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NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Daily List of Public Laws

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(Nov. 13, 1975; 89 Stat. 683)

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An act to amend further the Peace Corps Act, and for other purposes
(Nov. 14, 1975; 89 Stat. 684)

S. 24..... Pub. Law 94–131
An act to carry into effect certain provisions of the Patent Cooperation Treaty, and for other purposes
(Nov. 14, 1975; 89 Stat. 685)

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 51—FISCAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Revenue Sharing

The Department of the Treasury hereby publishes in its entirety the regulations in Part 51 of Subtitle B of Title 31, Code of Federal Regulations, which became effective April 5, 1973 (38 FR 9132) for entitlement periods beginning on or after January 1, 1973 and which have since been amended. Amendment to the regulations was made pursuant to the authority vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972 (the Revenue Sharing Act) approved October 20, 1972.

These complete regulations include all previous amendments and, specifically, amendments filed on October 22, 1975 to 31 CFR Part 51, creating a new subpart for civil rights regulations, and amendments filed October 23, 1975, indicating changes in the designation of subparts and section numbers as well as clarifying existing policy and changing existing procedures.

Dated: November 10, 1975.

JOHN K. PARKER,
Acting Director,
Office of Revenue Sharing.

Approved: Richard R. Albrecht,
General Counsel.

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AUTHORITY: Pub. L. 92-512; and 5 U.S.C. 301.

Subpart A—General Information

§ 51.0 Scope and application of regulations.

(a) *In general.* The rules and regulations in this part are prescribed for carrying into effect the State and Local Fiscal Assistance Act of 1972 (Title I, Public Law 92-512) applicable to entitlement periods beginning January 1, 1973. Subpart A sets forth general information and definitions of terms used in this part. Subpart B of this part prescribes reports required under this part and publicity concomitant thereto. Subpart C of this part contains rules regarding the computation, allocation and adjustment of entitlement. Subpart D of this part prescribes prohibitions and restrictions on the use of funds. Subpart E of this part prescribes fiscal procedures and auditing requirements. Subpart F of this part contains rules relating to procedure and practice requirements where a recipient government has failed to comply with any provision of this part.

(b) *Saving clause.* Any cause of action arising out of noncompliance with the interim regulations covering payments made for the first and second entitlement periods (January 1, 1972, through June 30, 1972, and July 1, 1972, through December 31, 1972) shall continue to be covered by such regulations and any proceeding commenced thereon shall be governed by the procedures set forth in Subpart F of this part.

§ 51.1 Establishment of Office of Revenue Sharing.

There is established in the Office of the Secretary of the Treasury the Office of Revenue Sharing. The office shall be headed by a Director who shall be appointed by the Secretary of the Treasury. The Director shall perform the functions, exercise the powers and carry out the duties vested in the Secretary of the Treasury by the State and Local Fiscal Assistance Act of 1972, Title I, Public Law 92-512.

§ 51.2 Definitions.

As used in this part (except where the context clearly indicates otherwise, or where the term is defined elsewhere in this part) the following definitions shall apply:

(a) "Act" means the State and Local Fiscal Assistance Act of 1972, Title I of Public Law 92-512, approved October 20, 1972.

(b) "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, or the chairman of a county commission or board in a county that has no elected county executive, or such other official as may be designated pursuant to law by the duly elected 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.

(c) "Department" means the Department of the Treasury.

(d) "Entitlement" means the amount of payment to which a State government or unit of local government is entitled as determined by the Secretary pursuant to an allocation formula contained in the Act and as established by regulation under this part.

(e) "Entitlement funds" means the amount of funds paid or payable to a State government or unit of local government for the entitlement period.

(f) "Entitlement period" means one of the following periods of time:

(1) The 6-month period beginning January 1, 1973, and ending June 30, 1973.

(2) The fiscal year beginning July 1, 1973, and ending June 30, 1974.

(3) The fiscal year beginning July 1, 1974, and ending June 30, 1975.

(4) The fiscal year beginning July 1, 1975, and ending June 30, 1976.

(5) The 6-month period beginning July 1, 1976, and ending December 31, 1976.

(g) "Governor" means the Governor of any of the 50 States or the Commissioner of the District of Columbia.

(h) "Independent public accountants" means independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States.

