reclassified from endangered status to threatened status, and proposed regulations which would permit sport-fishing of these species. Interested persons were invited to submit written comments on this proposal to the Director (FWS/LE), U.S. Fish and Wildlife Service.

Only five letters were received commenting on the reclassification of the trout as threatened species. The letters were received from the States of Arizona, California and Nevada, and from the United States Forest Service and the Environmental Defense Fund. None of these objected to the delisting from endangered to threatened status or the provision that would permit a State regulated sport harvest of these trout. It was suggested by Nevada that the Lahontan cutthroat trout be taken off both the endangered and threatened list, and the Forest Service suggested entire removal of the Apache trout. However, we do not feel this can be justified in view of the evidence presented in this proposal.

California and Nevada both requested that the reclassification to threatened status become effective upon publication in the FEDERAL REGISTER instead of waiting the normal 30 days from publication of the new rule. These states desire sport fishing of these species to begin immediately. The fishing season for trout begins in July in California.

Sport fishing is an acceptable method of preventing overpopulation which could injure a species by taxing the species' habitat. Sport fishing of these trout will be permitted when the reclassification to threatened status becomes effective.

The normal 30-day delay between publication and the effective date are designed to afford the public the opportunity to adjust to a new rule. However, no adjustment period is necessary here where the public need not restrict its activities as a result of this regulation. In fact, to do otherwise would be to put a person in jeopardy of committing a "technical" violation during the 30-day period, when the act which he is engaging in would be legal except for the 30-day waiting period.

Since the fishing season is impending, and the public needs no adjustment period, this rule shall become effective upon publication to facilitate sport fishing this season.

For the reasons stated earlier, it is hereby determined that the Arizona trout (*Salmo apache*), the Lahontan cutthroat trout (*Salmo clarki henshawi*), and the Paiute cutthroat trout (*Salmo clarki seleniris*) are not "Endangered" species as defined by the Endangered Species Act of 1973, but are "Threatened" species as defined by that Act.

This final rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531–43; 87 Stat. 884).

Dated: July 11, 1975.

LYNN A. GREENWALT,
*Director,*
*U.S. Fish and Wildlife Service.*

Accordingly, § 17.32 of Part 17 of 50 CFR Chapter I, Subchapter B is amended by adding the following:

**§ 17.32 Threatened wildlife list.**

| Common name | Scientific name | Range | Portion of range where threatened |
|---|---|---|---|
| * * * * * * * | | | |
| (d) Fishes: | | | |
| (1) Lahontan cutthroat trout | *Salmo Clarki henshawi* | California, Nevada | Entire range. |
| (2) Paiute cutthroat trout | *Salmo clarki seleniris* | California | Entire range. |
| (3) Arizona trout | *Salmo apache* | Arizona | Entire range. |

(1) Prohibitions: All the prohibitions in section 9(a)(1) apply to the Lahontan cutthroat trout (*Salmo clarki henshawi*), the Paiute cutthroat trout (*Salmo clarki seleniris*) and the Arizona trout (*Salmo apache*), *Except* that such species may be taken in accordance with State law. Any taking in violation of State law will also be a violation of the Endangered Species Act of 1973.

[FR Doc.75-18473 Filed 7-15-75;8:45 am]

## PART 32—HUNTING

### UL Bend-Bowdoin National Wildlife Refuges

The following regulations are issued and are effective July 16, 1975. These regulations apply to public hunting on portions of certain National Wildlife Refuges in Montana.

*General conditions.* Hunting shall be in accordance with applicable State regulations. Portions of refuges which are open to hunting are designated by signs and/or delineated on maps. No vehicle travel is permitted except on maintained roads and trails. Special conditions applying to individual refuges are listed on the reverse side of maps available at refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, 10597 West Sixth Avenue, P.O. Box 25486, Denver, Colorado 80225.

**§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.**

Migratory game birds may be hunted on the following refuge areas:

Bowdoin National Wildlife Refuge, Post Office Box J, Malta, Montana 59538.

UL Bend National Wildlife Refuge, Post Office Box J, Malta, Montana 59538.

**§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.**

Upland game birds may be hunted on the following refuge areas:

UL Bend National Wildlife Refuge, Post Office Box J, Malta, Montana 59538.

Bowdoin National Wildlife Refuge, Post Office Box J, Malta, Montana 59538.

*Special condition:* Hunting of all upland birds not permitted until opening of pheasant season.

**§ 32.32 Special regulations; big game; for individual wildlife refuge areas.**

Big game animals may be hunted on the following refuge areas:

UL Bend National Wildlife Refuge, Post Office Box J, Malta, Montana 59538.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1976.

Dated: July 7, 1975.

JOHN R. FOSTER,
*Refuge Manager, UL Bend National Wildlife Refuge, Bowdoin National Wildlife Refuge, Malta, Montana.*

[FR Doc.75-18423 Filed 7-15-75;8:45 am]

# proposed rules



## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### [ 27 CFR Part 5 ]

[Notice No. 281]

## METRIC STANDARDS OF FILL FOR DISTILLED SPIRITS

### Proposed Rulemaking and Public Hearing

The Bureau of Alcohol, Tobacco and Firearms, with the approval of the Secretary of the Treasury or his delegate, is considering amending the standard of fill regulations for distilled spirits.

BACKGROUND

Today, the United States is perhaps closer to movement toward the metric system of measurement than at any time in its history. As early as 1866, the Congress legalized the use of metric weights and measures. Since that time, public and private interest in metrication has alternately risen and fallen as advocates of the metric system have, from time to time, tried unsuccessfully to convert the nation to the use of metric weights and measures. In recent times, the United States has found itself to be an island in a metric world where the metric system has become the dominant language of measurement. Responding to this situation, the Congress, in 1968, passed a law authorizing the Secretary of Commerce to make a study to determine the advantages and disadvantages of increased use of the metric system in the United States. That study, published in 1971, provided an analysis of a broad base of metrication problems that face all Americans and showed that Americans, in broad consensus, were in favor of increased use of the metric system.

Federal law gives the Secretary of the Treasury authority to prescribe regulations respecting size and fill of containers. The Federal Alcohol Administration Act of August 29, 1935, contains this authority in its requirements regarding unfair competition and unlawful practices among persons engaged in production and distribution of alcoholic beverages. As it applies to distilled spirits, the law makes it unlawful for a producer, bottler, importer or wholesaler of distilled spirits to introduce distilled spirits into interstate or foreign commerce unless they are bottled, packaged, and labeled in conformity with regulations prescribed by the Secretary of the Treasury. As it applies to standards of fill, the law requires the Secretary to prescribe regulations "* * * with respect to packaging, marking, branding, labeling and size and fill of container (1) as will prohibit deception of the consumer with respect to such products or the quantity thereof and * * * (2) as will provide the consumer with adequate information as to * * * the net contents of the package." Since first issued in 1936, regulations under the Federal Alcohol Administration Act have contained specific standards of fill for bottled distilled spirits.

In view of the interest in expanded international trade, the Bureau of Alcohol, Tobacco and Firearms is at a critical point in the history of the regulation of distilled spirits standards of fill. The portion of the law that allows the Secretary of the Treasury to prescribe standards of fill is basically consumer oriented. Thus, the consumer's interests must be given substantial consideration in any changes in fill standards. However, since at the same time a change to metric standards of fill will have a significant impact upon State and local regulatory agencies, as well as upon several industry groups (*e.g.*, distilled spirits bottlers, container manufacturers, and importers), the Bureau desires to be completely objective in determining whether a changeover to the metric system should be made at this point in time and, if so, what specific schedule of metric standards should be adopted.

*Bureau involvement in metrication.* The issue of metric standards of fill for alcoholic beverage containers has been under consideration by the Bureau since the latter part of 1973. Metric standards of fill for wines have now been adopted. As stated in the document adopting those standards, all persons testifying during the public hearing, held in June of 1974, either openly endorsed metrication in the United States wine industry, or did not generally oppose the imposition of metric standards of fill. Briefly, the important changes in requirements for standards of fill for wines provided for (1) seven new metric standards of fill to replace sixteen current standards in U.S. measure, which were applicable to wines bottled domestically and a multitude of nonstandardized fills for wines bottled in foreign countries, (2) a four-year phase-in period for conversion to metric standards, (3) the packaging of cases of wine with a standard number of bottles per shipping case, (4) the statement of net contents of containers in both metric and U.S. measure during the conversion period, and (5) the complete abandonment of U.S. standards once a change to metric standards had been made.

As public interest in metrication of alcoholic beverage containers swelled, the Bureau received many letters of comment on, and recommendations for, metric standards of fill for distilled spirits. Of the correspondents who submitted letters on distilled spirits metrication, the Distilled Spirits Council of the United States, Inc. (DISCUS), submitted theirs in the form of a petition to replace present standards of fill regulations with specific metric standards. DISCUS also recommended that these metric standards be phased in by December 31, 1978, and requested a hearing on their petition.

DISCUS PROPOSALS

In its petition regarding metrication, DISCUS requested regulatory changes in five areas.

1. DISCUS asked that metric standards of fill be adopted to replace the current U.S. standards of fill applicable to bottles of distilled spirits. The fill standards proposed by DISCUS are: 1.75 liters, 1 liter, 750 ml, 375 ml, 187.5 ml and 50 ml. They further asked that distribution of the 50 ml bottle be limited to sale or service on airplanes and railroads only. In their petition, DISCUS stated that the above sizes were selected as a result of consultations which were held over a 1½ year period with the following domestic and foreign industry and allied organizations:

DOMESTIC

Air Transport Association.
Glass Container Manufacturers Institute.
Independent American Whiskey Association.
National Alcoholic Beverage Control Association.
National Association of Alcoholic Beverage Importers.
National Conference of State Liquor Administrators.
National Licensed Beverage Association.
National Liquor Stores Association.
Wine and Spirits Wholesalers of America.

FOREIGN

Association of Canadian Distillers.
International Federation on Wine and Spirits.
Irish Distillers Limited.
Scotch Whisky Association.

DISCUS stated that throughout the above-mentioned consultations, the major industry objective had been to produce benefits for the consumer by utilizing metric conversion to establish and maintain the lowest possible consumer prices. The DISCUS petition went on to say that this objective could be achieved by sharply reducing the present number of sizes in order to save on production, warehousing and distribution costs; and, that at the same time, the reduction in the number of sizes would facilitate consumer understanding of the metric system. DISCUS further stated that the recommended sizes had been approved by all of the above national organizations doing business in the United States and, thus, not only represented the over-

whelming viewpoint of the entire domestic distilled spirits industry as well as the airlines and glass bottle manufacturers, but also represented a consensus of the membership of the above foreign organizations, except for a few individual differences.

As to the specific standard fills proposed, DISCUS stated as follows:

a. *The .050 liter miniature standard.* DISCUS requests that the miniature be restricted to sale on airlines and trains because (1) miniatures are attractive to minors and to those who are tempted to drink surreptitiously while driving; and (2) the careless disposal of miniatures would create a litter problem, whereas most of the larger packages normally enter established solid waste systems from hotels, restaurants, taverns and private homes. For these and other reasons, DISCUS maintains, most states restrict the sale of miniatures.

b. *The 0.1875 liter small standard.* DISCUS points out, in their petition, that this standard (1) will provide a low cost package for the lower-income consumer who wishes to buy a name brand at the lowest possible cost and (2) will satisfy the demand for a "pocket-flask" size.

c. *The 0.375 liter medium standard.* In their petition, DISCUS states that this standard (1) will satisfy the combined consumer demand for the present ⅖ pint and 1 pint; (2) will help avoid price increases for both the present ⅖ pint and 1 pint standards, since there will be less content than either; and (3) is an exact multiple of the 0.1875 size.

d. *The 0.750 liter regular standard.* DISCUS points out in their petition that this standard (1) will satisfy the combined consumer demand for the present ¾ quart and 4/5 quart standards; (2) will help avoid a price increase for the 4/5 quart (present fifth) which is the most popular consumer size, since there will be slightly less content in the new size; and (3) is an exact multiple of the small and medium sizes.

e. *The 1.00 liter large size.* DISCUS states in their petition that this standard will replace the present 1 quart standard as the "pouring-bottle" for "on sale" premises.

f. *The 1.75 liter extra large standard.* DISCUS states in their petition that this standard (1) will satisfy the demand for the present ½ gallon and that a 1½ liter bottle would not suffice, since the content difference is too great. DISCUS further states that a 1.75 liter standard will facilitate the establishment of a price to satisfy the consumer since there will be less content than the present ½ gallon, whereas the 2 liter size would necessitate a substantial price increase to the detriment of the consumer. In addition, DISCUS says that this standard comes within the range of so called "double-gobbing" (a process used in the manufacture of containers) equipment either presently on hand or planned for the future by the glass bottle manufacturers, whereas a two-liter bottle would be too large for "double-gobbing". "Double-gobbing", according to DISCUS, generates savings which can be passed on to benefit the consumer. They also indicate the two-liter bottle would require excessive energy to produce and involve excessive weight and size for packaging, shipment and storage.

2. DISCUS requests that standard case packaging requirements be imposed on all bottles filled according to metric standards. The proposed case packaging requirements are:

| Fill standard | Bottles/case | Liters/case |
|---|---|---|
| 1.75 liters | 6 | 10.5 |
| 1 liter | 12 | 12.0 |
| 750 ml | 12 | 9.0 |
| 375 ml | 24 | 9.0 |
| 187.5 ml | 48 | 9.0 |
| 50 ml | 120 | 6.0 |

Three of the proposed standards, the .1875 liter, .375 liter, and .750 liter, would yield cases of 9 liter content, when packed as shown in the table. The 1 liter and 1.75 liter standards would yield cases of 12 and 10.5 liter content respectively, while the .050 liter standard would yield cases of 6.0 liter content. DISCUS states, in their petition, that packaging in this fashion will facilitate Federal and State tax computations.

3. *Phase-in period.* DISCUS proposed a phase-in period ending December 31, 1978, during which time all current standards of fill could be utilized, as well as the new metric standards of fill. After December 31, 1978, all spirits subject to standards of fill which were bottled for the United States market would have to be bottled in accordance with the new metric standards of fill.

4. *Conversion to metric standards to be complete.* DISCUS proposed that once a producer converted to a metric size, he would be prohibited from continuing to produce a comparable size of that product in U.S. ounces.

5. *Exception for previously bottled spirits.* DISCUS proposed that spirits bottled in current standard sizes prior to any mandatory effective date of new metric sizes should be allowed to be marketed after any mandatory effective date of the metric standards. DISCUS feels that such a provision would be necessary in order to avoid the possibility of massive returns to bottling premises of goods for rebottling and relabeling.

### Bureau Conclusions on DISCUS Proposals and Description of Proposed Regulatory Changes

Having reviewed and evaluated the DISCUS distilled spirits metrication proposals, the Bureau has reached the following conclusions on each, and proposes the following regulatory changes.

1. *Metric standards to fill.* The Bureau agrees with DISCUS that the standards of fill for distilled spirits should be in metric units. Nearly all of the rest of the world has "gone metric" or is in the process of doing so. Distilled spirits are an important product in international trade, and putting the United States on the same basis as the rest of the world cannot help but promote this trade. With this in mind, the fact that the distilled spirits and related industries are apparently solidly behind "going metric", and the possibility that there may be some consumer education benefits in metrication of this product, the Bureau sees substantial advantages for all parties concerned in promulgating metric standards of fill.

The Bureau also agrees that the number of standard fills may be reduced with positive benefits to distilled spirits bottlers, glass manufacturers, wholesalers, retailers, consumers, and government agencies concerned with distilled spirits taxation and regulation. In these days of high speed production and packaging machinery, and automated package handling and storage equipment, reduction in the number of different packages handled can mean substantial savings to glass suppliers, bottlers, wholesalers, and retailers. Further, reduction in the number of package sizes makes it easier to control inventory and account for the product, again with significant savings to producers and distributors, as well as to governmental agencies in computing taxes.

As far as consumers are concerned, production and handling savings should ultimately be passed on to them in the form of lower prices, or at least a negation of a price increase which might otherwise be necessary. Also, in the case of certain current standards of fill that are quite close in net contents (*e.g.*, the 1.6 and 2.0 fl. oz. miniature; the four-fifths pint and one pint; and four-fifths quart and one quart), the content differences are often not readily visible to consumers without a close examination of labels, and there is at least some element of consumer deception present. Fewer standards of fill, with larger net contents spread between the sizes, should alleviate this problem.

The disadvantage for consumers in reducing the number of standards of fill is, of course, that they do not have as many bottle sizes to select from. This does not appear to be a problem in the case of distilled spirits where certain currently authorized standards of fill appear to have a limited market. For example, one-gallon containers command less than one percent of the market; and the three-quarter pint and the three-quarter quart sizes together account for less than two percent of the market.

On the basis of these factors, the Bureau concluded that the advantages of reducing the number of standards of fill outweighed the disadvantages.

With regard to the new metric sizes proposed by DISCUS, the Bureau has serious reservations as to two of the six sizes proposed and to the restriction proposed on distribution of the 50 ml size. The reasons for the Bureau's reservations, and the proposed Bureau alternatives are as follows:

a. *DISCUS proposed a 50 ml miniature size restricted to sales to airlines and trains.* While the Bureau agrees that 50 ml is the logical size for a distilled spirits miniature, we have serious doubts as to

the constitutionality of restricting the sale of this product to certain transportation companies. Further, since some States restrict the sale of liquor by the drink to miniatures, the DISCUS prohibition would seem unduly restrictive as far as they are concerned. In view of this, the Bureau is proposing a 50 ml miniature standard of fill with no restriction on distribution.

b. *DISCUS proposed a 187.5 ml small bottle standard fill.* One of the principal advantages of the metric system is the ease of manipulating figures. It seems to the Bureau that a good share of this advantage would be sacrificed by adopting a standard of fill stated in both whole numbers and decimals. It would seem that this would be creating unnecessary hardships for the consumer who has to try to visualize what .5 ml amounts to; for the retailer, wholesaler, and bottler who would have to manipulate units of 187.5 ml in various records and accounts they have to keep; and for the governmental tax agencies which would often have to manipulate units of 187.5 ml in accounting for odd bottles and partial cases. Also, in terms of international trade, the 187.5 ml bottle does not appear to be a recognized size. Further, the 187.5 ml at 6.3 oz. does not correspond closely to a currently authorized standard of fill that commands any appreciable share of the market. This could mean that this size would enjoy little popularity with consumers.

In view of the foregoing, the Bureau is proposing a 250 ml standard of fill. There are no decimals, and it is a simple fraction (1/3) of the standard 750 ml bottle. It is already recognized in international trade (*e.g.*, in Germany and Italy). It corresponds closely (less than half an ounce difference) with the currently authorized one-half pint standard—a bottle that commands approximately nine percent of the U.S. market.

c. *DISCUS proposed a 375 ml medium size bottle standard of fill.* Obviously, the 375 ml bottle has no problem with decimals. It is recognized to some extent in international trade and corresponds closely with the currently authorized four-fifth pint standard bottle size.

In lieu of a 375 ml standard, the Bureau proposes a 500 ml standard bottle size. The 500 ml bottle also corresponds closely with a currently authorized standard, the pint, and whereas the four-fifth pint accounts for less than two percent of the market, the pint accounts for about nine percent of the market. It would appear from this that the 500 ml bottle might be more popular with consumers. Further, although the 375 ml bottle is recognized to some extent in international trade, the 500 ml. bottle appears to be recognized more universally.

While the Bureau sees what it believes to be significant disadvantages in two of the new metric sizes proposed by DISCUS, there may be some factors that would tend to favor the DISCUS proposal. For example, it would appear that the bulk of the distilled spirits industry, as well as the glass manufacturing industry, supports all of the sizes proposed by DISCUS. Also, comparing the 187.5 ml, 375 ml, and 750 ml sizes proposed by DISCUS with the 250 ml, 500 ml, and 750 ml sizes proposed by the Bureau, indicates that the DISCUS proposal might make it easier for consumers to price comparison shop among these three sizes, since both the 375 ml and the 750 ml contain just twice as much as the next smaller size.

Even though the Bureau is proposing alternatives to two of the new metric sizes proposed by DISCUS, because of strong industry preference for the DIS CUS sizes and the fact that there are some advantages to these sizes, the Bureau does not wish to rule out completely the DISCUS sizes at this stage. If information presented about these alternatives should disprove a substantial portion of the advantages the Bureau sees in the two alternative sizes it is proposing, or such information indicates substantial advantages in the DISCUS sizes that were not recognized by the Bureau, the Bureau reserves the right to promulgate the sizes proposed by DIS CUS as new metric standards of fill without further public hearings. For that reason, in the portion of this document showing proposed amendatory text, both the Bureau and DISCUS proposed sizes are shown, with the DISCUS sizes shown in parentheses. The Bureau especially invites public comment on this very critical aspect of the metric proposal.

2. *Bottles per shipping case.* The Bureau agrees with DISCUS that the number of bottles packed in a shipping case or shipping container should be standardized. No similar provision now exists respecting distilled spirits case sizes; however, by tradition, most bottlers pack the same number of bottles per case or shipping container. The new wine metrication regulations, which make metric bottling mandatory on January 1, 1979, standardize case packs for wine. Standardization of case packing will simplify marketing and pricing of distilled spirits since each case containing the same size bottle would contain the same quantity in liters. Therefore, a "case" of distilled spirits of a given size would automatically represent a precise quantity of spirits in both number of bottles and liters to the consumer, retailers, wholesalers, and bottlers. Standard case sizes in liters should increase efficiency in warehouse stocking, in inventorying cases, determining State and Federal taxes and import duties, and maintaining records.

The standard case packs proposed by the Bureau for the two alternative sizes it is proposing are as follows:

| Standard of fill: | *Bottles per case* |
|---|---|
| 500 milliliters | 24 |
| 250 milliliters | 48 |

3. *Metric phase-in.* The Bureau agrees with the DISCUS proposal for a transition period of at least three years. Conversion will be allowed at any time during the transition period; but will become mandatory on and after January 1, 1979. This phase-in period from January 1, 1976 to December 31, 1978, would hopefully promote orderly metric transition by (1) allowing current bottle molds to be replaced as they wear out, without having to discard serviceable molds; (2) allowing costs of conversion to be spread over a period of time; and (3) allowing a period for consumers to become acquainted with the new metric sizes. The January 1, 1979, mandatory date would coincide with the mandatory compliance date for wine metrication. Having the new metric wine and distilled spirits bottles available at about the same time would seem to offer some advantages to consumers and distributors of these products. The sizes being proposed for distilled spirits appear to enjoy more widespread recognition internationally than certain of the new wine bottle sizes did, and less time would probably be needed by foreign distilled spirits bottlers to make the conversion. However, we especially invite comments on this critical aspect of our proposed regulations.

4. *Complete conversion.* DISCUS proposed that "Once a producer converted to a metric size, he would be prohibited from continuing to produce a comparable size of that product in U.S. ounces". We agree with their intent, which is basically to reduce the time that dual sizes, metric and non-metric, are on a retailer's shelves side-by-side. For example, a quart bottle sitting beside a new 1 liter bottle might appear to many consumers to hold the same volume whereas the quart bottle actually holds less. Keeping the period of overlap to a minimum would also be advantageous to retailers and wholesalers since it reduces somewhat the variety of packages they have to store, handle, and account for.

In our regulatory proposal, we are expanding somewhat on the DISCUS proposal by requiring that conversion to a given metric standard of fill be complete with respect to any given product. For example, a bottler who begins to package XYZ gin in one-liter standard liquor bottles may not thereafter bottle XYZ gin in quart standard liquor bottles. However, a bottler who begins to package XYZ gin in one-liter standard liquor bottles may continue to bottle XYZ gin in quart bottles of unusual design which have been approved by the Director under 27 CFR 5.48(a). Also, a bottler who begins to package XYZ gin in a given new metric size (*e.g.*, a liter) may continue to package XYZ gin in a noncorresponding U.S. size (*e.g.*, a fifth). Further, if a bottler is packaging both ABC gin and XYZ gin in quart bottles and if he subsequently begins to package ABC gin in one-liter bottles, he may still continue to package XYZ gin in quart bottles. This requirement would, we believe, reduce the period of overlap of new metric and U.S. sizes, while at the same time would allow bottlers a considerable degree of flexibility in terms of using up existing bottle stocks, etc. The Bureau particularly invites comments on this requirement.

5. *Exemption for previously bottled spirits.* In their initial petition on dis-

tilled spirits metrication, DISCUS requested that provision should be made that spirits bottled in the existing sizes prior to the time that the metric sizes are made mandatory could continue to be shipped notwithstanding the provisions of Section 5.45. DISCUS stated "We feel that such a provision is necessary in order to avoid the possibility of massive returns to bottling premises of goods for rebottling and relabeling." The Bureau agrees. Storage and marketing practices of distilled spirits bottlers may create situations in which some bottles filled in accordance with U.S. standards of fill would not be introduced into trade channels until sometime after the metric standards become mandatory. The Bureau proposes that distilled spirits bottled according to the current standards of fill prior to the expiration date of the transition period and marketed after that date, would be specifically exempted from the new metric standards of fill requirements.

In order to enforce this provision relative to imported spirits, the Bureau would provide that distilled spirits introduced into the United States after January 1, 1979, in original containers which do not conform to the new metric standards of fill (1) be accompanied by a certificate signed by an authorized official of the country of origin that the spirits were bottled or packed prior to January 1, 1979; or (2) may be customs released from customs custody if they were entered into the customs bonded warehouse on or before December 31, 1978. No such certification would be required for domestic spirits since records of bottling dates are available for inspection and vertification by ATF officers during routine on-site inspections.

### Other Bureau Proposals

In addition to the DISCUS proposals and Bureau modifications outlined in the preceding pages, the Bureau proposes the following regulatory changes.

1. *Standards of fill for cordials, liqueurs, etc.* The Bureau proposes to revoke the exception to authorized standards of fill presently allowed for cordials, liqueurs, cocktails, highballs, bitters and certain specialties.

Early hearings (1934) at which the very first standards of fill for distilled spirits were dicussed, brought forth arguments, mostly by importers, against prescribing standards or fill for cordials, liqueurs et al., such as (1) "in Europe the bulk of bottles are hand-blown into molds and have a great many discrepancies; to attempt to standardize these foreign bottles means a complete revolution of the trade"; (2) "Foreign bottlers use metric measurement rather than U.S. measurement"; (3) "European bottlers fill by hand rather than by machine and so are less likely to fill to standard"; and (4) "Certain cordials have traditionally been bottled in unique, odd sized bottles and the public, accustomed to finding these odd sizes, is not deceived by the irregular size". The arguments presented at these early hearings convinced the regulatory agency (at that time, the Federal Alcohol Control Administration) that cordials et al. should be exempt from standards of fill requirements, and so, in standards of fill regulations prescribed by the agency, they were excluded from standards requirements.

This exemption was carried forward to regulations prescribed under the Federal Alcohol Administration Act of August 29, 1935, and has remained in effect these many years.

The issue of the exemption has not been aired before the public since first adopted, and the Bureau feels that certain of the original arguments for the exemption no longer hold true. Certainly, the argument that European countries use metric standards of fill and that the United States does not, will no longer be true if metric standards are adopted in the United States. The original argument that in Europe the bulk of bottles are hand-blown into molds and have a great many discrepancies, is probably no longer true. In view of technological advances since this issue was last aired, the arguments regarding filling by hand in European countries would similarly seem to be somewhat outdated.

The Bureau feels that the exception from standards of fill currently allowed cordials, liqueurs, etc., can be revoked without undue inconvenience to either the industry or the consumer. The phase-in period for metrication should ease the hardship of conversion to metric standards by allowing gradual conversion of present sizes. Bureau records indicate that bottles of distinctive shape and designs are generally designed to hold standard quantities and, therefore, would not disappear from the market because of revocation of the exception to standards of fill. No change is contemplated in permissible exceptions to design and headspace requirements presently allowed by regulations.

2. *Labeling in both metric and U.S. measure.* The proposed regulations provide that, if during the transition period bottles conforming to metric standards of fill are used, the bottler must state net contents in both metric and U.S. measure. This requirement is intended primarily as a consumer education measure.

*Notice of public hearing.* Interested persons are invited to attend a public hearing at the following time and place:

September 10–11, 1975, 10:00 a.m., e.d.t., George S. Boutwell Auditorium, Seventh Floor, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C.

At that time and place, all interested persons will be given the opportunity to be heard, in person or by a duly authorized representative, concerning the proposed changes in 27 CFR Part 5.

*Requests to present oral testimony.* Any person who desires to present oral testimony at the public hearing should so advise the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (Attn: Chief, Regulations and Procedures Division), not later than September 1, 1975. Requests shall be submitted in an original and three copies and must include (1) the name and address of the party submitting the request; (2) the name and address of the person or persons who will present oral testimony; and (3) an outline of the topics to be discussed and the amount of time to be devoted to each topic. As set forth in 27 CFR 71.31(a), ordinarily a period of 10 minutes will be allotted to each person for making oral comment.

*Submission of written material.* Any interested party may submit, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226 (Attn: Chief, Regulations and Procedures Division), relevant written data, views, or arguments for incorporation into the record of the hearing. Written material must be submitted not later than September 1, 1975. Written comments or suggestions, which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms, may be inspected by any person upon compliance with 27 CFR 71.22(d)(7). The provisions of 27 CFR 71.31(b) shall apply with respect to designation of portions of comments or suggestions as exempt from disclosure.

The following proposed regulations are to be issued under authority contained in 27 U.S.C. 205 (49 Stat. 981, as amended).

### Proposed Regulations

On the basis of the foregoing, it is proposed that the regulations pertaining to the labeling and advertising of distilled spirits (27 CFR Part 5) be amended as follows:

Paragraph 1. Amend § 5.11 by (1) amending the definitions of "Assistant regional commissioner" and "Director" to reflect current Bureau organizational structure; (2) amending the definition of "Gallon" and adding, in alphabetical order, a definition for "Liter or litre" to make it clear that units of liquid measure need not be of the U.S. system of measure; (3) amending the definition of "In bulk" to show the metric equivalent of one wine gallon; and (4) adding, in alphabetical order, a definition for "Regional director". As amended, § 5.11 reads as follows:

**§ 5.11 Meaning of terms.**

* * * * *

*Assistant regional commissioner.* Wherever used in this part shall mean a regional director as defined in this section.

* * * * *

*Director.* The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, D.C.

* * * * *

*Gallon.* U.S. gallon of 231 cubic inches of alcoholic beverage at 60° F.

* * * * *

*In bulk.* In containers having a capacity in excess of 1 wine gallon (3.785 liters).

* * * * *

*Liter or litre.* A metric unit of capacity equal to 1,000 cubic centimeters at 4° C., and equivalent to 33.814 U.S. fluid ounces. A liter is subdivided into 1,000 milliliters. Milliliter or milliliters may be abbreviated as ml".

* * * * *

*Region director.* A regional director who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

* * * * *

PAR. 2. Section 5.32 is amended by (1) adding a reference, in paragraph (a)(4), to net contents stated in both metric and U.S. fluid measures; and (2) adding references, in paragraph (b)(3), to metric standards of fill and to net contents stated either in metric measure only or in both metric and U.S. fluid measures. As amended, § 5.32 reads as follows:

§ 5.32 Mandatory label information.

* * * * *

(a) * * *

(4) In the case of distilled spirits packaged in containers for which no standard of fill is prescribed in § 5.47, net contents in accordance with § 5.38 (b) or § 5.38a(b)(2).

(b) * * *

(3) In the case of distilled spirits packaged in containers conforming to the standards of fill prescribed in § 5.47 or § 5.47a, net contents in accordance with § 5.38(a), § 5.38a(a) or § 5.38a(b)(1).

* * * * *

PAR. 3. Paragraph (b) of § 5.33 is revised to include metric exceptions to size of type requirements. As revised, paragraph (b) of § 5.33 reads as follows:

§ 5.33 Additional requirements.

* * * * *

(b) *Location of statements and size of type.* (1) Statements required by §§ 5.31–5.42 (except brand names) shall appear generally parallel to the base on which the container rests as it is designed to be displayed or shall be otherwise equally conspicuous.

(2) Statements required by §§ 5.31–5.42 (except brand names) shall be separate and apart from any other descriptive or explanatory matter.

(3) Statements of the type of distilled spirits shall be as conspicuous as the statement of the class to which it refers, and in direct conjunction therewith.

(4) When net contents are stated in U.S. fluid measure only, statements required by §§ 5.31–5.42 (except brand names) shall be in script, type or printing not smaller than 8-point Gothic caps, except that, in the case of labels on bottles of less than one-half pint capacity, such script, type or printing may be smaller than 8-point Gothic caps if readily legible under ordinary conditions.

(5) When net contents are stated either in metric measure or in both metric and U.S. fluid measures, statements required by §§ 5.31–5.42 (except brand names) shall be in script, type or printing not smaller than 8-point Gothic caps, except that, in the case of labels on bottles of less than 250 ml (187.5 ml) capacity, such script, type or printing may be smaller than 8-point Gothic caps if readily legible under ordinary conditions.

* * * * *

PAR. 4. Section 5.38 is amended by (1) inserting the phrase "Until December 31, 1978" at the beginning of the first sentence of paragraph (a); (2) by adding the phrase "Except as otherwise provided in § 5.38a(b)(3), until December 31, 1978" at the beginning of the first sentence of paragraph (b); and (3) adding a new paragraph, (d). As amended, § 5.38 reads as follows:

§ 5.38 Net Contents.

(a) *Bottles conforming to standards of fill.* Until December 31, 1978, the net contents of distilled spirits for which a standard of fill is prescribed in § 5.47 shall be stated in the same manner and form in which such standard of fill is set forth. * * *

(b) *Bottles not conforming to standards of fill.* Except as otherwise provided in § 5.38a(b)(3), until December 31, 1978, the net contents of distilled spirits for which no standard of fill is prescribed in § 5.47 shall be stated as follows:

* * * * *

(d) *Limitation.* This section shall not apply on or after January 1, 1979.

PAR. 5. A new section, § 5.38a, concerning metric net contents, is added immediately following § 5.38 to read as follows:

§ 5.38a Metric net contents.

(a) *Bottles conforming to metric standards of fill.*

On or after January 1, 1979, the net contents of distilled spirits shall be stated in the same manner and form in which metric standards of fill are set forth in § 5.47a. Such net contents need not be stated on the label if they are legibly blown, etched, sandblasted, marked by underglaze coloring, or otherwise permanently marked by any method approved by the Director, on the side, front, or back of the container in an unobscured location. Containers of 250 milliliters (187.5 milliliters) or greater capacity must bear letters and figures of not less than one-quarter inch height.

(b) *Net contents stated in both metric and U.S. fluid measures.* (1) A bottler may use a metric standard of fill prescribed in § 5.47a(a) after December 31, 1976, but must do so after December 31, 1978. Until December 31, 1978, whenever metric standards of fill are used, net contents shall be stated in both metric measure and the equivalent volume in U.S. fluid measure as follows:

1.75 liters (59.0 fl. oz.)—(1.75 liters (59.0 fl. oz.))
1.00 liter (33.8 fl. oz.)—1.00 liter (33.8 fl.oz.))
750 milliliters (25.4 fl. oz.)—(750 milliliters (25.4 fl. oz.))
500 milliliters (17.0 fl. oz.)—(375 milliliters (12.7 fl. oz.))
250 milliliters (8.5 fl. oz.)—(187.5 milliliters (6.3 fl. oz.))
50 milliliters (1.7 fl. oz.)—(50 milliliters (1.7 fl. oz.))

(2) Also, until December 31, 1978, a bottler shall state in both metric and U.S. fluid measures the net contents of distilled spirits for which no standard of fill is prescribed in § 5.47(a), for example, 700 ml. (23.7 fl. oz.). The metric measure shall be accurate to the nearest one-hundreth of a liter for sizes in excess of one liter and shall be stated in milliliters (ml) for sizes less than one liter. The U.S. measure shall be accurate to the nearest one-tenth of a fluid ounce.

(3) In lieu of the net content statement prescribed in paragraph (b)(2) of this section for distilled spirits for which no standard of fill is prescribed in § 5.47 (a), a bottler may utilize his existing stocks of labels or bottles bearing content statements set forth in the fashion prescribed by § 5.38(b). When existing stocks of such labels or bottles are exhausted, the U.S. net content statement or the U.S. equivalent volume shall be stated in terms of fluid ounces only as prescribed in paragraph (b)(2) of this section.

(c) *Qualifying statements.* Words or phrases qualifying statements of net contents are prohibited.

PAR. 6. Section 5.45 is amended by adding the requirement that distilled spirits in bottles must be packed in conformity with § 5.49. As amended, § 5.45 reads as follows:

§ 5.45 Application.

No person engaged in business as a distiller, rectifier, importer, wholesaler, or warehouseman and bottler, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled and packed in conformity with §§ 5.46–5.49.

PAR. 7. Section 5.46 is amended by (1) renumbering paragraph (b) as paragraph (b)(1) and revising it to limit its applicability to U.S. fluid measure only; and (2) adding a new subparagraph (b)(2) to specify headspace requirements when net contents are stated in either metric measure only or in both metric and U.S. fluid measures. As amended, § 5.46 reads as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(b) *Headspace.* (1) If the net contents are stated only in U.S. fluid measure, a liquor bottle of a capacity of one-half pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

(2) If the net contents are stated either in metric measure only or stated in both metric and U.S. fluid measures, a liquor bottle of a capacity of 250 milliliters (187.5 milliliters) or more shall be

held to be so filled as to mislead the purchaser if it has a headspace in excess of 8 percent of the total capacity of the bottle after closure.

* * * * *

PAR. 8. Section 5.47 is amended by (1) deleting the term "domestically manufactured" in paragraph (a); and (2) by adding a new paragraph, (d), to prescribe limitations for the applicability of standards of fill. As amended, § 5.47 reads as follows:

§ 5.47 Standards of fill.

(a) *Authorized standards of fill.* The standards of fill for all distilled spirits, whether domestically bottled or imported, subject to the tolerances allowed in this section, shall be as follows:

* * * * *

(d) *Limitations.* This section shall not apply on or after January 1, 1979. The metric standards of fill prescribed in § 5.47a may be substituted for the standards of fill in this section on or after January 1, 1976, but must be applied on or after January 1, 1979.

PAR. 9. A new section, § 5.47a, which prescribes metric standards of fill, is added immediately following § 5.47 to read as follows:

§ 5.47a Metric standards of fill.

(a) *Authorized standards of fill.* On or after January 1, 1979, the standards of fill for all distilled spirits, whether domestically bottled or imported, shall be as follows:

1.75 liters—(1.75 liters)
1.00 liter—(1.00 liter)
750 milliliters—(750 milliliters)
500 milliliters—(375 milliliters)
250 milliliters—(187.5 milliliters)
50 milliliters—(50 milliliters)

(b) *Tolerances.* The following tolerances shall be allowed:

(1) Discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice.

(2) Discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity: *Provided*, That no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made of approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity.

(3) Discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) *Unreasonable shortages.* Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

(d) *Irrevocability of conversion.* Whenever a permittee or foreign bottler commences bottling a given product in a standard liquor bottle corresponding to a metric standard of fill prescribed by paragraph (a) of this section, he may not thereafter bottle that product in any standard liquor bottle corresponding to a standard of fill prescribed by § 5.47. He may, however, continue to use a corresponding standard of fill prescribed by § 5.47 for that product in a bottle of unusual design which has been approved under the provisions of § 5.43. For the purposes of this paragraph, product shall mean a given class and type of distilled spirits bearing a given brand name (e.g., ABC bourbon, ABC gin, XYZ bourbon, and XYZ gin would be four distinct products).

(e) *Packaging requirements.* Whenever bottles are filled according to metric standards of fill, such bottles shall be packed with the number of bottles per shipping case or shipping container as prescribed in § 5.49.

(f) *Distilled spirits bottled before January 1, 1979.* Distilled spirits bottled domestically before January 1, 1979, may be marketed after January 1, 1979, if such distilled spirits were bottled in accordance with § 5.47. (See § 5.53 for similar provisions relating to distilled spirits imported in original containers.)

PAR. 10. Paragraph (b) of § 5.48 is revised to show that cordials, liquers, cocktails, highballs, bitters, and certain specialties will not be exempt from metric standard of fill requirements on or after January 1, 1979. As revised, § 5.48 reads as follows:

§ 5.48 Exceptions.

* * * * *

(b) Until December 31, 1978, sections 5.47(a) and 5.47a(a) shall not apply to cordials and liqueurs, and cocktails, highballs, bitters, and such other specialties as are specified by the Director. On or after January 1, 1976, the metric standards of fill may optionally be applied to cordials and liqueurs, and cocktails, highballs, bitters, and specialties; however, such standards shall mandatorily apply on or after January 1, 1979.

PAR. 11. A new section, § 5.49, is added immediately following § 5.48 to standardize the number of bottles packed per shipping case when bottles are filled according to the metric standards of fill. As added, § 5.49 reads as follows:

§ 5.49 Bottles per shipping case.

Distilled spirits, whether domestically bottled or imported, subject to the metric standards of fill prescribed in § 5.47a, shall be packed with the following number of bottles per shipping case or container:

| Bottle sizes: | Bottles per case |
|---|---|
| 1.75 liters | 6 |
| 1.00 liter | 12 |
| 750 milliliters | 12 |
| 500 milliliters | 24 |
| 250 milliliters | 48 |
| 50 milliliters | 120 |
| (1.75 liters) | (6) |
| (1.00 liter) | (12) |
| (750 milliliters) | (12) |
| (375 milliliters) | (24) |
| (187.5 milliliters) | (48) |
| (50 milliliters) | (120) |

Where distilled spirits were being filled according to the metric standards of fill prior to January 1, 1976, the case packaging requirements may optionally be used on or after January 1, 1976, but shall become mandatory on or after January 1, 1979.

PAR. 12. A new section, § 5.53, providing for a certificate of nonstandard of fill for spirits imported in original containers, is added immediately following § 5.52 to read as follows:

§ 5.63 Certificate of nonstandard fill.

(a) Distilled spirits imported in original containers not conforming to the metric standards of fill prescribed in § 5.47a shall not be released from customs custody after December 31, 1978:

(1) Unless the distilled spirits are accompanied by a statement signed by a duly authorized official of the appropriate foreign country, stating that the distilled spirits were bottled or packed prior to January 1, 1979; or

(2) Unless the distilled spirits are being withdrawn from a customs bonded warehouse into which entered on or before December 31, 1978.

Dated: June 9, 1975.

REX D. DAVIS,
*Bureau of Alcohol, Tobacco and Firearms.*

Dated: July 9, 1975.

Approved:

DAVID R. MACDONALD,
*Assistant Secretary of the Treasury.*

[FR Doc.75-18348 Filed 7-15-75;8:45 am]

---

## Internal Revenue Service

## [ 26 CFR Part 1 ]

## CERTAIN INTERCOMPANY PRICING RULES FOR DISC'S

### Notice of Proposed Rulemaking

On September 21, 1972, notice of proposed rule making was published in the FEDERAL REGISTER in regard to regulations under certain provisions of section 994 of the Internal Revenue Code of 1954 relating to intercompany pricing rules for DISC's, as added by section 501 of the Revenue Act of 1971 (37 FR 19625). Subparagraphs (3) and (5) of § 1.994-1 (e), as set forth in the appendix to such notice of proposed rule making, which deal with initial payment of transfer prices or commissions and procedure for adjustment to transfer prices or commissions, are withdrawn by Treasury Decision 7364, published elsewhere in today's FEDERAL REGISTER.

On October 4, 1972, notice of proposed rule making was published in the FEDERAL REGISTER in regard to regulations under section 993 of the Internal Revenue Code of 1954, relating to definitions for DISC's, as added by section 501 of the Revenue Act of 1971 (37 FR 20853).

Subparagraphs (2) and (3) of § 1.993–2 (d), as set forth in the appendix to such notice of proposed rule making, which deal with trade receivables representing commissions and indebtedness arising under § 1.994–1(e), are withdrawn by this notice of proposed rule making.

Notice is hereby given that, in lieu of the rules so withdrawn, the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by August 15, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by August 15, 1975. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

This document contains certain of the proposed amendments necessary to conform the Income Tax Regulations (26 CFR Part 1) to sections 993 and 994 of the Internal Revenue Code of 1954, as added by section 501 of the Revenue Act of 1971 (85 Stat. 535), relating to definitions for DISC's and intercompany pricing rules for DISC's. In general, these amendments apply for taxable years ending after December 31, 1971.

The rules of paragraph (d) (2) and (3) of § 1.993–2 (as proposed), relating to trade receivables as qualified export assets, are revised by paragraph 1 of this document. Under the revised rules of subparagraph (2) of § 1.993–2(d), if a DISC acts as commission agent in certain transactions which result in qualified export receipts and if the DISC receives accounts receivable or evidences of indebtedness representing commissions from the transactions, the accounts receivable or evidences of indebtedness will be treated as trade receivables (and, therefore, qualified export assets). If the DISC's principal is a related supplier, however, the accounts receivable and evidences of indebtedness will not be trade receivables unless they are paid in accordance with § 1.994–1(e) (3) and (5) as revised by paragraph 2 of this document. Under the revised rules of subparagraph (3) of § 1.993–2(d), an indebtedness to a DISC arising under the circumstances described in § 1.994–1(e)(3)(iii) is not a qualified export asset, and an indebtedness arising under § 1.994–1(e)(5)(i) is not a qualified export asset if it is not paid in the time and manner provided in § 1.994–1(e)(5)(i) and (ii).

Paragraph 2 of this document adds a new subdivision (v) to § 1.994–1(c)(6), relating to the determination of combined taxable income of a DISC and its related supplier. Under subdivision (v), such combined taxable income must be reduced by the excess of the face value of any account receivable arising out of the transaction and transferred by the related supplier to the DISC over the amount for which it was transferred to the DISC to the extent such excess is deducted by the related supplier.

Paragraph 2 of this document also revises the rules of § 1.994–1(e) (3) and (5), as proposed, and adds a new subparagraph (6). Subparagraphs (3) and (5) expand and clarify the rules with respect to the time and manner of payment of transfer prices and commissions between the DISC and its related supplier. If payments are not made as and when required, the DISC may be considered to hold an account receivable representing all or a portion of a credit for its excess payment of a transfer price or of a commission payable to the DISC by its related supplier. Such account receivable will not be treated as a qualified export asset under § 1.993–2(d) (as revised by this document) with the result that the DISC may not meet the 95 percent of gross assets test under section 992(a)(1)(B) and lose DISC status. In addition, the permissible forms of payment of transfer prices and commissions have been broadened to include payment in the form of property, such as accounts receivable from sales made by the DISC or with the DISC as a commission agent. A series of examples to illustrate these rules have been provided in new subparagraph (6).

*Proposed amendments to the regulations.* On September 21, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 19625) regarding amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to certain provisions of section 994 of the Internal Revenue Code of 1954, relating to intercompany pricing rules for DISC's, as added by section 501 of the Revenue Act of 1971 (85 Stat. 543). Subparagraphs (3) and (5) of § 1.994–1(e), as set forth in the appendix to such notice of proposed rule making, which deal with initial payment of transfer prices or commissions and procedure for adjustment to transfer prices or commissions, are withdrawn by Treasury Decision 7364, published elsewhere in today's FEDERAL REGISTER.

On October 4, 1972, notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 20853) regarding amendment of the Income Tax Regulations (26 CFR Part 1) to conform such regulations to section 993 of the Internal Revenue Code of 1954, relating to definitions for DISC's, as added by section 501 of the Revenue Act of 1971 (85 Stat. 538). Subparagraphs (2) and (3) of § 1.993–2 (d), as set forth in the appendix to such notice of proposed rule making, which deal with trade receivables representing commissions and indebtedness arising under § 1.994–1(e) are hereby withdrawn.

In lieu of the rule so withdrawn and in order to conform the Income Tax Regulations (26 CFR Part 1) to certain provisions of sections 992 and 994 of the Internal Revenue Code of 1954, such regulations are amended, effective for taxable years ending after December 31, 1971, as follows:

Paragraph 1. Section 1.993–2, as proposed in 37 FR 20853 for October 4, 1972, is amended by revising paragraph (d) (2) and (3). This revised provision reads as follows:

**§ 1.993–2 Definition of qualified export assets.**

* * * * *

(d) *Trade receivables.* * * *

(2) *Trade receivables representing commissions.* If a DISC acts as commission agent for a principal in a transaction described in § 1.993–1 (b), (c), (d), (e), (h), or (i) which results in qualified export receipts for the DISC, and if an account receivable or evidence of indebtedness held by the DISC and representing the commission payable to the DISC as a result of the transaction arises (and, in the case of an evidence of indebtedness, designated on its face as representing such commission), such account receivable or evidence of indebtedness shall be treated as a trade receivable. If, however, the principal is a related supplier (as defined in § 1.994–1(a)(3)) with respect to the DISC, such account receivable or evidence of indebtedness will not be treated as a trade receivable unless it is payable and paid in a time and manner which satisfy the requirements of § 1.994–1(e) (3) or (5) (relating to initial payment of transfer price or commission and procedure for adjustments to transfer price or commission, respectively), as the case may be. However, see subparagraph (3) of this paragraph for rules regarding certain accounts receivable representing commissions payable to a DISC by its related supplier.

(3) *Indebtedness arising under § 1.994–1(e).* An indebtedness arising under § 1.994–1(e)(3)(iii) (relating to initial payment of transfer price or commission) in favor of a DISC is not a qualified export asset. An indebtedness arising under § 1.994–1(e)(5)(i) (relating to procedure

for adjustments to transfer price or commission) in favor of a DISC is a trade receivable if it is paid in the time and manner described in § 1.994–1(e)(5) (i) and (ii) and if it otherwise satisfies the requirements of subparagraph (2) of this paragraph. If such an indebtedness is not paid in the time and manner described in § 1.994–1(e)(5) (i) and (ii), it is not a qualified export asset.

* * * * *

Paragraph 2. Section 1.994–1, as adopted by Treasury Decision 7364, is amended by adding a new subdivision (v) immediately after § 1.994–1(c)(6)(iv), by revising subparagraphs (3) and (5) of § 1.994–1(e), and by adding a new subparagraph (6) immediately after § 1.994–1(e)(5). These added and revised provisions read as follows:

**§ 1.994–1 Intercompany pricing rules for DISC's.**

* * * * *

(c) *Transfer price for sales of export property.* * * *

(6) *Combined taxable income.* * * *

(v) If an account receivable arising with respect to a sale of export property is transferred by the related supplier to the DISC for an amount which is less than its face value, and the related supplier recognizes a loss or other deduction upon such transfer, then the combined taxable income of the DISC and its related supplier from such sale shall be reduced by the amount of such loss or other deduction.

* * * * *

(e) *Methods of applying paragraphs (c) and (d) of this section.* * * *

(3) *Initial payment of transfer price or commission.* (i) The amount of a transfer price actually charged by a related supplier to a DISC, or a sales commission actually charged by a DISC to a related supplier, in a transaction to which section 994 applies must be paid no later than 60 days following the close of the taxable year of the DISC during which the transaction occurred.

(ii) Payment must be in the form of money, property (including accounts receivable from sales by or through the DISC), a written obligation which qualifies as debt under the safe harbor rule of § 1.992–1(d)(2)(ii), or an accounting entry offsetting the account receivable against an existing debt owed by the person in whose favor the account receivable was established to the person with whom it engaged in the transaction.

(iii) If the district director can demonstrate, based upon the data available as of the 60th day after the close of such taxable year, that the amount actually paid did not represent a reasonable estimate of the transfer price or commission (as the case may be) to be determined under section 994 and this section, an indebtedness will be deemed to arise (as of the date the transaction occurred which gave rise to the indebtedness), from the person required to make the payment in favor of the person to whom the payment is required to be made, in an amount equal to the difference between the amount of the transfer price or commission determined under section 994 and this section and the amount (if any) actually paid and received. Such indebtedness owed to a DISC shall be treated as an asset but shall not be treated as a trade receivable or other qualified export asset (see § 1.993–2(d)(3)) as of the end of the taxable year of the DISC in which the transaction occurred which gave rise to the indebtedness.

(iv) Except as provided in paragraph (c)(5)(i)(*b*) of this section with respect to incomplete transactions, if the amount actually paid results in the DISC realizing at least 50 percent of the DISC's taxable income from the transaction as reported in its tax return for the taxable year of the transaction (for the year the transaction is completed), then the amount actually paid shall be deemed to be a reasonable estimate of such transfer price or commission. For purposes of the preceding sentence, whether the transfer price or commission actually paid is deemed a reasonable estimate may be determined on the basis for grouping transactions chosen by the taxpayer under paragraph (c)(7) of this section.

(v) An indebtedness arising under subdivision (iii) of this subparagraph shall bear interest at an arm's length rate, computed in the manner provided by § 1.482–2(a)(2) from the 61st day after the close of the DISC's taxable year in which the transaction occurred which gave rise to the indebtedness to the date of payment. The interest so computed shall be accrued and included in the taxable income of the person to whom the indebtedness is owed for each taxable year during which the indebtedness is unpaid.

* * * * *

(5) *Procedure for adjustments to transfer price or commission.* (i) If the transfer price (or commission) for a transaction determined under section 994 is different from the price (or commission) actually charged, the person who received too small a transfer price (or commission) or paid too large a transfer price (or commission) shall establish (or be deemed to have established), at the date of the determination or redetermination under subparagraph (4) of this paragraph of the transfer price (or commission) under section 994, an account receivable from the person with whom it engaged in the transaction equal to the difference in amount between the transfer price (or commission) so determined and the transfer price (or commission) previously paid and received. If, for example, during 1972, a DISC purchased a product from its related supplier and paid a price of $10,000 which price is a reasonable estimate under subparagraph (3)(iii) of this paragraph but is later determined to be $8,000 under section 994 immediately before the DISC filed its return for 1972, the DISC must be paid $2,000 ($10,000—$8,000) by its related supplier or establish an account receivable from its related supplier of $2,000. The account receivable may be paid without tax consequences, provided that such account receivable is paid within 90 days after the date it is established (or deemed established). Such account receivable paid within such 90 days will be considered to relate to the taxable year in which the transaction occurred which gave rise thereto rather than the taxable year during which it is established or paid.

(ii) Payment must be in a form specified in subparagraph (3) of this paragraph.

(iii) If an account receivable of a DISC described in subdivision (i) of this subparagraph is not paid within 90 days of the date it is established (or deemed established), then, as of the end of the taxable year of the DISC in which the transaction occurred which gives rise to the indebtedness, the account receivable shall be treated as an asset but, under § 1.993–2(d)(3), shall not be treated as a trade receivable or other qualified export asset.

(iv) An account receivable established in accordance with subdivision (i) of this subparagraph shall bear interest at an arm's length rate, computed in the manner provided by § 1.482–2(a)(2) from the day after the date the account receivable is deemed established to the date of payment. The interest so computed shall be accrued and included in the taxpayer's taxable income for each taxable year during which the account receivable is outstanding.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

*Example (1).* (i) During 1972, a DISC which uses the calendar year as its taxable year purchased a product from its related supplier and made an initial payment of $8,500. If $8,500 were determined to be the transfer price under section 994, the DISC's taxable income from the transaction would be $1,000. Immediately before the DISC filed its return for 1972, under section 994 it is determined that the transfer price is $8,000 and the DISC's taxable income is $1,500. Thus, the requirement of a reasonable estimate under subparagraph (3) of this paragraph was met because the amount ($8,500) actually paid resulted in the DISC realizing taxable income of $1,000 which is not less than 50 percent of the DISC's taxable income ($1,500) from the transaction as determined under section 994.

(ii) Pursuant to subparagraph (5) of this paragraph, an account receivable due the DISC for $500, *i.e.*, $8,500—$8,000, is established on September 15, 1973, the date the DISC files its return for 1972, and is paid on December 1, 1973. The account receivable for $500 will be considered to relate to the taxable year (1972) in which the transaction occurred which gave rise thereto and will be a qualified export asset under § 1.993–2(d)(3) for the last day of such year.

*Example (2).* Assume the same facts as in example (1) except that the account receivable for $500 is paid on January 1, 1974. The account receivable for $500 will still be considered to relate to the taxable year (1972) in which the transaction occurred which gave rise thereto. However, such account receivable will be treated as an asset which is not a qualified export asset under § 1.993–2(d)(3) for the last day of such year.

* * * * *

[FR Doc.75-18249 Filed 7-15-75;8:45 am]

[ 26 CFR Parts 1, 301 ]

## CREDIT FOR PURCHASE OF NEW PRINCIPAL RESIDENCE

### Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by August 15, 1975. Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include therein material that he considers to be confidential or inappropriate for disclosure to the public.

It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rule making is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by . In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 44 and 7805 of the Internal Revenue Code of 1954 (89 Stat. 32, 68A Stat. 917; 26 U.S.C. 44, 7805).

[SEAL] DONALD C. ALEXANDER,
*Commissioner of Internal Revenue.*

*Preamble.* This document contains proposed amendments to conform the Income Tax Regulations (26 CFR Part 1) and the Regulations on Procedure and Administration (26 CFR Part 301) to the amendments made to the Internal Revenue Code of 1954 by section 208 of the Tax Reduction Act of 1975 (89 Stat. 32) and by section 401 of the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975 (89 Stat. 243), relating to the tax credit for the purchase of a new principal residence.

Section 208 added section 44 to the Code, which provides a Federal income tax credit of 5 percent of the taxpayer's adjusted basis with respect to the purchase of a new principal residence. The maximum credit allowed is $2,000 ($1,000 in the case of a married taxpayer filing a separate return) and such credit may not exceed the amount of the taxpayer's tax liability. In addition, the credit is allowed with respect to only one residence of the taxpayer.

To qualify for the credit the taxpayer must satisfy the following conditions. The residence must be a new principal residence the construction of which must have begun before March 26, 1975. The residence must be acquired and occupied as a principal residence after March 12, 1975, and before January 1, 1977, and if not constructed by the taxpayer it must be acquired by him under a binding contract entered into before January 1, 1976. Except in the case of self-construction, the buyer must attach to his return a certification by the seller that construction was begun before March 26, 1975, and that the purchase price is the lowest price at which the residence was offered for sale after February 28, 1975.

Under the proposed regulations, the term "principal residence" has the same meaning as under Code section 1034. Such residence includes a single family structure, a residential unit in a condominium or cooperative housing project, the taxpayer's portion of a duplex, a townhouse and a factory-made home (including mobile homes, houseboats, prefabricated and modular homes). The residence must be new and a renovated building does not qualify regardless of the extent of the renovation. Except for two stated exceptions for taxpayers who resided in a residence before acquiring title, the residence must never have been lived in prior to acquisition by the taxpayer.

The adjusted basis of the residence, on which the credit is computed, includes all amounts attributable to the acquisition and construction of the taxpayer's new principal residence to the extent that such amounts constitute capital expenditures and are not allowable as deductions in computing taxable income. Where an old principal residence was sold or involuntarily converted the adjusted basis of the new residence for purposes of computing the credit is reduced by any gain not recognized under section 1033 or 1034. Where self-construction was commenced before March 13, 1975, only that portion of the basis of such property properly allocable to construction after March 12, 1975, is to be taken into consideration in determining the amount of the credit. Special rules are provided for tie-in sales.

The proposed regulations provide rules for recapture where a residence on which the credit was allowed is sold within 36 months after the date of acquisition (or in the case of self-construction the date of occupancy). Certain exceptions are provided in the case of reinvestment and for certain involuntary dispositions.

Rules are provided for commencement of construction limiting such commencement to cases where there is actual physical work of a significant amount on the building site of the residence. Digging of the footings, excavation of the building foundation or similar work constitutes commencement of construction for these purposes. Special rules for factory-made homes are provided. The proposed regulations define self-construction and provide rules for allocation of the purchase price for purposes of computing the credit when self-construction commenced prior to March 13, 1975.

The proposed regulations set forth rules with regard to certification including a suggested form of certification and special rules for factory-made homes. Rules as to what constitutes an offer to sell and what constitutes the lowest price at which a residence was offered for sale after February 28, 1975 (including special rules for foreclosure and bulk sales) are also set forth.

*Proposed amendments to the regulations.* In order to conform the Income Tax Regulations and the Regulations on Procedure and Administration to section 208 of the Tax Reduction Act of 1975 (89 Stat. 32) and to section 401 of the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975 (89 Stat. 243), the regulations are amended as follows:

INCOME TAX REGULATIONS

(26 CFR PART 1)

PARAGRAPH 1. There are inserted immediately after § 1.42 the following new sections:

**§ 1.44 Statutory provisions; purchase of new principal residence.**

SEC. 44. *Purchase of new principal residence*—(a) *General rule.* In the case of an individual there is allowed, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to 5 percent of the purchase price of a new principal residence purchased or constructed by the taxpayer.

(b) *Limitations*—(1) *Maximum credit.* The credit allowed under subsection (a) may not exceed $2,000.

(2) *Limitation to one residence.* The credit under this section shall be allowed with respect to only one residence of the taxpayer.

(3) *Married individuals.* In the case of a husband and wife who file a joint return under section 6013, the amount specified under paragraph (1) shall apply to the joint return. In the case of a married individual filing a separate return, paragraph (1) shall be applied by substituting "$1,000" for "$2,000".

(4) *Certain other taxpayers.* In the case of individuals to whom paragraph (3) does not apply who together purchase the same new principal residence for use as their principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals as prescribed by the Secretary or his delegate, but the sum of the amounts allowed to such individuals shall not exceed $2,000 with respect to that residence.

(5) *Application with other credits.* The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, and 42.

(c) *Definitions.* For purposes of this section—

(1) *New principal residence.* The term "new principal residence" means a principal residence (within the meaning of section 1034), the original use of which commences with the taxpayer, and includes, without being limited to, a single family structure, a residential unit in a condominium or cooperative housing project, and a mobile home.

(2) *Purchase price.* The term "purchase price" means the adjusted basis of the new principal residence on the date of the acquisition thereof.

(3) *Purchase.* The term "purchase" means any acquisition of property, but only if—

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

(B) The basis of the property in the hands of the person acquiring it is not determined—

(i) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(ii) Under section 1014(a) (relating to property acquired from a decedent).

(d) *Recapture for certain dispositions*—(1) *In general.* Except as provided in paragraphs (2) and (3), if the taxpayer disposes of property with respect to the purchase of which a credit was allowed under subsection (a) at any time within 36 months after the date on which he acquired it (or, in the case of construction by the taxpayer, on the day on which he first occupied it) as his principal residence, then the tax imposed under this chapter for the taxable year in which terminates the replacement period under paragraph (2) with respect to the disposition is increased by an amount equal to the amount allowed as a credit for the purchase of such property.

(2) *Acquisition of new residence.* If, in connection with a disposition described in paragraph (1) and within the applicable period prescribed in section 1034, the taxpayer purchases or constructs a new principal residence, then the provisions of paragraph (1) shall not apply and the tax imposed by this chapter for the taxable year following the taxable year during which disposition occurs is increased by an amount which bears the same ratio to the amount allowed as a credit for the purchase of the old residence as (A) the adjusted sales price of the old residence (within the meaning of section 1034), reduced (but not below zero) by the taxpayer's cost of purchasing the new residence (within the meaning of such section) bears to (B) the adjusted sales price of the old residence.

(3) *Death of owner; casualty loss; involuntary conversion; etc.* The provisions of paragraph (1) do not apply to—

(A) A disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36 month period to which reference is made under such paragraph,

(B) A disposition of the old residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3) or compulsorily and involuntarily converted (within the meaning of section 1033(a)), or

(C) A disposition pursuant to a settlement in a divorce or legal separation proceeding where the other spouse retains the residence as principal residence.

(e) *Property to which section applies*—(1) *In general.* The provisions of this section apply to a new principal residence—

(A) The construction of which began before March 26, 1975.

(B) Which is acquired and occupied by the taxpayer after March 12, 1975, and before January 1, 1977, and

(C) If not constructed by the taxpayer, which was acquired by the taxpayer under a binding contract entered into by the taxpayer before January 1, 1976.

(2) *Self-constructed property begun before March 13, 1975.* In the case of property the construction of which was begun by the taxpayer before March 13, 1975, only that portion of the basis of such property properly allocable to construction after March 12, 1975, shall be taken into account in determining the amount of the credit allowable under subsection (a).

(3) *Binding contract.* For purposes of this subsection, a contract for the purchase of a residence which is conditioned upon the purchaser's obtaining a loan for the purchase of the residence (including conditions as to the amount or interest rate of such loan) is not considered non-binding on account of that condition.

(4) *Certification must be attached to return.* This section does not apply to any residence (other than a residence constructed by the taxpayer) unless there is attached to the return of tax in which the credit is claimed a written certification (which may be in any form) signed by the seller of such residence that—

(A) Construction of the residence began before March 26, 1975, and

(B) The purchase price of the residence is the lowest price at which the residence was offered for sale after February 28, 1975.

For purposes of this paragraph, a written certification filed by the taxpayer is sufficient whether or not it is on a form prescribed by the Secretary or his delegate so long as such certification is signed by the seller and contains the information required under this paragraph.

(Sec. 44 as added by sec. 208(a), Tax Reduction Act 1975 (89 Stat. 32), and as amended by sec. 401(a), Emergency Compensation and Special Unemployment Assistance Extension Act 1975 (89 Stat. 243))

SEC. 208 (*Tax Reduction Act of 1975.*) * * *

(b) *Suits to recover amounts of price increases.* If—

(1) Any person certifies under section 44(e)(4) of the Internal Revenue Code of 1954 that the price for which a residence was sold is the lowest price at which the residence was offered for sale after February 28, 1975, and

(2) The price for which the residence was sold exceeded the lowest price at which the residence was offered for sale after February 28, 1975,

such person shall be liable to the purchaser of such residence in an amount equal to three times the amount of such excess. The United States district courts shall have jurisdiction of suits to recover such amounts without regard to any other provision of law. In any suit brought under this subsection in which judgment is entered for the purchaser, he shall also be entitled to recover a reasonable attorney's fee.

(c) *Denial of deduction.* Notwithstanding the provisions of section 162 or 212 of the Internal Revenue Code of 1954, no deduction shall be allowed in computing taxable income for two-thirds of any amount paid or incurred on a judgement entered against any person in a suit brought under subsection (b).

(Sec. 208 (b) and (c), Tax Reduction Act 1975 (89 Stat. 35), and as amended by sec. 401(b), Emergency Compensation and Special Unemployment Assistance Extension Act 1975 (89 Stat. 244))

### § 1.44–1 Allowance of credit for purchase of new principal residence after March 12, 1975, and before January 1, 1977.

(a) *General rule.* Section 44 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1954 in the case of an individual who purchases a new principal residence (as defined in paragraph (a) of § 1.44–5) which is property to which section 44 applies (as provided in § 1.44–2). Subject to the limitations set forth in paragraph (b) of this section, the credit is in an amount equal to 5 percent of the purchase price (as defined in paragraph (b) of § 1.44–5).

(b) *Limitations*—(1) *Maximum credit.* The credit allowed under section 44 and this section may not exceed $2,000.

(2) *Limitation to one residence.* Such credit shall be allowed with respect to only one residence of the taxpayer; the combined purchase prices of more than one new principal residence cannot be aggregated to increase the credit allowed.

(3) *Married individuals.* In the case of a husband and wife who file a joint return under section 6013, the maximum credit allowed on the joint return is $2,000. In the case of married individuals filing separate returns the maximum credit allowable to each spouse is $1,000. Where a husband and wife do not make equal contributions with respect to the purchase price of the new principal residence, allocation of the credit is to be made in proportion to their respective ownership interests in such residence. For this purpose, tenants by the entirety or joitn tenants wtih right of survivorship are treated as equal owners.

(4) *Certain other taxpayers.* Where a new principal residence is purchased by two or more taxpayers (other than a husband and wife), the amount of the credit allowed will be allocated among the taxpayers in proportion to their respective ownership interests in such residence, with the limitation that the sum of the credits allowed to all such taxpayers shall not exceed $2,000. For this purpose, joint tenants with right of survivorship are treated as equal owners. For an example of the operation of this provision see example (2) of § 1.44–5(b)(2)(ii).

(5) *Application with other credits.* The credit allowed by this section shall not exceed the amount of the tax imposed by chapter 1 of the Code for the taxable year, reduced by the sum of the credits allowable under—

(i) Section 33 (relating to taxes of foreign countries and possessions of the United States),

(ii) Section 37 (relating to retirement income),

(iii) Section 38 (relating to investment in certain depreciable property),

(iv) Section 40 (relating to expenses of work incentive program),

(v) Section 41 (relating to contributions to candidates for public office), and

(vi) Section 42 (relating to personal exemptions).

**§ 1.44–2 Property to which credit for purchase of new principal residence applies.**

The provisions of section 44 and the regulations thereunder apply to a new principal residence which satisfies the following conditions:

(a) *Construction.* The construction of the residence must have begun before March 26, 1975. For this purpose construction is considered to have commenced in the following circumstances:

(1) (i) Except as provided in subparagraph (2) of this paragraph, construction is considered to commence when actual physical work of a significant amount has occurred on the building site of the residence. A significant amount of construction requires more than drilling to determine soil conditions, preparation of an architect's sketches, securing of a building permit, or grading of the land. Land preparation and improvements such as the clearing and grading (excavation or filling), construction of roads and sidewalks, and installation of sewers and utilities are not considered commencement of construction of the residence even though they might involve a significant expenditure. However, driving pilings for the foundation, digging of the footings, excavation of the building foundation or pouring of floor slabs constitute a significant amount of construction of the residence. In the case of a housing or condominium development construction of recreational facilities no matter how extensive does not by itself constitute commencement of construction of any residential unit. However, where residential units are part of a building structure, as in the case of certain condominium and cooperative housing units, then digging of the footings or excavation of the building foundation constitutes commencement of construction for all units in that building.

(ii) The rules in subdivision (i) of this subparagraph are illustrated by the following examples:

*Example (1).* A location chosen for a housing development has extremely hilly terrain. In order to make the location suitable for development, the builder moves large amounts of earth and places it elsewhere on the location. In addition, the earth material which has been moved must be compacted according to government specifications in order to provide a stable base. Such activities constitute land preparation and, therefore, do not constitute the commencement of construction.

*Example (2).* A location chosen for a housing development has swampy and marshy terrain. In order to make the location suitable for development, the builder utilizes large quantities of fill. This activity constitutes land preparation and does not constitute commencement of construction.

(2) Construction of a factory-made home (as defined in paragraph (e) of § 1.44–5) is considered to have commenced when construction of important parts of the factory-made home has commenced. For this purpose, commencement of construction of important parts means the cutting and shaping or welding of structural components for a specific identifiable factory-made home, whether the work was done by the manufacturer of the home or by a subcontractor thereof.

(b) *Acquisition and occupancy.* The residence must be acquired and occupied by the taxpayer after March 12, 1975, and before January 1, 1977. For this purpose a taxpayer "acquires" a residence when legal title to it is conveyed to him at settlement, or he has possession of it pursuant to a binding purchase contract under which he makes periodic payments until he becomes entitled under the contract to demand conveyance of title. A taxpayer "occupies" a residence when he or his spouse physically occupies it. Thus, for example, moving of furniture or other household effects into the residence or physical occupancy by a dependent child of the taxpayer is not "occupancy" for purposes of this paragraph. The credit may be claimed when both the acquisition and occupancy tests have been satisfied. Thus, where a taxpayer meets the acquisition and occupancy tests set forth above after March 12, 1975, and before January 1, 1976, the credit is allowable for 1975. Where a taxpayer occupied a residence prior to March 13, 1975, without having acquired it (as where his occupancy was pursuant to a leasing arrangement pending settlement under a binding contract to purchase or pursuant to a leasing arrangement where a written option to purchase was contained in the original lease agreement) he will nonetheless satisfy the acquisition and occupancy tests set forth above if he acquires the residence and continues to occupy it after March 12, 1975, and before January 1, 1977.

(c) *Binding contract.* Except in the case of self-construction, the new principal residence must be acquired by the taxpayer (within the meaning of paragraph (b) of this section) under a binding contract entered into by the taxpayer before January 1, 1976. An otherwise binding contract for the purchase of a residence which is conditioned upon the purchaser's obtaining a loan for the purchase of the residence (including conditions as to the amount or interest rate of such loan) is considered binding notwithstanding that condition.

(d) *Self-constructed residence.* A self-constructed residence (as defined in paragraph (d) of § 1.44–5) must be occupied by the taxpayer before January 1, 1977. Where self-construction of a principal residence was begun before March 13, 1975, only that portion of the basis of the property allocable to construction after March 12, 1975, and before January 1, 1977, shall be taken into consideration in determining the amount of the credit allowable. For this purpose, the portion of the basis attributable to the pre-March 13 period includes the total cost of land acquired (as defined in paragraph (b) of this section) prior to March 13, 1975, on which the new principal residence is constructed and the cost of expenditures with respect to construction work performed prior to March 13, 1975. The costs incurred in stockpiling materials for later stages of construction, however, are not allocated to the pre-March 13 period. Thus, for example, if prior to March 13, 1975, a taxpayer who qualifies for the credit has constructed a portion of a residence at a cost of $10,000 (including the cost of the land purchased prior to March 13, 1975) and the total cost of the residence is $40,000 and the taxpayer's basis after the application of section 1034 (e) (relating to the reduction of basis of new principal residence where gain is not recognized upon the sale of the old residence) is $36,000, the amount subject to the credit will be $27,000

$$\left(\frac{\$30,000}{\$40,000}\times\$36,000\right)$$

**§ 1.44–3 Certificate by seller.**

(a) *Requirement of certification by seller.* Taxpayers claiming the credit should attach Form 5405, Credit for Purchase or Construction of New Principal Residence, to their tax returns on which the credit is claimed. Except in the case of self-construction (as defined in § 1.44–5(d)), taxpayers must attach a certification by the seller that construction of the residence began before March 26, 1975, and that the purchase price is the lowest price at which the residence was offered for sale after February 28, 1975. For purposes of section 44(e)(4) and this section, the term "price" generally does not include costs of acquisition other than the amount of the consideration from the purchaser to the seller. However, for rules relating to adjustments in price due to changes in financing terms and closing costs see paragraph (d)(2) of this section.

(b) *Form of certification.* The following form of the certification statement is suggested:

I certify that the construction of the residence at (specify address) was begun before March 26, 1975, and that this residence has not been offered for sale after February 28, 1975 in a listing, a written private offer, or an offer by means of advertisement at a lower purchase price than (state price), the price at which I sold the residence to (state name, present address, and social security number of purchaser) by contract dated (give date).

(Date, seller's signature and taxpayer identification number.)

However, any written certification filed by the taxpayer will be accepted provided that such certification is signed by the seller and states that construction of the residence began before March 26, 1975, and that the purchase price of the residence is the lowest price at which the residence was offered for sale after February 28, 1975. With regard to factory-made homes the seller, in the absence of his own knowledge as to the commencement of construction, may attach to his own certification a certification from the manufacturer that construction began before March 26, 1975, and may certify based on the manufacturer's

certification. It is suggested that both certifications include the serial number, if any, of the residence.

(c) *Offer to sell.* (1) For purposes of section 44(e)(4) and this section, an offer to sell is limited to an offer to sell a specified residence at a specified purchase price.

(2) An "offer" includes any written offer, whether made to a particular purchaser or to the public, and any offer by means of advertising. Advertising includes an offer to sell published by billboards, flyers, brochures, price lists (unless the lists are exclusively for the internal use of the seller and are not made available to the public), mailings, newspapers, periodicals, radio, or television. The listing of a property with a real estate agency, the filing of a prospectus and the registration of construction plans and price lists with the appropriate authorities (in the case of condominiums or cooperative housing developments) are to be considered offers made to the public.

(3) An offer to sell a specified residence includes:

(i) Both an offer to sell an existing residence and an offer to build and sell a residence of substantially the same design or model as that purchased by the taxpayer on the same lot as that on which the taxpayer's new principal residence was constructed. It does not include an offer to sell the same model residence on a different lot. Where a residence of a particular design or model is offered at a specific base price, additions of property to the residence, no matter how extensive, will not result in the residence being treated as a different residence for the purpose of determining the lowest offer (as defined in paragraph (f) of § 1.44–5).

(ii) In the case of a condominium or cooperative housing development where units are offered for sale on the basis of models (*e.g.*, all Model C two-bedroom apartments sell at a specified base price), an offer to sell a specified residence includes an offer to sell a specific type of unit (with appropriate adjustments to be made for the location of such unit and as provided in paragraph (d) of this section).

(iii) In the case of a factory-made home, an offer to sell a specified residence includes an offer to sell the same model home as that purchased by the taxpayer, provided that the offer is made after the seller has the right to sell the home purchased by the taxpayer (*i.e.*, has that specific home in his inventory). However, it does not include an offer to sell such home with land which is not included in the taxpayer's purchase nor an offer to sell such home without land which is included in the taxpayer's purchase. Appropriate adjustments to a prior offer shall be made as provided in paragraph (d) of this section, including adjustments for any delivery and installation charges as provided in paragraph (d)(3).

(iv) The rules of this subparagraph may be illustrated by the following examples:

*Example (1).* In March 1975 A advertised colonial-style homes on section I of subdivision C at a base price of $40,000. At the time none of the homes had been completed but construction of all homes on section I was commenced before March 26, 1975. After one-half of the homes were sold, A offers to sell the remaining homes in May 1975 at a base price of $45,000. Under the facts above the base price of $45,000 is not the lowest offer since the seller had offered to sell the same model home on the same lot at a lower purchase price after February 28, 1975.

*Example (2).* In June 1975 A offers houses, otherwise qualifying, on section II for the first time for a base price of $50,000. They are colonial homes and substantially the same as the homes he previously offered on section I. Under the facts stated above the base price of $50,000 is the lowest offer since the same model home on the same lot was not previously offered for sale.

*Example (3).* In March 1975 B, a condominium developer, offers to sell any two-bedroom unit in a particular high rise condominium for $45,000 with an added $5,000 for units with a lake front view and an additional $2,000 for units on higher floors. With regard to all two-bedroom units in the condominium an offer to sell a specified residence at a specified purchase price has been made. This is true even though at the time of the offer construction had not reached the floor on which the particular unit will be located.

(4) A specified purchase price means a stated definite price for a particular residence or a specific base price for a residence of a particular model or design. An offer to sell for an indefinite price (*e.g.*, an advertisement that all houses sell in the $40,000's) is not considered an offer to sell at a specified purchase price.

(5) An offer to sell includes an offer to sell subject to special conditions imposed by the seller. Thus, if the lowest price at which a house was advertised was "at $40,000 for March only", the $40,000 price would be the lowest offer. However, certain conditions may necessitate adjustments in determining the lowest offer. See paragraph (d) of this section.

(6) An offer to sell two or more residences together as, for example, in a bulk sale shall be disregarded, even though each residence is assigned a specific purchase price for the purpose of such a sale. With regard to factory-made homes an offer to sell does not include an offer made by the manufacturer to a dealer in such homes.

(7) (i) Where new residences are purchased at a foreclosure sale (including a conveyance by the owner in lieu of foreclosure) and prior to the foreclosure sale such residences had been offered for sale by the foreclosure seller at specified prices, the foreclosure purchaser is bound by such prices in determining the lowest offer. He is not bound by the prices paid to the foreclosure seller since such prices do not constitute voluntary offers.

(ii) For this purpose, if the foreclosure seller and foreclosure purchaser are not related parties (as defined in subdivision (iii) of this subparagraph), and if the foreclosure purchaser does not have knowledge of the date of commencement of construction and the lowest offer made by such seller with respect to each of the foreclosed residences, the foreclosure purchaser must request and try to obtain from the foreclosure seller a certificate specifying such facts. Upon a subsequent sale of a particular residence by the foreclosure purchaser, he must certify whether the price is the lowest offer for that particular residence based on the certification of the foreclosure seller, a copy of which must be attached to the certification of the foreclosure purchaser. If the foreclosure seller refuses to so certify, the foreclosure purchaser must make a reasonable effort to determine the date construction commenced and the lowest offer made by the foreclosure seller. For this purpose, reasonable effort includes the effort to locate and examine advertising and listings published or used by the foreclosure seller. If the foreclosure seller and foreclosure purchaser are related parties (as defined in subdivision (iii) of this subparagraph), the foreclosure puchaser will be considered as having knowledge of the date of the commencement of construction and the lowest offer made by such seller with respect to each of the foreclosed residences, and, upon a subsequent sale of a particular residence by the foreclosure purchaser, he must comply with the certification requirements prescribed by paragraphs (a) and (b) of this section.

(iii) For purposes of this subparagraph related parties shall include the relationships described in subparagraph (2) of § 1.44–5(c), and the constructive ownership rules of section 318 shall apply, but family members for this purpose shall include spouses, ancestors, and lineal descendants.

(d) *Adjustments in determining lowest price.* (1) (i) In determining whether a residence was sold at the lowest offer appropriate adjustment shall be made for differences in the property offered and in the terms of the sale. Where the sale to the taxpayer includes property which was not the subject of the prior offer or excludes property which was included in the prior offer, the amount of the prior offer shall be adjusted to reflect the fair market value of such property, provided that, in the case of property included in the sale which was not a part of the residence at the time of execution of the contract of purchase, the taxpayer had the option to require inclusion or exclusion of such property. The fair market value of any excluded property is to be determined at the time of the prior offer, while all additions are to be valued at their fair market value on the date of execution of the contract of sale. If a seller increases his present offer to include financing or other costs of the seller in connection with his ownership of the residence, the present offer does not qualify as being the lowest offer.

(ii) The rules in subdivision (i) of this subparagraph are illustrated by the following examples:

*Example (1).* A offered to sell a new home without a garage for $35,000. Having found no buyers A added a garage and sold the home for $40,000. At the time the contract of sale was executed the fair market value of the garage was $5,000. The offer to sell

for $40,000 qualifies since it equals the seller's lowest offer plus the fair market value of the garage.

*Example (2).* B, unable to sell colonial-style homes presently under construction and previously offered for sale for $40,000, makes extensive changes in decor and identifies the homes as his new Williamsburg model. The Williamsburg models are not different residences for purposes of this section. To the extent that the additions have not yet been added at the time of execution of a contract of sale, in order to qualify for the credit the taxpayer must have the option as to whether to include these additions, and if these additions are included B must charge no more than the fair market value of the additions on that date of execution of the contract of sale.

(2) Appropriate adjustment to a prior offer to sell shall be made for differences in financing terms and closing costs which increases the seller's actual net proceeds and the purchaser's actual costs. A seller may pass on to the purchaser without affecting the purchase price only those additional amounts he is required to expend in connection with such differences. The seller may not by changing the financing terms or closing costs indirectly increase the purchase price. For these purposes closing costs include all charges paid at settlement for obtaining the mortgage loan and transferring real estate title. Thus, for example, where a purchaser previously offered a residence for sale for $40,000 and agreed to pay financing "points" required by the mortgagee, and now offers the same residence also for $40,000 but requires the purchaser to pay the points, the present offer does not constitute the lowest offer. On the other hand, a prior offer to sell based upon a large down payment by the prospective purchaser may be adjusted to reflect the additional costs to the seller of accepting a small down payment from the taxpayer. For purposes of determining the seller's net proceeds, proceeds received by all related parties within the meaning of section 318 must be taken into account. For purposes of determining the lowest offer, where an offer provided for a rebate (*e.g.*, of cash or of a contribution toward mortgage payments) or included, without additional charge or at less than fair market value, property not normally included in the sale of a residence (*e.g.*, an automobile) such offer must be reduced by the amount of such rebate or by the amount by which the fair market value of such property at the time of the offer exceeds the amount paid for it by the purchaser. Thus, where a residence was advertised for sale at $40,000, but the seller agreed to pay $200 a month on the purchaser's mortgage for 10 months, such residence is considered to have been offered for sale at $38,000.

(3) In the case of a factory-made home, where delivery and installation costs are included in the specified base price of such home an appropriate adjustment is to be made in such specified base price for differences in the fair market value of the delivery and installation in determining the lowest offer.

(e) *Civil and criminal penalties.* If a person certifies that the price for which the residence was sold does not exceed the lowest offer and if it is found that the price for which the residence was sold exceeded the lowest offer, then such person is liable (under section 208(b) of the Tax Reduction Act of 1975) to the purchaser for damages in an amount equal to three times the excess of the certified price over the lowest offer plus reasonable attorney's fees. No income tax deduction shall be allowed for two-thirds of any amount paid or incurred pursuant to a judgment entered against any person in a suit based on such liability. However, attorney's fees, court costs, and other such amounts paid or incurred with respect to such suit which meet the requirements of section 162 are deductible under that section. In addition, an individual who falsely certifies may be subject to criminal penalties. For example, section 1001 of title 18 of the United States Code provides as follows:

§ 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

The treble damages and criminal sanctions provided under this paragraph apply only with regard to false certification as to the lowest offer, not to false certification as to commencement of construction. However, with regard to false certification as to commencement of construction there may exist contractual or tort remedies under State law.

(f) *Denial of credit.* In the absence of the taxpayer's participation in, or knowledge of, a false certification by the seller, the credit is not denied to a taxpayer who otherwise qualifies for the credit solely because the seller has falsely certified that the new principal residence was sold at the lowest offer. However, if certification as to the commencement of construction is false, no credit is allowed since such residence does not qualify as a new principal residence construction of which began before March 26, 1975.

**§ 1.44–4 Recapture for certain dispositions.**

(a) *In general.* (1) Under section 44(d) except as provided in paragraphs (b) and (c) of this section, if the taxpayer disposes of property, with respect to the purchase of which a credit was allowed under section 44(a), at any time within 36 months after the date on which he acquired it (or, in the case of construction by the taxpayer, the date on which he first occupied it as his principal residence), then the tax imposed under chapter 1 of the Code for the taxable year in which the replacement period (as provided under subparagraph (2) of this paragraph) terminates is increased by an amount equal to the amount allowed as a credit for the purchase of such property.

(2) The replacement period is the period provided for purchase of a new principal residence under section 1034 of the Code without recognition of gain on the sale of the old residence. In the case of residences sold or exchanged after December 31, 1974, it is generally 18 months in the case of acquisition by purchase and 2 years in the case of construction by the taxpayer provided, however, that such construction has commenced within the 18-month period. Thus, a calendar-year taxpayer who disposes of his old principal residence in December 1975 and does not qualify under paragraph (b) or (c) of this section will include the amount previously allowed as additional tax on his 1977 tax return.

(3) Except as provided in paragraphs (b) and (c) of this section, section 44(d) applies to all dispositions of property, including sales (including foreclosure sales), exchanges (including tax-free exchanges such as those under sections 351, 721, and 1031), and gifts.

(4) In the case of a husband and wife who were allowed a credit under section 44(a) claimed on a joint return, for the purpose of section 44(d) and this section the credit shall be allocated between the spouses in accordance with the provisions of paragraph (b)(3) of § 1.44–1.

(b) *Acquisition of a new residence.* (1) Section 44(d)(1) and paragraph (a) of this section shall not apply to a disposition of property with respect to the purchase of which a credit was allowed under section 44(a) in the case of a taxpayer who purchases or constructs a new principal residence (within the meaning of § 1.44–5(a)) within the applicable replacement period provided in section 1034. In determining whether a new principal residence qualifies for purposes of this section the rules relating to construction, acquisition, and occupancy under § 1.44–2 do not apply. Where a disposition has occurred and the taxpayer's purchase (or construction) costs of a new principal residence are less than the adjusted sales price (as defined in section 1034(b)) of the old residence, the tax imposed by chapter 1 of the Code for the taxable year following the taxable year during which disposition occurs is increased by an amount which bears the same ratio to the amount allowed as a credit for the purchase of the old residence as (i) the adjusted sales price of the old residence (within the meaning of section 1034), reduced (but not below zero) by the taxpayer's cost of purchasing (or constructing) the new residence (within the meaning of such section) bears to (ii) the adjusted sales price of the old residence.

(2) The rules of subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* On July 15, 1975, A purchases a new principal residence for a total purchase price of $40,000. The property meets the tests of § 1.44–2, and A is allowed a credit of $2,000 on his 1975 tax return. On January 15, 1977 (within 36 months after acquisition) A sells his residence for an adjusted sales price of $50,000 and on March 15, 1977, purchases a new principal residence at a cost

of $40,000. Since the new principal residence was purchased within the 18-month replacement period (provided in section 1034), the amount recaptured is limited to $400, determined by multiplying the amount of the credit allowed ($2,000) by a fraction, the numerator of which is $10,000 (determined by reducing the adjusted sales price of the old residence ($50,000) by A's cost of purchasing the new principal residence ($40,000)) and the denominator of which is $50,000 (the adjusted sales price). Therefore, A's tax liability for 1978, the year following the taxable year in which the disposition occurred, is increased by $400.

(c) *Certain involuntary dispositions.* Section 44(d)(1) and paragraph (a) of this section shall not apply to the following:

(1) A disposition of a residence made on account of the death of any individual having a legal or equitable interest therein occurring during the 36-month period described in paragraph (a) of this section,

(2) A disposition of the residence if it is substantially or completely destroyed by a casualty described in section 165(c)(3),

(3) A disposition of the residence if it is compulsorily and involuntarily converted within the meaning of section 1033(a), or

(4) A disposition of the residence pursuant to a settlement in a divorce or legal separation proceeding where the other spouse retains the residence as principal residence (as defined in § 1.44–5(a)).

**§ 1.44–5 Definitions.**

For purposes of section 44 and the regulations thereunder—

(a) *New principal residence.* The term "new principal residence" means a principal residence, the original use of which commences with the taxpayer. The term "principal residence" has the same meaning as under section 1034 of the Code. For this purpose, the term "residence" includes, without being limited to, a single family structure, a residential unit in a condominium or cooperative housing project, a townhouse, and a factory-made home. In the case of a tenant-stockholder in a cooperative housing corporation references to property used by the taxpayer as his principal residence and references to the residence of a taxpayer shall include stock held by the tenant-stockholder in a cooperative housing project provided, however, that the taxpayer used as his principal residence the house or apartment which he was entitled as such stockholder to occupy. "Original use" of the new principal residence by the taxpayer means that such residence has never been used as a residence prior to its use as such by the taxpayer. For this purpose, a residence will qualify if the first occupancy was by the taxpayer pursuant to a lease arrangement pending settlement under a binding contract to purchase or pursuant to a lease arrangement where a written option to purchase the then existing residence was contained in the original lease agreement.

A renovated building does not qualify as new, regardless of the extent of the renovation nor does a condominium conversion qualify.

(b) *Purchase price*—(1) *General rule.* For purposes of section 44(a) and § 1.44–1, the term "purchase price" means the adjusted basis of the new principal residence on the date of acquisition and includes all amounts attributable to the acquisition or construction, but only to the extent that such amounts constitute capital expenditures and are not allowable as deductions in computing taxable income. Such capital expenditures include but are not limited to the cost of acquisition or construction, title insurance, attorney's fees, transfer taxes, and other costs of transfer. For these purposes the adjusted basis of a factory-made home includes the cost of moving the home and setting it up as the taxpayer's principal residence only where such cost is included in the base price of the residence; it also includes the purchase price of the land on which the home is located, but only if such land was purchased by the taxpayer after March 12, 1975 and only if the taxpayer acquired the land prior to or in conjunction with the acquisition of such factory-made home. However, the adjusted basis does not include any expenditures involved in connection with the leasing of land on which the factory-made home is located. In the case of factory-made homes the adjusted basis includes furniture only where it is included in the base price of the unit.

(2) *Sale of old principal residence.* (i) The adjusted basis is reduced by any gain from the sale or involuntary conversion of an old principal residence, which is not recognized due to the application of section 1033 or section 1034. However, no reduction will be made for any gain excluded from tax by reason of the special treatment provided under the tax laws in the case of a sale by a taxpayer who has attained age 65 (sec. 121 of the code).

(ii) The rules in subdivision (i) of this subparagraph are illustrated by the following examples:

*Example (1).* A sells an old principal residence for $30,000 which has an adjusted basis of $20,000. A reinvests the proceeds by purchasing a new principal residence for $40,000 (including settlement costs which are capital in nature), and this purchase satisfies the statutory criteria under section 1034 for nonrecognition of gain. The credit under section 44 applies with respect to $30,000 ($40,000 cost-minus $10,000 unrecognized gain) of the cost of the new principal residence.

*Example (2).* B and C, two sisters, purchase a new principal residence as joint tenants with the right of survivorship for a total purchase price of $40,000. B has previously sold her old principal residence for $25,000 and a $10,000 gain on the sale has qualified for nonrecognition under section 1034. B contributes $25,000 and C contributes $15,000. The adjusted basis of the new principal residence is $30,000 representing the total purchase price of $40,000 less $10,000 representing unrecognized gain under section 1034. The total credit allowable, therefore, is $1,500. Since joint tenants are treated as equal owners and since allocation of the credit is made in proportion to the taxpayer's respective ownership interests in such residence B and C each will receive a credit of $750.

*Example (3).* Taxpayer D is 65 years old and sells his old principal residence for $20,000 excluding all gain under section 121. He then purchases a new principal residence for $30,000. D's adjusted basis in his new principal residence is $30,000, and he is allowed a credit of $1,500.

(3) *Tie-in sales.* In the case of a purchase of a new principal residence which is tied in to the transfer of other property by the seller to the purchaser, whether purportedly by sale or gift, the adjusted basis of the residence is reduced by the amount of the excess of the fair market value of such other property received over the amount, if any, purportedly paid for it by the purchaser of the residence. For example, if a taxpayer receives a new car with a fair market value of $2,500 upon the purchase of a condominium apartment for a total purchase price of $40,000 (including settlement costs which are capital in nature) his adjusted basis in the residence for computation of the credit is $37,500.

(4) *Basis of new principal residence.* The taxpayer's basis in his new principal residence is not in any way affected by the allowance of the credit.

(c) *Purchase*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, the term "purchase" means any acquisition of property.

(2) *Exceptions.* (i) An acquisition does not qualify as a purchase for the purpose of this paragraph if the property is acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b). Such persons include—

(A) The purchaser's spouse, ancestors and lineal descendants,

(B) Related corporations as provided under section 267(b)(2),

(C) Related trusts as provided under section 267(b)(4), (5), (6), and (7),

(D) Related charitable organizations as provided under section 267(b)(9), and

(E) Related partnerships as provided under section 707(b)(1).

For purposes of this subdivision the constructive ownership rules of section 267(c) shall apply except that paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants.

(ii) An acquisition does not qualify as a purchase for the purpose of this paragraph if the basis of the property in the hands of the person acquiring such property is determined—

(A) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired (*e.g.*, a gift under section 1015), or

(B) Under section 1014(a) (relating to property acquired from a decedent).

(d) *Self-construction.* The term "self-construction" means the construction of a residence (other than a factory-made home) to the taxpayer's specifications on land already owned or leased by the taxpayer at the time of commencement of construction. Thus, where a taxpayer

purchases land and either builds a residence himself or hires an architect and a contractor to build a residence on that land, the taxpayer has "self-constructed" the residence.

(e) *Factory-made home.* The term "factory-made homes" includes mobile homes, houseboats and prefabricated and modular homes.

(f) *Lowest offer.* The term "lowest offer" means the lowest price at which the residence was offered for sale after February 28, 1975.

PAR. 2. Paragraph (c)(3) of § 1.6014–2 is amended by revising subdivisions (vi) and (vii) and adding new subdivisions (viii) and (ix), to read as follows:

**§ 1.6014–2 Tax not computed by taxpayer for taxable years beginning after December 31, 1969.**

* * * * *

(c) *Effects of election.* * * *

(3) A taxpayer who makes an election under section 6014 shall not be precluded from claiming—

* * * * *

(vi) The credit under section 41 (relating to contributions to candidates for public office);

(vii) The credit under section 42 (relating to overpayments of tax);

(viii) The credit under section 43 (relating to earned income); or

(ix) The credit under section 44 (relating to purchase of new principal residence).

REGULATIONS ON PROCEDURE AND ADMINISTRATION (26 CFR PART 301)

PAR. 3. Section 301.6096 is amended by revising subsection (b) and the historical note to read as follows:

**§ 301.6096 Statutory provisions; designation by individuals.**

SEC. 6096. *Designation by individuals.* * * *

(b) *Income tax liability.* For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown on his return) allowable under sections 33, 37, 38, 40, 41, 42, and 44.

(Sec. 6096 added by sec. 302, Foreign Investors Tax Act 1966 (80 Stat. 1587); amended by sec. 802 (a) and (b)(2), Rev. Act 1971 (85 Stat. 573); sec. 6(a), Act of July 1, 1973 (87 Stat. 135, Pub. Law 93–53); secs. 203(b)(4) and 208(d)(4), Tax Reduction Act 1975 (89 Stat. 30, 32))

PAR. 4. Section 301.6096–1 is amended to read as follows:

**§ 301.6096–1 Designation by individuals for taxable years beginning after December 31, 1972.**

* * * * *

(b) *Income tax liability.* For purposes of paragraph (a) of this section, the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown on his return) allowable under sections 33, 37, 38, 40, 41, 42, and 44.

[FR Doc.75–18472 Filed 7–15–75;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### [ 50 CFR Part 20 ]

### MIGRATORY BIRD HUNTING

### Importation Limits

Section 20.61 of Title 50, Code of Federal Regulations, sets limits on the numbers of migratory game birds which may be imported from any foreign country. These importation limits are imposed by the United States as part of its effort to protect species of migratory game birds from extermination. Importations from Canada are exempted from such limits as apply to migratory waterfowl because Canada and the United States are signatories to a treaty for the protection of migratory birds and because Canada has domestic legislation regulating the export of migratory game birds.

The government of Mexico is also signatory to a bilateral treaty with the United States for the protection of migratory birds and has recently enacted domestic legislation regulating the export of migratory game birds. The purpose of the proposed amendment is to add Mexico as a country from which migratory game birds may be imported without regard to the express, numerical importation limits of § 20.61 of Title 50, CFR. This change is considered desirable because principles of international comity suggest that the United States defer primary responsibility for the protection of migratory game birds within Mexico to the sovereign government of that country and because responsible authorities within that country may best be in a position to regulate and protect such birds.

Under the proposed change, the United States will no longer impose importation limits as such on migratory game birds from Mexico. However, any person who imports migratory game birds in excess of the maximum number permitted to be exported by Mexican authorities will still be in violation of United States' law (namely, proposed § 20.61(a)(2) or (b)(2) of Title 50, CFR) and will be subject to prosecution in the United States under the Migratory Bird Treaty Act, § 707 of Title 16, United States Code.

*Submittal of written comments.* Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, Post Office Box 19183, Washington, D.C. 20036. All relevant comments received no later than July 31, 1975, will be considered. The usual 30-day period for submittal of written comments has been reduced to 15 days because of the desirability of (1) removing the express numerical importation limits at the Mexican border in time for the forthcoming hunting season, and (2) including notice of such removal of these limits in the annual regulatory announcement concerning season lengths, bag and possession limits, etc. for migratory game birds. It is also considered that the nature of the proposed change as one which "relaxes" an already-existing regulatory requirement is such as to permit a shortened comment period. Comments received will be available for public inspection during normal business hours at the Service's office in Suite 600, 1612 K Street, NW., Washington, D.C.

This notice of proposed rulemaking is issued under the authority contained in the Migratory Bird Treaty Act (16 U.S.C. 704).

Dated: July 11, 1975.

LYNN A. GREENWALT,
*Director, U.S. Fish and Wildlife Service.*

Accordingly, it is proposed to amend Subchapter B, Chapter I to Title 50, Code of Federal Regulations, by revising § 20.61 to read as follows:

**§ 20.61 Importation limits.**

No person shall import migratory game birds in excess of the following importation limits:

(a) *Doves and pigeons.*—(1) From any foreign country except Mexico, during any one calendar week beginning on Sunday, not to exceed 25 doves, singly or in the aggregate of all species, and 10 pigeons, singly or in the aggregate of all species.

(2) From Mexico, not to exceed the maximum number permitted to be exported by Mexican authorities.

(b) *Waterfowl.*—(1) From any foreign country except Canada and Mexico, during any one calendar week beginning on Sunday, not to exceed 10 ducks, singly or in the aggregate of all species, and five geese including brant, singly or in the aggregate of all species.

(2) From Canada and Mexico, not to exceed the maximum numbers permitted to be exported by Canadian and Mexican authorities, respectively.

[FR Doc.75–18469 Filed 7–15–75;8:45 am]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### [ 7 CFR Part 29 ]

### TOBACCO INSPECTION

### Inspection of Tobacco

Notice is hereby given that the U.S. Department of Agriculture has under consideration the amendment of Subparts B and F, of 7 CFR Part 29, relating to fees and charges for permissive inspection under the regulations governing the inspection of tobacco pursuant to the authority contained in The Tobacco Inspection Act (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

*Statement of consideration.* The Department proposes to amend "Subpart B—Regulations", relating to fees and charges for services performed other than under an agreement (21 FR 3669, May 30, 1956; and 25 FR 4949, June 4,

1960). The Tobacco Inspection Act authorizes official inspection and grading of tobacco. Such inspection and grading service is either mandatory or permissive. Mandatory inspection, as defined in 7 CFR 29.71, consists of inspecting and certifying tobacco, free of charge, on designated markets (as defined in 7 CFR 29.1(e), before it is offered for sale. Permissive inspection, as defined in 7 CFR 29.56, consists of inspecting, including sampling and weighing, and certificating, and is made available to interested parties on a fee basis. The Act requires such fees to be reasonable, and as nearly as possible, to cover the cost of performing the services.

The current regulations, 7 CFR 29.123, provide that fees and charges for permissive inspection services performed other than under an agreement shall comprise the cost of travel expense, per diem allowance and salaries (21 FR 3669, May 30, 1956; and 25 FR 4949, June 4, 1960). It is proposed that § 123 be revised to provide that the fee for such service include the cost of related expenses, as well as the cost of salaries, travel, and per diem. This charge will increase the fees for such service to more nearly cover the Department's cost of performing the service. Additionally, it is proposed that a standard hourly rate of compensation be used rather than a fee based on the salary of the specific inspector who performed the service and that fee be based on the actual time required to render the service calculated to the nearest 30-minute period. Therefore, under the proposal, the base hourly rate will be $12.60; the overtime hourly rate for service performed outside the inspector's regularly scheduled tour of duty will be $15.00; and the hourly rate for services performed on Sundays or holidays will be $18.85. This proposed uniform rate of calculation will substantially reduce administrative recordkeeping and eliminate the possibility of error caused by the charging of different hourly rates based on the varying GS grades of inspectors as is currently done.

It is also proposed to amend § 9252 of 7 CFR Part 29, appearing in Subpart F, which establishes the fees and charges for the permissive inspection of nonquota Maryland tobacco, U.S. Type 32, produced and marketed in a quota area. The current regulations, 7 CFR 29.9252, provide that fees and charges for inspection and certification services at receiving points shall comprise the cost of travel expenses, per diem allowances, and salaries (38 FR 27817, October 9, 1973). It is proposed that § 29.9252 be amended to provide that the fees charged for such inspection will be the same as the fees charged as proposed in the amendment to 7 CFR 29.123 discussed above.

It is proposed that §§ 29.123 and 29.9252 of title 7, Code of Federal Regulations be revised as follows:

**§ 29.123 Fees and charges.**

The fees and charges for inspection other than under an agreement shall be as follows:

(a) Fees and charges for inspection at redrying plants and receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The base hourly rate shall be $12.60. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $15.00. The rate of $18.85 shall be charged for work performed on Sunday or holidays.

(b) The fees or charges for hogshead, bale or case inspection shall comprise the same costs as provided in paragraph (a) of this section.

(c) The fees or charges for sample inspection shall comprise the same costs as provided in paragraph (a) of this section.

**§ 29.9252 Fees and charges for inspection and certification services other than under an agreement.**

Fees and charges for inspection and certification services at receiving points shall comprise the cost of salaries, travel, per diem, and related expenses to cover the cost of performing the service. Fees shall be for actual time required to render the service calculated to the nearest 30-minute period. The base hourly rate shall be $12.60. The overtime rate for service performed outside the inspector's regularly scheduled tour of duty shall be $15.00. The rate of $18.85 shall be charged for work performed on Sunday or holidays.

All persons who desire to submit written data, views or arguments in connection with these proposed amendments should file the same, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112-A Administration Building, Washington, D.C. 20250, on or before August 15, 1975. All written submissions pursuant to the notice will be made available for public inspection at the Office of the Hearing Clerk during the official hours of business (7 CFR 1.27(b)).

Dated: July 11, 1975.

JOHN C. BLUM,
*Acting Administrator.*

[FR Doc.75-18462 Filed 7-15-75;8:45 am]

---

## [7 CFR Part 917]

## FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

### Approval of Expenses and Fixing of Rates of Assessment for the 1975-76 Fiscal Period and Carryover of Unexpended Funds

This notice invites written comment relative to the proposed budget and rates of assessment to be paid by handlers for local administration of Marketing Order 917, regulating shipments of fresh California pears, plums, and peaches. The proposed budget is $945,470 and the rates of assessment are $.01 per carton of pears, $.075 per lug of plums, and $.04 per lug of peaches.

Consideration is being given to the following proposals submitted by the Control Committee, established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), as the agency to administer the provisions thereof. Said agreement and order regulate the handling of fresh pears, plums, and peaches grown in the State of California and are effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposals are as follows:

(a) That expenses that are reasonable and likely to be incurred during the fiscal period from May 1, 1975, through February 29, 1976, will amount to $945,470.

(b) That the rates of assessment for such fiscal period payable by each handler in accordance with § 917.37 be fixed at:

(1) One cent ($0.01) per No. 29B special lug box of pears, or its equivalent in other containers or in bulk;

(2) Seven and five-tenths cents ($0.075) per No. 22D standard lug box of plums, or its equivalent in other containers or in bulk; and

(3) Four cents ($0.04) per L.A. lug of peaches or its equivalent in other containers or in bulk.

(c) That unexpended assessment funds in excess of expenses incurred during the fiscal period ending February 28, 1975, be carried over in accordance with § 917.38 of said marketing agreement and order.

Terms used in the amended marketing agreement and this part shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and this part, and "No. 29B special lug box" and "No. 22D standard lug box" shall have the same meanings as set forth in § 1387.11 of the regulations of the California Department of Food and Agriculture.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than July 31, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: July 11, 1975.

CHARLES R. BRADER,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.75-18463 Filed 7-15-75;8:45 am]

---

## [7 CFR Part 923]

## HANDLING OF SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

### Expenses and Fixing of Rate of Assessment for the 1975-76 Fiscal Period

This notice invites written comment relative to proposed expenses of $25,698 and rate of assessment of $0.80 per ton of cherries to support the activities of the

Washington Cherry Marketing Committee for the 1975–76 fiscal period under Marketing Order No. 923.

Consideration is being given to the following proposals submitted by the Washington Cherry Marketing Committee, established under the marketing agreement and Order No. 923 (7 CFR Part 923) as the agency to administer the provisions thereof. Said agreement and order regulate the handling of fresh sweet cherries grown in certain designated counties in the State of Washington and are effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposals are as follows:

(a) That expenses which are reasonable and likely to be incurred by said committee, during the period April 1, 1975, through March 31, 1976, will amount to $25,698.

(b) That there be fixed, at $0.80 per ton of sweet cherries, the rate of assessment payable by each handler in accordance with § 923.41 of the aforesaid marketing agreement and order.

All persons who submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than July 31, 1975. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: July 11, 1975.

CHARLES R. BRADER,
*Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc.75-18464 Filed 7-15-75;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

### [ 40 CFR Part 130 ]

[FRL 398-8]

### POLICIES AND PROCEDURES FOR STATE CONTINUING PLANNING PROCESS

The purpose of this notice is to propose an amendment to 40 CFR Part 130—Policies and Procedures for State Continuing Planning Process. On March 27, 1973, notice was published in the FEDERAL REGISTER (38 FR 8034) that the Environmental Protection Agency (EPA) was proposing, in the form of interim regulations, policies and procedures for the State continuing planning process pursuant to Section 303(e) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.) (hereinafter referred to as the Act). On June 3, 1974, notice was published in the FEDERAL REGISTER (39 FR 19634) that the EPA was amending 40 CFR to add a new Part 130, final regulations entitled "Policies and Procedures for State Continuing Planning Process."

Section 303(e) of the Act requires each State to submit a continuing planning process which is consistent with the Act. Following the publication of the interim regulations of March 27, 1973, and publication of the final regulations of June 3, 1974, all States, with the exception of the State of Illinois received EPA approval of a State continuing planning process.

These amended regulations describe the necessary elements of, and provide procedures for review, revision, and approval of a State's continuing planning process. In addition, these regulations now provide the mechanism for States to satisfy the Statewide requirements of Section 208. These regulations also provide the States with a mechanism for satisfying portions of Sections 303(d) (Critical waters and total maximum daily loads); 305(b) (Annual assessment and projection of water quality and related information, including nonpoint sources); 314(a) (Clean lakes); and 516 (b) (Federal/State estimate of publicly owned treatment works construction needs); they also provide data for 104 (a)(5) (Federal report on water quality).

The broad goals of the continuing planning process are to assure that the States develop the water quality assessment and establish the management program necessary to make coordinated water quality management decisions; to establish water quality objectives which take into account overall Federal, State, and local policies and programs, including those for land use and other related natural resources; and to develop the strategic guidance for preparing the annual State program submittal under Section 106 of the Act.

The process will result in a State strategy for preventing and controlling water pollution over a five year period to be updated annually, which will be based upon water quality management plans where they are completed and upon other available information where the plans are not completed. The level of detail of State water quality management plans will be tailored to the problems of the area. The timing for development and the content of plans will be established by agreement between the State and the Regional Administrator, consistent with the following:

(a) Phase I plans consist of those plans submitted prior to July 1, 1975, or those plans submitted prior to July 1, 1976, where an extension of up to one year has been granted by the Regional Administrator for specific basins or other approved planning areas. For Phase I, the requirements for planning are those requirements set forth in 40 CFR Parts 130 and 131, "Water Quality Management Basin Plans," promulgated on June 3, 1974. Phase I plans generally stress point source controls but may identify and develop solutions to nonpoint source problems where sufficient information and technical expertise is available.

(b) Phase II plans consist of those plans, or portions thereof, submitted after Phase I plans are approved. Initial Phase II State water quality management plans will be completed and submitted to the Regional Administrator for pre-adoption review no later than July 1, 1978, and will be adopted, certified, and submitted to the Regional Administrator for approval no later than July 1, 1979. Any State water quality management planning after July 1, 1975 (or July 1, 1976 in those cases where an extension of up to one year has been granted by the Regional Administrator) is to conform to the requirements of these Parts 130 and 131 as amended. Individual water quality management plans developed pursuant to the State continuing planning process should be no more detailed than is necessary for sound water quality management.

Regulations under Part 131 of this chapter describe requirements for the preparation of State water quality management plans pursuant to the State's continuing planning process. Such plans form a basis for implementing applicable point and nonpoint source controls in order to achieve the requirements of the Act. These plans are to consist of such elements as are necessary for sound planning and program management in the area covered by the plan. Regulations under Part 35 Subpart B of this chapter describe requirements for the preparation of the annual State program plan. Part 131 and Part 35 Subpart B regulations should be consulted during the review and revision of the continuing planning process under this Part 130. Additional guidelines concerning the State continuing planning process, the development of State water quality management plans, and the development of the annual State program plans will be prepared to assist the States in carrying out the provisions of these regulations.

Federal properties, facilities, and activities are subject to Federal, State, interstate, and local standards and effluent limitations for control and abatement of pollution. The State's planning process should include provision for Federal sources. It is contemplated that Federal agencies will provide information to the States in accordance with procedures established by the Administrator.

These proposed amendments have been reviewed by representative Federal, State, and local agencies. The EPA has revised these amendments to reflect most of the concerns raised, by either adopting the comments or substantially satisfying them through editorial changes. The issue of who should submit the planning process and State water quality management plans to the Regional Administrator for review and approval remains to be resolved. Because these amendments will require extensive coordination between appropriate Federal, State, and local agencies, several groups believe that the Governor should be required to submit the planning process and the State water quality management plans in order to assure that the proper coordination has taken place. On the other hand, several States have obected since submission by the Governor would undoubtedly result in additional delays in the

adoption and submission process. Resolution of this issue will be based on comments received during the review period.

Prior to the final adoption of these amendments to this part, consideration will be given to comments, suggestions, or objections which may be submitted in writing to:

Director, Water Planning Division (WH-454), 401 M Street SW., Room E813, Washington, D.C. 20460.

Consideration will be given to all comments, suggestions, or objections received on or before August 28, 1975.

It is therefore proposed to amend 40 CFR Part 130 by revising the existing part to add a new Part 130 to read as follows.

Dated: July 10, 1975.

RUSSELL TRAIN,
*Administrator.*

---

## PART 130—POLICIES AND PROCEDURES FOR STATE CONTINUING PLANNING PROCESS

### Subpart A—Scope and Purpose; Definitions

Sec.
130.1 Scope and purpose.
130.2 Definitions.

### Subpart B—General Requirements

130.10 Planning process requirements.
130.11 Agreement on level of detail and timing of State water quality management plan preparation.
130.12 Designation of planning agencies.
130.13 Designation of implementing and operating agencies.
130.14 Intergovernmental cooperation and coordination.

### Subpart C—Requirements for State Strategy

130.20 State strategy; contents.
130.21 Submission of State strategy.

### Subpart D—Relationship of Planning Process and Other Programs

130.30 Relationship to monitoring and surveillance program.
130.31 Relationship to municipal facilities program.
130.32 Relationship to National Pollutant Discharge Elimination System.
130.33 Relationship to other local, State, and Federal planning programs.
130.34 Planning requirements for Federal facilities and lands.

### Subpart E—Planning Process Adoption, Approval, and Revision Procedures; Separability

130.40 Adoption and submission of process.
130.41 Review and approval or disapproval of process.
130.42 Withdrawal of approval of process.
130.43 Review and revisions of process.
130.44 Separability.

AUTHORITY: Secs. 106, 208, 303(d), 303(e), 305(b), 314, 501, 516(b) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

### Subpart A—Scope and Purpose; Definitions

#### § 130.1 Scope and purpose.

(a) This part establishes regulations specifying procedural and other requirements for the State continuing planning process pursuant to Section 303(e) of the Federal Water Pollution Control Act, as amended, Pub. L. 92-500, 86 Stat. 816 (1972); (U.S.C. 1251 et seq.).

(b) The broad goals of the continuing planning process are to assure that the States develop the water quality assessment and establish the management program necessary to make coordinated decisions affecting water quality; to establish water quality objectives which take into account overall State and local policies and programs, including those for land use and other related natural resources; and to develop the strategic guidance for preparing the annual State program submittal under Section 106 of the Act.

(c) The "continuing planning process" is a time-phased process by which the State develops:

(1) The State strategy, to be updated annually, which sets the State's major objectives, approach, and priorities for preventing and controlling pollution over a five year period.

(2) Individual State water quality management plans, which provide recommendations on water quality goals, define specific programs, priorities and targets for preventing and controlling water pollution in individual basins (or other approved planning areas) and establish policies which guide decision making over at least a twenty year span of time (in increments of five years).

(3) The annual State program plan required under Section 106 of the Act, which establishes the program objectives, identifies the resources committed for the State program each year, and establishes a mechanism for reporting progress toward achievement of program objectives.

#### § 130.2 Definitions.

As used in this part, the following terms shall have the meanings set forth below.

(a) The term "Act" means the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

(b) The term "EPA" means the United States Environmental Protection Agency.

(c) The term "Administrator" means the Administrator of the Envronmental Protection Agency.

(d) The term "Regional Administrator" means the appropriate EPA Regional Administrator.

(e) The terms "continuing planning process," "planning process," and "process" mean the continuing planning process, including any revision thereto, required by Section 303(e) of the Act.

(f) The term "State water quality management plan" means the plan for managing the water quality, including consideration of the relationship of water quality to land and water resources and uses, for each hydrologic basin or other EPA/State approved planning area within a State. Preparation and adoption of State water quality management plans in accordance with regulations under this Part 130 and Part 131 of this chapter shall constitute compliance with State responsibilities under Sections 208 and 303(e) of the Act.

(g) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into waters of the United States including the Territorial Seas.

(h) The term "schedule of compliance" means remedial measures to be accomplished and a sequence of actions or operations leading to compliance with applicable effluent limitations, other limitation, prohibition, or standard which are contained in a National Pollutant Discharge Elimination System permit or State permit which are legally binding on the discharger.

(i) The term "target abatement dates" means:

(1) For point sources, a sequence of actions or control measures for point sources which have not yet been formally adopted through the permit process and therefore are not legally binding on the discharger.

(2) For nonpoint sources, remedial measures to be accomplished and a sequence of actions or operations leading to compliance with management or regulatory programs established pursuant to approved State water quality management plans.

(j) The term "municipal needs" means the municipal collection and treatment systems needs by 5-year increments, over a 20-year period (including identification of major alternatives thereto), including requirements for and general availability of land for such facilities, total capital funding required for construction and a program to provide the necessary financial arrangements for the development of such facilities.

(k) The term "National Pollutant Discharge Elimination System" means the national permitting system authorized under Section 402 of the Act, including any State or interstate permit program which has been approved by the Administrator pursuant to Section 402 of the Act.

(l) The term "phasing of planning" means the time scheduled State water quality management planning elements required to be completed by a State and approved by the Regional Administrator.

(m) The term "basin" means the streams, rivers, tributaries, and lakes and the total land and surface water area contained within one of the major or minor basins defined by EPA, or any other basin unit as agreed upon by the State(s) and the Regional Administrator. Unless otherwise specified, "basin" shall refer only to those portions within the borders of a single State.

(n) The term "segment" means a portion of a basin or other approved planning area, the surface waters of which have common hydrologic characteristics (or flow regulation patterns); common

natural physical, chemical and biological characteristics and processes; and common reactions to external stresses, such as the discharge of pollutants. Segments will be classified as either a water quality segment or an effluent limitation segment as follows:

(1) *Water quality segment.* Any segment where it is known that water quality does not meet applicable water quality standards and/or is not expected to meet applicable water quality standards even after the application of the effluent limitations required by Section 301(b)(2)(A) and (B) of the Act.

(2) *Effluent limitation segment.* Any segment where it is known that water quality is meeting and will continue to meet applicable water quality standards or where there is adequate demonstration that water quality will meet applicable water quality standards after the application of the effluent limitations required by Section 301(b)(2)(A) and (B) of the Act.

(o) The term "significant discharge" means any point source discharge for which timely management action must be taken in order to meet the water quality objectives within the period of the operative State water quality management plan. The significant nature of the discharge is to be determined by the State, but must include, as a minimum, any discharge which is causing or will cause serious or critical water quality problems relative to the segment to which it discharges.

(p) The term "Best Management Practices" (BMP) means a practice, or combination of practices, that is determined by a State after problem assessment, examination of alternative practices, and appropriate public participation to be practicable and most effective in preventing or reducing the amount of pollution generated by diffuse sources to a level compatible with water quality goals.

(q) The definitions of the terms contained in Section 502 of the Act shall be applicable to such terms as used in this part unless the context otherwise requires.

## Subpart B—General Requirements

### § 130.10 Planning process requirements.

(a) The State shall prepare a planning process which shall provide for:

(1) The preparation and adoption of State water quality management plans for all waters within the State that fulfill the requirements contained in Part 131 of this chapter;

(2) The preparation of the annual State strategy as described in Subpart C of this Part 130;

(3) The coordination of the State's water quality management planning with related Federal, State, interstate, and local comprehensive, functional, and other developmental planning activities, including land use and other natural resources planning activities, as described in § 130.33;

(4) The development, review and adoption of water quality standards in accordance with Section 303(c)(1) and (2) of the Act;

(5) The development and implementation of a Statewide policy on antidegradation, consistent with the criteria identified in § 131.11(e) of this chapter;

(6) Public participation in accordance with Section 101(e) of the Act and in accordance with Part 105 of this chapter; and

(7) Adequate intergovernmental input in the development and implementation of State water quality management plans as described in § 130.14.

(b) The planning process that is submitted by the State shall contain, as a minimum, the following:

(1) A description of how each of the requirements specified in § 130.10(a) will be achieved.

(2) A listing(s) and a map(s) of the State showing basins or other approved planning areas and segments, and a listing(s) and a map(s) showing recommended areas delineated for areawide waste treatment management planning (under Section 208) and facilities planning (under Section 201).

(3) A State/EPA agreement on the level of detail and the schedule for preparation of State water quality management plans as described in § 130.11.

(4) A listing of the classification of segments.

(5) The designation by the Governor of a single State agency responsible for coordination of the required planning under this part and Part 131 of this chapter.

(6) The designation(s) by the Governor or his designee of the planning agency or agencies that will perform the planning under this part and Part 131 of this chapter, as described in § 130.12 of this part.

(7) A description of public participation in the development of the continuing planning process, including participation of local governments.

(8) A statement that legal authorities required at the local and/or State levels to prepare, adopt, and implement State water quality management plans as required by the planning process exist or will be sought.

### § 130.11 Agreement on level of detail and timing of State water quality management plan preparation.

(a) The appropriate level of detail and timing of State water quality management plan preparation proposed for each basin or other approved planning area will depend on the water quality problems and the water quality decisions to be made and shall be established by agreement between the State and the Regional Administrator.

(b) The agreement shall include an indication of those segments, basins, or other approved planning areas wherein the State certifies that particular water quality and/or source control problems do not exist or will not develop over the twenty-year planning period and, therefore, that certain types of planning and implementation will not be undertaken.

(c) The agreement shall provide a sequence for phasing of planning, including nonpoint source management planning, in sufficient time to assure compliance with the 1983 national water quality goal specified in Section 101(a)(2) of the Act. The schedule should assure the orderly implementation of the planning process consistent with existing planning efforts and needs and the capabilities for planning in the State. The agreement shall define the State's priorities for the development of State water quality management plans, or portions thereof, pursuant to the process and shall be consistent with the timing requirements specified in § 131.10(c) of this chapter.

### § 130.12 Designation of planning agencies.

(a) The State may designate a State, local, or interstate agency to conduct all or any portion of the water quality management planning under this part and Part 131 of this chapter.

(b) Locally elected officials of major general purpose units of government, and other pertinent local and areawide organizations within the jurisdiction of a proposed local or interstate planning agency, shall be consulted prior to any final designation of an agency identified in paragraph (a) of this section.

(c) Each designation of an agency shall include:

(1) The agency's name, address, and name of the director; and

(2) The agency's jurisdiction (geographical coverage and extent of planning responsibilities).

(d) In the event that preparation of all or a portion of a State water quality management plan is to be undertaken by an agency other than the State water pollution control agency, evidence from such other agency shall be supplied which shows acceptance of such delegation of planning responsibility and the designated agency's capability and intent to comply with the time schedules set forth in the planning process and to develop a plan consistent with the laws of the respective State and the Act.

(e) The State may make additional designations, as set forth in this section, from time to time. Such designations shall be accomplished by revising the planning process as provided in § 130.43.

(f) Whenever the State chooses to undertake the planning and/or management of a nonpoint source program in the designated area(s) pursuant to Section 208(b)(4) of the Act, the State shall comply with requirements of § 131.11(n) of this chapter.

(g) If the State does not choose to exercise the option pursuant to Section 208(b)(4) in a designated area, the designated areawide planning agency shall be responsible for the development of the nonpoint source regulatory program(s).

### § 130.13 Designation of implementing and operating agencies.

(a) Upon completion and approval of a State water quality management plan, the State shall designate the appropriate State, interstate, regional, and/or local agency(ies) to carry out all appropriate

provisions of the State water quality management plan(s).

(b) The State may designate a specific agency(ies) to begin implementing a specified portion(s) of the State water quality management plan(s) prior to completion of the plan(s).

(c) The Regional Administrator shall accept and approve all designated implementing and operating agency(ies) unless, within 120 days of a designation, he finds that the agency(ies) does not have adequate authority and capability, as required in § 131.11(o)(2) of this chapter, to accomplish its assigned responsibilities under the plan.

### § 130.14 Intergovernmental cooperation and coordination.

(a) The process shall assure that adequate and appropriate areawide and local planning inputs will be included in the development and implementation of State water quality management plans.

(b) Local governments within the State are to be encouraged to utilize existing, or develop appropriate institutional or other arrangements with other local governments in the same State for cooperation in the development and implementation of State water quality management plans, or portions thereof.

(c) The State shall provide a mechanism for meaningful and significant input from local, State, and Federal units of government, as appropriate. As an element of this mechanism, a policy advisory committee shall be established for each basin or other approved planning area. As a minimum, this policy advisory committee's membership shall consist of a majority of representatives of local publicly elected officials of general purpose units of government. The committee shall advise the responsible planning or implementing agency during the development and implementation of the plan on broad policy matters, including the fiscal, economic, and social impacts of the plan.

(d) The State shall provide for interstate cooperation (and where necessary, should provide for international cooperation in conjunction with appropriate Federal agencies) whenever a plan involves the interests of more than one State. When a State water quality management plan or portion of a plan is under development or is being implemented in the State for an area affecting or affected by waters of one or more other States, the State shall cooperate and coordinate with each such other State in the development and implementation of the State water quality management plan pertinent to such area.

## Subpart C—Requirements for State Strategy

### § 130.20 State strategy; contents.

(a) Based on current water quality conditions, evaluation of program achievement to date, State water quality management plans developed under this part and Part 131 of this chapter (including Phase I and Phase II), and the annual EPA guidance (described in Subpart B of Part 35 of this chapter), each State shall prepare and update annually a State strategy for preventing and controlling pollution over a five-year period. The strategy shall contain:

(1) A Statewide assessment of water quality problems and the causes of these problems. This assessment may be based on the water quality analysis used to prepare the State's annual report required under Section 305(b) of the Act.

(2) A listing of the geographical priorities of these problems.

(3) A ranking of each segment based on the Statewide assessment of water quality problems.

(4) An overview of the State's approach to solving its water quality problems identified in subparagraph (1) of this paragraph, including a discussion of the extent to which nonpoint sources of pollution will be addressed by the State program.

(5) A year-by-year estimate of the financial resources needed to conduct the State program, by major program element (as defined in Subpart B of Part 35 of this chapter).

(6) A listing of the priorities and scheduling of State water quality management plan preparation and implementation, areawide plans, and other appropriate program actions to carry out subparagraph (4) of this paragraph.

(b) The State strategy shall be based upon information derived from completed State water quality management plans, when available, and from other available information in areas where State water quality management plans are not completed.

### § 130.21 Submission of State strategy.

(a) The State strategy shall be submitted annually as part of the annual State program submittal required under Section 106 of the Act.

## Subpart D—Relationship of Planning Process and Other Programs

### § 130.30 Relationship to monitoring and surveillance program.

(a) The process shall provide that each State water quality management plan shall be based upon the best available monitoring and surveillance data to determine the relationship between in-stream water quality and individual sources of pollutants and, where practicable, to determine the relationship between land disposal and groundwater quality.

(b) The State shall insure that an appropriate program to monitor the total stream pollutant loadings will be established for all water quality segments, including contributions for significant parameters from significant dischargers, which shall be related to the total maximum daily loads established by the State water quality management plan pursuant to § 131.11(f). The State may provide for the maintenance of a small number of permanent in-stream water quality trend evaluation stations at key locations, and where provided, shall be used as a basis for completing the reports required by Section 305(b) of the Act. The monitoring program shall be developed in accordance with provisions of Appendix A to Subpart B of Part 35 of this chapter.

(c) In areas where a State determines that a groundwater pollution or contamination problem exists or may exist from the disposal of wastes on land, or in subsurface excavations, the State, to support the establishment of controls or procedures to abate such pollution or contamination as identified in § 131.11(j)–(l) of this chapter, shall conduct or require to be conducted by the disposing person or agency a monitoring survey or continuing program of monitoring to determine present or potential effects of such disposal, where such disposal is not prohibited.

(d) The process shall provide that a monitoring survey for the area within water quality segments covered by the State water quality management plan will be repeated at appropriately defined intervals, depending on the variability of conditions and changes in hydrologic or effluent regimes.

### § 130.31 Relationship to municipal facilities program.

(a) Before awarding initial grant assistance for any project for any treatment works under Section 201(g) of the Act, where an applicable State water quality management plan, or relevant portion thereof, has been approved in accordance with this part and Part 131 of this chapter, the Regional Administrator shall determine, pursuant to Section 208(d) of the Act, that the applicant for such grant is the appropriate designated agency approved by the Regional Administrator pursuant to § 130.13.

(b) Before approving a Step II or Step III grant for any project for any treatment works under Section 201(g) of the Act, the Regional Administrator shall determine, pursuant to § 35.925–2 of this chapter, that such works are in conformance with any applicable State water quality management plan, or relevant portion thereof, approved by the Regional Administrator in accordance with this part and Part 131 of this chapter.

(c) The Regional Administrator may elect not to approve a grant for any project for any treatment works under Section 201(g) of the Act where an incomplete or a disapproved plan does not provide an adequate assessment of the needs and priorities for the area in which the project is located, consistent with the Act's planning requirements.

(d) The Regional Administrator and the State, through the agreement described in § 130.11, shall assure that planning for any project for any treatment works is accomplished in a timely manner, consistent with priorities for construction of such projects.

### § 130.32 Relationship to National Pollutant Discharge Elimination System.

(a) State participation in the National Pollutant Discharge Elimination System, other than the interim participation provided in Section 402(a)(5) of the Act, shall not be approved for any State which does not have a continuing plan-

ning process approved by the Regional Administrator pursuant to § 130.41.

(b) Approval of State participation in the National Pollutant Discharge Elimination System may be withdrawn from any State if approval of the continuing planning process is withdrawn for any reason, including withdrawal of process approval based on gross failure to comply with the schedule for State water quality management plan preparation or on failure of State water quality management plans to conform with the planning process requirements.

(c) No permit under Section 402 of the Act shall be issued for any point source which is in conflict with a plan approved by the Regional Administrator in accordance with this part and Part 131 of this chapter.

### § 130.33 Relationship to other local, State, and Federal planning programs.

(a) The process shall assure that State water quality management plans are coordinated and describe the relationship with plans for local designated areas within the State, with planning required in adjacent States under Section 208 of the Act, with affected State, local, and Federal programs, and with other applicable resource and developmental planning including:

(1) State and local land use and development programs.

(2) Activities stemming from applicable Federal resource and developmental programs including:

(i) The Coastal Zone Management Act (Pub. L. 92–583).

(ii) The Rural Development Act of 1972 (Pub. L. 92–419).

(iii) The Clean Air Act, as amended (Pub. L. 91–604).

(iv) The Solid Waste Disposal Act, as amended (Pub. L. 91–512).

(v) The Safe Drinking Water Act (Pub. L. 93–523).

(vi) Wastewater management urban studies programs administered by the U.S. Army Corps of Engineers (Pub. L. 685; Pub. L. 429).

(vii) Transportation planning administered by the Department of Transportation (23 U.S.C. 134; 49 U.S.C. 1301; 49 U.S.C. 1601).

(viii) Other Federally assisted planning and management programs.

(b) Designated areawide planning (the detailed planning covering complex water quality problems generally found in urban/industrial concentrations) under Section 208 of the Act shall be incorporated in the State water quality management plan. Similarly, the Section 201 facilities plans are to be considered detailed portions of the State water quality management plan providing in-depth analysis of specific municipal and storm drainage problems. The State is responsible for assuring compatibility of both 201 facilities planning and 208 designated areawide planning with the State water quality management plan.

(c) In the event that a "level B" study (as required under Section 209 of the Act) is underway or has been completed, the State shall incorporate the following outputs of the study and assure integration with appropriate portions of the State water quality management plan(s):

(1) Existing and projected future water withdrawals and consumptive demand over a 20-year period.

(2) Facilities and management measures to be undertaken to meet demands on the water supply program.

(3) The effects of the water supply program on water quality.

(4) Impact of authorized water development measures.

(5) Identification of proposed or designated wild and scenic stream reaches.

(6) Watershed management and land treatment measures.

(7) Energy development and production related factors.

(d) In the event that a "level B" plan has not been initiated, the State shall identify all appropriate constraints on water quality management which would be brought about by:

(1) Current and projected future water demands.

(2) Designated and desired wild and scenic river segments.

(3) Energy development and production factors.

### § 130.34 Planning requirements for Federal facilities and lands.

(a) Federal areas are required to be in compliance with State, interstate, and local substantive requirements respecting control and abatement of pollution to the same extent that any person is subject to such requirements. The authority for such substantive compliance is provided in Section 313 of the Act and Presidential Executive Order Number 11752.

(b) Federal agencies shall cooperate and give support to State governmental entities in the formulation and implementation of State water quality management plans for Federal areas and areas contiguous with Federally-owned areas.

(c) The Regional Administrator shall assist in coordination of substantive planning requirements for Federal facilities and lands between the appropriate State and Federal agency(ies).

(d) Disputes or conflicts between Federal agencies and State, interstate, or local agencies in matters affecting the application of or compliance with an applicable requirement for control and abatement of pollution shall be mediated by EPA. In such cases, if attempted mediation is unsuccessful the matter will be referred to the Office of Management and Budget under provisions of Executive Order 11752.

## Subpart E—Planning Process Adoption, Approval and Revision Procedures; Separability

### § 130.40 Adoption and submission of process.

(a) The continuing planning process shall be adopted after appropriate public participation as the official continuing planning process of the State.

(b) The Governor of each State, or his designee, shall submit the adopted continuing planning process to the Regional Administrator for approval.

(c) Submission shall be accomplished by delivering to the Regional Administrator the adopted planning process, as specified in § 130.10(b), and a letter from the Governor, or his designee, notifying the Regional Administrator of such action.

### § 130.41 Review and approval or disapproval of process.

(a) The Regional Administrator shall approve, conditionally approve, or disapprove the planning process submitted pursuant to § 130.40 within 30 days after the date of submission, as follows:

(1) If the Regional Administrator determines that the planning process conforms with the requirements of the Act and this part, he shall approve the process and so notify the Governor by letter.

(2) If the Regional Administrator determines that the process fails to conform with the requirements of the Act and this part, he shall either conditionally approve or disapprove the process and so notify the Governor or his designee by letter and shall state:

(i) The specific revisions necessary to obtain approval of the process; and

(ii) The time period for resubmission of the revised process or portions thereof.

(b) The Regional Administrator shall not approve any continuing planning process which will not result in timely State water quality management plans for all planning areas within the State that conform with the applicable requirements of the Act and Part 131 of this chapter.

### § 130.42 Withdrawal of approval of process.

(a) Substantial failure of any plan or plans prepared pursuant to the approved planning process to conform with applicable requirements of this part and Part 131 of this chapter, including gross failure to comply with the schedule for State water quality management plan preparation, may indicate that the planning process by which such plan or plans were developed was deficient and should be revised. Failure to accomplish necessary revisions of the planning process may result in withdrawal of approval of part or all of the process.

### § 130.43 Review and revisions of process.

(a) The State shall review annually its continuing planning process and shall revise the process as may be necessary to assure the development and maintenance of a State strategy and State program for preventing and controlling water pollution, based on current State water quality management plans which will accomplish national water quality objectives in conformity with the requirements of the Act.

(b) The State shall submit annual planning process revisions to the Re-

gional Administrator as part of the annual State Program Plan submitted required under Section 106 of the Act.

(c) In addition to any other necessary revisions identified by the State or the Regional Administrator, the State shall submit, within 120 days after these regulations become effective, whatever revisions to its planning process are necessary to insure conformity with this Part 130.

§ 130.44 Separability.

(a) If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this part, shall not be affected thereby.

[FR Doc.75-18356 Filed 7-15-75;8:45 am]

---

[ 40 CFR Part 131 ]

[FRL 399-2]

## PREPARATION OF STATE WATER QUALITY MANAGEMENT PLANS

The purpose of this notice is to propose an amendment to 40 CFR Part 131—Preparation of Water Quality Management Basin Plans. On May 23, 1973, notice was published in the FEDERAL REGISTER (38 FR 13567) that the Environmental Protection Agency was proposing policies and procedures designed to assist States in the preparation of water quality management basin plants pursuant to Section 303(e) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.) (hereinafter referred to as the Act). On June 3, 1974, notice was published in the FEDERAL REGISTER (39 FR 19639) that the EPA was amending 40 CFR to add a new Part 131, final regulations entitled "Preparation of Water Quality Management Basin Plans."

Section 303(e) of the Act requires each State to have a continuing planning process which is consistent with the Act. State water quality management plans are to be prepared in accordance with the State's continuing planning process submitted and approved pursuant to Part 130 of this chapter.

These amended regulations describe the requirements for preparation of water quality management plans and the procedures governing plan adoption, submission, revision, and EPA approval. These regulations now specifically include the provisions for Statewide planning responsibilities under Section 208 of the Act and are designed to assure that water quality management plans prepared pursuant to this Part 131 will be appropriate for water quality management both in areas having complex water quality problems and in less complicated situations.

The primary objective of the State water quality management plans will be to achieve the 1983 national water quality goal of the Act, where attainable. The plans will identify those areas in which the 1983 water quality goal is attainable; identify necessary revisions to water quality standards which reflect appropriate beneficial water uses to be achieved or protected and water quality criteria necessary to support those beneficial uses; and identify the controls, regulatory programs, and implementing and operating agencies necessary to attain the desired water quality goals. In addition, in those areas where the 1983 water quality goal may not be attainable, the plans will identify the water quality goals to be achieved and, where necessary, provide appropriate information (such as wasteload allocation information) which may be relevant in making water quality related effluent limitation determinations pursuant to Section 302 of the Act.

The State water quality management plans will serve as a management document which identifies the water quality problems of a particular basin or other approved planning areas and sets forth an effective management program to alleviate those problems and preserve water quality for all intended uses. Thus, development of the plans will involve an iterative process of establishing attainable water quality goals, identifying necessary controls and regulatory programs, and determining the resulting environmental, social, and economic impact.

EPA will prepare guidelines concerning the development of State water quality management plans to assist the States in carrying out the provisions of these regulations. In addition, EPA anticipates proposing, toward the end of calendar year 1975, regulations governing the review and revision of water quality standards under Section 303(c) of the Act and the determination of water quality related effluent limitations under Section 302 of the Act. These regulations, therefore, will address the relationship between the social and economic considerations required in Section 302 of the Act and the attainability of the national water quality goal expressed in Section 101(a)(2) of the Act.

These proposed amendments have been reviewed by representative Federal, State and local agencies. The EPA has revised these amendments to reflect most of the concerns raised, by either adopting the comments or substantially satisfying them through editorial changes.

Since plans under this part must be prepared in accordance with the approved State continuing planning process, regulations pertaining to the planning process, set forth in Part 130 of this chapter, should also be considered.

Prior to the final adoption of the amendments to this part, consideration will be given to comments, suggestions, or objections which may be submitted in writing to:

Director, Water Planning Division (WH-454), 401 M Street SW., Room E813, Washington, D.C. 20460.

Consideration will be given to all comments, suggestions, or objections received on or before August 28, 1975.

It is therefore proposed to amend 40 CFR Part 131 by revising the existing part to add a new Part 131 to read as follows.

Dated: July 10, 1975.

RUSSELL TRAIN,
*Administrator.*

---

## PART 131—PREPARATION OF STATE WATER QUALITY MANAGEMENT PLANS

### Subpart A—Scope and Purpose; Definitions

Sec.
131.1 Scope and purpose.
131.2 Definitions.

### Subpart B—Plan Content Requirements

131.10 General requirements.
131.11 Plan content; required elements.

### Subpart C—Plan Adoption, Approval, and Revision Procedures; Separability

131.20 Adoption, certification, and submission of plans.
131.21 Review and approval or disapproval of plans.
131.22 Review and revision of plans.
131.23 Separability.

AUTHORITY: Secs. 106, 208, 303(d), 303(e), 305(b), 314, 501, 516(b) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.).

### Subpart A—Scope and Purpose: Definitions

§ 131.1 Scope and purpose.

(a) This part establishes regulations specifying procedural and other requirements for the preparation of State water quality management plans and programs for hydrologic basins or other approved planning areas pursuant to a State continuing planning process approved in accordance with Section 303(e) of the Federal Water Pollution Control Act, as amended; Pub. L. 92-500, 86 Stat. 816 (1972); (33 U.S.C. 1251 et seq.), and Part 130 of this chapter.

(b) Compliance with these regulations constitutes compliance with State responsibilities under Sections 208 and 303(e) of the Act. Where the State preempts the nonpoint source responsibilities in designated areas, compliance with these regulations will constitute compliance with Section 208(b)(4) of the Act.

(c) A State water quality management plan is a management document which identifies the water quality problems of a particular basin or other approved planning area and sets forth an effective management program to alleviate those problems and preserve water quality for all intended uses. The value of the State water quality management plan lies in its utility in providing a basis for making water quality management decisions and in establishing control programs. To achieve this objective, the detail of the State water quality management plan should provide the necessary analysis and information for management decisions. Moreover, there must be a flexible revision mechanism to reflect changing conditions in the area of consideration. A State water quality management plan should be a dynamic

management tool, rather than a rigid, static compilation of data and material.

(d) A State water quality management plan will provide for orderly water quality management by:

(1) Identifying Problems and Establishing Goals: assessing existing water quality, applicable water quality standards, point and nonpoint sources of pollution, identifying constraints on the plan, and recommending attainable water quality goals.

(2) Assessing Needs/Establishing Priorities: assessing water quality and abatement needs, providing solutions, and establishing priorities.

(3) Scheduling Actions: setting forth compliance schedules and target abatement dates and indicating necessary Federal, State, and local activities.

(4) Establishing Implementing Agencies/Agency Responsibilities: identifying implementing agency(ies), including management, regulatory and operational agencies, and setting forth specific responsibilities to carry out required actions within the basin or other approved planning area.

(5) Coordinating Planning and Management: coordinating developmental planning and management related to water quality in order to attain the objectives of the Act.

### § 131.2 Definitions.

The definition set forth in § 130.2 of this chapter shall apply to this Part 131.

## Subpart B—Plan Content Requirements

### § 131.10 General Requirements.

(a) This subpart describes the required content of State water quality management plans to be prepared for each basin or other approved planning area in the State. The primary objective of the State water quality management plans shall be to address the 1983 national water quality goal of the Act, where attainable. The plans shall identify those areas in which the 1983 water quality goal is attainable; identify necessary revisions to water quality standards which reflect appropriate beneficial water uses to be achieved or protected and water quality criteria necessary to support those beneficial uses; and identify the controls, regulatory programs, and implementing and operating agencies necessary to attain the desired water quality goals. In addition, in those areas where the 1983 water quality goal may not be attainable, the plans shall identify the water quality goals to be achieved and, where necessary, provide appropriate information (such as wasteload allocation information) which may be relevant in making water quality related effluent limitation determinations pursuant to Section 302 of the Act.

(b) Generally, water quality management planning elements will be the same throughout each basin or other approved planning area of any State. However, the level of detail required will vary according to the water quality problems (ranging from intensive planning in areas similar to those areas designated pursuant to Section 208(a) (2)–(4) of the Act to essentially no planning in those areas wherein the State certifies that no planning is necessary pursuant to § 130.11(b) of this chapter) and shall be established in the agreement between the State and the Regional Administrator (see § 130.11 of this chapter).

(c) Initial State water quality management plans, or portions thereof, and appropriate implementing actions identified as a result of the planning process shall be completed at the earliest practicable time, consistent with State program priorities and resources. The timing of such State water quality management planning and implementing actions shall be identified in the State/EPA agreement described in § 130.11 of this chapter and shall be consistent with the following:

(1) Initial State water quality management plans shall be completed and submitted to the Regional Administrator for pre-adoption review in accordance with § 131.20(a) no later than July 1, 1978, and shall be adopted, certified, and submitted in accordance with § 131.20 (b)–(d) no later than July 1, 1979.

(2) These initial plans shall (i) refine point source control needs identified under Phase I plans, including necessary controls over stormwater; (ii) develop plans for appropriate controls over nonpoint sources of pollutants; (iii) merge outputs from designated areawide wastewater management and facilities planning with the State water quality management plans; (iv) identify necessary regulatory programs; and (v) identify necessary implementing and operating agencies.

(d) Each State water quality management plan shall incorporate appropriate information concerning other local, State and Federal planning as required under § 130.33 of this chapter.

(e) Each State water quality management plan shall include, where appropriate, a delineation of the relative priority of actions to be taken toward prevention and control of water pollution problems. Such priorities shall reflect the coordination of State water quality management plans with other related planning programs including those identified in § 130.33 of this chapter.

(f) State water quality management planning elements shall include, but are not limited to:

(1) Planning boundaries (§ 131.11 (a)).

(2) Water quality assessment and segment classification (§ 131.11(b)).

(3) Inventories and projections (§ 131.11(c)).

(4) Nonpoint source assessment (§ 131.11(d)).

(5) Water quality standards (§ 131.11 (e)).

(6) Total maximum daily loads (§ 131.11(f)).[1]

(7) Point source load allocations (§ 131.11(g)).[1]

(8) Municipal facilities needs (§ 131.11(h)).

(9) Industrial facilities needs (§ 131.11(i)).

(10) Nonpoint source control needs (§ 131.11(j)).

(11) Residual waste control needs; land disposal needs (§ 131.11(k)).

(12) Urban and industrial stormwater needs (§ 131.11(l)).

(13) Schedules of compliance (§131.11 (m)).

(14) Regulatory programs (§ 131.11 (n)).

(15) Implementing and operating agencies (§ 131.11(o)).

(16) Environmental, social, economic impact (§ 131.11(p)).

### § 131.11 Plan content; required elements.

The following elements shall be included in each State water quality management plan:

(a) *Planning boundaries.* (1) A delineation of the basin or other approved planning area and segments on a map of appropriate scale.

(i) Except as provided in paragraph (a)(1)(ii) below, the basin boundaries shall be those identified as minor basins in the EPA water quality information system.

(ii) Where the approved planning process provides for planning boundaries differing from the EPA minor basins, the approved boundaries shall be used.

(iii) The map or maps used to delineate the planning boundaries shall include:

(A) A delineation of each water quality and effluent limitation segment identified in § 131.11(b)(2).

(B) An identification of the location of each significant discharger by river mile (or latitude/longitude) and/or shore location for bays, lakes and estuaries.

(C) An identification of the location of all monitoring stations (Federal-State-Local) by river mile and/or grid location. (Note: Such a map may omit monitoring station locations if such locations are available in the EPA water quality information system.

(b) *Water quality assessment and segment classifications.* (1) An assessment of existing and potential water quality problems within the basin or other approved planning area, including an identification of the types and degree of problems and the sources of pollutants contributing to the problems. The results of this assessment shall be reflected in the State's annual report required under Section 305(b) of the Act.

(2) The classification of each segment as either water quality or effluent limitation as defined in §130.2(n) of this chapter.

(i) Segments shall include the surrounding land areas that contribute or may contribute to alterations in the physical, chemical, or biological characteristics of the surface waters.

[1] Not required in effluent limitation segments.

(ii) Water quality problems generally shall be described in terms of existing or potential violations of water quality standards.

(iii) Each water quality segment classification shall include the specific water quality parameters requiring consideration in the total maximum daily load allocation process.

(iv) In the segment classification process, upstream sources that contribute or may contribute to such alterations should be considered when identifying boundaries of each segment.

(v) The classification of segments shall consider measurements of in-stream water quality, where available.

(c) *Inventories and projections.* (1) an inventory of municipal and industrial sources of pollutants and a ranking of municipal sources which shall be used by the State in the development of the annual State strategy described in § 130.20 of this chapter and the "project priority list" described in § 35.915(c) of this chapter.

(2) An analysis of each significant discharger of pollutants and a description, by parameter, of its major waste discharge characteristics.

(i) The analysis should utilize data from the National Pollutant Discharge Elimination System and the associated compliance monitoring system, whenever available.

(ii) A summary of the analysis should be included in the plan.

(3) A summary of existing land use patterns.

(4) Demographic and economic growth projections for at least a 20 year planning period disaggregated to the level of detail necessary to identify potential water quality problems.

(5) Projected municipal and industrial wasteloads based on paragraph (c) (2) and (4) of this section.

(6) Projected land use patterns based on paragraph (c) (3) and (4) of this section.

(d) *Nonpoint source assessment.* (1) An assessment of water quality problems caused by nonpoint sources of pollutants.

(i) The assessment shall include, as a minimum, a description of the type of problem, an identification of the waters affected (by segment or other appropriate planing area), an evaluation of the seriousness of the effects on those waters, and an identification of nonpoints sources (by category as defined in § 131.11(j)) contributing to the problem.

(ii) The results of this assessment shall be reflected in the State's annual report required under Section 305(b) of the Act.

(iii) Any nonpoint sources of pollutants originating outside a segment which materially affect water quality within the segment shall be considered.

(e) *Water quality standards.* (1) The applicable water quality standards established pursuant to Section 303 (a) through (c) of the Act and recommendations for revision of water quality standards applicable to each body of water. The recommendations for revision of water quality standards shall be consistent with the following:

(i) Water quality standards shall specify appropriate beneficial water uses to be achieved or protected and the water quality criteria necessary to support those appropriate beneficial uses;

(ii) Water quality standards shall be established taking into consideration their use and value for public water supplies; propagation of fish, shellfish, and wildlife; recreational purposes; and agricultural, industrial, and other purposes; and also taking into consideration their use and value for navigation;

(iii) Water quality standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act. Thus, recommendations for revision of water quality standards shall provide for:

(A) Progress toward the 1983 national water quality goal, wherever attainable, specified in Section 101(a)(2) of the Act; and

(B) Protection of those in-stream beneficial water uses currently existing, both in those waters being considered and in downstream waters.

(iv) [Reserved] (Regulations concerning revision of water quality standards will be promulgated by the Administrator and appropriate reference to those regulations will be included herein).

(2) The Statewide antidegradation policy and the methods for implementing such policy, established pursuant to § 130.10(a)(5) of this chapter. The antidegradation policy and implementation methods shall be consistent with the following:

(i) Existing in-stream beneficial water uses shall be maintained and protected. No further water quality degradation which would result in impairment of existing in-stream beneficial uses is allowable.

(ii) Existing high quality waters which exceed those levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water shall be maintained and protected unless the State chooses, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process and subject to the provisions of § 131.11(e)(2)(i) of this part, to allow lower water quality as a result of necessary and justifiable economic or social development. In such cases, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and feasible management or regulatory programs pursuant to Section 208 of the Act for nonpoint sources, both existing and proposed.

(iii) Determinations under § 131.11(e)(2)(ii) shall not be subject to disapproval by the Administrator (except where regulatory or statutory requirements have not been satisfied), except for any water quality impairment which affects waters or water uses protected by Federal statute (e.g., the National Park System; Wild and Scenic Rivers, Endangered Species, etc.).

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Act.

(f) *Total maximum daily loads.* (1) For each water quality segment, the total allowable maximum daily load of suitable pollutants during critical flow conditions for each specific water quality criterion being violated or expected to be violated within at least a 20-year planning period.

(i) Such total maximum daily loads shall be established at levels necessary to achieve compliance with applicable water quality standards.

(ii) Such loads shall take into account:

(A) Provision for seasonal variation; and

(B) Provision of a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality and an additional margin of safety which takes into account any uncertainty resulting from insufficiency of data, including data from nonpoint sources of pollutants.

(2) For each water quality segment where thermal water quality criteria are being violated or expected to be violated within at least a 20-year planning period, the total daily thermal load during critical flow conditions allowable in each segment.

(i) Such loads shall be established at a level necessary to assure the protection and propagation of a balanced, indigenous population of fish, shellfish, and wildlife.

(ii) Such loads shall take into account:

(A) Normal water temperatures,

(B) Flow rates,

(C) Seasonal variations,

(D) Existing sources of heat input,

(E) The dissipative capacity of the waters within the identified segment.

(iii) Each estimate shall include an estimate of the maximum heat input that can be made into the waters of each segment where temperature is one of the criteria being violated or expected to be violated and shall include a margin of safety which takes into account lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of indigenous biota in the waters of the identified segments.

(3) For each water quality segment, an allocation for point sources of pollutants and a gross allotment for nonpoint sources of pollutants.

(i) A specific allowance for growth shall be included in the allocation for point sources and the gross allotments for nonpoint sources.

(ii) The total of the allocation for point sources and the gross allotment for nonpoint sources shall not exceed the total maximum daily load.

(4) Where predictive mathematical models are used in the determination of

total maximum daily loads, an identification and brief description of the model, and the specific use of the model.

(g) *Point source load allocations.* (1) For each water quality segment, the load allocation for point sources of pollutants, including thermal load allocations.

(2) The total of such pollutant load allocations or effluent limitations for all sources in the water quality segment shall not exceed the allocation for all point sources of pollutants for each segment determined pursuant to § 131.11(f).

(3) Each pollutant load allocation established pursuant to this paragraph shall incorporate an allowance for anticipated economic and population growth over at least a five-year period and an additional allowance reflecting the precision and validity of the method used in determining such allowance.

(4) Establishment of pollutant load allocations shall be coordinated with the development of terms and conditions of permits under the National Pollutant Discharge Elimination System and with any hearings pursuant to Section 316(a) of the Act relating to a source discharging to or otherwise affecting the segment.

(h) *Municipal facilities needs.* (1) The municipal collection and treatment system needs by 5-year increments, over at least a 20-year period (including identification of major alternatives thereto), including requirements for and general availability of land for such facilities, total capital funding required for construction, and a program to provide the necessary financial arrangements for the development of such facilities.

(2) The identification of municipal needs (after consideration of major alternatives thereto), shall be based on the following criteria:

(i) Load reduction to be achieved by each facility and why this reduction is required to attain and maintain applicable water quality standards and effluent limitations.

(ii) Population or population equivalents to be served, including forecasted growth or decline of such population over at least a 20-year period following the scheduled date for installation of the needed facility. These analyses shall take into account projections used in other State and local planning activities.

(iii) Types of facilities needed and their investment costs derived from approved Section 201 facilities plans, Section 208 areawide waste treatment management plans, or facilities design plans and specifications, where available.

(iv) In the absence of the above plans and designs, an indication of facilities required to be considered as an option under future Section 201 facilities or Section 208 areawide planning and preliminary estimates of their costs.

(3) Cost estimates for facilities meeting the above criteria shall be based on engineering plans, specifications, and detailed cost estimates, where available.

(i) *Industrial facilities needs.* (1) The anticipated industrial wasteload reductions required for at least a 20-year planning period (in 5-year increments).

(2) The only requirement for alternative consideration of industrial wasteload reductions relates to those industrial sources connected to municipal facilities.

(3) Any alternative considerations for industrial sources connected to municipal systems should be reflected in the alternative considerations for such municipal facility.

(j) *Nonpoint source control needs.* (1) For each category of nonpoint sources of pollutants to be considered in any specified area as established in the State/EPA agreement (see § 130.11 of this chapter), an identification and evaluation of all measures necessary to produce the desired level of control through application of best management practices (or more stringent control measures, as appropriate).

(2) The evaluation shall include an assessment of nonpoint source control measures applied thus far, the period of time required to achieve the desired control (see § 131.11(m)), the proposed regulatory programs to achieve the controls (see § 131.11(n)), the implementing and operating agencies needed to achieve the controls (see § 131.11(o)), and the costs by agency and activity, presented by 5-year increments, to achieve the desired controls.

(3) The nonpoint source categories shall include:

(i) Agriculturally related nonpoint sources of pollution including runoff from manure disposal areas, and from land used for livestock and crop production;

(ii) Silviculturally related nonpoint sources of pollution;

(iii) Mine-related sources of pollution including new, current and abandoned surface and underground mine runoff;

(iv) Construction activity related sources of pollution;

(v) Sources of pollution from disposal on land in wells or in subsurface excavations that affect ground and surface water quality;

(vi) Salt water intrusion into rivers, lakes, estuaries and groundwater resulting from reduction of fresh water flow from any cause, including irrigation, obstruction, groundwater extraction, and diversion; and

(vii) Sources of pollution related to hydrographic modifications, including those caused by changes in the movement, flow, or circulation of any navigable waters or groundwaters due to construction of dams, levees, channels, or flow diversion facilities.

(k) *Residual waste control needs; land disposal needs.* (1) An identification of the necessary controls to be established over the disposition of residual wastes from municipal, industrial, or other water or wastewater treatment processing and a description of the proposed actions necessary to achieve such controls.

(2) An identification of the necessary controls to be established over the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality and a description of the proposed actions necessary to achieve such controls.

(l) *Urban and industrial stormwater systems needs.* (1) An identification of the required improvements to existing urban and industrial stormwater systems including combined sewer overflows.

(2) An identification of the needed urban and industrial stormwater systems for areas not served over at least a 20-year planning period (in 5-year increments), emphasizing appropriate land management and other nonstructural techniques for control of urban and industrial stormwater runoff.

(3) A cost estimate for the needs identified in paragraph (l) (1) and (2) of this section, the effect on capital construction costs brought about by nonstructural control measures, and any capital and annual operating costs of such facilities and practices.

(m) *Schedules of compliance.* (1) Schedules of compliance or target abatement dates for all significant dischargers, nonpoint source control measures, residual and land disposal controls, and stormwater system needs, including major interim and final completion dates, and terms or conditions that are necessary to assure an adequate tracking of progress toward compliance.

(n) *Regulatory programs.* (1) A description of existing State/local regulatory programs and an identification of necessary additional regulatory programs (including legislative, administrative, and financial aspects) to:

(i) Assure that, to the extent practicable, waste treatment management including point and nonpoint source management shall be on a Statewide and/or an areawide basis and provide for the control or abatement of all sources of pollution including in place or accumulated deposits of pollutants;

(ii) Assure that any industrial or commercial wastes discharged into any publicly owned treatment works in such area meet applicable pretreatment requirements; and

(iii) Take full advantage of existing legislative authorities and administrative capabilities (e.g., programs to regulate the location, modification and construction of any facilities, activities, or substantive changes in use of the lands within the State, which might result in any new or deleterious discharge directly or indirectly into navigable waters).

(2) Such regulatory programs should generally be based on existing regulatory programs where applicable, and must include a provision for nonpoint source controls that:

(i) Specify best management practices will be adopted for implementation; and

(ii) Assure that where implementation of such best management practices is inadequate to achieve water quality standards, more stringent measures will be required.

(o) *Implementing and operating agencies.* (1) The identification within each

planning area of those agencies necessary to construct, operate and maintain all treatment works identified in the plan and those agencies to manage those portions of the nonpoint source program included in the plan.

(2) Depending upon an agency's assigned responsibilities under the plan, the agency must have adequate authority and capability:

(i) To carry out appropriate portions of a State water quality management plan(s) developed under this part including, where applicable, nonpoint source control requirements;

(ii) To carry out appropriate portions of an areawide waste treatment management plan developed under Section 208 of the Act;

(iii) To effectively manage waste treatment works and related point and nonpoint source facilities and practices serving such area in conformance with the plan;

(iv) Directly or by contract, to design and construct new works, and to operate and maintain new and existing works as required by any plan developed pursuant to Section 208 of the Act;

(v) To accept and utilize grants or other funds from any source for waste treatment management or nonpoint source control purposes;

(vi) To raise revenues, including the assessment of user charges;

(vii) To incur short and long term indebtedness;

(viii) To assure, in implementation of a State water quality management plan, that each participating community pays its proportionate share of related costs;

(ix) To refuse to receive any wastes from a municipality or subdivision thereof, which does not comply with any provision of an approved plan under Section 208 of the Act applicable to such areas; and

(x) To accept for treatment industrial wastes.

(p) *Environmental, social, economic impact.* (1) For each planning area defined pursuant to § 130.10(b) of this chapter, or at the discretion of the affected State for each portion thereof, an assessment of the environmental, social, and economic impact of carrying out the plan.

## Subpart C—Plan Adoption, Approval, and Revision Procedures; Separability

### § 131.20 Adoption, certification, and submission of plans.

(a) The State shall submit a State water quality management plan to the Regional Administrator for review prior to formally adopting the plan. The Regional Administrator shall provide for review and comment in order to assure a minimal amount of conflict once the plan is formally adopted by the State. Concurrence with a State water quality management plan at the time of the preadoption review will not substitute for approval by the Regional Administrator after the plan has been presented at an appropriate public meeting(s) and formally adopted by the State. Portions of the plans (interim outputs) may be adopted, certified, and approved during the development of the plan and approved in the same manner as an entire plan.

(b) Prior to formal adoption, the State water quality management plans or portions thereof, shall be the subject of appropriate public participation in accordance with Section 101(e) of the Act and with Part 105 of this chapter requiring public participation in all phases of the State water quality management plan development.

(1) The goal of the public participation requirements is to involve the public in the formulation of the plan, including the determination of the planning goals, and to develop public support that will ultimately lead to acceptance and implementation of the plan.

(2) The State may delegate public participation activities to appropriate governmental units within the State.

(c) Before formal adoption of the State water quality management plan, or portions thereof, the State shall consider the Regional Administrator's comments provided pursuant to § 131.20(a) and those comments which result from intergovernmental coordination and public participation and shall modify the plan if appropriate.

(d) Each State water quality management plan or portions thereof, shall be adopted as the official State water quality management plan of the State. Supportive data not required to be included in the State water quality management plans need not be adopted, but shall be made available to the Regional Administrator and the public upon request.

(e) Each State water quality management plan shall include assurances and a certification by the Governor or his designee that the plan is the official State water quality management plan for the area covered by such plan, that the plan meets all applicable requirements of this part and Part 130 of this chapter and that the plan will be used for establishing permit conditions, nonpoint source controls, and target abatement dates and for determining priorities for awarding municipal construction grants under Section 201(g) of the Act.

(f) State water quality management plan submission shall be accomplished by delivering to the Regional Administrator the adopted plan, or portions thereof, a summary of public participation in the development and adoption of the plan (required by Part 105 of this chapter) and a letter from the Governor, or his designee, notifying the Regional Administrator of such action.

### § 131.21 Review and approval or disapproval of plans.

(a) The Regional Administrator shall approve, conditionally approve, or disapprove the State water quality management plan or portion thereof, submitted pursuant to § 131.20 within 60 days after the date of submission, as follows:

(1) If the Regional Administrator determines that the State water quality management plan conforms with the requirements of the Act, this part, and the approved continuing planning process (including compliance with any State/EPA agreement) and is consistent with contiguous water quality management plans, including those of neighboring States, he shall approve the plan and so notify the Governor or his designee by letter.

(2) If the Regional Administrator determines that the State water quality management plan fails to conform with the requirements of the Act, this part, or the approved continuing planning process (including compliance with any State/EPA agreements) or is not consistent with contiguous water quality management plans including those of neighboring States, he shall either conditionally approve or disapprove the plan and so notify the Governor or his designee by letter and shall state:

(i) The specific revisions necessary to obtain full approval of the State water quality management plan; and

(ii) The time period for resubmission of the State water quality management plan or portions thereof.

(3) Where State water quality management plans involving interstate waters are found to be inconsistent, the Regional Administrator shall notify the Governor of each concerned State of the specific areas of inconsistency and the specific revision(s) necessary to eliminate such inconsistency.

### § 131.22 Review and revision of plans.

(a) As a minimum, the State shall review, and if necessary revise, each State water quality management plan at least annually. The State water quality management plan shall be revised such that it remains a meaningful and current water quality management document.

(b) Minor revisions, particularly those which incorporate updated information but do not involve substantive change, may be submitted directly to the Regional Administrator by the State agency designated under § 130.10(b)(5) of this chapter.

(c) Revisions of a substantive nature shall be subject to formal adoption, certification, public participation, and submission and review and approval procedures described in § 131.20 and § 131.21.

### § 131.23 Separability.

(a) If any provision of this part, or the application of any provision of this part to any person or circumstance, is held invalid, the application of such provision to other persons of circumstances, and the remainder of this part, shall not be affected thereby.

[FR Doc.75-18358 Filed 7-15-75;8:45 am]

[ 40 CFR Part 415 ]

[FRL 400-3]

## INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

### Extension of Comment Period and Notice of Availability

On May 22, 1975 the Agency published a notice of proposed rules establishing best available technology economically achievable effluent limitations and guidelines and standards of performance for new sources and pretreatment standards for existing sources and for new sources (40 FR 22424) for the inorganic chemicals manufacturing point source category. The due date for comments provided in the notice was June 23, 1975.

The Agency anticipated that the document entitled "Development Document for Interim Final and Proposed Limitations Guidelines and Proposed New Source Performance Standards for the Significant Inorganic Products Segment of the Inorganic Chemicals Point Source Category," which contains information on the analysis undertaken in support of the regulations, would be available to the public throughout the comment period. Production delays have delayed the availability of this document. Copies of the document are now available and are being distributed to those persons who have submitted written requests to the Office of Public Affairs.

Accordingly, the date for submission of comments is hereby extended thirty days from the date of publication of this notice (August 15, 1975).

Dated: July 8, 1975.

JAMES L. AGEE,
*Assistant Administrator for Water and Hazardous Materials.*

[FR Doc.75-18378 Filed 7-15-75;8:45 am]

# FEDERAL TRADE COMMISSION

[ 16 CFR Part 437 ]

## FOOD ADVERTISING

### Postponement of Public Hearing Date

Notice of proceeding, statement of reasons for proposed rule, invitation to propose issues of specific fact for consideration in public hearings, invitation to comment on proposed rule, and proposed trade regulation rule was published in the FEDERAL REGISTER May 28, 1975, (40 FR 23086). By press release issued May 27, 1975, announcement was made that public hearings were expected to commence in September 1975.

Notice is hereby given that public hearings will not commence in September, and that the exact time and place of hearings will be specified in a final notice to be published in the FEDERAL REGISTER.

By direction of the Commission dated July 1, 1975.

VIRGINIA M. HARDING,
*Acting Secretary.*

[FR Doc.75-18442 Filed 7-15-75;8:45 am]

[ 16 CFR Part 444 ]

## CREDIT PRACTICES

### Change in Closing Date To Propose Issues of Specific Fact on Proposed Trade Regulation Rule

Notice of the opportunity to propose issues of specific fact regarding the proposed Trade Regulation Rule Concerning Credit Practices was published in the FEDERAL REGISTER on April 11, 1975 (40 FR 16347). The notice also set forth both a proposed rule and a staff statement on which comment was requested.

The Commission has determined that the comment period to propose issues of specific fact should be extended. The record in this matter is hereby extended until no later than August 11, 1975, for the receipt of such comments.

Proposed issues of specific fact concerning the proposed Rule may be filed with the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Issued: July 10, 1975.

By the Commission.

VIRGINIA M. HARDING,
*Acting Secretary.*

[FR Doc.75-18443 Filed 7-15-75;8:45 am]

[ 16 CFR Part 701 ]

## DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

### Proceeding, Invitation To Comment, and Public Hearings

*Proposed Rule on Warranty Disclosures.* Section 102(a) of the Magnuson-Moss Warranty Act, Pub. L. 93-637 (15 U.S.C. 2301), hereinafter referred to as "the Act," authorizes the Federal Trade Commission to prescribe rules setting forth the terms and conditions which must be disclosed by warrantors in written warranties subject to the Act.

Section 102 does not authorize the Commission to require that a consumer product or any of its components be warranted. Rather, the items authorized for disclosure in the section are to be disclosed only if a manufacturer, supplier or other person elects to give a written warranty on a consumer product actually costing the consumer more than $5.00.

The proposed rule is intended to increase the flow and the comprehensibility of relevant warranty information to consumers. This would facilitate comparison shopping and intelligent consumer purchasing decisions, and ensure that consumers obtain warranty performance on their own behalf.

Section 102(a) sets forth certain terms and conditions which the Commission may require warrantors to disclose. The proposed rule essentially incorporates each of these items. It also provides additional disclosure requirements for warrantors who choose to offer "lifetime warranties," or elect to use "owner registration cards."

In consideration of the foregoing, the Commission proposes the following rule implementing section 102(a) of the Act, and to amend Title 16, Chapter 1, by adding a new Subchapter G—Rules, Regulations, Statements, and Interpretations under the Magnuson-Moss Warranty Act—and a new Part 701 under that subchapter (Part 700 would be reserved). The new Part 701 reads as follows:

SUBCHAPTER G—RULES, REGULATIONS, STATEMENTS, AND INTERPRETATIONS UNDER MAGNUSON-MOSS WARRANTY ACT

## PART 701—DISCLOSURE OF WRITTEN CONSUMER PRODUCT WARRANTY TERMS AND CONDITIONS

Sec.
701.1 Definitions.
701.2 Scope.
701.3 Written warranty terms.
701.4 Owner registration cards.

AUTHORITY: 15 U.S.C. 2302 and 2309.

### § 701.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written warranty" means any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level or performance over a specified period of time, or any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Implied warranty" means an implied warranty arising under State law (as modified by secs. 104(a) and 108 of the Act) in connection with the sale by a supplier of a consumer product.

(e) "Remedy" means whichever of the following actions the warrantor elects:

(1) repair;
(2) replacement, or
(3) refund;

except that the warrantor may not elect refund unless: (1) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (2) the consumer is willing to accept such refund.

(f) "Supplier" means any person engaged in the business of making a con-

sumer product directly or indirectly available to consumers.

(g) "Warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(h) "Consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty applicable to the product, and any other such person who is entitled by the terms of such warranty or under applicable State law to enforce against the warrantor the obligations of the warranty.

**§ 701.2 Scope.**

The regulations in this part establish requirements for warrantors for disclosing the terms and conditions of written warranties on consumer products.