(i) "Indian tribes and Alaskan native villages' means those Indian tribes and Alaskan native villages which have a recognized governing body and which perform substantial governmental functions. Certification to the Secretary by the Secretary of the Interior (or by the Governor of a State in the case of a State affiliated tribe) that an Indian tribe or an Alaskan native village has a recognized governing body and performs substantial governmental functions, shall constitute prima facie evidence of that fact.

(j) "Recipient government" means a State government or unit of local government as defined in this section.

(k) "Secretary" means the Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(l) "State government" means the government of any of the 50 States or the District of Columbia.

(m) "Unit of local government" means the government of a county, municipality, township, or other unit of government below the State which is a unit of general government and which shall be determined on the basis of the same principles as used by the Bureau of the Census for general statistical purposes. The term "unit of local government" shall also include the recognized governing body of an Indian tribe or Alaskan native village which performs substantial governmental functions. The District of Columbia, in addition to being treated as a State, shall also be treated as a county area which has no units of local government (other than itself) within its geographic area.

§ 51.3 Procedure for effecting compliance.

(a) *In general.* If the Secretary determines that a recipient government has failed to comply substantially with any provision of this part, and after giving reasonable notice and opportunity for a hearing to the Governor of the State or the chief executive officer of the unit of local government pursuant to Subpart G of this part, the Secretary shall notify the recipient government that if it fails to take corrective action within 60 days from the date of receipt of such notification further payments to it will be withheld for the remainder of the entitlement period and for any subsequent entitlement period until such time as the Secretary is satisfied that appropriate corrective action has been taken and that there will no longer be any failure to comply. Until he is satisfied, the Secretary shall make no further payments of such amounts.

(b) *Determination to delay payment.* Whenever the Secretary determines that a recipient government has failed to comply with the communication requirements of Subpart B, he may delay payment of entitlement funds to such recipient. A determination to delay payment of entitlement funds shall not be subject to the procedure set forth in paragraph (a) of this section and shall be in effect only for such time as is necessary to effect compliance.

§ 51.4 Extension of time.

When by these regulations (other than those specified in Subpart F of this part) an act is required within a specified time, the Secretary may grant a request for an extension of time if in his judgment it is necessary and appropriate. Requests for extensions of time shall set forth the facts and circumstances supporting the need for more time and the amount of additional time requested.

§ 51.5 Transfer of funds to secondary recipients.

Those prohibitions and restrictions set forth in Subparts D and E of this part which are applicable to a recipient government's entitlement funds continue to be applicable to such funds if they are transferred to another governmental unit or private organization. A violation of Subparts D and E of this part by a secondary recipient shall constitute a violation by the recipient government and the applicable penalty shall be imposed on the recipient government.

Subpart B—Reports and Written Communications

§ 51.10 Reports to the Secretary; assurances.

(a) *Reports for review and evaluation.* The Secretary may require each recipient government receiving entitlement funds to submit such annual and interim reports (other than those required by § 51.11) as may be necessary to provide a basis for evaluation and review of compliance with and effectiveness of the provisions of the Act and regulations of this part.

(b) *Requisite assurances for receipt of entitlement funds.* Each Governor of a State or chief executive officer of a unit of local government, in order to qualify for entitlement funds, must file a statement of assurances when requested by the Secretary, on a form to be provided, that such government will abide by certain specific requirements of the Act and the prohibitions and restrictions of Subparts D, E, and F of this part, with respect to the use of entitlement funds. The Secretary will afford each Governor the opportunity for review and comment to the Secretary on the adequacy of the assurances by units of local government in his State.

§ 51.11 Report on planned use and actual use of funds.

(a) *Planned use report.* Each recipient government which expects to receive funds under the Act shall submit to the Secretary a report, on a form to be provided, of the specific amounts and purposes for which it plans to spend the funds which it expects to receive for an entitlement period. The planned use reports for the third and fourth entitlement periods (the 6-month period beginning January 1, 1973 and ending June 30, 1973, and the fiscal year beginning July 1, 1973 and ending June 30, 1974) shall be filed with the Secretary on a date he shall determine. Thereafter, each planned use report shall be filed prior to the beginning of an entitlement period as defined in § 51.2(f).