**§ 701.3 Written warranty terms.**

Any warrantor warranting to a consumer by means of a written warranty a consumer product actually costing the consumer more than $5.00 shall fully and conspicuously disclose, in a single document, in simple and readily understood language, the following items of information:

(a) The full name(s) and address(es) of the warrantor(s);

(b) The identity of the party or parties to whom the warranty is extended, including, where applicable, any limitation on its enforceability by any party other than the first purchaser at retail;

(c) A clear description and identification of parts, characteristics, components and properties covered by, and excluded from the warranty;

(d) A statement of what the warrantor will do to remedy a defect or malfunction in the product, or failure to conform with the written warranty, including but not limited to the items or services the warrantor will and will not pay for or provide;

(e) The period of time, stated in terms of hours, business days or days, within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty;

(f) The point in time or event on which the warranty term commences, and the time period or other measurements of duration for which the product and/or its parts, characteristics, components, or properties are warranted.

(g) Any requirement or duty which must be fulfilled by the purchaser as a condition precedent to securing warranty performance, including any expenses which must be borne by the purchaser;

(h) A step-by-step explanation of the procedure which the purchaser should follow in order to obtain performance of any warranty obligation, including the persons or organizations authorized to perform warranty service, or a telephone number which consumers may use without charge from which such information may be obtained. This information shall include the name and address of any corporate officer or department responsible for the resolution of such matters, and/or any telephone number which consumers may use without charge for such purposes;

(i) Information respecting the availability of any informal dispute settlement procedure as specified in Part 703 of this subchapter;

(j) Any limitations on the time of day or days of the week during which the warrantor will perform his warranty obligations if such performance is not available Monday through Saturday, 9 a.m. to 6 p.m. local time;

(k) All modifications and limitations on implied warranties, and all exclusions of or limitations on relief such as incidental or consequential damages;

(1) Where any such modification, limitation, or exclusion is unenforceable under applicable State law, that fact shall be disclosed in a manner which specifically names such jurisdictions.

(2) Any limitation on or exclusion of consequential damages for breach of any written or implied warranty on the consumer product shall be disclosed on the face of the warranty, as provided in section 104 of the Act.

(3) Any limitation on the duration of an implied warranty shall be disclosed on the face of the warranty as provided in section 108 of the Act. Any modification, limitation, or exclusion, or any statement that such modification, limitation, or exclusion is unenforceable under applicable State law shall be set apart from the balance of the warranty by the use of a type size larger than the body copy of the warranty, or by the use of all capital letters, or by underlining.

(l) A statement about express and implied warranties in the following language:

> This warranty gives you specific legal rights. You also have implied warranty rights. In the event of a problem with warranty service or performance, you may be able to go to a small claims court, a State court, or a Federal district court.

or

> This warranty gives you specific legal rights. You also have implied warranty rights, including an implied warranty of merchantability which means that your product must be fit for the ordinary purposes for which such goods are used. In the event of a problem with warranty service or performance, you may be able to go to a small claims court, a State court, or a Federal district court;

(m) If the terms "Life", "Lifetime", or words of similar meaning are used to indicate the duration of a warranty, a clear and conspicuous disclosure of the life referred to.

**§ 701.4 Owner registration cards.**

When a warrantor employs any card such as an owner's registration card, a warranty registration card, or the like, which the purchaser is requested or required to return subsequent to purchasing the product:

(a) If the return of such card is a condition precedent to warranty coverage and performance, the warrantor shall disclose this fact in the warranty document.

(b) If the return of such card is not a condition precedent to warranty coverage, the warrantor shall clearly and conspicuously disclose in the warranty document the purpose for which such card is utilized. In such instance, the warrantor shall not designate the card as "warranty registration card", but shall appropriately label or title the card according to the purpose or purposes for which it is intended, e.g. "marketing research cards", or "product safety registration card."

The documents supporting the proposed rule, and a report of the Commission Staff discussing the proposed rule and the supporting documents, will be available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C.

All interested persons are hereby notified that they may file written data, views or arguments concerning the proposed Rule with the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, not later than September 15, 1975.

All interested persons are also given notice of the opportunity to orally present data, views or arguments with respect to the proposed rule at a public hearing to be held commencing at 9 a.m., e.d.t., September 15, 1975 in Room 332, Federal Trade Commission Building, Sixth and Pennsylvania Avenue, Northwest, Washington, D.C. Additional hearings will be held in Chicago, Room 347 A–B, 230 South Dearborn, commencing September 22, 1975, and in Los Angeles, Room 13209, 1100 Wilshire Boulevard, commencing September 29, 1975.

Any person desiring to orally present his or her views at any of the hearings should so inform the following designated people not later than September 8, 1975, and state the estimated time required for his or her oral presentation. For the Washington, D.C., hearings, notify the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. For the Chicago hearings, notify Jerome Lamet, Assistant Regional Director, Federal Trade Commission, Suite 1437, 55 East Monroe, Chicago, Illinois. For the Los Angeles hearings, notify Wendy Kaufman, Federal Trade Commission, Room 13209, Federal Building, 11000 Wilshire Boulevard, Los Angeles, California 90024. Reasonable limitations upon the length of time allotted to any person may be imposed.

In addition, all persons desiring to deliver a prepared statement at any of the hearings should file such statement together with supporting factual material with the Special Assistant Director for Rulemaking not later than September 8, 1975. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit five copies, except that supporting materials need not be duplicated.

The data, views or arguments presented with respect to the proposed rule will be available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C., and will be considered by the Commission in its determination to issue a final version of the proposed Rule. All interested persons are urged to express their approval or disapproval of the proposed Rule, or to recommend revisions thereof, and to give a full statement of their views in connection therewith. Comments are invited with respect to all aspects of the proposed rule.

Issued: July 15, 1975.

By direction of the Commission.

[SEAL] VIRGINIA M. HARDING,
*Acting Secretary.*

[FR Doc.75-18432 Filed 7-15-75;8:45 am]

---

## [16 CFR Part 702]

## PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

### Proceeding, Invitation To Comment, and Public Hearings

*Proposed Rule on Pre-Sale Availability of Written Warranty Terms.* Section 102 (b) (1) (A) of the Magnuson-Moss Warranty Act, P.L. 93-637 (15 U.S.C. 2301), hereinafter referred to as "the Act," directs the Federal Trade Commission to prescribe rules requiring that the terms of any written warranty on a consumer product actually costing the consumer more than $5.00 be made available to the consumer prior to the sale of the product.

The unavailability of consumer product warranties at the point of sale precludes the use of the warranty as informational input in the consumer's purchasing decision, and as a tool for making product comparisons.

The proposed rule sets forth the means by which the written warranty terms must be made available to the consumer prior to the sale of the consumer product.

The proposed rule includes detailed requirements for both sellers and warrantors of consumer products with written warranties. The burden is placed on the warrantor to provide the seller with the materials necessary for the seller to make the required pre-sale warranty disclosures to consumers.

The proposed rule also includes provisions which require catalog, mail-order, and door-to-door sellers to make pre-sale warranty disclosures.

In consideration of the foregoing, the Commission proposes the following rule implementing section 102(b)(1)(A) of the Act and to amend Title 16, Chapter 1, by adding to subchapter G, Rules, Regulations, Statements and Interpretations under the Act, a new Part 702 under that subchapter.

---

New Part 702 reads as follows:

## PART 702—PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

Sec.


AUTHORITY: 15 U.S.C. 2302 and 2309.

### § 702.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written warranty" means any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect-free or will meet a specified level of performance over a specified period of time, or any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Warrantor" means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty arising under State law (as modified by sections 104(a) and 108 of the Act) in connection with the sale by a supplier of a consumer product.

(e) "Seller" means any person who sells or offers for sale for purposes other than resale any consumer product.

(f) "Principal display panel" means that part of a package, carton, or other container that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(g) "Supplier" means any person engaged in the business of making a consumer product directly or indirectly available to consumers. This includes sellers as defined in this part, manufacturers, wholesalers, distributors, jobbers and any other parts of the product distribution system.

(h) "Binder" means a locking binder, notebook, or similar system which will provide the consumer with convenient access to copies of product warranties.

### § 702.2 Scope.

The regulations in this part establish requirements for sellers and warrantors for making the terms of any written warranty on a consumer product available to the consumer prior to sale.

### § 702.3 Pre-sale availability of written warranty terms.

The following requirements apply to consumer products actually costing the consumer more than $5.00:

(a) *Duties of the seller.* The seller of a consumer product with a written warranty shall:

(1) Maintain a binder or a series of binders, in each department in which any consumer product with a written warranty is offered for sale, containing copies of the warranties for the products sold in such department. The duty to maintain a binder includes the duty to request copies of warranties from the warrantor where needed to comply with this Part 702; and

(i) The title "Warranties" shall be prominently disclosed in bold face type on the outside cover of each such binder, accompanied by a clear and conspicuous disclosure of the following statement: "You may obtain a copy of any of the warranties contained in this book from the warrantor."

(ii) Each such binder shall be clearly and conspicuously indexed either according to product or according to warrantor.

(2) Update the binder when new warranted products or models or new warranties for existing products are introduced into the department by substituting superseding warranties or by adding the new warranties as appropriate.

(3) Make the binder available to the consumer upon request.

(4) Not remove or obscure any warranty information disclosure materials attached to a warranted consumer product by a warrantor.

(b) *Duties of the warrantor.* A warrantor warranting to a consumer a consumer product actually costing the consumer more than $5.00 shall:

(1) Upon specific written or oral request from a prospective consumer, promptly provide a copy of each written warranty requested; and

(2) Provide sellers with copies of written warranties necessary for such sellers to comply with the requirements set forth in subparagraph (1) of paragraph (a) above.

(3) Clearly and conspicuously disclose any applicable warranty designation(s) contained in the written warranty for the product, and the following statement:

"The retailer has a copy of the complete warranty on this product. Ask to see it."

(i) By means of a tag, sign, sticker, label, decal or other attachment to the product; and

(ii) By printing such disclosure on the principal display panel of the package, carton or other product container.

(c) *Catalog sales.* (1) Any seller who offers for sale to consumers consumer products with written warranties by means of a catalog shall:

(i) clearly and conspicuously disclose in such catalog in close conjunction to the warranted consumer products:

(A) the warranty designation of each such product, and

(B) that the written warranty is available free on request, and the address where such warranty can be obtained, and

(ii) provide a copy of any written warranty requested by the consumer.

(2) "Catalog" means any multi-page solicitation, flier, or brochure distributed to consumers in which more than one consumer product is offered for sale.

(3) "Close conjunction" means on the page containing the description of the warranted product.

(d) *Mail order sales.* Any seller who offers for sale to consumers a consumer product with a written warranty by means of direct mail solicitation or by means of an advertisement, in any medium, which includes instructions for ordering the product shall:

(1) clearly and conspicuously disclose in such solicitation or such advertisement in close conjunction to the warranted consumer products:

(i) the warranty designation of each such product, and

(ii) that the written warranty is available free on request, and the address where such warranty can be obtained, and

(2) provide a copy of any written warranted consumer products:

(e) *Door-to-door sales.* (1) Any seller who offers for sale to consumers a consumer product with a written warranty by means of door-to-door sales shall, prior to any sales transaction, present the consumer with a copy of the written warranty which the consumer may retain even if no purchase is made.

(2) "Door-to-door sale" means a sale of consumer products in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by a buyer, and the buyer's agreement to offer to purchase is made at a place other than the place of business of the seller.

The documents supporting the proposed rule, and a report of the Commission staff discussing the proposed Rule and the supporting documents, will be available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C.

All interested persons are hereby notified that they may file written data, views, or arguments concerning the proposed Rule with the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, not later than September 15, 1975.

All interested persons are also given notice of the opportunity to orally present data, views or arguments with respect to the proposed Rule at a public hearing to be held commencing at 9 a.m., e.d.t., September 15, 1975 in Room 332, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, Northwest, Washington, D.C.

Additional hearings will be held in Chicago, Room 347A-B, 230 South Dearborn, commencing on September 22, 1975, and in Los Angeles, Room 13209, 11000 Wilshire Boulevard, commencing on September 29, 1975.

Any person desiring to orally present his or her views at the hearings should so inform the following designated people not later than September 8, 1975, and state the estimated time required for his or her oral presentation. For the Washington, D.C., hearings, notify the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. For the Chicago hearings, notify Jerome Lamet, Assistant Regional Director, Federal Trade Commission, Suite 1437, 55 East Monroe, Chicago, Illinois. For the Los Angeles hearings, notify Wendy Kaufman, Federal Trade Commission, Room 13209, Federal Building, 11000 Wilshire Boulevard, Los Angeles, California, 90024. Reasonable limitations upon the length of time allotted to any person may be imposed.

In addition, all persons desiring to deliver a prepared statement at any of the hearings should file such statement together with supporting factual material with the Special Assistant Director for Rulemaking not later than September 8, 1975. To the extent practicable, persons wishing to file written presentations in excess of two pages should submit five copies except that supporting materials need not be duplicated.

The data, views or arguments presented with respect to the proposed rule will be available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C. and will be considered by the Commission in its determination to issue a final version of the proposed Rule. All interested persons are urged to express their approval or disapproval of the proposed rule, or to recommend revisions thereof, and to give a full statement of their views in connection therewith. Comments are invited with respect to all aspects of the proposed rule.

Issued: July 15, 1975.

By the Commission.

[SEAL] VIRGINIA M. HARDING,
*Acting Secretary.*

[FR Doc.75-18354 Filed 7-15-75;8:45 am]

---

## [ 16 CFR Part 703 ]

## INFORMAL DISPUTE SETTLEMENT PROCEDURES

### Proceeding, Invitation To Comment, and Public Hearings

*Proposed minimum standards rule.* Section 110(a)(2) of the Magnuson-Moss Warranty Act, P.L. 93-637 (15 U.S.C. 2310) (hereafter the Act) directs the Federal Trade Commission to prescribe rules setting forth minimum standards for any informal dispute settlement mechanism which is incorporated into the terms of a written warranty subject to that Act.

Under section 110(a)(4) the Commission may review the operation of any dispute settlement procedure resort to which is stated in a written warranty to be a pre-requisite to the consumer pursuing a legal remedy under Section 110 of the Act. In addition, any interested person may file a written complaint with the Commission, and thereby cause the Commission to conduct such a review. If the Commission finds that a procedure, or its implementation, is not in compliance with minimum requirements prescribed by the Commission, then the Commission may take appropriate remedial action under any authority under this Act, or other provision of law. Section 110(b) of the Act states that failure by any person to comply with any requirement imposed on such person by the Act, or by a rule thereunder shall be a violation of Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). Should instances of non-compliance with these requirements occur, the Commission may exercise its injunctive powers, or take other action enforcing Section 5 of the FTC Act.

It should be noted that the incorporation of a complying mechanism into the terms of a written warranty would not relieve a warrantor of other obligations under this Act, or under other provisions of law, to proceed fairly and expeditiously in non-mechanism complaint handling, or in complaint handling through an informal dispute settlement mechanism not incorporated into the terms of a written warranty. In other words, by incorporating a mechanism into a written warranty the warrantor undertakes obligations in addition to, not in lieu of, obligations under existing law.

Under section 110(a)(3), if a warrantor incorporates a complying dispute settlement mechanism into the terms of the written warranty, and the warrantor requires that the consumer resort to the mechanism before pursuing any legal remedies under section 110, then the consumer may not commence a civil action under section 110(d) (except for the limited purpose of establishing the representative capacity of a class of plaintiffs), without first seeking redress through the mechanism.

Section 110(d) permits any consumer damaged by reason of the failure of any supplier, warrantor, or service contractor to comply with any obligation under the Act, under a written or implied warranty, or under a service contract, to bring suit in either a State court, or Federal District Court (though minimum jurisdictional requirements are imposed on Federal district court actions). This Section also permits a consumer who prevails in a legal action to recover costs and expenses, including reasonable attorney fees.

When read together with section 110(d), section 110(a)(3) might be construed as requiring a consumer to resort to warrantor's complying informal dispute settlement mechanism before pursuing any legal rights or remedies. However, section 111(b) makes clear that the

consumer would be free to pursue State or other Federal rights or remedies whether or not warrantor has incorporated a complying mechanism into the terms of his written warranty.

Thus, under section 110 (a)(3) and (d), the consumer may be required to resort in the first instance to warrantor's complying mechanism only when pursuing rights or remedies newly created by section 110(d), such as the class action under section 110(d)(3), attorney fees under section 110(d)(2), or, by reference, any right or remedy newly created by Title I of the Act (or Rules thereunder) relating to written or implied warranties, service contracts, or other obligations.

Section 110 does not require warrantors to establish informal mechanisms for resolution of consumer warranty disputes. Rather, the legislative policy, set out in section 110(a)(1), is to "encourage" warrantors toward that end. The Section requires only that if a warrantor incorporates an informal mechanism into the terms of a written warranty, then the mechanism, and its implementation, must comply with minimum requirements to be prescribed by the Federal Trade Commission.

The Commission is of the view that this legislative scheme is best implemented by a careful balancing of warrantor and consumer interests. Therefore, the minimum requirements for informal mechanisms set out below are intended to facilitate fair and expeditious settlement of warranty disputes without placing unnecessary burdens on warrantors.

Section 110 requires that consumer warranty disputes be handled "fairly and expeditiously" by designated mechanisms, and that the minimum requirements provide for "participation in such procedure by independent or governmental entities". The section does not specify in detail the form, procedures or other requirements that the Commission must prescribe in its rules. The proposed rule would permit a wide variation in form and procedure among complying mechanisms, in recognition of the variety among effective dispute handling mechanisms currently in existence. The intent is to permit warrantors to establish mechanisms—third party and intracompany—best suited to their particular product complaint patterns, and to avoid creating artificial or unnecessary procedural burdens as long as the basic goals of speed, fairness and independent participation are met.

To balance the lack of specific requirements as to form and method of operation, the proposed rule includes detailed requirements for member qualifications, deadlines for resolution of disputes, recordkeeping, audit, and certain other matters. These requirements are intended to ensure the integrity of mechanisms, facilitate the monitoring and enforcement obligations of the Commission, and encourage consumer review and participation.

Accordingly, the Commission proposes the following rule to implement section 110 of the Act and to amend Title 16, Chapter 1, Subchapter G, Rules, Regulations, Statements and Interpretations under the Magnuson-Moss Act, by adding a new Part 703 to read as follows:

---

## PART 703—INFORMAL DISPUTE SETTLEMENT PROCEDURES

Sec.
703.1 Definitions.
703.2 Duties of Warrantor.

MINIMUM REQUIREMENTS OF THE MECHANISM

703.3 Mechanism Organization.
703.4 Qualification of Members.
703.5 Operation of the Mechanism.
703.6 Recordkeeping.
703.7 Audits.
703.8 Openness of Records and Proceedings.

AUTHORITY: 15 U.S.C. 2309 and 2310.

### § 703.1 Definitions.

(a) "The Act" means the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, 15 U.S.C. 2301, *et seq.*

(b) "Consumer product" means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(c) "Written warranty" means:

(1) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(2) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking,

which written affirmation, promise or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(d) "Warrantor" means any person who gives or offers to give a written warranty which incorporates an informal dispute settlement mechanism.

(e) "Mechanism" means an informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of Title I of the Act applies, as provided in section 110 of the Act.

(f) "Members" means the person or persons within a Mechanism actually deciding disputes.

(g) "Seller" means any person who sells or offers for sale for purposes other than resale any consumer product.

(h) "Consumer" means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of a written warranty applicable to the product, and any other person who is entitled by the terms of such warranty or under applicable state law to enforce against the warrantor the obligations of the warranty.

### § 703.2 Duties of Warrantor.

(a) The warrantor shall not incorporate into the terms of a written warranty a Mechanism that fails to comply with the requirements contained in § 703.3–703.8. This paragraph shall not prohibit a warrantor from incorporating into the terms of a written warranty the step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty as described in section 102(a)(7) of the Act and required by Part 701 of this subchapter.

(b) The warrantor shall disclose clearly and conspicuously at least the following information on the face of the written warranty:

(1) a statement of the availability of the informal dispute settlement mechanism;

(2) the name and address of the Mechanism, or the name and a telephone number of the Mechanism which consumers may use without charge;

(3) a statement of any requirement that the consumer resort to the Mechanism before exercising rights or seeking remedies created by Title I of the Act; together with the disclosure that if a consumer chooses to seek redress by pursuing rights and remedies not created by Title I of the Act, resort to the Mechanism would not be required by any provision of the Act; and

(4) a statement, if applicable, indicating where further information on the Mechanism can be found in materials accompanying the product, as provided in § 703.2(c).

(c) The warrantor shall include in the written warranty or in a separate section of materials accompanying the product, the following information:

(1) either (i) a form addressed to the Mechanism containing spaces requesting the information which the Mechanism may require for prompt resolution of warranty disputes; or

(ii) a telephone number of the Mechanism which consumers may use without charge;

(2) the name and address of the Mechanism;

(3) the time limits adhered to by the Mechanism; and

(4) the types of information which the Mechanism may require for prompt resolution of warranty disputes.

(d) Warrantor shall provide to its sellers and service centers the information described in § 703.2(c), and shall take those steps reasonably calculated to ensure that the information is distributed to any consumer who requests the information or presents a warranty complaint.

Nothing contained in paragraphs (b), (c) or (d) of this section shall limit the warrantor's option to encourage consumers to seek redress directly from the warrantor; but the warrantor shall clearly and conspicuously disclose that

access to the Mechanism is available without restriction at a consumer's option. The warrantor shall proceed fairly and expeditiously to attempt to resolve all disputes submitted directly to the warrantor.

(e) Whenever the warrantor determines that a dispute submitted directly to it cannot be resolved to the consumer's satisfaction, the warrantor shall immediately refer the dispute to the Mechanism, together with any information which the Mechanism may require for prompt resolution of warranty disputes.

(f) The warrantor shall: (1) respond fully and promptly to requests by the Mechanism for information;

(2) upon notification of any decision of the Mechanism that would require action on the part of the warrantor, immediately notify the Mechanism, whether, and to what extent, warrantor will abide by the decision; and

(3) perform any obligations it has agreed to.

(g) The warrantor shall act in good faith in determining whether, and to what extent, it will abide by a Mechanism decision.

(h) The warrantor shall comply with any requirements imposed by the Mechanism to fairly and expeditiously resolve warranty disputes.

### Minimum Requirements of the Mechanism

### § 703.3 Mechanism Organization.

(a) The Mechanism shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for use of the Mechanism.

(b) The warrantor and the sponsor of the Mechanism (if other than the warrantor) shall take all steps necessary to ensure that the Mechanism, and its members and staff, are sufficiently insulated from the warrantor and the sponsor, so that the decisions of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. Necessary steps may include committing funds in advance, basing personnel decisions solely on merit, and avoiding the assigning of conflicting warrantor or sponsor duties to Mechanism staff persons.

(c) The Mechanism shall impose any other requirements necessary to ensure that the members, staff and warrantors act fairly and expeditiously in each dispute.

### § 703.4 Qualification of Members.

(a) No member deciding a dispute shall be: (1) a party to the dispute, or an employee or agent of a party other than for purposes of deciding disputes; or

(2) a person who is or may become a party in any legal action, including but not limited to class actions, relating to the product or complaint in dispute, or an employee or agent of such person other than for purposes of deciding disputes.

For purposes of this paragraph a person shall not be considered a "party" solely because he or she acquires or owns an interest in a party solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment.

(b) When one or two members are deciding a dispute, all shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. When three or more members are deciding a dispute, at least two-thirds shall be persons having no direct involvement in the manufacture, distribution, sale or service of any product. "Direct involvement" shall not include acquiring or owning an interest solely for investment, and the acquisition or ownership of an interest which is offered to the general public shall be prima facie evidence of its acquisition or ownership solely for investment. Nothing contained in this section shall prevent the members from consulting with any persons knowledgeable in the technical, commercial or other areas relating to the product which is the subject of the dispute.

### § 703.5 Operation of the Mechanism.

(a) The Mechanism shall establish written operating procedures which shall include at least those items specified in paragraphs (b)–(j). Copies of the written procedures shall be made available to any person.

(b) Upon notification of a dispute, the Mechanism shall immediately inform both the warrantor and the consumer of receipt of the dispute, and shall promptly supply the consumer with a description of the procedures and time limits adhered to by the Mechanism.

(c) The Mechanism shall investigate, gather and organize all information necessary for a fair and expeditious decision in each dispute. The Mechanism shall, where necessary to decide the dispute, elicit facts from the parties relating to the number of any repair attempts, length of repair periods, the possibility of unreasonable use of the product, or any other facts relevant in light of Title I of the Act (or rules thereunder), including facts that might support a decision to award consequential damages, or any other remedy, under the Act (or rules thereunder). When information submitted by one party, a consultant under § 703.4(b), or any other source tends to contradict facts submitted by the other party, the Mechanism shall clearly, accurately, and completely disclose to both parties the contradictory information (and its source) and shall provide both parties an opportunity to explain or rebut the information and to submit additional materials. The Mechanism shall not require any information not reasonably necessary to decide the dispute.

(d) If the warrantor and the consumer agree to a settlement of the dispute before a decision is rendered by the Mechanism, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute: (1) ratify the settlement as a decision of the Mechanism (The members may authorize the staff of the Mechanism to ratify settlements as Mechanism decisions.); and

(2) disclose to the consumer the terms of the ratified settlement, and the information described in paragraph (g) of this section.

(e) If the dispute has not been settled, the Mechanism shall, as expeditiously as possible but at least within 40 days of notification of the dispute: (1) render a fair decision based on the information gathered as described in paragraph (c) of this section, and on any information submitted at an oral presentation which conforms to the requirements of paragraph (f) of this section (A decision shall include any remedies appropriate under the circumstances, including repair, replacement, refund, reimbursement for expenses, compensation for damages, and any other remedies available under the written warranty or the Act (or rules thereunder); and a decision shall state a specified reasonable time for performance);

(2) disclose to the warrant or its decision and the reasons therefor;

(3) if the decision would require action on the part of the warrantor, determine whether, and to what extent, warrantor will abide by its decision; and

(4) disclose to the consumer its decision, the reasons therefor, warrantor's intended actions (if the decision would require action on the part of the warrantor), and the information described in paragraph (g) of this section.

Nothing contained in this paragraph shall prohibit the Mechanism from delaying the performance of its duties under this paragraph beyond the 40 day time limit, where the period of delay is due solely to failure of a consumer to provide promptly information necessary for the decision in response to a reasonable request.

(f) The Mechanism may allow an oral presentation by a party to a dispute (or a party's representative) only if: (1) both warrantor and consumer expressly agree to the presentation;

(2) prior to agreemen tthe Mechanism fully discloses to the consumer the following information:

(i) that the presentation by either party will take place only if both parties so agree, but that if they agree, and one party fails to appear at the agreed upon time and place, the presentation by the other party may still be allowed;

(ii) that the members will decide the dispute whether or not an oral presentation is made;

(iii) the proposed date, time and place for the presentation; and

(iv) a brief description of what will occur at the presentation including, if applicable, parties' rights to bring witnesses and/or counsel; and

(3) each party has the right to be present during the other party's oral presentation.

Nothing contained in this paragraph shall preclude the Mechanism from allowing an oral presentation by one party, if the other party fails to appear at the agreed upon time and place, as long as all of the requirements of this paragraph have been satisfied.

(g) The Mechanism shall inform the consumer, at the time of disclosure required in paragraphs (d) and (e)(4) of this section that: (1) if he or she is dissatisfied with its decision or warrantor's intended actions, or eventual performance, legal remedies, including use of small claims court, may be pursued;

(2) the Mechanism's decision is admissible in evidence as provided in section 110(a)(3) of the Act; and

(3) the consumer may obtain, at reasonable cost, copies of all Mechanism records relating to the consumer's dispute.

(h) If the warrantor has agreed to perform any obligations, either as part of a settlement under paragraph (d) or as a result of a decision under paragraph (e), the Mechanism shall ascertain from the consumer within 5 working days of the date for performance whether performance has occurred.

(i) A requirement that a consumer resort to the Mechanism prior to commencement of an action under section 110(d) of the Act shall be satisfied 40 days after notification to the Mechanism of the dispute or when the Mechanism completes all of its duties under paragraph (e) of this section, whichever occurs sooner. Except that, if the Mechanism delays performance of its paragraph (e) duties as allowed by the last sentence of that paragraph, the requirement that the consumer initially resort to the Mechanism shall not be satisfied until the period of delay due solely to the consumer's failure to provide necessary information has ended.

(j) Decisions of the Mechanism shall not be legally binding on any person. However, the warrantor shall act in good faith, as provided in § 703.2(g). In any civil action arising out of a warranty obligation and relating to a matter considered by the Mechanism, any decision of the Mechanism shall be admissible in evidence, as provided in section 110(a)(3) of the Act.

### § 703.6 Recordkeeping.

(a) The Mechanism shall maintain records on each dispute referred to it which shall include: (1) a dispute summary form containing: (i) name, address and telephone number of the consumer;

(ii) name, address, telephone number and contact person of the warrantor;

(iii) brand name and model number of the product involved;

(iv) a brief description of the facts pertinent to the dispute;

(v) a statement of the Mechanism's decision or other resolution;

(vi) a summary of follow-up action and results thereof; and

(vii) the date of receipt of the dispute and the date of disclosure to consumer of resolution;

(2) all letters or other written documents submitted by either party;

(3) all other evidence collected by the Mechanism relating to the dispute, including summaries of all telephone calls and meetings between the Mechanism and any other person (including consultants described in § 703.4(b));

(4) a summary of any information presented by either party at an oral presentation;

(5) the decision of the members including information as to date, time and place of meeting, and the identity of members voting; or information on any other resolution;

(6) a copy of the disclosure to the parties of the decision;

(7) a statement of the warrantor's intended action(s);

(8) copies of follow-up letters (or summaries of follow-up telephone calls) to the consumer, and responses thereto; and

(9) any other documents and communications (or summaries of oral communications) relating to the dispute.

(b) The Mechanism shall maintain and index the records required to be kept under paragraph (a) of this section in a manner that will facilitate a determination by an auditor under § 703.7 as to whether the Mechanism and the warrantor(s) are in compliance with this part.

(c) The Mechanism shall retain all records specified in paragraphs (a) and (b) for at least 4 years after final disposition of the dispute.

(d) The Mechanism shall compile and maintain statistics which include: (1) the number and percent of disputes in each of the following status or final disposition categories, on a month-to-month basis: (i) resolved by staff of the Mechanism and warrantor has complied;

(ii) resolved by staff of the Mechanism, time for compliance has occurred, and warrantor has not complied;

(iii) resolved by staff of the Mechanism and time for compliance has not yet occurred;

(iv) decided by members and warrantor has complied;

(v) decided by members, time for compliance has occurred, and warrantor has not complied;

(vi) decided by members and time for compliance has not yet occurred;

(vii) decided by members adverse to the consumer;

(viii) no jurisdiction;

(ix) insufficient information;

(x) pending; and

(xi) decision delayed beyond 40 days; and

(2) the average (mean) time between referral to the Mechanism and final resolution.

### § 703.7 Audits.

(a) The Mechanism shall have an audit conducted at least annually, to determine whether the Mechanism and its implementation are in compliance with this part. All records of the Mechanism required to be kept under § 703.6 shall be available for audit.

(b) Each audit provided for in paragraph (a) of this section shall include a review of all aspects of Mechanism and warrantor performance that are the subject of this part, and shall include a verification of a statistically valid sample of disputes decided by the Mechanism. For any matter that cannot be verified on the basis of readily available data, the auditor may substitute an informal critique, accompanied by a statement describing the criteria or factors forming the basis for the critique.

(c) A report of each audit provided for in paragraph (a) of this section shall be submitted to the Federal Trade Commission, and shall be made available to any person at reasonable cost. The Mechanism may direct its auditor to delete names of parties to disputes, and identity of products involved, from the audit report.

(d) Auditors shall be selected by the Mechanism. No auditor may be involved with the Mechanism as a warrantor, sponsor or member, or employee or agent thereof, other than for purposes of the audit.

### § 703.8 Openness of Records and Proceedings.

(a) All records specified in § 703.6(d) shall be available to any person for inspection and copying.

(b) All records other than those specified in paragraph (d) of § 703.6, except as provided under paragraph (e) of this section, may be kept confidential, or made available only on such terms and conditions, or in such form, as the Mechanism shall permit.

(c) The policy of the Mechanism with respect to records made available at the Mechanism's option shall be set out in the procedures under § 703.5(a); the policy shall be applied uniformly to all requests for access to or copies of such records.

(d) Meetings of the members to hear and decide disputes shall be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved in disputes need not be disclosed at meetings.

(e) Upon request the Mechanism shall provide to either party to a dispute: (1) access to all records relating to the dispute; and

(2) copies of any records relating to the dispute, at reasonable cost.

(f) All records maintained by the Mechanism shall be available to the Federal Trade Commission without restriction.

The documents supporting the proposed rule, and a report of the Commission staff discussing the proposed rule and the supporting documents, are available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C.

All interested persons are hereby notified that they may file written data, views or arguments concerning the proposed Rule with the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission,

Washington, D.C. 20580, not later than September 15, 1975.

All interested persons are also given notice of the opportunity to orally present data, views or arguments with respect to the proposed Rule at a public hearing to be held commencing at 9 a.m. e.d.t., September 15, 1975 in Room 332, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue, Northwest, Washington, D.C., 20580. Additional hearings will be held in Chicago, Room 347A-B, 230 South Dearborn, commencing September 22, 1975, and in Los Angeles, Room 13209, 11000 Wilshire Boulevard, commencing September 29, 1975.

Any person desiring to orally present his or her views at any of the hearings should so inform the following designated people not later than September 8, 1975, and state the estimated time required for his or her oral presentation. For the Washington, D.C., hearings, notify the Special Assistant Director for Rulemaking, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580. For the Chicago hearings, notify Jerome Lamet, Assistant Regional Director, Federal Trade Commission, Suite 1437, 55 East Monroe, Chicago, Illinois. For the Los Angeles hearings, notify Wendy Kaufman, Federal Trade Commission, Room 13209, Federal Building, 11000 Wilshire Boulevard, Los Angeles, California, 90024. Reasonable limitations upon the length of time allotted to any person may be imposed.

In addition, all persons desiring to deliver a prepared statement at the hearings should file such statement together with supporting factual material with the Special Assistant Director for Rulemaking not later than September 8, 1975.

To the extent practicable, persons wishing to file written presentations in excess of two pages should submit five copies, except that supporting materials need not be duplicated.

The data, views or arguments presented with respect to the proposed rule, including a transcript of oral testimony at the hearings described above, will be made available for examination by interested persons in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C. and will be considered by the Commission in its determination to issue a final version of the proposed Rule.

All interested persons are urged to express their approval or disapproval of the proposed Rule, or to recommend revisions thereof, and to give a full statement of their views, supplemented by all appropriate documentations, in connection therewith.

Comments are invited with respect to all aspects of the proposed rule. The Commission invites comments particularly with respect to:

1. The disclosures required by § 703.2 (b), (c) and (d). Are these sufficient to ensure that consumers will be aware of the Mechanism's existence when they have a warranty complaint? If not, what other means of disclosure (e.g., media advertising, or stickers permanently affixed to the product itself) should be required?

2. The provision in § 703.3(a) prohibiting the imposition of any fee on the consumer for use of the Mechanism.

3. The requirements in § 703.5 relating to the operation of the Mechanism. Are they stringent enough to ensure fair and expeditious settlement of disputes? Is the forty day time limit reasonable from the standpoint of both the Mechanism and the consumer?

4. Whether any requirements in the proposed rule (such as the § 703.2(b), (c) and (d) disclosures, the § 703.5(c) investigation requirement, the § 703.6 recordkeeping provisions, and the § 703.7 audit provisions) could be accomplished by equally satisfactory, but less costly, means.

Issued: July 15, 1975.

By the Commission.

VIRGINIA M. HARDING,
*Acting Secretary.*

[FR Doc.75-18355 Filed 7-15-75;8:45 am]

## SECURITIES AND EXCHANGE COMMISSION

### [ 17 CFR Parts 230, 239, 240, 249 ]

[Rel. Nos. 33-5594, 34-11498; File No. S7-561]

### PROJECTIONS OF FUTURE ECONOMIC PERFORMANCE

#### Extension of Comment Period

The Securities and Exchange Commission today extended the comment period on its proposals relating to projections of future economic performance and a more timely filing of Form 8-K to report a change in control (Release No. 33-5581, April 28, 1975, 40 FR 20316). The Commission believes that an extension from June 30 until July 31, 1975 is appropriate in view of the extension requests it has received and the great interest these proposals have generated.

Accordingly, all interested persons are invited to submit their views and comments on the proposals contained in Release No. 33-5581 to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before July 31, 1975. Such communications should refer to File No. S7-561. All such communications will be available for public inspection.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

JUNE 26, 1975.

[FR Doc.75-18438 Filed 7-15-75;8:45 am]

## SMALL BUSINESS ADMINISTRATION

### [ 13 CFR Part 121 ]

### SMALL BUSINESS SIZE STANDARDS

#### New Date for Hearing Regarding Proposed Change in Definition of Small Petroleum Refiner

On June 19, 1975, there was published in the FEDERAL REGISTER (40 F.R. 25831), a notice that the Small Business Administration would hold a public hearing at 9:00 A.M., on Monday, August 4, 1975, in Room 214 of the Small Business Administration Central Office, 1441 L Street, N.W., Washington, D.C., on the definition of a small petroleum refiner.

Due to scheduling problems, we find that we are unable to hold the hearing on the date originally scheduled. Therefore, the hearing will be held on Monday, August 25, 1975, at the same time and place.

In our earlier notice, it was requested that all parties who will attend the hearing, notify Mr. William L. Pellington, Director, Size Standard Division, 1441 L Street, N.W., Washington, D.C. 20416 by July 1, 1975. This date is extended to July 21, 1975.

(Catalog of Federal Domestic Assistance Program No. 59.002, Economic Injury Disaster Loans; 59.009, Procurement Assistance to Small Businesses; and 59.012, Small Business Loans.)

Dated: July 7, 1975.

THOMAS S. KLEPPE,
*Administrator.*

[FR Doc.75-18424 Filed 7-15-75;8:45 am]

# notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF STATE

[Public Notice CM-5/66]

### ADVISORY COMMITTEE FOR U.S. PARTICIPATION IN THE UN CONFERENCE ON HUMAN SETTLEMENTS (HABITAT)

#### Meeting

The first meeting of the Advisory Committee for U.S. Participation in the UN Conference on Human Settlements (Habitat) will be held at 10 a.m. on July 31, 1975 in Room 1107 at the Department of State. The meeting will be an open one and will continue until no later than 12:30 p.m. Those attending should use the entrance to the State Department at 22nd and C Sts. N.W.

The agenda will include:

1. Opening Remarks by Chairman.
2. Status Report on Conference Preparations.
3. Discussion of Conference Themes and Issues.

Members of the general public may attend and participate in the discussion subject to instructions of the Chairman.

For purposes of fulfilling building security requirements, anyone wishing to attend the open session must advise the Executive Secretary by telephone in advance of the meeting. Telephone (703) 235-9558. Members of the public will be accommodated up to the seating capacity of the meeting room.

Dated: July 11, 1975.

DONALD KRUMM,
*Executive Secretary.*

[FR Doc.75-18511 Filed 7-15-75;8:45 am]

## DEPARTMENT OF JUSTICE

### Antitrust Division

### UNITED STATES V. AMERICAN TECHNICAL INDUSTRIES, INC.

#### Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comments on the proposed judgment filed with the United States District Court in the Middle District of Pennsylvania in Civil Action No. 73-246, United States of America v. American Technical Industries, Inc., were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: July 8, 1975.

THOMAS E. KAUPER,
*Assistant Attorney General, Antitrust Division.*

U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[Civil No. 73-246]

United States of America, Plaintiff, v. American Technical Industries, Inc., Defendant.

RESPONSE OF THE PLAINTIFF TO COMMENTS OF GENERAL FOAM PLASTICS, CORP., REGARDING PROPOSED FINAL JUDGMENT

Plaintiff hereby responds to the comments of General Foam Plastics, Corp., Norfolk, Virginia pursuant to the provisions of Section 5 (b) and (d) of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 16), commonly known as the Clayton Act.

SUGGESTED MODIFICATION OF PROPOSED CONSENT JUDGMENT

The comments of General Foam Plastics, Corp. concluded that the format of the proposed Final Judgment was an acceptable and reasonable approach to the restoration of competition in the manufacture and sale of artificial Christmas trees provided that (a) the royalty-free licensing arrangements of the proposed Judgment be modified to include all of the patents of American Technical Industries, Inc. (hereinafter ATI) or, in the very least, those ATI patents which possibly dominate the patents of Masterpiece, Inc. (hereinafter Masterpiece) and that (b) patent licensees be provided with the requisite "Know-How" by way of physical demonstrations of the patented methods, apparatus and trees in order that the licensees may practice the licensed inventions.

The purpose of this action was to undo the allegedly anticompetitive effects of the acquisition of Masterpiece, Inc. by defendant ATI. Ordinarily, the way this is accomplished is to deprive the defendant of the benefits of the acquisition through divestiture of the assets acquired or, as here, by requiring licensing of the acquired patents. The patents of ATI which it had prior to the acquisition are obviously not fruits of an unlawful acquisition. Of course, it would be convenient to competitors to get access to ATI's patents without cost, but such licensing is not deemed either appropriate or necessary to undo the anticompetitive effects of the acquisition.

The compulsory licensing provisions of the proposed Final Judgment will make available to all competitors and potential competitors in the manufacture and sale of artificial Christmas trees the patented technology of Masterpiece existing at the time of its acquisition by ATI plus such technology developed by Masterpiece employees after the acquisition. This, the plaintiff believes, will put all competitors on an equal footing with ATI with regard to the patented technology acquired by ATI from Masterpiece.

Furthermore, the plaintiff believes that the provision of the proposed Final Judgment relating to the publication of a written manual by ATI will provide all competitors and potential competitors with the requisite "Know-How" employed by ATI in the production of artificial Christmas trees under the licensed patents, since the Final Judgment imposes upon ATI the duty to "accurately and completely" describe its methods of manufacture in such manual. Should the manual alone prove insufficient, the plaintiff can apply to the Court for modification of the Final Judgment pursuant to section 7 thereof which provides that the Court retains jurisdiction of this cause for the purpose of enabling any of the parties to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the modification of any of the provisions therein.

Dated: July 1, 1975.

ROGER L. CURRIER,
WALTER L. DEVANY,
NORMAN E. GREENSPAN,
*Attorneys, Department of Justice, Antitrust Division, Middle Atlantic Office, 3430 United States Courthouse, Independence Mall West, 601 Market Street, Philadelphia, Pennsylvania 19106.*

COMMENTS OF GENERAL FOAM PLASTICS, CORP., REGARDING PROPOSED CONSENT JUDGMENT

These comments are submitted to the United States (Anti-trust Division of the U.S. Department of Justice) by General Foam Plastics, Corp., Norfolk, Virginia, a competitor of American Technical Industries, Inc., pursuant to the provisions of Section 5 (b) and (d) of the Act of Congress of October 15, 1914, as amended (15 U.S.C. § 16), commonly known as the Clayton Act.

I. *Nature and purpose of the proceeding.* This civil action was brought by the U.S. Justice Department-Antitrust Division in view of its belief that the acquisition by American Technical Industries, Inc. (hereinafter ATI) of Masterpiece, Inc. (hereinafter Masterpiece) might substantially lessen competition or tend to create a monopoly in the manufacture and sale of artificial Christmas trees in the United States.

To the present knowledge of General Foam Plastics Corp., a competitor of ATI, the aforementioned acquisition has indeed not only substantially lessened competition in the manufacture and sale of artificial Christmas trees in the U.S., but it has tended to create and/or to perpetuate a monopoly in the manufacture and sale of Christmas tree-making equipment for ATI, since to the knowledge of General Foam Plastics Corp., ATI is the only manufacturer, for sale or lease to third parties, of the equipment required for the manufacture of artificial Christmas trees and since the majority of the U.S. patents covering Christmas tree-making equipment are now held by ATI. In controlling tree-making equipment, the technology therefor, and the further development of said technology, ATI enjoys extraordinary control over potential entrants into the business and over the nature and extent of expansion of those already in the tree business and in competition with ATI.

II. *The events giving rise to the alleged violation.* At the time of its acquisition of Masterpiece in 1971, ATI held few, if any, U.S. patents covering artificial Christmas trees, but it did hold approximately 20 U.S. patents for the equipment and methods of

manufacture of such trees, while, at the time of the acquisition, Masterpiece held 2 U.S. patents covering artificial Christmas trees and 4 U.S. patents covering method and equipment for their manufacture. Subsequent to the acquisition, ATI in its own name has obtained approximately 10 patents relating to Christmas trees and approximately 3 U.S. patents relating to method and manufacture, while Masterpiece has obtained 2 tree patents and 2 patents for method and apparatus. (See Schedules A and B attached hereto). Thus, the total of ATI and Masterpiece patents for method and apparatus is approximately 30 (of which only one is known to have expired) and the total for trees is approximately 13 (none of which has expired), a grand total of approximately 43 patents.

The thrust of the Government's allegations relating to patents apparently was directed to a single product, namely, the "Mountain King" tree and appears to have been concerned primarily with Masterpiece as a competitive source of Christmas trees, per se. The United States does not appear to have completely considered the highly detrimental and restraining effect on the artificial Christmas tree trade of the elimination of Masterpiece as a developer of and a potential competitive source for Christmas tree-making equipment.

III. *The proposed consent judgment and its anticipated effects on competition.* While the proposed Consent purports to make available to competitors on a royalty-free licensed basis the Masterpiece technology (essentially as represented by the Masterpiece patents, i.e., those developed by Masterpiece personnel), this technology may not be sufficient to enable others to effectively compete with ATI since ATI retains control over its own, possibly dominating patent portfolio and its own "Know-How" as well as the "Know-How" of Masterpiece. ATI presumably has continued to develop its technology, as reflected by the patent activity after the acquisition, while it appears that the growth of Masterpiece technology has been effectively thwarted (only the last of the 10 Masterpiece patents listed in the Proposed Consent Judgment was applied for after the acquisition). Thus, the proposed offer to license only Masterpiece technology does not extend far enough to restore competition and to restore or to make available competitive "Know-How" and up-to-date technology to ATI's competitors. What is required to make such a restoration, in lieu of the considered—but rejected—divestiture of Masterpiece, is the making available to competitors of the viable and growing, up-to-date technology of ATI along with the somewhat dated Masterpiece technology, the growth of which surely has been seriously stunted if not totally curtailed by the acquisition.

IV. *Suggested modification of proposed consent judgment.* Therefore, it is submitted by General Foam Plastics that fair competition will be achieved, and the restraints upon trade occasioned by the acquisition of Masterpiece by ATI will be obviated, to the benefit of the general public, only if the terms of the proposed Consent Judgment are not limited to the licensing of the 10 Masterpiece patents (which may well be dominated by some of ATI's patents), but are broadened to include all of the ATI patents, or, in the alternative, to include at least every one of those ATI patents which are determined by the United States to dominate or in anywise to cover products, methods, or equipment manufactured under the scope of the Masterpiece patents.

It is further submitted that the proposed immediate dissemination of the technology represented by the Masterpiece patents, while commendable in principle, will not be effectively accomplished by means of a printed manual alone. The transfer or acquisition of the highly sophisticated technology involved in the manufacture of artificial trees requires at least the physical inspection of the equipment and the products covered by the patents as well as the actual observation of both the operation of the patented equipment and the actual steps of the patented methods. Accordingly, if the Consent Judgment is to be effective at all, it must be modified to provide licenses with the required "Know-How" to practice the licensed inventions and that said "Know-How" must be transferred, not by a written manual alone, but by physical demonstrations of the patented methods, apparatus, and trees.

V. *Conclusion.* General Foam Plastics, a competitor of ATI, believes the format of the proposed Consent Judgment will be an acceptable and reasonable approach to the restoration of competition, short of divestiture of Masterpiece by ATI, *provided that* (a) the proposed royalty-free licensing arrangements be modified to include all of the ATI patents or, in the very least, those ATI patents which possibly dominate the Masterpiece patents and that (b) patent licensees be provided with the requisite "Know-How", by way of physical demonstrations, to practice the licensed inventions.

Dated: June —, 1975.

MICHAEL A. CORNMAN, Esq.,
*Mandeville and Schweitzer, 230 Park Avenue, New York, New York 10017, (212) 689-6967, Attorneys for General Foam Plastics Corp.*

SCHEDULE A.—*American Technical Industries, Inc., patents*

[According to Patent Office records]

| Patent No. | Title | Granted |
|---|---|---|
| 2,742,327 | Fully automatic machine for making brushes | Apr. 17, 1956 |
| 2,903,299 | Automatic machines for making brushes | Sept. 8, 1959 |
| 3,093,240 | Machines for trimming twisted wire brushes | June 25, 1963 |
| 3,160,449 | Continuous twister and feeder mechanism for brush machines or the like | Dec. 8, 1964 |
| 3,165,362 | Method of making a brush | Jan. 12, 1965 |
| 3,191,996 | Twisting mechanism | June 29, 1965 |
| 3,221,506 | Power transmission mechanism | Dec. 7, 1965 |
| 3,227,492 | Brush trimmer | Jan. 4, 1966 |
| 3,231,311 | Brushmaking apparatus | Jan. 25, 1966 |
| 3,254,682 | Twisting mechanism | June 7, 1966 |
| 3,254,923 | Brushmaking apparatus and method | Do. |
| 3,279,506 | Method and machine for producing an article by strand wrapping | Oct. 18, 1966 |
| 3,322,467 | Brushmaking apparatus | May 30, 1967 |
| 3,330,603 | Twist wire guide assembly | July 11, 1967 |
| 3,335,909 | Variable slot bristle-feeding mechanism | Aug. 15, 1967 |
| 3,349,659 | Brush-sensing mechanism | Oct. 31, 1967 |
| 3,370,345 | Branch-pointing method and apparatus | Feb. 27, 1968 |
| 3,370,622 | Apparatus and method for producing twisted wire products | Do. |
| 3,376,073 | Bristle-feeding mechanism | Apr. 2, 1968 |
| 3,548,686 | Pole drilling machine | Dec. 22, 1970 |
| 3,548,694 | Method and apparatus for slitting web material | Do. |
| 3,616,105 | Artificial tree branch of foliage stamped from a ribbon of plastic material | Oct. 26, 1971 |
| 3,634,180 | Artificial tree and method of assembly | Jan. 11, 1972 |
| 3,647,605 | Artificial plant utilizing a 3-dimensional shell framework | Mar. 7, 1972 |
| D 223,497 | Branch for an artificial tree or similar article | Apr. 25, 1972 |
| 3,657,879 | Apparatus for making artificial tree having exposed branch ends of weblike material | Do. |
| 3,679,528 | Indoor-outdoor artificial Christmas tree | July 25, 1972 |
| D 224,598 | Christmas tree | Aug. 8, 1972 |
| 3,682,421 | Tree stand | Do. |
| 3,692,617 | Modular tree using tapered frame and rings of branches | Sept. 19, 1972 |
| 3,746,600 | Hinged plug-in branch attachment | July 17, 1973 |
| 3,774,653 | Apparatus and method for making twisted wire products using intermittently fed fringe material | Nov. 27, 1973 |
| 3,857,421 | Apparatus for forming loops from springs | Dec. 31, 1974 |
| 3,879,829 | Method for forming loops from spring | Apr. 29, 1975 |

SCHEDULE B.—*Masterpiece, Inc., patents*

[According to Patent Office records]

| Patent No. | Title | Granted |
|---|---|---|
| 3,223,454 | Apparatus for making brushes | Dec. 14, 1965 |
| D204,887 | Christmas tree | May 24, 1966 |
| 3,278,364 | Artificial Christmas tree | Oct. 11, 1966 |
| 3,365,529 | Artificial tree limb tapering method | Jan. 23, 1968 |
| 3,459,243 | Fully automatic cross-limb attaching machine | Aug. 5, 1969 |
| 3,458,893 | Artificial tree limb tapering machine | Do. |
| 3,594,260 | Artificial shrubbery and method of manufacturing the same | July 20, 1971 |
| 3,665,577 | Apparatus for manufacturing artificial shrubs | May 30, 1972 |
| 3,746,601 | Artificial shrub suitable for indoor or outdoor use | July 17, 1973 |
| 3,811,991 | Collapsible artificial shrub | May 21, 1974 |

[FR Doc.75-18240 Filed 7-15-75;8:45 am]

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[Montana 31589]

### MONTANA

### Order Providing for Opening of Public Lands

JULY 8, 1975.

In an exchange made under the provisions of Section 8 of the Act of June 28, 1934, as amended, 43 U.S.C. 315g, the following described lands have been reconveyed to the United States:

PRINCIPAL MERIDIAN, MONT.

T. 37 N., R. 23 E.,
Sec. 13, SE¼.
T. 24 N., R. 27 E.,
Sec. 10, SE¼NE¼; and
Sec. 11, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, and SW¼SE¼.

The areas described aggregate 480 acres located in Blaine and Phillips Counties.

The 160-acre tract in Blaine County is located seven miles north of Hogeland, Montana, near the Canadian Border. Topography varies from nearly level to slightly rolling. Soils range from heavy clays to clay loam with hardpan spots and gravel. About 70 acres of the tract is lake and sand bed which contains some saline water during wet springs. Vegetation is native grasses with a sparse scattering of silver sagebrush.

The 320-acre tract in Phillips County is about 38 air miles southwest of Malta. Topography is mainly flat with gentle upward slopes on the west edge. Soils are generally heavy clays; vegetation includes native grasses and a dense stand of greasewood interspersed with sagebrush.

The tracts are adjacent to or surrounded by blocks of national resource lands and will be managed for multiple resource use in conjunction with these lands.

At 10 a.m., August 18, 1975, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands will be open to the operation of the public land laws.

The mineral rights in the lands were not exchanged; therefore, the mineral status of the lands is not affected by this order.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

KENNETH J. SIRE,
*Acting Chief, Branch of Lands and Mineral Operations.*

[FR Doc.75-18420 Filed 7-15-75;8:45 am]

---

[Colorado 22245 and 22771]

### NORTHWEST PIPELINE CORP.

### Pipeline Applications

JULY 7, 1975.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for an amendment to right of way permit C-22245 for a 4½-inch pipeline to serve as an extension of the applicant's natural gas gathering system. It will be approximately one mile in length and will cross the following-described lands:

Rio Blanco County, Colo.
T. 4 S., R. 101 W., 6th P.M.,
Sec. 10, SE¼SE¼, NE¼SE¼, NW¼SE¼;
Sec. 11, SW¼SW¼;
Sec. 14, NW¼NW¼;
Sec. 23, SE¼SW¼;
Sec. 26, SW¼SW¼;
Garfield County, Colo.
T. 5 S., R. 101 W., 6th P.M.,
Sec. 2, lot 8;
Sec. 3, lot 5;
Sec. 11, NW¼NW¼.

In addition to the foregoing, Northwest Pipeline Corporation has applied for a right of way (Colorado 22771) for a 4½ inch natural gas pipeline which will be a further extension of the applicant's gathering system, will be approximately one mile in length, and will cross the following described lands:

RIO BLANCO COUNTY, COLO.

T. 4 S., R. 101 W., 6th P.M.,
Sec. 35, NE¼SW¼, Lot 2 (SE¼SW¼);

GARFIELD COUNTY, COLO.

T. 5 S., R. 101 W., 6th P.M.,
Sec. 1, lot 8;
Sec. 2, lots 5 and 6.

The purpose of this project is to enable the applicant to meet increasing demands for natural gas.

The purposes of this notice are: to inform the public that the Bureau of Land Management will be proceeding with the preparation of environmental and other analyses necessary for determining whether the applications should be approved and, if so, under what terms and conditions; to allow interested parties to comment on the applications; and to allow any persons asserting a claim to the lands or having bona fide objections to the proposed pipeline rights of way to file their objections in this office. Any person asserting a claim to the lands or having bona fide objections must include evidence that a copy thereof has been served on the applicant.

Any comment, claim or objection must be filed with the Chief, Branch of Land Operations, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, within thirty days from the date of this notice.

EVERETT K. WEEDIN,
*Chief, Branch of Land Operations.*

[FR Doc.75-18422 Filed 7-15-75;8:45 am]

---

[OR 14346 (Wash.)]

### WASHINGTON

### Proposed Withdrawal and Reservation of Land

JULY 8, 1975.

The Corps of Engineers, U.S. Department of the Army, has filed application, serial No. OR 14346 (Wash.), for withdrawal of the land described below from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), and mineral leasing laws.

The applicant desires to use the land for the purpose of construction of a dam, navigation lock and reservoir, to provide power, navigation benefits, and flood control on the Snake River.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing no later than Aug. 13, 1975, to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 2965, (729 N.E. Oregon Street) Portland, Oregon 97208.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes other than the applicant's, to eliminate land needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination by the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it a public hearing will be held at a convenient time and place which will be announced.

The land involved in the application is as follows:

WILLAMETTE MERIDIAN

T. 13 N., R. 38 E.,
Sec. 32, all of the south 500 feet of lot 1 and all of the south 300 feet of lot 2.

The area described contains 21.67 acres.

HAROLD A. BERENDS,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc.75-18421 Filed 7-15-75;8:45 am]

---

### SANTA FE NATIONAL FOREST GRAZING LIVESTOCK ADVISORY BOARD

### Meeting

A meeting of the Santa Fe National Forest Grazing Livestock Advisory Board will be held at 2 p.m. on August 1, 1975, at the Tesuque Ranger Station, 1155 Siler Road, Santa Fe, New Mexico. Items on the agenda will include the Charter and proposed by-laws, election of officers, hosting of the State Permittee Meeting,

issuance of new 10 year term permits, and discussion of Forest problems. The meeting is open to the public.

JACK R. MILLER,
*Acting Forest Supervisor.*

[FR Doc.75-18419 Filed 7-15-75;8:45 am]

## Fish and Wildlife Service

### MARINE MAMMALS

### Issuance of Permit

On May 27, 1975, a notice was published in the FEDERAL REGISTER (40 FR 22853), that an application had been filed with the Fish and Wildlife Service by Dr. G. Carleton Ray, Department of Pathobiology, Johns Hopkins University, Baltimore, Maryland, for a permit to engage in scientific research of the Pacific walrus.

Notice is hereby given that on July 3, 1975, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Fish and Wildlife Service issued a permit to the Department of Pathobiology, Johns Hopkins University, Baltimore, Maryland, subject to certain conditions set forth therein. The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's office in Suite 600, 1612 K Street, N.W., Washington, D.C.

*Dated: July 11, 1975.*

C. R. BAVIN,
*Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service.*

[FR Doc.75-18485 Filed 7-15-75;8:45 am]

## Office of the Secretary

### TWIN BUTTES RESERVOIR, SAN ANGELO, TEX.

### Designation of Certain Areas and Trails for Off-Road Vehicle Use

Notice is hereby given that, pursuant to the regulations stated in 43 C.F.R. 420, operation of motor vehicles within Twin Buttes Reservoir area is prohibited outside established public roads and parking areas except for the following area and trails which are hereby designated for off-road vehicle use:

The area designated for off-road vehicle use is located in the David Lloyd survey 101, Tom Green County, Texas, and contains an estimated 80 acres of land lying below Twin Buttes Dam and south of South Concho River. A connecting off-road vehicle trail continues south, circles the south end of the dam, and continues north paralleling the west side of the dam to the water's edge. Two off-road vehicle trails are located in surveys 104 and 106 of Washington County School lands and 102 of David Lloyd survey. One of these trails extends from water to water on the east side of the equalizing channel of Twin Buttes Reservoir but does not include any portion of Knickerbocker Road; the other is located on the west side of the equalizing channel and extends from Knickerbocker Road south and southwesterly, ending in survey 102 near right-of-way marker No. 50. The designated area and trails have been clearly marked.

Nothing in this notice shall be deemed to restrict official or emergency use of motor vehicles outside public roads and parking areas.

Limits may be established on the number of vehicles permitted in the designated area and trails when such limitations become necessary in the interest of public safety, for coordination of other visitor uses, or for conservation of the natural resources of the area.

Dated: July 11, 1975.

ROLAND G. ROBISON, Jr.,
*Assistant Secretary, Land and Water Resources.*

[FR Doc.75-18400 Filed 7-15-75;8:45 am]

# DEPARTMENT OF AGRICULTURE

## Food and Nutrition Service

### NATIONAL SCHOOL LUNCH PROGRAM

### Adjustment of National Average Minimum Value of Donated Foods for Fiscal Year 1976

Notice is hereby given of the national average minimum value of donated foods, or cash in lieu thereof, per lunch, to be made available under the National School Lunch Program (7 CFR Part 210) for the Fiscal Year 1976. This national average minimum value will be 11.0 cents. This value was derived by applying the percentage increase in the series for food away from home of the Consumer Price Index during the period June 1974-May 1975 (from 157.1 in May 1974 to 172.8 in May 1975) to the national average minimum value prescribed for fiscal year 1975, adjusted to the nearest one-fourth cent.

(Pub. L. 93-326, 42 U.S.C. 1755)

(Catalog of Federal Domestic Program No. 10.555, National Archives Reference Service)

*Effective date:* This notice shall become effective as of July 1, 1975.

Dated: July 10, 1975.

JOHN DAMGARD,
*Acting Assistant Secretary.*

[FR Doc. 75-18466 Filed 7-15-75;8:45 am]

### NATIONAL SCHOOL LUNCH PROGRAM

### National Average Payments for the Period July 1-December 31, 1975

Pursuant to § 210.4 and § 210.11 of the regulations governing the National School Lunch Program (7 CFR Part 210), notice is hereby given of adjustments in the national average factors for payment for lunches and the maximum rates of reimbursement. The national average factors for payment for lunches served during the six-month period July 1-December 31, 1975, to children participating in the National School Lunch Program are as follows: (a) 12.25 cents from general cash-for-food assistance funds for each lunch; (b) an additional 44.50 cents from special cash assistance funds for each reduced price lunch and (c) an additional 54.50 cents from special cash assistance funds for each free lunch.

The total amount of general cash-for-food assistance payments and special cash assistance payments to be made to each State agency from the sums appropriated therefor, shall be based upon such national average factors.

The above factors represent a 3.97 percent increase in the factors prescribed for the period January-June 1975. This represents the percent of increase during the six-month period December 1974-May 1975 (from 166.2 in November 1974 to 172.8 in May 1975) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

For the six-month period July 1-December 31, 1975, (a) the maximum rate of reimbursement from general cash-for-food assistance funds shall be 18.25 cents per lunch served; (b) the maximum per lunch reimbursement (from a combination of general cash-for-food assistance and special cash assistance funds) shall be 81.75 cents for a free lunch and 71.75 cents for a reduced price lunch.

*Definitions.* The terms used in this notice shall have the meanings ascribed to them in the regulations governing the National School Lunch Program (7 CFR Part 210) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Program No. 10.555, National Archives Reference Services)

*Effective date:* This notice shall be effective as of July 1, 1975.

*Dated:* July 10, 1975.

JOHN DAMGARD,
*Acting Assistant Secretary.*

[FR Doc.75-18467 Filed 7-15-75;8:45 am]

### SCHOOL BREAKFAST PROGRAM

### National Average Payments for the Period July 1-December 31, 1975

Pursuant to § 220.4 and § 220.9 of the regulations governing the School Breakfast Program (7 CFR Part 220), notice is hereby given that the national average breakfast factors for breakfasts served during the six-month period July 1-December 31, 1975, to children participating in the School Breakfast Program shall be: (a) 9.75 cents for all breakfasts; (b) an additional 18.25 cents for each reduced price breakfast; and (c) an additional 24.25 cents for each free breakfast. The total amount of breakfast assistance payments to be made to each State agency from the sums appropriated therefor, shall be based upon such national average factors: *Provided, however,* That additional payments shall be made in such amounts as are needed to finance reimbursement rates assigned for especially needy schools under § 220.9.

The above factors represent a 3.97 percent increase in the factors prescribed for the period January 1-June 30, 1975. This

represents the percent of increase during the six-month period December 1974–May 1975 (from 166.2 in November 1974 to 172.8 in May 1975) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

For nonespecially needy schools, the maximum rates of reimbursement for paid breakfasts, for reduced price breakfasts and for free breakfasts shall be equal to the respective factors set out above.

For especially needy schools, the maximum rate of reimbursement for paid breakfasts shall be equal to the national average factor for all breakfasts; the maximum rate of reimbursement for reduced price and free breakfasts shall be 40 cents and 45 cents, respectively.

*Definitions.* The terms used in this notice shall have the meanings ascribed to them in the regulations governing the School Breakfast Program (7 CFR Part 220) and the regulations for Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools (7 CFR Part 245).

(Catalog of Federal Domestic Assistance Program No. 10.553, National Archives Reference Services)

*Effective date:* This notice shall be effective as of July 1, 1975.

*Dated:* July 10, 1975.

JOHN DAMGARD,
*Acting Assistant Secretary.*

[FR Doc.75-18468 Filed 7-15-75;8:45 am]

## SPECIAL MILK PROGRAM

### Rate of Reimbursement for Fiscal Year 1976

Pursuant to section 3 of the Child Nutrition Act of 1966 and § 215.8 of the regulations governing the Special Milk Program (7 CFR Part 215), notice is hereby given that the rate of reimbursement per half pint of milk purchased for service to children in nonpricing programs and for service to children other than needy children in pricing programs for fiscal year 1976 shall be 5.5 cents. This rate of reimbursement represents a 9.99 percent increase, adjusted to the nearest one-fourth cent, in the rate prescribed for fiscal year 1975. This represents the percent of increase during the twelve month period June 1974–May 1975 (from 157.1 in May, 1974 to 172.8 in May, 1975) in the series for food away from home of the Consumer Price Index, published by the Bureau of Labor Statistics of the Department of Labor.

(Catalog of Federal Domestic Assistance Program No. 10.556, National Archives Reference Services)

*Effective date:* This notice shall become effective as of July 1, 1975.

*Dated:* July 10, 1975.

JOHN DAMGARD,
*Acting Assistant Secretary.*

[FR Doc.75-18465 Filed 7-15-75;8:45 am]

## Forest Service

## KELLY-BULLION UNIT PLAN

### Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for Kelly-Bullion Planning Unit Report Number USDA–FS–FES (Adm) R1–74–17.

The environmental statement concerns proposed action and implementation of management guidance for the Kelly-Bullion Planning Unit as developed through land use planning procedures of the Northern Region. Nezperce National Forest, Idaho County, Idaho.

This final environment statement was transmitted to CEQ on July 8, 1975.

Copies are available for inspection during regular working hours at the following locations:

USDA Forest Service, South Agriculture Bld., Room 3230, 12th St. & Independence Ave. SW., Washington, D.C. 20250.
District Ranger, Salmon River Ranger District, Whitebird, ID 83539.
Nezperce National Forest, 319 E. Main, Grangeville, ID 83530.
Regional Office, Federal Building, Missoula, MT 59801.

A limited number of single copies are available upon request to Forest Supervisor, Don Biddison, 319 E. Main, Grangeville, ID 83530.

Copies of the environmental statement have been sent to various Federal, state and local agencies as outlined in the CEQ guidelines.

E. E. LAVEN,
*Acting Forest Supervisor, Nezperce National Forest, Northern Region.*

JULY 8, 1975.

[FR Doc.75-18409 Filed 7-15-75;8:45 am]

## WEST CHICHAGOF-YAKOBI ISLAND LAND USE STUDY

### Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a draft environmental statement for the West Chichagof-Yakobi Island Land Use Study, USDA–FS–DES (Adm) R–10–75–10.

This plan offers five alternatives for management, and an evaluation of each of the environmental and economic impacts under each plan. The primary action having impact on the land is timber harvest, although increased mining, recreation use and harvest of fish and game will also affect the ecosystem.

This draft environmental statement was transmitted to CEQ on July 3, 1975.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3231, 12th St. and Independence Avenue, SW., Washington, D.C. 20250.
USDA, Forest Service, Alaska Region, Federal Office Building, Juneau, Alaska 99802.
Forest Supervisor, Chugach National Forest, 121 W. Firewood Lane, Suite 205, Anchorage, Alaska 99503.
Forest Supervisor, Chatham Area, Tongass National Forest, P.O. Box 757, Sitka, Alaska 99835.
Forest Supervisor, Stikine Area, Tongass National Forest, Federal Building, Petersburg, Alaska 99833.
Forest Supervisor, Ketchikan Area, Tongass National Forest, Federal Building, Room 313, Ketchikan, Alaska 99901.

A limited number of single copies are available upon request to Richard W. Wilson, Forest Supervisor, Chatham Area, Tongass National Forest, P.O. Box 757, Sitka, Alaska 99835.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the proposed action and requests for additional information should be addressed to Richard W. Wilson, Forest Supervisor, Chatham Area, Tongass National Forest, P.O. Box 757, Sitka, Alaska 99835. Comments must be received by September 1, 1975 in order to be considered in the preparation of the final environmental statement.

Dated: July 3, 1975.

C. A. YATES,
*Regional Forester, Alaska Region.*

[FR Doc.75-18408 Filed 7-15-75;8:45 am]

# DEPARTMENT OF COMMERCE

## Domestic and International Business Administration

## U.S. IMPORTS OF NITROGENOUS FERTILIZER

### Export Monitoring Report for April 1975

The United States was a net importer of nitrogenous fertilizers in the first ten months of the crop year starting July 1, 1974, as the result of a sharp rise in imports during April.

During July 1974–April 1975, imports of nitrogenous fertilizers totaled about 970,000 content tons while exports were about 931,000 content tons. April 1975 imports were about 176,000 content tons compared with 106,000 content tons in March 1975, while April 1974 exports were about 113,000 content tons.

A year earlier, the United States had a net export balance in nitrogenous fertilizers with imports at 838,091 content tons and exports at 1,137,636 content tons.

Commerce Department sources noted that the April figures tend to confirm Department of Agriculture projections of a net import balance in nitrogenous fertilizers for the 1975 crop year.

The U.S. is continuing very high levels of phosphate fertilizer exports. Exports on a content ton basis are running about 10 percent higher than for the comparable 10 month period in crop year 1974, or 1,452,000 content tons compared with 1,324,000 content tons.

Anticipated exports as reported by the Commerce Department's Office of Export Administration indicate that nitrogen and phosphate export levels for the rest of crop year 1975 will continue at the same rate as for the first 10 months of the crop year.

Production of nitrogenous fertilizer materials is marginally ahead of last year's levels for the first three quarters of the crop year, while production of phosphoric acid for phosphate fertilizers is almost 8 percent greater than last year's production levels for the same period.

Inventories of most fertilizer materials, both nitrogenous and phosphatic, are higher than last year's March levels reflecting the generally eased supply situation now existing.

For the 10 month period of the current crop year (July 1974–April 1975), the U.S. has exported about 10.5 percent of apparent consumption of nitrogenous fertilizer materials and 29 percent of the phosphate fertilizer materials. The U.S. imports about 11 percent of apparent consumption of nitrogenous materials and 4 percent of phosphate materials.

Export prices of fertilizer materials on contract are falling according to the weighted averages provided by the Office of Export Administration.

Data for July 1974–April 1975 indicate that most exports of fertilizer materials are destined for developing countries. Seventy-four percent of the ammonia, 98 percent of the urea and 93 percent of the ammonium sulfate, as well as 85 percent of the phosphoric acid, 80 percent of the triple superphosphate and 82 percent of the ammonium phosphates were exported to developing countries.

Tables on exports, imports, inventories, domestic [1] production and prices follow.

[1] World supply and demand data are not available on a monthly basis. The most recent data on world supply and demand will be included in the Semi-Annual Report to the Congress on operations under the Export Administration Act covering the period ending with the first Quarter 1975.

TABLE I.—*U.S. trade in nitrogen and phosphate fertilizer for crop years 1974, 1975* [1] *trade and export contracts for crop year 1975* [1]

[In content tons]

| Commodity | July to December 1973 | January to June 1974 | July to December 1974 | January to April 1974 | January to April 1975 | Actual May to June 1974 | Contracts May to June 1975 |
|---|---|---|---|---|---|---|---|
| **IMPORTS** | | | | | | | |
| N and $P_2O_5$ content tons: [2] | | | | | | | |
| Nitrogen fertilizer | 422,548 | 636,818 | 460,425 | 415,543 | 479,912 | 221,277 | ..... |
| Phosphate fertilizer [3] | 129,144 | 190,807 | 126,727 | 122,007 | 109,151 | 68,800 | ..... |
| **EXPORTS** | | | | | | | |
| N and $P_2O_5$ content tons: [2] | | | | | | | |
| Nitrogen fertilizer | 757,922 | 524,097 | 503,684 | 379,714 | 427,769 | 134,673 | 116,380 |
| Phosphate fertilizer [3] | 863,540 | 649,799 | 897,189 | 460,082 | 555,145 | 182,633 | 269,635 |

[1] Crop years extend from July to June.
[2] N and $P_2O_5$ content tons include items not listed on accompanying tables.
[3] Does not include phosphate rock.

Source: Bureau of Census and Office of Export Administration.

TABLE 2.—*Fertilizer exports, crop year 1974,* [1] *trade and export contracts for crop year 1975* [1]

[Short tons, except as noted]

| Commodity | July to December 1973 | January to June 1974 | July to December 1974 | January to April 1974 | January to April 1975 | Actual May to June 1974 | Contracts May to June 1975 |
|---|---|---|---|---|---|---|---|
| Nitrogenous: | | | | | | | |
| Anhydrous ammonia [2] | 406,861 | 238,042 | 159,878 | 174,598 | 166,349 | 63,444 | 22,000 |
| Urea | 184,543 | 137,981 | 177,525 | 123,414 | 187,664 | 14,567 | 34,218 |
| Ammonium nitrate | 27,024 | 9,940 | 8,160 | 8,329 | 10,445 | 1,611 | 1,032 |
| Ammonium sulfate | 299,286 | 258,188 | 272,093 | 149,057 | 134,407 | 109,131 | 120,347 |
| Phosphatic: | | | | | | | |
| Phosphoric acid | 43,409 | 44,278 | 114,710 | 27,048 | 80,557 | 17,239 | 37,085 |
| Phosphate rock (in thousands) (Florida only) | 6,466 | 6,577 | 6,778 | 4,433 | 3,833 | 2,144 | 2,774 |
| Concentrated superphosphate | 527,237 | 370,030 | 675,799 | 271,273 | 263,363 | 99,657 | 255,858 |
| Ammonium phosphate | 1,237,924 | 916,206 | 1,075,559 | 638,369 | 795,581 | 277,837 | 277,724 |
| Mixed fertilizer | 214,711 | 222,536 | 251,841 | 203,504 | 201,375 | 18,972 | 44,805 |

[1] Crop years extend from July to June.
[2] Includes fertilizer and other grades of anhydrous ammonia.

Source: Bureau of Census and Office of Export Administration.

TABLE 3.—*Fertilizer imports, crop-year 1974,[1] trade for July to April of crop-years 1974, 1975* [1]

[Short tons]

| Commodity | July to December 1973 | January to June 1974 | July to December 1974 | January to April 1974 | January to April 1975 | Actual May to June 1974 |
|---|---|---|---|---|---|---|
| Nitrogenous: | | | | | | |
| Anhydrous ammonia | 146,354 | 273,007 | 182,359 | 190,296 | 254,257 | 82,711 |
| Urea | 328,422 | 339,894 | 377,317 | 222,693 | 325,853 | 117,201 |
| Ammonium nitrate | 107,223 | 193,946 | 175,267 | 128,195 | 97,386 | 65,751 |
| Ammonium sulfate | 123,693 | 149,368 | 108,329 | 111,972 | 123,600 | 37,396 |
| Ammonium nitrate limestone | 10,000 | 198,776 | 134,067 | 73,325 | 49,080 | 125,451 |
| Phosphatic: | | | | | | |
| Phosphoric acid | 61,462 | 449,533 | 72,102 | 22,542 | 52,936 | 22,411 |
| Concentrated superphosphate | 18,154 | 56,773 | 28,613 | 40,534 | 22,842 | 16,239 |
| Ammonium phosphate | 158,271 | 238,486 | 166,917 | 159,909 | 97,910 | 78,577 |

[1] Crop-years extend from July to June.

Source: Bureau of Census.

TABLE 4.—*Fertilizer production, crop years 1973, 1974,[1] and July to March, crop years 1974, 1975* [1]

[In thousands of short tons]

| Commodity | July to June 1972/73 | July to June 1973/74 | Percent change 1974/1973 | July to March 1973/74 | July to March 1974/75 | Percent change 1975/1974 |
|---|---|---|---|---|---|---|
| Nitrogenous: | | | | | | |
| Anhydrous ammonia | R14,863 | R15,593 | 4.9 | R11,459 | 11,496 | 0.3 |
| Urea | 3,427 | 3,543 | 3.4 | 2,604 | 2,644 | 1.5 |
| Ammonium nitrate [2] | R6,850 | R7,291 | 6.4 | R5,366 | 5,644 | 5.2 |
| Ammonium sulfate [2] | R2,403 | R2,689 | 11.9 | 1,982 | N.A. | N.A. |
| Phosphatic: | | | | | | |
| Phosphoric acid [3] | R6,774 | R6,866 | 1.4 | R5,099 | R5,503 | 7.9 |
| Concentrated superphosphate [3] | 1,673 | 1,705 | 1.9 | 1,260 | 1,264 | 0.3 |
| Ammonium phosphate [4] | 6,739 | 6,746 | 0.1 | 4,973 | 5,046 | 1.5 |

[1] Crop years extend from July to June.
[2] Includes coke oven by-products.
[3] 100% APA.
[4] Gross weight.
R=Revised.

Source: Bureau of Census.

TABLE 5.—*Producers inventories of fertilizer materials*

[In short tons]

| Commodity | June 1973 | June 1974 | February 1974 | February 1975 | March 1974 | March 1975 |
|---|---|---|---|---|---|---|
| Anhydrous ammonia | 622,318 | 615,376 | 1,116,823 | 1,555,315 | 1,047,537 | 1,573,119 |
| Urea | N.A. | N.A. | N.A. | N.A. | N.A. | N.A. |
| Ammonium nitrate | 90,811 | 90,491 | 427,721 | 214,051 | 345,106 | 201,190 |
| Ammonium sulfate | 101,508 | 153,496 | 226,754 | 211,515 | 139,266 | N.A. |
| Phosphoric acid | 88,150 | 133,313 | 126,077 | 168,867 | 109,069 | 182,079 |
| Concentrated superphosphate | 103,960 | 95,016 | 111,278 | 171,222 | 92,808 | 180,143 |
| Ammonium phosphate | 135,048 | 95,773 | 106,243 | 137,276 | 126,565 | 152,249 |

Source: Bureau of Census.

TABLE 6.—*Producers prices of fertilizer materials*

[In dollars per ton]

| Commodity | October 24, 1973 | October 21, 1974 | June 2, 1975 | Percent change October 1973/ June 1975 |
|---|---|---|---|---|
| Anhydrous ammonia | 65 | 160 | 210 | 223 |
| Urea | 72 | 175 | 175 | 143 |
| Ammonium nitrate | 62 | 115 | 115 | 85 |
| Phosphoric acid | 78 | 157 | 173 | 122 |
| Phosphate rock (66 to 68 percent) | 7 | 25 | 31 | 343 |
| Concentrated superphosphate | 55 | 140 | 140 | 155 |
| Ammonium phosphate | 75 | 165 | 165 | 120 |

Source: Price column 1—Cost of Living Council. Columns 2 and 3—Chemical marketing reporte d (high quote)

TABLE 7.—*Export prices of selected fertilizer products, April, 1975*

[In dollars per ton]

| Product | Low | High | Weighted average |
|---|---|---|---|
| Phosphate rock: | | | |
| Shipments | 24 | 44 | 38 |
| Remaining contracts | 21 | 49 | 38 |
| Ammonia: | | | |
| Shipments | 339 | 349 | 342 |
| Remaining contracts | 155 | 283 | 204 |
| Urea: | | | |
| Shipments | 204 | 352 | 300 |
| Remaining contracts | 103 | 298 | 284 |
| Triple superphosphate: | | | |
| Shipments | 82 | 318 | 219 |
| Remaining contracts | 127 | 342 | 218 |
| Diammonium phosphate: | | | |
| Shipments | 165 | 427 | 319 |
| Remaining contracts | 179 | 445 | 234 |

Source: Office of Export Administration, U.S. Department of Commerce.

*Exports and anticipated exports, April 1975*

| Unit of measure, commodity, and area of destination | Actual July to April 1974 to 1975 | Unfilled contract May to June 1975 |
|---|---|---|
| IN CONTENT TONS | | |
| Nitrogen: | | |
| Western hemisphere | 468,548 | 61,328 |
| Western Europe | 99,720 | 6,516 |
| Asia | 334,532 | 48,488 |
| Australia and Oceania | 10,176 | 13 |
| Africa | 18,477 | 34 |
| Phosphate: | | |
| Western hemisphere | 632,376 | 107,533 |
| Western Europe | 128,549 | 41,482 |
| Communist areas in Europe | 31,944 | 8,948 |
| Asia | 636,829 | 105,174 |
| Australia and Oceania | 13,131 | 6,494 |
| Africa | 9,494 | |
| IN SHORT TONS | | |
| Ammonia: | | |
| Western hemisphere | 238,945 | 22,600 |
| Western Europe | 62,175 | |
| Asia | 1,307 | |
| Australia and Oceania | 6,098 | |
| Africa | 17,702 | |
| Percent exported to developing countries in crop-year 1975 | 74 | |
| Urea: | | |
| Western hemisphere | 63,096 | 3,418 |
| Western Europe | 3,540 | |
| Asia | 298,553 | 30,900 |
| Percent exported to developing countries in crop-year 1975 | 98 | |
| Ammonium nitrate: | | |
| Western hemisphere | 17,853 | 853 |
| Asia | 214 | 40 |
| Australia and Oceania | 428 | 32 |
| Africa | 110 | 100 |
| Percent exported to developing countries in crop-year 1975 | 60 | |
| Ammonium sulfate: | | |
| Western hemisphere | 342,083 | 130,347 |
| Western Europe | 62 | |
| Asia | 63,553 | |
| Australia and Oceania | 50 | |
| Africa | 746 | |
| Percent exported to developing countries in crop-year 1975 | 93 | |
| Phosphoric acid: | | |
| Western hemisphere | 108,407 | 21,516 |
| Western Europe | 26,034 | 2,750 |
| Asia | 59,499 | 12,819 |
| Australia and Oceania | 1,177 | |
| Africa | 150 | |
| Percent exported to developing countries in crop-year 1975 | 85 | |
| Phosphate rock (in thousands): | | |
| Western hemisphere | 4,094 | 956 |
| Western Europe | 2,875 | 799 |
| Communist areas in Europe | 251 | 116 |
| Asia | 3,301 | 903 |
| Percent exported to developing countries in crop-year 1975 | 28 | |

*Exports and anticipated exports, April 1975*—Continued

| Unit of measure, commodity, and area of destination | Actual July to April 1974 to 1975 | Unfilled contract May to June 1975 |
|---|---|---|
| Triple superphosphate: | | |
| Western hemisphere | 483,925 | 126,637 |
| Western Europe | 57,536 | 51,379 |
| Communist areas in Europe | 69,443 | 19,453 |
| Asia | 328,285 | 58,389 |
| Percent exported to developing countries in crop-year 1975 | 80 | |
| Diammonium phosphate and other ammonium phosphates: | | |
| Western hemisphere | 672,373 | 81,402 |
| Western Europe | 144,000 | 36,607 |
| Asia | 1,005,935 | 159,715 |
| Australia and Oceania | 27,780 | |
| Africa | 21,054 | |
| Percent exported to developing countries in crop-year 1975 | 82 | |
| Mixed chemicals: | | |
| Western hemisphere | 292,781 | 7,359 |
| Western Europe | 136,662 | |
| Communist areas in Europe | 1 | |
| Asia | 23,315 | 37,536 |
| Australia and Oceania | 446 | |
| Africa | 11 | |
| Percent exported to developing countries in crop-year 1975 | 31 | |

Source: Office of Export Administration, U.S. Department of Commerce.

DONALD E. JOHNSON,
*Deputy Assistant Secretary for Domestic and International Business.*

[FR Doc.75-18215 Filed 7-15-75;8:45 am]

## National Bureau of Standards

### FEDERAL INFORMATION PROCESSING STANDARDS TASK GROUP 15 COMPUTER SYSTEMS SECURITY

#### Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. III, 1973), notice is hereby given that the Federal Information Processing Standards Task Group 15 (FIPS TG-15), "Computer Systems Security," will hold a meeting from 9:00 a.m. to 4:00 p.m. on Tuesday, September 16, 1975 and Wednesday, September 17, 1975, in Room B-163, Building 222 of the National Bureau of Standards at Gaithersburg, Maryland.

The purpose of this meeting is to continue drafting guidelines in five areas of computer systems security: information management; internal controls; teleprocessing and network control; requirements; and risk analysis and methodology.

The public will be permitted to attend, to file written statements, and, to the extent that time permits, to present oral statements. Persons planning to attend should notify Dr. Dennis K. Branstad, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234 (Phone 301-921-3861).

Dated: July 10, 1975.

ERNEST AMBLER,
*Acting Director.*

[FR Doc.75-18320 Filed 7-15-75;8:45 am]

## National Technical Information Service

### GOVERNMENT-OWNED INVENTIONS

#### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

U.S. DEPARTMENT OF AIR FORCE AF/JACP, Washington, D.C. 20314.

Patent application 522,366: Flight Control Device; filed 8 November 1974; PC $3.25/MF $2.25.

Patent application 522,369: High Power Resistor; filed 8 November 1974; PC $3.25/MF $2.25.

Patent application 490,599: Method and Apparatus for Producing Fatigue Resistant Spanwise Splices; filed 22 July 1974; PC $3.25/MF $2.25.

Patent application 501,728: Multiple Selected Line Unstable Resonator; filed 29 August 1974; PC $3.25/MF $2.25.

Patent application 508,946: Overload Clutch with Zero Parasitic Torque; filed 24 September 1974; PC $3.25/MF $2.25.

Patent application 509,198: Method and Apparatus for Measuring the Optical Absorption Coefficient in Solids; filed 25 September 1974; PC $3.25/MF $2.25.

Patent application 509,199: Window Wash System; filed 25 September 1974; PC $3.25/MF $2.25.

Patent application 509,201: Dye Sensitized Dichromated Gelatin; filed 25 September 1974; PC $3.25/MF $2.24.

Patent application 509,202: Variable Free Stream Buffer; filed 25 September 1974; PC $3.25/MF $2.25.

Patent application 512,388: Solid Boron Fuel Burner for Ramjet Engine; filed 4 October 1974; PC $3.25/MF $2.24.

Patent application 513,025: Device to Reduce Flow Induced Pressure Oscillations in Open Cavities; filed 8 October 1974; PC $3.25/MF $2.25.

Patent application 516,840: A Compatible Scanning System; filed 21 October 1974; PC $3.25/MF $2.25.

Patent application 516,931: Hollow Composite Compressor Blade; filed 22 October 1974; PC $3.25/MF $2.25.

Patent application 516,932: Range Resolving Ground Line Sensor; filed 22 October 1974; PC $3.25/MF $2.25.

Patent application 516,933: Multiple Liquid Flow Proportioning System; filed 22 October 1974; PC $3.25/MF $2.25.

Patent application 516,936: Inductive Load Driver with Fast Switching Capability; filed 22 October 1974; PC $3.25/MF $2.25.

Patent application 517,340: Mechanically Tuned Buffer Rod for Ultrasonic Temperature Sensor; filed 23 October 1974; PC $3.25/MF $2.25.

Patent application 517,341: Collimated X-Ray Source for X-Ray Lithographic System; filed 23 October 1974; PC $3.25/MF $2.25.

Patent application 522,365: A System for Measuring Unsteady Aerodynamic Torques; filed 8 November 1974; PC $3.25/MF $2.25.

Patent application 522,367: Method and Means for Coupling a Multiplicity of Surface Acoustic Wave Transducers to a Single Electromagnetic Wave Transmission Line; filed 8 November 1974; PC $3.25/MF $2.25.

Patent application 522,368: Optical Convolution Velocimeter; filed 8 November 1974; PC $3.25/MF $2.25.

Patent 3,842,363: Chemical Laser Nozzle System; filed 24 October 1972; patented 15 October 1974; not available NTIS.

Patent 3,842,367: Technique and Apparatus for Stabilizing the Frequency of a Gas Laser; filed 25 April 1973; patended 15 October 1974; not available NTIS.

Patent 3,842,654: Apparatus for the Direct Measurements of Thermal Stresses; filed 14 February 1973; patented 22 October 1974; not available NTIS.

Patent 3,842,665: Pulse Press Tester; filed 5 November 1973; patented 22 October 1974; not available NTIS.

Patent 3,843,024: Liquid Expulsion Subsystem Having Orientation Responsive Pump; filed 26 October 1972; patented 22 October 1974; not available NTIS.

Patent 3,843,156: Cargo Handling Trailer; filed 9 April 1973; patented 22 October 1974; not available NTIS.

Patent 3,843,889: High Intensity Proton Source; filed 29 November 1973; patented 22 October 1974; not available NTIS.

Patent 3,843,926: Electronic Sampling System; filed 2 February 1972; patented 22 October 1974; not available NTIS.

Patent 3,843,969: Personnel Armor Suspension System; filed 5 November 1973; patented 29 October 1974; not available NTIS.

Patent 3,844,118: APT Inlet Ramjet Powered Missile; filed 28 August 1973; patented 29 October 1974; not available NTIS.

Patent 3,845,427: Insulating Cone Plasma Enhancement Configuration for a Plasma Waveguide Switch; filed 14 November 1973; patented 29 October 1974; not available NTIS.

Patent 3,845,465: Associative Storage Apparatus for Comparing Between Specified Limits; filed 12 January 1973; patented 29 October 1974; not available NTIS.

U.S. Department of Health, Education and Welfare, National Institutes of Health, Chief, Patent Branch, Bethesda, Md. 20014.

Patent application 513,872: Regenerative Heat Engine; filed 10 October 1974; PC $3.25/MF $2.25.

National Aeronautics and Space Administration, Assistant General Counsel for Patent Matters, NASA-Code GP-2, Washington, D.C. 20546.

Patent application 533,555: Diffused Waveguiding Capillary Tube with Distributed Feedback for a Gas Laser; filed 17 December 1974; PC $3.25/MF $2.25.

Patent application 533,556: Method and Apparatus for Generating Coherent Radiation in the Ultraviolet Region and Above by Use of Distributed Feedback; filed 17 December 1974; PC $3.25/MF $2.25.

Patent application 537,024: Lead-Oxygen DC Power Supply System; filed 27 December 1974; PC $3.25/MF $2.25.

Patent application 537,473: Soft X-Ray Laser Using Crystal Channels as Distributed Feedback Cavities; filed 30 December 1974; PC $3.25/MF $2.25.

Patent application 537,480: Method for Detecting Pollutants; filed 30 December 1974; PC $3.25/MF $2.25.

Patent application 541,822: Preload Torque Limiting Shaft Coupling; filed 17 January 1975; PC $3.25/MF $2.25.

Patent application 542,754: An Improved Heat Transfer Device; filed 21 January 1975; PC $3.25/MF $2.25.

Patent 3,859,714: Bonding of Sapphire to Sapphire by Eutectic Mixture of Aluminum Oxide and Zirconium Oxide; patented 14 January 1975; not available NTIS.

Patent 3,859,840: Ergometer Calibrator; patented 14 January 1975; not available NTIS.

Patent 3,859,845: Leak Detector; patented 14 January 1975; not available NTIS.

Patent 3,860,921: Simultaneous Acquisition of Tracking Data from Two Stations; patented 14 January 1975; not available NTIS.

[FR Doc.75-18363 Filed 7-15-75;8:45 am]

## GOVERNMENT-OWNED INVENTIONS

### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

Douglas J. Campion,
*Patent Program Coordinator, National Technical Information Service.*

Department of the Air Force, AF/JACP, Washington, D.C. 20314.

Patent 3,873,212: Optical Comparator; filed 20 January 1972; patented 25 March 1975; not available NTIS.

Patent 3,873,215: Radiometer; filed 20 September 1973; patented 25 March 1975; not available NTIS.

Patent 3,873,270: Determination of Methadone in Biological Specimens; filed 5 November 1973; patented 25 March 1975; not available NTIS.

Patent 3,873,338: Thermal Stabilization of Polyamide Fibers; filed 28 February 1973; patented 25 March 1975; not available NTIS.

Department of Health, Education, and Welfare, National Institutes of Health, Chief, Patent Branch, Bethesda, Md. 20014.

Patent application 534,836: Homocysteine Thiolactone Perchlorate and a Method of Making Same; filed 20 December 1974; PC $3.25/MF $2.25.

Department of the Navy, Assistant Chief for Patents, Office of Naval Research, Arlington, Va. 22217.

Patent application 466,564: Rate Gyro Stabilized Platform; filed 3 May 1974; PC $3.25/MF $2.25.

Patent application 469,739: Drogue Chute Extraction; filed 13 May 1974; PC $3.25/MF $2.25.

Patent application 470,892: Safety Device for Rockets; filed 17 May 1974; PC $3.25/MF $2.25.

Patent application 473,252: Multiple Strap Shock Absorber; filed 24 May 1974; PC $3.25/MF $2.25.

Patent application 477,528: Rigid Line Array Suspension System; filed 7 June 1974; PC $3.25/MF $2.25.

Patent application 478,018: Solenoid; filed 10 June 1974; PC $3.25/MF $2.25.

Patent application 479,936: Logic Module; filed 17 June 1974; PC $3.25/MF $2.25.

Patent application 483,595: Stress Relieving Liner; filed 27 June 1974; PC $3.25/MF $2.25.

Patent application 483,861: Sodium Azide Gas Generator Propellants; filed 27 June 1974; PC $3.25/MF $2.25.

Patent application 485,195: Acoustic Current/Flow Measuring System; filed 2 July 1974; PC $3.25/MF $2.25.

Patent application 494,102: Dye Laser Transmitter-Resonant Flourescent Detector System for Underwater Optical Communications; filed 2 August 1974; PC $3.25/MF $2.25.

Patent application 497,607: Ship Speed Indicator; filed 15 October 1974; PC $3.25/MF $2.25.

Patent application 508,472: Signal Processing Imager Array Using Charge Transfer Concepts; filed 23 September 1974; PC $3.25/MF $2.25.

Patent application 512,823: Automatic Power Adapter for Manual Quick-Release Connectors; filed 4 October 1974; PC $3.25/MF $2.25.

Patent application 516,330: Decoupled Hydrophone with Reduced Response to Vibration and Stress Concentration; filed 21 October 1974; PC $3.25/MF $2.25.

Patent application 518,313: Electro-Optic Diffraction Grating Tuned Laser; filed 29 October 1974; PC $3.25/MF $2.25.

Patent application 518,314: Dielectric Circuit Board Bonding; filed 29 October 1974; PC $3.25/MF $2.25.

Patent application 518,687: Digital Display System; filed 29 October 1974; PC $3.25/MF $2.25.

Patent application 519,960: Method and Means for Flash Suppression; filed 1 November 1974; PC $3.25/MF $2.25.

Patent application 520,381: Flare; filed 4 November 1974; PC $3.25/MF $2.25.

Patent application 522,808: The Improved Read-Only Optical Memory System; filed 11 November 1974; PC $3.25/MF $2.25.

Patent application 523,387: Stimulated Brillouin Scattered (SBS) Tuned Laser; 11 November 1974; PC $3.25/MF $2.25.

Patent application 524,025: Null Input Omega Tracking Filter System; filed 15 November 1974; PC $3.25/MF $2.25.

Patent application 526,299: Optical Integrated Circuit Laser Beam Scanner; 22 November 1974; PC $3.25/MF $2.25.
Patent application 528,746: Liquid Crystal Optical Image Attenuator; filed 2 December 1974; PC $3.25/MF $2.25.
Patent application 528,976: Improved Optical Coupler; filed 2 December 1974; PC $3.25/MF $2.25.
Patent application 530,914: Ice Nuclei Counter; filed 9 December 1974; PC $3.25/MF $2.25.
Patent application 532,261: Frequency Selective Optical Coupler; filed 12 December 1974; PC $3.25/MF $2.25.
Patent application 534,040: Helix Pitch Monitor; filed 18 December 1974; PC $3.25/MF $2.25.
Patent application 534,383: Self-Cocking Rocket Launcher Detent; filed 19 December 1974; PC $3.25/MF $2.25.
Patent application 534,617: Rotatable Head Up Display with Coordinate Reversal Correctives; filed 20 December 1974; PC $3.25/MF $2.25.
Patent application 539,472: Electrically Activated Pendant Release Mechanism; filed 8 January 1975; PC $3.25/MF $2.25.
Patent application 540,479: Safety Mechanism for Intervalometers and Distributors; filed 13 January 1975; PC $3.25/MF $2..25.
Patent application 542,524: Electro-Optical Spectrum Analyzer; filed 20 January 1975; PC $3.25/MF $2.25.
Patent application 552,504: Method for Measuring Suitability of Aluminum for use in Certain Propellants; filed 24 February 1975; PC $3.25/MF $2.25.
Patent application 554,956: Improved Optical Waveguide Coupler; filed 3 March 1975; PC $3.25/MF $2.25.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENT MATTERS, WASHINGTON, D.C. 20546.

Patent application 551,184: Fluid Seal for Rotating Shafts; filed 19 February 1975; PC $3.25/MF $2.25.
Patent 3,864,797: Method of Making Dished Ion Thruster Grids; patented 11 February 1975; not available NTIS.
Patent 3,865,442: Magnetic Bearing; patented 11 February 1975; not available NTIS.

[FR Doc.75-18364 Filed 7-15-75;8:45 am]

## GOVERNMENT-OWNED INVENTIONS

### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENTS, WASHINGTON, D.C. 20545.

Patent 3,825,175: Centrifugal Particle Elutriator and Method of Use; filed 6 June 1973; patented 23 July 1974; not available NTIS.
Patent 3,826,617: Method for Determining Sugar/Starch Contents in Aqueous Solutions; filed 31 October 1972; patented 30 July 1974; not available NTIS.
Patent 3,833,421: Secondary Electrochemical Cells with a Chalcogen Cathode; filed 27 December 1972; patented 3 September 1974; not available NTIS.

DEPARTMENT OF COMMERCE, ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION, WASHINGTON, D.C. 20230.

Patent application 415,469: Acylated Myofibrillar Protein Binder for Aquacultural Feeds and Fish Baits; filed 13 November 1973; PC $3.25/MF $2.25.
Patent application 544,600: Cool-Touch Cooking Surfaces; Filed 27 January 1975; PC $3.25/MF $2.25.
Patent 3,745,810: Apparatus for Measuring the Rate at Which Vapors are Evolved from Materials during Thermal Degradation; filed 3 September 1971; patented 17 July 1973; not available NTIS.
Patent 3,752,989: Method of Producing an Intense, High-Purity K X-Ray; filed 27 January 1972; patented 14 August 1973; not available NTIS.
Patent 3,826,848: Preparation of Functional Fish Protein Concentrates and Isolates; filed 14 September 1972; patented 30 July 1974; not available NTIS.

DEPARTMENT OF THE NAVY, ASSISTANT CHIEF FOR PATENTS, OFFICE OF NAVAL RESEARCH, ARLINGTON, VA. 22217.

Patent 3,780,754: Fluidic Angular Shaft Position Sensor; filed 1 September 1972; patented 25 December 1973; not available NTIS.
Patent 3,783,452: Removable Goggles for Helmet; filed 11 April 1972; patented 8 January 1974; not available NTIS.
Patent 3,789,257: Coherent Microwave Generators; filed 14 November 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,303: Method and Apparatus for Synchronizing Split-Phase PCM Signals; filed 1 May 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,305: Tone Burst to Frequency Converter; filed 28 August 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,330: Ferrite Microwave Phase Shifter with Insertion Phase Modifying Means; filed 8 December 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,350: Reduced Bandwidth Processing for Ultrasonic Image Conversion; filed 13 October 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,351: Guidance System; filed 4 September 1970; patented 29 January 1974; not available NTIS.
Patent 3,789,353: Diver Communication System; filed 3 January 1973; patented 29 January 1974; not available NTIS.
Patent 3,789,354: Passive Holography System; filed 21 November 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,369: Thin Film MIS Storage Diode; filed 10 July 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,401: Frame for Low Frequency Source; filed 16 February 1971; patented 29 January 1974; not available NTIS.
Patent 3,789,417: Circulatory Symmetric Retrodirective Antenna; filed 25 January 1972; patented 29 January 1974; not available NTIS.
Patent 3,789,445: Buoy Construction; filed 12 November 1971; patented 5 February 1974; not available NTIS.
Patent 3,789,674: Optical Accelerometer; filed 27 October 1972; patented 5 February 1974; not available NTIS.
Patent 3,789,758: Force Balance Pressure Device; filed 12 February 1957; patented 5 February 1974; not available NTIS.
Patent 3,789,762: Device to Prevent Accidental Ignition of Electro-Explosives from Electrostatic Discharge; filed 30 March 1972; patented 5 February 1974; not available NTIS.
Patent 3,790,104: High/Low Aspect Ratio Dual-Mode Fin Design; filed 12 March 1973; patented 5 February 1974; not available NTIS.
Patent 3,790,250: Thermally-Activated Optical Absorber; filed 25 August 1971; patented 5 February 1974; not available NTIS.
Patent 3,790,276: Direct Measurement of Ship Body Distortion Using a Laser Beam; filed 7 April 1971; patented 5 February 1974; not available NTIS.
Patent 3,790,282: Flame-in-Engine Photometer Detector and Alarm for Phosphorus and Other Elements; filed 23 March 1972; patented 5 February 1974; not available NTIS.
Patent 3,790,486: Thermal Catalytic Chemical Reaction of Non-Newtonian Fluids; filed 28 October 1971; patented 5 February 1974; not available NTIS.
Patent 3,790,794: Absolute Calorimetric Dosimeter; filed 21 December 1972; patented 5 February 1974; not available NTIS.
Patent 3,790,824: Radio Frequency Switching Circuit; filed 10 October 1972; patented 5 February 1974; not available NTIS.
Patent 3,790,828: Electroacoustic Surface Acoustic Wave Beam Deflector; filed 23 June 1973; patented 5 February 1974; not available NTIS.
Patent 3,790,907: Lattice Softening Variable Delay Line; filed 30 March 1973; patented 5 February 1974; not available NTIS.
Patent 3,790,928: Transducer Pressure Release System; filed 29 October 1969; patented 5 February 1974; not available NTIS.
Patent 3,791,141: Ramjet Engine Fuel Controller; filed 2 October 1972; patented 12 February 1974; not available NTIS.
Patent 3,791,194: Testing of Fuel Filters Using Thermography; filed 25 September 1972; patented 12 February 1974; not available NTIS.
Patent 3,791,296: Ice Demolition Charge; filed 27 July 1960; patented 12 February 1974; not available NTIS.
Patent 3,791,480: Stress Relief Insert for Flexible Towed Array; filed 13 October 1972; patented 12 February 1974; not available NTIS.
Patent 3,791,718: Wideband Traveling-Wave Microstrip Meander-Line Light Modulator; filed 21 November 1972; patented 12 February 1974; not available NTIS.
Patent 3,791,892: Castable Polyurethane Composite Propellants; filed 24 January 1966; patented 12 February 1974; not available NTIS.
Patent 3,792,257: Lateral Photodetectors; filed 31 March 1972; patented 12 February 1974; not available NTIS.

Patent 3,792,373: Metallic Vapor Laser Assembly; filed 21 July 1972; patented 12 February 1974; not available NTIS.

Patent 3,792,378: Digitally Controlled RF Sweep Generator; filed 8 September 1971; patented 12 February 1974; not available NTIS.

Patent 3,792,421: Underwater Data Transmission System; filed 12 July 1972; patented 12 February 1974; not available NTIS.

Patent 3,792,535: Laser Rifle Simulator System; filed 11 December 1972; patented 19 February 1974; not available NTIS.

Patent 3,792,580: Portable Underwater Fuel Feed System; filed 29 December 1971; patented 19 February 1974; not available NTIS.

Patent 3,793,070: Method of Varying the Carrier Concentration of Lead-Tin Sulfide Epitaxial Films; filed 1 June 1971; patented 19 February 1974; not available NTIS.

Patent 3,793,581: Solid State Phase Controlling Switch; filed 19 April 1972; patented 19 February 1974; not available NTIS.

Patent 3,793,593: Phase Sensitive Demodulator; filed 20 July 1972; patented 19 February 1974; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENT MATTERS, WASHINGTON, D.C. 20546.

Patent application 531,649: Servo Valve; filed 11 December 1974; PC $3.25/MF $2.25.

[FR Doc.75-18365 Filed 7-15-75;8:45 am]

## GOVERNMENT-OWNED INVENTIONS

### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENTS, WASHINGTON, D.C., 20545.

Patent 3,825,735: Command Pulse Generator for Computer-Controlled Machining; filed 12 November 1973; patented 23 July 1974; not available NTIS.

Patent 3,828,274: Electron Beam-Pumped Gas Laser System; filed 5 November 1971; patented 6 August 197–; not available NTIS.

Patent 3,830,721: Hollow Cathode Sputtering Device; filed 22 August 1973; patented 20 August 1974; not available NTIS.

Patent 3,835,040: Cross-Flow Filtration Process; filed 4 April 1972; patented 10 September 1974; not available NTIS.

DEPARTMENT OF COMMERCE, ASSISTANT GENERAL COUNSEL FOR ADMINISTRATION, WASHINGTON, D.C. 20230.

Patent 3,826,975: Universal Dropout Tester for Magnetic Storage Media; filed 29 August 1973; patented 30 July 1974; not available NTIS.

Patent 3,835,315: System for Determining Parameters of a Particle by Radiant Energy Scattering Techniques; filed 6 December 1972; patented 10 September 1974; not available NTIS.

DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 7th St., SW., Washington, D.C. 20590.

Patent application 542,505: An Interferometric Navigation and Guidance System; filed 20 January 1975; PC $3.25/MF $2.25.

Patent application 549,081: Radio Theodolite Angle Measuring Apparatus; filed 11 February 1975; PC $3.25/MF $2.25.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, National Institutes of Health, Chief, Patent Branch, Bethesda, Md. 20014.

Patent application 527,280: Direct-Response Ultraviolet Dosimeter Utilizing Thermoluminescent Magnesium Oxide; filed 26 November 1974; PC $3.25/MF $2.25.

Patent application 534,237: A Field Instrument for Measurement of AC Voltage Fluctuations; filed 19 December 1974; PC $3.75/MF $2.25.

Patent 3,857,067: Switch Failure Monitoring Device; filed 13 December 1972; patented 24 December 1974; not available NTIS.

DEPARTMENT OF THE NAVY, ASSISTANT CHIEF FOR PATENTS, OFFICE OF NAVAL RESEARCH, ARLINGTON, VA. 22217.

Patent 3,802,775: Rapidly, Continuously and Synchronously Tuned Laser and Laser Detector; filed 5 September 1972; patented 9 April 1974; not available NTIS.

Patent 3,803,427: Frequency Multiplier and High Frequency Generator; filed 22 February 1972; patented 9 April 1974; not available NTIS.

Patent 3,803,498: Voltage Detection Circuit; filed 11 July 1972; patented 9 April 1974; not available NTIS.

Patent 3,803,506: Control Converter Amplifiers; filed 1 February 1971; patented 9 April 1974; not available NTIS.

Patent 3,803,546: Broad Band Hydrophone; filed 21 December 1966; patented 9 April 1974; not available NTIS.

Patent 3,803,601: Incoherent Turbulence Detector; filed 19 March 1973; patented 9 April 1974; not available NTIS.

Patent 3,803,613: Phase Antenna Array Providing Continuous All-Angle Reception by Harmonic Frequency Modulation of Incoming Signals; filed 26 October 1971; patented 9 April 1974; not available NTIS.

Patent 3,803,618: Multimodal Retrodirective Array; filed 25 April 1973; patented 9 April 1974; not available NTIS.

Patent 3,803,622: HF Dual-Feed Corner Reflector Antenna; filed 3 May 1973; patented 9 April 1974; not available NTIS.

Patent 3,803,626: Environmental Distortion Measurement of Curved Antenna Dishes; filed 30 April 1973; patented 9 April 1974; not available NTIS.

Patent 3,803,916: Direct Measurement of Earth's Vertical deflection Using Ship's Inertial Navigation System; filed 9 February 1973; patented 16 April 1974; not available NTIS.

Patent 3,804,222: Clutch with Centrifugal Engaging and Releasing Weights; filed 16 March 1972; patented 16 April 1974; not available NTIS.

Patent 3,804,453: Underwater Torpedo Recovery Device; filed 15 December 1972; patented 16 April 1974; not available NTIS.

Patent 3,804,698: Adhesively Releasable and Reusable Shock Load Absorbing System; filed 25 May 1970; patented 16 April 1974; not available NTIS.

Patent 3,804,807: Crosslinked Polyamide-Quinoxalines; filed 11 July 1973; patented 16 April 1974; not available NTIS.

Patent 3,805,031: Count and Store Synchronous Binary Counter; filed 25 September 1972; patented 16 April 1974; not available NTIS.

Patent 3,805,109: Wedge Shaped Raster Generation; filed 3 November 1972; patented 16 April 1974; not available NTIS.

Patent 3,805,157: Amp-Hour Meter; filed 18 December 1972; patented 16 April 1974; not available NTIS.

Patent 3,805,170: Transition Detector; filed 3 January 1969; patented 16 April 1974; not available NTIS.

Patent 3,805,226: Omnidirectional High Sensitivity Hydrophone; filed 16 February 1971; patented 16 April 1974; not available NTIS.

Patent 3,805,256: New Temperature Sonde; filed 19 December 1972; patented 16 April 1974; not available NTIS.

Patent 3,805,586: Abrasion Test Machine; filed 24 October 1972; patented 23 April 1974; not available NTIS.

Patent 3,805,590: Oxygen Partial Pressure Sensor; filed 9 March 1973; patented 23 April 1974; not available NTIS.

Patent 3,805,723: Safety Cut-off for Propellers; filed 25 January 1971; patented 23 April 1974; not available NTIS.

Patent 3,805,824: Pressure-Compensated Flow Control Valve; filed 25 September 1972; patented 23 April 1974; not available NTIS.

Patent 3,805,853: Apparatus for Making Transducer Scroll Spacers; filed 2 January 1973; patented 23 April 1974; not available NTIS.

Patent 3,805,977: Mobile ASW Target Handling Kit; filed 27 July 1972; patented 23 April 1974; not available NTIS.

Patent 3,806,791: Micro-Miniature High Efficiency Power Supply; filed 4 December 1972; patented 23 April 1974; not available NTIS.

Patent 3,806,809: High Frequency Interference Simulator and Method of Identifying Causation of Undesired Non-Linear Intermodulation Interference; filed 9 November 1972; patented 23 April 1974; not available NTIS.

Patent 3,806,915: Multithreshold Analog to Digital Converter; filed 5 September 1972; patented 23 April 1974; not available NTIS.

Patent 3,806,924: Platform Motion Compensating for Airborne Radars; filed 13 February 1973; patented 23 April 1974; not available NTIS.

Patent 3,806,929: Method for the Detection of Radar Targets; filed 24 June 1971; patented 23 April 1974; not available NTIS.

Patent 3,806,931: Amplitude Modulation Using Phased-Array Antennas; filed 26 October 1971; patented 23 April 1974; not available NTIS.

Patent 3,806,944: VLF Frequency Diversity Trailing Wire Transmitting Antenna; filed 2 February 1973; patented 23 April 1974; not available NTIS.

Patent 3,806,945: Stripline Antenna; filed 4 June 1973; patented 23 April 1974; not available NTIS.

Patent 3,806,947: Microwave Timing Circuit for Beam Steering; filed 5 February 1973; patented 23 April 1974; not available NTIS.

Patent 3,807,334: Motion Compensating Device for Surface Supported Underwater Structures; filed 17 September 1973; patented 30 April 1974; not available NTIS.

Patent 3,807,335: Submersible Underwater Docking Concept; filed 7 December 1972; patented 30 April 1974; not available NTIS.

Patent 3,807,524: Ground Handling Wheels for Air Cushion Landing Gear; filed 24 April 1972; patented 30 April 1974; not available NTIS.

Patent 3,807,604: Frozen Gel Slicing Method and Apparatus; filed 24 February 1972; patented 30 April 1974; not available NTIS.

Patent 3,808,139: Chemiluminescent Formulations Containing an Alkylsiloxane; filed 30 September 1964; patented 30 April 1974; not available NTIS.

Patent 3,808,182: 2,2-Dinitroalkyl Vinyl Ethers and Polymers Thereof; filed 16 June 1972; patented 30 April 1974; not available NTIS.

Patent 3,808,276: Alpha-Hydro-Gamma-Hydroxy Poly (Oxymethylenenitroamino) Polymer; filed 19 January 1972; patented 30 April 1974; not available NTIS.

Patent 3,808,397: Tungsten Inert Gas Welding Control Unit with a Filler Metal Feeding Means; filed 29 December 1971; patented 30 April 1974; not available NTIS.

Patent 3,808,529: Method and Apparatus for Analyzing Random Signals; filed 22 June 1973; patented 30 April 1974; not available NTIS.

Patent 3,808,532: Extender Test Connector for Plug-In Module; filed 12 October 1972; patented 30 April 1974; not available NTIS.

Patent 3,808,533: High Volume, Binary Data Transmission System; filed 10 September 1971; patented 30 April 1974; not available NTIS.

Patent 3,808,803: Anticarbon Device for the Scroll Fuel Carburetor; filed 15 March 1973; patented 7 May 1974; not available NTIS.

Patent 3,809,127: Two Position Liquid Flow Control Valve; filed 3 December 1971; patented 7 May 1974; not available NTIS.

Patent 3,809,876: Apparatus for the Generation of Bessel Function Signals; filed 31 August 1973; patented 7 May 1974; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matter, NASA-Code GP-2, Washington, D.C. 20546.

Patent 3,849,554: Reduction of Blood Serum Cholesterol; patented 19 November 1974; not available NTIS.

Patent 3,856,042: Combined Pressure Regulator and Shutoff Valve; patented 24 December 1974; not available NTIS.

[FR Doc.75-18366 Filed 7-15-75;8:45 am]

## GOVERNMENT-OWNED INVENTIONS

### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or Microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

ENERGY RESEARCH & DEVELOPMENT ADMINISTRATION, ASSISTANT GENEGAL COUNSEL FOR PATENTS, WASHINGTON, D.C. 20545.

Patent 3,825,735: Command Pulse Generator for Computer-Controlled Machining; filed 13 November 1973; patented 23 July 1974; not available NTIS.

Patent 3,827,910: Homogeneous Cathode Mixtures for Secondary Electrochemical Power-Producing Cells; filed 30 November 1972; not available NTIS.

Patent 3,828,274: Electron Beam-Pumped Gas Laser System; filed 5 November 1971; patented 6 August 1972; not available NTIS.

Patent 3,830,721: Hollow Cathode Sputtering Device; filed 22 August 1973; patented 20 August 1974; not available NTIS.

DEPARTMENT OF THE AIR FORCE, AF/JACP, WASHINGTON, D.C. 20314.

Patent Application 412,853: Determination of Methadone in Biological Specimens; filed 5 November 1973; PC $3.25/MF $2.25.

Patent Application 490,600: Method and Apparatus for Producing Fatigue Resistant Splices; filed 22 July 1974; PC $3.25/MF $2.25.

Patent Application 492,078: Thrust Augmentation System With Oscillating Jet Nozzles; filed 26 July 1974; PC $3.25/MF $2.25.

Patent Application 494,934: Non-Penetrating Rib-to-Surface Structural Clip Connector Assembly; filed 5 August 1974; PC $3.25/MF $2.25.

Patent application 494,935: Low Cost, Clipless Stringer Airfoil; filed 5 August 1974; PC $3.25/MF $2.25.

Patent application 497,415: Heat Sink for Microstrip Circuit; filed 14 August 1974; PC $3.25/MF $2.25.

Patent application 497,439: Fiber Optics Connector With Linear X-Y Register; filed 14 August 1974; PC $3.25/MF $2.25.

Patent application 499,228: An Earth Reference Thin-Film Magnetometer Compass Exhibiting Total Tilt Immunity; filed 21 August 1974; PC $3.25/MF $2.25.

Patent application 499,229: Controllable Solid Propulsion System Based on Utilization of a Demand Solid Propellant-Gas Generator; filed 21 August 1974; PC $3.25/MF $2.25.

Patent application 499,938: Antenna Control for Communications Systems; filed 23 August 1974; PC $3.25/MF $2.25.

Patent application 501,724: Temperature Controlled Hybrid Oven; filed 29 August 1974; PC $3.25/MF $2.25.

Patent application 501,725: Series Tuned Spin Coil Supply; filed 29 August 1974; PC $3.25/MF $2.25.

Patent application 501,729: Phase Stable Variable Phase Slope Limiter; filed 29 August 1974; PC $3.25/MF $2.25.

Patent application 501,730: High Resolution Radar Range Tracking System; filed 29 August 1974; PC $3.25/MF $2.25.

Patent 3,827,904: Thermal Stabilization of Polybenzimidazole Fiber Fabrics; filed 28 February 1973; patented 6 August 1974; not available NTIS.

Patent 3,827,911: Preparation of Nickel Electrodes; filed 21 February 1973; patented 6 August 1974; not available NTIS.

Patent 3,830,078: Anti-Frost Apparatus; filed 13 July 1973; patented 20 August 1974; not available NTIS.

Patent 3,831,264: Method of Connecting Substantial Similar Metal Parts; filed 22 February 1973; patented 27 August 1974; not available NTIS.

Patent 3,832,320: Modified Polybenzothiazole-Based Adhesive; filed 7 November 1973; patented 27 August 1974; not available NTIS.

Patent 3,832,543: Gated Detector Synchronization; filed 4 June 1973; patented 27 August 1974; not available NTIS.

Patent 3,834,161: Dual Mode Auxiliary Power Unit; filed 1 June 1973; patented 10 September 1974; not available NTIS.

Patent 3,834,834: Compact High Thrust Augmentation Ejector System; filed 7 March 1973; patented 10 September 1974; not available NTIS.

Patent 3,835,328: Ionization System for Sensing and Measuring Gaseous Impurities; filed 12 May 1972; patented 10 September 1974; not available NTIS.

Patent 3,835,330: Electromagnetic Implosion X-ray Source; filed 15 September 1972; patented 10 September 1974; not available NTIS.

Patent 3,835,414: Gallium Arsenide Array; filed 24 March 1972; patented 10 September 1974; not available NTIS.

Patent 3,835,416: Tunable Off Resonant Optically Pumped Laser; filed 13 March 1973; patented 10 September 1974; not available NTIS.

Patent 3,835,459: Birefringence Read Bi4Ti3O12 Display and Memory Device; filed 18 April 1973; patented 10 September 1974; not available NTIS.

Patent 3,835,702: Multi-Axis Bio-Mechanical Force Measuring Device; filed 13 September 1973; patented 17 September 1974; not available NTIS.

Patent 3,836,972: Four-Horn Radiometric Tracking RF System; filed 16 April 1973; patented 17 September 1974; not available NTIS.

Patent 3,837,965: Portable Repair Apparatus; filed 17 October 1972; patented 24 September 1974; not available NTIS.

Patent 3,839,546: Preparation of Ultrahigh Purity Anhydrous Alkali Metal Halide Powders; filed 29 August 1972; patented 1 October 1974; not available NTIS.

Patent 3,839,940: Automatic Pop-Up Decoy; filed 13 December 1963; patented 8 October 1974; not available NTIS.

Patent 3,841,171: Support for flexible Control Device; filed 28 August 1973; patented 15 October 1974; not available NTIS.

Patent 3,841,197: Foam Structured Rocket Dispenser; Filed 13 December 1972; patented 15 October 1974; not available NTIS.

Patent 3,841,516: Aircraft Cargo Winching System; filed 30 April 1973; patented 15 October 1974; not available NTIS.

Patent 3,841,773: Releasable Connector Subassembly; filed 13 September 1972; patented 15 October 1974; not available NTIS.

Patent 3,842,262: High Speed Photodiode Mount; filed 12 November 1973; patented 15 October 1974; not available NTIS.

Patent 3,842,266: Atmospheric Sampling Probe for a Mass Spectrometer; filed 11 April 1973; patented 15 October 1974; not available NTIS.

Patent 3,842,284: Radioactive Preionization Method and Apparatus for Pulsed Gas Lasers; filed 15 December 1972; patented 15 October 1974; not available NTIS.

Patent 3,842,352: Communications System Having Single RF Channel Diversity Means; filed 14 July 1972; patented 15 October 1974; not available NTIS.

Patent 3,842,363: Chemical Laser Nozzle System; filed 24 October 1972; patented 15 October 1974; not available NTIS.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, NATIONAL INSTITUTES OF HEALTH, CHIEF, PATENT BRANCH, BETHESDA, MARYLAND 20014.

Patent application 536,446: Radiorespirometer; filed 26 December 1974; PC $3.25 MF $2.25.

Patent application 539,236: Additive Composition for Making Dental Materials; filed 7 January 1975; PC $3.25/MF $2.25.

Patent 3,857,920: Recovery of Lithium Carbonate; filed 29 July 1971; patented 31 December 1974; not available NTIS.

DEPARTMENT OF THE NAVY, ASSISTANT CHIEF FOR PATENTS, OFFICE OF NAVAL RESEARCH, ARLINGTON, VA. 22217.

Patent 3,803,546: Broad Band Hydrophone; filed 21 December 1966; patented 9 April 1974; not available NTIS.

Patent 3,804,977: Colored Running Light Simulator; filed 20 November 1972; patented 16 April 1974; not available NTIS.

Patent 3,805,226: Omnidirectional High Sensitivity Hydrophone; filed 16 February 1971; patented 16 April 1974; not available NTIS.

Patent 3,805,723: Safety Cut-off for Propellers; filed 25 January 1971; patented 23 April 1974; not available NTIS.

Patent 3,808,397: Tungsten Inert Gas Welding Control Unit With a Filler Metal Feeding Means; filed 29 December 1971; patented 30 April 1974; not available NTIS.

Patent 3,809,585: Urethane Propellant Composition; filed 9 November 1966; patented 7 May 1974; not available NTIS.

Patent 3,809,820: Multi-Channel Asynchronous to Synchronous Converter; filed 3 April 1973; patented 7 May 1974; not available NTIS.

Patent 3,809,920: Polymeric Pyroelectric Detector; filed 25 August 1972; patented 7 May 1974; not available NTIS.

Patent 3,809,931: Temperature-Stabilized Transducer Device; filed 19 March 1973; patented 7 May 1974; not available NTIS.

Patent 3,810,080: Swimmer-Dive Navigation and Reconnaissance Device; filed 13 October 1972; patented 7 May 1974; not available NTIS.

Patent 3,810,119: Processor Synchronization Scheme; filed 4 May 1971; patented 7 May 1974; not available NTIS.

Patent 3,810,154: Digital Code Translator Apparatus; filed 10 October 1972; patented 7 May 1974; not available NTIS.

TENNESSEE VALLEY AUTHORITY, DIVISION OF LAW, MUSCLE SHOALS, ALABAMA 35660.

Patent 3,832,154: Production of Chloride-Free Potassium Phosphates; filed 18 June 1973; patented 27 August 1974; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENT MATTERS, NASA, CODE GP-2, WASHINGTON, D.C. 20546.

Patent application 513,611: Bearing Material; filed 10 October 1974; PC $3.75/MF $2.25.

[FR Doc.75-18367 Filed 7-15-75;8:45 am]

## GOVERNMENT-OWNED INVENTIONS

### Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the licensing policy of each Agency-sponsor.

Copies of patents are available from the Commissioner of Patents, Washington, D.C. 20231, at $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22161, at the prices cited. Requests for copies of patent applications must include the PAT-APPL-number. Claims are deleted from patent application copies sold to the public to avoid premature disclosure in the event of an interference before the Patent Office. Claims and other technical data can usually be made available to serious prospective licensees by the agency which filed the case.

Requests for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
*Patent Program Coordinator, National Technical Information Service.*

DEPARTMENT OF THE AIR FORCE, AF/JACP, WASHINGTON, D.C. 20314.

Patent 3,873,368: Production of Cadmium Electrodes; filed 29 June 1973; patented 25 March 1975; not available NTIS.

Patent 3,873,929: Clock Synchronization System; filed 1 October 1970; patented 25 March 1975; not available NTIS.

Patent 3,873,938: Very High Power Shock Wave Gas Laser; filed 16 April 1973; patented 25 March 1975; not available NTIS.

Patent 3,873,948: Multichannel Microwave Filter; filed 4 February 1974; patented 25 March 1975; not available NTIS.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION, ASSISTANT GENERAL COUNSEL FOR PATENTS, WASHINGTON, D.C. 20545.

Patent 3,856,054: Glass Polymer Composites; filed 28 July 1972; patented 24 December 1974; not available NTIS.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, NATIONAL INSTITUTES OF HEALTH, CHIEF, PATENT BRANCH, BETHESDA, MARYLAND 20014.

Patent application 553,079: alpha- and beta-2'-Deoxy-6-R-Substituted Selenoguanosine and Process of Preparation; filed 26 February 1975; PC $3.25/MF $2.25.

Patent 3,870,719: Synthesis of (N-5)-Methyltetrahydrohomofolic Acid and Related Reduced Derivatives of Homofolic Acid; filed 16 June 1972; patented 11 March 1975; not available NTIS.

Patent 3,878,728: Thermesthesiometer; filed 18 October 1973; patented 22 April 1975; not available NTIS.

DEPARTMENT OF THE NAVY, ASSISTANT CHIEF FOR PATENTS, OFFICE OF NAVAL RESEARCH, ARLINGTON, VA. 22217.

Patent application 375,422: Large Aperture, Narrow-Band Detectors for Optical Communication Systems; filed 2 July 1973; PC $3.25/MF $2.25.

Patent application 402,220: Phase Locked Servo Loop Circuit; filed 1 October 1973; PC $3.25/MF $2.25.

Patent application 418,623: Safe and Arm Device; filed 23 March 1973; PC $3.25/MF $2.25.

Patent application 419,565: Low Temperature High Flash Point Turbine Engine Fuel; filed 28 November 1973; PC $3.25/MF $2.25.

Patent application 421,307: Process for Fabricating One-Piece Rocket Motor Heat Barrier; filed 3 December 1973; PC $3.25/MF $2.25.

Patent application 423,869: Liquid Crystal Light Valve; filed 11 December 1973; PC $3.25/MF $2.25.

Patent application 432,713: Semi-Automatic Bearing Lubricator Work Center; filed 11 January 1974; PC $3.25/MF $2.25.

Patent application 440,406: Secondary Injection Actuated Gimbaled Motor; filed 7 February 1974; PC $3.25/MF $2.25.

Patent application 451,635: Wide-Angle On-Axis Projection System; filed 15 March 1974; PC $3.25/MF $2.25.

Patent application 454,985: Supply Dependent Logic Reset; filed 26 March 1974; PC $3.25/MF $2.25.

Patent application 457,001: A New Cartridge Casing; filed 1 April 1974; PC $3.25/MF $2.25.

Patent application 457,159: Pressure Sensitive Control Device; filed 1 April 1974; PC $3.25/MF $2.25.

Patent application 458,159: Pyrophoric Penetrator; filed 5 April 1974; PC $3.25/MF $2.25.

Patent application 467,172: Analog Gun (Selection of Consumable Cartridge Materials); filed 6 May 1974; PC $3.25/MF $2.25.

Patent application 471,382: An Improved Atmospheric Electrical Current Detector; filed 20 May 1974; PC $3.25/MF $2.25.

Patent application 473,854: Molded Bobbin Head Coil Assembly; filed 28 May 1974; PC $3.25/MF $2.25.

Patent application 473,855: Optical Gyroscope Assembly; filed 28 May 1974; PC $3.25/MF $2.25.

Patent application 474,278: Logic Circuits with Interfacing System; filed 29 May 1974; PC $3.25/MF $2.25.

Patent application 481,092: Rail Launched Missile; filed 20 June 1974; PC $3.25/MF $2.25.

Patent 3,859,430: Radioactive Iodine Labeling of Viruses Enzymes and Flourescene Isothyiocyanate; filed 29 January 1973; patented 7 January 1975; not available NTIS.

Patent 3,860,311: Apparatus for Producing Magnetic Resonance Cells; filed 23 July 1973; patented 14 January 1975; not available NTIS.

Patent 3,860,874: Receiver for Desk Signals; filed 4 December 1973; patented 14 January 1975; not available NTIS.

Patent 3,860,899: Strum Noise Reducing Device; filed 8 October 1968; patented 14 January 1975; not available NTIS.

Patent 3,861,211: Ultra-Low Flow Velocity Current Meter; filed 25 March 1974; patented 21 January 1975; not available NTIS.

Patent 3,861,878: General Purpose Analyzer for Plasma Media; filed 19 December 1972; patented 21 January 1975; not available NTIS.

Patent 3,862,046: Strengthened and High Density BaTiO3; filed 18 May 1973; patented 21 January 1975; not available NTIS.

Patent 3,862,407: Decimal to Binary Converter; filed 23 December 1970; patented 21 January 1975; not available NTIS.

Patent 3,862,930: Radiation-Hardened CMOS Devices and Circuits; filed 22 August 1972; patented 28 January 1975; not available NTIS.

Patent 3,863,061: ALU with End-Around Carry Derived from Auxiliary Unit; filed 16 August 1973; patented 28 January 1975; not available NTIS.

Patent 3,863,100: M-Type Microwave Signal Delay Tube; filed 6 March 1968; patented 28 January 1975; not available NTIS.

Patent 3,863,149: RF Hazard Detector; filed 30 October 1973; patented 28 January 1975; not available NTIS.

Patent 3,864,634: Doppler Correction Circuit; filed 1 October 1973; not available NTIS.

Patent 3,864,643: Traveling Wave Vacuum Spark and a Traveling Wave Flashlamp; filed 23 November 1973; patented 4 February 1975; not available NTIS.

Patent 3,864,664: Line Hydrophone Array Element Calibrator; filed 25 June 1973; patented 4 February 1975; not available NTIS.

Patent 3,865,503: Wobble Plate Pump; filed 15 October 1973; patented 11 February 1975; not available NTIS.

Patent 3,866,231: Satellite Transmitter of ULF Electromagnetic Waves; filed 8 September 1972; patented 11 February 1975; not available NTIS.

Patent 3,867,600: Hand-Held Control Means; filed 17 May 1973; patented 18 February 1975; not available NTIS.

Patent 3,867,612: Film Viewer Display Encoder; filed 8 November 1972; patented 18 February 1975; not available NTIS.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, Assistant General Counsel for Patent Matters, NASA, Code GP-2, Washington, D.C. 20546.

Patent application 545,283: Differential Pulse Code Modulation; filed 29 January 1975; PC $3.25/MF $2.25.

Patent Application 553,209: Particle Size Spectrometer and Refractometer; filed 26 February 1975; PC $3.75/MF $2.25.

Patent application 553,210: Frequency Scanning Particle Size Spectrometer; filed 26 February 1975; PC $3.25/MF $2.25.

Patent application 555,336: Resistive Anode Image Converter; filed 3 March 1975; PC $3.25/MF $2.25.

Patent application 557,444: Dual Mode Solid State Power Switch; filed 11 March 1975; PC $3.25/MF $2.25.

Patent application 557,448: Stack Plume Visualization System; filed 11 March 1975; PC $3.25/MF $2.25.

Patent application 557,565: Method of Growing Composites of the Type Exhibiting the Soret Effect; filed 11 March 1975; PC $3.25/MF $2.25.

Patent application 559,845: Detector Absorptivity Measuring Method and Apparatus; filed 19 March 1975; PC $3.25/MF $2.25.

Patent application 559,846: A Heat Exchanger and Method of Making; filed 19 March 1975; PC $3.25/MF $2.25.

Patent application 559,847: Heat Exchanger; filed 19 March 1975; PC $3.25/MF $2.25.

Patent 3,864,060: Automatic Liquid Inventory Collecting and Dispensing Unit; Patented 4 February 1975; not available NTIS.

Patent 3,864,239: Multitarget Sequential Sputtering Apparatus; patented 4 February 1975; not available NTIS.

Patent 3,864,542: Grain Refinement Control in Gig Arc Welding; patented 4 February 1975; not available NTIS.

Patent 3,864,953: Meter for Use in Detecting Tension in Straps Having Predetermined Elastic Characteristics; patented 11 February 1975; not available NTIS.

Patent 3,864,960: Vacuum Leak Detector; patented 11 February 1975; not available NTIS.

Patent 3,865,975: Deep Trap, Laser Activated Image Converting System; patented 11 February 1975; not available NTIS.

Patent 3,866,022: System for Generating Timing and Control Signals; patented 11 February 1975; not available NTIS.

Patent 3,866,128: Random Pulse Generator; Patented 11 February 1975; not available NTIS.

Patent 3,866,210: X-Y Alphanumeric Character Generator for Oscilloscopes; patented 11 February 1975; not available NTIS.

Patent 3,866,233: Dish Antenna Having Switchable Beamwidth; patented 11 February 1975; not available NTIS.

Patent 3,866,863: Space Vehicle; patented 18 February 1975; not available NTIS.

Patent 3,867,677: Motor Run-Up System; patented 18 February 1975; not available NTIS.

Patent 3,868,591: Laser Head for Simultaneous Optical Pumping of Several Dye Lasers; patented 25 February 1975; not available NTIS.

Patent 3,868,830: Condensate Removal Device for Heat Exchanger; patented 4 March 1975; not available NTIS.

Patent 3,868,856: Instrumentation for Measurement of Aircraft Noise and Sonic Boom; patented 4 March 1975; not available NTIS.

Patent 3,868,151: Internally Supported Flexible Duct Joint; patented 4 March 1975; not available NTIS.

Patent 3,869,160: Latching Device; patented 4 March 1975; not available NTIS.

Patent 3,869,210: Laser System with an Antiresonant Optical Ring; patented 4 March 1975; not available NTIS.

Patent 3,869,212: Spectrometer Integrated with a Facsimile Camera; patented 4 March 1975; not available NTIS.

Patent 3,869,597: Self-Regulating Proportionally Controlled Heating Apparatus and Technique; patented 4 March 1975; not available NTIS.

Patent 3,869,615: Multiplate Focusing Collimator; patented 4 March 1975; not available NTIS.

Patent 3,869,659: Controllable High Voltage Source Having Fast Settling Time; patented 4 March 1975; not available NTIS.

Patent 3,869,667: Voltage Monitoring System; patented 4 March 1975; not available NTIS.

Patent 3,869,676: Diode-Quad Bridge Circuit Means; patented 4 March 1975; not available NTIS.

Patent 3,869,680: Dually Mode Locked Nd: YAG Laser; patented 4 March 1975; not available NTIS.

Patent 3,869,779: Duplex Aluminized Coatings; patented 11 March 1975; not available NTIS.

Patent 3,872,395: Signal Conditioning Circuit Apparatus; patented 18 March 1975; not available NTIS.

[FR Doc.75-18368 Filed 7-15-75;8:45 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[Docket No. 75G-0124]

### BNB TRADING CO., INC.

### Filing of Petition for Affirmation of Gras Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1786 (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 5G0056) has been filed by BNB Trading Co., Inc., 1801 Preston Tower, Dallas, TX 75225, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that *Rhynchosia pyramidalis* extract as a flavoring agent for liqueur is generally recognized as safe (GRAS).

Any petition which meets the format requirements outlined in 21 CFR 121.40 is filed by the Food and Drug Administration. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before September 15, 1975, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated: July 8, 1975.

HOWARD R. ROBERTS,
*Acting Director, Bureau of Foods.*

[FR Doc.75-18390 Filed 7-15-75;8:45 am]

### DERMATOLOGY ADVISORY COMMITTEE

#### Establishment and Request for Nominations for Membership

Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration (FDA) announces the establishment by the Secretary, Department of Health, Education, and Welfare, on June 20, 1975, of the following advisory committee:

*Name:* Dermatology Advisory Committee.

*General function of the committee:* Reviews and evaluates all available data on the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the practice of dermatology; and advises the Secretary, Assistant Secretary for Health, and the Commissioner of Food and Drugs on current advances, changing concepts, and trends in the field.

The committee will consist of nine members who are knowledgeable in dermatology, pharmacology, toxicology, internal medicine, and related fields.

Authority for this committee will expire June 20, 1977, unless the Secretary formally determines that continuation is in the public interest.

Under § 2.331(b) (21 CFR 2.331(b)) of the FDA administrative practices and procedures regulations, published in the FEDERAL REGISTER of May 27, 1975 (40 FR 22950), the FDA invites submissions of nominations for membership on the Dermatology Advisory Committee.

Any interested person may nominate one or more qualified persons for membership within the areas of expertise listed above. Nominations shall specify

the committee for which the nomination is recommended. A complete curriculum vitae of the nominee shall be included. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of advisory committee, and appears to have no conflict of interest that would preclude committee membership.

Membership is for 4 years, except that initial appointments will be staggered to provide an orderly rotation of membership.

Nominations are due by August 15, 1975 and should be submitted to Dr. Merle Gibson, Director, Division of Anti-Infective Drug Products (HFD-140), Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Elsewhere in this issue of the FEDERAL REGISTER the Commissioner of Food and Drugs is amending § 2.340 (21 CFR 2.340) by adding new paragraph (c)(20) to include the Dermatology Advisory Committee in the list of standing advisory committees.

Dated: July 10, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-18388 Filed 7-15-75;8:45 am]

---

[Docket No. 75N-0131]

## FOODS, DRUGS, AND COSMETICS CONTAINING FLUOROCARBON-11, FLUOROCARBON-12 AND OTHER FLUOROCARBON PROPELLANTS

### Manufacturers, Packers, and Distributors

The regulatory responsibilities of the Food and Drug Administration (FDA) for the safety of foods, drugs, and cosmetics warrant the agency's immediate consideration of the recently predicted environmental and health consequences of the possible depletion of stratospheric ozone resulting from the use of fluorocarbon-containing aerosols. Initial industry estimates received by FDA indicate that a major portion of the U.S. production of these substances is used as propellant for dispensing food, drug, and cosmetic products from pressurized containers, hereafter referred to as aerosol containers. Since these products are subject to the Federal Food, Drug, and Cosmetic Act, the Commissioner of Food and Drugs has concluded that FDA must monitor all attempts to determine the significance of the widespread use of fluorocarbon propellants and must initiate the collection of data to provide a basis for any regulatory action which may be required.

The most widely used aerosol propellants are fluorocarbon-11 (FC-11) and fluorocarbon-12 (FC-12) (trichloromonofluoromethane and dichlorodifluoromethane), which were first synthesized in the early 1930's by workers at the General Motors Research Laboratory. Since FC-12 is readily liquified when compressed, it became a prime material for use in refrigeration units. The principal advantages of this compound over previously used refrigerants, e.g., ammonia, are nonflammability, low toxicity and low chemical reactivity.

The aerosol industry arose after World War II when researchers at the U.S. Department of Agriculture found that the dispersal of insecticides by pressurized refrigerants greatly increased the effectiveness of the insecticides through the formation of a fine aerosol. After the development of low-pressure (less than 55 pounds per square inch) valves and nozzles in the 1950's, a mixture of FC-11 and FC-12 became the standard propellant for aerosol-dispensed products. Since 1955, the growth rate for the production of these two compounds has increased by an average of 12 percent each year.

Although other fluorocarbon propellants have been developed, FC-11 and FC-12 continue to dominate the market. For example, the U.S. Tariff Commission reports that in 1972, FC-11 and FC-12 production, 300 and 439 million pounds, respectively, accounted for 82 percent of the total U.S. fluorocarbon production (900 million pounds). Approximately 82 percent of the FC-11 and 50 percent of the FC-12 produced are used as aerosol propellants. Consequently, over 50 percent of the total U.S. fluorocarbon production goes into pressurized containers. Industry estimates indicate that some 80 percent of these container types are used to dispense products subject to the Federal Food, Drug, and Cosmetic Act. These estimates lead the Commissioner to conclude that FDA has jurisdiction to regulate about 40 percent of the U.S. production of fluorocarbons (50 percent x 80 percent).

While fluorocarbons have been generally regarded as inert gases, the possible interaction of fluorocarbons and stratospheric ozone was suggested by Rowland and Molina in the June 28, 1974, issue of "Nature." Previous work utilizing fluorocarbons to study air movements indicated the persistent nature of these compounds in the tropospheric environment and demonstrated the probability of fluorocarbons reaching the stratosphere. On the basis of laboratory chemical studies, Rowland and Molina hypothesized that ultraviolet radiation of a wavelength naturally occurring only above the troposphere can break down fluorocarbons to yield reactive chlorine atoms capable of catalyzing ozone-destroying reactions. This observation generated great public concern since a large depletion of stratospheric ozone could cause grave consequences to life on earth.

More recently, computer models have been developed to predict the extent of ozone depletion resulting from various levels of worldwide fluorocarbon production. These models are based on expected rates of atmospheric diffusion and on the same chemical reaction schemes utilized by Rowland and Molina in their predictions. For example, a recent report by Wofsey, et al., in "Science," February 14, 1975, shows a significant lag time between the release of fluorocarbons at ground level and the eventual stratospheric reactions which cause ozone depletion. If the assumptions as to chemical reaction kinetics and atmospheric diffusion are correct, it is predicted that the production and release of fluorocarbons need be halted within 2 to 3 years to prevent significant reduction of stratospheric ozone.

It is not possible at this time to predict the full extent of the environmental consequences of ozone reduction. Predictions of increased skin cancers have been derived from epidemiological observations of variances in the incidence of the disease with geographic latitude. One such study was performed by the U.S. Department of Transportation in association with its SST impact program. A similar study by the National Academy of Sciences (NAS) is in preparation. Other consequences, such as diminished crop yields, climatic changes and significant ecosystem perturbations due to mutations, behavioral alterations and other effects on plant and animal populations have also been postulated.

To unify the Federal Government's response to this serious problem, in January 1975, the Council on Environmental Quality and the Federal Council on Science and Technology (CEQ/FCST) formed an interagency task force on the Inadvertent Modification of the Stratosphere (IMOS) for the purposes of: (1) Developing a report summarizing the status of the problem and actions that need to be taken, (2) recommending research and regulatory responsibilities for Federal agencies, and (3) serving as the means of coordinating the Federal effort in obtaining the information required to precede any regulatory actions. The membership of this task force includes representatives from both research and regulatory agencies, including representatives from the National Aeronautics and Space Administration, the Food and Drug Administration, U.S. Department of Agriculture, National Oceanic and Atmospheric Administration, U.S. Department of Transportation, Department of State, Department of Justice, Consumer Product Safety Commission, National Institute of Environmental Health Sciences, Environmental Protection Agency, Department of Defense, and the Energy Research and Development Administration.

The task force has issued its report on fluorocarbons, which contains the following conclusions and recommendations:

1. Fluorocarbon release in the environment is a legitimate cause for concern. Unless new scientific evidence is found to remove the cause for concern, it would seem necessary to restrict the use of FC-11 and FC-12 to replacement of fluids in existing refrigeration and air conditioning equipment and to closed recycled systems or other uses not involving release to the atmosphere. The NAS is currently conducting an in-depth scientific study of man-made impacts on the stratosphere and will report its findings next spring. If the NAS confirms the current task force assessment, it is recommended that the Federal regulatory

agencies initiate rule making procedures to implement regulations to restrict fluorocarbon uses.

2. The Federal Government's significant stratospheric research program, resulting in part from a concern over possible effects on the stratosphere of SST flights, should continue with some shifted emphasis on the chemical reactions of interest to improve the understanding of the interactions of fluorocarbons with stratospheric ozone.

3. The Environmental Protection Agency has jurisdiction over pesticides under the Federal Insecticide, Fungicide and Rodenticide Act, the FDA has authority over aerosol-propelled foods, drugs, and cosmetics, and the Consumer Product Safety Commission has authority over all other consumer aerosol products, home air conditioners, and home refrigerants. However, no Federal authority is responsible for governing any of the remaining uses of fluorocarbons, such as automobile air conditioning, industrial and commercial applications for air conditioning and refrigeration, and use as foaming agents for fire retardants. The task force, therefore, recommended that the proposed Toxic Substances Control Act now pending before Congress be enacted to provide for effective control of all uses of fluorocarbons, if required, and also to provide a regulatory base for control of a wide variety of potentially harmful substances that have broad environmental consequence.

4. In order to avoid unduly penalizing manufacturers of aerosol products that do not employ FC–11 and FC–12 propellants, the task force recommends that the regulatory agencies proceed immediately with consideration of a requirement that all aerosol products using fluorocarbons be labeled to indicate their fluorocarbon content.

The National Environmental Policy Act (NEPA) requires that, where the agency's authority permits, the FDA shall act in accordance with the national policy to preserve the quality of the human environment, and that the environmental effects of a proposed action be considered early in the decision-making process. Since fluorocarbons used as propellant for dispensing foods, drugs, and cosmetics from aerosol containers are considered to be components of these products, the FDA has the responsibility to consider the environmental effects of the use of these products. Through its participation on the IMOS task force, FDA is keeping abreast of the environmental concerns associated with the use of fluorocarbon propellants. The health consequences of the use of products packaged in aerosol containers are also under study. Research on the acute cardiotoxicities of fluorocarbons has been completed and is under review. Chronic exposure studies and studies of toxic effects on other organs are being initiated. In addition, research involving the health hazards of inhalation of particulates from products dispensed from aerosol containers has been extensively supported by FDA.

If the research recommended by the CEQ/FCST Task Force establishes that a significant reduction of stratospheric ozone will be the likely result of continued use of fluorocarbon propellants in aerosol products, the Commissioner has determined that the FDA must consider regulatory action concerning such products that are subject to the Federal Food, Drug, and Cosmetic Act. Furthermore, NEPA requires that an environmental impact statement (EIS) be prepared for every major agency action significantly affecting the quality of the human environment. The procedures used by the FDA for determining the necessity for an EIS are described in 21 CFR Part 6. For these reasons, and in consideration of the agency's responsibilities for human health and the human environment, it is essential that the Commissioner begin the acquisition of data on every food, drug, and cosmetic currently marketed in the United States in aerosol containers, pending a determination of the need for any regulatory action (including possible labeling requirements).

Section 510(j)(3) of the act authorizes the Commissioner to require each registrant under section 510 to submit a list of every drug product that the registrant is manufacturing, preparing, propagating, compounding, or processing for commercial distribution and that contains a particular ingredient, when he finds that the submission of such a list is necessary to carry out the purposes of the act. For the reasons stated above, the Commissioner so finds with regard to drugs containing fluorocarbon propellant.

In addition to the required list of drugs containing fluorocarbon propellant, the Commissioner is requesting, not requiring, that certain other information be submitted by the registrants. He is also requesting that manufacturers of foods and cosmetics containing fluorocarbon propellant submit similar information.

Therefore, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 510, 701(a), 52 Stat. 1040–1042 as amended, 1055, 76 Stat. 794–795 as amended (21 U.S.C. 321, 360, 371(a))) and the National Environmental Policy Act (sec. 201(2)(C), 83 Stat. 853 (42 U.S.C. 4332(2)(C))), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), each registrant under section 510 of the act is required to submit to the FDA a list of all drugs containing fluorocarbon propellant that are being manufactured, prepared, propagated, compounded, or processed for commercial distribution, as follows:

(1) Reporting firm name, address, and registration number.

(2) A listing of all drug products containing fluorocarbon propellant-11 (trade name, if any, and established name, if any).

(3) A listing of all drug products containing fluorocarbon propellant-12 (trade name, if any, and established name, if any).

(4) A listing of all drug products containing other fluorocarbon propellants (trade name, if any, and established name, if any).

It is requested, not required, that each registrant submit the following information:

(5) The percentage of the net weight of the product which is fluorocarbon propellant, the identity of the propellant(s) used, and the percentages of each propellant in the product.

(6) The annual unit production of each aerosol product for each year since the introduction into interstate commerce of the product in aerosol containers.

(7) A statement whether the drug is marketed over-the-counter or limited to prescription distribution.

(8) Route of administration.

(9) A copy of the label and labeling.

It is requested, not required, that each manufacturer of a food or a cosmetic product containing fluorocarbon propellant submit the following information:

(1) Reporting firm name and address.

(2) A listing of all food and cosmetic products containing fluorocarbons (for cosmetics, by name and by trade name, if any; for foods, by trade name, if any, and by common or usual name, if any).

(3) The percentage of the net weight of the food and cosmetic product which is fluorocarbon propellant, the identity of the propellant(s) used, and the percentages of each propellant in the product.

(4) The annual unit production of each aerosol food and cosmetic product for each year since the introduction into interstate commerce of the product in aerosol containers.

(5) A copy of the label.

Individual submissions of information responding to the above requests will be considered confidential and will not be available for release under the Freedom of Information Act. This information is requested to be, and the required list of drugs containing fluorocarbon propellant shall be, submitted by October 14, 1975 in triplicate to the Hearing Clerk, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

Dated: July 10, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-18391 Filed 7-15-75;8:45 am]

## PANEL ON REVIEW OF CONTRACEPTIVE AND OTHER VAGINAL DRUG PRODUCTS

### Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), the Food and Drug Administration announces the renewal of the Panel on Review of Contraceptive and Other Vaginal Drug Products by the Secretary, Department of Health, Education, and Welfare, for an additional period of 2 years beyond June 27, 1975.

Authority for this committee will expire on June 27, 1977, unless the Secre-

tary formally determines that continuance is in the public interest.

Dated: July 10, 1975.

SAM D. FINE,
*Associate Commissioner for Compliance.*

[FR Doc.75-18386 Filed 7-15-75;8:45 am]

---

### Health Services Administration

## HEALTH MAINTENANCE ORGANIZATIONS

### Applications for Federal Financial Assistance

On February 12, 1975, there was published in the FEDERAL REGISTER a notice about new project applications for assistance under Title XIII of the Public Health Service Act, "Health Maintenance Organizations" (42 U.S.C. 300e et seq.), and projects previously funded. This notice sets forth a schedule of funding cycles for new projects and repeats the modified procedures for previously funded projects.

NEW PROJECTS

Applications for the support of projects not previously funded under Title XIII may be submitted and will be considered and acted upon in accordance with the following schedule:

| *Deadline for the submission of applications* | *Anticipated date of award* |
|---|---|
| Sept. 29, 1975 | Jan. 5, 1976. |
| Jan. 5, 1976 | April 5, 1976. |

Applications must be submitted to the appropriate DHEW Regional Office. A further notice will appear in the FEDERAL REGISTER when subsequent award cycles are established.

PROJECTS PREVIOUSLY FUNDED UNDER TITLE XIII

The Health Services Administration, in order to respond to the different rates of progress of HMO feasibility, planning, and initial development projects, and to their different beginning dates of initial operations, will on an individual basis accept and consider applications for continuation funding, or for funding of subsequent levels of progress as completion of the appropriate activities under the previously funded projects is demonstrated. It is estimated that a 13-week review period will be required between the receipt of such applications and final action on their disposition.

Dated: July 3, 1975.

JOHN E. MARSHALL, PH.D.,
*Acting Administrator, Health Services Administration.*

[FR Doc.75-18418 Filed 7-15-75;8:45 am]

---

## INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES

### Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to assemble during the month of August 1975:

Name: INTERAGENCY COMMITTEE ON EMERGENCY MEDICAL SERVICES.

Date and Time: August 7, 1975, 9:00 a.m.

Place: Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland. Open for entire meeting.

Purpose: The Committee will provide for the communication and exchange of information necessary to maintain the coordination and effectiveness among such Federal programs and activities and make recommendations to the Secretary respecting the administration of grants and contracts under Title XII, including making regulations for the emergency medical services systems program.

Agenda: The agenda will include reports from the EMS Work Groups, the Social Security Administration, the Social and Rehabilitation Service, the Robert Wood Johnson Foundation and the staff of DEMS on progress of the EMS resource publication and fiscal year 1976 work plan. Grants and projects funded in fiscal year 1975 by HSA, HRA, DOT and the Appalachian Regional Commission will also be reviewed.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to attend, obtain a roster of the members, or other relevant information should contact John D. Reardon, DEMS/BMS, 6525 Belcrest Road, Hyattsville, Maryland 20782, Telephone (301) 436-6284. Public seating is limited to forty (40). Please contact at least 72 hours before the meeting.

Dated: July 7, 1975.

ANDREW J. CARDINAL,
*Associate Administrator for Management.*

[FR Doc.75-18417 Filed 7-15-75;8:45 am]

---

### Social Security Administration

## SUPPLEMENTAL SECURITY INCOME STUDY GROUP

### Meeting

Notice is hereby given pursuant to Pub. L. 92-463, that the Supplemental Security Income Study Group will hold a meeting on Thursday, July 31 and Friday, August 1 from 9 a.m. to 5 p.m. at the Albany Hotel, 17th and Stout Streets, Denver, Colorado. The meeting is open to the public.

Further information on the Study Group may be obtained from Nelson Sabatini, Executive Secretary of the Study Group, Room 945 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2330. Members of the public planning to attend should send written notice of intent to the Executive Secretary.

(Catalog of Federal Domestic Assistance Program Number 13.807, Supplemental Security Income for the Aged, Blind, and Disabled)

Dated: July 10, 1975.

NELSON SABATINI,
*Executive Secretary, Supplemental Security Income Study Group.*

[FR Doc.75-18446 Filed 7-15-75;8:45 am]

---

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Federal Disaster Assistance Administration

[FDAA-474-DR; NFD-274]

### OKLAHOMA

### Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on July 9, 1975, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms, tornadoes, and flooding beginning about May 13, 1975, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Oklahoma.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Joe D. Winkle, HUD Region VI, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Oklahoma to have been adversely affected by this declared major disaster:

The Counties of: Blaine, Cleveland, Cotton, Jefferson, Kingfisher, Lincoln, McClain, Major, Mayes, Payne.

Dated: July 9, 1975.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM E. CROCKETT,
*Acting Administrator, Federal Disaster Assistance Administration.*

[FR Doc.75-18371 Filed 7-15-75;8:45 am]

---

### Office of Interstate Land Sales Registration

[Docket No. N-75-387]

### BRYCE MOUNTAIN

### Hearing

In the matter of Bryce Mountain, OILSR No. 0-009-54-5, 0-0790-54-25, 0-0099-54-5(A-G), Docket No. 75-105-IS.

Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d) notice is hereby given that:

1. Bryce's Mountain Resort, Inc., Joseph W. Luter, III, President, its officers, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full

Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for Hearing issued June 23, 1975, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Bryce Mountain, located in Shenandoah County, Virginia, contain untrue statement of material fact or omit to state material facts required to be stated therein as necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received July 7, 1975, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on July 22, at 10:00 a.m. (second call).

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before July 15, 1975.

6. The Respondent is HEREBY NOTIFIED that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: July 9, 1975.

By the Secretary.

JAMES W. MAST,
*Administrative Law Judge.*

[Docket No. N–75–386]

## GOOSE CREEK ADDITION

### Hearing

In the matter of Goose Creek Addition, OILSR No. 0–1126–29–29 (A–3) Docket No. 75–68–IS. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Goose Creek Land Company, Inc., James Higgins, Secretary-Treasurer, its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for Hearing issued May 20, 1975, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Goose Creek Addition, located in, St. Francois County and Ste. Genevieve County, Missouri, contain untrue statement of material fact or omit to state material facts required to be stated therein as necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received July 1, 1975, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on August 13, 1975, at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before August 6, 1975.

6. The Respondent is HEREBY NOTIFIED that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: July 9, 1975.

By the Secretary.

JAMES W. MAST,
*Administrative Law Judge.*

[FR Doc.75–18448 Filed 7–15–75;8:45 am]

[Docket No. N–75–388]

## MOUNT MITCHELL LANDS

### Hearing

In the matter of Mount Mitchell Lands, OILSR 0–2328–38–104 Docket No. Y–958 IS. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Mount Mitchell Lands, Inc., Edwin V. Floyd, President, its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for Hearing issued May 15, 1975, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Mount Mitchell Lands, located in Yancey County, North Carolina, contain untrue statement of material fact or omit to state material facts required to be stated therein as necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received June 2, 1975, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on August 29, 1975, 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C. 20410 on or before August 22, 1975.

6. The Respondent is HEREBY NOTIFIED that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: July 9, 1975.

By the Secretary.

JAMES W. MAST,
*Administrative Law Judge.*

[FR Doc.75–18449 Filed 7–15–75;8:45 am]

[Docket No. N–75–389]

## PROSSER LAKEVIEW ESTATES

### Hearing

In the matter of Prosser Lakeview Estates, OILSR No. 0–1282–04–234 Docket No. Y–866. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), notice is hereby given that:

1. Aguilas, Inc., F. W. Valley, President, its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90–448) (15 U.S.C. 1701 et seq.), received a Notice of Proceedings and Opportunity for Hearing issued March 19, 1975, which was sent to the developer pursuant to 15

U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Prosser Lakeview Estates, located in Nevada County, California, contain untrue statement of material fact or omit to state material facts required to be stated therein as necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received May 12, 1975 in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on July 17, 1975, at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before July 16, 1975.

6. The Respondent is HEREBY NOTIFIED that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: July 9, 1975.

By the Secretary.

JAMES W. MAST,
*Administrative Law Judge.*

[FR Doc.75-18450 Filed 7-15-75;8:45 am]

---

[Docket No. D-75-351]

### ACTING DIRECTOR, KANSAS CITY AREA OFFICE

#### Designation and Delegation of Authority

The officer named below is hereby designated to serve as Acting Director of the Kansas City Area Office during the vacancy in the position of Director, Kansas City Area Office. The Acting Director has all the powers, functions, and duties delegated or assigned to the Area Office Director.

EMIL HUBER

Presently, Assistant Regional Administrator for Community Planning & Development, Region VII.

Designation February 23, 1971, 36 FR 3389.

*Effective date.* This delegation is effective as of June 1, 1975.

ELMER E. SMITH,
*Regional Administrator,*
*Region VII (Kansas City).*

[FR Doc.75-18370 Filed 7-15-75;8:45 am]

---

[Docket No. D-75-350]

### ACTING DEPUTY REGIONAL ADMINISTRATOR REGION III, (PHILADELPHIA)

#### Designation and Delegation of Authority

Mr. Francis X. Healy is hereby designated to serve as Acting Deputy Regional Administrator of the Philadelphia Regional Office for the period of May 27, 1975, through September 24, 1975, with all the powers, functions, and duties redelegated or assigned to the Deputy Regional Administrator.

(Authority to redelegate: 27 FR 4319, Interim Order II 31 FR 815, January 21, 1966).

*Effective Date*—This designation shall be effective as of May 27, 1975.

VINCENT A. MARINO,
*Acting Regional Administrator,*
*Region III, (Philadelphia).*

[FR Doc.75-18369 Filed 7-15-75;8:45 am]

---

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### TOLLS ON BRIDGES OPERATED BY THE DELAWARE RIVER PORT AUTHORITY

#### Order of the Federal Highway Administrator

Issued: July 10, 1975.

On May 19, 1975, the Administrator issued an order finding that the existing toll schedule for crossing the bridges operated by the Delaware River Port Authority was not just and reasonable and set forth a new toll schedule to be effective 12:01 a.m., August 1, 1975, as the legal rates to be demanded and received for transit over such bridges. The Delaware River Port Authority (DRPA), the City of Philadelphia, and the Motorists for Lower Tolls have duly filed petitions for reconsideration.

Several of the points pressed by parties as grounds for reconsideration have been answered by the Administrator in prior orders and will not be considered here again.

The City of Philadelphia and the Motorists for Lower Tolls generally support the findings in the May 19, 1975, order. The City of Philadelphia does request reconsideration on such things as burden of proof, refund of excess toll charges, broader use of investment income, review of DRPA so-called overstated expenses and understated revenue, etc. The Administrator feels that these points have been sufficiently covered in the instant order and previous orders and will not reiterate his position here.

The Administrator does comment on the following points:

1. All parties argue that higher tolls have generally not discouraged traffic on DRPA crossings. While it is true that the traffic volume, historically, on the bridges show a continuing upward rise, without regard to toll rates, such increase cannot be attributed to any single factor. Population increase, more individuals reaching driving age, increase in the number of automobiles, etc., can continue the increase of traffic over the bridges. However, common sense economic principles would dictate that low tolls would encourage traffic and high tolls, especially if they are exorbitant, would discourage traffic. The Administrator, in using these principles in the opinion, was merely attempting to strike a balance between the two factors of high or low tolls in the conservation of gasoline. The Administrator's toll schedule does provide a substantial inducement to commuters to join a carpool and thus reduce single occupant car traffic.

The Administrator appreciates DRPA's reference to the Department of Transportation report submitted to Congress on July 1, 1974, which found that bridge tolls may be useful in discouraging travel when facilities are congested and in increasing carpooling and transit ridership. The Administrator feels that the primary thrust of his May 19, 1975, order is to do just that.

2. DRPA devotes a major part of its petition for reconsideration to the proposition that due to a "misstatement" in the opinion, the Administrator would require the Authority to breach its bond indenture. The "misstatement" appears on page 11 of the opinion in a description of the powers of the Authority and is not controlling of the results reached in the opinion. This "misstatement" reads:

> DRPA may reduce tolls or fares if in the preceding calendar year a coverage of at least 1.6 has been achieved *or* if in each of the two *preceding* years a coverage of at least 1.4 has been achieved. (Emphasis added.)

This statement should have read, and the May 19, 1975, opinion is hereby amended to read:

> DRPA may reduce tolls or fares if in the preceding calendar year a coverage of at least 1.6 had been achieved, *and, among other things,* if in each of the two succeedings years, it *is estimated* that a coverage of at least 1.4 *will* be achieved. (Emphasis added.)

The City of Philadelphia declares that DRPA's argument on this point is spurious and fallacious. The Administrator is inclined to agree by noting that if the sentence had been omitted from the opinion entirely, the result obtained by the opinion would not have been changed one iota. DRPA is not persuasive in contending that the opinion does, in fact, require the Authority to breach its bond indenture, and in point of fact, how can such argument be advanced in face of a toll schedule which allows a return comfortably above the covenanted 1.2 return?

However, it is possible DRPA is arguing a larger point, that is, that only DRPA has the authority to set the toll schedule for the bridge crossings, by virtue of its bond indenture. The coverage clause of the bond indenture, like the whole of that document, is a private contract between the Authority and its bondholders. DRPA covenanted with the bondholders with full knowledge that rates charged on the bridges are subject to a determination by the Secretary of Transportation that they be reasonable and just pursuant to section 503 of the General Bridge Act of 1946. There is ample precedent for the proposition that contracts between private parties and a regulated entity are subject to the regulations and statutes of the Regulatory Agency. *Colorado Interstate Gas Co.* v. *FPC*, 142 F. 2d 943, affirmed 324 U.S. 581 (1944) involved a claim that the FPC could not abrogate prices fixed by contract prior to the effective date of the Natural Gas Act. The court stated that the contracts entered into before the enactment of the Act were made "with knowledge of the paramount authority of Congress to regulate commerce among the States," 142 F. 2d 953. The court held such contracts were invalid. Unlike the *Colorado* fact situation, the bond indenture between bondholders and the Authority was entered into subsequent to and not prior to the enactment of the statute which is the basis for the Federal regulatory power here. Under these circumstances, it seems manifest that the private contractual obligations of DRPA should not affect the regulatory power of the Administrator to determine whether the toll schedule is just and reasonable. See also *Michigan Consolidated Gas Co.* v. *Panhandle Eastern Pipe Line Co.*, 80 F. Supp. 27, *aff'd*, 173 F. 2d 784 (6th Cir., 1949); and *Federal Power Commission* v. *Texaco, Inc.*, 417 U.S.C. 380, 94 S. Ct. 2315 (1974). In brief, it is clear that the DRPA compact vested in the Authority power to enter into agreements with bondholders for security of obligations, subject to the 1946 Bridge Act. Acceptance of DRPA's position would nullify the General Bridge Act and substitute any bond covenant DRPA may wish to make.

3. DRPA argues that the Administrator erred in not using Ex. 139, the 1975 Operating Budget, in projecting the Authority's expenses in the formulation of Appendix F to the opinion. Appendix F is a table showing estimated debt service coverage under the prescribed toll schedule for the years 1975, 1976, 1977, and 1978. DRPA's operating budget, Exhibit 139, adjusts O&M and administrative expenses with an inflation rate of seven percent, six percent, and six percent in 1976, 1977, and 1978. The Authority submits an Appendix F–1 with these figures utilized. Appendix F to the opinion, by footnote (a), indicates clearly the estimates therein were based on estimates found on pages 21 and 22 of Ex. 136, the prospectus for the issuance of the 1974 Bond Refunding Program. This document, which served to persuade the public to purchase DRPA's bonds appeared to to be the best source for calculating the future estimated debt coverage of the Authority. It is further evident that even if the Administrator had used the projected expenses of the 1975 operating budget, DRPA's Appendix F–1 provides a coverage above the covenanted 1.20. DRPA's contention on this point is without merit.

4. DRPA argues that the Administrator does not have the legal function to make minute adjustments in a toll schedule, but that he has only the legal duties of determining whether a toll schedule generally falls within the "zone of reasonableness." The Administrator disagrees. There is no legal criteria requiring the Administrator to establish a "zone of reasonableness," but only that the tolls be "reasonable and just," pursuant to the General Bridge Act of 1946.

5. DRPA argues that the opinion does not provide coverage leeway on the effect of an acute gasoline shortage, which might reduce its toll revenues. The inclusion of a reduction allowance as set forth in Table 7, Appendix A, of Ex. 136, would permit DRPA to decrease its gross toll revenues by 10 to 13 percent in the years 1974–1978 in calculating its bond service coverage. This would mean for those years, a total sum of $21,326,000, that the Authority would receive if an acute gasoline shortage did not occur. DRPA makes no suggestion as to how this money would be utilized in the event a gasoline shortage failed to occur. Such oversight is patently unfair to the toll-paying public. The Administrator's toll schedule is calculated by using and projecting 1974 actual traffic figures, and this was the year in which a gasoline shortage did, in fact, occur. A failure to provide the reduction allowance coverage, considering the highly problematical questions of whether there will occur in the future an acute gasoline shortage substantially reducing bridge traffic, does not render the subject toll schedule invalid.

6. DRPA argues that because of the reduction in commuter rates and straight fare tolls for automobiles, the Administrator's toll schedule cannot go into effect until an Environmental Impact Statement is filed pursuant to the National Environmental Policy Act of 1969. This Act requires that such a statement be filed with respect to every "major" Federal action significantly affecting the quality of the human environment. DRPA does not argue that the substantial reduction in the carpool rate and bus rate would also require an impact statement, nor does the Authority apply its argument to the fact that the reduction in commuter and straight fare rates for automobiles is minimal, that is, only five cents in each class. It is pointed out in the May 19, 1975, opinion several times that this minimal reduction will have little effect on encouraging automobile traffic. The Administrator now states that such minimal reduction will not significantly affect the quality of the human environment, and on the contrary, the Administrator's toll schedule, providing for substantial reduction in carpool rates and bus rates will prove beneficial to the environment. This is borne out by the record in this case, particularly by Ex. 123, the statement of the U.S. Environmental Protection Agency, urging that a lower carpool rate be established. The statement, it is true, expressed disfavor with the discount commutation rate at the same time. In this regard, it is to be noted that that agency has filed no exceptions to the Administrator's May 19, 1975, opinion and the logical inference that follows is that EPA did not consider the minimal reduction in the commuter and straight car rate as harmful.

The question of whether an impact statement should be filed was discussed in the November 5, 1973, opinion with the conclusion that no such statement was necessary. For the reasons stated therein, and the reasons stated here, the Administrator concludes the toll schedule set forth in the May 19, 1975, opinion is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

The issuance of this order makes moot DRPA's request for a stay of the effective date of the Administrator's opinion and order.

*Wherefore*, the Administrator finds that the petitions for reconsideration should be, and they are hereby, denied.

Issued in Washington, D.C., this 10th day of July, 1975.

NORBERT T. TIEMANN,
*Federal Highway Administrator.*

[FR Doc.75–18433 Filed 7–15–75;8:45 am]

## AD HOC ADVISORY GROUP ON PUERTO RICO

### MEETINGS

#### Cancellations

The meetings of the Ad Hoc Advisory Group on Puerto Rico scheduled for July 17, 18 and 19, 1975, and July 24, 25 and 26, 1975, as published in the FEDERAL REGISTER of June 5, 1975, are hereby canceled. However, the Advisory Group will meet on July 31, August 1 and 2, 1975, as published in the FEDERAL REGISTER of 1975.

The location of that meeting will be published herein at the earliest possible date. Any questions concerning this meeting should be directed to the undersigned at 1016 16th Street, N.W., Room 400, Washington, D.C. 20036, (202) 382–1771.