(b) *Actual use report; status of trust fund.* Each recipient government which receives funds pursuant to the Act shall submit to the Secretary an annual report, on a form to be provided, of the amounts and purposes for which such funds have been spent or otherwise transferred from the trust fund (as defined in § 51.70(a)) during the reporting period. Such report also shall state any interest earned on entitlement funds during the period. Such reports shall show the status of the trust fund including its balance as of June 30 and shall be filed with the Secretary on or before September 1 of each calendar year. All such funds must be used, obligated, or appropriated within the time period specified in § 51.70(b).

§ 51.12 Certifications.

The Secretary shall require a certification by the Governor, or the chief executive officer of the unit of local government, that no entitlement funds have

been used in violation of the prohibition contained in § 51.40 against the use of entitlement funds for the purpose of obtaining matching Federal funds. In the case of a unit of local government the Secretary shall require a certification by the chief executive officer that entitlement funds received by it have been used only for priority expenditures as prescribed by § 51.41. The certifications required by this section shall be in such form as the Secretary may prescribe.

§ 51.13 Publication and publicity of reports; public inspection.

(a) *Publication of required reports.* Each recipient government must publish in a newspaper a copy of each report required to be filed under § 51.11 (a) and (b) prior to the time such report is filed with the Secretary. Such publication shall be made in one or more newspapers which are published within the State and have general circulation within the geographic area of the recipient government involved. In the case of a recipient government located in a metropolitan area which adjoins and extends beyond the boundary of the State, the recipient government may satisfy the requirement of this section by publishing its reports in a metropolitan newspaper of general circulation even though such newspaper may be located in the adjoining State from the recipient government.

(b) *Publicity.* Each recipient government, at the same time as required for publication of reports under paragraph (a) of this section, shall advise the news media, including minority and bilingual news media, within its geographic area of the publication of its reports made pursuant to paragraph (a) of this section, and shall provide copies of such reports to the news media on request.

(c) *Public inspection.* Each recipient government shall make available for public inspection a copy of each of the reports required under § 51.11(a) and (b) and information as necessary to support the information and data submitted on each of those reports. Such detailed information shall be available for public inspection at a specified location during normal business hours. The Secretary may prescribe additional guidelines concerning the form and content of such information.

§ 51.14 Reports to the Bureau of the Census.

It shall be the obligation of each recipient government to comply promptly with requests by the Bureau of the Census (or by the Secretary) for data and information relevant to the determination of entitlement allocations. Failure of any recipient government to so comply may place in jeopardy the prompt receipt by it of entitlement funds.

Subpart C—Computation and Adjustment of Entitlement

§ 51.20 Data.

(a) *In general.* The data used in determination of allocations and adjustments thereto payable under this part will be the latest and most complete data supplied by the Bureau of the Census or such other sources of data as in the judgment of the Secretary will provide for equitable allocations.

(b) *Computation and payment of entitlements.* (1) Allocations will not be made to any unit of local government if the available data is so inadequate as to frustrate the purpose of the Act. Such units of local government will receive an entitlement and payment when current and sufficient data become available as necessary to permit an equitable allocation.

(2) Payment to units of local government for which the Secretary has not received an address confirmation will be delayed until proper information is available to the Secretary.

(3) Where the Secretary determines that the data provided by the Bureau of the Census or the Department of Commerce are not current enough, or are not comprehensive enough, or are otherwise inadequate to provide for equitable allocations he may use other data, including estimates. The Secretary's determination shall be final and such other additional data and estimates as are used, including the sources, shall be publicized by notice in the FEDERAL REGISTER.

(c) *Special rule for 6 month entitlement periods.* For entitlement periods which encompass only one-half of a year, the adjusted taxes and intergovernmental transfers of any unit of local government for that half-year will be estimated to be one-half of the annual amounts.

(d) *Units of local government located in more than one county area.* In cases where a unit of local government is located in more than one county, each part of such unit is treated for allocation purposes as a separate unit of government, and the adjusted taxes, and intergovernmental transfers of such parts are estimated on the basis of the ratio which the population of such part bears to the population of the entirety of such unit.

§ 51.21 Data affected by major disaster.