PETER J. GALLAGHER,
*Executive Director.*

[FR Doc.75–18549 Filed 7–16–75;8:45 am]

## CIVIL RIGHTS COMMISSION

### NEW JERSEY STATE ADVISORY COMMITTEE

#### Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of

the U.S. Commission on Civil Rights, that a planning meeting of the New Jersey State Advisory Committee (SAC) to this Commission will convene at 7:30 p.m. on July 22, 1975, at the Holiday Inn, 430 Broad Street, Newark, New Jersey.

Persons wishing to attend this meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York 10007.

The purpose of this meeting is to discuss new projects for the Advisory Committee.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., July 10, 1975.

ISAIAH T. CRESWELL, Jr.,
*Advisory Committee Management Officer.*

[FR Doc.75-18459 Filed 7-15-75;8:45 am]

### NEW JERSEY STATE ADVISORY COMMITTEE

#### Cancellation of Meeting

The meeting of the New Jersey State Advisory Committee to the United States Commission on Civil Rights, originally scheduled for July 27, 1975, a notice of which was previously published on page 27511 in the FEDERAL REGISTER on Monday June 30, 1975 (FR Doc. 75-16966) has been cancelled.

Dated at Washington, D.C., July 10, 1975.

ISAIAH T. CRESWELL, Jr.,
*Advisory Committee Management Officer.*

[FR Doc.75-18458 Filed 7-15-75;8:45 am]

## CIVIL SERVICE COMMISSION

### FEDERAL EMPLOYEES PAY COUNCIL

#### Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Federal Employees Pay Council will meet at 2:00 p.m. on Wednesday, July 30, 1975. This meeting will be held in room 5A06A of the U.S. Civil Service Commission building, 1900 E Street, NW., and will consist of continued discussions on the fiscal year 1976 comparability adjustment for the statutory pay systems of the Federal Government.

The Chairman of the U.S. Civil Service Commission is responsible for the making of determinations under section 10 (d) of the Federal Advisory Committee Act as to whether or not meetings of the Federal Employees Pay Council shall be open to the public. He has determined that this meeting will consist of exchanges of opinions and information which, if written, would fall within exemptions (2) or (5) of 5 U.S.C. 552(b). Therefore, this meeting will not be open to the public.

For the President's Agent:

RICHARD H. HALL,
*Advisory Committee Management Officer, for the President's Agent.*

[FR Doc.75-18362 Filed 7-15-75;8:45 am]

## CONSUMER PRODUCT SAFETY COMMISSION

### TECHNICAL ADVISORY COMMITTEE ON POISON PREVENTION PACKAGING

#### Postponement of Meeting and New Date Scheduled

Notice is given that the Technical Advisory Committee on Poison Prevention Packaging meeting scheduled for July 21-22, 1975, has been postponed. Notice is given further that this meeting is rescheduled for August 26-27, 1975, to be held at the CPSC, 1750 K St., N.W., Washington, D.C., 6th Floor Conference Room. The tentative agenda is as follows:

Tuesday, August 26—9 a.m.-12:30 p.m.
—Orientation Session for new committee members.

Tuesday, August 26—2-5 p.m.
—A discussion of the exemption criteria and the possible need for legislative amendments to the Poison Prevention Packaging Act regarding exemptions.

Wednesday, August 27—9 a.m.-4 p.m.
—Substances under consideration for special packaging and problems associated with child-resistant packaging standards, i.e., test protocol, use by the elderly, handicapped, etc.

The meeting is open to the public, however, space is limited. Further information concerning this meeting and final agenda topics may be obtained from the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, Telephone (202) 634-7700.

Dated: July 10, 1975.

SADYE E. DUNN,
*Secretary, Consumer Product Safety Commission.*

[FR Doc.75-18398 Filed 7-15-75;8:45 am]

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 400-1; PP5G1622/T2]

### ACEPHATE

#### Notice of Establishment of Temporary Tolerance

Chevron Chemical Co., 940 Hensley St., Richmond CA 94804, submitted a pesticide petition (5G1622) to the Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for residues of the insecticide acephate (*O,S*-dimethyl acetylphosphoramidothioate) and its cholinesterase-inhibiting metabolite *O,S*-dimethyl phosphoramidothioate in or on the raw agricultural commodity almonds at 1 part per million.

The temporary tolerance would permit the marketing of almonds treated with the insecticide in accordance with the provisions of an experimental use permit which is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act.

The data submitted in the petition and other relevant material have been evaluated. It has been determined that the tolerance is adequate to cover residues resulting from the proposed experimental use and that such tolerance will protect the public health. Therefore, the temporary tolerance is established as requested for the insecticide for distribution under the Chevron Chemical Co. name with the following provisions:

1. The total amount of the active insecticide to be used must not exceed the quantity authorized by the permit.

2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company is also required to keep records of production, distribution, and performance and on request make such records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires July 10, 1976. Residues remaining in or on the raw agricultural commodity almonds after the expiration date will not be considered actionable if the pesticide is legally applied during the term and in accordance with the provisions of the experimental use permit and temporary tolerance.

Dated: July 10, 1975.

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)))

EDWIN L. JOHNSON,
*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc.75-18384 Filed 7-15-75;8:45 am]

[FRL 400-4; OPP-50016]

### U.S. DEPARTMENT OF AGRICULTURE

#### Issuance of Experimental Use Permit

Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (86 Stat. 973; 7 U.S.C. 136), an experimental use permit has been issued to the U.S. Department of Agriculture, Washington, D.C. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172; Part 172 was published in the Federal Register on April 30, 1975 (40 FR 18780) and defines EPA procedures with respect to the use of pesticides for experimental purposes.

This experimental use permit No. 11312-EUP-3 allows the use of 10.8 kilograms of cis-7,8-epoxy-2-methyloctadecane on gypsy moths in forested areas. A total of 642 acres are involved; the

program is authorized only in Connecticut, Massachusetts, New Jersey, and Pennsylvania. The experimental use permit is effective from June 9, 1975, to June 9, 1976.

Interested parties wishing to review the experimental use permit are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. These files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: July 10, 1975.

EDWIN L. JOHNSON,
*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc.75-18381 Filed 7-15-75;8:45 am]

---

[FRL 400-5; OPP-180043]

## MINNESOTA

### Issuance of a Specific Exemption To Control Army Cutworms and Sunflower Beetles

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), notice is hereby given that the Environmental Protection Agency (EPA) has granted a specific exemption to the University of Minnesota, State of Minnesota (hereafter referred to as the "Applicant") to use toxaphene for control of the Army cutworm (*Euxoa auxiliaris*, Grote) and the sunflower beetle (*Zygogramma exclamationis*, Fabricius), which are seriously damaging the commercial sunflower crop in 20 counties. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), and which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information set forth in the application. For more detailed information, interested parties are referred to the application on file in the Office of the Director, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Room E-347, Washington, D.C. 20460.

The State of Minnesota has requested permission from EPA to treat 100,000 acres of the commercial sunflower crop infested with the Army cutworm and an additional 50,000 acres infested with the sunflower beetle. These insects are causing significant economic damage to the State's 200,000 acre commercial sunflower crop. No registered pesticides or alternative methods of control are presently available to suppress these insect pests.

The twenty counties to be treated are: Becker, Big Stone, Chippewa, Clay, Grant, Kittson, Lac Qui Parle, Lincoln, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Stevens, Swift, Traverse, Wilkin, and Yellow Medicine. The pesticide is to be applied by air and ground equipment by spray operators licensed by the State. The spray application will occur under the direction of the Applicant. Economic analyses performed indicate that the projected losses attributable to Army cutworm and/or sunflower beetle damage could exceed a total of $4 million, assuming partial crop failure on the affected acreage.

The proposed use of toxaphene, with the restriction against applications on or near reservoirs, rivers, streams, or wetland areas, should not cause any irreversible short term or long term effects on the environment; this application restriction will reduce the probability of contamination of domestic water supplies, as well as minimize the impact of toxaphene on waterfowl. The Office of Endangered Species, U.S. Department of the Interior, reports that no endangered species are known to be present within the proposed pesticide treatment area.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Army cutworms and sunflower beetles has occurred; (b) there is no pesticide presently registered and available for use to control these insect pest populations in Minnesota; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic loss to the commercial sunflower crop is likely to occur if these insect pests are not controlled; and (e) the time available for action to mitigate the problem posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 15, 1975, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. The dosage rate shall not exceed 2.0 pounds per acre actual toxaphene;

2. Treated acreage shall not exceed 150,000 acres;

3. The counties to be treated are limited to those listed in this notice;

4. Leaves and stalks of the treated sunflower crops are not to be used for livestock feed;

5. The Applicant must supervise any aerial application to avoid or minimize drift to non-target areas;

6. The Applicant is to collect data on efficacy, residues, and environmental impact of the toxaphene spray program. The pesticide personnel of EPA Region V shall be informed of the times and places of toxaphene applications so that monitoring activities of EPA can be coordinated with those of the Applicant; and

7. A residue level not to exceed 7.0 ppm in or on sunflower seeds has been determined to be adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this action. Sunflower seeds not exceeding this level may be offered in interstate commerce.

It should be noted that if the Administrator determines that the Applicant is not complying with the requirements set forth or if such action is necessary to protect man or the environment, the exemption shall be immediately withdrawn.

Dated: July 10, 1975.

EDWIN L. JOHNSON,
*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc.75-18382 Filed 7-15-75;8:45 am]

---

[FRL 400-6; OPP-180044]

## NORTH DAKOTA

### Issuance of a Specific Exemption To Control Army Cutworms and Sunflower Beetles

Pursuant to the provisions of section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136), notice is hereby given that the Environmental Protection Agency (EPA) has granted a specific exemption to North Dakota State University (hereafter referred to as the "Applicant") to use toxaphene for the control of the Army cutworm (*Euxoa auxiliaris*, Grote) and the sunflower beetle (*Zygogramma exclamationis* Fabricicus), which are seriously damaging the commercial sunflower crop in 23 counties. This exemption was granted in accordance with, and is subject to, the provisions of 40 CFR Part 166, issued December 3, 1973 (38 FR 33303), which prescribes requirements for exemption of Federal and State agencies for use of pesticides under emergency conditions.

This notice contains a summary of certain information set forth in the application. For more detailed information, interested parties are referred to the application on file in the Office of the Director, Registration Division (WN-567), Office of Pesticide Programs, EPA, 401 M St., S.W., Room E-347, Washington, D.C. 20460.

The State of North Dakota has requested permission from EPA to treat 150,000 acres of the commercial sunflower crop infested with the Army cutworm and an additional 125,000 acres infested with the sunflower beetle. These insects are causing significant damage to the State's 500,000 acre commercial sunflower crop. No registered pesticide or alternative methods of control are presently available to suppress these insect pests.

The twenty-three counties to be treated are: Barnes, Benson, Cass, Dickey, Eddy, Foster, Grand Forks, Griggs, Kidder, La Moure, Logan, McIntosh, Nelson, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Traill, Walsh, Ward, and Wells. The spray application will occur under the direction of the Applicant. Economic analyses performed indicate that the projected losses attributable to Army cutworm and/or sunflower beetle

damage could reach a total of nearly $50 million, assuming complete crop failure on the affected acreage.

The proposed use of toxaphene, with the restriction against applications on or near reservoirs, rivers, streams, or wetland areas, should not cause any irreversible short term or long term effects on the environment. The Office of Endangered Species, U.S. Department of the Interior, reports that no endangered species are known to be present within the proposed pesticide treatment area.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Army cutworms and sunflower beetles has occurred; (b) there is no pesticide presently registered and available for use to control these insect pest populations in North Dakota; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic loss to the commercial sunflower crop is likely to occur if these insect pests are not controlled; and (e) the time available for action to mitigate the problem posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 15, 1975, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. The dosage rate shall not exceed 2.0 pounds per acre actual toxaphene;

2. Treated acreage shall not exceed 275,000 acres;

3. The counties to be treated are limited to those listed in this notice;

4. Leaves and stalks of the treated sunflower crops are not to be used for livestock feed;

5. The Applicant must supervise any aerial application to avoid or minimize drift to non-target areas;

6. The Applicant is to collect data on efficacy, residues, and environmental impact of the toxaphene spray program. The pesticide personnel of EPA Region VIII shall be informed of the times and places of toxaphene applications so that monitoring activities of EPA can be coordinated with those of the Applicant; and

7. A residue level not to exceed 7.0 ppm in or on sunflower seeds has been determined to be adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this action. Sunflower seeds not exceeding this level may be offered in interstate commerce.

It should be noted that if the Administrator determines that the Applicant is not complying with the requirements set forth or if such action is necessary to protect man or the environment, the exemption shall be immediately withdrawn.

Dated: July 10, 1975.

EDWIN L. JOHNSON,
*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc.75-18383 Filed 7-15-75;8:45 am]

[FRL 401-3; OPP-33000/285]

## RECEIPT OF APPLICATIONS FOR PESTICIDE REGISTRATION

### Data To Be Considered in Support of Applications

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (38 FR 31862) its interim policy with respect to the administration of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This policy provides that EPA will, upon receipt of every application for registration, publish in the FEDERAL REGISTER a notice containing the information shown below. The labeling furnished by the applicant will be available for examination at the Environmental Protection Agency, Room EB-31, East Tower, 401 M Street, SW, Washington DC 20460.

On or before September 15, 1975, any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after October 21, 1972, is being used to support an application described in this notice, (c) desires to assert a claim for compensation under Section 3(c)(1)(D) for such use of his data, and (d) wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Information Coordination Section, Technical Services Division (WH-569), Office of Pesticide Programs, 401 M Street, SW, Washington DC 20460. Every such claimant must include, at a minimum, the information listed in the interim policy of November 19, 1973.

Applications submitted under 2(a) or 2(b) of the interim policy will be processed to completion in accordance with existing procedures. Applications submitted under 2(c) of the interim policy cannot be made final until the 60 day period has expired. If no claims are received within the 60 day period, the 2(c) application will be processed according to normal procedure. However, if claims are received within the 60 day period, the applicants against whom the claims are asserted will be advised of the alternatives available under the Act. No claims will be accepted for possible EPA adjudication which are received after September 15, 1975.

Dated: July 9, 1975.

MARTIN H. ROGOFF, Ph. D.,
*Acting Director, Registration Division.*

APPLICATIONS RECEIVED (OPP-33000/285)

EPA File Symbol 11623-RN. Apollo Industries, Inc., 4480 Frederick Dr., SW, Atlanta GA 30336. APOLLO-WASP AND HORNET KILLER. Active Ingredients: Pyrethrins 0.15%; Piperonyl Eutoxide, Technical 0.30%; N-Octyl bicycloheptene Dicarboximide 0.50%; 2-(1-Methylethoxy) phenol Methylcarbamate 0.75%; Petroleum Distillate 78.30%. Method of Support: Application proceeds under 2(c) of interim policy. PM12.

EPA File Symbol 11623-O. Apollo Industries, Inc., 4480 Frederick Dr., SW, Atlanta GA 30336. APOLLO WASP AND HORNET KILLER NO. II. Active Ingredients: Pyrethrins 0.15%; Piperonyl Butoxide, Technical 0.30%; N-Octyl bicycloheptene Dicarboximide 0.50%; 2-(1-Methylethoxy) phenol Methylcarbamate 0.75%; Petroleum Distillate 13.75%. Method of Support: Application proceeds under 2(c) of interim policy. PM12.

EPA Reg. No. 1526-498. Arizona Agrochemical Co., Chemical Distributors dba, PO Box 21537, Phoenix AZ 85036. DIROL-320 DUST. Active Ingredients: *Bacillus thuringiensis* Berliner, potency of 320 International Units per mg. (at least ½ billion viable spores (per gram) 0.064%. Method of Support: Application proceeds under 2(b) of interim policy. PM22.

EPA File Symbol 10332-I. Barclay Chemical Co., 150 Coolidge Ave., Watertown MA 02172. ALGAECIDE BD. Active Ingredients: Disodium cyanodithioimidocarbonate 4.90%; Potassium N-methyldithiocarbamate 6.76%. Method of Support: Application proceeds under 2(b) of interim policy. PM33.

EPA File Symbol 5667-RNR. Barrett Chemical Co., "H" & Luzerne St., Philadelphia PA 19124. BARRETT'S CLEANER CONCENTRATE #15. Active Ingredients: alpha-(p-Nonylphenyl) - omega - hydroxpoly (oxyethylene) -iodine complex 18.05%; Phosphoric Acid 16.00%. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 34850-G. Bio Dyne Industries, PO Box 666, 24201 Frampton Ave., Harbor City CA 90701. REVERE'S FLEA & TICK SHAMPOO FOR DOGS. Active Ingredients: Pyrethrins 0.055%; Piperonyl butoxide, technical 0.555%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 498-OG. Chase Products Co., 19th & Gardner Rd., Broadview IL 60153. CHASE'S LEMON-LIME GLYCOLIZED AIR SANITIZER DEODORIZER. Active Ingredients: Triethylene Glycol 4.10%. Method of Support: Application proceeds under 2(c) of interim policy. PM33.

EPA File Symbol 11524-O. Control Chemical Corp., 2090 Route 110, Farmingdale NY 11735. DI-KIL SPECIAL INSECT SPRAY. Active Ingredients: O,O-Diethyl O-(2-isopropyl-6-methyl - 4 - pyrimidinyl) phosphorothioate 0.500%; Pyrethrins 0.052%; Piperonyl Butoxide, Technical 0.261%; Petroleum Distillate 98.608%. Method of Support: Application proceeds under 2(c) of interim policy. PM15.

EPA File Symbol 464-LEA. The Dow Chemical Co., 2030 Dow Center, Midland MI 48640. HOSPITAL GERMICIDE AND AIR FRESHENER. Active Ingredients: o-phenylphenol 0.12%; Alcohol 66.6%. Method of Support: Application proceeds under 2(b) of interim policy. PM32.

EPA File Symbol 270-RRE. Farnam Companies, Inc., PO Box 21447, Phoenix AZ 85036. FARNAM MUSCALURE. Active Ingredients: Z-9-Tricosene 96.0%. Method of Support: Changed from 2(c) to 2(b) of interim policy. PM17.

EPA File Symbol 10583-R. General Control Co., Inc., 3334 Penn. St., Tucson AZ 85714. CONTROL NUT GRASS-BINDWEED KILLER. Active Ingredients: Monosodium Acid Methanearsonate 14.3%. Method of Support: Application proceeds under 2(c) of interim policy. PM23.

EPA File Symbol 32460-I. Hydrology Laboratories Inc., PO Box 714, Smithtown NY 11787. SWIMFREE COAGULATING ALGAECIDE FOR SWIMMING POOLS. Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 5%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 5%. Method of Support: Application proceeds under 2(b) of interim policy. PM31.

EPA File Symbol 4875-RE. Independence Chemical Co., N. Railroad & Essex St., Gloucester City NJ 08030. INDCO LG-11 SANITIZER. Active Ingredients: Butoxy polypropoxy polyethoxy ethanol-iodine complex 12.47%; Polyethoxy polypropoxy polyethoxy ethanol-iodine complex 0.37%. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 13186-R. Maintenance Research Laboratories, 11940 Grand River, Detroit MI 48204. VIKING MORPHOR. Active Ingredients: Butoxy polypropoxy polethoxy ethanol-iodine complex 12.47%; Polyethoxy polypropoxy polyethoxy ethanol-iodine complex 0.37%. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 11525-GN. Peterson/Puritan, Inc., Hegeler Lane, Danville IL 61832. P/P DISINFECTANT DEODORANT SPRAY "H". Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 0.072%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.072%; Ethanol 53.088%. Method of Support: Application proceeds under 2(c) of interim policy. PM31.

EPA File Symbol 11525-GR. Peterson/Puritan, Inc., Hegeler Lane, Danville IL 61832. P/P DISINFECTANT DEODORANT SPRAY "G". Active Ingredients: n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chlorides 0.072%; n-Alkyl (68% C12, 32% C14) dimethyl ethylbenzyl ammonium chlorides 0.072%; Ethanol 53.088%. Method of Support: Application proceeds under 2(c) of interim policy. PM31.

EPA File Symbol 36023-E. Ranger-Dawson, 808 S. Washington, Box 128, Murfreesboro AR 71958. RANGER-DAWSON SARCOPTIC MANGE TREATMENT. Active Ingredients: Coal tar neutral oils 1.02%; Phenols from coal tar 0.52%; Soap 0.26%; Petroleum distillate 40.00%; Flowers of sulfur 20.00%. Method of Support: Application proceeds under 2(c) of interim policy. PM15.

EPA File Symbol 9852-UO. Rite-Off Inc., 163 Dupont St., Plainview NY 11803. RITE-OFF ORNAMENTAL AND GARDEN INSECTICIDE SPRAY. Active Ingredients: Pyrethrins 0.02%; Piperonyl Butoxide, technical 0.20%; Petroleum distillate 0.08%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 2155-ON. I. Schneid, Inc., PO Box 93188, Martech Station, Atlanta GA 30318. ULTRA LOW VOLUME SPRAY INSECTICIDE. Active Ingredients: Pyrethrins 3.00%; Piperonyl Butoxide, Technical 6.00%; N-octyl bicycloheptene dicarboximide 10.00%; Petroleum Distillates, 81.00%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 11511-EE. Shalco Chemical Corp., PO Box 2508, 2421 Lexington Ave., Toledo OH 43606. SHALCO OUTDOOR FOGICIDE. Active Ingredients: Petroleum distillate (Initial Boiling Range 375° F) 99.154%; Piperonyl Butoxide, Technical 0.753%; Pyrethrins 0.093%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 11511-EO. Shalco Chemical Corp. SHALCO INSECTICIDE (WITH RESIDUAL INSECT CONTROL). Active Ingredients: Petroleum distillate 99.187%; O,O-diethyl O-(2-isopropyl-4-methyl-6-pyrimidinyl) phosphorothioate 0.500%; Piperonyl Butoxide Technical 0.261%; Pyrethrins 0.052%. Method of Support: Application proceeds under 2(c) of interim policy. PM15.

EPA File Symbol 11511-ET. Shalco Chemical Corp. SHALCO ALGAECIDE. Active Ingredients: n-Alkyl (50% C12, 30% C14, 17% C16, 3% C18) dimethyl ethylbenzyl ammonium chloride 5.0%; n-Alkyl (60% C14, 30% C16, 5% C12, 5% C18) dimethyl benzyl ammonium chloride 5.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM31.

EPA File Symbol 11511-GN. Shalco Chemical Corp. SHALCO EMULSIFIABLE SPRAY CONCENTRATE. Active Ingredients: Pyrethrins 1.20%; Piperonyl Butoxide, Technical 9.60%; Petroleum Distillates 81.20%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 11511-GR. Shalco Chemical Corp. SHALCO INSECTICIDE CONCENTRATE. Active Ingredients: Pyrethrins 3.00%; Piperonyl Butoxide, Technical 6.00%; N-octyl bicycloheptene dicarboximide 10.00%; Petroleum Distillates 81.00%. Method of Support: Application proceeds under 2(c) of interim policy. PM17.

EPA File Symbol 538-RUR. O. M. Scott & Sons Co., Marysville OH 43040. PROTURF 18-5-5 FERTILIZER PLUS 101 BROAD SPECTRUM FUNGICIDE. Active Ingredients: Chlorothalonil (Tetrachloroisophthalonitrile) 11.25%. Method of Support: Application proceeds under 2(c) of interim policy. PM21.

EPA Reg. No. 10330-2. Union Carbide Corp., PO Box 372-51 Cragwood Rd., S. Plainfield NJ 07080. ETHYLENE. Active Ingredients: Ethylene 100%. Method of Support: Application proceeds under 2(c) of interim policy. PM25.

EPA File Symbol 1769-ETO. National Chemsearch, Div. of USAchem, Inc., 2727 Chemsearch Blvd., Irving TX 75062. NATIONAL CHEMSEARCH P-O-W WASP SPRAY. Active Ingredients: Pyrethrins 0.15%; Petroleum Distillate 63.04%; 2-(1-Methylethoxy)phenol methyl carbamate 1.00%; Technical Piperonyl Butoxide 0.37%; N-octyl bicycloheptene dicarboximide 0.37%. Method of Support: Application proceeds under 2(c) of interim policy. PM12.

EPA File Symbol 3525-AG. Utility Chemical Co., 145 E. Peel St., Paterson NJ 07524. UTIKEM LIQUID CHLORINE. Active Ingredients: Sodium Hypochlorite 12.5%. Method of Support: Application proceeds under 2(c) of interim policy. PM34.

CORRECTION ITEMS

The following are corrections to the list of Applications Received previously published in the FEDERAL REGISTER.

EPA File Symbol 10595-L. Capital Chem. Co., 1607 High Point Ave., Richmond VA 23230. CAPCIDE-1. Active Ingredients: Poly [oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride] 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. Originally published with incorrect file symbol. PM34 (40 FR 26305).

EPA File Symbol 11611-O. Puma Chemical Co., 3012 S. Main, Fort Worth TX 76110. TERMICIDE 5-15. Active Ingredients: 2,4-Dichlorophenoxyacetic Acid Alkanolamine Salts (of the Ethanol and Isopropanol Series) 5.31%; Monosodium Acid Methanearsonate 8.86% (originally published as 8.65%). Method of Support: Application proceeds under 2(c) of interim policy. Originally published with incorrect file symbol. PM23 (40 FR 24234).

[FR Doc.75-18385 Filed 7-15-75;8:45 am]

---

[Docket No. 20403]

## FEDERAL COMMUNICATIONS COMMISSION

### AUTOMATIC TRANSMISSION SYSTEMS

#### Order Extending Time for Filing Comments and Reply Comments

In the matter of: amendment of the Commission's rules to permit the use of automatic transmission systems at AM, FM and television broadcasting stations.

1. On April 1, 1975, the Commission adopted a Notice of Inquiry in the above-entitled proceeding. Publication was made in the Federal Register on April 18, 1975, 40 Fed. Reg. 17317. The dates for filing comments and reply comments are presently July 11 and August 11, 1975, respectively.

2. On June 26, 1975, the Association of Federal Communications Consulting Engineers (AFCCE) requested that the time for filing comments be extended from July 11 to August 15, 1975, and for reply comments from August 11 to September 19, 1975. It states that the Rules and Standards Committee of AFCCE has been directed to prepare draft comments on behalf of that organization which will be presented to the Executive Committee and then to the membership which consists of more than 100 persons, and which includes professional engineers, engineering directors of multiple stations which are commonly owned and manufacturers of communications equipment. Final comments, it is said, will be prepared after the membership has approved the Committee's draft. AFCCE states that the extension is needed in order to provide sufficient time for the completion of each step to be taken in the preparation of its comments.

3. We are of the view that the public interest would be served by extending the time in this proceeding. Accordingly, IT IS ORDERED, That the dates for filing comments and reply comments ARE EXTENDED to and including August 15 and September 19, 1975, respectively.

4. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and Sections 0.281 and 1.46 of the Commission's Rules and Regulations.

Adopted: July 3, 1975.

Released: July 9, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

[FR Doc.75-18395 Filed 7-15-75;8:45 am]

---

[Dockets Nos. 20537, etc.; File Nos. BPH-8338, etc.]

## KOKA BROADCASTING CO., ET AL.

### Consolidated Hearing

In re applications of: G. F. Abendroth, *et al.*, dba Koka Broadcasting Company,

Shreveport, Louisiana; Docket No. 20537, File No. BPH-8338; Requests: 100.1 MHz, Channel No. 261; 3 kW (H&V); 281.8 feet. Coastal Broadcasting Corporation, Bossier City, Louisiana; Docket No. 20538, File No. BPH-9139; Requests: 100.1 MHz, Channel 261; 3 kW (H&V); 287.875 feet. Bossier Broadcasting Corp., Bossier City, Louisiana; File No. BPH-8011; Requests: 100.1 MHz, Channel 261; 3 kW (H&V); 288 feet. Shreveport-Bossier Broadcasting, Inc., Shreveport, Louisiana; File No. BPH-8492; Requests: 100.1 MHz, Channel 261; 3 kW (H&V); 282 feet. For Construction Permits.

1. The Commission, by the Chief of the Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications. Also before the Commission is a joint petition submitted pursuant to section 1.525(a) of the rules, requesting approval of an agreement providing for the dismissal of the applications of Bossier Broadcasting Corp. [BBC], and Shreveport-Bossier Broadcasting, Inc. [S-BB], in return for the reimbursement, not to exceed $9,000 in the case of BBC and not to exceed $5,000 in the case of S-BB, for expenses incurred by those applicants in the preparation and prosecution of these applications. The funds for reimbursement will be supplied, in equal shares, by the remaining applicants, G. F. Abendroth, *et al.*, dba KOKA Broadcasting Company [KOKA], and Coastal Broadcasting Corporation [CBC]. The joint petition and attached affidavits disclose a brief history of the negotiations leading to the agreement, and document the disbursement of $9,248.61 by BBC and $4,929.43 by S-BB in legal, engineering, and miscellaneous expenses incurred in the preparation and prosecution of the respective applications.

2. After having examined the petition and the attached affidavits, the Commission finds that the applicants have complied with the provisions of section 1.525(a) of the rules. In accordance with section 311(c)(3) of the Communications Act of 1934, as amended, the proposed reimbursement does not exceed the amounts legitimately and prudently incurred by each applicant in preparing, filing and prosecuting the BBC and the S-BB application. As one remaining applicant proposes to provide service to Shreveport, and the other to Bossier City, Louisiana, no section 307(b) problems are presented by the petition, and no publication is required.

3. Channel 261A is assigned to Shreveport, Louisiana, see section 73.202 of the Commission's rules; KOKA has proposed operation of the facility in that community. CBC has proposed to locate its facility in Bossier City, Louisiana, a location within ten miles of the listed community, pursuant to section 73.203(b) of the rules. However, although the respective proposals are for different communities, substantially the same areas and populations would be served by either applicant. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications of KOKA and CBC ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

2. To determine, in the event that it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. IT IS FURTHER ORDERED, That the joint petition for approval of the agreement, filed by the applicants herein IS GRANTED, and that the applications of Bossier Broadcasting Corp., and Shreveport-Bossier Broadcasting, Inc., ARE DISMISSED.

7. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants herein, pursuant to section 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by section 1.594(g) of the rules.

Adopted: July 3, 1975.

Released: July 10, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
*Chief, Broadcast Bureau.*

[FR Doc.75-18396 Filed 7-15-75;8:45 am]

### Available Standard Broadcast Applications for Processing

The following application requests authority to restore standard broadcast service formerly provided by station WCGA, Calhoun, Georgia. The Commission will accept other applications for consolidation with this application which propose essentially the same facilities.

BP-19971—NEW, Calhoun, Georgia
Frances Lanford Rhodes
Req: 900 kHz, 1 kW, Day

Pursuant to the provisions of sections 1.227(b)(1) and 1.591(b) of the Commission's rules, an application, in order to be considered with this application must be tendered no later than August 22, 1975.

The attention of any party in interest desiring to file pleadings concerning this application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to section 1.580(i) of the Commission's rules for the provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: July 9, 1975.

Released: July 11, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
*Secretary.*

[FR Doc.75-18397 Filed 7-15-75;8:45 am]

## FEDERAL MARITIME COMMISSION

### MAHER TERMINALS INC. AND JAPAN LINE LTD. ET AL.

#### Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 5, 1975. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

Thomas D. Wilcox, Esq.
919 Eighteenth St., N.W.
Washington, D.C. 20006

Agreement No. T-3117, between Maher Terminals, Inc. (Maher) and Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, and Yamashita-Shinnihon Steamship Co., (Lines). The agreement is an arrangement whereby Maher will furnish the Lines comprehensive container terminal, stevedoring and LCL cargo handling (Container Freight Station) services for the Lines' vessels at Elizabeth, New Jersey, for a term of three years (with a two-year extension option). Compensation for these services will be as agreed to by the parties and filed with the Commission. The agreement also provides that the Lines will employ Maher as their sole terminal in the Port of New York area for the services provided under the agreement.

By the Commission.

FRANCIS C. HURNEY,
*Secretary.*

JULY 11, 1975.

[FR Doc.75-18435 Filed 7-15-75;8:45 am]

## FEDERAL POWER COMMISSION

[Docket No. CP75-374]

### ALGONQUIN GAS TRANSMISSION CO. AND ALGONQUIN LNG, INC.

#### Application

JULY 8, 1975.

Take notice that on June 25, 1975, Algonquin Gas Transmission Company (Algonquin Gas) and its wholly-owned subsidiary Algonquin LNG, Inc. (Algonquin LNG), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP75-374 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the use of a portion of the capacity of Algonquin's LNG storage facilities at Providence, Rhode Island[1] to render a short-term warehousing service in liquefied natural gas (LNG) for participating natural gas resale companies, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Algonquin LNG has a 600,000 bbl. capacity LNG storage tank currently being used for the benefit of Providence Gas Company (PGC) of which up to 246,200 bbls of capacity, as part of the local distribution system. Applicants submit that operation of the facility for PGC is part of a distribution operation and does not need to be certificated.[2] Said tank will have approximately 353,800 bbl. of unused capacity during the 1975-1976 heating season. The application further states that there will be excess liquifaction capacity in the summer of 1976 in excess of LNG storage capacity. Applicants propose to use the available capacity in the storage tank in Providence to store LNG for use during the 1975-1976 winter by resale companies including regular distributor customers. The application states that by use of the facility as proposed, participating customers would be able to defer interruptible sales this summer and convert them to high priority sales next winter.

Algonquin LNG requests in the instant application authorization to utilize its storage facilities at Providence to receive, store and redeliver the total volume of LNG subscribed to by all of the participating customers, including those who have to this time stated a desire to receive service,[3] and those who may execute letter agreements with Algonquin LNG but have not yet done so. The Application states that prior to the commencement of service copies of executed letter agreements would be furnished. Under the terms of letter agreements that have been and would be executed, the storage price that would be charged is $4.50 per barrel of LNG stored, to be paid in equal amounts over the storage period through May 1, 1975. The proposed service would not exceed 353,800 bbls. of LNG for all customers. Deliveries would be made to the storage tank by truck, and redelivery would be made either in liquid form by truck or barge or in gaseous form, by pipeline.

Algonquin Gas requests authorization to make redelivery to those customers who so desire in the gaseous form by arrangements under which Algonquin LNG would gasify and deliver stored LNG to PGC; and Algonquin Gas would redeliver equivalent volumes on a best efforts basis to the customer by displacement. Algonquin Gas proposes to charge 15 cents per Mcf for such deliveries. The application states that the total redeliveries of regasified LNG are not expected to exceed 50,000 Mcf per day.[4]

No additional facilities are proposed in the instant application.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 24, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.-10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18237 Filed 7-15-75;8:45 am]

[Docket No. E-9419]

### ARKANSAS-MISSOURI POWER CO.

#### Filing of Supplemental Data and Petition for Waiver of Notice Requirements

JULY 9, 1975.

Take notice that on July 3, 1975, the Arkansas-Missouri Power Company (Ark-Mo) tendered supplemental data intended to make complete its original filing of May 1, 1975, in the above-referenced docket. This latest submittal is in response to a deficiency letter issued

[1] The application states that these facilities are part of the Phase I, of the intrastate phase, of Algonquin LNG's proposal to construct and operate LNG terminal facilities and that an application for authorization to construct and operate Phase II, or the interstate phase of the facilities pending in Docket No. CP73-139 in the proceeding in Eacosgas LNG, Inc., et al., Docket Nos., CP73-47, et al.

[2] By order issued June 18, 1975, in Docket No. CP75-313 the Commission concluded that the storage of gas by Algonquin LNG for PGC is subject to the jurisdiction of the Commission.

[3] Applicants state that the following are the resale customers which have thus far stated a desire to receive service pursuant to this application:

| Company name: | *Barrels of LNG to be stored* |
|---|---|
| Boston Gas Co | 72,500 |
| Delmarva Power and Light Co | 90,000 |
| Northeast Utilities Service Co | 30,000 |

[4] Applicants state that due to the short-term use of the facilities under the proposed arrangement, scheduling of deliveries, handling of boiloff, and arranging other matters related to the service proposed would require the coordination of PGC and those customers desiring the delivery as gas. The application states that the details of these arrangements have not yet been completed but that the customers would assume the responsibility for such arrangements as a non-jurisdictional matter.

May 30, 1975, by the Secretary of the Federal Power Commission. Ark-Mo states that this data includes a fuel adjustment clause in conformance with § 35.14 of the Commission's regulations, as amended by Order No. 517.

Ark-Mo requests a waiver of the notice requirements of the Commission's regulations to allow an effective date of June 1, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 23, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18326 Filed 7-15-75;8:45 am]

---

[Docket No. RP73-93]

## COLORADO INTERSTATE GAS CO.

### Intended Disposition of Refunds

JULY 8, 1975.

Take notice that on December 23, 1974, and January 22, 1975, Colorado Interstate Gas Company tendered for filing a report of intended disposition of refunds. The December 23 filing relates to a refund in the amount of $683,497.57, received from Panhandle Producing Company which results in a refund to jurisdictional customers of $535,110. The January 22 filing relates to refunds received from Phillips Petroleum Company in the amount of $88,938.53. CIG states that this refund results in a refund to its jurisdictional customers of $2,435.

CIG states that copies of both filings were served on its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 21, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18327 Filed 7-15-75;8:45 am]

---

[Docket No. RP75-47-6]

## COLUMBIA GAS TRANSMISSION CORP.

### Petition for Extraordinary Relief

JULY 8, 1975.

Take notice that on June 19, 1975, The Standard Oil Company (Ohio), an Ohio Corporation (Sohio), filed a petition, pursuant to § 1.7(b) of the Commission's rules of practice and procedure and § 2.78(a)(ii) of the Commission's Statements of General Policy and Interpretations, seeking relief from the currently effective curtailment procedures of Columbia Gas Transmission Corporation (Columbia Transmission). Sohio requests an order directing Columbia Transmission to deliver to Columbia Gas of Ohio, Inc. (Columbia Ohio) 50,070 Mcf of natural gas per day for redelivery to Sohio at Lima, Ohio, where these volumes of natural gas will be utilized primarily for the manufacture of fertilizer to be used in the 1975–1976 agricultural season. Sohio previously applied to the Ohio Public Utilities Commission for such extraordinary relief, and was directed to apply to this Commission for such relief after which the Ohio Commission would intervene for the purpose of establishing standing.

In support of its petition for extraordinary relief, Sohio claims that the natural gas requirements of its complex at Lima are primarily for the manufacture of ammonia, with relatively small quantities used for safety, process, and environmental control. According to Sohio, a major portion of this ammonia is marketed directly, mainly to the agricultural markets, and most of the remaining ammonia is upgraded to urea, nitric acid, ammonium nitrate and nitrogen fertilizer solutions. Although the nitrogen plant boilers were converted to alternate fuels when the present emergency began, Sohio asserts that it has a minimum natural gas load of 50,070 Mcf per average day for (1) the Number 2 Ammonia Unit, consisting of requirements for feedstock, gas turbine process fuel, and reformer process fuel; and (2) Safety, Process, and Environmental Control, comprised of the requirements for the refinery, nitrogen plant, and industrial chemicals plant.

Sohio requests that the extraordinary relief here sought begin on November 1, 1975, and continue for a period of one year because Columbia Ohio, its only natural gas supplier at Lima, has notified it of an impending 60 percent curtailment of deliveries commencing on that date.

Any person desiring to be heard or to make any protest with reference to said petition for extraordinary relief should on or before July 17, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Copies of the petition for extraordinary relief are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18328 Filed 7-15-75;8:45 am]

---

[Docket No. E-9526]

## CONNECTICUT LIGHT AND POWER CO.

### Exchange Agreement

JULY 9, 1975.

Take notice that on June 30, 1975 The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Exchange Agreement pertaining to an exchange between CL&P, The Hartford Electric Light Company (HELCO) and Western Massachusetts Electric Company (WMECO) (the NU Companies) and Boston Edison Company (Edison) dated as of June 1, 1975.

CL&P states that the Exchange Agreement provides for an exchange between the NU Companies and Edison of a specified amount of pumped storage capacity from the NU Companies' Pumped Storage Hydroelectric Project (Project) at Northfield Mountain in Erving and Northfield, Massachusetts, for an equal amount of capacity of Edison's intermediate fossil generating unit known as Mystic No. 5 situated at Everett, Massachusetts (Unit), during the Term of the Exchange Agreement.

CL&P states that the Exchange Agreement provides Edison and the NU Companies an opportunity to improve their generation mix. CL&P states that Edison has, in the past, experienced excess must-run generation at night (its system load was less than the minimum amount of generation in operation at night) and this exchange is expected to minimize Edison's excess must-run generation problems. CL&P states that Edison, therefore, expects to be able to more economically utilize their entitlements in the Project than the 25,000 kilowatts of capacity from the Unit. CL&P states that on the other hand the NU Companies' need for peaking energy has been reduced from previously anticipated levels due to the energy crisis and resulting conservation efforts, and now the NU Companies cannot economically utilize the full capacity (1,000,000 kilowatts) of the Project. CL&P states that the NU Companies have a greater need for intermediate capacity than peaking capacity and therefore expect to be able to more economically utilize their entitlement in the Unit than the 25,000 kilowatts of capacity from the Project.

CL&P also states that the parties to the Exchange Agreement reached agreement on the principles to be applied to this exchange, however, the development of the detailed language of the Exchange Agreement prevented the filing of such rate schedule more than thirty days prior to the start of the Agreement.

CL&P requests that in order to permit the NU Companies and Edison to achieve mutual benefits of this Exchange Agreement, the Commission, pursuant to § 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed herewith to become effective on June 30, 1975.

CL&P states that Certificates of Concurrrence were filed with the rate schedule.

CL&P states that a copy of this rate schedule has been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut, WMECO, West Springfield, Massachusetts and Edison, Boston, Massachusetts.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 23, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18329 Filed 7-15-75;8:45 am]

[Docket No. E-9529]

## CONNECTICUT LIGHT AND POWER CO.

### Purchase Agreement

JULY 9, 1975.

Take notice that on June 26, 1975, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed Purchase Agreement with Respect to Various Gas Turbine Units dated June 1, 1975 between (1) CL&P and The Hartford Electric Light Company (HELCO) and (2) Vermont Electric Cooperative, Inc. (VEC).

CL&P states that the Purchase Agreement provides for a sale to VEC of a specified percentage of capacity and energy from six gas turbine generating units during the period from June 1, 1975 to October 31, 1975.

CL&P states that the determination that VEC had a need for additional capacity to meet its system requirements was not made by VEC until a date which delayed execution of the agreement until a date which prevented the filing of such rate schedule more than thirty days prior to the proposed effective date.

CL&P therefore requests that, in order to permit VEC to receive urgently needed capacity, the Commission, pursuant to § 35.11 of its regulations, waive the thirty-day notice period and permit the rate schedule filed to become effective on June 1, 1975.

CL&P states that the capacity charge rate for the proposed service was developed on a cost-of-service basis and is the same rate as that used for other gas turbine capacity sold except for differences which result from different periods of service.

CL&P states that copies of this rate schedule have been mailed or delivered to CL&P, Hartford, Connecticut, HELCO, Hartford, Connecticut and VEC, Johnson, Vermont.

CL&P states that HELCO has submitted a certificate of concurrence in this docket.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 25, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18330 Filed 7-15-75;8:45 am]

[Docket No. E-9516]

## CONSUMERS POWER CO.

### Proposed Tariff Change

JULY 9, 1975.

Take notice that Consumers Power Company (Consumers Power) on June 23, 1975, tendered for filing proposed changes in data supporting the Electric Coordination Agreement between Consumers Power and The Detroit Edison Company (Detroit Edison), designated Consumers Power Company Rate Schedule FPC No. 33. The proposed changes when fully effective would increase the charges under the Agreement for seasonal, weekly and daily capacity reservations by approximately 4.7 percent.

The changes proposed to be effective on April 28, 1975 reflect an order of the Michigan Public Service Commission, dated January 23, 1975, in the most recent Consumers Power electric rate case increasing the authorized overall rate of return for Consumers Power. Similarly, the changes reflect a later order of the Michigan Public Service Commission in a Detroit Edison rate case.

Consumers Power states that copies of the filing were mailed to Detroit Edison and to the Michigan Public Service Commission.

Any person desiring to be heard or to protest said Agreement should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 18, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this Agreement are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18331 Filed 7-15-75;8:45 am]

[Docket No. E-9525]

## DELMARVA POWER & LIGHT CO.

### Service Agreement Change

JULY 9, 1975.

Take notice that Delmarva Power & Light Company (Delmarva) on June 30, 1975, tendered for filing proposed changes in "Service Agreement" serving the City of Milford, Delaware under FPC Electric Tariff, Volume No. 4, of Delmarva Power & Light Company. Delmarva presently supplies Milford's requirements at a nominal voltage of 23,000 volts. Under the proposed Service Agreement the delivery point is relocated, the nominal delivery voltage is revised, and a new 10-year term is established.

The above changes were requested by the City of Milford, Delaware.

Copies of the filing were served upon Mr. George G. Russell, Jr., City Manager, Milford, Delaware, the only jurisdictional customer affected thereby.

Any person desiring to be heard or to protest said change should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 24, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of these changes are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18332 Filed 7-15-75;8:45 am]

[Docket No. RP75-114]

## EAST TENNESSEE NATURAL GAS CO.

### Filing of Proposed Changes in Rates

JULY 9, 1975.

Take notice that on June 30, 1975, East Tennessee Natural Gas Company (East Tennessee) tendered for filing proposed changes in its FPC Gas Tariff to be effective on August 15, 1975, consisting of Thirteenth Revised Sheet No. 4 and First Revised Sheet No. 42 to Sixth Revised Volume No. 1.

The proposed changes would increase revenues from jurisdictional sales by

$6,569,000 based on the test period consisting of the twelve months ended February 28, 1975, adjusted for known and measurable changes through November 30, 1975. Such tariff changes also reflect the cancellation of Rate Schedule S.

East Tennessee states that the increased rates are required to reflect a proposed composite book depreciation and amortization rate of 5.5 percent, a rate of return of 11.22 percent, increases in cost of materials, supplies and wages, increases in taxes, and substantially reduced sales due to gas supply curtailment.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 23, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18333 Filed 7-15-75;8:45 am]

---

[Docket Nos. CP73-334, etc.]

## EL PASO NATURAL GAS CO.

### Order Providing for Hearing, Consolidating Proceedings, Prescribing Procedures, and Granting Temporary Authorization

JULY 9, 1975.

On June 10, 1975, El Paso Natural Gas Company (El Paso) filed an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act, in which it proposes a "special operating arrangement" over a two year period ending April 30, 1977, with its California customer, Pacific Gas & Electric Company (PG&E) and Southern California Gas Company (SoCal) for the purpose of serving the full requirements of its east of California (EOC) Priority 1 and 2 consumers during the winter heating seasons of 1975–76 and 1976–77. The arrangement with both California customers is basically of the same type as that which was proposed in Docket No. CP74-289 which pertained to operating arrangements for the 1974–75 heating season.

The current application, filed in Docket No. CP75-360, involves the delivery of advance sale gas by El Paso to PG&E during the summer season of 1975 (ending October 31, 1975), which is being done to accomplish the protection of high priority EOC requirements during the 1975–76 winter season.[1] This protection would be effected by El Paso reducing deliveries to PG&E when necessary during the heating season when peak day Priority 1 and 2 requirements necessitated more gas than was available from El Paso's usual sources of supply on that day. In addition, the arrangement includes a proposal whereby El Paso could also reduce deliveries to SoCal for high priority EOC use for short durations. This would be subject to immediate repayment. Like the previous CP74-289 proposal, the additional volumes of advance sale gas to PG&E would be obtained by curtailing summer volumes of Priority 5 customers. The cost of the proposed arrangements incurred by the California customers would be borne by the EOC users in the form of a surcharge.

Specifically, the new "operating arrangements" proposal requests authorization to deliver additional volumes of gas to PG&E during the two summer seasons involved of up to 17,000,000 Mcf in addition to the 13,691,968 Mcf now being retained by PG&E as a result of earlier predeliveries temporarily authorized in Docket No. CP74-289. By reducing deliveries to PG&E during the winter season, in volumes up to 300,000 Mcf per day, an equivalent volume would be available for delivery to EOC customers. The arrangement with SoCal is also similar to the previous proposal in Docket No. CP74-289. El Paso would pay back these volumes as soon as possible and, in addition, pay SoCal a diversion charge of 37.5 cents per Mcf. This cost, plus the costs incurred by El Paso resulting from the PG&E arrangement, would be levied upon El Paso EOC Priority 1 and 2 customers on the basis of their load requirements in the form of a surcharge proposed to be 8.37 cents per Mcf.

El Paso asserts that these arrangements are necessitated by projected deficiencies in its Priority 1 and 2 requirements for EOC customers during the 1975–76, 1976–77, and 1977–78 heating seasons. El Paso further asserts that it has no alternative means of providing large quantities of gas to protect the load requirements of its EOC Priority 1 and 2 customers. The proposed arrangements also provide that unless a similar arrangement is continued past April 30, 1977, any imbalance in deliveries to PG&E would be adjusted with reductions in deliveries to PG&E possibly extending into the 1977–78 heating season.

El Paso has filed tariff sheets reflecting the proposed new operating arrangements and the proposed new surcharge of high priority EOC customers. These tariff sheets, filed concurrently with the application herein, are denominated Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A. A detailed listing of these sheets is contained in the El Paso filing.

Because of the substantial similarity of factual and legal issues presented in the previously consolidated Docket Nos. CP74-289 and CP73-334[2] and those in Docket No. CP75-360, we believe it essential to consolidate the Dockets for hearing and disposition. We are aware that the hearing phase of the previously consolidated dockets has been completed and is awaiting briefing. While we are reluctant to further delay the disposition of those proceedings, considering the substantial delays which have already occurred therein, the Commission is nevertheless of the opinion that in reaching a decision concerning El Paso's operating arrangements and storage operations it is important to develop a record which will permit a decision to be based on the entire perspective of the operations from their initiation to their currently proposed conclusion. We wish to avoid making a fragmented determination of two proposals which essentially represent a continuous effort by El Paso to protect its high priority requirements in previous and upcoming winter seasons. We believe a decision founded in terms of the entire time period encompassed by the consolidated proposals is in the public interest because of the similarity of issues in each docket. A decision denying permanent authorizations in CP73-334 and CP74-289 at this time might result in an abandonment by El Paso to proceed with its application in CP75-360 which in turn might result in the withdrawal of a proposal which may ultimately be in the public interest. On the other hand, a decision to authorize permanent certification of the CP73-334 and CP74-289 proposals at this time might result in essentially a prejudgment of similar issues in CP75-360, thus denying opponents thereof the opportunity to fully dispute all issues presented in CP75-360 without a compelling precedent to overcome. Consequently, we believe that consolidation of the above dockets is in the public interest.

Also, we have determined that the issuance of a temporary certificate of public convenience and necessity is justified for the purpose of initiating the currently proposed operating arrangements. In order to predeliver volumes of gas to PG&E for winter period protection of Priority 1 and 2 uses, El Paso must initiate deliveries this summer to meet its desired volumetric goal for the 1975–76 winter season and temporary authorization is required pending the outcome of the consolidated proceedings herein.

Finally, on June 10, 1975, El Paso also filed a Report and Plan of Disposition of Excess Revenues collected under the special operating arrangements during 1974–75 as required to be filed within 60 days after April 30, 1975, by the provisions in its FPC Gas Tariffs. The report indicates that revenues of $3,792,630 were collected and that actual costs incurred were $3,161,731, providing $630,899 of excess revenues as of April 30, 1975. The excess revenues resulted from selling less advance sale gas to PG&E than projected and not incurring any diversion charge from SoCal since deliveries were not reduced. El Paso proposes to apply the excess revenues to the carrying charges and facilities operating charges incurred by PG&E for retaining the advance sale gas for the account of

[1] The current application also contemplates protection of Priority 1 and 2 consumers during the winter of 1976–77.

[2] *See, Order Consolidating Proceedings And Granting Intervention*, El Paso Natural Gas Company, Docket Nos. CP73-334 and CP74-289, issued November 19, 1974.

El Paso. These charges for the months of May and June 1975 amount to $951,728. The net cost of $320,829 has been reflected in the projected costs used to derive a surcharge to EOC customers for continuing the arrangements with PG&E and SoCal as filed herein. The proposed disposition of the excess revenues appears reasonable.

*The Commission finds:* (1) It is in the public interest to set for hearing and disposition El Paso's application for a certificate of public convenience and necessity filed in Docket No. CP75–360 on June 10, 1975.

(2) It is in the public interest to consolidate Docket No. CP75–360 with the previously consolidated Docket's CP73–334, and CP74–289 because of the similarity of factual and legal issues.

(3) It is in the public interest to issue a temporary certificate of public convenience and necessity authorizing the initiation of the operations proposed by El Paso in Docket No. CP75–360 because of the emergency need on El Paso's system to protect high priority consumers during upcoming winter seasons, and to accept for filing the proposed tariff sheets submitted along with its application in that docket to become effective upon issuance of that order through April 30, 1977, subject to any further orders of the Commission in this proceeding.

(4) It is in the public interest to approve the Report and Plan of Disposition of Excess Revenues collected under the special operating arrangements for the 1974–75 winter season.

*The Commission orders:* (A) El Paso's application for a certificate of public convenience and necessity, filed in Docket No. CP75–360, shall be set for hearing and disposition.

(B) The proceedings in Docket No. CP75–360 shall be consolidated with the now completed proceedings in Docket Nos. CP73–334 and CP74–289 for hearing and disposition.

(C) The Presiding Administrative Law Judge shall accordingly suspend the briefing dates previously set in Docket Nos. CP73–334 and CP74–289 and proceed to prescribe further procedural dates including such dates for submission of prepared testimony and exhibits and for hearing as may be required in the Docket No. CP75–360 proceeding.

(D) Pursuant to section 7(c) of the Natural Gas Act and §§ 157.17 of the regulations thereunder, a temporary certificate of public convenience and necessity is hereby issued authorizing the initiation of the operations proposed by El Paso in Docket No. CP75–360. In addition, the tariff sheets filed with such application are accepted for filing to become effective upon issuance of this order through April 30, 1977, subject to any further orders of the Commission in this proceeding.

(E) The Report and Plan of Disposition of Excess Revenues collected under the special operating arrangements for the 1974–75 winter season is hereby approved.

By the Commission.

[SEAL] MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75–18334 Filed 7–15–75;8:45 am]

---

[Docket No. RP75–39]

## EL PASO NATURAL GAS CO.

### Extension of Procedural Dates

JULY 8, 1975.

On June 18, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued January 15, 1975, in the above-designated matter. El Paso Natural Gas Company filed an answer concurring in the Staff's motion but suggested a further modification of the procedural dates. The answer states that Staff Counsel concurs in the revised dates.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

Service of Staff Testimony, November 21, 1975.

Service of Intervenor Testimony, December 5,1975.

Service of Company Rebuttal, January 23, 1976.

Prehearing Conference, February 10, 1976 (10 a.m., e.s.t.).

Hearing, commence at the conclusion of the Conference.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75–18335 Filed 7–15–75;8:45 am]

---

[Docket No. E–7740]

## INDIANA & MICHIGAN ELECTRIC CO.

### Order Denying Rehearing and Ordering Refunds

JULY 8, 1975.

Indiana & Michigan Electric Company (I&M) on June 9, 1975, filed an application for rehearing of the Commission's order of May 9, 1975, in the above entitled proceeding. In that order we granted in part a motion by a group of Cooperatives (Cooperatives)[1] filed April 10, 1975, to enforce our order of June 3, 1974, in which we rejected I&M's June 13, 1972, rate increase filing as not contractually permissible and ordered refunds. Our rejection followed the opinion of the Court of Appeals in Richmond Power and Light Company v. F.P.C., 481 F.2d 490 (CADC 1973), certiorari denied 414 U.S. 1068 (1973).

In its application for rehearing I&M notes that on May 28, 1975, the Court of Appeals for the District of Columbia Circuit temporarily stayed the effectiveness of the Commission's order of June 3, 1974, and the order of August 2, 1974, denying rehearing. It contends that in view of this action the Commission's order of May 9, 1975, has likewise been stayed, since its validity depends entirely on the ability of the Commission to proceed with the enforcement of its orders of June 3, 1974, and August 2, 1974. It asserts that it remains at risk if the Commission should take a contrary view.

In our order of May 9, 1975, we provided that I&M should refund to the Cooperatives amounts collected pursuant to the June 13, 1972, filing which are in excess of the previously existing rates, but in our order of May 30, 1975, denying I&M's motion for a stay, we required I&M, in response to the Court's order of May 28, 1975, to place the amounts to be refunded in escrow pending further Commission order.

On June 24, 1975, the Court ordered I&M's motion for a stay be denied and that the temporary stay of May 28, 1975, be dissolved. The Court said that its action was based upon the intervenors' representation that all monies refunded to them by I&M would be placed in escrow.

In the present posture of the court proceedings and our previous orders we shall terminate our requirement in our May 30, 1975, order that I&M place amounts to be refunded in escrow and reinstate paragraph (B) of our order of May 9, 1975, that I&M make refund to the Cooperatives. We observe that the Court based its decision on the Cooperatives holding the refunded amounts in escrow, but this matter is beyond our jurisdiction. We did not base our May 9, 1975, order requiring payment of refunds on any escrow procedure, and we do not do so here. The matter of an escrow account held by the Cooperatives is entirely a matter between them and the Court.

Other issues relating to whether we should grant a stay or recall our order of May 9, 1975, are treated at length in our order of May 30, 1975.

*The Commission further finds:* The assignments of error and grounds for rehearing set forth in the application for rehearing filed herein June 9, 1975, by I&M present no facts or legal principles that would warrant any change in or modification of the Commission's order of May 9, 1975, as supplemented by the order of May 30, 1975, and by the present order.

*The Commission orders:* (A) I&M's application for rehearing filed June 7, 1975, is denied.

(B) Within twenty days of the issuance of this order I&M shall refund with interest at 7 percent to the Cooperatives amounts collected pursuant to the June 13, 1972, filing which are in excess of the previously existing rates.

[1] Indiana Statewide Rural Electric Cooperative, Inc., Fruit Belt Electric Cooperative, Jay County Rural Electric Membership Corporation, Noble County Rural Electric Membership Corporation, Paulding-Putman Electric Cooperative, Inc., United Rural Electric Corporation, Wayne County Rural Electric Membership Corporation, and Whitley County Rural Electric Membership Corporation.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18336 Filed 7-15-75;8:45 am]

[Docket No. E-9342]

## JERSEY CENTRAL POWER & LIGHT

### Filing of Supplemental Data and Petition for Waiver of Notice Requirements

JULY 9, 1975.

Take notice that on July 3, 1975 the Jersey Central Power & Light (Jersey Central) tendered supplemental data intended to make complete its original filing of March 26, 1975, as revised on May 30, 1975, in the above-referenced docket. This latest submittal is in response to a deficiency letter issued June 27, 1975 by the Secretary of the Federal Power Commission.

Jersey Central requests a waiver of the notice requirements of the Commission's regulations to allow an effective date of June 30, 1975.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 23, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18337 Filed 7-15-75;8:45 am]

[Docket No. RP73-23]

## LAWRENCEBURG GAS TRANSMISSION CORP.

### Filing of Tariff Sheets

JULY 9, 1975.

Take notice that on June 26, 1975, Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing Eleventh Revised Sheet No. 3-A and Eleventh Revised Sheet No. 18-B to its FPC Gas Tariff, Original Volume No. 1.

Lawrenceburg states that these sheets are being filed to reflect a net reduction in its cost of gas purchased from Texas Gas Transmission Corporation pursuant to Lawrenceburg's Purchased Gas Adjustment (PGA) Clause in its FPC Gas Tariff, Original Volume No. 1. Lawrenceburg further states that the proposed changes contained therein would reduce revenues from jurisdictional sales by $156,865 as compared to revenues at the current rates in effect since April 1, 1975, based on the 12 months ending May 31, 1975. Lawrenceburg requests an effective date of August 1, 1975, for this filing and requests waiver of the Commission's Regulations to enable this filing to become effective on that date.

Lawrenceburg states that copies of this filing have been mailed to its two wholesale customers and to the interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 30, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18338 Filed 7-15-75;8:45 am]

[Docket No. E-9475]

## MISSOURI POWER & LIGHT CO.

### Filing of Supplemental Data

JULY 9, 1975.

Take notice that on July 2, 1975, Missouri Power and Light Company (MP&L) tendered supplemental data intended to make complete its original filing of June 2, 1975. This action is in response to a deficiency letter issued by the Secretary of the Federal Power Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 22, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18339 Filed 7-15-75;8:45 am]

[Docket No. E-9527]

## OHIO EDISON CO.

### Filing of Letter Agreement

JULY 9, 1975.

Take notice that Ohio Edison Company (Ohio Edison) on June 30, 1975, tendered for filing a letter agreement dated May 27, 1975, between Ohio Edison and the Village of Grafton, Ohio. The agreement would extend until September 20, 1975, the temporary service being supplied until June 20, 1975, under F.P.C. Rate Schedule No. 119 and Supplement No. 1 thereto.

Ohio Edison states that the rate for the temporary service during the extension period is governed by the agreement for the initial period, i.e., the rate in the existing schedule for Municipal Resale Service—Primary Voltage or any superseding schedule accepted for filing by the Federal Power Commission. Ohio Edison states that no other change than the three-month extension of temporary service is provided for in the agreement.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure. All such petitions or protests should be filed on or before July 18, 1975. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18340 Filed 7-15-75;8:45 am]

[Docket No. E-9514]

## PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

### Filing of Agreement

JULY 8, 1975.

Take notice that Public Service of New Hampshire (PSNH) on June 23, 1975, tendered for filing as an initial rate schedule a Transmission Contract with Vermont Electric Cooperative, Inc. (the Buyer).

Under the Contract, PSNH states it will transmit through its system an entitlement of power which the Buyer will be purchasing from The Connecticut Light and Power Company and The Hartford Electric Light Company.

PSNH requests that the Commission waive the normal 30-day notice requirement and permit the rate schedule to be effective as of June 1, 1975.

According to PSNH, a copy of the filing was served upon Vermont Electric Cooperative, Inc.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 18, 1975. Protests will be considered by the Commission in determin-

ing the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18341 Filed 7-15-75;8:45 am]

[Docket No. E-8242]

## PUBLIC SERVICE COMPANY OF OKLAHOMA

### Extension of Time

JULY 8, 1975.

On July 3, 1975, Staff Counsel filed a motion to extend the date for filing briefs on exceptions to the initial decision of the Presiding Administrative Law Judge issued June 13, 1975 in the above-designated matter. The motion states that the parties have been notified and have no objection.

Upon consideration, notice is hereby given that the date for filing briefs on exceptions in the above matter is extended to and including August 11, 1975, and the date for filing briefs opposing exceptions is extended to and including September 2, 1975.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18342 Filed 7-15-75;8:45 am]

[Rate Schedule Nos. 1, et al.]

## RATE CHANGE FILINGS

### Commission's Opinion No. 699-H

JULY 7, 1975.

Take notice that the producers listed in the Appendix attached hereto have filed proposed increased rates to the applicable new gas national ceiling based on the interpretation of vintaging concepts set forth by the Commission in its Opinion No. 699-H, issued December 4, 1974. Pursuant to Opinion No. 699-H the rates, if accepted, will become effective as of the date of filing.

The information relevant to each of these sales is listed in the Appendix.

Any person desiring to be heard or to make any protest with reference to said filings should on or before July 16, 1975, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). A protest will not serve to make the protestant a party to the proceeding. Any party wishing to become a party to a proceeding must file a petition to intervene in accordance with the Commission's rules.

MARY B. KIDD,
*Acting Secretary.*

APPENDIX

| Filing date | Producer | Rate schedule No. | Buyer | Area |
|---|---|---|---|---|
| June 13, 1975 | J. M. Williams, also known as Jacquelyn M. Williams [1] | [2] 1 | El Paso Natural Gas Co. | Rocky mountain. |
| June 23, 1975 | Skelly Oil Co. P.O., Box 1650, Tulsa, Okla. 74102. | 8 | Arkansas-Louisiana Gas Co. | Other southwest. |
| Do | Mitchell Energy Corp. 3900 One Shell Plaza, Houston, Tex. 77002. | 6 | Tennessee Gas Pipeline Co. | Texas gulf coast. |
| Do | do | 12 | do | Do. |
| Do | do | 14 | do | Do. |
| Do | Champlin Petroleum Co. P.O. Box 9365, Fort Worth, Tex. 76107. | 97 | do | Do. |

[1] 100 South Pickard; Norman, Oklahoma 73069 [cc: Terry R. Barrett, Esquire; Fifth Floor, 100 Park Avenue Building, Oklahoma City, Oklahoma 73102].
[2] Applicant's interest is currently covered under Northeast Blanco Development Corp. FPC Gas Rate Schedule No. 1.

[FR Doc.75-18277 Filed 7-15-75;8:45 am]

[Docket No. RP72-91; (Phase II), et al.; (AP 5/16/74)]

## SOUTHERN NATURAL GAS CO.

### Further Postponement of Hearing

JULY 8, 1975.

On June 26, 1975, Southern Natural Gas Company filed a motion to extend the procedural dates fixed by order issued July 19, 1974, as most recently modified by notice issued May 2, 1975, in the above-designated matter. On June 30, 1975, Staff Counsel filed a response concurring in the request but reserved its right to respond to any new information which Southern may seek to introduce into the record.

Upon consideration, notice is hereby given that the hearing date in the above matter is further postponed until October 29, 1975, at 10 a.m., e.s.t.

By the direction of the Commission.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18343 Filed 7-15-75;8:45 am]

[Docket No. RP74-89]

## TRUNKLINE GAS CO.

### Order Approving Settlement and Determining Reserved Issue

JULY 9, 1975.

Trunkline Gas Company on May 15, 1974, tendered for filing proposed changes in its FPC Gas Tariff which were to increase revenues from jurisdictional sales by $63,940,397 reflecting an increase in claimed rate of return from 8.5 percent to 10.07 percent and an increase in its claimed depreciation rate. By order of June 28, 1974, the Commission suspended the proposed increase until December 1, 1974, and provided for a hearing.

A hearing session was held on March 18, 1975, at which direct evidence was presented and a further session was held on April 14, 1975, at which a proposed settlement was presented. Presiding Administrative Law Judge Israel Convisser certified the settlement agreement to the Commission on April 18, 1975. Comments on the settlement were filed by Trunkline on May 9, 1975, by Mississippi River Transmission Corporation (MRT) and the Staff on May 5, 1975, and by Northern Indiana Public Service Company (NIPSCO) on May 14, 1975.

The proposed settlement is based upon a total pipeline system cost of service of $231,823,431 including a rate of return of 9.5 percent reflecting an allowance on common equity of 11.5 percent. Rates are agreed upon for the period December 1, 1974, through March 31, 1975. For the period after April 1, 1975, the settlement provides alternative rate schedules: one based upon the recovery of 50 percent of fixed costs in the commodity component of the rate for design purposes in accordance with the straight Seaboard [1] method of cost classification and the other based upon recovery of 75 percent of fixed costs in commodity in accordance with Opinion No. 671, United Gas Pipe Line Company, 50 FPC 1348, 1360 (1973) rehearing denied, 51 FPC --, Opinion No. 671-A, March 12, 1974. The Staff supports the United method, while Trunkline, MRT and NIPSCO support the unmodified Seaboard method. The settlement provides that the Seaboard based rates will take effect April 1, 1975, but if the Commission determines that the United based rates should be used, they shall be effective on the first day of the month commencing at least 20 days after issuance of the Commission's order.

The settlement also provides for refunds. It sets forth depreciation rates used in computing the settlement cost of service and to be recorded on its books as follows: onshore transmission 4.0 percent; offshore transmission 5.4 percent; onshore gathering 7.7 percent; offshore gathering 8.8 percent. It further provides that the settlement rates are to be adjusted to reflect increases or decreases in the net amount of advance payments

[1] *Atlantic Seaboard Corporation*, 11 FPC 43 (1952).

multiplied by 13.59 percent subject to various conditions. Effective April 1, 1975, the commodity rates and straight line rates are made subject to an advance payment tracker in the amount of 1.29 cents per Mcf. Trunkline's collection of this was made subject to refund obligations as though it had been suspended if and to the extent the Commission initiates a proceeding as to the reasonableness of those advances payments within 60 days following this order.

The settlement also provides for adjustment of the settlement rates where Trunkline's Cost of Transmission and Compression of Gas by Others (Account No. 858) differs from the base level of annual costs included in the settlement agreement. Likewise an adjustment is provided for changes in Federal Income Taxes.

The settlement is not to become effective until the Commission shall have entered a final order approving the agreement as to rates without condition (or if conditioned subject to Trunkline's acceptance) and no person within 30 days of the order shall have filed a petition for rehearing. Further, the Commission must have waived compliance by Trunkline with its rules and regulations necessary to carry out the provisions of the agreement and such order shall have provided that rate increases and reductions made pursuant to the agreement shall be permitted to become effective as of the time provided without suspension.

Neither Trunkline, the Staff nor any other person is to be bound or prejudiced by the settlement rates unless approved and made effective, and shall not be deemed to have approved any rate-making principle. Furthermore, if the Commission has not issued an order approving the agreement within ninety days Trunkline or any other party shall have the right to withdraw.

Trunkline expresses strong support for the settlement, but in doing so advocates the rate design that reflects the inclusion of 50 percent of the fixed cost in the commodity component (Seaboard method) for the reasons expressed by its witness Kennedy. This witness points out, referring to the Staff witness Hubbard, that eight customers account for 98 percent of Trunkline's total sales which purchase at or near a 100 percent load factor, while the remaining 2 percent of Trunkline's sales are made to low load factor SG customers. The latter, while exempt from curtailment under the plan proposed by Trunkline, its customers and the Staff, cannot add new requirements or serve any boiler fuel or electric generation loads over 50 Mfc/d. In neither case is there any incentive, the witness says, to reduce gas consumption. Further, the witness pointed out, Trunkline's commodity rates are lower than the cost of competing fuels. Also, he says, it has no interruptible direct industrial sales so that the effect of a 25/75 ratio on any allocation wherein additional transmission costs are allocated to direct industrial sales is not present in Trunkline. In addition, the witness says, the 25/75 allocation formula would place additional risk upon Trunkline that it would not have sufficient revenues to meet its costs in the event of gas supply deficiencies.

NIPSCO argues that the United formula will not achieve Staff's objection of lessening industrial use of gas. This could only be done, it says, by ultra-extreme price increases which would make the use of gas economically unfeasible and would be disruptive of the distributors' rates. MRT makes similar arguments and with NIPSCO contends that the Commission is without legal authority to consider end-use under its rate making powers.

Staff contends that Trunkline's system is one on which annual volumes, rather than peak capacity are presently determinative of costs and accordingly the principles of United are applicable. Staff notes that several arguments advanced in opposition to departure from the Seaboard method of rate design but believes that none of these arguments dictate retention of the Seaboard method. Opposing the argument that the Commission cannot consider the end-use of gas in designing rates, Staff cites the Commission's discussion in its notice of rulemaking in End-Use Rate Schedules, Docket No. RM75-19, issued February 20, 1975.

We agree with Staff that the United method of cost classification and rate design is applicable here and should be used. As Staff says, annual volumes are more important than contract entitlements in designing rates. While in its original presentation Trunkline shows annual jurisdictional volumes for the twelve months ended January 31, 1974, as 400,575,852 Mcf, it reduced this to 338,714,411 on rebuttal. Furthermore, as witness Hubbard testified, Trunkline's expected level of curtailment in January, 1975, is 750,000 Mcf per day. When referenced to the categories of priority established in Order No. 467-B, 49 FPC 583, 587, such curtailment represents a reduction of approximately 20 percent in Category 1 (residential and less than 50 Mcf peak-day commercial) and a total curtailment in lower priority categories. The witness summarized that at the present time with Trunkline's high level of curtailment (38 percent below contract entitlements) gas is not available for sales in the lower end-use categories. Under the settlement the agreed upon sales volumes represent a curtailment of 46 percent below the contract entitlements.

In United we found that it was necessary to revise the Seaboard formula because the utilization of United's system was declining both on a peak and annual basis due to a gas supply shortage. While we noted that we were increasing the costs ultimately to industrial high load factor customers and this would have a beneficial effect, the effect would not be great and we did not rely upon it. On rehearing we noted that the limiting factor in the operation of its pipeline system was the quantity of gas available and not the capacity of the pipeline, and we were concerned about the utilization of the pipeline system and designing rates which would recover costs based upon this utilization.

In the case of Trunkline it is plain that a similar reduction in the utilization of facilities has taken place. The balance established in Seaboard between demand costs and capacity costs no longer reflects the factual situation. As noted above deliveries are no longer limited by pipeline capacity but by the amount of gas available. As in United we think that as a matter of judgment the fixed costs should be classified 25 percent to demand and 75 percent to commodity and that the rates be designed accordingly.

In view of the record the argument that the Commission is without legal authority to consider end-use under its rate making powers is not controlling, even if it were valid. Nevertheless, in United, we also said our objective was to design rates to assign more costs to industrial customers including direct industrial customers. We pointed out that the changed rate design would encourage successive sellers between United and the ultimate consumer to reflect United's rates. Thus an increase in the commodity charge of United's rate would likely affect commodity charges down to the ultimate consumer. In any case shifting costs to the commodity side would tend to discourage any customers of the pipeline from attempting to lower its unit costs by selling gas to industrials at a high load factor.

Here, we think that a similar situation prevails except with respect to direct sales by the pipeline. It is likely that if Trunkline's commodity charges were increased relative to its demand charges that these would tend to increase the commodity costs of gas to the ultimate consumers on the system served by Trunkline. Specifically the proposed settlement provides that under Rate Schedule G (General Service to Distributors) and Rate Schedule P (Pipe Line Service) the charges would be as follows:

| Rate schedules G and P | Zone 1 | Zone 2 |
|---|---|---|
| Seaboard: | | |
| Demand charge | $2.73 | $3.26 |
| Commodity charge | .6234 | .6568 |
| United: | | |
| Demand charge | 1.81 | 2.06 |
| Commodity charge | .6775 | .7268 |

In our opinion if Trunkline employs the rates computed under the United method it will be more difficult for its customers and their customers to sell gas for high load factor industrial purposes rather than high priority, low load factor residential and commercial purposes.

We recognize, as we did in United, that the shift in costs made here would not be decisive in discouraging interruptible and direct sales by Trunkline or its customers particularly as the record shows that it would not increase commodity costs up to the costs of competitive fuels. Nevertheless, the shift in costs should go to reduce the cost advantages of natural gas for industrial purposes. Further, we realize that higher commodity costs result in a greater risk to Trunkline in the event of further reduced supplies of gas.

However, we believe that this is a matter of careful estimates of future volumes. Apparently Trunkline has considered this matter in agreeing to the settlement, since it set forth the volumes on which it is based.

We realize that in F.P.C. v. Hope Natural Gas Company, 320 U.S. 591, 616–617 (1944) it was held that the Commission is without power to design rates so as to discourage the industrial use of gas and that this holding was reflected in Fuels Research Council, Inc. v. F.P.C. 374 F. 2d 842 (CA7, 1967) where the court upheld the Commission in permitting a "tilt" in the Seaboard method of rate design so as to permit gas to compete with coal.[3] Here our choice of the United method will have the opposite effect to meet present conditions. We do not think we are forbidden to take this step even if we based our action entirely on necessary control of the end use of gas as a scarce commodity. In our Notice of Rulemaking with respect to End Use Rate Schedules, Docket No. RM75–19, we said that in Fuels Research we were looking at the end use of gas in attempting to design rates to encourage industrial boiler fuel gas sales and that it would seem anomalous to say that we cannot now, in the face of a severe natural gas shortage, design rates which would remove the incentives for sales of natural gas for industrial purposes.

We look upon our action here as directed towards the same end as our policy statement in Order No. 467–B with respect to the order in which various categories of gas sales should be curtailed. In F.P.C. v. Louisiana Power & Light Co., 406 U.S. 621 (1972) the Court held that our curtailment authority is found in Section 16 of the Natural Gas Act providing that the Commission shall have power to perform any and all acts necessary or appropriate to carry out the provisions of the Act and that the substantive and procedural standards lay in the rate regulatory sections 4 and 5. In American Smelting and Refining Company v. F.P.C., __F. 2d __ (CADC January 21, 1974) the court noted that Fuels Research said that the Commission could not consider end use in a rate proceeding, but the decision did not apply in a curtailment proceeding. Here we do not have a curtailment proceeding but we are modifying rate design to achieve some of the objectives of a curtailment program. We see no prohibition of this in the rate regulatory sections of the Natural Gas Act. As noted above, however, we need not rest on this ground because the curtailed operation of Trunkline's system supports the 25–75 cost classification and rate design apart from any purpose to control end use of gas.

*The Commission further finds:* The settlement of these proceedings on the basis of the agreement in Exhibit 60 is reasonable and proper and in the public interest in carrying out the provisions of the Natural Gas Act and should be approved and made effective on the basis of the United 25–75 method of cost classification and rate design reflected in the rates set forth in Appendix B, Page 2 of the Settlement Agreement.

*The Commission orders:* (A) The Agreement referred to above is approved and made effective in accordance with its terms on the basis of the United 25–75 method of cost classification and rate design reflected in the rates set forth in Appendix B, Page 2 of the Agreement.

(B) Trunkline's compliance with the Commission's rules and regulations, including but not limited to Part 154, are waived as necessary to carry out the provisions of the Agreement as to rates.

(C) While unable to bind future Commissions it is our intention that rate increases and reductions made pursuant to this Agreement as to rates shall be permitted to become effective as of the time provided for without suspension and without conditions other than those specified in the Agreement.

(D) Within 60 days of the Issuance of this order Staff shall report to the Commission whether or not the advance payment tracker effective April 1, 1975, is reasonable in accordance with the settlement.

By the Commission.

[SEAL] MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75–18344 Filed 7–15–75;8:45 am]

---

[Docket No. E-9147; (Phases I and II)]

## VIRGINIA ELECTRIC AND POWER CO.

### Further Extension of Time

JULY 9, 1975.

On June 24, 1975, Virginia Electric and Power Company filed a motion to extend the procedural dates fixed by order issued January 22, 1975, as most recently modified by notice issued May 19, 1975. On July 3, 1975, Staff Counsel filed a motion to extend the procedural dates in the above-designated matter, which superseded the June 24th, motion by Virginia Electric and Power Company.

Upon consideration, notice is hereby given that the procedural dates in the above matter are modified as follows:

PHASE I

Service of Staff Testimony, August 19, 1975.

Service of Intervenor Testimony, September 2, 1975.

Service of Company Rebuttal, September 16, 1975.

Hearing, September 30, 1975 (10 a.m. e.d.t.).

PHASE II

Service of Intervenor Testimony, October 7, 1975.

Service of Staff Testimony, October 28, 1975.

Service of Company Direct Testimony, November 18, 1975.

Service of Intervenor Rebuttal, December 2, 1975.

Hearing, December 16, 1975 (10 a.m. e.d.t.).

By direction of the Commission.

MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75–18345 Filed 7–15–75;8:45 am]

---

[Docket No. CS75–544, et al.]

## JOHN S. TABER

### Applications for "Small Producer" Certificates[1]

JULY 9, 1975.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 4, 1975, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

MARY B. KIDD,
*Acting Secretary.*

---

[3] *Midwestern Gas Transmission Company*, 34 FPC 973, 982–983 (1965).

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| C875-544 | June 17, 1975 | John S. Taber, 342 Madison Ave., New York, N.Y. 10017. |
| C875-545 | June 18, 1975 | Hansford Oil Co., Suite 200, 3636 Lemmon Ave., Dallas, Tex. 75219. |
| C875-546 | do | HCM, Suite 628, Meadows Bldg., Dallas, Tex. 75206. |
| C875-547 | do | Robert T. Halpin, Suite 628, Meadows Bldg., Dallas, Tex. 75206. |
| C875-548 | do | Jon F. Cobb, Suite 628 Meadows Bldg., Dallas, Tex. 75206. |
| C875-549 | June 19, 1975 | Durbin Bond, Union Bank Bldg., Little Rock, Ark. 72201. |
| C875-550 | do | Comstock Trust, 2099 Liberty Tower, Oklahoma City, Okla. 73102. |
| C875-551 | do | Knott, B. J., 509 Praetorian Bldg., Dallas, Tex. 75201. |
| C875-552 | do | Albert Willner, P.O. Box 11320, Kansas City, Mo. 64112. |
| C875-553 | June 20, 1975 | Gibson Drilling Co., P.O. Box 1540, Kilgore, Tex. 75662. |
| C875-554 | do | Cayman Exploration Corp., 608 Silver Spur Rd., Palos Verdes Peninsula, Calif. 90274. |
| C875-555 | June 23, 1975 | Tremade Corp., P.O. Box 740, Minden, La. 71055. |
| C875-556 | do | Daniel Jacobson, 200 East 57th St., New York, N.Y. 10022. |
| C875-557 | do | Ralph P. Manny, 342 Madison Ave., New York, N.Y. 10017. |
| C875-558 | do | Hellar Drilling Co., Inc., 710 Petroleum Bldg., Wichita, Kans. 67202. |
| C875-559 | do | Tri-State Gas Corp., Greenwood, La. 71033. |
| C875-560 | June 25, 1975 | Joseph H. King, 1 Chase Manhattan Plaza, 50th Floor, New York, N.Y. 10005. |
| C875-561 | do | Octave Henry Deshotels, III, P.O. Drawer 278, Kaplan, La. 70548. |
| C875-562 | June 26, 1975 | R. C. Cain, doing business as Plata Oil of Calif., 7072 Little Harbor Dr., Huntington Beach, Calif. 92648. |
| C875-563 | do | Robert L. Manning, 1700 Broadway, Suite 2202, Denver, Colo. 80202. |
| C875-564 | June 25, 1975 | Shelley F. Deshotels. |
| C875-565 | do | Sandra Charlotte Deshotels Reaux. |
| C875-566 | June 26, 1975 | Curt Weaver Oil Co., 924 First N.B.C. Bldg., New Orleans, La. 70112. |
| C875-567 | June 27, 1975 | Lee Drilling Co., 201 Parkland Plaza Bldg., 2121 South Columbia, Tulsa, Okla. 74114. |
| C875-568 | do | John B. Morey, Suite 760, 101 Park Avenue Bldg., Oklahoma City, Okla. 73102. |
| C875-569 | do | Jess Hepner and Frances L. Hepner, Freedom, Okla. 73842. |
| C875-570 | do | Jack Miller, Mooreland, Okla. 73852. |
| C875-571 | do | Melvin T. Miller, 1823 20th St., Woodward, Okla. 73801. |
| C875-572 | do | Elmer L. Maddux and Rita Jo Maddux, Freedom, Okla. 73842. |
| C875-573 | June 30, 1975 | Vinson Trust, 200 City National Bank Bldg., Wichita Falls, Tex. 76301. |
| C875-574 | do | Bison Oil Co., 200 City National Bank Bldg., Wichita Falls, Tex. 76301. |
| C875-575 | do | Sable Oil Co., 200 City National Bank Bldg., Wichita Falls, Tex. 76301. |
| C875-576 | do | Eland Oil Co., 200 City National Bank Bldg., Wichita Falls, Tex. 76301. |
| C875-577 | do | Ann Vinson Inman. |
| C875-578 | do | Robert E. Vinson. |
| C875-579 | do | Vinson and Vinson. |
| C875-580 | do | Vinson Gas Co. |
| C875-581 | do | Vinson Oil Co. |

[FR Doc.75-18346 Filed 7-15-75;8:45 am]

[Docket No. R-472; Order No. 531-A]

## REPORT OF THE ALTERNATE FUEL DEMAND OF DIRECT END USE CUSTOMERS OF INTERSTATE PIPELINE COMPANIES DUE TO NATURAL GAS CURTAILMENTS

### Order Revising and Clarifying Form No. 69

JULY 9, 1975.

On June 25, 1975, the Commission issued Order No. 531 setting forth a new Form No. 69 coordinated with the Federal Energy Administration (FEA) and other governmental agencies and the National Association of Regulatory Utility Commissioners.

In order to fully conform FPC Form No. 69 with the FEA's concurrent form No. G101-Q-0 to insure consistent responses to the respective forms in order to facilitate data processing and analysis, the Commission *sua sponte* orders the following minor revisions and clarifications in Form No. 69, as noted below.

On Page 16 of General Instructions, add the following footnote at the end of the first line on the page after the first sentence of Schedule 2C: [1] Schedule 2C should be used to assign identification numbers for aggregated small direct end-use customers who have been or will be affected by curtailments during the base or current years. These aggregations are to be listed by SIC codes and by the number of companies within each SIC code. The Volumes Curtailed, Column (D), is to contain base year data only. DO NOT REPORT current year curtailed volumes, either actual or projected, under column D.

On Page 19 of General Instructions, add to bottom of page at the end of Appendix A:

Note: Curtailments by pipelines are reductions of deliveries from the gas entitlements as determined in FPC curtailment proceedings.