(a) *In general.* Any change in data otherwise eligible for use in determining the entitlement of a recipient government after April 1, 1974, shall be disregarded for a period of 60 months if that change:

(1) Resulted from a major disaster determined by the President under § 301 of the Disaster Relief Act of 1974 (Pub. L. 93-288) and

(2) Results in a data factor which is less beneficial than the previous data factor for purposes of the revenue sharing allocation process.

(b) *Eligibility requirements.* In order for a recipient government to be eligible for the data stabilization benefit of paragraph (a) of this section, it shall:

(1) Be located within a State designated by the President as a major disaster area, and

(2) Be located within a geographical subdivision of the State as certified to the Office of Revenue Sharing as a major disaster area by the Administrator of the Disaster Assistance Administration of the Department of Housing and Urban Development.

Further, each recipient government within the specific geographic area so designated will be notified pursuant to the data improvement program, provided for in § 51.29 of each of its data factors developed subsequent to the major disaster designation and shall be required to verify through its chief executive officer, that the data was adversely affected by the major disaster. In addition, the Secretary may require that such verifications be accompanied by substantiating documentation evidencing a causal relationship between the major disaster and the less favorable revenue sharing allocation value of the subject data factor. The Secretary, upon being satisfied that all of the requirements of this section have been met with respect to any post-disaster data factor, shall refrain from using the post-disaster data factor in the allocation process, and shall continue to use the pre-disaster data factor, until whichever of the following occurs first: (i) A data factor more beneficial than the pre-disaster data factor currently being used is developed, or (ii) 60 months have expired from the designation by the President of the specific major disaster area.

§ 51.22 Adjusted taxes.

(a) *In general.* Tax revenues are compulsory contributions to a unit of local government exacted for public purposes, as such contributions are determined by the Bureau of the Census for general statistical purposes. The term "adjusted taxes" means the tax revenues adjusted by excluding an amount equal to that portion of such compulsory contributions which is properly allocable to school operations, debt service on school indebtedness, school capital outlays, and other educational purposes.

(b) *Procedure for exclusion of tax revenues for education.* The tax revenues exacted by a unit of local government shall be adjusted to exclude any such tax revenues used for financing education in a manner consistent with the following provisions:

(1) Where a unit of local government finances education from a specific fund and lists tax revenues to the fund or levies a separate tax for purposes of education, such amounts as determined will constitute the tax revenues for education.

(2) If tax revenues for purposes of education are not separately identifiable because education is financed by expenditure or transferring of moneys from a general fund (or similarly named fund) to a school fund or funds, then the ratio of tax revenues (as defined in paragraph (a) of this section) to the total revenues in such fund shall be calculated, and that ratio multiplied by the expenditure or transfer of moneys from such fund to the school fund shall be equated with the tax revenues properly allocable to expenses for education. The phrase "total revenues in such fund" means cash and securities on hand in the general fund (or similarly named fund) at the beginning of the fiscal year, plus all revenues to the fund (other than trust or agency revenues) less cash and securities on hand at the end of the fiscal

year. Trust and agency funds are those held specifically for individuals or governments for which no discretion can be exercised as to the amounts to be paid to the recipient.

(3) If any instance where neither paragraph (b) (1) nor (2) of this section permits determination of school taxes, then any procedure deemed equitable by the Secretary shall be utilized to ascertain adjusted taxes.

(c) *Validity of adjusted tax data.* Allocation of funds under the Act will be based on data reported by States and units of local governments to the Bureau of the Census and shall be in accordance with definitions established by the Bureau. No unit of government shall report to the Department of the Treasury or the Bureau of the Census in a manner which attempts to circumvent or frustrate the intent of this section.

§ 51.23 Date for determination of allocation.

(a) *In general.* Pursuant to the provisions of § 51.20 (a) and (b)(3), the determination of the data definitions upon which the allocations and entitlements for an entitlement period are to be calculated shall be made not later than the day immediately preceding the beginning of the entitlement period. Any change in the computation of local tax effort to credit certain county sales taxes to units of local government pursuant to section 109(e)(2)(B) of the Act (the "Memphis Rule") will be considered to be a change in a data definition and will not be given effect for any entitlement periods for which there are final data definitions. The final date upon which determinations of allocations and entitlements, including adjustments thereto, may be made for an entitlement period shall be determined by the Secretary as soon as practicable and shall be publicized by notice in the FEDERAL REGISTER.