On Schedule 1C. Under B. change "from April 1" to "after April 1"; place period after "April 1, 1974" and delete "through March 31, 1976."

On Schedule 2C. Under B. change "from April 1" to "after April 1"; place period after "April 1, 1974" and delete "through March 31, 1976."

On Schedule 2C. Delete sentence beginning "IMPORTANT:" and substitute the following: "IMPORTANT: Use a separate sheet for each customer I.D. number. Reproduce this page before data are entered and provide the requested data on the additional sheet(s)."

On Schedule 2C. Delete the four blocks on line 10 under the column headed "Customer I.D. No."

*The Commission finds:*

(1) The revisions prescribed herein represent procedural matters and do not require notice or hearing under 5 U.S.C. 553.

(2) Good cause exists that the revisions and clarifications adopted herein become effective upon issuance of this order.

(3) The revision of Form No. 69 herein is necessary and appropriate for the administration of the Natural Gas Act.

*The Commission*, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly Section 16 thereof (52 Stat. 717o), *orders:*

(A) The revisions to FPC Form No. 69 as promulgated by Section 260.15 and Section 3.170 of Title 18 of the Code of Federal Regulations shall be in accordance with the above and shall be contained on Form No. 69 as made available to the public.

(B) The revisions adopted herein shall be effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] MARY B. KIDD,
*Acting Secretary.*

[FR Doc.75-18347 Filed 7-15-75;8:45 am]

## FEDERAL RESERVE SYSTEM

### FEDERAL OPEN MARKET COMMITTEE

### Domestic Policy Directive of May 20, 1975

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on May 20, 1975.[1]

The information reviewed at this meeting suggests that real output of goods and services—after having fallen sharply for two quarters—is declining much less rapidly in the current quarter. In April the pace of the decline in industrial production moderated considerably further, and total employment rose. However, the unemployment rate increased again, from 8.7 to 8.9 per cent, as the civilian labor force increased considerably. Average wholesale prices of industrial commodities changed little in April, as in March; prices of farm and food products rose sharply, following several months of large decreases. The advance in average wage rates so far this year has been considerably less rapid than the increase during the second half of 1974.

The foreign exchange value of the dollar has declined somewhat since mid-April, but it is still above the low of early March. U.S. imports fell sharply in the first quarter, and the foreign trade balance was in substantial surplus, in contrast to the deficits of preceding quarters. Net outflows of funds through banks were large in the first quarter, as loans to foreigners continued to increase while liabilities to foreigners declined.

Both $M_1$ and $M_2$ grew moderately in April, but $M_3$ grew more rapidly as inflows of deposits to nonbank thrift institutions remained substantial. Business demands for short-term credit remained weak, both at banks and in the commer-

[1] The Record of Policy Actions of the Committee for the meeting of May 20, 1975, is filed as part of the original document. Copies are available on request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

cial paper market, while demands in the long-term market continued strong. Since mid-April short-term market interest rates have declined somewhat. Most longer-term yields have changed little on balance, and mortgage rates have risen. Federal Reserve discount rates were reduced from 6¼ to 6 per cent in mid-May.

In light of the foregoing developments, it is the policy of the Federal Open Market Committee to foster financial conditions conducive to stimulating economic recovery, while resisting inflationary pressures and working toward equilibrium in the country's balance of payments.

To implement this policy, while taking account of developments in domestic and international financial markets, the Committee seeks to maintain about the prevailing money market conditions over the period immediately ahead, provided that monetary aggregates generally appear to be growing within currently acceptable shortrun ranges of tolerance.

By order of the Federal Open Market Committee, July 7, 1975.

ARTHUR L. BROIDA,
*Secretary.*

[FR Doc.75-18412 Filed 7-15-75;8:45 am]

## ONE CORP.

### Formation of Bank Holding Company

One Corporation, New Richmond, Wisconsin, has applied for the Board's approval under section 3(a)(1) of the bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 87.8 per cent or more of the voting shares of First National Bank of New Richmond, New Richmond, Wisconsin. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment of the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received not later than August 3, 1975.

Board of Governors of the Federal Reserve System, July 2, 1975.

[SEAL] GRIFFITH L. GARWOOD,
*Assistant Secretary of the Board.*

[FR Doc.75-18410 Filed 7-15-75;8:45 am]

## SOUTHERN BANCORPORATION OF ALABAMA

### Acquisition of Bank

Southern Bancorporation of Alabama, Birmingham, Alabama, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 90 per cent or more of the voting shares of both First Bank of Russell County, Phenix City, Alabama, and First State Bank, Smiths, Alabama. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than August 7, 1975.

Board of Governors of the Federal Reserve System, July 7, 1975.

GRIFFITH L. GARWOOD,
*Assistant Secretary of the Board.*

[FR Doc.75-18411 Filed 7-15-75;8:45 am]

# GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-58, General]

## ENERGY CONSERVATION PERFORMANCE

### Mandatory Reporting Requirements

1. *Purpose.* This bulletin announces the availability of FEA U 502-Q-0, Energy Conservation Performance Report, and advises affected agencies of the mandatory reporting requirements imposed by Federal Management Circular (FMC) 74-1, dated January 21, 1974, and supplements 1 and 2 dated March 12, 1974, and November 15, 1974, respectively.

2. *Expiration date.* This bulletin expires December 31, 1975, unless sooner revised or canceled.

3. *Background.* Since the early days of the Nation's energy crisis, certain Federal agencies have been required to report their energy conservation performance so that the effectiveness of Federal energy conservation efforts could be determined. This reporting requirement was imposed by FMC 74-1 at the request of the Federal Energy Administration (FEA). Since then, FEA has developed a standardized report form to facilitate preparation of its quarterly energy conservation performance report.

4. *Agency action.* Affected agencies are reminded of the continuing requirement to submit Energy Conservation Performance Reports in accordance with FMC 74-1, supplement 2, attachment A, paragraph 5 and attachment C, paragraph 6. Reports should be submitted on the new report form, FEA U 502-Q-0, a copy of which is attached.[1] (The report has been assigned Interagency Reports Control Number 1492-FEA-QU in conformance with the provisions of FPMR 101-11.11.) Instructions for preparation and submission of the report are provided on the form.

5. *Availability of forms.* Agencies may obtain their initial supply of FEA U 502-Q-0, Energy Conservation Performance Report, from the Federal Energy Administration (FEA), Office of Conservation and Environment, Attention: Federal Energy Management Program Office, Ben Franklin Post Office Building, Washington, D.C. 20461. Agency field offices should submit all future requirements to their Washington headquarters office which should then forward consolidated annual requirements to the FEA office listed above.

DWIGHT A. INK,
*Acting Administrator of General Services.*

JULY 2, 1975.

[FR Doc.75-18413 Filed 7-15-75;8:45 am]

[1] The form referenced in paragraph 4 is filed with the original document

## OFFICE OF FEDERAL MANAGEMENT POLICY

### OMB, Office of Federal Procurement Policy Delegation of Responsibilities

In creating the Office of Federal Procurement Policy (OFPP) (P.L. 93-400), Congress intended that it be small in size and make maximum use of existing agency capabilities. Under the Act, the Administrator for Federal Procurement Policy is expected to use the personnel, services and facilities of the executive agencies to the greatest practicable extent and to designate agencies to develop issues or to solicit views on significant procurement matters. The OFPP has been established on the basis of these guidelines.

The Administrator for Federal Procurement Policy has requested that the delegation letter which follows, together with its enclosure, be published in the FEDERAL REGISTER for the benefit of the general public. This letter implements the Congressional intent of the OFPP Act by assigning functions to be performed by the General Services Administration's Office of Federal Management Policy (OFMP) in support of the OFPP. The responsibilities assigned to the OFMP largely continue certain functions which were assigned to the OFMP under the authority of Executive Order No. 11717.

Dated at Washington, D.C. on July 2, 1975.

DWIGHT A. INK,
*Acting Administrator.*

JUNE 24, 1975.

HON. ARTHUR F. SAMPSON
*Administrator of General Services,*
*General Services Administration,*
*Washington, D.C. 20405.*

DEAR MR. SAMPSON: Under the authority of Executive Order 11717, GSA's Office of Federal Management Policy (OFMP) has provided effective support and leadership in Government-wide procurement and property management. The exercise of these functions in the OFMP has been subject to the broad policy oversight of the Office of Management and Budget.

With the enactment of the Office of Federal Procurement Policy Act, Public Law 93-400, additional Government-wide authority and responsibility for policies, regulations, procedures and forms regarding procurement and related matters were added to the broad oversight role of OMB. The responsibilities vested in the Office of Federal Procurement Policy (OFPP) in OMB include certain procurement and property management func-

tions which were performed in OMB prior to their transfer to GSA pursuant to E.O. 11717. The OFPP Act, however, provides authority under which the Administrator may assign functions to be performed by the OFMP comparable to those which were carried out in the procurement and property management areas under E.O. 11717. The Act also would permit additional assignments of responsibility and delegation of authority, all of which are necessarily subject to the overall direction of the Administrator for Federal Procurement Policy.

The limited staffing of the OFPP is based on the organizational and operational concept of its receiving support from the OFMP. It is appropriate that this support be officially recognized and that the basic and operational responsibilities of the respective offices be clarified for the guidance of all Federal agencies and others concerned.

A description of the authority and responsibilities of the OFPP is set forth in Section 225 of the Office of Management and Budget Manual. A copy of that section is attached.

Except for those situations when it will be more appropriate for OFPP to designate another agency to provide interagency leadership in a study, policy development or implementation project, we would generally look to OFMP to provide the following support with respect to the responsibilities described for the OFPP:

1. Coordinate the development of proposed executive branch positions on recommendations of the Commission on Government Procurement.

2. Evaluate legislative proposals, review agency comments thereon, and prepare issue papers as a basis for OFPP action.

3. Promulgate and maintain OFPP policy issuances.

4. Review agency implementation of new or revised policy, when requested by OFPP, to assure that implementation is timely and effective.

5. Provide leadership in identifying areas where greater uniformity and consistency in agency practices would result in cost savings or other benefits.

6. Conduct independent studies to identify problems and conditions which call for improving Government procurement operations.

7. Perform fact-finding survey and research assignments, as required.

8. Provide leadership for interagency groups, including those organized at OFPP request, to study problem situations, develop policy proposals, or implement approved recommendations or policy positions.

9. Maintain continuing liaison with OFPP.

Nothing in this letter should be construed as limiting the authority of the Administrator for Federal Procurement Policy to delegate his authority or assign responsibilities to executive agencies as authorized by the OFPP Act.

Copies of this letter are being furnished the Federal agencies to call their attention to the special relationship between OFPP and OFMP, and to request their full cooperation in our common effort to achieve the objectives set forth by the Congress in the Declaration of Policy, Section 2 of the OFPP Act.

For the benefit of the general public, please have this letter published in the FEDERAL REGISTER.

Sincerely,

HUGH E. WITT,
*Administrator for*
*Federal Procurement Policy.*

Attachment.

OFFICE OF MANAGEMENT AND BUDGET MANUAL

SECTION 225—OFFICE OF FEDERAL PROCUREMENT POLICY

225–1. *Establishment.*

The Office of Federal Procurement Policy (OFPP) was created by Public Law 93–400 for the purpose of establishing an office within the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies.

225–2. *Principal Authorities.*

The following authorities pertain to the office's principal functions:

a. The *Office of Federal Procurement Policy Act* (Public Law No. 93–400) which established the Office of Federal Procurement Policy within the Office of Management and Budget.

b. *Executive Order No. 11717* of May 9, 1973 (38 FR 12315) which pertains to certain responsibilities for procurement and related activities.

c. *Budget and Accounting Act, 1921* (31 U.S.C. 1–24) which, in addition to annual budget matters, provides for the conduct of administrative studies to enable the President to achieve greater economy and efficiency in the executive branch.

d. *Office Memorandum No. 75–43, April 14, 1975* delegates to the Administrator for Federal Procurement Policy certain responsibilities of the Director, including those with respect to economy and efficiency for procurement and related activities within the executive branch.

225–3. *Primary Functions.*

The primary functions are as follows:

a. Act on all policy matters concerning procurement and related activities of the executive agencies, including the procurement of personal property and real property (except for the direct procurement of real property in being); property management; supply, storage, and distribution; transportation and traffic management, general services; and property maintenance, utilization, and disposal.

b. Provide overall direction of procurement policy for the executive agencies and recipients of Federal assistance, and prescribe related procurement policies, regulations, procedures, and forms.

c. Establish a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies.

d. Establish criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms.

e. Monitor and revise policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services.

f. Promote and conduct research in procurement policies, regulations, procedures, and forms.

g. Establish a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector.

h. Recommend and promote programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel.

i. Consult with affected Federal agencies, including the Small Business Administration, on matters regarding procurement policies, regulations, procedures, and forms.

j. Keep the Congress and its duly authorized committees fully and currently informed of the major activities of the OFPP, including prior notification of matters of major policy.

k. Advise agencies on, administer OMB policy directives concerning, coordinate executive agency action upon, and exercise general oversight responsibility (including responsibility for the procurement and related activities addressed in Executive Order No. 11717, dated May 9, 1973, 38 FR 12315) over all matters concerning procurement and related activities.

l. Provide for the effective conduct of administrative operations within the Office of Federal Procurement Policy.

m. Delegate any such authority, function or power, other than the basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy.

225–4. *Organization.*

The functions of the office are performed by the Administrator and staff organized into six areas. Principal responsibilities are shown below:

a. *The Assistant Administrator for Contract Administration* is responsible for policies for contract placement, execution, management, and audit and also for socio-economic programs implemented through the procurement process. Specific areas of responsibility include formally advertised and negotiated contracts; foreign contracting, contract cost allowability, overhead and profit policies; economic adjustment provisions; contract administration; contractor management systems; subcontracting; and termination of contracts.

b. *The Assistant Administrator for Logistics* is responsible for developing and coordinating logistic policies and practices throughout the Federal establishment, including the procurement of personal and real property (except for the direct procurement of real property in being); property management, utilization and disposal; supply, storage and distribution; transportation and traffic management; and professional and support services. Responsibilities also include development and administration of the Government's general policy of reliance on the private enterprise system to supply the products and services it needs.

c. *The Assistant Administrator for Regulations* is responsible for establishing and coordinating a system of consistent, and, to the extent feasible, uniform procurement policies, regulations, procedures, and forms for use by all Federal procuring agencies, and in connection therewith is responsible for establishing criteria and procedures for soliciting and considering the views of the private sector, Government agencies, and the public on procurement matters. Responsibilities also include establishment of policies for procurement matters concerned with grants and Federal assistance programs, the development of a system of Government-wide procurement data, and policies for contracting for construction and architect-engineer services.

d. *The Assistant Administrator for Systems Acquisition* is responsible for establishing and coordinating policies for the acquisition of major systems and research and development. With respect to major systems, this responsibility includes the statement of requirements, solicitations, source selection of systems and subsystems contractors, competition, risk analysis, and risk sharing provisions. With respect to contracting for research and development, this re-

sponsibility includes policies for processing of unsolicited research and development proposals, use of master contract agreements, and cost recovery and cost sharing provisions.

e. *The Assistant Administrator for Procurement Law* is responsible for procurement policies with respect to patents, copyrights and data; matters before the Renegotiation Board and other Federal tribunals; contract litigation in the Federal and State judicial systems, as well as Administrative Boards; the handling of protests of contract awards; claims; and debarment and suspension practices. Other responsibilities include the Freedom of Information Act, Administrative Procedure and Advisory Committee Acts, and indemnification for unusually hazardous risks. Also provides legal interpretations in response to requests from the Administrator and Assistant Administrators.

f. *The Assistant Administrator for Procurement Personnel and Training* is responsible for recommending and promoting programs of the Civil Service Commission and executive agencies for Federal personnel assigned in procurement, including the interaction of procurement personnel with personnel of other related disciplines, the effective recruitment and retention of personnel, grade level structuring, rotation, tenure and promotion, career development, and training. Responsibilities also include the development and coordination of efforts to establish a Federal Procurement Institute wholly responsive to procurement research and training needs for career managers in procurement.

Approved: June 19, 1975.

[FR Doc.75-18415 Filed 7-15-75;8:45 am]

## NATIONAL ENDOWMENT FOR THE HUMANITIES

### ADVISORY COMMITTEE FELLOWSHIPS PANEL

#### Notice of Meeting

JULY 8, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that meetings of the Fellowships Panel will be held at Washington, D.C. on August 8, 13, 18, and 25, 1975, from 9:00 a.m. to 5:30 p.m.

The purpose of the meetings is to review Independent Fellowship applications submitted to the National Endowment for the Humanities for 1976-77 fellowship grants.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meetings would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meetings to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street, NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
*Advisory Committee Management Officer.*

## NUCLEAR REGULATORY COMMISSION

### ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON COMBUSTION ENGINEERING SYSTEM 80

#### Rescheduling of Meeting

The meeting of the Advisory Committee on Reactor Safeguards Subcommittee on Combustion Engineering System 80, originally scheduled for July 18, 1975, notice of which was published at 40 Federal Register 27986, July 2, 1975, has been rescheduled as follows:

(a) The meeting will be held July 25, 1975 at the same location.

(b) Written statements may be submitted with a postmark no later than July 18, 1975.

(c) Information as to whether the meeting has been cancelled or rescheduled can be obtained by a prepaid telephone call, on July 24, 1975.

(d) A copy of the transcript of the open portion of the meeting will be available on or after July 30, 1975.

(e) A copy of the minutes of the meeting will be made available, on request, after October 27, 1975.

All other matters pertaining to the meeting remain unchanged. The open portion of the meeting will commence at 9:00 a.m., July 25, 1975.

Dated: July 10, 1975.

JOHN C. HOYLE,
*Advisory Committee Management Officer.*

[FR Doc.75-18403 Filed 7-15-75;8:45 am]

[Docket Nos. 50-324, 50-325]

### CAROLINA POWER & LIGHT CO. (BRUNSWICK STEAM ELECTRIC PLANT UNITS 1 AND 2)

#### Order Modifying License and Revoking Order To Show Cause

On April 10, 1975 the Acting Director of the Office of Nuclear Reactor Regulation issued an Order to Carolina Power and Light Company (licensee) requiring it to show cause why its license Nos. DPR-62 and CPPR-68 should not be amended to require installation of a seismograph network and the conduct of an appropriate releveling program to determine whether dilatancy was occurring in the vicinity of the Brunswick plant. On May 5, 1975 in order to develop a detailed written study proposal the licensee requested an extension of time in which to respond. On May 9, 1975 the Director of Nuclear Reactor Regulation granted a time extension to July 9, 1975 provided the licensee submitted a seismic study proposal to the NRC staff on or before June 10, 1975. The licensee submitted such a proposal on June 10 and on June 20, 1975 it met with the NRC staff to discuss its position. This proposal entails the gathering and evaluation of data over a two year period principally by means of a seismograph network. The NRC staff believes the licensee's proposal is responsible, responsive to the staff's concern, and will provide the data necessary to resolve the question of whether dilatancy is occurring in the vicinity of the Brunswick plant.

Accordingly, the public health, safety and interest require an amendment to the license to construct and operate nuclear power plants at the Brunswick facility which insures the seismic issue is resolved in compliance with the Commission's regulations and the Atomic Energy Act of 1954 as amended.

In view of the foregoing and pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in 10 CFR Parts 2, 50 and 100, IT IS HEREBY ORDERED THAT:

1. Operating License No. DPR-62 and Construction Permit No. CPPR-68 are amended by adding the following requirement thereto:

Carolina Power and Light Company will undertake a program for seismic monitoring for a minimum of two years unless termination is earlier approved by the NRC staff. The program and its control will be conducted in general conformity with the document "Brunswick Steam Electric Plant Program for Seismic Monitoring" dated June 10, 1975 as revised June 27, 1975 and attached * hereto as Appendix A. The program will include: 1) not less than ten seismic monitoring stations (seven permanent and three portable), in an array approved by the NRC staff, unless a lesser number is approved by the NRC staff in writing, and 2) quarterly reports on the monitoring data to be submitted to the NRC. Should the NRC staff determine that initiation of Phase II as described within the program within the two year monitoring period, or Phase III following initiation of Phase II, is required the licensee will either comply with a request to proceed to Phase II (or Phase III) or immediately request and be granted a hearing on the issue of whether the data on which the staff's request is based justifies the initiation of Phase II (or Phase III) under the program for seismic monitoring agreed to by the licensee and the NRC staff. Nothing herein will be construed as precluding changes in the program by the licensee which do not adversely affect the quality or quantity of information derived from the monitoring program. NRC will be informed of any such changes in the quarterly report.

* Appendix A is not provided in the Federal Register publication but is available for public inspection in the NRC's public document room at 1717 H Street, N.W., Washington, D.C. and at the Southport Brunswick County Library, 109 W. Moore Street, Southport, North Carolina.

2. The Order to Show Cause dated April 10, 1975 issued by Edson G. Case, Acting Director of Nuclear Reactor Regulation to Carolina Power and Light Company (Docket Nos. 50-324 and 50-325) is revoked.

The licensee, having answered the Order to Show Cause with an acceptable monitoring proposal, has not requested a hearing and has consented by letter dated June 27, 1975 to entry of this order in accordance with the provisions of 10 CFR § 2.202(e); EXCEPT that the licensee has requested and is hereby granted the right to request a hearing on any NRC order or request requiring initiation of Phase II (or Phase III) of the monitoring program as described above. In view of the foregoing this Order is effective immediately.

Dated at Bethesda, Maryland this 9th day of July, 1975.

BEN C. RUSCHE,
*Director, Office of Nuclear Reactor Regulation.*

[FR Doc.75-18405 Filed 7-15-75;8:45 am]

---

[Docket No. 50-263]

## NORTHERN STATES POWER CO.

### Issuance of Amendment to Provisional Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 10 to Provisional Operating License No. DPR-22 issued to the Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generating Plant (the facility) located in Wright County, Minnesota. The amendment is effective as of its date of issuance.

The amendment increases the amount of uranium 235 (from 2300 kilograms to 3200 kilograms) that the licensee may receive, possess and use in connection with operation of the facility in accordance with the licensee's application dated May 30, 1975. This amendment is required so that the licensee can receive new fuel assemblies for refueling of the reactor.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment is not required since the amendment does not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendment dated May 30, 1975, (2) Amendment No. 10 to License No. DPR-22, and (3) the Commission's concurrently issued Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at The Environmental Conservation Library, 300 Nicollet Mall, Minneapolis, Minnesota 55414. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention, Director, Division of Reactor Licensing.

Dated at Bethesda, Maryland, this 8th day of July 1975.

For The Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
*Chief, Operating Reactors Branch #2, Division of Reactor Licensing.*

[FR Doc. 75-18406 Filed 7-15-75;8:45 am]

---

## ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON CONTAINMENT: CONCRETE

### Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards Subcommittee on Containment: Concrete will hold a meeting on July 31, 1975 at the Royal Court Inn, 1750 South Elmhurst Road, Des Plaines, Illinois. The purpose of this meeting will be to develop information for consideration by the ACRS in its review of the requirment for structural integrity test(s) for containment.

The agenda for the subject meeting shall be as follows:

THURSDAY, JULY 31, 1975, 9:00 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee will hear presentations by representatives of the NRC Staff and will hold discussions with this group pertinent to its review of the structural integrity test(s) for containments.

In connection with the above agenda item, the Subcommittee will hold Executive Sessions, not open to the public, at 8:30 a.m. and at the end of the day to consider matters relating to the above application. These sessions will involve an exchange of opinions and discussion of preliminary views and recommendations of Subcommittee Members and internal deliberations for the purpose of formulating recommendations to the ACRS.

In addition to the Executive Sessions, the Subcommittee may hold closed sessions with representatives of the NRC Staff for the purpose of discussing privileged information concerning matters related to plant design, construction, and operation, if necessary.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that the above-noted Executive Sessions will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). Further, any non-exempt material that will be discussed during the above closed sessions will be inextricably intertwined with exempt material, and no further separation of this material is considered practical. It is essential to close such portions of the meeting to protect the free interchange of internal views, to avoid undue interference with agency or Subcommittee operation, and to avoid public disclosure of proprietary information.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than July 24, 1975 to the Executive Secretary, ACRS, NRC, Washington, D.C. 20555. Such comments shall be based upon related documents on file and available for public inspection at the NRC Public Document Room 1717 H St., N.W., Wash., D.C. 20555.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statement and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of no more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee between the hours of 10:00 a.m. and 11:00 a.m. on July 31, 1975.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been canceled or rescheduled and in regard to the Chairman's ruling on requests for opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on July 28, 1975 to the Office of the Executive Secretary of the Committee (telephone 202/634-1920, Attn: John C. McKinley) between 8:15 a.m. and 5:00 p.m., Eastern Daylight Time.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the

meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(h) Persons desiring to attend portions of the meeting where proprietary information, other than plant security information, is to be discussed may do so by providing to the Executive Secretary, ACRS, 1717 H St. ,N.W., Wash., D.C. 20555, seven days prior to the meeting, a copy of an executed agreement with the owner of the proprietary information to safeguard this material.

(i) A copy of the transcript of the open portion of the meting will be available for inspection on or after Aug. 5, 1975 at the NRC Public Document Room 1717 H St., N.W., Wash., D.C. 20555. Copies of the transcript may be reproduced in the Public Document Room or may be obtained from Ace Federal Reporters, Inc., 415 Second Street, N.E., Wash. D.C. 20002 (telephone 202/547-6222) upon payment of appropriate charges.

(j) On request, copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room 1717 H St., N.W., Wash., D.C. 20555 after October 31, 1975. Copies may be obtained upon payment of appropriate charges.

Dated: July 10, 1975.

JOHN C. HOYLE,
*Advisory Committee Management Officer.*

[FR Doc.75-18617 Filed 7-15-75;9:29 am]

---

[Docket No. PRM-40-21]

## NATURAL RESOURCES DEFENSE COUNCIL, INC.

### Extension of Comment Period

On May 14, 1975, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (40 FR 20983) a notice that a petition for rule making had been filed with the Commission by the Natural Resources Defense Council, Inc.

The petitioners requested the Commission to issue regulations that would (a) require uranium mill operators licensed by the Commission to post a performance bond that would cover the cost of stabilization and ultimate disposal of uranium mill tailings, and (b) require each Agreement State to require uranium mill operators licensed by the Agreement State to post a similar performance bond.

The petitioners also requested the Commission to proceed immediately with the preparation of a draft programmatic environmental impact statement on the Commission's uranium milling regulatory program, including that part of the mill licensing program administered by Agreement States. Further, the petitioners requested the Commission to issue or renew no licenses during the time the environmental impact statement is being prepared that would permit a licensee to escape any new regulations promulgated as a result of the requested environmental impact statements.

Interested persons were invited to submit comments on the petition by July 14, 1975. In view of the interest which has been shown on the subject matter of the petition, the Commission is hereby extending the time for filing comments.

All interested persons who desire to submit written comments or suggestions concerning the petition for rule making should send them to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 on or before August 28, 1975.

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. A copy of the petition may be obtained by writing the Division of Rules and Records at the above address.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
*Secretary of the Commission.*

JULY 14, 1975.

[FR Doc.75-18618 Filed 7-15-75;9:29 am]

---

## OFFICE OF MANAGEMENT AND BUDGET

### CLEARANCE OF REPORTS

#### List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on July 11, 1975 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the clearance office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

DEPARTMENT OF COMMERCE

Economic Development Administration, Title X Project Completion Form, ED-736 Q, Single-time, Federal agencies, Economics and General Government Division, Lowry, R. L., 395-3451.

EXTENSIONS

VETERANS ADMINISTRATION

Scales To Be Used in VA Cooperative Study in Metal Health Evaluation of Day Treatment by Patient Attitude and Behavior, 10-20570A, on occasion, veteran patients in VA day treatment program, Marsha Traynham, 395-4529.

DEPARTMENT OF JUSTICE

Departmental and Other Statement of Personal Circumstances, 1260/1, on occasion, LEEP participants, Marsha Traynham, 395-4529.

Departmental and Other LEEP Participant's Certification Statement, LEEP-6A, quarterly, LEEP participants, Marsha Traynham, 395-4529.

PHILLIP D. LARSEN,
*Budget and Management Officer.*

[FR Doc.75-18548 Filed 7-15-75;8:45 am]

---

## SECURITIES AND EXCHANGE COMMISSION

### CINCINNATI STOCK EXCHANGE

#### Applications for Unlisted Trading Privilege

JULY 10, 1975.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

| | *File no.* |
|---|---|
| Dresser Industries, Inc. | 7-4736 |
| Eastern Gas & Fuel Associates | 7-4737 |
| Halliburton Co. | 7-4738 |
| McDermott, (J. Ray) & Co., Inc. | 7-4739 |
| Pittston Co. (The) | 7-4740 |
| Schlumberger, Ltd. | 7-4741 |
| Utah International Inc. | 7-4742 |

Upon receipt of a request, on or before July 26, 1975 from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C., 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18436 Filed 7-15-75;8:45 am]

[Rel. No. 8847; 811-1758]

## GATEWAY FUND, INC.

### Filing of Application for an Order Declaring that Company has Ceased to Be An Investment Company

JULY 9, 1975.

In the matter of the Gateway Fund, Inc., One North Jefferson Avenue, St. Louis, Missouri 63103 (811-1758).

Notice is hereby given that The Gateway Fund, Inc. ("Gateway"), registered under the Investment Company Act of 1940 ("Act") as an open-end diversified management investment company, filed an application on April 21, 1975, pursuant to Section 8(f) of the Act for an order declaring that Gateway has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

The application represents that pursuant to resolutions of the Board of Directors of Gateway, adopted on December 11, 1974, and January 20, 1975, a Special Meeting of Gateway's shareholders was called, and was subsequently held, on March 18, 1975.

At said Special Meeting, the shareholders of Gateway voted to exchange Gateway's assets for shares of the common stock of AMCAP Fund, Inc., and to dissolve Gateway pursuant to an Agreement and Plan of Reorganization and Liquidation, dated February 19, 1975.

Gateway further represents that such exchange was consummated on April 2, 1975, and the shares of common stock of AMCAP received by Gateway were distributed to Gateway shareholders on that date; that all or substantially all of Gateway's assets have been distributed; and that the dissolution of Gateway is in process.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than August 4, 1975, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Gateway at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18321 Filed 7-15-75;8:45 am]

[Rel. No. 19061A, 70-5680]

## OHIO ELECTRIC CO.

### Correction

JULY 10, 1975.

In the matter of Ohio Electric Co., c/o American Electric Power Service Corp., 2 Broadway, New York, New York 10004, (70-5680).

In the notice dated June 24, 1975 (HCAR No. 19061) issued in this proceeding, there was an error in the proceeding file number. Said file number should have been as shown above.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18322 Filed 7-15-75;8:45 am]

[File No. 500-1]

## PACIFIC AIR TRANSPORT INTERNATIONAL, INC.

### Suspension of Trading

JULY 9, 1975.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Pacific Air Transport International, Inc. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 4 p.m. (e.d.t.) on July 9, 1975 through midnight (e.d.t.) on July 18, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18437 Filed 7-15-75;8:45 am]

[Rel. No. 19084; 70-5704]

## PENNSYLVANIA ELECTRIC CO.

### Proposed Issuance and Sale of First Mortgage Bonds at Competitive Bidding

JULY 10, 1975.

In the matter of Pennsylvania Electric Co., 1001 Broad Street, Johnstown, Pennsylvania 15907 (70-5704).

Notice is hereby given that Pennsylvania Electric Company ("Penelec"), an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, as amended, which is summarized below, for a complete statement of the proposed transaction.

Penelec proposes to issue and sell, subject to the competitive bidding requirement of Rule 50 under the Act, up to $45,000,000 principal amount of First Mortgage Bonds, ——% Series. The bonds will mature not later than August 1, 2005. The interest rate and the regular redemption prices will be determined by competitive bidding. The bidding procedure will require that (1) the price specified in the bids (and, if applicable, the price at which the bonds shall be initially reoffered to the public) shall be 100% of the principal amount of the bonds, plus accrued interest from August 21, 1975 to the date of delivery, (2) the interest rate to be borne by the bonds shall be a multiple of ⅛ of 1% and (3) the commission to be paid by Penelec to the successful bidders shall be specified in the bids. The bidding procedure will not establish a minimum or maximum interest rate within which bids may be submitted. The bonds will be issued under Indenture, dated as of January 1, 1942, of Penelec to Bankers Trust Company, Trustee, as heretofore supplemented and amended by a supplemental indenture creating the bonds to be dated as of August 1, 1975, and which includes, with certain exceptions, a prohibition until August 1, 1980, against refunding the issue with proceeds of funds borrowed at a lower effective interest cost.

The proceeds, exclusive of underwriting commissions, expenses of the offering and accrued interest, if any, realized from the sale of the bonds will be applied to the payment of a portion of Penelec's short-term bank loans, of which approximately $60,000,000 is outstanding, for construction purposes or to reimbuse Penelec's treasury for expenditures therefrom for construction purposes. The estimated cost of Penelec's 1975 construction program is approximately $125,000,000.

The fees and expenses to be incurred by Penelec in connection with the proposed transaction are estimated at $155,000, including legal fees of $42,000. Printing and engraving expenses are estimated at $55,000. Fees of counsel for the underwriters, to be paid by the successful bidder, will be supplied by amendment. It is stated that the Pennsylvania Public Utility Commission has jurisdiction over the proposed issue and sale of bonds by Penelec and that no other state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than August 4, 1975, request in writing that a hearing be held on such matter, stating the

nature of his interest, the reasons for such request, and the issues of fact or law raised by said application, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D. C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended, or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20 (a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18323 Filed 7-15-75;8:45 am]

---

[File No. 500-1]

## UPPSTER CORP.

### Suspension of Trading

JULY 8, 1975.

In the matter of trading in securities of Uppster Corp., File No. 500-1 Securities Exchange Act of 1934 Section 12(k).

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock of Uppster Corporation being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities otherwise than on a national securities exchange is suspended, for the period from 2:30 p.m. (EDT) on July 8, 1975 through midnight (EDT) on July 17, 1975.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
*Secretary.*

[FR Doc.75-18324 Filed 7-15-75;8:45 am]

---

# SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0118]

## AFFILIATED INVESTMENT FUND, LTD.

### Application for a License as a Small Business Investment Company (SBIC)

Notice is hereby given of the filing of an application with the Small Business Administration (SBA), pursuant to Section 107.102 of the Regulations (13 FR 107.702 (1975)), under the name of Affiliated Investment Fund, Ltd., 2225 Shurfine Drive, College Park, Georgia 30337, for a license to operate in the State of Georgia as an SBIC under the provisions of the Small Business Investment Act of 1958 (Act), as amended, (15 U.S.C. et seq.).

The proposed officers and directors and major stockholders are as follows:

Samuel Weissman, 4400 Mt. Paran Parkway, N.W., Atlanta, Georgia 30327, President, Director—None.

Chester E. Sanders, 2852 Concord Court, Ben Hill Road, East Point, Georgia 30344, Secretary, Treasurer—None.

Fred Braswell, 1 Central Street, Rockmark, Georgia 30153, Director—None.

Jerome S. Merlin, 1205 Lenox Circle, N.E., Atlanta, Georgia 30306, Director—None.

Ted Teagle, 510 Willow Road, Peachtree City, Georgia 30269, Assistant Secretary—None.

Associated Grocers Co-Op, Inc.—100%.

Associated Grocers Co-Op, Inc. has 247 stockholders and there are no beneficial owners of 10 percent, or more, of the voting stock of Associated Grocers Co-Op, Inc.

The parent company is in the wholesale grocery business and distributes its products to members of the association. The applicant will not limit itself to investments in grocery stores, or to its members.

The applicant will begin operations with a capitalization of $500,000 which will be a source of equity capital and long-term loans for qualified small business concerns, with particular attention to growth potentials, in the retail food industry. In addition to financial assistance, the applicant will provide consulting services to its clients.

The applicant will conduct its operations principally in the State of Georgia and in other areas wherever the need may arise.

Matters involved in SBA's consideration of the application include the general busines reputation and character of the proposed owners and management, including adequate profitability and financial soundness, in accordance with the Act and Regulations.

Notice is further given that any interested person may, not later than July 31, 1975, submit written comments on the proposed company to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Dated: July 9, 1975.

JAMES THOMAS PHELAN,
*Deputy Associate Administrator for Investment.*

[FR Doc.75-18426 Filed 7-15-75;8:45 am]

---

## ANCHORAGE DISTRICT ADVISORY COUNCIL

### Meeting

The Small Business Administration Anchorage District Advisory Council will meet at 9 a.m., (P.d.t.), Monday, August 11, 1975, at Suite 200, Anchorage Legal Center, 1016 West 6th Avenue, in Anchorage, Alaska, to discuss such business as may be presented by members and the staff of the Small Business Administration. For further information, call or write Daniel B. Ward, Small Business Administration, 710 Second Avenue, Seattle, Washington 98104, (206) 442-7791.

Dated: July 9, 1975.

ANTHONY S. STASIO,
*Chief Counsel for Advocacy, Small Business Administration.*

[FR Doc.75-18428 Filed 7-15-75;8:45 am]

---

[Declaration of Disaster Loan Area #1154]

## MINNESOTA

### Declaration of Disaster Area

As a result of the President's declaration I find that Aitken and adjacent counties within the state of Minnesota, constitute a disaster area because of damage resulting from flooding which began on or about April 23, 1975. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 5, 1975, and for economic injury until the close of business on April 7, 1976, at:

Small Business Administration, District Office, Plymouth Building, Room 530, 12 South Sixth Street, Minneapolis, Minnesota 55402,

or other locally announced locations.

Dated: July 9, 1975.

THOMAS S. KLEPPE,
*Administrator.*

[FR Doc.75-18425 Filed 7-15-75;8:45 am]

---

[License No. 09/09-5182]

## PACIFIC VENTURE CAPITAL, LTD.

### Issuance of License To Operate as a Small Business Investment Company

On January 23, 1975, a notice was published in the FEDERAL REGISTER (40 F.R. 3652) stating that Pacific Venture Capital, Ltd., located at 1427 Dillingham Boulevard, Suite 210, Honolulu, Hawaii 96817, had filed an application with the Small Business Administration, pursuant to 13 C.F.R. 107.102 (1975) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on February 7, 1975.

Notice is hereby given that, having considered the application and other pertinent information, SBA has issued License No. 09/09-5182 to Pacific Venture Capital, Ltd.

Dated: July 7, 1975.

JAMES THOMAS PHELAN,
*Deputy Associate Administrator for Investment.*

[FR Doc.75-18427 Filed 7-15-75;8:45 am]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 903]

### ASSIGNMENT OF HEARINGS

JULY 11, 1975.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 114211 Sub 239, Warren Transport, Inc., now assigned September 9 1975, at Omaha, Nebraska is postponed indefinitely.

MC-C 8573, Black Hills Stage Lines, Inc.—Investigation and Revocation of Certificates, now assigned September 23, 1975 at Lincoln, Nebraska, is being advanced to September 16, 1975, in Lincoln, Nebraska; in a hearing room to be designated later.

MC 111729 Sub 520, Purolator Courier Corp., now assigned September 30, 1975, at St. Paul, Minn., is postponed to October 15, 1975, (8 days), at St. Paul, Minn.; in a hearing room to be designated later.

MC 139099 Sub 10, Redfather Fast Freight, Inc., now being assigned September 9, 1975, at Omaha, Nebraska; in a hearing room to be designated later.

MC 130262, Crimson Travel Service, Inc., DBA Crimson Travel Service, now assigned August 4, 1975, at Boston, Mass., will be held on the Fifth Floor, 150 Causeway.

MC 25798 (Sub-No. 273), Clay Hyder Trucking Lines, Inc., now being assigned September 11, 1975, at Washington, D.C., at the offices of the Interstate Commerce Commission.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

[FR Doc.75-18475 Filed 7-15-75;8:45 am]

---

[AB 52 (Sub-No. 5)]

## ATCHISON, TOPEKA, AND SANTA FE RAILWAY CO.

### Abandonment

In the matter of Atchison, Topeka and Santa Fe Railway Company Abandonment between Burbank and Fairfax, in Osage County, Oklahoma.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available for public inspection upon request; and

*It appearing*, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the equality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

*It is ordered*, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Osage County, Okla., on or before July 29, 1975, and certify to the Commission that this has been accomplished.

*And it is further ordered*, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the Federal Register.

Dated at Washington, D.C., this 7th day of July, 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

The Interstate Commerce Commission hereby gives notice that by order dated July 7, 1975, it has been determined that abandonment of a portion of the Cushing District of the Atchison, Topeka and Santa Fe Railway Company between Burbank and Fairfax, a distance of 12.01 miles, in Osage County, Oklahoma, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the low amount of traffic handled on the line, the capability of local highways to handle an incremental increase in truck transport, and the absence of specific development plants that depend upon continued rail service. Therefore, the impacts on air, water, noise, etc., if any, are negligible.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before August 13, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-18482 Filed 7-15-75;8:45 am]

---

[AB 4 (Sub-No. 1)]

## CADILLAC AND LAKE CITY RAILWAY

### Abandonment

In the matter of Cadillac and Lake City Railway abandonment between Round Lake Junction and Lake City, in Wexford and Missaukee Counties, Michigan.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

*It appearing*, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

*It is ordered*, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Wexford and Missaukee Counties, Mich., on or before July 29, 1975, and certify to the Commission that this has been accomplished.

*And it is further ordered*, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the Federal Register.

Dated at Washington, D.C., this 7th day of July, 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

The Interstate Commerce Commission hereby gives notice that by order dated July 7, 1975, it has been determined that the proposed abandonment by the Cadillac and Lake City Railway of its line of railroad between Round Lake Junction and Lake City, a distance of 8.12 miles, all in Wexford and Missaukee Counties, Mich., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the instant line has not been in service since 1973 and the former traffic has already been diverted to various motor carriers operating in the area. In addition, if the application is approved the Michigan Department of Natural Resources has expressed an interest in obtaining the right-of-way for public recreation uses.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before August 13, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-18481 Filed 7-15-75;8:45 am]

## FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

JULY 11, 1975.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's Rules of Practice, published in the Federal Register, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

California Docket No. 55738 (Correction), filed June 12, 1975, published in the FEDERAL REGISTER issue of July 2, 1975, and republished as corrected this issue. Applicant: RON'S DELIVERY SERVICE, INC., 1854 Floradale, South El Monte, Calif. 91733. Applicant's representative: Milton W. Flack, 4311 Wilshire Boulevard, Suite 300, Los Angeles, Calif. 90010. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of (1) *Floor coverings or related articles*, as described under that generic heading in the National Motor Freight Classification; (2) *tile, facing or flooring; and molding, facing, baseboard or cove*, other than metal, as described in that generic heading in the National Motor Freight Classification; and (3) the necessary *tools, adhesives, attachments and supplies* for installation of those commodities set forth in subparagraphs (1) and (2) hereof, from, to and within all points and places in the counties of Los Angeles, Orange, San Diego, Riverside and San Bernardino.

NOTE.—The purpose of this correction is to indicate correct name of applicant. Intrastate, interstate and foreign commerce authority sought.

*HEARING:* Date, time and place not yet fixed. Requests for procedural information should be addressed to the California Public Utilities Commission, State of California, State Bldg., Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should *not* be directed to the Interstate Commerce Commission.

California Docket No. 55772, filed June 27, 1975. Applicant: PAK MOVING, INC., 601 Highway 12, P.O. Box 249, Suisun, Calif. 94585. Applicant's representative: Daniel W. Baker, 100 Pine Street, San Francisco, Calif. 95111. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of A. Baggage, between the following points: 1. Between all points and places in the San Francisco Territory and between all points within 10 miles of any point therein; 2. Between all points on or within 10 miles of points on the following routes: (a) State Highway 65, between Marysville and Interstate Highway 80, inclusive; (b) State Highway 70, between Marysville and Sacramento, inclusive; (c) State Highway 20, between Marysville and Yuba City, inclusive; (d) State Highway 113, between Yuba City and Interstate Highway 80, inclusive; (e) Interstate Highway 80, between San Francisco and junction with State Highway 65, inclusive; (f) U.S. Highway 101, between Santa Rosa and San Francisco, inclusive; (g) State Highway 12, between Santa Rosa and Lodi, inclusive; (h) State Highway 29, between Napa and Vallejo, inclusive; (i) State Highway 37, between U.S. Highway 101 and Interstate Highway 80, inclusive; (j) State Highway 17, between San Rafael and Richmond, inclusive; (k) Interstate Highway 680, between Fremont and Vallejo, inclusive; (l) State Highway 4, between Interstate Highway 80 and Stockton, inclusive; (m) U.S. Highway 50, between Oakland and Sacramento, inclusive; (n) Interstate Highways 580 and 5, between U.S. Highway 50 and State Highway 140, inclusive; (o) State Highway 140, between Interstate Highway 5 and Merced, inclusive; (p) State Highway 99, between Stockton and Merced, inclusive; (q) State Highway 132, between Interstate Highway 5 and Modesto, inclusive.

B. General Commodities, except the following: (a) Used household goods and personal effects not packed in accordance with the crated property requirements; (b) Livestock; (c) Liquid or dry commodities in bulk; (d) Logs; (e) Fresh fruits and vegetables; (f) Automobiles, trucks, buses and trailer coaches and campers; (g) Cement; (h) Commodities requiring the use of special refrigeration or temperature control, in specially designed and constructed refrigerator equipment; between all points and places in the San Francisco-East Bay Cartage Zone, on the one hand, and, all points and places on and within 10 miles of points on Interstate Highway 80 between Vallejo and Vacaville, on the other hand.

In performing the service set forth in Paragraphs A and B above, applicant may make use of any and all streets, roads, highways and bridges necessary or convenient for the performance of said service.

San Francisco-East Bay Cartage Zone includes that area embraced by the following boundary: Beginning at the point where the San Francisco-San Mateo County Boundary Line meets the Pacific Ocean; thence easterly along said boundary line to Lake Merced Boulevard; thence southerly along said Lake Merced Boulevard and Lynnewood Drive to So. Mayfair Avenue; thence westerly along said South Mayfair Avenue to Crestwood Drive; thence southerly along Crestwood Drive to Southgate Avenue; thence westerly along Southgate Avenue to Maddux Drive; thence southerly and easterly along Maddux Drive to a point one mile west of Highway U.S. 101; thence southeasterly along an imaginary line one mile west of and paralleling Highway U.S. 101 (El Camino Real) to its intersection with the southerly boundary line of the City of San Mateo; thence northeasterly, northwesterly, northerly and easterly along said southerly boundary to Bayshore Highway (U.S. 101 Bypass); thence leaving said boundary line and continuing easterly along the projection of last course to its intersection with Belmont (or Angelo) Creek; thence northeasterly along Belmont (or Angelo) Creek to Seal Creek; thence westerly and northerly to a point one mile south of Toll Bridge Road; thence easterly along an imaginary line one mile southerly and paralleling Toll Bridge Road and San Mateo Bridge and Mt. Eden Road to its intersection with State Sign Route 17.

Thence continuing easterly and northeasterly along an imaginary line one mile south and southeasterly of and paralleling Mt. Eden Road and Jackson Road to its intersection with an imaginary line one mile easterly of and paralleling State Sign Route 9; thence northerly along said imaginary line one mile easterly of and paralleling State Sign Route 9 to its intersection with "B" Street, Hayward; thence easterly and northerly along "B" Street to Center Street; thence northerly along Center Street to Castro Valley Boulevard; thence westerly along Castro Valley Boulevard to Redwood Road; thence northerly along Redwood Road to William Street; thence westerly along William Street and 168th Avenue to Foothill Boulevard; northwesterly along Foothill Boulevard to the southerly boundary Line of the City of Oakland; thence easterly and northerly along the Oakland Boundary Line to its intersection with the Alameda-Contra Costa County Boundary Line; thence northwesterly along last said line to its intersection with Arlington Avenue (Berkeley).

Thence northwesterly along Arlington Avenue to a point one mile northeasterly of San Pablo Avenue (Highway U.S. 40); thence northwesterly along an imaginary line one mile easterly of and paralleling San Pablo Avenue (Highway U.S. 40) to its intersection with County Road No. 20 (Contra Costa County); thence westerly along County Road No. 20 to Broadway Avenue (also known as Balboa Road); thence northerly along Broadway Avenue (also known as Balboa Road) to Highway U.S. 40; thence northerly along Highway U.S. 40 to Rivers Street; thence westerly along Rivers Street to 11th Street; thence northerly along 11th Street to Johns Avenue; thence westerly along Johns Avenue to Collins Avenue; thence northerly along Collins Avenue to Morton Avenue; thence westerly along Morton Avenue to the Southern Pacific Company right of way and continuing westerly along the prolongation of Morton Avenue to the shore line of San Pablo Bay; thence southerly and westerly along the shore line and waterfront of San Pablo Bay to Point San Pablo; thence southerly along an imaginary line

from Point San Pablo to the San Francisco Waterfront at the foot of Market Street; thence westerly along said waterfront and shore line to the Pacific Ocean; thence southerly along the shore line of the Pacific Ocean to the point of beginning.

San Francisco Territory includes all the City of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County Line meets the Pacific Ocean; thence easterly along said County Line to a point one mile west of State Highway 82; southerly along an imaginary line one mile west of and paralleling State Highway 82 to its intersection with Southern Pacific Company right-of-way at Arastradero Road; southeasterly along the Southern Pacific Company right-of-way to Pollard Road, including industries served by the Southern Pacific Company spur line extending approximately two miles southwest from Simla to Permanente; easterly along Pollard Road to W. Parr Avenue; easterly along W. Parr Avenue to Capri Drive; southerly along Capri Drive to Division Street; easterly along Division Street to the Southern Pacific Company right-of-way; southerly along the Southern Pacific right-of-way to the Campbell-Los Gatos City Limits; easterly along said limits and the prolongation thereof to South Bascom Avenue (formerly San Jose-Los Gatos Road); northeasterly along South Bascom Avenue to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to State Highway 82; northwesterly along State Highway 82 to Tully Road; northeasterly along Tully Road and the prolongation thereof to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 238 (Oakland Road); northerly along State Highway 238 to Warm Springs; northerly along State Highway 238 (Mission Blvd.) via Mission San Jose and Niles to Hayward.

Northerly along Foothill Blvd. and MacArthur Blvd. to Seminary Avenue; easterly along Seminary Avenue to Mountain Blvd.; northerly along Mountain Blvd. to Warren Blvd. (State Highway 13); northerly along Warren Blvd. to Broadway Terrace; westerly along Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland Boundary Line; northerly along said boundary line to the Campus Boundary of the University of California; westerly, northerly and easterly along the campus boundary to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue northerly along Arlington Avenue to San Pablo Avenue (State Highway 123); northerly along San Pablo Avenue to and including the City of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Intrastate, interstate and foreign commerce authority sought.

*HEARING:* Date, time and place not yet fixed. Requests for procedural information should be addressed to the Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, Calif. 94102, and should *not* be directed to the Interstate Commerce Commission.

New York Docket No. T-9231, filed March 24, 1975. Applicant: I.T.A. BUFFALO LIMOUSINE SERVICE, INC., 186 Lydia Lane, Buffalo, N.Y. 14225. Applicant's representative: William J. Hirsch, Suite 1125 43 Court Street, Buffalo, N.Y. 14202. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *Lost, missing or delayed baggage* belonging to airline passengers when not accompanying the passengers: From the Greater International Airport, or the Niagara Falls Airport when planes are diverted from the Buffalo International Airport to all points in the following Counties: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming. Intrastate, interstate and foreign commerce authority sought.

*HEARING:* Date, time and place not yet fixed. Requests for procedural information should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, N.Y. 12226, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-18480 Filed 7-15-75;8:45 am]

## FOURTH SECTION APPLICATION FOR RELIEF

JULY 11, 1975.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before July 31, 1975.

FSA No. 43018—*Anhydrous Ammonia from Epco, Idaho.* Filed by Western Trunk Line Committee, Agent, (No. A-2714), for interested rail carriers. Rates on anhydrous ammonia, in tank-car loads, as described in the application, from Epco, Idaho, to points in western trunk-line territory.

Grounds for relief—Market competition.

Tariffs—Supplement 116 to Western Trunk Line Committee, Agent, tariff 120-L, I.C.C. No. A-4868, and supplements 6 and 9 to Union Pacific Railroad Company tariffs 3030-K and 6044-J, I.C.C. Nos. 5804 and 5794, respectively. Rates are published to become effective on August 10, 1975.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-18476 Filed 7-15-75;8:45 am]

[Notice No. 24]

## MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JULY 11, 1975.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commision under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC 48958 (Deviation No. 66), ILLINOIS-CALIFORNIA EXPRESS, INC., 510 E. 51st Ave., PO Box 16404, Denver, Colo. 80216, filed June 23, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Sacramento, Calif., over Interstate Highway 80 to junction Interstate Highway 55 near Rockdale, Ill., thence over Interstate Highway 55 to Chicago, Ill., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Sacramento, Calif., over Interstate Highway 5 to Los Angeles, Calif., thence over U.S. Highway 60 to Wickenburg, Ariz., thence over U.S. Highway 89 to Ashfork, Ariz., thence over U.S. Highway 66 to Albuquerque, N. Mex., thence over U.S. Highway 85 to Denver, Colo., thence over U.S. Highway 6 to Sterling, Colo., thence over U.S. Highway 138 to junc-

tion U.S. Highway 30, thence over U.S. Highway 30 to Grand Island, Nebr., thence over U.S. Highway 281 to junction U.S. Highway 34, thence over U.S. Highway 34 to Lincoln, Nebr., thence over U.S. Highway 6 to Princeton, Ill., thence over U.S. Highway 34 to Chicago, Ill., and return over the same route.

No. MC 97699 (Deviation No. 3), BARBER TRANSPORTATION CO., P.O. Box 1970, Deadwood Ave., Rapid City, S. Dak. 57701, filed June 25, 1975. Carrier's representative: Leslie R. Kehl, Suite 1600, Lincoln Center, 1660 Lincoln St., Denver, Colo. 80203. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Omaha, Nebr., over Interstate Highway 29 to Sioux Falls, S. Dak., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Omaha, Nebr., over U.S. Highway 275 to junction U.S. Highway 20, thence over U.S. Highway 20 to Mission, Nebr., thence over U.S. Highway 18 to junction U.S. Highway 183, thence over U.S. Highway 183 to junction U.S. Highway 16, thence over U.S. Highway 16 to Sioux Falls, S. Dak., and return over the same route.

No. MC 108158 (Deviation No. 11), MID-CONTINENT FREIGHT LINES, INC., 2711 Fairview Ave. No., St. Paul, Minn. 55113, filed May 8, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Tulsa, Okla., over U.S. Highway 64 to junction U.S. Highway 77 near Perry, Okla., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Tulsa, Okla., over U.S. Highway 75 to junction U.S. Highway 60, thence over U.S. Highway 60 to junction U.S. Highway 77, thence over U.S. Highway 77 to junction U.S. Highway 64 near Perry, Okla., and return over the same route.

No. MC 108835 (Deviation No. 7), HYMAN FREIGHTWAYS, INC., 3030 Harbor Lane, Suite 102, Minneapolis, Minn. 55441, filed June 23, 1975. Carrier's representative: Andrew R. Clark, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Des Moines, Iowa, over Interstate Highway 80 to junction Interstate Highway 35, thence over Interstate Highway 35 to Kansas City, Mo., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Des Moines, Iowa, over Iowa Highway 5 to junction Interstate Highway 35, thence over Interstate Highway 35 to junction Iowa Highway 92, thence over Iowa Highway 92 to junction U.S. Highway 169, thence over U.S. Highway 169 to Mt. Ayr, Iowa, thence over Iowa Highway 2 to Bedford, Iowa, thence over Iowa Highway 148 to the Iowa-Missouri State line, thence over Missouri Highway 148 to junction U.S. Highway 71, thence over U.S. Highway 71 to St. Joseph, Mo., thence over U.S. Highway 59 to Atchison, Kans., thence over unnumbered highway to junction U.S. Highway 73, thence over U.S. Highway 73 to Kansas City, Mo., and return over the same route.

No. MC 111383 (Deviation No. 29), BRASWELL MOTOR FREIGHT LINES, INC., P.O. Box 4447, Dallas, Tex. 75208, filed June 23, 1975. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Tulsa, Okla., over Muskogee Turnpike to junction Interstate Highway 40, thence over Interstate Highway 40 to Little Rock, Ark., thence over U.S. Highway 65 to junction U.S. Highway 80 near Tallulah, La., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Tulsa, Okla., over U.S. Highway 75 to junction Oklahoma Highway 3 near Coalgate, Okla., thence over Oklahoma Highway 3 to Antlers, Okla., thence over U.S. Highway 271 to Mt. Pleasant, Tex., thence over U.S. Highway 67 to Naples, Tex., thence over Texas Highway 77 to the Louisiana-Texas State line, thence over Louisiana Highway 1 to Shreveport, La., thence over U.S. Highway 80 to Tallulah, La., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75-18479 Filed 7-15-75;8:45 am]

---

[Notice No. 55]

## MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JULY 11, 1975.

The following publications include motor carrier, water carrier, broker, freight forwarder and rail proceedings indexed as follows: (1) grants of authority requiring republication prior to certification; (2) notices of filing of petitions for modification of existing authorities; (3) new operating right's applications directly related to and processed on a consolidated record with finance applications filed under Sections 5(2) and 212(b); (4) notices of filing of Sections 5(2) and 210a(b) finance applications; and (5) notices of filing of Section 212(b) transfer applications.

Each applicant (except as otherwise specifically noted) states that there will be no significant effect on the quality of the human environment resulting from approval of its application in compliance with the requirements of 49 CFR 1100.250.

Protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice (unless otherwise specified). Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest should comply with section 247(d) or section 240(c) as appropriate of the Commission's General Rules of Practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and a detailed description of the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally.

Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest (except for petitions and Finance Dockets under Rule 40 requiring the original and six (6) copies of the protest) shall be filed with the Commission, and a copy shall be served concurrently upon applicant's or petitioner's representative, or applicant or petitioner if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) or section 240(c)(4) of the special rules, and shall include the certification required therein.

No. MC 125254 (Sub-No. 27) (Republication), filed March 18, 1974, and published in the FEDERAL REGISTER issue of May 2, 1974, and republished this issue. Applicant: DONALD L. MORGAN, doing business as MORGAN TRUCKING CO., 1201 East 5th Street, P.O. Box 714, Muscatine, Iowa 52761. Applicant's representative: Larry D. Knox, 9th Floor, Hubbell Building, Des Moines, Iowa 50309. A Report and Order of the Commission, Review Board Number 2, dated June 16, 1975, and served June 24, 1975, finds, that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *materials used in the manufacture of insulation* (except in bulk), from points in Nebraska and Missouri, and from points in that portion of Illinois on and south of U.S. Highway 460, and from East St. Louis, Ill., and Evansville, Ind., to Muscatine, Iowa; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder.

The purpose of this republication is to indicate that Missouri has been added as an origin in the above authority. Because it is possible that other parties who have relied upon the notice of the application as published, may have an

interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a Certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 7647 (Notice of filing of petition to modify territorial description), filed June 23, 1975. Petitioner: J. & S. TRUCKING SERVICE, INC., 9 West Stimpson Ave., Linden, N.J. 07036. Petitioner's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Petitioner holds a motor *common carrier* certificate in No. MC 7647 issued August 4, 1971, authorizing transportation, as pertinent, over irregular routes, of *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), Between New York, N.Y., on the one hand, and, on the other, points in Hudson, Bergen, Union, Middlesex, Monmouth, Somerset, Essex, Morris, Passaic, and Ocean Counties, N.J.

By the instant petition, petitioner seeks to modify the territorial description in the above authority so as to read, Between New York, N.Y. and those points in New Jersey within 5 miles of New York, N.Y., and all of any New Jersey municipality any part of which is within 5 miles of New York, N.Y., on the one hand, and, on the other, points in Hudson, Bergen, Union, Middlesex, Monmouth, Somerset, Essex, Morris, Passaic, and Ocean Counties, N.J.

Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 119777 (Sub-No. 207) (Notice of filing of petition to eliminate restriction), filed June 30, 1975. Petitioner: LIGON SPECIALIZED HAULER, INC., P.O. Drawer L, Madisonville, Ky. 42431. Petitioner's representative: Louis J. Amato, P.O. Box E, Bowling Green, Ky. 42101. Petitioner holds a motor *common carrier* certificate in No. MC 119777 (Sub-No. 207), issued January 17, 1973, authorizing transportation, over irregular routes, of (1) *Lumber, millwork, wood products, wood by-products, cardboard containers, and nails*, from points in Kentucky (except Louisville), to points in the United States (except Alaska and Hawaii and Martinsville and Bassett, Va.), restricted against the transportation of woodpulp and fiber pulp from points in Kentucky, to points in Tennessee, Alabama, West Virginia, Pennsylvania, Ohio, Indiana, Michigan, Illinois, Iowa, Wisconsin, and Minnesota; (2) *Cardboard containers and nails*, from points in the United States (except Alaska and Hawaii), to points in Kentucky; and (3) *lumber, millwork, wood products, and wood by-products*, from points in Kentucky, restricted in (1), (2), and (3) above against joinder with any other authority held by carrier.

By the instant petition, petitioner seeks to eliminate the above restriction against joinder with any other authority held by petitioner. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 123502 (Sub-Nos. 20, 21, 27, 28, 29, 30, 34, 38, and 41) (Notice of filing of petition to remove restrictions), filed June 26, 1975. Petitioner: FREE STATE TRUCK SERVICE, INC., P.O. Box 760, Glen Burnie, Md. 21061. Petitioner's representative: W. Wilson Corroum (same address as petitioner). Petitioner holds motor *common carrier* certificates in No. MC 123502 (Sub-Nos. 20, 21, 27, 28, 29, 30, 34, 38, and 41) issued July 11, 1968, October 4, 1968, May 26, 1969, August 12, 1969, August 8, 1969, December 16, 1970, December 12, 1972, March 22, 1973, and March 27, 1975, respectively, authorizing transportation, as pertinent, over irregular routes, in Sub-No. 20, of (1) *Metal alloys and scrap metal*, in dump vehicles, From points in Bergen, Essex, Hudson, Middlesex, and Passaic Counties, N.J., and New York, N.Y., to Baltimore, Md.; and (2) *Alloys and ores*, in dump vehicles, From Philadelphia, Pa., to points in Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York (except New York, N.Y.), New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, N.J.), Pennsylvania, Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Kentucky, Ohio (except points in Ashtabula, Cuyahoga, Lake, Summit, Muskingum, Licking, Franklin, and Wayne Counties, Ohio), Indiana, Illinois, and Michigan; in Sub-No. 21, of (1) *Nickel scrap*, in dump vehicles, From Johnstown, Pa., to Baltimore, Md.

(2) *Metals* and *metal alloys*, in dump vehicles, From Vancoram, Ohio, and Graham, W. Va., to points in Maryland (except points in Allegany, Frederick, Garrett, and Washington Counties, Md.), Virginia, New Jersey, Delaware, Connecticut, Massachusetts, and the District of Columbia; and (3) *Alloys, granular refractories, minerals*, and *ores*, in dump vehicles, (a) From East Liverpool, Powhatan, Brilliant, and Philo, Ohio, and Pittsburgh, Pa., to points in Alabama, Florida, Georgia, South Carolina, and Tennessee, and to Philadelphia, Pa.; (b) From East Liverpool, Ohio, and Pittsburgh, Pa., to points in Massachusetts, Rhode Island, New York (except Chautauqua and Cattaraugus Counties), Illinois, North Carolina, Virginia (except Bath, Highland, Augusta, Greene, Madison, Rappahannock, Fauquier, Rockingham, Shenandoah, Frederick, Clarke, Loudoun, Fairfax, Warren, and Page Counties), New Jersey, Connecticut, Maryland (except Frederick, Carroll, Garrett, Allegany, Washington, and Montgomery Counties), Delaware, New Jersey, Connecticut, and the District of Columbia, and Philadelphia, Pa.

(d) From Brilliant, Ohio, to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, New Jersey, North Carolina, Virginia (except Bath, Highland, Augusta, Greene, Madison, Rappahannock, Fauquier, Rockingham, Shenandoah, Frederick, Clarke, Loudoun, Fairfax, Warren, and Page Counties), Maryland (except Baltimore and points in its commercial zone as defined by the Commission, and except Garrett, Allegany, Washington, Frederick, Montgomery, and Carroll Counties), Delaware, Connecticut, and the District of Columbia, restricted in 3(d) above to traffic originating at the named origin point and destined to points in the described destination territories, and from Brilliant, Ohio, to Baltimore, Md., and Philadelphia, Pa., restricted to the transportation of traffic originating at Brilliant, Ohio, and moving in foreign commerce only; and (e) From Philo, Ohio, to points in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, North Carolina, Virginia (except Bath, Highland, Augusta, Greene, Madison, Rappahannock, Fauquier, Rockingham, Shenandoah, Frederick, Clarke, Loudoun, Fairfax, Warren, and Page Counties), Maryland (except Baltimore and points in its commercial zone as defined by the Commission, and except Garrett, Allegany, Washington, Frederick, Montgomery, and Carroll Counties), Delaware, Connecticut, and the District of Columbia, restricted in 3(e) above to traffic originating at the named origin and destined to points in the described destination territories, and from Philo, Ohio, to Baltimore, Md., and Philadelphia, Pa., restricted to the transportation of traffic originating at Philo, Ohio, and moving in foreign commerce only.

In Sub-No. 27, of (1) *Aluminum dross* and *smelter residues*, in dump vehicles, From points in Alabama, Georgia, Kentucky, Massachusetts, Michigan, New York (except the town of Wawarsing, N.Y.), North Carolina, Ohio (except points in Ashtabula, Cuyahoga, Lake, Summit, Muskingum, Licking, Franklin, and Wayne Counties, Ohio, and Pataskala, Ohio), Tennessee, and Virginia, to Philadelphia, Pa.; and (2) *Alloys* and *ores*, in dump vehicles, From Port

Newark, N.J., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Ohio, Pennsylvania (except points in Philadelphia, Delaware, Chester, and Montgomery Counties, Pa.), Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; in Sub-No. 28, of (1) *Nickel sulphate*, in dump vehicles, from Baltimore, Md., to Sewaren, N.J., and (2) *Metals and metal alloys*, in dump vehicles, Between Baltimore, Md., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii, and except from points in Virginia to Baltimore, Md.), restricted in (1) and (2) above against the transportation of ferro alloys, from Niagara Falls, N.Y., to Baltimore, Md.; in Sub-No. 29, of (1) *Alloys, granular refractories*, and *ores*, in dump vehicles, from Wilmington, Del., to points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties), New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, and Washington, D.C.

(2) *Alloys, aluminum dross, minerals, ores, scrap metals, smelter residue*, and *granular refractories*, in dump vehicles, Between points in South Carolina, on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties), New York, and Pennsylvania; and (3) *Alloys, minerals*, and *ores*, in dump vehicles: (a) From Calvert City, Ky., to Baltimore, Md., restricted to the transportation of traffic originating at Calvert City, Ky., and destined to Baltimore, Md.; and (b) From Monaca, Pa., to points in Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, North Carolina, South Carolina, Tennessee, Vermont, and to New York, N.Y., and Baltimore, Md. (except ferro alloys from Monaca, Pa., to points in Alabama, Georgia, North Carolina, South Carolina, and Tennessee); in Sub-No. 30, of *Alloys*, in dump vehicles, Between Kingwood, W. Va., on the one hand, and, on the other, points in Delaware, Illinois, Indiana, Kentucky (except points in Marshall County, Ky.), Maryland, New Jersey, New York, Wisconsin, Virginia, and points in that part of Pennsylvania on and east of U.S. Highway 219, restricted to the transportation of traffic originating at and destined to points in the above-named territories.

In Sub-No. 34, of (1) *Alloys* and *ores* (except fluorspar), in dump vehicles, between points in Delaware, Maryland (except Baltimore, Md.), New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, N.J.), and points in that part of Pennsylvania lying on and east of U.S. Highway 219 (except Scranton, Pa., Columbia, Pa., and points in the commercial zone thereof as defined by the Commission, and points in Philadelphia, Montgomery, and Delaware Counties, Pa.), restricted against service between Newark, N.J., and points in New Jersey; and (2) *Slag*, in dump vehicles, (a) From points in Bucks County, Pa., to points in the United States (except Alaska, New Jersey, Delaware, Maryland, Ohio, West Virginia, Hawaii, and the District of Columbia); and (b) From points in Butler County, Ohio, to points in the United States (except Alaska and Hawaii).

In Sub-No. 38, of *Metal and metal alloys*, in dump vehicles, From points in Virginia, to Baltimore, Md., restricted to the transportation of traffic destined to Baltimore, Md.; and in Sub-No. 41, of *Alloys, metals* (except scrap metals), *minerals* (except lime, limestone products, and sand), and *ores* (except lithium), in dump vehicles, Between Strasburg, Va., on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Maryland, New Jersey (except points in Cumberland, Salem, Gloucester, Cape May, Atlantic, Camden, and Burlington Counties, and Mt. Hope, N.J.), New York (except from Niagara Falls, N.Y.), Ohio (except from Marietta, Ohio), Pennsylvania, Virginia, West Virgina (except from Alloy, W. Va.), and the District of Columbia.

By the instant petition, petitioner seeks to eliminate the restriction, "in dump vehicles," from each of the above authorities. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 128698 (Sub-No. 1) (Notice of filing of petition to modify territorial description), filed June 20, 1975. Petitioner: ERDNER BROS., INC., Davidson Road, P.O. Box 68, Swedesboro, N.J. 08085. Petitioner's: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Petitioner holds a motor *common carrier* certificate in No. MC 128698 (Sub-No. 1), issued April 4, 1972, authorizing transportation, over irregular routes, of *Foodstuffs, and ingredients, materials, supplies, and equipment*, used in the processing and manufacture of foodstuffs, Between Milford, Bridgeville, Clayton, Georgetown, Wilmington, Milton, and Houston, Del.; Whiteford, Snow Hill, Hurlock, Cambridge, Salisbury, Pocomoke City, Chestertown, Ridgely, Baltimore, Goldsboro, and Trappe, Md.; Parksley, Va.; Centre Hall, Bloomsburg, York, Hanover, Lancaster, and Downingtown, Pa.; Bridgeton, Swedesboro, Woodstown, Camden, Moorestown, and Glassboro, N.J.; Sumter, S.C.; and the District of Columbia, restricted against the transportation of commodities, in bulk, and restricted to the transportation of shipments originating at and destined to the facilities utilized by Campbell Soup Company, its affiliates and its subsidiaries, at the above-described points.

By the instant petition, petitioner seeks to add Napoleon, Ohio, and, Exmore, Va., as additional service points in the above described authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 129456 (Sub-No. 6) (Notice of filing of petition to add a contracting shipper), filed June 20, 1975. Petitioner: PUROLATOR COURIER, LTD., 259 Lakeshore Blvd., East Toronto, Ontario, Canada M5A 3T7. Petitioner's representative: Peter A. Greene, 1625 K Street NW., Washington, D.C. 20006. Petitioner holds a motor *contract carrier* permit in No. MC 129456 (Sub-No. 6), issued April 2, 1973, authorizing transportation, as pertinent, over irregular routes, of *Cash letters*, From Buffalo, N.Y., to the port of entry at the United States-Canada Boundary line located at or near the Niagara River and Buffalo, N.Y., under a continuing contract, or contracts, with Marine Midland Bank-Western.

By the instant petition, petitioner seeks to add the Canadian Imperial Bank of Commerce, Commerce Court, Toronto, Ontario, Canada, as an additional contracting shipper in the above-described authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 129558 (Sub-No. 3) (Notice of filing of petition to add a destination state), filed June 24, 1975. Petitioner: ROY ROSS, doing business as ROY ROSS TRUCKING COMPANY, 297 Spruce St., P.O. Box 405, Gallipolis, Ohio 45631. Petitioner's representative: James R. Stiverson, 1396 West Fifth Avenue, Columbus, Ohio 43212. Petitioner holds a motor *contract carrier* permit in No. MC 129558 (Sub-No. 3), issued July 3, 1972, authorizing transportation, over irregular routes, of *Meats, meat products*, and *meat by-products*, and *articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and liquid commodities in bulk), from Bidwell and Xenia, Ohio, to points in Pennsylvania, under a continuing contract or contracts with Bob Evans Farms, Inc., of Columbus, Ohio.

By the instant petition, petitioner seeks to add points in Maryland to the destination territory in the above authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 129863 (Sub-No. 7) (Notice of filing of petition to modify territorial description), filed June 13, 1975. Petitioner: FREDERICK L. BULTMAN, INC., 11144 W. Silver Spring Drive, Milwaukee, Wis. 53225. Petitioner's representative: Richard C. Alexander, 710 North Plankinton Avenue, Milwaukee, Wis. 53203. Petitioner holds a motor

*contract carrier* permit in No. MC 129863 (Sub-No. 7), issued May 5, 1975, authorizing transportation, over irregular routes, of (1) *Electric light bulbs, fluorescent tubes, and display racks*, From the plant site of General Electric Company, Lamp Division, at Milwaukee, Wis., to Rockford and Freeport, Ill., and Cedar Rapids and Davenport, Iowa; and (2) *Returned shipments* of the commodities named above, From Rockford and Freeport, Ill., and Cedar Rapids and Davenport, Iowa, to the plant site of General Electric Company, Lamp Division, at Milwaukee, Wis., under a continuing contract, or contracts, with General Electric Company, Lamp Division.

By the instant petition, petitioner seeks to add Clinton and Dubuque, Iowa, as additional destination points in (1) above, and as additional origin points in (2) above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 138003 (Sub-No. 2) (Notice of filing of petition to add a contracting shipper), filed June 23, 1975. Petitioner: ROBERT F. KAZIMOUR, 1200 Norwood Drive SE., P.O. Box 2011, Cedar Rapids, Iowa 52403. Petitioner's representative: A. J. Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, Nebr. 68501. Petitioner holds a motor *contract carrier* permit in No. MC 138003 (Sub-No. 2), issued May 19, 1975, authorizing transportation, as pertinent, over irregular routes, of *Appliances, furnaces*, and *air conditioners*, Between points in Iowa, California, Washington, Idaho, Oregon, Arizona, Utah, Nevada, Montana, and Tennessee, under a continuing contract, or contracts, with Lennox Industries, Inc., of Marshalltown, Iowa.

By the instant petition, petitioner seeks to add General Electric Company of Louisville, Ky., as an additional contracting shipper in the above-described authority. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

## APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 C.F.R. 1.240.)

## MOTOR CARRIERS OF PROPERTY

Applications for certificates or permits which are to be processed concurrently with applications under section 5 governed by special rule 240 to the extent applicable.

No. MC 114273 (Sub-No. 235), filed June 6, 1975. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, Iowa 52406. Applicant's representative: Robert E. Konchar, Suite 315 Commerce Exchange Building, 2720 First Avenue NE., P.O. Box 1943, Cedar Rapids, Iowa 52406. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Iron and steel articles*, and *nonferrous metals* and *plastic articles* moving in mixed shipments with iron and steel articles, from points in the Chicago, Ill., Commercial Zone, as defined by the Commission, and those points in Illinois south of a line extending from Lake Michigan along the Cook-Lake County Boundary line to intersection Illinois Highway 53, and points east of a line extending from the intersection of Illinois Highway 53 and the Cook-Lake County Boundary line southerly along Illinois Highway 53 to intersection Palatine Road, thence easterly along Palatine Road to intersection Roselle Road, thence southerly along Roselle Road to intersection Interstate Highway 90, thence easterly along Interstate Highway 90 to intersection County Highway D, thence southerly along County Highway D to intersection U.S. Highway 20, thence southeasterly along U.S. Highway 20 to intersection Gary Avenue, thence southerly along Gary Avenue to intersection Illinois Highway 64, thence easterly along Illinois Highway 64 to intersection Bloomingdale Road.

Thence southerly along Bloomingdale Road to intersection Roosevelt Road, thence easterly along Roosevelt Road to intersection Bryant Avenue, thence southerly along Bryant Avenue to intersection Butterfield Road, thence easterly along Butterfield Road to intersection Highland Avenue, thence southerly along Highland Avenue to intersection Main Street (Downers Grove), thence southerly along Main Street to intersection 75th Street, thence easterly along 75th Street to intersection Cass Avenue, thence southerly along Cass Avenue to intersection Illinois State Highway 83, thence southerly along Illinois Highway 83 to intersection Illinois Highway 171, thence southerly along Illinois State Highway 171 to intersection Bell Road, thence southerly along Bell Road to intersection Cook-Will County Boundary line, thence easterly, southerly, easterly and southerly along said county boundary line to intersection of U.S. Highway 30, and points in Illinois north of U.S. Highway 30; points in that part of Indiana on and north of U.S. Highway 20, Cincinnati, Dayton and Hamilton, Ohio; points in that part of Ohio on and north of U.S. Highway 20 extending from the Ohio-Indiana State Boundary line to and including Toledo, Ohio, Midland, Mich.; and points in that part of Michigan on and south of a line beginning at Benton Harbor, and extending along U.S. Highway 12 to Marshall, thence on and east of U.S. Highway 27 to St. Louis, thence on and south of Michigan Highway 46 to Saginaw, thence on and east of Michigan Highway 47 to Bay City, thence on and south of Michigan Highway 25 to intersection U.S. Highway 25.

Thence on and south of U.S. Highway 25 from said intersection to Detroit; and points in that part of Pennsylvania on and west of U.S. Highway 119 and on and south of U.S. Highway 442, to points in Colorado, Iowa, and Minnesota. The purpose of this filing is to eliminate a gateway at Chicago, Ill.

(B) *General Commodities* (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), Between Chicago, Ill., and points in its Commercial Zone as defined by the Commission and those points in that part of Illinois south of a line extending from Lake Michigan along the Cook-Lake County Boundary line to intersection Illinois Highway 53, and points east of a line extending from the intersection of Illinois Highway 53 and the Cook-Lake County Boundary line southerly along Illinois Highway 53, to intersection Palatine Road, thence easterly along Palatine Highway 53 to intersection Roselle Road, thence southerly along Roselle Road to intersection Interstate Highway 90, thence easterly along Interstate Highway 90 to intersection County Highway D, thence southerly along County Highway D to intersection U.S. Highway 20, thence southeasterly along U.S. Highway 20 to intersection Gary Avenue, thence southerly along Gary Avenue to intersection Illinois Highway 64, thence easterly along Illinois Highway 64 to intersection Bloomingdale Road, thence southerly along Bloomingdale Road to intersection Roosevelt Road.

Thence easterly along Roosevelt Road to intersection Bryant Avenue, thence southerly along Bryant Avenue to intersection Butterfield Road, thence easterly along Butterfield Road to intersection Highland Avenue, thence southerly along Highland Avenue to intersection Main Street (Downers Grove), thence southerly along Main Street to intersection 75th Street, thence easterly along 75th Street to intersection Cass Avenue, thence southerly along Cass Avenue to intersection Illinois State Highway 83, thence southerly along Illinois Highway 83 to intersection Illinois Highway 171, thence southerly along Illinois State Highway 171 to intersection Bell Road, thence southerly along Bell Road to intersection Cook-Will County Boundary line, thence easterly, southerly, easterly and southerly along said county boundary line to intersection U.S. Highway 30; and points in Illinois north of U.S. Highway 30 on the one hand, and, on the other, points in Ohio. The purpose of this filing is to eliminate the gateway at Dayton, Ohio.

(C) (1) *Glass closures and rubber rings* for glass containers, and *wooden and paper cases and labels* for use in connection with the sale and distribution of glass containers, from points in the Chicago, Ill., Commercial Zone, as defined by the Commission, and those points in Illinois south of a line extending from Lake Michigan along the Cook-Lake County Boundary line to intersection Illinois Highway 53, and points east of a line extending from the intersection of

Illinois Highway 53 and the Cook-Lake County Boundary line southerly along Illinois Highway 53 to intersection Palatine Road, thence easterly along Palatine Road to intersection Roselle Road, thence southerly along Roselle Road to intersection Interstate Highway 90, thence easterly along Interstate Highway 90 to intersection County Highway D, thence southerly along County Highway D to intersection U.S. Highway 20, thence southeasterly along U.S. Highway 20 to intersection Gary Avenue, thence southerly along Gary Avenue to intersection Illinois Highway 64, thence easterly along Illinois Highway 64 to intersection Bloomingdale Road, thence southerly along Bloomingdale Road to intersection Roosevelt Road, thence easterly along Roosevelt Road to intersection Bryant Avenue, thence southerly along Bryant Avenue to intersection Butterfield Road, thence easterly along Butterfield Road to intersection Highland Avenue.

Thence southerly along Highland Avenue to intersection Main Street (Downers Grove), thence southerly along Main Street to intersection 75th Street, thence easterly along 75th Street to intersection Cass Avenue, thence southerly along Cass Avenue to intersection Illinois State Highway 83, thence southerly along Illinois Highway 83 to intersection Illinois Highway 171, thence southerly along Illinois State Highway 171 to intersection Bell Road, thence southerly along Bell Road to intersection Cook-Will County Boundary line, thence easterly, southerly, easterly and southerly along said county boundary line to intersection of U.S. Highway 30, and points in Illinois north of U.S. Highway 30; to points in Virginia; and (2) *such commodities* as are used or sold by dealers in five- and-ten-cent store merchandise, between points in the Chicago, Ill., Commercial Zone, as defined by the Commission, and those points in Illinois south of a line extending from Lake Michigan along the Cook-Lake County Boundary line to intersection Illinois Highway 53, and points east of a line extending from the intersection of Illinois Highway 53 and the Cook-Lake County Boundary line southerly along Illinois Highway 53 to intersection Palatine Road, thence easterly along Palatine Road to intersection Roselle Road, thence southerly along Roselle Road to intersection Interstate Highway 90, thence easterly along Interstate Highway 90 to intersection County Highway D, thence southerly along County Highway D to intersection U.S. Highway 20.

Thence southeasterly along U.S. Highway 20 to intersection Gary Avenue, thence southerly along Gary Avenue to intersection Illinois Highway 64, thence easterly along Illinois Highway 64 to intersection Bloomingdale Road, thence southerly along Bloomingdale Road to intersection Roosevelt Road, thence easterly along Roosevelt Road to intersection Bryant Avenue, thence southerly along Bryant Avenue to intersection Butterfield Road, thence easterly along Butterfield Road to intersection Highland Avenue, thence southerly along Highland Avenue to intersection Main Street (Downers Grove), thence southerly along Main Street to intersection 75th Street, thence easterly along 75th Street to intersection Cass Avenue, thence southerly along Cass Avenue to intersection Illinois State Highway 83, thence southerly along Illinois Highway 83 to intersection Illinois Highway 171, thence southerly along Illinois State Highway 171 to intersection Bell Road, thence southerly along Bell Road to intersection Cook-Will County Boundary line, thence easterly, southerly, easterly, and southerly along said county boundary line to intersection of U.S. Highway 30, and points in Illinois north of U.S. Highway 30; on the one hand, and, on the other, points in Alabama, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia, and the District of Columbia. The purpose of this filing is to eliminate a gateway at Pittsburgh, Pa.

NOTE.—Common control may be involved. This is a gateway elimination request and is directly related to a Section 5(2) proceeding No. MC-F-12498 published in the FEDERAL REGISTER issue of April 30, 1975. The territorial description pertaining to points in Illinois has been modified by applicant upon request by the Commission in order to conform to the standards set forth in *Glennon Transports, Inc., Extension-New York, N.Y.*, 78 M.C.C. 157 (1958). If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 126588 (Sub-No. 3), filed June 16, 1975. Applicant: KERR MOTOR LINES, INC., 1/4 Jackson Street, Binghamton, N.Y. 13903. Applicant's representative: Norman M. Pinsky, 345 South Warren Street, Syracuse, N.Y. 13202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between points in Montgomery County, N.Y., on the one hand, and, on the other, Albany, Fulton, Herkimer, Montgomery, Otsego, Saratoga, Schenectady, and Schoharie, N.Y.

NOTE.—By the instant application, applicant seeks to convert a Certificate of Registration it is seeking to acquire to a Certificate of Public Convenience and Necessity. This application is a matter directly related to a Section 5(2) proceeding in No. MC-F-12482 published in the FEDERAL REGISTER issue of April 23, 1975. Applicant has also filed concurrently in MC 126588 (Sub-No. 2), an application to permit tacking of the combined authorities and to eliminate the resulting gateway. Notice of this request was published in the FEDERAL REGISTER issue of May 21, 1975. If a hearing is deemed necessary, applicant requests it be held at either Syracuse, N.Y., or Washington, D.C.

No. MC-F-12573. Authority sought for purchase by NOBLE TRANSPORT, INC., P.O. Box 17-B, Denver, CO 80217, of a portion of the operating rights and property of R. CLYDE ASHWORTH, doing business as ASHWORTH TRANSFER, INC., 1526 South 700 W. St., Salt Lake City, UT 84104, and for acquisition by B. F. WALKER, INC., also of Denver, CO 80217, of control of such rights and property through the purchase. Applicants' attorneys: Richard P. Kissinger, P.O. Box 17-B, Denver, CO 80217, and F. Robert Reeder, P.O. Box 11898, Salt Lake City, UT 84111. Operating rights sought to be transferred: (A)(1) *Commodities*, the transportation of which because of their size or weight require special handling or special equipment, and *commodities* which do not require the use of special equipment or special handling, when moving in connection with size and weight commodities, (2) *iron or steel articles*, as described in Appendix V to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, (3) *explosives*, of various kinds or types; (4) *contractor's material, equipment, and supplies;* (5) *self-propelled articles*, each weighing 15,000 pounds or more and related machinery, tools, parts, and supplies moving in connection therewith; as a *common carrier* over irregular routes, between numerous points in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; (B) *contractor's equipment and supplies*, between points in Colorado, Kansas, Iowa, Missouri, Nebraska, South Dakota, and Wyoming; (C) *building materials*, between numerous points in the States of Arizona, Idaho, Montana, Nevada, Utah, Washington, and Wyoming; (D) *lumber and lumber products*, between numerous points in the States of Colorado, Idaho, Montana, Nevada, Utah, and Wyoming.

(E) *Special-purpose trailers*, of various types, between numerous points in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; (F) *mining equipment and supplies*, between points in Idaho, Nevada, Utah, and Wyoming; (G) *cast iron pressure pipe and fittings*, from Council Bluffs, Iowa, to points in Arizona, Idaho, and Utah; (H) *heavy machinery*, from Boise, Idaho, to points in Washington; (I) *sand*, in bags, from Hamilton, Wash., to Salt Lake City, Utah; (J) *machinery, materials, supplies, and equipment*, incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum; (2) *machinery, materials, supplies, and equipment* incidental to and used in the construction, maintenance, or dismantling of water wells and pipelines; (3) *construction materials and equipment;* (4) *farm equipment* and (5) *pipe*, other than iron and steel together with fittings; between points in California; (K) *self-propelled articles*, each weighing less than 15,000 pounds; from Logan, Utah, to points in Arizona, Colorado, Nevada, and New Mexico; and between points in California. Vendee holds no authority from this Commission. However, it is affiliated with B. F. WALKER, INC., P.O. Box 17-B, Denver CO 80217, MC 74321, which is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has

been filed for temporary authority under section 210a(b).

No. MC–F–12574. Authority sought for control by KENNETH SAVAGE, NEAL SAVAGE, AND T. LUKE SAVAGE, doing business as SAVAGE BROTHERS, 585 South 500 East, American Fork City, Utah County, UT 84003, of R. CLYDE ASHWORTH, doing business as ASHWORTH TRANSFER, INC., 1526 South 700 W. St., Salt Lake City, UT 84100. Applicants' attorneys: Noall T. Wootton, P.O. Box 65, American Fork City, UT 84003, and F. Robert Reeder, 79 S. State St., Salt Lake City, UT 84100. Operating rights sought to be controlled: (A) (1) *Commodities*, the transportation of which because of their size or weight require special handling or special equipment, and *commodities* which do not require the use of special equipment or special handling, when moving in connection with size and weight commodities, (2) *iron or steel articles*, as described in Appendix V to the report *in Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, (3) *explosives*, of various kinds or types; (4) *contractor's material, equipment and supplies;* (5) *self-propelled articles*, each weighing 15,000 pounds or more, and related machinery, tools, parts and supplies moving in connection therewith, as a *common carrier* over irregular routes, between numerous points in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; (B) *contractor's equipment and supplies*, between points in Colorado, Kansas, Iowa, Missouri, Nebraska, South Dakota, and Wyoming; (C) *building materials*, between numerous points in the States of Arizona, Idaho, Montana, Nevada, Utah, Washington, and Wyoming; (D) *lumber and lumber products*, between numerous points in the States of Colorado, Idaho, Montana, Nevada, Utah, and Wyoming; (E) *special-purpose trailers*, of various types, between numerous points in the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming.

(F) *Mining equipment and supplies*, between points in Idaho, Nevada, Utah, and Wyoming; (G) *cast iron pressure pipe and fittings*, from Council Bluffs, Iowa, to points in Arizona, Idaho, and Utah; (H) *heavy machinery*, from Boise, Idaho, to points in Washington; (I) *sand*, in bags, from Hamilton, Wash., to Salt Lake City, Utah; (J) (1) *machinery, materials, supplies, and equipment*, incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum; (2) *machinery, materials, supplies, and equipment* incidental to and used in the construction, maintenance, or dismantling of water wells and pipelines; (3) *construction materials and equipment;* (4) *farm equipment;* and (5) *pipe*, other than iron and steel together with fittings, between points in California; (K) *self-propelled articles*, each weighing less than 15,000 pounds, from Logan, Utah, to points in Arizona, Colorado, Nevada, and New Mexico; and between points in California; *commodities*, the transportation of which because of their size or weight require the use of special equipment or special handling, and *commodities*, which do not require the use of special equipment or special handling, moving in connection with size and weight commodities; *contractor's equipment, materials, and supplies; building materials; self-propelled articles*, each weighing 15,000 pounds or more, and related *machinery, tools, parts, and supplies* moving in connection therewith; special purpose trailers, of various types; iron and steel articles, (1) between points in Colorado, and (2) between points in Utah. SAVAGE BROTHERS, holds no authority with this Commission. However, they are affiliated with SAVAGE BROTHERS, INCORPORATED, 602 E. Main St., American Fork, UT 84003, MC 124160, which is authorized to operate as a *common carrier* in Utah, Wyoming, Idaho, and Nevada. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12576. Authority sought for purchase by M & M TRANSPORTATION COMPANY, 186 Alewife Brook Parkway, Cambridge, MA 02138, of a portion of the operating rights of B & P MOTOR EXPRESS, INC., 720 Gross St., Pittsburgh, PA 15224, and for acquisition by QUALPECO SERVICES, INC., 750 Third Ave., New York, NY 10017, of control of such rights through the purchase. Applicants' attorney: Herbert Burstein, One World Trade Center, New York, NY 10048. Operating rights sought to be transferred: *General commodities*, excepting among others, classes A and B explosives, household goods and commodities in bulk, as a *common carrier* over regular routes, between New York, N.Y., and Philadelphia, Pa., serving all intermediate points on the specified routes, and the off-route points within 10 miles of the specified routes, those in New York within 30 miles of New York N.Y., those in Pennsylvania within 30 miles of City Hall, Philadelphia, those in New Jersey within 30 miles of Newark, and those in New Jersey within 15 miles of City Hall and Camden. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC–F–12577. Authority sought for purchase by LASALLE COUNTY FAST FREIGHT, INC.—Purchase—W. T. MARSHALL TRUCKING, INC., 3237 Terminal Ave., Springfield, IL 62707, and for acquisition by RALPH H. BOELK, R. R. 2, Mendota, IL 61342, of control of such rights through the purchase. Applicants' attorneys: Arnold L. Burke and William H. Towle, 127 N. Dearborn St. Chicago, IL 60602. Operating rights sought to be transferred: *Malt beverages*, as a *common carrier* over irregular routes, from St. Louis, Mo., to points in Illinois. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–12578. Authority sought for purchase by NELSON'S EXPRESS, INC., 675 N. Market St., Millersburg, PA 17061, of a portion of the operating rights of KRAMER'S MOTOR SERVICE AND STORAGE, INC., 402 N. Queen St., York, PA 17405, and for acquisition by WILLIAM G. NELSON, also of Millersburg, PA 17061, of control of such rights through the purchase. Applicant's attorney: John M. Musselman, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Operating rights sought to be transferred: *General commodities*, except those of unusual value, Classes A and B explosives, naptha or gasoline in containers, feathers, commodities requiring refrigeration, and those requiring special equipment, as a *common carrier* over irregular routes, between York, Pa., and points in Pennsylvania within 25 miles of York, on the one hand, and, on the other, points in the District of Columbia, and those in that part of Maryland bounded by a line beginning at the Maryland-Pennsylvania State line and extending along U.S. Highway 1 to Baltimore, Md., thence along U.S. Highway 140 to the Maryland-Pennsylvania State line, and thence along the state line to point of beginning, including points on the indicated portions of the highways specified, from York, Pa., to points in Maryland and Pennsylvania within 35 miles of York, except those in the above-specified portion of Maryland. Vendee is authorized to operate as a *common carrier* in Delaware, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–12579. Authority sought for purchase by MOMSEN TRUCKING CO., 13811 "L" St., Omaha, NE 68137, of the operating rights of MAREAN R. WRIGG, Executrix of the Estate of Max Wrigg, deceased, doing business as WATERLOO FREIGHT SERVICE, Waterloo, NE 68069, and for acquisition by KARL E. MOMSEN, 8210 Poppleton, Omaha, NE 68124, of control of such rights through the purchase. Applicants' attorney: Donald L. Stern, Suite 530 Univac Bldg., 7100 W. Center Rd., Omaha, NE 68106. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC–120086 (Sub-No. 1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Nebraska. Vendee is authorized to operate as a *common carrier* in Iowa, Illinois, Indiana, Nebraska, Minnesota, and South Dakota. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.75–18478 Filed 7–15–75;8:45 am]

[Notice No. 30]

## MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

JULY 16, 1975.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to Sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 C.F.R. Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before August 5, 1975. Pursuant to Section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-75850. By order of July 1, 1975, the Motor Carrier Board on reconsideration approved the transfer to Mensch Trucking, Inc., Philadelphia, Pa., of the operating rights in Certificate No. MC 74846 (Sub-No. 58) issued March 20, 1967, to Lewis G. Johnson, Inc., Port Gibson, N.Y., authorizing the transportation of foodstuffs (except frozen foods, and except foodstuffs, in bulk, in tank vehicles) from the facilities of American Home Foods Division of American Home Products Corporation at or near Milton, Pa., to points in that part of New York on and west of a line beginning at Clayton, N.Y., and extending along New York Highway 12 to Binghamton, N.Y., and thence along U.S. Highway 11 to the New York-Pennsylvania State line. Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048 and Gary L. Blum, 477 Madison Avenue, New York, N.Y. 10022. Attorneys for applicants.

No. MC-FC-75892. By order of July 1, 1975, the Motor Carrier Board approved the transfer to The Columbus Automobile Club, Columbus, Ohio, of License No. MC 130027 issued March 25, 1975, to Travel Associates, Inc., doing business as All-American Motorcoach Tours, Columbus, Ohio, authorizing it to engage in operations as a broker of passengers and their baggage, in special and charter operations, beginning and ending at points in Franklin County, Ohio, and extending to points in the United States (including Alaska but excluding Hawaii). David A. Turano, George, Greek, King, McMahon and McConnaughey, Attorney at Law, 100 E. Broad St., Suite 1800, Columbus, Ohio 43215, Attorney for Applicants.

No. MC-FC-75911. By order of July 3, 1975, the Motor Carrier Board approved the transfer to Service Bus Co., Inc., Yonkers, N.Y., of Certificate No. MC 103210 issued by the Commission October 7, 1974, authorizing the transportation of passengers and their baggage, in round trip charter operations, beginning and ending at Harrison, Rye, Mamoroneck, Port Chester, and White Plains, N.Y., and extending to points in Fairfield County, Conn., and Bergen and Hudson Counties, N.J. Dual operations were authorized. Sidney J. Leshin, Esq., Attorney for Applicants, 575 Madison Avenue, New York, N.Y. 10022.

No. MC-FC-75913. By order entered July 8, 1975, the Motor Carrier Board approved the transfer to Rich-Hill Transportation, Inc., Flemington, N.J., of the operating rights set forth in Certificates Nos. MC 48176 and MC 48176 (Sub-No. 1), issued October 18, 1950, and June 21, 1950, respectively, to LeRoy W. Everett, Flemington, N.J., authorizing the transportation of fertilizer, feed, and lime, from specified points in Pennsylvania, to specified points in New Jersey. Robert F. Danziger, 117 Main St., Flemington, N.J. 08822, attorney for applicants.

No MC-FC-175917. By order of July 2, 1975, the Motor Carrier Board approved the transfer to Durkee Drayage Company, a corporation, San Francisco, Calif., of Certificate of Registration No. MC 121744 issued by the Commission October 8, 1974, to Stanley Fenton, doing business as Durkee Drayage Company, San Francisco, Calif., evidencing authority to perform a transportation service in interstate or foreign commerce corresponding in scope to the intrastate authority in Certificate of Public Convenience and Necessity issued June 25, 1974, by Decision No. 83033, by the Public Utilities Commission of the State of California1. John Paul Fischer, Esq., Silver, Rosen, Fischer & Stecher, Attorney for Applicants, 140 Montgomery Street, San Francisco, Calif. 9404.

No. MC-FC-75942. By order of July 1, 1975, the Motor Carrier Board approved the transfer to D. H. Trucking Co., Lyons, Oreg., of the operating rights in Certificates Nos. MC 126128, MC 126128 (Sub-No. 3), and MC 126128 (Sub-No. 5) issued November 20, 1964, October 28, 1969, and January 25, 1968, respectively, to Dean W. Hobbensiefken, doing business as D. H. Trucking, Lyons, Oreg., authorizing the transportation of lumber, from points in Linn and Benton Counties, Oreg., to the Public Docks at Portland, Oreg.; rough lumber, from Mill City, Oreg., to Portland, Oreg., and lumber, from Turner, Oreg., to Portland, Oreg., restricted to traffic having an immediately subsequent movement by water. George R. Duncan, Jr., 545 Third Street, Stayton, Oreg. 97383, Attorney for applicants.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

[FR Doc.75-18477 Filed 7-15-75;8:45 am]

---

[AB 9 (Sub-No. 4)]

## ST. LOUIS-SAN FRANCISCO RAILWAY CO. Abandonment

In the matter of St. Louis-San Francisco Railway Company abandonment Between Parsons and Dennis, Labette County, Kansas.

Upon consideration of the record in the above-entitled proceeding, and of a staff-prepared environmental threshold assessment survey which is available to the public upon request; and

*It appearing*, That no environmental impact statement need be issued in this proceeding because this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321, *et seq.*; and good cause appearing therefor:

*It is ordered*, That applicant be, and it is hereby, directed to publish the appended notice in a newspaper of general circulation in Labette County, Kans., on or before July 29, 1975 and certify to the Commission that this has been accomplished.

*And it is further ordered*, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secertary of the Commission at Washington, D.C., and by forwarding a copy to the Director, Office of the Federal Register, for publication in the Federal Register.

Dated at Washington, D.C., this 7th day of July, 1975.

By the Commission, Commissioner Deason.

[SEAL] ROBERT L. OSWALD,
*Secretary.*

The Interstate Commerce Commission hereby gives notice that by order dated July 7, 1975, it has been determined that the proposed abandonment by the St. Louis-San Francisco Railway Company of its line from Milepost 172.5 at Parsons to Milepost 179.2 at Dennis, a distance of 6.7 miles, all in Labette County, Kans., if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the volume of traffic involved is low, and U.S. Highway 160, which parallels the line, is adequate and being utilized by trucks to move diverted rail shipments since January 16, 1975, when all traffic on the line ceased. In addition, there is the absence of any historic, safety or ecological impacts associated with the proposal.

This determination was based upon the staff preparation and consideration of an environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-343-2086.

Interested persons may comment on this matter by filing their statements in writing with the Interstate Commerce Commission, Washington, D.C., 20423, on or before August 13, 1975.

This negative environmental determination shall become final unless good and sufficient reason demonstrating why an environmental impact statement should be prepared for this action is submitted to the Commission by the above-specified date.

[FR Doc.75-18483 Filed 7-15-75;8:45 am]

federal register

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

PART II

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Secretary

■

# ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## Corrections and Amendments

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-75-297]

# PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## Corrections and Amendments

On January 7, 1975, the Department of Housing and Urban Development ("HUD" herein) amended Title 24 of the Code of Federal Regulations by adding a new Part 58 to Subtitle A. The new Part 58 was published at 40 FR 1392.

The purpose of Part 58 is to set forth the regulations governing environmental review procedures to be undertaken by applicants for funds under Title I of the Housing and Community Development Act of 1974, Pub. L. 93-383 (the "Act" herein).

The Preamble to the January 7, 1975 regulations contained certain matters which should be corrected for clarification. They are:

1. Preamble, page 1392, paragraph 4, the eighth line from the bottom, after the word "responsibilities", delete the comma and the words "and that the carrying out of NEPA responsibilities by such applicants".

2. Preamble, page 1392, paragraph 6, a comma should be inserted after "1966".

3. Preamble, page 1393, middle column, line 37, the word "register" should read "Register".

4. Preamble, page 1393, middle column, second full paragraph, second line, the word "had" following the comma and after "projects", should read "has".

5. Preamble, page 1393, right hand column, first full paragraph, reference is made to the "Assistant Secretary for Community Planning and Development." This should read, the "Secretary of Housing and Urban Development."

In addition to the editorial corrections, certain changes are needed in the text of Part 58 to conform it to existing law or regulations, provide clarification, or correct technical deficiencies. Principally, these changes include deletion of § 58.2 (b), and addition of new §§ 58.2 (b) and (c). The purpose of this change is to add Federal holidays to the days not counted in computing time periods, and to conform the counting of days in time periods in connection with the issuance of a Draft or Final Environmental Impact Statement ("EIS" herein) under § 58.17 with the method of counting used under Council on Environmental Quality ("CEQ" herein) Guidelines, 40 CFR Part 1500. Under the CEQ Guidelines, Saturdays, Sundays, and holidays are not excluded in computing time periods. The changes in Part 58 also include a provision at § 58.3 excluding payment of administrative costs from the definition of the word "project"; the addition of the U.S. Environmental Protection Agency as an agency to which the applicants must send any Draft EIS, circulated pursuant to § 58.17(e); and clarification of the intent of § 58.18.

The amendments being made to Part 58 generally relax existing requirements and are, particularly with respect to shortened time periods for issuing Environmental Impact Statements under § 58.17, necessary to expedite procedures implementing programs currently delayed under the existing provisions of Part 58. For this reason, the Secretary has determined that comment and public procedure prior to the adoption of these amendments are impracticable and contrary to the public interest and that good cause exists for making these amendments together with the editorial corrections effective upon publication. However, consistent with HUD policy of providing for public comment to the fullest extent feasible, the Department invites interested persons to submit data and suggestions with respect to these amendments. All relevant material received on or before August 18, 1975 will be considered before a final rule is adopted. All submittals should refer to Docket No. R-75-297, and should be filed with the Rules Docket Clerk, Office of General Counsel, Room 10245, 451 7th Street SW., Washington, D.C. 20410. Copies of comments filed will be available during business hours at the above address for examination by interested persons.

Section 104(h) of the Act requires that these regulations may be issued only after consultation with the Council on Environmental Quality. Such consultations have been accomplished. Also, in connection with the issuance of this Part 58 as herein amended as final regulations, a Finding of Inapplicability has been made in accordance with HUD Handbook 1390.1, 38 FR 19182. A copy of the Finding of Inapplicability is available for public inspection at the above address.

Accordingly, Title 24, Part 58 is amended to read as follows:

# PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

### Subpart A—General Policy and Responsibilities

Sec.



### Subpart B—Environmental Reviews by Applicants Under Title I



### Subpart C—Releases of Funds for Particular Projects



AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

## Subpart A—General Policy and Responsibilities

### § 58.1 Purpose and authority.

(a) *Authority*—(1) *Basic law.* The National Environmental Policy Act of 1969 (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (hereinafter "NEPA") establishes national policy, goals and procedures for protecting and enhancing environmental quality. NEPA, as implemented by Executive Order 11514 and the Guidelines of the Council on Environmental Quality, 40 CFR Part 1500 (hereinafter "CEQ", as to the Council, and "CEQ Guidelines") requires in section 102(2)(c), in addition to other responsibilities, that all agencies of the Federal government prepare detailed environmental impact statements on proposals for major Federal actions significantly affecting the quality of the human environment.

(2) *Section 104(h) of Title I of the Housing and Community Development Act of 1974* (Pub. L. 93-383, 42 U.S.C. 5301 et seq.) (hereinafter "section 104(h)" and "Title I" respectively) authorizes a procedure under which applicants with approved applications for assistance under Title I assume for specific projects the environmental review and decision-making responsibilities that would apply to the HUD Secretary were he to undertake such projects as Federal projects. The procedure eliminates the necessity for Federal environmental impact statements at the time of the initial application. At the same time, however, the procedure is intended to assure that NEPA policies and protection of the environment continue undiminished. Under the procedure applicants are to certify prior to any commitment of Title I funds for particular projects (other than funds for general planning or environmental study purposes) that they have met all of their environmental responsibilities in accordance with regulations issued by HUD Secretary, after consultation with CEQ. Approval of such certification by

the Secretary under section 104(h) discharges the responsibilities he may otherwise have had under NEPA with respect to the specific projects covered by the certification. The Secretary is to wait 15 days after receipt before acting upon such a certification, thus giving those who may wish to challenge a certification an opportunity to take appropriate action. That challenge can include suit against the certifying officer or applicant who for purposes of enforcing NEPA has consented to accept the jurisdiction of the Federal courts. Such challenge may also include a request that the Secretary reject the certification. The Secretary will consider a request for rejection of the certification only if such request is grounded on certain bases, as set forth in § 58.31 (b). Under section 104(h) cities, counties and other units of general local government assume only those responsibilities which would apply if the HUD Secretary were to undertake the projects proposed for assistance as Federal projects. Thus, these regulations neither expand nor contract the categories of actions that would be subject to environmental identification and review procedures.

(3) *Other applicable authority.* The environmental review process must also consider, where applicable, the criteria, standards, policies and regulations under the following:

(i) *Historic properties.* The National Historic Preservation Act of 1966 (Pub. L. 89–665); Preservation of Historic and Archeological Data Act of 1974 (Pub. L. 93–291) and regulations which may hereafter be issued; Executive Order 11593, Protection and Enhancement of the Cultural Environment, 1971; Procedures for Protection of Historic and Cultural Properties, Advisory Council on Historic Preservation, 36 CFR Part 800.

(ii) *Noise.* HUD Handbook 1390.2, Noise Abatement and Control, Department Policy, Responsibilities and Standards, 1971.

(iii) *Flood plain.* Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and implementing regulations; Title 24, Chapter X, Subchapter B, National Flood Insurance Program; and Executive Order 11296.

(iv) *Coastal zones and wetlands.* Coastal Zone Management Act of 1972 (Pub. L. 92–583) and applicable State legislation or regulations.

(v) *Air quality.* Clean Air Act (Pub. L. 90–148) and Clean Air Act Amendments of 1970 (Pub. L. 91–604); and applicable U.S. Environmental Protection Agency implementing regulations.

(vi) *Water quality.* Federal Water Pollution Control Act (Pub. L. 92–500) and applicable U.S. Environmental Protection Agency implementing regulations.

(vii) *Wildlife.* Fish and Wildlife Coordination Act (Pub. L. 85–624).

(b) *Purpose.* These regulations implement the requirements of section 104(h), which is intended to assure that the policies of NEPA are most effectively implemented in connection with the expenditure of funds under Title I, and to assure to the public undiminished protection of the environment. The policies of NEPA, in addition to other responsibilities set out in section 2 and Title I of NEPA, require the use of all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

### § 58.2 Time periods.

The days in each time period which must be observed in compliance with this Part shall be counted in accordance with the following:

(a) The first day of such time period shall commence at the first 12:01 a.m. (local time) which shall occur following the action which initiates the time period.

(b) Saturdays, Sundays, and legal holidays under Federal or State law occurring within a time period required by §§ 58.16, 58.30, or 58.31 shall not be counted as a day in such time period, except such legal holidays under Federal or State law on which the applicant maintains business hours shall be counted.

(c) The days counted in each time period required by § 58.17 shall include any Saturday, Sunday, or legal holiday under Federal or State law occurring within such time period.

### § 58.3 Terminology.

For the purposes of this Part, the following terminology shall apply:

*Actions which may significantly affect the quality of the human environment.* Those actions for which section 102(2)(c) of NEPA would require the preparation of an Environmental Impact Statement (EIS). Applicants assuming NEPA responsibilities pursuant to Title I and these regulations shall review each project proposed for fund release under Title I in accordance with the environmental review process described in these regulations in order to determine whether the applicant's request to HUD for the release of Title I funds would constitute an action, were the applicant a Federal agency, which may significantly affect the quality of the human environment.

*Applicant.* The applicant is the State or unit of general local government which makes application pursuant to the provisions of Subpart D or Subpart E of 24 CFR Part 570. One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of general local government to undertake a Community Development Program in whole or in part, but only the State or unit of general local government may be the applicant under the subparts cited above, and under this Part 58. Upon execution of its grant agreement with HUD, an applicant becomes a "recipient" under 24 CFR Part 570. As used in this Part 58, the term "applicant" includes "recipient" under Part 570, where the context so requires.

*Chief executive officer.* The chief executive officer of a unit of local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that unit's governmental affairs. Examples of the "chief executive officer" of a unit of local government may be: The elected mayor of a municipality; the elected county executive of a county; the chairman of a county commission or board in a county that has no elected county executive; the official designated pursuant to law by the governing body of the unit of local government; or the chairman, governor, chief, or president (as the case may be) of an Indian tribe or Alaskan native village.

*Environmental impact.* Any alteration of existing environmental conditions, or creation of a new set of environmental conditions, adverse or beneficial, caused or induced in whole or in part, directly or indirectly, by a proposed project under Title I.

*Environmental Impact Statement* (EIS). A written statement, prepared in accordance with NEPA and CEQ Guidelines using such format as may be acceptable to HUD, describing any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration, and the alternatives to such action or group of actions. The statement should include a quantitative measure of magnitude and a qualitative measure of importance of the environmental impacts.

*Environmental review and environmental review process.* The entire process for compliance by the applicant with NEPA under this Part with respect to a project funded under Title I.

*Level of clearance finding.* The applicant's determination pursuant to §58.15 (d) as to which of the two levels of environmental clearance applies.

*Project.* An activity, or a group of activities as determined by the applicant in its sole discretion, to be assisted under Title I. A project is an "action" within the meaning of the CEQ Guidelines, 40

CFR 1500.5. However, the payment of reasonable administrative costs related to the planning and execution of community development and housing activities, as permitted by section 105(a)(13) of Title I and implementing regulations of HUD, is not regarded as a project for purposes of this Part.

§ 58.4 [Reserved]

§ 58.5 General policy.

(a) *Applicants to assume NEPA responsibilities.* Except as provided at paragraph (b) of this section, all applicants for assistance under Title I shall be required to assume responsibility for carrying out all of the provisions of NEPA relating to particular projects for which the release of funds is sought. In assuming such responsibility, the applicant's chief executive officer or other officer of the applicant approved by HUD shall carry out the responsibilities of the "responsible Federal official" as that term is used in NEPA and applicable regulations thereunder. Such responsibilities include, where applicable, the conduct of environmental reviews; decisionmaking and action as to environmental issues; preparation and circulation of Draft and Final EIS's; and assumption of lead agency responsibilities for preparation of such statements in behalf of Federal agencies other than HUD when such agencies consent to such assumption. The chief executive officer or other officer of the applicant approved by HUD shall be subject to the jurisdiction of the Federal courts pursuant to section 104(h); such chief executive officer or other officer of the applicant approved by HUD shall not be represented by the Department of Justice in court, but reasonable defense costs, including the fees of attorneys and experts, incurred in environmental litigation may be funded from the applicant's grant amounts.

The certification described at § 58.30 must be submitted to HUD by the applicant prior to the release of funds for any such project as evidence of such assumption of responsibility.

(b) *Exception.* HUD shall retain and carry out environmental review responsibilities for applicants found by HUD to lack the legal capacity to assume or carry out such responsibilities (see 24 CFR 570.603—*Environment*).

(1) An applicant wishing to claim such lack of legal capacity shall consult with the HUD official authorized to receive the application in order to obtain appropriate instructions. If an applicant claims lack of legal capacity, such claim shall be made prior to submitting its application, and if such claim is approved by HUD, the application when submitted shall be accompanied by a proposed draft EIS with accompanying comments, as required by 24 CFR 570.603. Submission of an application without the proposed draft EIS and accompanying comments may be deemed by HUD to constitute a waiver of such claim. If, following consultation with the applicant, HUD approves the claim, then the applicant will not be permitted to assume environmental review responsibility for any proposal by it and the approval shall be effective with respect to the Community Development Program (as defined at 24 CFR 570.3(f)) for the program year to which the application pertains, unless an exception is approved by HUD.

(2) Community associations (other than public entities which are also community associations), and private developers approved under Title VII of the Housing and Urban Development Act of 1970 or Title IV of the Housing and Urban Development Act of 1968, are considered by HUD to lack the legal capacity to assume or carry out environmental review responsibilities.

(c) *Environmental review process.* The environmental review process consists of a study by the applicant of each project to identify any environmental impacts of actions proposed to be taken by the applicant which are to be supported, in whole or in part, by Title I funds.

(d) *Determination of impact.* In the environmental review process, the applicant must arrive at a determination as to whether or not any proposed project will result in any environmental impact; the nature, magnitude and extent of any such impact; whether or not any changes could be made in the project as proposed, or alternatives to such project could be adopted, to eliminate or minimize adverse impacts; and the level of environmental clearance which is appropriate. Such determination is largely a matter of judgment on the part of the applicant, involving evaluation of available facts, pursuant to the procedures and guidelines contained in this Part.

(e) *Conditions and safeguards.* If the applicant's environmental review process reveals conditions or safeguards which should be implemented when the project is undertaken, in order to protect or enhance environmental quality or minimize adverse environmental impacts, then such conditions or safeguards shall be set forth in the environmental review record and the applicant shall use all appropriate means to assure that those conditions and safeguards are implemented.

(f) *Decision not to implement.* If, through the environmental review process, the applicant concludes that the proposed project should not be implemented in whole or in part, then the applicant may reprogram to another eligible project, in accordance with the applicable provisions of 24 CFR 570.305.

(g) *Comprehensive and early evaluation.* Environmental review should be conducted on as comprehensive a scale as is feasible and should be commenced as early as practicable. The examination to determine the potential consequences of a proposed project should, if possible, cover the expected period of impact.

§ 58.6 [Reserved]

## Subpart B—Environmental Reviews by Applicants Under Title I

§ 58.7 [Reserved]

§ 58.8 [Reserved]

§ 58.9 Financial assistance for environmental review.

Applicants may utilize Federal financial assistance to enable them to carry out environmental review pursuant to this Part, as follows:

(a) *Ten percent advance.* For the program period beginning January 1, 1975, each applicant eligible to receive Title I grants may request HUD to advance up to ten per centum (10%) of the Title I amount allocated to it, in order to plan and prepare for the implementation of activities to be assisted under Title I. The planning and conduct of environmental reviews relating to the preparation of Title I applications and projects thereunder may be so funded. (See 24 CFR 570.302).

(b) *Funding costs of environmental review.* After HUD approval of its Title I application, any applicant may utilize its Title I funds for environmental studies relating to the applicant's community development program for the program year, or subsequent program years.

(c) *Comprehensive planning assistance grants (701).* Applicants eligible to receive HUD 701 Comprehensive Planning Assistance grants may request 701 funds for the development of environmental review systems as part of their comprehensive planning activities.

§ 58.10 [Reserved]

§ 58.11 Environmental review record.

Applicants shall prepare and maintain a written record of the environmental review pertaining to each project, which shall be designated the "Environmental Review Record", and shall be available for review as part of the project proposal at the request of interested agencies, groups or individuals. The environmental review record, using such format as may be acceptable to HUD, shall include as applicable:

(a) A description of the project to which it relates;

(b) Documentation showing that each step in the environmental review process set forth in § 58.15 has been performed, that the level of clearance finding required by § 58.15(d) has been made, and is supported in the environmental review record;

(c) Documentation showing that each step in the environmental review process under § 58.16 or § 58.17, as the case may be, has been performed, and that the requirements of applicable subsections have been satisfied;

(d) A description of the existing environmental conditions, the environmental impacts identified and modifications and changes made to compensate for environmental impacts;

(e) A copy of any Draft EIS, and the comments on it, and the Final EIS;

(f) Copies of historic preservation review analyses conducted under 36 CFR Part 800, showing satisfaction with each step of such process and support for any conclusion reached in connection therewith;

(g) The written decision required by § 58.19(c) with respect to projects to which § 58.19(c) is applicable;

(h) A copy of the notice required by § 58.30(a), the request required by § 58.30(b), and the certification and accompanying statement required by § 58.30(c);

(i) A copy of any environmental objection received which pertains to the project;

(j) A copy of any request for a waiver, and any waiver that may by issued under § 58.25(a);

(k) Evidence of any determination of the "lead agency" under § 58.27;

(l) Copies of environmental analyses or reports, conducted under State or local law; and

(m) Original counterparts or copies, as appropriate, of other documents appropriate in the judgment of the applicant for inclusion in the environmental review record.

§ 58.12 [Reserved]

§ 58.13 [Reserved]

§ 58.14 [Reserved]

**§ 58.15 Steps to commence environmental review process.**

The manner in which the applicant carries out the environmental review process, including the concurrent historic preservation review, and other reviews required by the authorities set forth in § 58.1(a), is largely within the discretion of the applicant. However, the process shall include the following steps:

(a) *Determine existing conditions.* Existing environmental conditions and trends which are likely to occur absent implementation of the proposed project should be identified. Such information is an essential data base from which to assess and evaluate any effects of the project.

(b) *Identify environmental impacts.* An identification of the nature, magnitude and extent of all environmental impacts of the project, whether beneficial or adverse, should be identified.

(c) *Examine identified impacts.* As to all environmental impacts of the proposed project which are identified:

(1) *Possible project modification.* Examine the project and consider ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize any adverse environmental impacts and enhance environmental quality. The examination should include consideration in light of the policies set forth in § 58.1(b) of both positive and negative effects of any such modification in relation to design, use, location, cost, and timing of the proposed project and its implementation.

(2) *Alternative projects.* Examine alternatives to the project itself which would eliminate or minimize environmental impacts or enhance environmental quality. The examination should include consideration of both positive and negative effects of any such alternatives in relation to design, use, location, cost, and timing, and consideration of the effect of no project.

(d) *Level of clearance finding.* Having completed each of the foregoing steps that may be applicable in the environmental review process, the applicant shall make one of the two level of clearance findings set forth below:

(1) *Finding that request for release of funds for project is not an action which may significantly affect the quality of human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is not an action which may significantly affect the quality of the human environment, then a document stating this finding and the facts and reasons supporting the finding shall be prepared by the applicant and included in the environmental review record. The document shall set forth sufficient information to assure that each step in the environmental review process has been complied with, and applicant's conclusion upon performance of each such step. (See §§ 58.15 and 58.16.) However, compliance with other applicable laws and regulations set forth in § 58.1(a)(3) is nevertheless required.

(2) *Finding that request for release of funds for project is an action which may significantly affect the quality of the human environment.* If the environmental review process of the applicant results in a finding by the applicant that the request for release of funds for the proposed project is an action which may significantly affect the quality of the human environment, then a document stating this finding shall be prepared by the applicant and included in the environmental review record. An EIS is required for each action which may have such significant effect.

**§ 58.16 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is not an action which may significantly affect the environment (no EIS).**

The following procedure shall be followed where the level of clearance finding is that specified in § 58.15(d)(1):

(a) *Notice of finding of no significant effect.* The applicant shall prepare a Notice of Finding of No Significant Effect on the Environment using such format as may be acceptable to HUD. Such notice may be brief, but shall: (1) identify the project to which the clearance relates; (2) state that the applicant has found that the project has no significant effect on the environment; (3) set forth the facts and reasons for such decision; (4) state that the applicant has made an Environmental Review Record respecting the project and indicate when and where the Environmental Review Record may be examined and copied; (5) state, if applicable, that no further environmental review of such project is proposed to be conducted and that the applicant intends to request HUD to release funds for such project; (6) indicate that comments may be submitted to the applicant until a certain date which shall not be less than 15 days following its first publication and dissemination; (7) state the name and address of the applicant and the chief executive officer of applicant; and (8) be dated as of the time it is first published and disseminated.

(b) *Publication and dissemination.* The Notice of Finding of No Significant Effect on the Environment shall be published and disseminated in the same manner as a Notice of Intent to File an EIS, as described as §58.17(b) and will provide at least 15 days from the date of initial publication for public comment.

(c) *Completion.* Following publication and dissemination of the Notice of Finding of No Significant Effect on the Environment and the expiration of any time fixed for comments, the environmental review process shall be complete, unless further proceedings are found by the applicant to be necessary, due to responses to such notice, or otherwise.

**§ 58.17 Steps to complete environmental review process where level of clearance finding is that the request for the release of funds for project is an action which may significantly affect the environment (EIS required).**

The following procedure shall be followed where the level of clearance finding is that specified in §58.15(d)(2):

(a) *Notice of intent to file an EIS.* As soon as practicable, the applicant shall prepare a Notice of Intent to File an EIS. Such notice may be brief, but shall: (1) Identify the project(s) to which the EIS will relate; (2) solicit the comments of all interested parties respecting the environmental impacts of such project(s) and indicate the time, manner and form in which such comments may be submitted to the applicant; (3) specify an estimated date for completion and distribution of the Draft EIS, and (4) state the name and address of the applicant and the chief executive officer of the applicant.

(b) *Publication and dissemination.* Copies of the Notice of Intent to File an EIS shall be sent to the local news media, individuals and groups known to be interested in the applicant's activities, local, state, and Federal agencies, the A-95 clearinghouse and others believed appropriate by the applicant. Such notice shall be published at least once in a newspaper of general circulation in the affected community, and shall be filed with the HUD official authorized to receive the application.

(c) *Public hearings—procedure.* Prior to the preparation and distribution of a Draft EIS, the applicant shall determine whether it will conduct one or more public hearings at which the public may be heard respecting the preparation and contents of the Draft EIS. The applicant should also determine whether or not separate public hearings shall be held concerning the Draft EIS, or whether such public hearings shall be combined with other public hearings pertaining to the application of the applicant. All such public hearings concerning a Draft EIS shall be preceded by a Notice of Public Hearing, which shall be published and disseminated in the same manner as a Notice of Intent to File an EIS, as set forth in § 58.17(b), at least fifteen days prior to such hearing, and which shall: (1) State the date, time, place and pur-

pose of the hearing; (2) describe the project, its estimated costs and the project area; (3) state that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard; (4) state the name and address of the applicant and chief executive officer of the applicant; and (5) state where the Draft EIS can be obtained, whether in person or by mail, and any charges that may apply.

(d) *Public hearings—factors to consider.* The determination of whether or not public hearings shall be held prior to distribution of a Draft EIS or after such distribution, or at any other time during the environmental review process, shall be within the reasonable discretion of the applicant. In determining whether or not to hold such public hearings on environmental issues, either separately, or in combination with other proceedings relating to the application of the applicant, the following factors should be considered: (1) The magnitude of the projects, in terms of economic costs, the geographic area involved, and the uniqueness of size of commitment of the resources involved; (2) the degree of interest in or controversy concerning the projects, as evidenced by requests from the public, or from Federal, State or local authorities, for information, or that a hearing be held; (3) the complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the applicant in carrying out its environmental responsibilities respecting the particular projects; (4) the extent to which public involvement has been achieved with respect to environmental concerns through other means, such as other public hearings, citizen participation in the development of the applicant's community development program and in formulation of its application, meeting with citizen representatives and written comments on the particular projects.

(e) *Draft EIS.* A Draft EIS shall be prepared in accordance with CEQ Guidelines (40 CFR Part 1500). Copies of the Draft EIS shall be sent by applicant to CEQ (5 copies), and simultaneously to Federal agencies to the U.S. Environmental Protection Agency, except HUD) whose areas of jurisdiction by law or special expertise are involved, to OMB-designated A–95 clearinghouses, to appropriate local agencies and entities, including local and area planning agencies, and groups or individuals known by the applicant to have an interest in the proposed action of the applicant. The CEQ Guidelines (Appendix II) set forth a listing of the Federal agency jurisdictions and special expertise. Copies shall also be made available to the public. Upon filing of the Draft EIS with CEQ, a notice that the applicant has prepared a Draft EIS will be published by CEQ in the FEDERAL REGISTER. Commencing on the date of such publication, there shall be a minimum review period of 45 days for the Draft EIS, plus any extensions thereof initiated or granted by the applicant. A Draft EIS must be on file with CEQ at least 90 days prior to submission to HUD of a certification and request for release of funds for the particular projects pursuant to § 58.30.

(f) *Final EIS.* A Final EIS shall be prepared in accordance with CEQ Guidelines (40 CFR Part 1500). The Final EIS must take into account and must respond to the comments received as the result of circulation of the Draft EIS. The Final EIS, including all comments received and the applicant's responses thereto, shall be filed with CEQ (5 copies), and simultaneously sent to all agencies and individuals who commented on the Draft EIS, to the Environmental Protection Agency, A–95 clearinghouses, appropriate Federal, state, regional and local agencies, and shall be made available to the public. A final EIS must be on file with CEQ not less than 30 days prior to submission to HUD of a certification and request for release of funds for the particular project pursuant to § 58.30. If the Final EIS is filed within 90 days after publication by CEQ in the FEDERAL REGISTER of Notice of Receipt of the Draft EIS, then the minimum 30 day period for review of the Final EIS, and the 90 day period provided for in § 58.17(e) will run concurrently, to the extent that they overlap.

### § 58.18 Limitation on action pending clearance.

During the environmental review process and pending completion of the appropriate environmental clearance procedures, the applicant may not use any funds to take any action with respect to the project under review where such action might have an adverse environmental effect, would limit choices among competing alternatives, or might alter the environmental premises on which the pending clearance is based in such fashion that the validity of the conclusions to be reached would be affected. Except as to exempt activities under § 58.21, no Title I funds will be released for a project until the Secretary shall approve said release of funds and the related certification. (See §§ 58.30, 58.31 and 58.32). No Title I funds may be used to reimburse project costs subject to this Part which have been incurred in advance of the Secretary's approval of the release of such funds and the related certification.

### § 58.19 Continuation of previous activities.

(a) *Original or updated environmental review.* A project which is a continuation of a previously commenced activity or activities for which no environmental review or clearance has been completed or for which previously conducted environmental reviews are insufficient due to changed circumstances, including the availability of additional data or advances in technology, must be subjected to an original or updated environmental review under this Part. Such review shall be carried out with respect to the entire project to the extent that the entire project or portions of it could still be altered in light of environmental considerations.

(b) *Procedures governing updated reviews.* The following procedures shall govern the updating of environmental reviews:

(1) A new level of clearance finding shall be made which shall take into account the information theretofore developed and the new factors.

(2) If information relating to such factors arises after a Draft EIS has been transmitted for circulation, but prior to the expiration date for receipt of comments, then a copy of any revision, amendment, addendum to the Draft EIS, or other issuance, shall be transmitted to all parties to whom the Draft EIS was transmitted, and to all parties who have commented thereon, and, where appropriate, the applicant shall extend the time for comment on the Draft EIS.

(3) If the time for comments on the Draft EIS has expired, but the Final EIS has not been circulated, then any revision, amendment or addendum to the Draft EIS shall be transmitted to all parties to whom the Draft EIS was transmitted and to all parties who commented thereon, and a reasonable time for receipt of comments shall be fixed and allowed. The Final EIS shall then reflect the additional factors and contain the comments and responses respecting them.

(4) If the Final EIS has been circulated, then it shall be revised and reissued or an addendum thereto shall be prepared and distributed, as appropriate, to all parties to whom the Final EIS was distributed and to others who have commented thereon. Such revision or addendum shall be subject to the same review and comment procedures, including those respecting time, as the Final EIS which is being updated.

(c) *No new environmental review.* A project which is a continuation of a previously commenced activity or activities for which environmental review or clearance has been completed and for which circumstances, including the availability of additional data or advances in technology, have not changed significantly, requires no new environmental review or clearance by virtue of such project's funding under Title I. The applicant shall prepare a written decision to that effect, which shall set forth the reasons therefor.

### § 58.20 [Reserved]

### § 58.21 Exempt Activities.

(a) Certain activities eligible for assistance under Title I are exempt from the requirements of this Part, and are set forth below:

(1) Environmental studies;

(2) Purposes authorized by Section 105(a)(12) of Title I, including activities necessary:

(i) To develop a comprehensive community development plan; and

(ii) To develop a policy-planning-management capacity; and

(3) For the first program year beginning on or after January 1, 1975, and only if the sole source of Federal funds is an advance pursuant to 24 CFR 570.302, activities necessary:

(i) To plan and prepare for the implementation of activities to be assisted under Title I; and

(ii) To continue previously approved urban renewal (including Neighborhood Development Program) activities being carried out under Title I of the Housing Act of 1949 or previously approved model cities activities being carried out under Title I of the Demonstration Cities and Metropolitan Development Act of 1966. The phrase "previously approved" in the preceding sentence shall mean those urban renewal and model cities activities that were approved and funded by HUD on or before June 30, 1974.

(b) The exemption from review pursuant to this Part does not exempt applicants from other reviews which may be required pursuant to the authorities set forth in § 58.1(a).

§ 58.22 and § 58.23 [Reserved]

§ 58.24 Historic preservation.

Applicants must comply with the following requirements relating to the Preservation of Historic and Archeological Data Act of 1974, Section 106 of the National Historic Preservation Act of 1966 and Executive Order 11593 whenever any property or district included in, or found by the Secretary of the Interior pursuant to 36 CFR Part 800 to be eligible for inclusion in, the National Register provided for by such Act, is in the boundaries, or within the vicinity of, a project which is to be funded, in whole or in part, by Title I funds.

(a) As part of the environmental review process each project shall be examined in accordance with the Procedures for Protection of Historic and Cultural Properties (36 CFR Part 800) for the purpose of identifying any National Register and National Register-eligible properties and determining whether or not the project may affect the property. If the property is not affected by the project, the applicant shall so state, in the environmental review record.

(b) If the project will affect the property, the applicant, as part of the environmental review process, shall carry out the procedures set forth at 36 CFR Part 800.

§ 58.25 Projects requiring an EIS.

The following types of projects require the preparation and dissemination of an EIS:

(a) Projects which would remove, demolish, convert or emplace a total of 500 or more dwelling units, unless the project is otherwise assisted by HUD and HUD waives the requirement for an EIS pursuant to HUD's general environment review regulations (HUD Circular 1390.1 (38 FR 19182, July 18, 1973) as amended (39 FR 38922, November 4, 1974)).

(b) Water and sewer facilities projects which will serve undeveloped areas of 100 acres or more.

§ 58.26 [Reserved]

§ 58.27 Interaction of applicant and Federal agencies—lead agency role.

(a) *Interaction with agencies other than HUD.* Where a project is to be jointly funded by one or more Federal agencies other than HUD and by HUD under Title I, and the preparation of an EIS is required by this Part, a single agency, either the applicant or the other Federal agency, should assume responsibility as the "lead agency" for the preparation and clearance of an EIS, with the other agencies providing assistance. In the event that the regulations of none of the Federal agencies other than HUD require an EIS for such project, but the applicant determines under this part that an EIS is required then the applicant shall assume the "lead agency" role, or shall otherwise prepare an EIS, which shall comprehend the actions of the other Federal agency or agencies related to the project, as provided in the CEQ Guidelines, 40 CFR 1500.7(b).

(b) *Joint reviews—designation of lead agency.* All determinations respecting joint environmental review or designation of a "lead agency" to perform an environmental review shall be made and agreed upon between the applicant and any Federal agency involved, where practicable. In the event an applicant and a Federal agency are unable to reach such agreement, the applicant shall notify HUD, and HUD, with the advice and assistance of CEQ, will seek to obtain such agreement.

§ 58.28–58.29 [Reserved]

## Subpart C—Releases of Funds for Particular Projects

§ 58.30 Release of funds upon certification.

An applicant which has completed all applicable environmental review and clearance requirements as provided in this Part with respect to a proposed project and which desires to submit a request to HUD for the release of Title I funds for the project, shall comply with the following:

(a) *Publication of notice.* An applicant shall, at least five (5) days prior to submitting its request for release of funds and certification, publish in a newspaper of general circulation in the community affected, a notice to the public, which shall:

(1) Specify the date upon which the request and certification will be submitted to HUD by the applicant;

(2) Specify that such request and certification relate to the application of the applicant for a grant of funds under Title I;

(3) Briefly describe the project;

(4) State that the applicant has prepared an environmental review record respecting the projects for which release of funds is sought, and specify when and where the same may be examined by the public and copies thereof obtained;

(5) State the name and address of the applicant and of the chief executive officer of applicant; and

(6) Include the following text, completed as indicated:

(*Name of applicant*) will undertake the project described above with Block Grant funds from the U.S. Department of Housing and Urban Development (HUD), under Title I of the Housing and Community Development Act of 1974. (*name of applicant*) is certifying to HUD that (*name of applicant*) and (*chief executive officer*, or other officer of applicant approved by HUD), in his/her official capacity as (*office*), consent to accept the jurisdiction of the Federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decisionmaking, and action; and that these responsibilities have been satisfied. The legal effect of the certification is that upon its approval, (*name of applicant*) may use the Block Grant funds, and HUD will have satisfied its responsibilities under the National Environmental Policy Act of 1969. HUD will accept an objection to its approval of the release of funds and acceptance of the certification only if it is on one of the following bases: (a) That the certification was not in fact executed by the chief executive officer or other officer of applicant approved by HUD; or (b) that applicant's environmental review record for the project indicates omission of a required decision, finding, or step applicable to the project in the environmental review process. Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58), and may be addressed to HUD at (*complete area office address; or the Denver Regional Office address in Region VIII*). Objections to the release of funds on bases other than those stated above will not be considered by HUD. No objection received after (*date of last day in the 15-day period*) will be considered by HUD.

(b) *Request for release of funds—Form.* A request for release of funds pursuant to this Part shall be addressed to the HUD officer authorized to receive the application of applicant, shall be executed by the chief executive officer or other officer of applicant approved by HUD, and may be submitted with or as part of an application, or at any time after submittal of an application. Such request shall in all cases by accompanied by the certification of the applicant as stated at § 58.30(c) and shall:

(1) State the name and address of the applicant;

(2) State that the applicant requests the release of funds for particular projects, identify such projects and state the amount of funds requested to be released as to each;

(3) Be accompanied by the certification described in paragraph (c).

(c) *Certification-Form.* A certification pursuant to this Part shall be addressed to the HUD officer authorized to receive the application of applicant, and shall:

(1) State the name and address of the applicant and be executed by the chief executive officer or other officer of applicant approved by HUD;

(2) Specify that the applicant has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the projects named in the request for release of funds;

(3) Specify the levels of all environmental clearances carried out by the applicant in connection with each project pertaining to the certification;

(4) Specify the dates upon which any statutory or regulatory time period for review, comment, or other response or action in regard to each such environmental clearance commenced and has expired, or will expire, and that with the expiration of each statutory or regulatory time period the applicant is in com-

pliance with the requirements of this Part;

(5) Specify that the chief executive officer or other officer of applicant approved by HUD is authorized to consent to assume the status of a responsible Federal official, under NEPA, insofar as the provisions of NEPA apply to the HUD responsibilities for environmental review, decision making and action assumed and carried out by the applicant, and that the chief executive officer or other officer of applicant approved by HUD so consents; by so consenting, the chief executive officer or other officer of applicant approved by HUD assumes the responsibilities, where applicable, for the conduct of environmental reviews, decision making, and action as to environmental issues; preparation and circulation of Draft and Final EIS's; and assumption of lead agency responsibilities for preparation of such statements on behalf of Federal agencies other than HUD when such agencies consent to such assumption;

(6) Specify that the chief executive officer or other officer of applicant approved by HUD is authorized to consent, personally, and on behalf of the applicant, to accept the jurisdiction of the Federal courts, for the enforcement of all responsibilities referred to in § 58.30(c)(5); and that the chief executive officer or other officer of applicant approved by HUD so consents on behalf of the applicant and himself in his official capacity only;

(7) Be accompanied by a statement, over the signature of the attorney for the applicant, that the chief executive officer or other officer of applicant approved by HUD so consents on behalf of the applicant and himself in his official capacity only; that the applicant and the stating chief executive officer or other officer of applicant approved by HUD, are authorized and empowered by law to make the certification (or, that HUD has as a matter of fact so found), and that the same was duly made by the applicant and the chief executive officer or other officer of applicant approved by HUD, in accordance with such authority and power; and if applicant made a claim of lack of legal capacity pursuant to § 58.5(b) and such claim was denied, that there has been no final decision by a court of competent jurisdiction or legislation which has become effective since the denial of such claim which may affect such denial.

(8) Be accompanied by a statement, over the signature and seal of the clerk or other authenticating officer of the applicant, stating that the chief executive officer or other officer of applicant approved by HUD is duly authorized to execute this certification, and that he did execute the same.

**§ 58.31 Objections to release of funds.**

HUD shall not approve the release of funds for any project until fifteen (15) days (as calculated pursuant to §58.2) have elapsed from the time HUD shall have received the applicant's request for the release of such funds and the certification pertaining thereto. Applicants shall not commit any funds which are the subject of any request for the release of funds to any project prior to HUD's approval of such request. Any person or agency may object to an applicant's request for the release of funds and the certification pertaining thereto, but HUD will consider such objections only if the conditions set forth in paragraphs (a) and (b) of this section are satisfied, and the procedures in paragraph (d) of this section are followed. HUD can refuse the request and certification on the grounds set forth in paragraph (b) of this section. Any decision by HUD approving or disapproving the request for the release of funds and the certification pertaining thereto shall be final.

(a) *Time for objecting.* HUD must receive objections within fifteen (15) days from the time HUD shall have received the applicant's request for the release of funds and the certification pertaining thereto.

(b) *Permissible Bases:* (1) That the certification was not, in fact, executed by the chief executive officer or other officer of the applicant approved by HUD;

(2) That the applicant's environmental review record indicates that applicant has omitted to make one of the two level of clearance findings pursuant to § 58.15(d), or to make the decision required by § 58.19(c), for the project, as applicable;

(3) That the applicant's environmental review record, with regard to a project for which the level of clearance finding in § 58.15(d)(1) was made, indicates that the applicant has omitted one or more of the steps set forth at: § 58.15(a); § 58.15(b); § 58.15(c)(1); § 58.15(c)(2); § 58.16(a); or, § 58.16(b);

(4) That the applicant's environmental review record, with regard to a project for which the level of clearance finding in § 58.15(d)(2) was made, indicates that the applicant has omitted one or more of the steps set forth at: § 58.17(a); § 58.17(b); § 58.17(c) only if applicant has decided to conduct a public hearing as a part of its environmental review of the project; § 58.17(e); or § 58.17(f);

(5) That the applicant's environmental review record indicates that, with respect to a property listed on the National Register of Historic Places, or found to be eligible by the Secretary of Interior pursuant to 36 CFR Part 800 for inclusion in such Register, and which is affected by the project, no opportunity was given to the Advisory Council on Historic Preservation or its Executive Director to review the effect of the project on the property in accordance with the procedures set forth at 36 CFR Part 800; or,

(6) That with respect to a project for which the applicant has decided that § 58.19(c) applies, the applicant has failed to include in the environmental review record the written decision required pursuant to § 58.19(c).

(c) *Public and agency objections.* The only bases upon which HUD will consider the objection of any person or agency to the certification of an applicant, or to the approval by HUD of such certification, are set forth at § 58.31(b). Other objections will not be considered by HUD; but may be addressed to the applicant, and the chief executive officer of the applicant.

(d) *Procedure.* A person or agency objecting to an applicant's request for the release of funds and the certification pertaining thereto shall:

(1) Submit such objection in writing, to the HUD officer authorized to receive the application of the applicant;

(2) Specify the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of the agency;

(3) Be dated when signed;

(4) Specify the bases for objection, and the facts or legal authority relied upon in support of the objection;

(5) Indicate that a copy of the objections has been mailed or delivered to the chief executive officer of the applicant.

**§ 58.32 Effect of approval of certification.**

(a) *NEPA responsibilities of HUD.* The approval by HUD of the certification of an applicant is deemed to satisfy the responsibilities of the Secretary under NEPA insofar as those responsibilities relate to the application and releases of funds under Title I for projects which are covered by such certification.

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental assessments covered by an approved certification shall deal with the applicant and not with HUD. It shall be the policy of HUD, following the approval of a certification, not to respond to inquires and complaints seeking such redress, and only to refer such inquiries and complaints to the applicant and the certifying officer of the applicant. Other remedies for noncompliance, in addition to those stated in this Part, are set forth at 24 CFR 570.913.

*Effective date.* These regulations are effective on July 16, 1975.

CARLA A. HILLS,
*Secretary of Housing and Urban Development.*

[FR Doc.75-18236 Filed 7-15-75;8:45 am]

federal register

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

PART III

# DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Low Income Housing

■

# PROPOSED FAIR MARKET RENTS FOR HOUSING ASSISTANCE PAYMENTS PROGRAMS

Amendment of Schedule B; Interim Rule

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Low Income Housing

### [ 24 CFR Part 888 ]

[Docket No. R-75-311]

### FAIR MARKET RENTS FOR HOUSING ASSISTANCE PAYMENTS PROGRAMS

### Amendment of Schedule B; Interim Rule

On April 7, 1975, the Department published Fair Market Rents for Housing Assistance Payments Programs, section 8—Existing Housing and section 23—Existing Housing. Since April 7, 1975, additional comments and data have been received indicating continuing need to revise these rents in light of the most recent data available. This material, submitted by interested members of the general public as well as HUD Field Offices, has generally indicated a need to increase the published rents in order to meet specific local housing market or submarket conditions. The following Fair Market Rent schedules for local housing markets and submarkets are proposed amendments to Schedule B of Part 888 of Title 24.

Prior to making these Fair Market Rents effective, the Assistant Secretary for Housing Production and Mortgage Credit-FHA Commissioner has determined it to be reasonable and in the public interest to allow for a 15-day comment period.

By nature, the Fair Market Rent Schedule is subject to continuous revision where data and information indicate change is needed. If, upon consideration of the information and comments, it is determined that further revision of these rents is appropriate, Schedule B will again be amended to reflect those changes as soon as practicable.

Issued at Washington, D.C., July 9, 1975.

DAVID M. DEWILDE,
*Acting Assistant Secretary for Housing Production and Mortgage Credit-FHA, Commissioner.*

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 2 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SAN JUAN, P. R. AREA OFFICE | | | | | | |
| SMSA:SAN JUAN | NON-ELEVATOR: | 152 | 172 | 202 | 232 | 253 |
| | ELEVATOR: | 167 | 189 | 222 | 255 | 278 |
| SMSA:PONCE | NON-ELEVATOR: | 153 | 173 | 204 | 224 | 244 |
| | ELEVATOR: | 168 | 190 | 224 | 246 | 268 |
| SMSA:MAYAGUEZ | NON-ELEVATOR: | 124 | 140 | 165 | 182 | 198 |
| | ELEVATOR: | 136 | 154 | 182 | 200 | 218 |
| SMSA:CAGUAS | NON-ELEVATOR: | 119 | 135 | 159 | 175 | 191 |
| | ELEVATOR: | 131 | 149 | 175 | 193 | 210 |
| NON SMSA MUNICIPIO | NON-ELEVATOR: | 113 | 128 | 151 | 166 | 181 |
| | ELEVATOR: | 124 | 141 | 166 | 183 | 199 |
| REGION 3 | | | | | | |
| BALTIMORE,MARYLAND AREA OFFICE | | | | | | |
| SMSA:BALTIMORE, MD<br>COUNTY:HOWARD EX. COLUMBIA<br>STATE:MD | NON-ELEVATOR:<br>ELEVATOR: | 124<br>136 | 141<br>155 | 168<br>184 | 194<br>213 | 220<br>242 |
| :-COLUMBIA(U) | NON-ELEVATOR: | 150 | 180 | 210 | 240 | 270 |
| | ELEVATOR: | 165 | 198 | 231 | 264 | 297 |
| PHILADELPHIA,PENNSYLVANIA AREA OFFICE | | | | | | |
| NON SMSA COUNTIES<br>COUNTY:LEBANON<br>STATE:PA | NON-ELEVATOR:<br>ELEVATOR: | 102<br>112 | 116<br>128 | 138<br>152 | 160<br>176 | 175<br>192 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 4 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| **JACKSON,MISSISSIPPI AREA OFFICE** | | | | | | |
| SMSA:MEMPHIS, TN-AR-MS | | | | | | |
| COUNTY:DE SOTO | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:MS | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| **JACKSONVILLE,FLORIDA AREA OFFICE** | | | | | | |
| SMSA:PENSACOLA, FL | | | | | | |
| COUNTY:ESCAMBIA | NON-ELEVATOR: | 110 | 125 | 149 | 172 | 187 |
| STATE:FL | ELEVATOR: | 121 | 138 | 164 | 189 | 206 |
| COUNTY:SANTA ROSA | NON-ELEVATOR: | 110 | 125 | 149 | 172 | 187 |
| STATE:FL | ELEVATOR: | 121 | 138 | 164 | 189 | 206 |
| SMSA:TALLAHASSEE, FL | | | | | | |
| COUNTY:LEON | NON-ELEVATOR: | 105 | 120 | 142 | 157 | 173 |
| STATE:FL | ELEVATOR: | 116 | 132 | 156 | 173 | 190 |
| COUNTY:WAKULLA | NON-ELEVATOR: | 105 | 120 | 142 | 157 | 173 |
| STATE:FL | ELEVATOR: | 116 | 132 | 156 | 173 | 190 |
| **LOUISVILLE,KENTUCKY AREA OFFICE** | | | | | | |
| SMSA:CLARKSVILLE-HOPKINSVILLE, TN-KY | | | | | | |
| COUNTY:CHRISTIAN | NON-ELEVATOR: | 99 | 113 | 134 | 149 | 163 |
| STATE:KY | ELEVATOR: | 109 | 124 | 147 | 164 | 179 |
| **MEMPHIS,TENNESSEE INSURING OFFICE** | | | | | | |
| SMSA:MEMPHIS, TN-AR-MS | | | | | | |
| COUNTY:SHELBY | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:TIPTON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:MADISON | NON-ELEVATOR: | 80 | 92 | 110 | 122 | 134 |
| STATE:TN | ELEVATOR: | 89 | 101 | 122 | 134 | 147 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 4 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| NASHVILLE,TENNESSEE INSURING OFFICE | | | | | | |
| SMSA:CLARKSVILLE-HOPKINSVILLE, TN-KY | | | | | | |
| COUNTY:MONTGOMERY | NON-ELEVATOR: | 99 | 113 | 134 | 149 | 163 |
| STATE:TN | ELEVATOR: | 109 | 124 | 147 | 164 | 179 |
| SMSA:NASHVILLE-DAVIDSON, TN | | | | | | |
| COUNTY:CHEATHAM | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:DAVIDSON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:DICKSON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:ROBERTSON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:RUTHERFORD | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:SUMNER | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:WILLIAMSON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| COUNTY:WILSON | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:TN | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:PUTNAM | NON-ELEVATOR: | 74 | 85 | 101 | 112 | 123 |
| STATE:TN | ELEVATOR: | 81 | 94 | 111 | 123 | 135 |
| COUNTY:WARREN | NON-ELEVATOR: | 74 | 85 | 101 | 112 | 123 |
| STATE:TN | ELEVATOR: | 81 | 94 | 111 | 123 | 135 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 4 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| TAMPA,FLORIDA INSURING OFFICE | | | | | | |
| SMSA:DAYTONA BEACH, FL | | | | | | |
| COUNTY:VOLUSIA | NON-ELEVATOR: | 100 | 114 | 135 | 151 | 165 |
| STATE:FL | ELEVATOR: | 110 | 125 | 149 | 166 | 182 |
| SMSA:TAMPA-ST PETERSBURG, FL | | | | | | |
| COUNTY:HILLSBOROUGH | NON-ELEVATOR: | 109 | 124 | 147 | 171 | 186 |
| STATE:FL | ELEVATOR: | 120 | 136 | 162 | 188 | 205 |
| COUNTY:PASCO | NON-ELEVATOR: | 109 | 124 | 147 | 171 | 186 |
| STATE:FL | ELEVATOR: | 120 | 136 | 162 | 188 | 205 |
| COUNTY:PINELLAS | NON-ELEVATOR: | 109 | 124 | 147 | 171 | 186 |
| STATE:FL | ELEVATOR: | 120 | 136 | 162 | 188 | 205 |
| REGION 5 | | | | | | |
| CINCINNATI,OHIO INSURING OFFICE | | | | | | |
| SMSA:DAYTON, OH | | | | | | |
| COUNTY:GREENE | NON-ELEVATOR: | 132 | 151 | 178 | 206 | 225 |
| STATE:OH | ELEVATOR: | 145 | 166 | 196 | 227 | 248 |
| COUNTY:MONTGOMERY | NON-ELEVATOR: | 132 | 151 | 178 | 206 | 225 |
| STATE:OH | ELEVATOR: | 145 | 166 | 196 | 227 | 248 |
| COUNTY:PREBLE | NON-ELEVATOR: | 132 | 151 | 178 | 206 | 225 |
| STATE:OH | ELEVATOR: | 145 | 166 | 196 | 227 | 248 |
| COLUMBUS,OHIO AREA OFFICE | | | | | | |
| SMSA:DAYTON, OH | | | | | | |
| COUNTY:MIAMI | NON-ELEVATOR: | 132 | 151 | 178 | 206 | 225 |
| STATE:OH | ELEVATOR: | 145 | 166 | 196 | 227 | 248 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 5 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SPRINGFIELD,ILLINOIS INSURING OFFICE | | | | | | |
| SMSA:ST LOUIS, MO-IL | | | | | | |
| COUNTY:CLINTON | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:IL | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:MADISON | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:IL | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:MONROE | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:IL | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:ST CLAIR | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:IL | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| REGION 6 | | | | | | |
| ALBUQUERQUE,NEW MEXICO INSURING OFFICE | | | | | | |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:CHAVES | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| COUNTY:CURRY | NON-ELEVATOR: | 94 | 106 | 125 | 138 | 150 |
| STATE:NM | ELEVATOR: | 103 | 117 | 138 | 152 | 165 |
| COUNTY:DONA ANA | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| COUNTY:EDDY | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| COUNTY:LEA | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| COUNTY:OTERO | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| COUNTY:SAN JUAN | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 162 |
| STATE:NM | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6. | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| DALLAS,TEXAS AREA OFFICE | | | | | | |
| SMSA:SHERMAN-DENISON, TX | | | | | | |
| COUNTY:GRAYSON | NON-ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| STATE:TX | ELEVATOR: | 108 | 121 | 143 | 157 | 172 |
| SMSA:TYLER, TX | | | | | | |
| COUNTY:SMITH | NON-ELEVATOR: | 90 | 102 | 120 | 132 | 144 |
| STATE:TX | ELEVATOR: | 99 | 112 | 132 | 145 | 158 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:ANDERSON | NON-ELEVATOR: | 83 | 94 | 111 | 122 | 133 |
| STATE:TX | ELEVATOR: | 91 | 103 | 122 | 134 | 146 |
| COUNTY:COOKE | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:DELTA | NON-ELEVATOR: | 80 | 91 | 107 | 118 | 128 |
| STATE:TX | ELEVATOR: | 88 | 100 | 118 | 130 | 141 |
| COUNTY:GREGG | NON-ELEVATOR: | 90 | 102 | 120 | 132 | 144 |
| STATE:TX | ELEVATOR: | 99 | 112 | 132 | 145 | 158 |
| COUNTY:HOPKINS | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:HUNT | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:LAMAR | NON-ELEVATOR: | 80 | 91 | 107 | 118 | 128 |
| STATE:TX | ELEVATOR: | 88 | 100 | 118 | 130 | 141 |
| COUNTY:RUSK | NON-ELEVATOR: | 83 | 94 | 111 | 122 | 133 |
| STATE:TX | ELEVATOR: | 91 | 103 | 122 | 134 | 145 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| **FORT WORTH,TEXAS INSURING OFFICE** | | | | | | |
| SMSA:ABILENE, TX | | | | | | |
| COUNTY:CALLAHAN | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| COUNTY:JONES | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| COUNTY:TAYLOR | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| SMSA:SAN ANGELO, TX | | | | | | |
| COUNTY:TOM GREEN | NON-ELEVATOR: | 90 | 102 | 120 | 132 | 144 |
| STATE:TX | ELEVATOR: | 99 | 112 | 132 | 145 | 158 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:ERATH | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:MONTAGUE | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:PALO PINTO | NON-ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| STATE:TX | ELEVATOR: | 108 | 121 | 143 | 157 | 172 |
| **HOUSTON,TEXAS INSURING OFFICE** | | | | | | |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:ANGELINA | NON-ELEVATOR: | 83 | 94 | 111 | 122 | 133 |
| STATE:TX | ELEVATOR: | 91 | 103 | 122 | 134 | 145 |
| COUNTY:NACOGDOCHES | NON-ELEVATOR: | 83 | 94 | 111 | 122 | 133 |
| STATE:TX | ELEVATOR: | 91 | 103 | 122 | 134 | 145 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| LITTLE ROCK,ARKANSAS AREA OFFICE | | | | | | |
| SMSA:FAYETTEVILLE-SPRINGDALE, AR | | | | | | |
| COUNTY:BENTON | NON-ELEVATOR: | 88 | 99 | 117 | 130 | 143 |
| STATE:AR | ELEVATOR: | 97 | 108 | 128 | 143 | 157 |
| COUNTY:WASHINGTON | NON-ELEVATOR: | 88 | 99 | 117 | 130 | 143 |
| STATE:AR | ELEVATOR: | 97 | 108 | 128 | 143 | 157 |
| SMSA:FORT SMITH, AR-OK | | | | | | |
| COUNTY:CRAWFORD | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:AR | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| COUNTY:SEBASTIAN | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:AR | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| SMSA:MEMPHIS, TN-AR-MS | | | | | | |
| COUNTY:CRITTENDEN | NON-ELEVATOR: | 120 | 136 | 162 | 186 | 204 |
| STATE:AR | ELEVATOR: | 131 | 150 | 177 | 205 | 223 |
| SMSA:PINE BLUFF, AR | | | | | | |
| COUNTY:JEFFERSON | NON-ELEVATOR: | 86 | 96 | 114 | 127 | 139 |
| STATE:AR | ELEVATOR: | 95 | 106 | 125 | 140 | 154 |
| SMSA:TEXARKANA, TX-AR | | | | | | |
| COUNTY:LITTLE RIVER | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:AR | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| COUNTY:MILLER | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:AR | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| COUNTY:BOWIE | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:TX | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:CRAIGHEAD | NON-ELEVATOR: | 85 | 96 | 113 | 127 | 139 |
| STATE:AR | ELEVATOR: | 94 | 106 | 124 | 140 | 153 |
| COUNTY:GARLAND | NON-ELEVATOR: | 78 | 88 | 104 | 116 | 127 |
| STATE:AR | ELEVATOR: | 86 | 97 | 115 | 128 | 140 |

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| LITTLE ROCK, ARKANSAS AREA OFFICE | | | | | | |
| COUNTY:MISSISSIPPI | NON-ELEVATOR: | 85 | 96 | 113 | 127 | 139 |
| STATE:AR | ELEVATOR: | 94 | 106 | 124 | 140 | 153 |
| COUNTY:POINSETT | NON-ELEVATOR: | 85 | 96 | 113 | 127 | 139 |
| STATE:AR | ELEVATOR: | 94 | 106 | 124 | 140 | 153 |
| COUNTY:ST FRANCIS | NON-ELEVATOR: | 85 | 96 | 113 | 127 | 139 |
| STATE:AR | ELEVATOR: | 94 | 106 | 124 | 140 | 153 |
| LUBBOCK, TEXAS INSURING OFFICE | | | | | | |
| SMSA:AMARILLO, TX | | | | | | |
| COUNTY:POTTER | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| COUNTY:RANDALL | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| SMSA:LUBBOCK, TX | | | | | | |
| COUNTY:LUBBOCK | NON-ELEVATOR: | 101 | 115 | 135 | 149 | 160 |
| STATE:TX | ELEVATOR: | 111 | 127 | 149 | 164 | 179 |
| SMSA:MIDLAND, TX | | | | | | |
| COUNTY:MIDLAND | NON-ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| STATE:TX | ELEVATOR: | 108 | 121 | 143 | 157 | 172 |
| SMSA:ODESSA, TX | | | | | | |
| COUNTY:ECTOR | NON-ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| STATE:TX | ELEVATOR: | 108 | 121 | 143 | 157 | 172 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:DEAF SMITH | NON-ELEVATOR: | 92 | 104 | 122 | 134 | 146 |
| STATE:TX | ELEVATOR: | 101 | 114 | 134 | 147 | 161 |
| COUNTY:GRAY | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:HALE | NON-ELEVATOR: | 89 | 100 | 118 | 130 | 142 |
| STATE:TX | ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| COUNTY:HOWARD | NON-ELEVATOR: | 98 | 110 | 130 | 143 | 156 |
| STATE:TX | ELEVATOR: | 108 | 121 | 143 | 157 | 172 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| NEW ORLEANS,LOUISIANA AREA OFFICE | | | | | | |
| SMSA:BATON ROUGE, LA | | | | | | |
| COUNTY:ASCENSION | NON-ELEVATOR: | 117 | 134 | 158 | 183 | 200 |
| STATE:LA | ELEVATOR: | 129 | 147 | 174 | 201 | 220 |
| COUNTY:E BATON ROUGE | NON-ELEVATOR: | 117 | 134 | 158 | 183 | 200 |
| STATE:LA | ELEVATOR: | 129 | 147 | 174 | 201 | 220 |
| COUNTY:LIVINGSTON | NON-ELEVATOR: | 117 | 134 | 158 | 183 | 200 |
| STATE:LA | ELEVATOR: | 129 | 147 | 174 | 201 | 220 |
| COUNTY:W BATON ROUGE | NON-ELEVATOR: | 117 | 134 | 158 | 183 | 200 |
| STATE:LA | ELEVATOR: | 129 | 147 | 174 | 201 | 220 |
| SMSA:LAFAYETTE, LA | | | | | | |
| COUNTY:LAFAYETTE | NON-ELEVATOR: | 88 | 101 | 120 | 138 | 151 |
| STATE:LA | ELEVATOR: | 97 | 111 | 132 | 152 | 166 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:IBERIA | NON-ELEVATOR: | 88 | 101 | 120 | 138 | 151 |
| STATE:LA | ELEVATOR: | 97 | 111 | 132 | 152 | 166 |
| COUNTY:ST LANDRY | NON-ELEVATOR: | 88 | 101 | 120 | 138 | 151 |
| STATE:LA | ELEVATOR: | 97 | 111 | 132 | 152 | 166 |
| COUNTY:WASHINGTON | NON-ELEVATOR: | 65 | 74 | 88 | 98 | 108 |
| STATE:LA | ELEVATOR: | 71 | 81 | 97 | 108 | 118 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| OKLAHOMA CITY,OKLAHOMA AREA OFFICE | | | | | | |
| SMSA:LAWTON, OK | | | | | | |
| COUNTY:COMANCHE | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:CARTER | NON-ELEVATOR: | 80 | 90 | 107 | 119 | 130 |
| STATE:OK | ELEVATOR: | 88 | 99 | 117 | 130 | 143 |
| COUNTY:CUSTER | NON-ELEVATOR: | 92 | 103 | 122 | 141 | 154 |
| STATE:OK | ELEVATOR: | 101 | 113 | 134 | 155 | 170 |
| COUNTY:GARFIELD | NON-ELEVATOR: | 92 | 103 | 122 | 141 | 154 |
| STATE:OK | ELEVATOR: | 101 | 113 | 134 | 155 | 170 |
| COUNTY:GRADY | NON-ELEVATOR: | 92 | 103 | 122 | 141 | 154 |
| STATE:OK | ELEVATOR: | 101 | 113 | 134 | 155 | 170 |
| COUNTY:KAY | NON-ELEVATOR: | 84 | 95 | 112 | 129 | 140 |
| STATE:OK | ELEVATOR: | 92 | 105 | 123 | 142 | 154 |
| COUNTY:KINGFISHER | NON-ELEVATOR: | 84 | 95 | 112 | 129 | 140 |
| STATE:OK | ELEVATOR: | 92 | 105 | 123 | 142 | 154 |
| COUNTY:PAYNE | NON-ELEVATOR: | 98 | 111 | 131 | 152 | 166 |
| STATE:OK | ELEVATOR: | 108 | 122 | 144 | 167 | 183 |
| COUNTY:PONTOTOC | NON-ELEVATOR: | 80 | 90 | 107 | 119 | 130 |
| STATE:OK | ELEVATOR: | 88 | 99 | 117 | 130 | 143 |
| COUNTY:TEXAS | NON-ELEVATOR: | 87 | 99 | 116 | 133 | 145 |
| STATE:OK | ELEVATOR: | 96 | 109 | 128 | 146 | 160 |
| COUNTY:WOODWARD | NON-ELEVATOR: | 84 | 95 | 112 | 129 | 140 |
| STATE:OK | ELEVATOR: | 92 | 105 | 123 | 142 | 154 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SAN ANTONIO,TEXAS AREA OFFICE | | | | | | |
| SMSA:BROWNSVILLE-HARLINGEN-SAN BENITO, TX | | | | | | |
| COUNTY:CAMERON | NON-ELEVATOR: | 104 | 118 | 140 | 162 | 178 |
| STATE:TX | ELEVATOR: | 114 | 129 | 154 | 179 | 195 |
| SMSA:CORPUS CHRISTI, TX | | | | | | |
| COUNTY:NUECES | NON-ELEVATOR: | 115 | 131 | 155 | 178 | 197 |
| STATE:TX | ELEVATOR: | 127 | 144 | 171 | 198 | 217 |
| COUNTY:SAN PATRICIO | NON-ELEVATOR: | 115 | 131 | 155 | 178 | 197 |
| STATE:TX | ELEVATOR: | 127 | 144 | 171 | 198 | 217 |
| SMSA:LAREDO, TX | | | | | | |
| COUNTY:WEBB | NON-ELEVATOR: | 104 | 118 | 140 | 162 | 178 |
| STATE:TX | ELEVATOR: | 114 | 129 | 154 | 170 | 195 |
| SMSA:MC ALLEN-PHARR-EDINBURG, TX | | | | | | |
| COUNTY:HIDALGO | NON-ELEVATOR: | 104 | 118 | 140 | 162 | 178 |
| STATE:TX | ELEVATOR: | 114 | 129 | 154 | 179 | 195 |
| SMSA:SAN ANTONIO, TX | | | | | | |
| COUNTY:BEXAR | NON-ELEVATOR: | 115 | 131 | 155 | 178 | 197 |
| STATE:TX | ELEVATOR: | 127 | 144 | 171 | 198 | 217 |
| COUNTY:COMAL | NON-ELEVATOR: | 115 | 131 | 155 | 178 | 197 |
| STATE:TX | ELEVATOR: | 127 | 144 | 171 | 198 | 217 |
| COUNTY:GUADALUPE | NON-ELEVATOR: | 115 | 131 | 155 | 178 | 197 |
| STATE:TX | ELEVATOR: | 127 | 144 | 171 | 198 | 217 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:MAVERICK | NON-ELEVATOR: | 89 | 100 | 119 | 132 | 145 |
| STATE:TX | ELEVATOR: | 98 | 110 | 131 | 145 | 160 |
| COUNTY:VICTORIA | NON-ELEVATOR: | 100 | 114 | 135 | 149 | 164 |
| STATE:TX | ELEVATOR: | 110 | 125 | 148 | 164 | 180 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SHREVEPORT,LOUISIANA INSURING OFFICE | | | | | | |
| SMSA:ALEXANDRIA, LA | | | | | | |
| COUNTY:GRANT | NON-ELEVATOR: | 92 | 105 | 124 | 144 | 157 |
| STATE:LA | ELEVATOR: | 101 | 115 | 137 | 158 | 173 |
| COUNTY:RAPIDES | NON-ELEVATOR: | 92 | 105 | 124 | 144 | 157 |
| STATE:LA | ELEVATOR: | 101 | 115 | 137 | 158 | 173 |
| SMSA:MONROE, LA | | | | | | |
| COUNTY:OUACHITA | NON-ELEVATOR: | 92 | 105 | 124 | 144 | 157 |
| STATE:LA | ELEVATOR: | 101 | 115 | 137 | 158 | 173 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:NATCHITOCHES | NON-ELEVATOR: | 74 | 85 | 101 | 117 | 128 |
| STATE:LA | ELEVATOR: | 82 | 93 | 110 | 129 | 141 |
| COUNTY:HARRISON | NON-ELEVATOR: | 76 | 86 | 101 | 111 | 121 |
| STATE:TX | ELEVATOR: | 84 | 95 | 111 | 122 | 133 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 6 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| TULSA,OKLAHOMA INSURING OFFICE | | | | | | |
| SMSA:FORT SMITH, AR-OK | | | | | | |
| COUNTY:LE FLORE | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:OK | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| COUNTY:SEQUOYAH | NON-ELEVATOR: | 83 | 93 | 110 | 128 | 140 |
| STATE:OK | ELEVATOR: | 91 | 102 | 121 | 140 | 154 |
| SMSA:TULSA, OK | | | | | | |
| COUNTY:CREEK | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| COUNTY:MAYES | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| COUNTY:OSAGE | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| COUNTY:ROGERS | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| COUNTY:TULSA | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| COUNTY:WAGONER | NON-ELEVATOR: | 109 | 122 | 145 | 167 | 182 |
| STATE:OK | ELEVATOR: | 120 | 135 | 159 | 183 | 200 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:OTTAWA | NON-ELEVATOR: | 80 | 90 | 107 | 119 | 130 |
| STATE:OK | ELEVATOR: | 88 | 99 | 117 | 130 | 143 |
| COUNTY:PITTSBURG | NON-ELEVATOR: | 77 | 86 | 102 | 113 | 124 |
| STATE:OK | ELEVATOR: | 85 | 95 | 112 | 125 | 137 |
| COUNTY:WASHINGTON | NON-ELEVATOR: | 90 | 101 | 120 | 138 | 150 |
| STATE:OK | ELEVATOR: | 99 | 111 | 132 | 152 | 165 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 7 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| ST.LOUIS,MISSOURI AREA OFFICE | | | | | | |
| SMSA:COLUMBIA, MO | | | | | | |
| COUNTY:BOONE | NON-ELEVATOR: | 121 | 138 | 163 | 182 | 198 |
| STATE:MO | ELEVATOR: | 133 | 152 | 179 | 200 | 218 |
| SMSA:ST LOUIS, MO-IL | | | | | | |
| COUNTY:FRANKLIN | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:MO | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:JEFFERSON | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:MO | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:ST CHARLES | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:MO | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:ST LOUIS | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:MO | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| COUNTY:ST LOUIS CTY | NON-ELEVATOR: | 134 | 154 | 182 | 211 | 239 |
| STATE:MO | ELEVATOR: | 147 | 169 | 200 | 232 | 263 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:ADAIR | NON-ELEVATOR: | 113 | 130 | 153 | 171 | 186 |
| STATE:MO | ELEVATOR: | 124 | 142 | 168 | 188 | 205 |
| COUNTY:CALLAWAY | NON-ELEVATOR: | 113 | 130 | 153 | 171 | 186 |
| STATE:MO | ELEVATOR: | 124 | 142 | 168 | 188 | 205 |
| COUNTY:CAPE GIRARDEAU | NON-ELEVATOR: | 98 | 111 | 130 | 143 | 156 |
| STATE:MO | ELEVATOR: | 108 | 122 | 143 | 157 | 172 |
| COUNTY:SCOTT | NON-ELEVATOR: | 98 | 111 | 130 | 143 | 156 |
| STATE:MO | ELEVATOR: | 108 | 122 | 143 | 157 | 172 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 8 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SALT LAKE CITY,UTAH INSURING OFFICE | | | | | | |
| SMSA:PROVO-OREM, UT | | | | | | |
| COUNTY:UTAH | NON-ELEVATOR: | 113 | 128 | 150 | 165 | 180 |
| STATE:UT | ELEVATOR: | 122 | 139 | 163 | 179 | 196 |
| SMSA:SALT LAKE CITY-OGDEN, UT | | | | | | |
| COUNTY:DAVIS | NON-ELEVATOR: | 119 | 134 | 160 | 184 | 200 |
| STATE:UT | ELEVATOR: | 130 | 149 | 174 | 200 | 217 |
| COUNTY:SALT LAKE | NON-ELEVATOR: | 119 | 134 | 160 | 184 | 200 |
| STATE:UT | ELEVATOR: | 130 | 149 | 174 | 200 | 217 |
| COUNTY:TOOELE | NON-ELEVATOR: | 119 | 134 | 160 | 184 | 200 |
| STATE:UT | ELEVATOR: | 130 | 149 | 174 | 200 | 217 |
| COUNTY:WEBER | NON-ELEVATOR: | 119 | 134 | 160 | 184 | 200 |
| STATE:UT | ELEVATOR: | 130 | 149 | 174 | 200 | 217 |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:UINTAH | NON-ELEVATOR: | 97 | 111 | 131 | 144 | 158 |
| STATE:UT | ELEVATOR: | 107 | 122 | 144 | 160 | 174 |
| SOUIX FALLS,SOUTH DAKOTA INSURING OFFICE | | | | | | |
| SMSA:SIOUX FALLS, SD | | | | | | |
| COUNTY:MINNEHAHA | NON-ELEVATOR: | 131 | 149 | 175 | 192 | 210 |
| STATE:SD | ELEVATOR: | 144 | 164 | 193 | 211 | 231 |
| REGION 9 | | | | | | |
| HONOLULU,HAWAII INSURING OFFICE | | | | | | |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:HAWAII | NON-ELEVATOR: | 175 | 200 | 235 | 307 | 334 |
| STATE:HI | ELEVATOR: | 193 | 220 | 259 | 0 | 0 |
| COUNTY:KAUAI | NON-ELEVATOR: | 175 | 200 | 230 | 260 | 280 |
| STATE:HI | ELEVATOR: | 0 | 0 | 0 | 0 | 0 |

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM

SCHEDULE B- FAIR MARKET RENTS FOR EXISTING HOUSING(INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM)

| REGION 9 | | 0 BEDROOMS | 1 BEDROOM | 2 BEDROOMS | 3 BEDROOMS | 4+BEDROOMS |
|---|---|---|---|---|---|---|
| SAN FRANCISCO,CALIFORNIA AREA OFFICE | | | | | | |
| SMSA:SANTA CRUZ, CA | | | | | | |
| COUNTY:SANTA CRUZ | NON-ELEVATOR: | 139 | 157 | 185 | 213 | 231 |
| STATE:CA | ELEVATOR: | 153 | 173 | 203 | 234 | 254 |
| REGION 10 | | | | | | |
| SEATTLE,WASHINGTON AREA OFFICE | | | | | | |
| NON SMSA COUNTIES | | | | | | |
| COUNTY:COWLITZ | NON-ELEVATOR: | 109 | 123 | 145 | 161 | 176 |
| STATE:WA | ELEVATOR: | 120 | 135 | 160 | 177 | 194 |
| SPOKANE,WASHINGTON INSURING OFFICE | | | | | | |
| SMSA:SPOKANE, WA | | | | | | |
| COUNTY:SPOKANE | NON-ELEVATOR: | 122 | 138 | 162 | 186 | 203 |
| STATE:WA | ELEVATOR: | 134 | 152 | 178 | 205 | 223 |

[FR Doc.75-18235 Filed 7-15-75;8:45 am]

PREPARED BY HUD - EMAD (CO) JUNE 1975

federal register

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

PART IV

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

■

# Guidelines for Oil and Gas Exploration and Development Activities in Territorial and Inland Navigable Waters and Wetlands

Proposed Adoption

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### GUIDELINES FOR OIL AND GAS EXPLORATION AND DEVELOPMENT ACTIVITIES IN TERRITORIAL AND INLAND NAVIGABLE WATERS AND WETLANDS

### Proposed Adoption

Notice is hereby given that the guidelines set forth in tentative form below are proposed by the Director, Fish and Wildlife Service, for use by Service employees in the review of Federal and federally permitted or assisted work and activities for oil and gas exploration and development activities to be conducted in territorial and inland navigable waters and wetlands. Prior to formal adoption of the proposed guidelines, consideration will be given to any comments which are submitted to the Director, Fish and Wildlife Service, Interior Building, Washington, D.C. 20240. Attention: Division of Ecological Services by August 15, 1975.