(b) *Time limitation and minimum adjustment.* If prior to the date determined by the Secretary pursuant to paragraph (a) of this section, it is established to the satisfaction of the Secretary by factual evidence and documentation that the data used in the computation of an allocation is erroneous an adjustment will be made. No adjustment of any kind which is less than $200 shall be made to an entitlement if in the judgment of the Secretary such adjustment will be burdensome, expensive, or otherwise impracticable.

(c) *Adjusted taxes and intergovernmental transfers.* The dates for determining the amount of adjusted taxes and intergovernmental transfers of a unit of local government will be the fiscal year of such unit ending during the 12 months prior to July 1, 1971. If a more recent period is used, it shall be such fiscal year that can be uniformly assembled for all units of government prior to the beginning of the affected entitlement period.

§ 51.24 Boundary changes, governmental reorganization, etc.

(a) *In general.* Boundary changes, governmental reorganizations, or changes in State statutes or constitutions occurring prior to or during an entitlement period which were not taken into account during the initial allocation shall, if not within the scope of paragraph (d) of this section, affect such allocation or payments in a manner consistent with the following provisions:

(1) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of an entitlement of a unit of local government under the Act, occuring prior to the beginning of an entitlement period shall result in an alteration to the entitlement of that unit if brought to the attention of the Bureau of the Census within 60 days (or by June 30, 1973, in case of the third entitlement period) after the beginning of such entitlement period.

(2) A boundary change, governmental reorganization, or change in State statutes or constitution relevant to the computation of entitlement of a unit of local government under the Act, occurring during an entitlement period shall not result in a change to the entitlement of that unit until the next entitlement period. However, payment tendered to such unit for the entitlement period may be redistributed pursuant to the provisions of paragraphs (b) and (c) of this section.

(b) *New units of local government.* A unit of local government which came into existence during an entitlement period shall first be eligible for an entitlement allocation for the next entitlement period. However, if such unit is a successor government, it shall be eligible to receive the entitlement payment of the unit or units of local government to which it succeeded in accordance with the conditions of the succession.

(c) *Dissolution of units of local government.* A unit of local government which dissolved, was absorbed or ceased to exist as such during an entitlement period is eligible to receive an entitlement payment for that entitlement period: *Provided,* That such unit of local government is in the process of winding up its governmental affairs or a successor unit of local government has legal capacity to accept and use such entitlement funds. Entitlement payments which are returned to the Secretary because of the cessation of existence of a unit of local government shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such times as they can be redistributed according to the conditions under which the unit of local government ceased to exist.

(d) *Limitations on adjustment for annexations.* (1) Annexations by units of local government having a population of less than 5,000 on April 1, 1970, shall not affect the entitlement of any unit of local government for an entitlement period unless the Secretary determines that adjustments pursuant to such annexations would be equitable and would not be unnecessarily burdensome, expensive, or otherwise impracticable.

(2) Annexations of areas with a population of less than 250, or less than 5 percent of the population of the gaining government, shall not affect the entitlement of any unit of local government.

(e) *Certification.* Units of local government affected by a boundary change, governmental reorganization, or change in State statutes or constitution shall, before receiving an entitlement adjustment or payment redistribution pursuant to this section, obtain State certification that such change was accomplished in accordance with State law. The certifying official shall be designated by the Governor, and such certification shall be submitted to the Bureau of the Census.

§ 51.25 Waiver of entitlement; nondelivery of checks; insufficient data.

(a) *Waiver.* Any unit of local government may waive its entitlement for any entitlement period: *Provided,* The chief executive officer with the consent of the governing body of such unit notifies the Secretary that the entitlement payments for a past, current, or next beginning entitlement period, or any combination thereof, are being waived. A waiver of entitlement for the next beginning entitlement period will only be given effect if the waiver is received during the 6-month period immediately preceding that entitlement period. In the event that an entitlement payment is returned or a notice of waiver is executed which is not in accordance with this procedure, the chief executive officer will be so notified by the Secretary and, unless the attempted waiver is rescinded within 30 days of such notice, it shall be given effect. However, in no event will a notice of waiver be given effect for an entitlement period which is subsequent to the next beginning entitlement period. The entitlement waived and adjustments thereto, if any, resulting from recalculation of earlier entitlements, shall be added to and shall become a part of the entitlement of the next highest unit of government eligible to receive entitlement funds in that State in which the unit of government waiving entitlement is located. However, if the governing body of an Indian tribe or Alaskan native village waives its entitlement for any period, the rules relating to distributions within county areas (pursuant to section 108(b)(4) of the Act) are to apply to the distribution within a county area as if such tribe or village were not in existence for that period. A waiver of entitlement by a unit of local government or Indian tribe or Alaskan native village shall be deemed irrevocable 30 days prior to the first payment for the entitlement period to which it relates.

(b) *Constructive waiver.* Any recipient government which has not waived and is otherwise eligible to receive entitlement payments and which has failed to provide required reports, assurances or certifications pursuant to Subpart B is subject to a determination of having constructively waived its entitlement funds for the affected entitlement period through inaction. The Secretary, prior to such a determination, shall notify nonresponsive recipient governments

of their noncompliance and that their entitlement funds are being temporarily withheld pursuant to § 51.3(b). If compliance is not achieved within a reasonable period of time, which shall not be less than 30 days, the Secretary shall notify the affected recipient governments that if compliance is not achieved within a period of 30 days after mailing such notice, a constructive waiver of entitlement funds will be determined to have occurred. Entitlement funds thus constructively waived will be redistributed pursuant to the provisions of paragraph (a) of this section.

(c) *Nondelivery.* Entitlement funds for any entitlement period which are returned by the U.S. Postal Service to the Department of the Treasury as being nondeliverable because of incorrect address information, or which are unclaimed for any reason, shall be placed in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

(d) *Insufficient data.* Entitlement funds for any entitlement period which are withheld from payment because of insufficient data upon which to compute the entitlement, or for which payment cannot be made for any other reason, shall remain in the State and Local Government Fiscal Assistance Trust Fund until such time as payment can be made.

§ 51.26 Reservation of funds and adjustment of entitlement.

(a) *Reservation of entitlement funds.* In order to make subsequent adjustments to an entitlement payment under this part which may be necessitated because of insufficient or erroneous data, or for any other reason, the Secretary shall reserve in the State and Local Government Fiscal Assistance Trust Fund such percentage of the total entitlement funds for any entitlement period as in his judgment shall be necessary to insure that there will be sufficient funds available so that all recipient governments will receive their full entitlements. Such reserve shall be known as the Obligated Adjustment Reserve and amounts remaining in that reserve will accumulate until the liabilities of the Trust Fund are discharged or sufficiently diminished to permit an allocation to recipient governments.

(b) *Adjustment to entitlement payments.* Adjustment to an entitlement of a recipient government will ordinarily be effected through alteration to entitlement payments unless there is a downward adjustment which is so substantial as to make payment alterations impracticable or impossible. In such case the Secretary may demand that the funds received by the recipient government in excess of its entitlement be immediately repaid to the Trust Fund of the Department of the Treasury.

§ 51.27 State must maintain transfers to local governments.

(a) *General rule.* The entitlement of any State government for any entitlement period beginning on or after July 1, 1973, shall be reduced by the amount (if any) by which—

(1) The average of the aggregate amounts transferred by the State government out of its own sources during such period (or during that State's fiscal year ending on or immediately prior to the end of such period) and the preceding entitlement period (or such fiscal year) to all units of local government (as defined in § 51.2(m)) in such State, is less than,

(2) The similar aggregate amount for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period).

For purposes of paragraph (a)(1) of this section, the amount of any reduction in the entitlement of a State government under this section for any entitlement period shall, for subsequent entitlement periods, be treated as an amount transferred by the State government out of its own sources during such period to units of local government in such State. The phrase "own sources" means all sources of State revenue (including debt proceeds and the State's revenue sharing entitlement funds) but excluding intergovernmental revenues received from the Federal government.