Until final guidelines are promulgated by the Director, Fish and Wildlife Service, these proposed guidelines will provide interim guidance to all Service employees reviewing proposals for Federal and federally permitted or assisted work and activities for oil and gas exploration and development activities to be conducted in territorial and inland navigable waters and wetlands.

1. *Introduction.*

1.1. The U.S. Fish and Wildlife Service recognizes that an adequate and dependable supply of petroleum products is essential to meet the economic and standard of living needs of this Nation. The Service also recognizes the need for a strong, uniform policy for planning, evaluating, and reporting on oil and gas exploration and production activities affecting the navigable waters and related natural resources of the United States. The pamphlet is directed toward meeting and satisfying the Nation's environmental and energy needs by presenting the Service's guidelines for geophysical, drilling and completion operations, pipeline construction, onshore facilities, and other associated exploration and development activities. These guidelines discourage the exploitation of one resource at the expense of another and encourage the use of environmentally sound planning criteria. Basically, these guidelines focus on the conservation, development, and improvement of fish and wildlife, their habitats, naturally functioning ecosystems, other environmental values, and related human uses of the Nation's waters and wetlands.

2. *Basis.*

2.1A. Federal permits are required for the proposed works in the navigable waters and associated wetlands of the United States. Placing of any structure in or over such waters and wetland areas or excavating from or depositing material in such areas is unlawful unless a permit has been issued by the Department of the Army, Corps of Engineers, under authority of Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403). The U.S. Coast Guard, Department of Transportation, has special authority to regulate the location and clearances of bridges and causeways over navigable waters of the United States under Section 9 of the 1899 Act (33 U.S.C. 401) and the Department of Transportation Act (49 U.S.C. 1653).

B. Permits issued by the Environmental Protection Agency (EPA) or by a State agency under EPA overview also are required under Section 402 of the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251), for pollutant discharges into navigable waters. This Act also provides for certification by EPA or the State, that activities otherwise federally permitted will not abridge water quality requirements (Section 401), for permitting by the Corps of Engineers (Corps) of the placement of dredged and fill materials in defined disposal areas (Section 404), and for regulation by EPA of the disposal of sewage sludge which would result in pollutants entering navigable waters (Section 405).

C. Applications for permits described in the preceding paragraphs are made, as appropriate, to the District Engineer, Corps of Engineers; the District Commander, U.S. Coast Guard; or the Regional Administrator, Environmental Protection Agency (or the State water quality agency) for the District or Region in which the work or activity is proposed. *All persons or other entities, including Federal and other government agencies, are required to obtain the appropriate permits prior to commencing any construction or other activity in navigable waters.*

D. All of the above-described Federal regulatory programs are subject to the provisions of the Fish and Wildlife Coordination Act (16 U.S.C. 661) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321) which mandate, respectively, full consideration of fish and wildlife and environmental values in weighing the balance of the public interest in deciding whether a permit should be issued for a proposed activity.

3. *Authorities and Responsibilities of the Department of the Interior.*

3.1A. The Secretary of the Interior, acting through the Bureau of Land Management, the U.S. Geological Survey, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, the National Park Service, and the Bureau of Outdoor Recreation, has broad authority in the administration of public lands, reservations, and the mineral resources of such lands including the Outer Continental Shelf and Indian lands held in trust, and in providing consultation and advice on the protection of the Nation's fish, wildlife, scenic, natural, historic, recreational, and other environmental resources.

B. One such law administered for the Department of the Interior by the U.S. Fish and Wildlife Service is the Fish and Wildlife Coordination Act. This Act specifically requires (16 U.S.C. 662): "*. . . whenever the waters of any stream or body of water are proposed or authorized to be* impounded, diverted, the channel deepened, or the stream or other body of water otherwise *controlled or modified for any purpose whatever,* including navigation and drainage, by any department or agency of the United States, or *by any public or private agency under Federal permit or license, such department or agency first shall consult with the United States Fish and Wildlife Service,* Department of the Interior, and *with the head of the agency exercising administration over the wildlife resources of the particular State* . . . with a view to the conservation of wildlife resources by preventing loss of and damage to such resources as well as providing for the development and improvement thereof . . ."[1] italics added). [Similar responsibilities under the Fish and Wildlife Coordination Act are administered by the National Marine Fisheries Service for the Department of Commerce.]

C. Additional authorities mandating the concern of the Department of the Interior for environmental values include the Migratory Bird Conservation Act (16 U.S.C. 701), the National Historic Preservation Act of 1966 (16 U.S.C. 470), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Wilderness Act (16 U.S.C. 1131), the Anadromous Fish Conservation Act (16 U.S.C. 757a), the Estuary Protection Act (16 U.S.C. 1221), the Wild and Scenic Rivers Act (16 U.S.C. 1271), the Endangered Species Act of 1973 (16 U.S.C. 1361), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321). The U.S. Fish and Wildlife Service also has advisory and consultative roles under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) and the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401), and shares the mandates of the Fish and Wildlife Coordination Act with the States.

4. *Objectives and Policies of the Fish and Wildlife Service Concerning the Usage and Development of the Nation's Waters and Wetlands.*

4.1. The following outline presents the overall objectives and policies of the Fish and Wildlife Service in its advisory, consultive, and review role regarding works and activities in the Nation's waters and associated wetlands.

4.2. *Objectives.*

4.2A. The objectives of the U.S. Fish and Wildlife Service in relation to oil and gas exploration, development, and production activities are to prevent or minimize damages to fish and wildlife resources, their associated habitat, and other environmental resources, and to preserve public trust rights of use and enjoyment of such resources in and associated with navigable and other waters of the United States. The Service strives to meet these objectives by encouraging the industry to use every practical means, method, and alternative to prevent

[1] Wildlife and wildlife resources are defined by the Act to include: "birds, fishes, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent."

harmful environmental impacts and degradations.

B. More specifically the Service has the following long-range objectives:

(1) Respecting navigable waters, their tributaries and related wetlands of the United States:

(a) Providing assistance to other Federal agencies in their enforcement of regulatory programs to prevent unauthorized activities from occurring, damaging, or posing a threat of damage to the naturally functioning aquatic and wetland ecosystems and other environmental resources, values, and uses.

(b) Ensuring that all authorized works, structures, and activities are (1) judged to be the least ecologically damaging alternative or combination of alternatives (e.g., all appropriate means have been adopted to minimize environmental losses and degradations) and (2) in the public's interest in safeguarding the environment from loss and degradation. Water dependency of a work, structure, or activity will be considered when criterion (1) above has not been met. In determining whether criteria (1) and (2) have been met, the Service will always consider: (a) the long-term effects of the proposed work, structure, or activity; (b) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or activities of the same kind; and/or (c) its cumulative effects, when viewed in the context of other already existing or foreseeable works, structures, or activities of different kinds.

(2) Respecting all other waters and wetlands of the Nation not presently classed as navigable waters of the United States, where the affected resources involve a national interest, long-range objectives are identical to those above-stated for navigable waters, insofar as legally possible.

4.3A. *Policies.*

(1) The U.S. Fish and Wildlife Service exercises and encourages all efforts to preserve, restore, and improve fish and wildlife resources and associated aquatic and wetland ecosystems, and supports State actions designed to protect areas of special biological significance.

(2) The Service opposes activities and developments in or affecting the Nation's waters and wetlands which would individually, or cumulatively with other developments on a waterway or group of related waterways, needlessly destroy, damage, or degrade fish and wildlife resources, associated aquatic and wetland ecosystems, and the human satisfactions dependent thereon.

(3) The Service places special emphasis on the protection of vegetated and other productive shallow waters and wetlands and on fish and wildlife species for which the Secretary of the Interior has delegated and specifically mandated responsibilities. These include:

(a) Wetlands as described in Wetlands of the United States, Circular 39 of the U.S. Fish and Wildlife Service, published in 1956, republished in 1971.

(b) Estuarine and Great Lakes area as defined in the Estuary Protection Act, the Coastal Zone Management Act of 1972, and Sec. 104(n) of the Federal Water Pollution Control Act.

(c) Migratory birds, anadromous and Great Lakes fishes, and endangered species as defined respectively in the Migratory Bird Treaty Act, Anadromous Fish Conservation Act and the Endangered Species Act of 1973.

5. *Procedures for Review of Permit Applications.*

5.1A. The U.S. Fish and Wildlife Service will solicit from each permit applicant information which demonstrates that the proposed works are water-oriented or water-dependent, served a recognized public need, and minimize environmental damages as set forth in item 4.2B(1)(b). If information is not provided by the applicant, or if the Service's investigations and review indicate avoidable fish and wildlife losses, the Service will recommend to the Corps of Engineers, the Environmental Protection Agency, or the U.S. Coast Guard, as appropriate, that the permit be denied. In cases where denial is recommended to the Corps of Engineers, the July 13, 1967, Memorandum of Understanding between the Secretaries of the Departments of the Army and the Interior provides that the applicant will be notified, and an effort will be made to reach a solution at the Regional level. If resolution at that level fails, the case will be forwarded for the consideration of the Chief of Engineers, Department of the Army, and Under Secretary, Department of the Interior. The final administrative decision in such cases rests with the Secretary of the Army. It must be emphasized that the Service does not have the responsibility, as do the regulatory agencies, of making the final determination of the overall acceptability of a proposal, all factors considered. These guidelines are not intended nor should they be interpreted to be addressed to such a final decision. They are intended to reflect the Service's responsibility to contend for the special public interest in fish and wildlife resources, their related and associated habitats and ecosystems, the environmental values dependent thereon; and to be compatible and reasonably consistent with relevant provisions of law, decisions of the courts, and rules, regulations, and administrative practices of Federal regulatory agencies.

B. The Department of the Interior has no similar agreements with the Environmental Protection Agency or the Department of Transportation (U.S. Coast Guard), but envisions that referral of unresolved issues from those agencies will be handled under procedures similar to those set forth in the agreement with the Department of the Army, with the final decision resting with the Secretary or the Administrator of the regulatory agency.

6. *Information Necessary to Assess Fish and Wildlife Effects of Proposed Works and Activities Requiring Federal Permit.*

6.1A. The U.S. Fish and Wildlife Service assists and promotes an orderly and expeditious review of Federal permit applications. Toward this goal, the following items of information should be submitted, if applicable, in conjunction with an application.

(1) Overall map (based on a U.S. Coast and Geodetic navigation chart or Geological Survey quadrangle map) showing project location in relation to:

(a) Water depths at and in the vicinity of the proposed project.

(b) Direction of sheetflow in wetland areas and of water currents in river and coastline areas, and duration and amplitude of ebb and flood tides in estuarine and bay areas.

(c) Location of freshwater outflows, including surface drainageways, streams, aquifers and springs where known or identified within the area of project influence.

(d) Location of shellfish lease areas within the area of project influence.

(2) Aerial photograph of project area, if available or specifically requested red.

(3) Scale drawings and project area maps showing proposed works in relation to ordinary high water, mean high or means of the higher high water, and mean low or mean of the lower low water elevations and lines (as locally proper and where technologically possible), and the following detailed information:

(a) A description of methods and kinds of equipment to be used, means of access to activity sites, proposed geophysical operations, and duration and season of activities.

(b) Types, locations, and dimensions, including vertical cross sections of shallow water and wetland areas to be excavated and/or filled (e.g., canals, channels, roadways, fill and spoil areas, and dikes).

(c) Details of all planned facilities where construction or operation could alter or disturb shallow waters and wetlands.

(4) For purposes of environmental protection:

(a) Detailed information concerning known threatened and/or endangered species, including their associated habitats, in the area of project influence.

(b) Detailed written assurances that all exploration, production, and pipeline operations will be conducted consistent with appropriate rules, regulations, and guidelines of regulatory agencies.

(c) Plans for maintenance of natural drainage patterns and freshwater-saltwater exchanges in waters and wetlands (prevention of unnatural saltwater or freshwater intrusion and dewatering of wetlands).

(d) Plans for minimization of erosion, sedimentation, and turbidity, including stabilization of construction sites.

(e) Other plans or measures to prevent or minimize losses of fish and wildlife and public utilization, and other environmental values, including special construction and operation procedures.

(5) Names, addresses, and telephone numbers of the applicant's liaison.

7. *General Guidelines.*

7.1A. Permits issued for oil and gas exploration and development operations in territorial waters and wetlands should be limited to the shortest time period essential to the work proposed. These permits also should provide by explicit conditions for exploration and development procedures not normally used (e.g., slant drilling), use of equipment not normally used (e.g., shallow draft barges and low-impact swamp vehicles on wetlands), and limitations on dredging, filling, and spoiling (e.g., use of existing channels wherever possible, avoidance of productive wetlands and shallows for filling and spoiling, etc. where possible) as will minimize environmental degradation.

B. Proposed activities and works should be fully described in the original permit application. To the extent that these cannot be described for the entire extent of the work and period of the permit, the undescribed extensions and modifications, when known and proposed, shall be subject to provisions of adequate notice and opportunity for onsite assessment of potential environmental impact by the Service. The permit should be further conditioned, as may be required, to protect fish and wildlife resources on the basis of recommendations made by the Service.

C. Proposals for other associated activities and works involved in mineral exploration and developments should meet the following applicable general provisions to minimize environmental degradation, particularly from the spillage of oil; release of refuse including polluting substances and solid wastes; spoiling on productive wetlands; dredging of productive shallows; and alteration of current patterns, tidal exchanges, freshwater outflow, erosion and sedimentation.

D. The U.S. Fish and Wildlife Service will consider the following criteria to ascertain if works requiring a Federal permit in shallow waters and wetlands can be implemented without significant damages to fish, wildlife, and the environment:

(1) In general, the following structures, facilities, or activities utilizing land fill procedures are not considered desirable uses of public waters and wetland areas:

(a) Spoil and solid-waste fill sites.

(b) Sewage, waste, and industrial lagoons.

(c) Private roads and parking lots.

(d) Offices, warehouses, tank farms, camps, and other onshore facilities.

However, in all cases the applicant should demonstrate that alternate upland sites are not available for proposed works which involve alteration or destruction of estuarine or wetland areas.

(2) Any proposed works which are determined to be acceptably located on wetland or shallows of navigable waters should be constructed, operated, and maintained in such a way as to minimize or avoid adverse environmental impacts.

(3) Permit applications for an unauthorized existing excavation, fill, structure, facility, or building will be examined on an individual basis. The condition, present use, and future potential of a particular work, and alternatives to its continued existence will be considered in determining whether or not to recommended denial of the permit, removal of the unauthorized work, and possible restoration.

E. This Service will recommend denial of Federal permits for proposed projects as follows:

(1) Projects which needlessly degrade or destroy wetland types identified in the Fish and Wildlife Service's Circular 39, Wetlands of the United States, published 1956, republished 1971. The decision whether a project needlessly degrades or destroys wetland types will be made with reference to the three criteria set forth in item 4.2B(1)(b).

(2) Projects not designed to prevent or minimize significant fish wildlife, and environmental damages.

(3) Projects which do not utilize available upland sites as alternatives to wetland areas.

(4) Projects located on upland which do not assure the protection of adjacent wetland areas.

8. *Specific Project Guidelines.*

8.1A. The Service will utilize the following specific project guidelines when reviewing permit applications:

(1) *Geophysical Operations.*

(a) Gas or airguns, sparkers, vibrators, and other electromechanical and mechanical transducers should be used where practicable.

(b) When explosive charges must be used, the smallest charge consistent with acceptable recording should be used.

(c) Use of explosives should be avoided in important fish and wildlife spawning, nesting, nursery, and rearing areas during periods of high concentration or intense activity by the fish or wildlife of concern.

(d) All explosive charges should be fired in compliance with applicable State and Federal regulations.

(2) *Docks and Piers.*

(a) The size and extension of a dock or pier should be limited to that required for the intended use.

(b) Project proposals should include transfer facilities for the proper handling of litter, wastes, refuse, spoil drilling mud, and petroleum products.

(c) Piers and catwalks will be encouraged in preference to solid fills to provide needed access across biologically productive shallows and marshes to navigable water.

(3) *Bulkheads or Seawalls.* Construction of bulkheads, seawalls, or the use of riprapping generally will be acceptable in areas having unstable shorelines. Except in special circumstances such as eroding shorelines, structures should be located no further waterward than the mean or normal high water line, and designed so that reflected wave energy does not destroy stable marine bottoms or constitute a safety hazard. In areas which have undergone extensive development applications for bulkheads will be acceptable that esthetically and/or ecologically enhance the aquatic environment. However, denial of permits for the construction of bulkheads on barrier and sand islands, where such will affect the natural transport and deposition of sand materials, will normally be recommended.

(4) *Cables and Transmission Lines.* Installation of aerial or submerged cables and transmission lines located and designed to provide maximum compatibility with the environment will be acceptable. Particular emphasis will be placed on measures to protect fish and wildlife resources, esthetics, and unique natural areas. In operational areas, routes should make maximum use of existing rights-of-ways.

(5) *Access Roads.*

(a) Existing roadways should be utilized.

(b) Timber, other matting, or special low impact vehicles should be utilized where possible when temporary access is required in shallows and wetlands.

(c) When access roads to a drilling site must be constructed, the roads should be minimal in size and number.

(d) Selection of location and design of proposed roadways should be based on wet-season conditions to minimize disruption of normal sheetflow, water flow, and drainage patterns or systems.

(e) Adequate culverts must be placed in all roadways to maintain natural sheetflow, water flow, and drainage patterns or systems.

(f) Shoulder and slope surfaces should be stabilized with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(g) Upon abandonment of a project site, temporary access roads should be removed and the area restored as near as possible to pre-project conditions, where recommended.

(6) *Bridges.*

(a) Designs and alignments should minimize disruption of sheetflows, water flow, and drainage patterns or systems.

(b) Approaches to permanent structures in wetland areas should be located, to the maximum extent possible, on pilings rather than solid fill causeways.

(7) *Jetties, Groins, and Breakwaters.* Jetties, groins, and breakwaters that do not create adverse sand transportation patterns or unduly disturb the aquatic ecosystem will be acceptable.

(8) *Levees and Dikes.*

(a) Designs and alignments should minimize disruption of natural sheetflow, water flow, and drainage patterns or systems.

(b) Shoulder and slope surface should be stabilized following construction with natural vegetation plantings or by seeding of native species, where possible, or by riprapping.

(c) Where recommended, levees and dikes upon abandonment should be removed and the area restored.

(9) *Lagoons, Impoundments, Waste Pits, and Emergency Pits.*

(a) Construction should minimize disruption of natural sheetflow, water flow, and drainage patterns or systems.

(b) Areas should be excavated to an impermeable soil formation at the time of construction, or lined or scaled.

(c) Operation and use must be in strict compliance with applicable local, State, and Federal regulations.

(10) *Navigation Channels and Access Canals.*

(a) Designs and alignments should minimize disruption or natural sheetflow, water flow, and drainage patterns or systems.

(b) Designs should meet demonstrated navigational needs.

(c) Designs should prevent the creation of pockets or other hydraulic conditions which would cause stagnant water problems.

(d) Designs should minimize shoreline or other erosion problems and interference with natural sand and sediment transport processes.

(e) Designs, where recommended, should use temporary dams or plugs in the seaward ends of canals or waterways until excavation has been completed.

(f) Designs should minimize changes in tidal circulation patterns, salinity regimes, or related nutrient and aquatic life distribution patterns.

(g) Alignments will be recommended by the Service that avoid or minimize damages to shellfish grounds, beds of productive aquatic vegetation, coral reefs, and other shallow water and wetland areas of value to fish and wildlife resources.

(h) Alignments should make maximum use of existing natural channels.

(i) Construction should be conducted in a manner that minimize turbidity and dispersal of dredged material.

(j) Construction should follow schedules, which will be recommended by the Service; these schedules will aim at minimizing interference with fish and wildlife migrations, spawning, and nesting or the public's enjoyment and utilization of these resources.

(11) *Excavation of Fill Material.* Excavation and dredging in shallow waters and wetlands will be discouraged and the Service will recommend that any permit issued contains conditions to minimize adverse effects and activities in important fish and wildlife spawning, nesting, nursery, and rearing areas and prohibit construction during critical periods of migration, spawning, and nesting activity.

(12) *Disposal of Spoil and Refuse Material.* In-bay, open-water, and deep-water disposal generally will be considered acceptable by the Service only after all upland and other alternative disposal sites have been explored and rejected for good cause. Deep-water disposal will be acceptable only at sites specifically selected, including those selected for deposit of suitable material for habitat improvement, where agreed upon by all concerning agencies.

(13) *Drilling and Injection Wells, and Production Facilities.*

(a) Multiple production sites from a single location utilizing directional drilling techniques should be used where practicable.

(b) Drilling and production facilities should utilize equipment that prevents or controls to the maximum extent possible, the discharge of pollutants.

(c) All drilling muds should be stored in tanks or diked non-wetland areas.

(14) *Pipelines.*

(a) Pipeline routes that avoid or minimize damages to important spawning, nesting, nursery or rearing areas will be recommended by the Service.

(b) In established operational areas pipeline routes should make maximum use of existing rights-of-ways.

(c) In all areas, pipelines should be confined to areas of which will minimize environmental impact; special care should be taken in unaltered areas.

(d) Pipelines should be buried beneath the bay bottom or ocean floor to avoid interference with fishing operations. Additionally, pipelines placed (buried) across tidal creeks, canals, or sills, or in any situation where strong currents produce abrasive action. A program providing for periodic inspection to ensure early detection should be implemented.

(e) Where recommended, pipeline access canals should be immediately plugged at the seaward end and subsequently maintained to prevent freshwater or saltwater intrusion.

(f) Where recommended, bulkheads, plugs, or dams should be installed and maintained at all stream, bay, lake, or other waterway or water body crossings.

(g) Pipeline placement should be designed with a wide margin of safety against breakage from mud slides, currents, earthquakes, or other causes. In areas of high natural seismic activity, pipelines should be designed and situated to the maximum extent posible, to be "earthquake proof."

(h) Pipeline placement by the push method in marshland will be encouraged.

9. *Assistance to Applicants and Prospective Applicants.*

9.1A. All applications for works or activities subject to Federal jurisdiction over navigable waters will be considered within the framework of foregoing policies and guidelines. It is the position of the Service that these guidelines, if followed, will facilitate the orderly review of permit applications for oil and gas exploration and development activities. Protection is a national responsibility that cannot be shirked or compromised if future generations are to enjoy a satisfying and healthy environment. The Service considers that adherance to these guideline is requisite to this national responsibility and the Nation's goal of environmental quality.

B. The Service stands ready at all times to assist permit applicants in formulating environmentally sound proposals and in avoiding unnecessary delays in developing environmentally compatible plans. Contacts should be made through the appropriate Regional Office of the Fish and Wildlife Service. The addresses and telephone numbers of the Service's Regional Offices and a map of the States each Region covers are contained respectively, in Appendices 1 and 2.

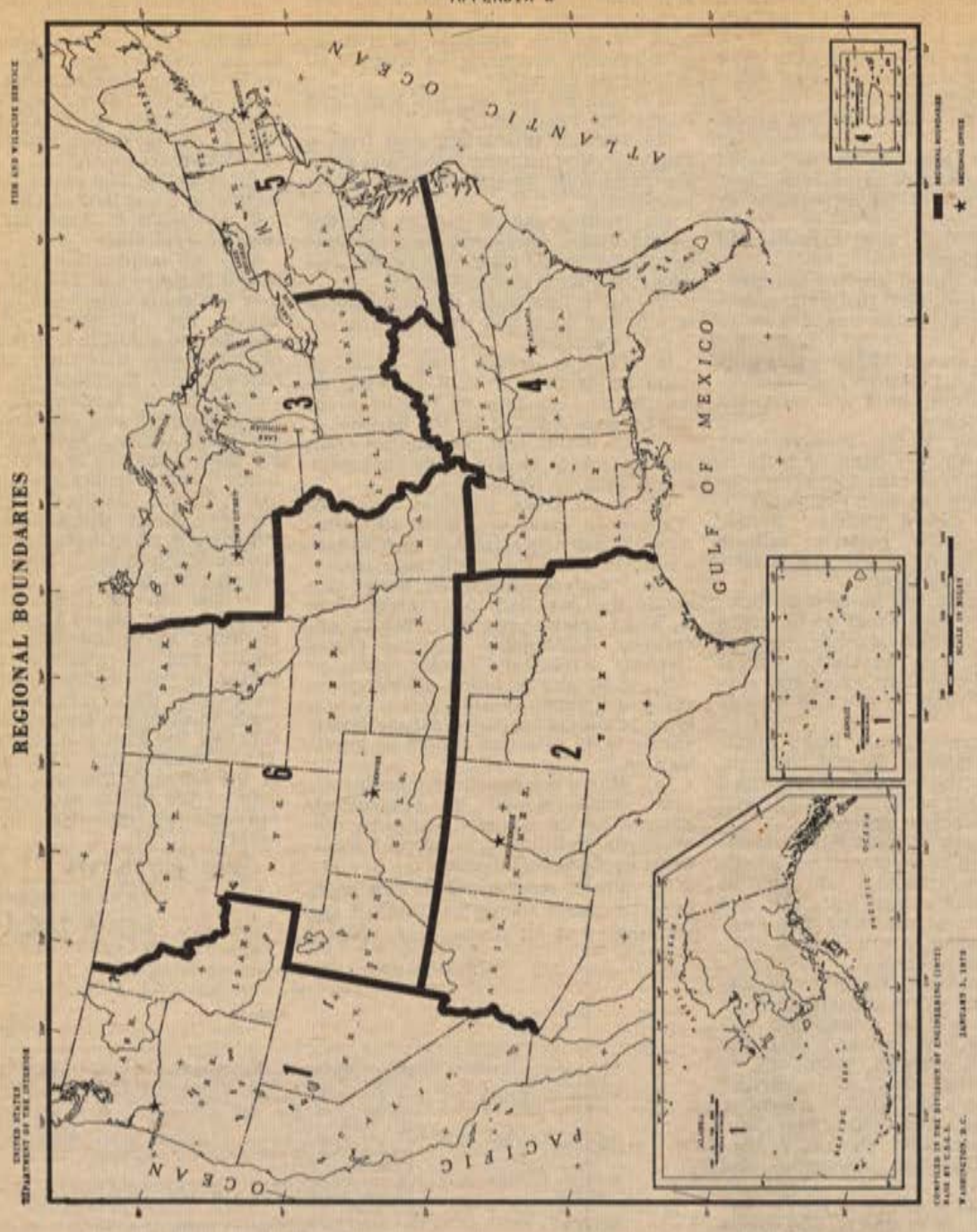
Dated: July 10, 1975.

LYNN A. GREENWALT,
*Director, Fish and Wildlife Service.*

*Regional office addresses and phone numbers*

| Region | Regional director | Address | Ecological services supervisor |
|---|---|---|---|
| 1..... | R. Kahler Martinson, (503) 234-4050. | Fish and Wildlife Service, Department of the Interior, P.O. Box 3737, Portland, Oreg. 97208. | Donald H. Reese, (503) 234-5263. |
| 2..... | Wilford O. Nelson, Jr., (505) 766-2321. | Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, N. Mex. 87103. | Jack P. Woolstenhulme, (505) 766-2914. |
| 3..... | Jack E. Hemphill, (612) 725-3500. | Fish and Wildlife Service, Department of the Interior, Federal Bldg., Fort Snelling, Twin Cities, Minn. 55111. | William E. Martin, (612) 725-3536. |
| 4..... | Kenneth E. Black, (404) 526-4671. | Fish and Wildlife Service, Department of the Interior, Executive Park Dr., NE., Atlanta, Ga. 30329. | John D. Green, (404) 526-4781. |
| 5..... | Richard E. Griffith, (617) 223-2961. | Fish and Wildlife Service, Department of the Interior, John W. McCormack Post Office and Court, Boston, Mass. 02109. | (Vacant), (617) 223-2983. |
| 6..... | Charles M. Loveless, (303) 234-2209. | Fish and Wildlife Service, Department of the Interior, P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225. | William D. Sweeney, (303) 234-4616. |
| Alaska... | Gordon W. Watson, area director, (907) 265-4864. | Fish and Wildlife Service, Department of the Interior, 813 D St., Anchorage, Alaska 99501. | Melvin A. Monson, (909) 265-4896. |

APPENDIX 2




[FR Doc.75-18349 Filed 7-15-75;8:45 am]

federal register

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

PART V

# OFFICE OF MANAGEMENT AND BUDGET

■

# BUDGET RESCISSIONS AND DEFERRALS

Cumulative Report, July 1975

## OFFICE OF MANAGEMENT AND BUDGET

### CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS, JULY 1975

*A. Fiscal year 1976 actions.* This report is submitted in fulfillment of the requirements of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (P.L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for that fiscal year with respect to which, as of the first day of such month, a special message has been transmitted to the Congress. This report includes those rescissions and deferrals contained in the first special message of fiscal year 1976 transmitted to the Congress on July 1, 1975.

*Rescissions (Attachment A).* The first FY 1976 special message contains proposals for three rescissions of appropriations enacted prior to FY 1976 that made funds available on a multi-year basis. The total amount proposed for rescission is $123.7 million, of which $8.7 million is from the Treasury Department and $115.0 million is from the Department of Transportation.

*Deferrals (Attachment B).* The first special message also contains 27 deferrals that will delay the obligation of $2,727.8 million in budget authority. More than half of the total amount is a deferral of Navy's shipbuilding and conversion funds ($1,793.6 million).

*Information from Special Messages.* The special message containing information on each of the rescissions and deferrals covered by the cumulative report is included in the July 9, 1975, issue of the FEDERAL REGISTER.

*B. Fiscal year 1975 actions.* In accordance with the Impoundment Control Act of 1974, the last cumulative report for FY 1975 was transmitted to the Congress on June 10, 1975, and reflected only that activity that had occurred through June 1, 1975. The following table provides the end of fiscal year status of budget authority deferred or proposed for rescission during the first year of activity under the Act (amounts in millions of dollars).

| | |
|---|---|
| Rescissions: | |
| Total amount proposed | $2,637.2 |
| Amount proposed as of 6/30/75 | 28.0 |
| Amount made available | 2,217.9 |
| Amount rescinded by Congress | $391.3 |
| Deferrals: | |
| Total amount initially deferred | $25,797.8 |
| Subsequent release by OMB | 11,732.0 |
| Congressional Impoundment Resolution releasing funds | 9,318.2 |
| Amount deferred end of fiscal year | $4,747.6 |

JAMES T. LYNN,
*Director.*

*Status of rescissions, fiscal year 1976; as of July 1, 1975*

[Amounts in thousands]

| Agency bureau account | Rescission No. | Amount proposed for rescission | Date special message transmitted to Congress | Amount rescinded | Date rescission act signed | Amount made available | Date made available |
|---|---|---|---|---|---|---|---|
| DEPARTMENT OF TRANSPORTATION | | | | | | | |
| Federal Highway Administration: | | | | | | | |
| National Scenic and Recreational Highway | R76-1 | 90,000 | July 1, 1975 | | | | |
| Access highway to public recreation, areas on lakes | R76-2 | 25,000 | do | | | | |
| DEPARTMENT OF THE TREASURY | | | | | | | |
| Office of the Secretary: Construction, Federal Law Enforcement Training Center | R76-3 | 8,665 | do | | | | |
| Total | | 123,665 | | | | | |

*Status of deferrals, fiscal year 1976*

[Amounts in thousands of dollars]

| Bureau and account | Deferral No. | Amount transmitted in special message | | Date of action | Releases resulting from subsequent actions taken by | | | Amount deferred as of July 1, 1975 |
|---|---|---|---|---|---|---|---|---|
| | | Superseded | Current | | OMB/agency | House | Senate | |
| DEPARTMENT OF AGRICULTURE | | | | | | | | |
| Foreign Agricultural Service: | | | | | | | | |
| Salaries and expenses (special foreign currency) | D76-1 | | 2,232 | July 1, 1975 | | | | 2,232 |
| Total | | | 2,232 | | | | | 2,232 |
| DEPARTMENT OF COMMERCE | | | | | | | | |
| National Oceanic and Atmospheric Administration: | | | | | | | | |
| Fisheries loan fund | D76-2 | | 7,252 | July 1, 1975 | | | | 7,252 |
| Promote and develop fishery products | D76-3 | | 1,355 | do | | | | 1,355 |
| Total | | | 8,607 | | | | | 8,607 |
| DEPARTMENT OF DEFENSE, MILITARY | | | | | | | | |
| Shipbuilding and conversion, Navy | D76-4 | | 1,793,590 | July 1, 1975 | | | | 1,793,590 |
| Military construction, all | D76-5 | | 233,630 | do | | | | |
| | | | | June 27, 1975 | | 1,582 | | 232,048 |
| Total | | | 2,027,220 | | | 1,582 | | 2,025,638 |
| DEPARTMENT OF DEFENSE, CIVIL | | | | | | | | |
| Wildlife conservation, military reservations | D76-6 | | 432 | July 1, 1975 | | | | 432 |
| Total | | | 432 | | | | | 432 |

*Status of deferrals, fiscal year 1976*—Continued

[Amounts in thousands of dollars]

| | | | | | | |
|---|---|---|---|---|---|---|
| **DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE** | | | | | | |
| National Institutes of Health: Buildings and Facilities | D76-7 | | 2,164 | July 1, 1975 | | 2,164 |
| Assistant Secretary for Health: Scientific activities overseas (special foreign currency) | D76-8 | | 3,652 | do | | 3,652 |
| Office of Education: Higher Education | D76-9 | | 49,040 | do | | 49,040 |
| Special Institutions: Howard University | D76-10 | | 8,174 | do | | 8,174 |
| Assistant Secretary for Human Development: Research and training activities overseas (special foreign currency) | D76-11 | | 7,307 | do | | 7,307 |
| Total | | | 70,337 | | | 70,337 |
| **DEPARTMENT OF THE INTERIOR** | | | | | | |
| Bureau of Land Management: Public lands development roads and trails | D76-12 | | 25,847 | July 1, 1975 | | 25,847 |
| Bureau of Reclamation: | | | | | | |
| Construction and rehabilitation | D76-13 | | 1,030 | do | | 1,030 |
| Upper Colorado River storage project | D76-14 | | 1,150 | do | | 1,150 |
| Bureau of Outdoor Recreation: Land and water conservation fund | D76-15 | | 30,000 | do | | 30,000 |
| Fish and Wildlife Service: | | | | | | |
| Federal aid in fish restoration and management | D76-16 | | 6,330 | do | | 6,330 |
| Federal aid in wildlife restoration | D76-17 | | 21,470 | do | | 21,470 |
| National Park Service: Road construction | D76-18 | | 238,092 | do | | 238,092 |
| Geological Survey: Payment from proceeds, sale of water | D76-19 | | 29 | do | | 29 |
| Bureau of Indian Affairs: Road construction | D76-20 | | 68,470 | do | | 68,470 |
| Total | | | 392,418 | | | 392,418 |
| **DEPARTMENT OF TRANSPORTATION** | | | | | | |
| Coast Guard: Acquisition, construction and improvements | D76-21 | | 707 | July 1, 1975 | | 707 |
| Federal Aviation Administration: | | | | | | |
| Civil supersonic aircraft development termination | D76-22 | | 7,686 | do | | 7,686 |
| Facilities and equipment (airport and airway trust fund) | D76-23 | | 75,824 | do | | 75,824 |
| Total | | | 84,217 | | | 84,217 |
| **DEPARTMENT OF THE TREASURY** | | | | | | |
| Office of the Secretary: | | | | | | |
| State and local government fiscal assistance trust fund | D76-24 | | 93,420 | July 1, 1975 | | 93,420 |
| Do | D76-25 | | 38,391 | do | | 38,391 |
| Total | | | 131,811 | | | 131,811 |
| **OTHER INDEPENDENT AGENCIES** | | | | | | |
| Foreign Claims Settlement Commission: Payment of Vietnam Prisoner of War claims | D76-26 | | 11,081 | July 1, 1975 | | 11,081 |
| American Revolution Bicentennial Administration | D76-27 | | 1,000 | do | | 1,000 |
| Total | | | 12,081 | | | 12,081 |
| Total deferrals | | | 2,729,355 | | 1,582 | 2,727,773 |

[FR Doc.75-18441 Filed 7-15-75;8:45 am]

federal register

WEDNESDAY, JULY 16, 1975

WASHINGTON, D.C.

Volume 40 ■ Number 137

PART VI

# FEDERAL ENERGY ADMINISTRATION

■

## DOMESTIC CRUDE OIL

### Gradual Removal of Price Controls

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 211—MANDATOR PETROLEUM ALLOCATION REGULATIONS

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

## Phase-Out of Old Oil Price Ceilings

### A. Introduction

The Federal Energy Administration hereby adopts an amendment to its regulations to provide for the gradual removal of price controls from domestic crude oil. This amendment is being submitted to the Congress for its review pursuant to section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973. Unless disapproved by either house of Congress during the five day period allowed for legislative review, the amendment will decontrol "old" crude oil (now subject to a ceiling price averaging $5.25 per barrel) at the rate of 3.3 percent a month over a 30-month period ending January 31, 1978.

The amendment also provides for a new ceiling price for all domestic crude oil other than stripper well crude oil) to be in effect during the 30-month decontrol period equal to the highest price charged for uncontrolled domestic crude oil produced from the particular property concerned in the conth of January, 1975, plus $2.00 per barrel, or a total of approximately $13.50 per barrel. This ceiling, which approximates the present world price level plus the $2.00 per barrel supplementary import fee. will prevent any future crude oil price increases by OPEC from triggering still higher domestic crude oil prices.

This proceeding was initiated on April 30, 1975, when the Federal Energy Administration issued a notice of proposed rulemaking and public hearing (40 FR 19219, May 2, 1975) to amend Part 212 of Title 10 of the Code of Federal Regulations to phase out over a 25-month period all price controls on crude oil at the producer level.

Fifty-nine written comments were received in response to the notice of proposed rulemaking before the close of the period for receipt of such comments. Oral presentations were made by 29 persons at the public hearings held on May 13 and 14, 1975. All these comments and presentations were considered b ythe FEA, and certain modifications in the proposed amendments have been made, to arrive at the final amendment adopted today, reflecting FEA's consideration of these comments and presentations as well as other information available to FEA. These modifications included in the decontrol rule now promulgated are discussed in section E, below.

### B. Background

The petroleum industry has been subject to various forms of price controls since 1971, a period of about four years. When the general Phase IV price controls ended on April 30, 1974, with the expiration o fthe Economic Stabilization Act of 1970, the only industry which remained subject to price controls (as administered by the FEO and subsequently the FEA) was the petroleum industry.

The reason for continuing price controls on the petroleum industry was, of course, the serious shortage of crude oil and products derived therefrom in late 1973 and early 1974. In response to this emergency situation, the Emergency Petroleum Allocation Act of 1973 was enacted in November, 1973, pursuant to which price controls on the sale of crude oil and derivative products have been retained.

As its name suggests, that Act was chiefly concerned with assuring adequate supplies through regulatory mechanisms by which covered products would be equitably allocated to all regions and to all users throughout the product distribution chain. Price controls were retained to further assure that reduced supplies would not lead to inequitably high prices.

At present, about one-third of total domestic production of crude oil is not subject to the ceiling price of 10 CFR 212.74. This amount represents crude oil which is under the congressionally-mandated stripper well lease exemption and crude oil which is allowed to be priced at market levels under existing production-incentive regulations concerning "new" and "released" crude oil. Taking into account imported crude oil, about 56 percent of all domestically refined crude oil is not subject to price ceilings.

Domestic crude oil subject to price ceilings, defined as "old" crude petroleum, sells at an average of $5.25 a barrel (or about 12½ cents a gallon), while the average price of uncontrolled domestic crude oil rose from about $11.30 a barrel in January, 1975, prior to the increase in import fees, to a current level of about $12.25 (29 cents a gallon).

The Emergency Petroleum Allocation Act of 1973 permits exemptions from allocation and price controls for products subject to the Act to be granted only under certain conditions. An exemption may apply to only one product and may extend for a period of not more than 90 days. Any proposed exemption must be submitted to Congress prior to implementation, together with findings that (1) there is no shortage of the product concerned, (2) the proposed exemption will not have an adverse effect on the supply of any other product, and (3) controls on the product concerned are no longer necessary to carry out the purposes and goals of the Act. Pursuant to section 4(g)(2) of the Act, the exemption may not be implemented if disapproved by either house of Congress during the period of five sessional days allowed by the Act for legislative review by each house.

Having received written comments and having held public hearings on its old oil deregulation proposal, the FEA has transmitted this final decontrol amendment to the Congress together with the findings set forth below. Under the amendment adopted today, old oil will be gradually decontrolled over a 30-month period, beginning immediately upon expiration of the five-day period prescribed in section 4(g)(2) of the EPAA and ending on January 31, 1978. The FEA plans to issue a notice before August 1, 1975, stating what congressional action, if any, was taken under section 4(g)(2) and, if this amendment was not disapproved by either house of Congress within the period provided by Section 4(g)(2), the date this amendment became effective.

The rate of decontrol of old oil will be at 3.3 percent for each month from August, 1975, through January 31, 1978. Since it appears that the five-day legislative review period prescribed in the Act will expire on or about July 23, 1975, one percent of old oil will also be decontrolled for the month of July, 1975, to achieve the same rate of decontrol for approximately one-third of the month of July remaining after the effective date of the amendment. Because crude oil is generally produced and sold to the same purchaser in a continuous flow for an entire month, with prices under the two-tier system calculated for the month concerned in the subsequent month, the only practicable method for determining the amount of old oil to be decontrolled under this amendment for the remainder of the month of July is to determine a decontrol rate for July which bears the same approximate ratio to the 3.3 monthly percentage rate that the number of days remaining in July after the amendment becomes effective bears to the total number of days in July. The purpose of FEA in this respect is to avoid retroactive application of the amendment adopted today while assuring that the important national benefits of decontrol will begin to accrue at the earliest possible date.

As explained in the notice of proposed rulemaking issued April 30, 1975, the FEA's "old oil" decontrol program (which implements one phase of the overall energy conservation program put forward by President Ford in his State of the Union Message) would affect only crude oil sales at the producer level. It would not affect the crude oil allocation regulations or the allocation or price regulations for any other product at any level of distribution. The old oil decontrol program would both help curb domestic consumption and spur domestic production, thus furthering the important national goal of reducing dependence on imported crude oil.

Decontrol will ultimately permit all domestic crude oil prices to rise to the current prevailing world price levels, so that the demand-dampening effects which have been felt worldwide would be felt to the full extent in the United States. Under the two-tiered price system now in effect, the price of most domestic oil is held at a level less than half that of current world price levels, so that the impact which the escalation of world market prices has had on demand elsewhere in the world has been considerably cushioned in the United States.

In addition to conserving domestic supplies by reducing demand, decontrol

of domestic crude oil prices would stimulate domestic production, or at least greatly reduce the rate of decline in domestic production, displacing some supplies of crude oil that would otherwise have to be imported. Measures to promote maximum domestic production of crude oil—especially new exploration and drilling activity and implementation of secondary and tertiary recovery techniques—are considered essential in order to help assure adequate and dependable energy resources for the United States until alternative domestic energy resources can be developed over the long term. Furthermore, the FEA has found that the production incentives afforded by the rules permitting "new" and "released" domestic crude oil to be sold at free market prices are of decreasing impact or effectiveness, as production levels, because of natural rates of decline, are generally falling further below 1972 levels, and 1972 levels of production for a property must be exceeded before the new and released price rules can have any effect.

Thus, many producers, especially those whose current production levels are substantially below the 1972 base levels and are further declining under primary recovery techniques, remain unaffected by the incentives presently afforded because those incentives are too remote to outweigh the cost of implementing the substantial secondary or tertiary recovery programs which would be necessary to bring production up to and above the 1972 base levels. Under the FEA decontrol program, when fully implemented, all production, including additional production, would bring the higher prices now available to uncontrolled oil.

The existing incentives to increase production are, for properties that were producing in 1972, only effective for limited periods of time in any event, since the inevitable slackening of output will eventually bring production below 1972 levels, to the point where existing incentives are no longer adequate to encourage investment in secondary/tertiary recovery and other costly programs designed to increase total output of crude oil. Although the additional incentive afforded by the gradual decontrol of old oil would also eventually diminish in effect with respect to existing properties, due to the inevitable decline or exhaustion of work-over reservoirs, the purpose of decontrol is not to provide a permanent solution to limited domestic production capabilities. Rather, it is intended simply to provide incentives of sufficient effectiveness and duration as will yield maximum levels of domestic production until such time as supplementary energy resources can be developed and exploited. Although existing incentives are believed to have contributed substantially to the current reduction in the rate of decline in domestic production, FEA believes that existing incentives clearly cannot work to maintain domestic production at levels now thought necessary to avoid an unacceptable degree of reliance on imported fuels over the next few years.

As also noted in the April 30, 1975, notice of proposed rulemaking, an additional benefit of decontrol of domestic crude oil will be the elimination of economic distortions caused by the present two-tiered pricing system. The two-tiered pricing system inevitably causes cost disparities among refiners and marketers of petroleum products. Although these cost disparities have been substantially reduced by the crude oil entitlements program, they can never be entirely eliminated while the two-tiered pricing system exists. Such cost disparities significantly hinder FEA's ability to assure that the competitive viability of the independent sector of the petroleum industry is maintained.

Moreover, the existing complicated structure of price controls at all levels of distribution, which is necessitated in large measure by the existence of cost disparities resulting from the two-tiered price system, tends to be self-defeating over the long run by reducing normal incentives toward increased production and cost control, and by eliminating the ability of the industry to engage in long range business planning. As effectiveness of price controls lags over time, regulations of greater complexity and reach become necessary to maintain a controlled-price structure. And tightening of controls, in turn, tends further to stifle initiative and to contribute to greater economic distortions.

### C. Findings

1. *There is no shortage of crude oil.* As FEA representatives have previously testified at congressional hearings, there is currently no shortage of crude oil available to U.S. refiners. Worldwide production capability substantially exceeds current demand. U.S. refiners have been able to obtain from foreign sources all requirements needed to fill the domestic production shortfall. Inputs to U.S. refineries, which dropped markedly during the first three months of 1974, now exceed pre-embargo levels. Domestic crude oil inventories have also increased, and exceed pre-embargo levels.

The level of crude oil production in the OPEC countries continues to decline due to reduced demand. At the end of March, 1975, output was 25.72 million barrels/day (b/d), compared to 28.85 million b/d at the start of 1975, a drop of 11 percent. These production figures represent 66 percent of OPEC's currently estimated producing capacity of 39 million b/d.

U.S. petroleum inventory and import estimates for late April 1975 show an inventory-to-import ratio of approximately 167 days. This is considerably higher than the 123 days of stocks available in April 1974. Petroleum stocks were approximately 852 million barrels at the end of April 1975 and 815 million barrels at the end of April 1974, an increase of 4.5 percent. Imports for the same periods were approximately 5.1 and 6.6 million barrels per day respectively, a decrease of 23 percent.

The general availability of crude oil to meet U.S. demands is also demonstrated by current data concerning the FEA allocation programs. For example, allocation fractions for all major refined products and residual fuel oils are at or close to 1.0, generally indicating that crude oil is in sufficient supply to meet virtually all demand for refined and other products derived from crude oil. While supplies of propane are not always adequate to meet demand in all regions of the U.S., such shortage problems as occur relate principally to the fact that most propane is produced from natural gas rather than crude oil, and there has been a decreasing supply of natural gas.

In addition, activity under the FEA's crude oil allocation program has slackened during recent quarters. The buy-sell program in its current form enables small and independent refiners to obtain crude oil supplies from the major refiners to supplement their own supplies. The fact that more and more small and independent refiners are obtaining their supplemental crude oil supplies through normal market channels further indicates the general availability of crude oil at all levels and in all regions of the U.S.

2. *The proposed exemption will not have an adverse impact on the supply of any other oil or refined petroleum products subject to the Act.* Under today's conditions, 20 months after passage of the Act, national policy requires that dependence on imported crude oil be reduced. This can be done by stimulating domestic crude oil production and by curbing demand for residual oil and refined petroleum products. The proposal to decontrol old oil is an important step toward a greater degree of self-sufficiency in meeting our energy needs.

To the extent that decontrol contributes, as expected, to stimulate domestic crude oil production by encouraging increased exploration and drilling activity and the use of secondary and tertiary recovery techniques, decontrol obviously tends to enhance rather than adversely affect the supply of products derived from crude oil. To the extent that higher prices resulting from decontrol dampen demand, as expected, decontrol will also tend to increase rather than reduce supplies of petroleum products.

Increased production and reduced demand brought by decontrol will not result in any domestic surplus of crude oil. It is expected that the result will be an offsetting decrease in the amount of crude oil or refined product that would otherwise be imported to meet domestic needs. To this extent, decontrol will not change the overall availability of petroleum products in this country. However, because domestic crude oil is a more reliable source of crude oil for production of petroleum products than is imported crude oil, decontrol will tend to have a beneficial rather than adverse impact on the nature of the domestic supply of petroleum products subject to the Act.

3. *Price controls on crude oil are not necessary to carry out the Act.* All of the purposes and goals of the Act are predicated upon alleviating the emergency

conditions resulting from shortages of crude oil, residual fuel oil and refined petroleum products which were being experienced or appeared imminent when the Act was made law late in 1973. As indicated in Finding 1, shortages of crude oil no longer exist. Inasmuch as the underlying condition to which the purposes and goals of the Act generally relate is no longer present, the necessity of price controls on old oil to carry out the Act is no longer apparent.

The express purpose of the Act, as stated in section 2(b), is to grant to and direct the President to exercise "specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system." The specific goals to be reached by exercise of the authority granted under the Act, as set forth in section 4(b)(1), may be placed in the following groupings: (a) To protect the general welfare and the national defense; (b) to maintain residential heating, public services and agricultural operations; (c) to preserve an economically sound and competitive petroleum industry; (d) to allocate crude oil in order to permit refineries to operate at full capacity; (e) to provide for equitable distribution of crude oil, residual fuel oil and refined petroleum products at equitable prices among all regions and among all users; (f) to allocate residual fuel oil and refined petroleum products in order to maintain exploration and production or extraction of fuels; and (g) to provide for economic efficiency and minimization of economic distortion, inflexibility and unnecessary interference with market mechanisms.

The decontrol of old oil prices should serve to further the goals indicated in items (c) and (g), above, under present conditions. The economic inefficiencies and distortions brought about by price controls when they are extended over a long period of time are discussed in section B, above. In addition, the gradual removal of price controls during a period of adequate supply should lead to improvement in the economic position of the petroleum industry and stimulate resumption of normal competitive conditions. These results are particularly desirable in view of the major effort which will be required to alter the trend of declining U.S. crude oil production.

The adequacy of supply under current conditions means that the threat to the national security and welfare posed by an existing or imminent shortage of crude oil no longer exists. Price controls on crude oil are therefore no longer necessary to achieve the short-term goals of the Act concerning protection of the national defense and public welfare (item (a)). For the longer term, removal of price controls should have a favorable effect on the national defense and public welfare. As the Secretary of Treasury found in connection with the President's Proclamation regarding imposition of import fees, the heavy reliance by the United States on imported crude oil poses a significant threat to the national security. As noted above, the decontrol of old oil prices should over the long run significantly reduce reliance on foreign sources of oil.

The goals indicated in items (d) and (f) relate primarily to the allocation program or to petroleum products other than crude oil. These goals are therefore not directly affected by the proposal to decontrol the price of old oil.

The goals in item (b) address the threat to adequate supplies of fuel for residential heating, public services and agricultural operations resulting from imminent crude oil shortages. This threat was countered primarily by the allocation of crude oil used to produce fuels for these needs, and by the allocation of these fuels themselves. This fact, plus the current absence of any shortage of crude oil, leads to the conclusion that price controls on crude oil are no longer necessary to achieve the goals of the Act relating to maintaining adequate fuel supplies for residential, public service and agricultural needs.

The goal of providing for "equitable distribution of crude oil * * * at equitable prices among all regions and * * * all users" (item (e)) is one which is clearly predicated upon the existence or imminence of a serious crude oil shortage situation. When supplies are short, normal market mechanisms may not assure equitable distribution of supplies across the country and do not prevent price gouging and other shortage-related pricing abuses. In other words, the goal of "equitable prices" should not be isolated and read out of context as mandating permanent price ceilings, even when supplies of crude oil are adequate to permit normal market mechanisms to function. In the absence of shortages of crude oil, therefore, price controls on crude oil are not necessary to carry out the goal of equitable distribution at equitable prices.

In addition, FEA believes that "equitable" prices, within the meaning of Section 4(b)(1)(F) of the Act, will be achieved by restoring normal market mechanisms during a period of adequate supply and by eliminating economic distortions caused by the current two-tier pricing system. However, to the extent that a return to normal market mechanisms at this time would bring prices on crude oil to levels which might be viewed in certain sectors of the economy as inequitably high because they result in higher prices on certain petroleum products, this view is outweighted by the need to achieve other objectives of the Act and by other considerations, including the fact that decontrol is being phased in gradually and the availability of legislative measures to alleviate, through tax relief or rebates, the impact of price increases on consumers and other sectors of the economy.

On the basis of all the foregoing considerations, the FEA concludes that price controls on crude oil are not necessary to carry out the Act.

COMMENTS ON OLD OIL DECONTROL PROPOSAL

Comments in opposition to the FEA old oil decontrol proposal generally reflected the following arguments:

1. *The argument that U.S. crude oil price levels should be based on production costs and not reflect arbitrary OPEC pricing decisions.* The FEA decontrol program permits old oil prices ultimately to rise to the vicinity of current prevailing world market prices, plus the supplementary import fee of $2.00 per barrel. Some commentators who opposed the FEA decontrol program generally felt that the world price was artificial and therefore unnecessarily high, and might go higher, resulting in still higher domestic prices for decontrolled crude oil. In order to provide appropriate incentive toward increased domestic production, it was proposed that the old oil price ceiling be retained but set at some higher intermediate level, such as $7.50, $8.50 or $10.00 a barrel.

While no indisputable conclusions in this matter are possible, it is clear that current world price levels, including the supplementary import fee, do not exceed the point at which further price increases cannot be expected to bring significant returns in terms of increased crude oil production. In the view of FEA, decontrol at prices up to current world price levels (plus U.S. import fees) will effectively stimulate domestic production and over time substantially reduce our dependence on imported oil. Nevertheless, in order to be responsive to the concern that further OPEC price increases could result in further domestic price increases above those levels providing the maximum useful production incentives, the amendment adopted today imposes an ultimate ceiling on domestic crude oil prices.

It should be remembered in this connection that the great bulk of new domestic production of crude oil will come not from traditional production techniques within the contiguous portions of the continental United States but from more sophisticated and expensive production techniques within this area, or from the continental shelf and remote areas of Alaska. Most offshore production is expected to come from previously untapped areas of the Atlantic and Pacific rather than from the more familiar and tested reaches of the Gulf of Mexico. These considerations all point to the need for new technologies, heavier investment burdens, greater risks and greatly increased costs of production.

In addition, the potential exists for substantial new recoveries from worked over "onshore" reservoirs provided technology for secondary and tertiary recovery is further developed or existing technology becomes economically feasible as prices rise. While not as costly as recovery from offshore and Alaskan frontiers, recovery utilizing secondary/tertiary recovery techniques is generally substantially more costly than primary recovery.

Unfortunately, the level of incentive needed to induce high-risk exploration

and cost estimates for successful development projects vary considerably due to the substantial uncertainties connected with exploration and ultimate recovery from remote and unhospitable regions and considerable doubt as to future rates of inflation. Thus, even if costs could be projected with great precision, necessary incentives for increased production could not be provided by setting prices which merely covered costs. While producers acknowledge that current uncontrolled domestic crude oil price levels provide sufficient incentive to produce new oil, nevertheless as long as three-fifths to two-thirds of production must be sold at the old oil price ceiling of approximately $5.25 per barrel, cash flow, together with other sources of capital, will not be adequate to generate enough capital to finance exploration and development of new oil, no matter what price it may be expected to bring. This problem is of even greater urgency now that tax reform has removed the depletion allowance as a means of accumulating capital for exploration and development.

In this connection, comment provided by oil producers indicates that while industry profits were high in 1974, profits for the first quarter of 1975 have dropped to an average of about two-thirds of the level of the first quarter of 1974. On an annualized basis, this level of profit would produce a return on stockholder equity of 10.5 percent. For the ten-year period prior to 1974 the rate of return on stockholder equity was 11.4 percent for the petroleum industry compared with 11.6 percent for all manufacturing. These figures tend to support the view that the high profit levels of 1974 were not typical, and were the result of short-term non-recurring forces. According to industry comments, the steep decline in industry profits this year, while attributable in large degree to the change in the depletion allowance, significantly exceeds the decline attributable to that change.

Management decisions as to capital needs and adequacy of price incentives necessarily rest with producers and, unless control of oil production is to be assumed by the government, oil firms cannot be forced to develop and market additional amounts of crude oil, even if price levels deemed "adequate" by FEA or Congress were to be adopted. Several commentators made reference in this connection to the serious decline in natural gas production that has occurred under long-term federal price regulation.

Taking into account both FEA and industry estimates, adequate incentive for development of new "onshore" crude oil (i.e., enhanced recovery from traditional domestic reservoirs by secondary/tertiary methods) is currently estimated at between $7.00 to $10.00 a barrel; for development of new oil from Alaska and offshore or continental shelf regions, at between $7.00 to $12.00 a barrel; for development of oil from shale, at between $12.00 to $15.00 a barrel; for development of oil from coal, at about $18.00 a barrel. This array of estimates suggests that if imports are to be held at acceptable levels by substituting significant amounts of new domestic production, it will be both necessary and appropriate to allow prices to rise to the vicinity of currently prevailing world market levels.

The foregoing estimates are generally supported by estimates provided to FEA by other sources. For example, industry data submitted by the Society of Petroleum Engineers indicates that cost of developing and producing a barrel of crude oil in 600 feet of water in the North Atlantic and North Pacific is 3.5 times the cost at the same depth in the Gulf of Mexico, while the cost in the Gulf of Alaska may range up to six times that in the Gulf of Mexico. Lag times are more than twice as great in these frontier areas. In addition, an independent economist testified before a congressional committee that the replacement cost or "economic cost" of domestic crude oil reached a level of $12.73 a barrel in 1974. The high cost of finding "replacement" barrels of crude oil for those we consume today must be financed, in the main, by profits earned on the barrels sold today.

In the opinion of FEA, the task which the nation faces is one of providing sufficient incentives to private industry to develop, to the maximum extent possible and as quickly as possible, additional domestic crude oil resources which will reduce dependence on unreliable foreign crude oil. Revival of domestic production will require a major undertaking in frontier regions at high cost. A decision to offer maximum incentives and to pursue maximum efforts to this end is our own decision and not one dictated by foreign pricing policies.

2. *The argument that decontrol would impose too great a burden on the consumer.* Most commenting refiners stated that old oil decontrol would result in an average price increase of 5 cents or 6 cents per gallon of petroleum product. Suggesting that actual dollar cost increases to the consumer would be within manageable limits, Exxon commented that gasoline prices today are below 1950 levels, in terms of constant dollars, and would remain so even if old oil decontrol were effected immediately. Other comments either directed attention to "ripple effects" or noted that the cost was a small price to pay for greater energy independence.

FEA assessment if impact on the consumer indicates that the average retail price increase attributable to decontrol by the end of this year would be only about 1 cent per gallon of petroleum product. This fact illustrates that the program to phase out crude oil price controls over a 2½ year period will substantially diminish the impact of decontrol on consumers. FEA estimates that the total retail price increase attributable to decontrol over the 2½ year period will be approximately 7 cents per gallon of petroleum product.

The FEA assessment of impact on the consumer also takes into account the intangible but real benefits which would accrue to the public at large through increased national economic security brought by lessened dependence on unreliable foreign crude oil sources, improved balance of payments position, revived domestic industrial production and new jobs in the petroleum industry. In addition, the "windfall profits" tax on oil producers' excess revenues proposed by the President would yield tax receipts which would be used to provide direct rebates to energy consumers. These factors mitigate to a significant extent the actual dollar cost to consumers.

On the other hand, the FEA is aware that prices on such products as home heating oil are already very high and that further increases could impair the ability of certain consumers (particularly the aged and the poor) to pay heating bills, despite the gradual nature of the FEA decontrol program and tax relief. Specific legislative proposals, such as a home insulation tax credit, have been proposed to the Congress to minimize the impact that relatively higher energy costs, including costs of home utilities, will ultimately have on various sectors of the economy.

However, the FEA considers the immediate adoption of this gradual crude oil decontrol program of such overriding national importance that no further delay can be justified. FEA believes this action to be consistent with the admonition in the Conference Report on the Emergency Allocation Act of 1973 that in exercising authority under that Act it would be necessary to "strike an equitable balance between the sometimes conflicting needs of providing adequate inducement for the production of an adequate supply and of holding down spiraling consumer costs."

3. *The argument that decontrol will not reduce demand.* Several comments were received which stressed that consumers have already "dialed down" and taken all other available conservation steps, and that no further realistic anti-consumption measures are available, particularly to the homeowner. According to this view, the decontrol program would therefore merely squeeze the consumer.

While the FEA acknowledges that many useful conservation measures in home heating (except perhaps major insulation efforts) were instituted last year, nevertheless comments with respect to inelasticity of demand are not borne out by the demand responses experienced with respect to past price increases.

The decontrol program will contribute to the long-term goal of reducing dependence on unreliable foreign crude oil and the benefits of achieving that goal must therefore be measured on a long-term basis. The FEA position that increased prices of domestic crude oil will dampen demand domestically is based on the realistic asumption that higher fuel prices in the long run will inevitably result in or contribute to smaller and/or more efficient automobiles, more efficient home heating systems, increased construction and use of public transporta-

tion systems, and more efficient use of fuels in commerce and industry. All of these will contribute to contracting energy demand.

Moreover, means are available for easing short-term problems relating to demand reduction. The President has consistently urged that appropriate legislative action be taken to ease the burden on consumers of the transition to an economic system based on relatively higher costs for energy than have been experienced in the past. The FEA will continue to work actively in seeking to solve transitional consumer problems.

4. *The argument that decontrol of crude oil should not be undertaken unless natural gas prices are deregulated simultaneously.* A number of petroleum marketers stated that they would not support the FEA decontrol program unless natural gas prices were decontrolled at the same time. Understandably, marketers of petroleum fuels are concerned that they will lose a share of their fuel markets to natural gas marketers if petroleum fuels become increasingly noncompetitive in price.

To some degree the concern of petroleum marketers in this respect may be exaggerated. The present short supply of natural gas is expected to become more critical in the coming months, so that it is most unlikely that many consumers will be able to substitute natural gas for petroleum fuels even if the latter become more expensive. Only if Congress acts to decontrol natural gas prices substantially in advance of implementation of a program to decontrol crude oil prices could there be an expansion of natural gas supplies sufficient to permit inroads into the petroleum fuels market. In that event, of course, natural gas prices would have begun to climb before those of petroleum fuels, so that the petroleum marketers would be in a relatively better competitive position.

The FEA agrees that many of the same reasons which support decontrol of crude oil prices support decontrol of natural gas price levels. However, regulation of natural gas prices is not within the jurisdiction of FEA. In exercising its responsibilities under the Emergency Petroleum Allocation Act of 1973, the FEA must move forward to develop policies and programs within its mandate, while recommending for congressional action complementary measures which are beyond FEA authority to implement.

Congress has under active consideration proposals to deregulate the prices of natural gas. In view of the urgency of taking steps now to alter the trend toward increased imports of crude oil, and in view of the gradual phase-out approach of the FEA decontrol program, the FEA believes it is appropriate to commence gradual decontrol of old oil price ceilings without waiting for final congressional action on natural gas prices.

The FEA recognizes that the Emergency Petroleum Allocation Act of 1973 places special emphasis on protecting the competitive viability and market share of independent marketers, to the maximum extent practicable and consistent with the other objectives of the Act. FEA will therefore maintain a continuing review of the market shares of home heating oils versus competing fuels to insure that decontrol of crude oil does not have a significant adverse impact on independent marketers.

5. *The argument that decontrol of crude oil should not be undertaken until a "windfall" profits tax is enacted.* For the reasons given under argument number 4, above, the FEA believes that the decontrol program must begin now, without further delay. Action on a "windfall" profits tax can be completed within the next few months by Congress without disrupting an orderly administrative decontrol program. Increases in producer revenues will be gradual under the phased decontrol schedule, and in any event a new profits tax may be imposed retroactively.

6. *The arugmen t that decontrol by FEA would harm the airline industry, in controvention of one of the goals of the EPAA.* Representatives of the airline industry commented that U.S. airlines, already in financial difficulty because of the increases in jet fuel prices in 1974 and the effects of the recession on airline travel, would be further adversely affected by another round of fuel price increases brought about by decontrol.

The airline industry takes the position, in effect, that decontrol should not be permitted to proceed because it would impair public air transportation in contravention of one of the goals of the Emergency Petroleum Allocation Act.

The FEA recognizes that one of many express goals to be achieved by the allocation and price regulations promulgated under the Emergency Petroleum Allocation Act of 1973 is to "provide for maintenance of all public services * * * including transportation facilities." However, the concern of Congress in this respect was directed to the adequacy of supplies to keep transportation systems running. This is clearly shown by the following specific discussion of air transport problems in the Conference Report on the Act.

> The petroleum fuel shortage threatens numerous areas of commerce. The jeopardy from shortage of these fuels impacts most directly on transportation. Without adequate petroleum fuel most United States' domestic and international transportation, with no option to convert to other fuels, potentially wouldb e seriously disrupted. A significant reduction of transportation capability could adversely affect all other areas of commerce and the national economy. Thus, one of the primary objectives of the Act is to assure maintenance of transportation services.

The Act clearly does not require the "maintenance" of price ceilings on certain petroleum products purchased by a particular industry.

Moreover, each of the many goals listed in § 4(b) of that Act is qualified by the proviso that the allocation and price regulations need provide for those goals only "to the maximum extent practicable." In explaining why this qualification was included, the Conference Report stated, "It is fully recognized that, in some instances, it may be impossible to satisfy one objective without sacrificing the accomplishment of another." The qualification was thus intended, according to the Report, "to give the President administrative flexibility in marshalling short supplies and equitably assigning them to particular needs."

Therefore, even if FEA were to agree with the airline industry's view that decontrol does not fully meet one of the many sometimes conflicting objectives under the Act, this would not overcome the FEA's conclusion as to the overriding need to proceed with this decontrol program—a program designed to reflect the present adequacy of supplies and to begin on a gradual basis to restore the petroleum industry to normal functioning.

The FEA is sensitive to the special problems which face the airline industry and other public service industries due to energy cost increases. The change from a 25 to a 30-month phase-out schedule should serve to reduce the impact of decontrol on industries which are especially dependent on petroleum fuels. The FEA is prepared to discuss with any industry or affected group other ways in which adverse effects under the decontrol program can be minimized.

### E. Rule Modification

1. *Length of phase-out period.* A great variety of suggestions were received for changing the 25-month period for decontrol proposed by FEA in its notice of proposed rulemaking in this matter. These ranged from requests for immediate decontrol, to decontrol over a 5–10 month period, to decontrol over a 4- or 5-year period. However, many commentators indicated that they would be willing to accept the FEA proposal on this issue as a compromise or second choice.

Those who proposed a longer period for phase-out were chiefly concerned with minimizing or softening the impact on the economy or on consumers, in particular. Those proposing a shorter period stressed either the need to remove the economic distortions and other deleterious effects of controls as soon as possible or the need to achieve a greater degree of national self-sufficiency in crude oil at a more rapid pace.

The FEA must, of course, strike a balance between these opposing considerations or concerns. The FEA believes that a somewhat more gradual decontrol pace, at the rate of 3.3 percent a month for 30 months (after decontrol of one percent for the month of July, 1975), represents a reasonable balance on this issue. This will mean that the decontrol process would extend to February 1, 1978, compared with August, 1977, under the 25-month proposal and August, 1980, under the decontrol proposal contained in H.R. 7014 as recently reported out of the House Commerce Committee. This phase out program, once placed in motion, will permit planning and mobilization for long range exploration and development of new domestic crude oil resources to begin immediately. At the same time, the 30-month phase-out schedule appears to

provide an appropriately gradual mechanism to minimize the impact on the economy.

2. *Requirement of maximum feasible rates of production.* Comments were received which expressed concern that the decontrol program, as proposed, might have the unintended result of reducing production temporarily if producers held back on production until the end of the phase-out period, when all crude oil could be sold at uncontrolled price levels.

In view of this possibility, the FEA has decided to adopt generally the same express requirement now applicable by its terms only to the stripper well lease exemption, which requires production to be maintained at maximum feasible rates of production. The FEA believes this requirement is appropriate to assure that the purpose and intent of the decontrol program are not circumvented. The requirement is also fully consistent with the main purpose of decontrol, which is to maintain and increase current levels of domestic production as rapidly as possible. Any holding back would defeat this purpose and would also defeat the effort to minimize adverse effects on the economy by phasing out controls on a gradual basis.

3. *Decontrol base level.* Under the proposed rule the amount of decontrolled oil would have been calculated as a percentage of the base production control level crude petroleum (i.e., 1972 production) rather than as a percentage of the old oil currently being produced. It was pointed out to FEA that inasmuch as 1972 production levels are generally greater than current production levels, the monthly decontrol volume would be correspondingly larger if the amount of decontrolled oil were to be calculated against a 1972 base. This would mean that the old oil produced from a property would be decontrolled in a period of less than 25 months, to the extent that its current production was at less than 1972 levels. Thus, the overall decontrol program, as proposed, would have extended to the end of that 25-month period, and would have affected for the full 25 months (as proposed) those properties which continue to produce at 1972 levels, but would have decontrolled properties producing at less than 1972 levels before the end of that period.

In order to clarify this ambiguity concerning the phase-out schedule and in order to assure a full 30-month phase-out for all properties which continue to be productive, the FEA has concluded that it would be preferable to calculate the amount of decontrolled crude oil on the basis of a recent level of old oil production rather than on the basis of the 1972 base level production.

The FEA has also concluded that, in view of the urgent need for increased domestic production of crude oil, the modified decontrol amendment should provide production incentives for all properties, at all levels of production. As discussed in Section B, above, existing production incentives relating to "new" and "released" crude oil are not effective to encourage additional production in many cases where current production has declined substantially below 1972 base levels. Gradual decontrol of old oil based on the current month's production would not directly stimulate additional production in these cases, since such a decontrol formula would subject any incremental production to price controls in the same percentage as if a lesser amount had been produced.

In view of the foregoing considerations, the decontrol rule adopted by FEA today has been modified to measure decontrolled old crude oil by reference to an established base of the recent production level of old oil from the property concerned. This will provide an immediate price incentive to all properties to increase production above that level. Accordingly, the new regulation establishes a "decontrol base production level," which is defined as the average monthly production of old oil from the property concerned during the three calendar months ending June 30, 1975, based on maximum feasible rates of production in those months. Any old oil production above that level in each month beginning with August, 1975, will be decontrolled, as will an amount of each current month's old oil production which is equal to the decontrol base production level multiplied times a percentage equal to 3.3 percent times the number of months beginning with August, 1975, through that current month, plus one percent (representing the decontrol action for July, 1975). However, for the month of July, 1975, the only production to be decontrolled will be one percent of the decontrol base production level. Since the decontrol calculations are based exclusively on old oil production levels (controlled oil less "new" and "released" oil), this amendment leaves undisturbed and is in addition to the existing regulations which permit "new" and "released" crude oil to be priced at market levels.

For example, a property which had a 1972 base production control level of 2,000 barrels per month (b/m) and a 1975 "decontrol base production level" (i.e., old oil production level) of 1,680 b/m might reach the following hypothetical total production levels: in July, 1975, 1,600 b/m; in August, 1975, 1,640 b/m; in October, 1975, 1,880 b/m; and in January, 1976, 2,180 b/m.

Under the amendment adopted by FEA today, the amount of July production of 1,600 barrels which would be decontrolled would be one percent of the decontrolled base production level of 1,680 barrels, or 17 barrels. The amount of August production of 1,640 barrels which would be decontrolled would be 4.3 percent (3.3 percent for August plus one percent for July) of the decontrol base production level of 1,680 barrels, or 72 barrels.

Decontrolled production for October would be the 200 barrels of oil (all of which is old oil) produced in excess of the decontrol base production level, plus 10.9 percent (3.3 percent times three months plus one percent) of the 1,680-barrel decontrol base production level, a total of 383 barrels.

For January, in order to determine the amount of crude petroleum that could be sold at market levels, the producer would first note that the 180 barrels in excess of the 2,000 barrel base production control level comprised "new" oil, and that, accordingly, 180 barrels of "released" oil would be available (omitting for purposes of this example the cumulative deficiency requirement). This means that the month's production of old oil is 1,820 barrels. The amount of old oil which would then be decontrolled pursuant to this amendment would be the 140 barrels by which the 1,820 barrels of old oil production for the month exceeds the 1,680 barrel decontrol base production level, plus 20.8 percent (3.3 pecent times six months plus one percent) of the 1,680-barrel decontrol base production level, or 349 barrels. Thus, for the month, 1,331 barrels would be subject to the old oil ceiling price and a total of 849 barrels would be sold at market levels (although subject to the higher ceiling price for "decontrolled" oil).

The foregoing examples are intended merely to illustrate the computations under current new and released crude oil price rules, and under this amendment, where the current month's production is (1) below the "decontrol base production level," (2) above the "decontrol base production level" but below the 1972 base production control level, and (3) above both the "decontrol base production level" and the 1972 base production control level. (These examples are not intended to reflect projected rates of production for any particular property or for U.S. domestic production generally.)

4. *Decontrolled price ceiling.* Pricing policies recently announced by OPEC indicate that world crude oil price levels, which have remained generally stable for more than a year, might be increased in the coming months.

In order to avoid the possibility that future world price increases might result in U.S. domestic price increases to levels which are above the current landed cost for imported oil (i.e., the world market price plus the $2.00 per barrel supplementary import fee), the FEA has further modified its proposed rule, to establish in this amendment an ultimate price ceiling for decontrolled domestic crude oil of $13.50 per barrel applicable until the end of the 30-month decontrol period. This ceiling will apply to all domestic crude oil other than stripper well crude oil, which is exempt from price controls pursuant to the Emergency Petroleum Allocation Act of 1973. With respect to properties from which new or released crude oil was produced and sold in the month of January, 1975, the ceiling price shall be the highest price charged for crude oil produced and sold from that property in January, 1975, plus $2.00 per barrel; and with respect to decontrolled crude oil produced and sold from all properties which did not produce and sell new or released crude oil in January, 1975, the ceiling price shall be $13.50 per barrel.

The FEA does not intend by imposing this safeguard to alter the fundamental nature or direction of the decontrol program. While the existence of an ultimate price ceiling means in one sense that decontrol is not absolute, the experience under price controls since the Economic Stabilization Act of 1970 indicates that no price exemption can be considered permanent where economic conditions remain unsettled or vulnerable to disruption. The FEA intends under this rule merely to make clear in advance the point above which decontrolled prices will not be permitted to rise without a price freeze and concurrent reassessment of crude oil cost/price and supply/demand forces.

Should Congress adopt a windfall profits tax measure, as urged by FEA, any increased oil-producer revenues generated due to possible future OPEC price increases would be returned to the Treasury whether or not FEA imposed an ultimate crude oil price ceiling. However, assuming a windfall profits tax is enacted and the authority of the FEA to regulate petroleum prices is extended, it would remain the responsibility of FEA to monitor progress toward import-duction goals and to take such additional steps as might be necessary to assure that domestic production is increased at the rate and in the manner deemed most appropriate. The establishment of an ultimate price ceiling at this time helps to clarify energy policy for both producers and consumers and is in keeping with FEA's continuing responsibility to guide and direct attainment of energy policy goals.

5. *Technical changes.* Technical changes have been made in §§ 211.62 and 212.131 to conform the entitlements program and the crude oil sales certification requirements to the decontrol program.

(Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. 93-159, as amended by Pub. L. 93-511; Federal Energy Administration Act of 1974, Pub. L. 93-275; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 Code of Federal Regulations, are amended as set forth below, effective immediately upon the expiration of the period required pursuant to section 4(g)(2) of the Emergency Petroleum Allocation Act of 1973, as amended, unless this amendment or any portion thereof is disapproved by either house of Congress during that period.

Issued in Washington, D.C., July 14, 1975.

ROBERT E. MONTGOMERY, Jr.,
*General Counsel,*
*Federal Energy Administration.*

1. Section 211.62 is amended in the definition of "old oil" to read as follows:

**§ 211.62 Definitions.**

* * * * *

"Old oil" means old crude petroleum less any related decontrolled old crude petroleum, as each of these terms is defined in § 212.72 of this chapter.

* * * * *

2. Section 212.72 is revised to add, in appropriate alphabetical order, a definition of "decontrol base production level" and "decontrolled old crude petroleum" to read as follows:

**§ 212.72 Definitions.**

* * * * *

"Decontrol base production level" means the total number of barrels of old crude petroleum produced and sold from the property concerned during the three calendar months ending June 30, 1975, divided by three. The decontrol base production level for each property shall be based upon each well on that property having been maintained at the maximum feasible rate of production during the three calendar months ending June 30, 1975, in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production. In a case where the property concerned was not so maintained, the FEA may assign a decontrol base production level which fairly represents the production level which would have been attained if that property had been so maintained.

"Decontrolled old crude petroleum" means:

(1) For the month of July, 1975, a number of barrels of old crude petroleum produced and sold from the property concerned in that month equal to 1 percent of the decontrol base production level for that property;

(2) For months subsequent to July, 1975, (a) the total number of barrels of old crude petroleum produced and sold from the property concerned in the current month which exceeds the decontrol base production level for that property, plus (b) a number of barrels of old crude petroleum produced and sold from the property concerned in the current month equal to the product of the decontrol base production level for that property multiplied by a percentage equal to 3.3 percent multiplied by the number of months beginning with August, 1975, through the current month plus one percent.

3. Section 212.74 is revised to read as follows:

**§ 212.74 New, released and decontrolled old crude petroleum.**

(a) Notwithstanding the provisions of § 212.73(a), but subject to paragraphs (b) and (c) of this section, a producer of crude petroleum may charge any price for the new crude petroleum, the released crude petroleum, and the decontrolled old crude petroleum produced and sold from the property concerned in the month concerned.

(b) Until February 1, 1978, no producer may charge a price for any new crude petroleum, released crude petroleum, or decontrolled old crude petroleum which exceeds the highest price charged for new or released crude petroleum produced and sold from the property concerned in January, 1975, plus $2.00 per barrel, or with respect to such crude petroleum produced from a property from which new or released crude petroleum was not produced and sold in January, 1975, a maximum of $13.50 per barrel.

(c) A producer that charges a price for decontrolled old crude petroleum which exceeds the ceiling price for old crude petroleum shall maintain each well on the property concerned at all times at the maximum feasible rate of production, in accordance with recognized conservation practices, and shall use all reasonable means to insure that production is not significantly curtailed by reason of mechanical failure or other disruption in production.

4. Section 212.131 is revised in paragraphs (a) and (b) to read as follows:

**§ 212.131 Certification of domestic crude petroleum sales.**

(a) (1) Each producer of domestic crude petroleum shall, with respect to a first sale of domestic crude petroleum, certify in writing to the purchaser: (i) The ceiling price of that domestic old crude petroleum, (ii) the amount of stripper well crude petroleum, (iii) the amount of new crude petroleum, (iv) the amount of released crude petroleum, (v) the amount of decontrolled old crude petroleum, and (vi) the amount of old crude petroleum which has not been decontrolled, provided, that the certification requirements of this paragraph (a)(1) may be complied with by a one-time certification by a producer to the purchaser as to the base production control level crude petroleum for each month of 1972 and as to the decontrol base production level for the particular property. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

(2) Each seller of domestic crude petroleum, other than a producer of domestic crude petroleum covered by paragraph (a)(1) of this section shall, with respect to each sale of domestic crude petroleum other than (i) an allocation sale pursuant to § 211.65 of part 211, or (ii) a sale in which no volumes of old oil (as defined in § 211.62) are deemed to have been transferred pursuant to § 211.67(g) of part 211, certify in writing to the purchaser the amount of old crude petroleum which has not been decontrolled included in the volume of domestic crude petroleum so sold. The certification shall also contain a statement that the price charged for the domestic crude petroleum is no greater than the maximum price permitted pursuant to this part.

(b) With respect to each allocation sale under § 211.65 of part 211, the seller shall certify in writing to the purchaser the amount of old crude petroleum which has not been decontrolled deemed (under the provisions of § 211.67(f) of part 211) to be included in the volume of crude petroleum so sold. Such written certification shall be made within 25 days following the month in which the crude oil so sold is delivered to or for the account of the purchaser.

* * * * *

[FR Doc.75-18656 Filed 7-15-75;12:08 pm]