(b) *Measurement of maintenance of effort.* In those States that do not have an accounting system providing an audit trail for all funds concerned (from own source to final application) in intergovernmental transfer to units of local government (such as those States in which intergovernmental transfers to units of local government are made from a commingled fund with no identification as to specific revenue source), the following formula may be applied by the Secretary to establish the base year intergovernmental transfers to units of local government from own sources and to generally monitor level of accordance with the maintenance provision of paragraph (a) of this section during future entitlement periods:

(1) It shall be assumed that the ratio of a State's own source intergovernmental transfers to units of local government to that State's total intergovernmental transfers to units of local government is equal to the ratio of that State's own source revenues to its total revenues. Thus, for a State in which such formula may be applied, its base year own source intergovernmental transfers to units of local government shall be assumed to equal its total intergovernmental transfers to units of local government in the base year multiplied by its own source revenue in the base year divided by its total revenues in the base year.

(2) In a State in which the formula is applied, the State's own source intergovernmental transfers to units of local government in a future entitlement period shall be assumed to equal the average of—

(i) The State's total intergovernmental transfers to units of local government during that period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year) and

(ii) The State's total intergovernmental transfers to units of local government during the preceding entitlement period (or that State's fiscal year ending on or immediately prior to the end of such period) multiplied by its own source revenue in that period (or such fiscal year) divided by its total revenues in that period (or such fiscal year).

(3) Therefore, in a State in which the formula is applied, maintenance (for a given entitlement period) of intergovernmental transfer effort to units of local government will be measured by the difference between that State's average aggregate intergovernmental transfers to units of local government (over the appropriate periods) as calculated by employing the method described in paragraph (b)(2) of this section and that State's own source intergovernmental transfers to units of local government in the base period as calculated by employing the method described in paragraph (b)(1) of this section.

(4) Should the application of this formula during any entitlement period indicate nonmaintenance, for example, should a State's calculated own source average aggregate intergovernmental transfers to units of local government (over the appropriate periods) be less than such transfers as calculated for the base period, the difference (as defined in paragraph (b)(3) of this section) shall constitute the future indicated reduction in that State's entitlement unless such State can document to the Secretary that the fact or amount of nonmaintenance as determined by application of the formula is inaccurate.

(c) *Alternative procedure.* If the Secretary shall determine that application of the formula set forth in paragraph (b) of this section in a particular case provides an inaccurate or unfair measure of transfer effort, then any formula, procedure, or method deemed equitable by the Secretary, may be utilized to measure such transfer effort for the purpose of implementing the maintenance provision.

(d) *Adjustment where State assumes responsibility for category of expenditures.* If the State government establishes to the satisfaction of the Secretary that since June 30, 1972, it has assumed responsibility for a category of expenditures which (before July 1, 1972) was the responsibility of local governments located in such State, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent that increased State government spending (out of its own sources) for such category has replaced corresponding amounts which for the 1-year period beginning July 1, 1971 (or that State's fiscal year ending on or immediately prior to the end of such period) it transferred to units of local government.

(e) *Adjustment where new taxing powers are conferred upon local governments.* If a State establishes to the satisfaction of the Secretary that since June 30, 1972, one or more units of local gov-

ernment within such State have had conferred upon them new taxing authority, then, the aggregate amount taken into account under paragraph (a)(2) of this section shall be reduced to the extent of the larger of—

(1) An amount equal to the amount of the taxes collected by reason of the exercise of such new taxing authority by such local governments, or

(2) An amount equal to the amount of the loss of revenue to the State by reason of such new taxing authority being conferred on such local governments.

No amount shall be taken into consideration under paragraph (e)(1) of this section if such new taxing authority is an increase in the authorized rate of tax under a previously authorized kind of tax, unless the State is determined by the Secretary to have decreased a related State tax.

(f) *Special rule for period beginning July 1, 1973.* In the case of the entitlement period beginning July 1, 1973, the preceding entitlement period for purposes of paragraph (a)(1) of this section shall be treated as being the 1-year period beginning July 1, 1972, or that State's fiscal year which ends prior to June 30, 1973.

(g) *Special rule for period beginning July 1, 1976.* In the case of the entitlement period beginning July 1, 1976, and ending December 31, 1976, the aggregate amount taken into account under paragraph (a)(1) of this section for the preceding entitlement period and the aggregate amount taken into account under paragraph (a)(2) of this section shall be one-half of the amounts which (but for this paragraph (g)) would be taken into account.

(h) *Report by Governor.* Pursuant to the authority of § 51.10 and in order to effect compliance with this section, the Governor of each State shall submit to the Secretary after the end of the State's fiscal year, on a form to be provided, the aggregate amounts transferred out of its own sources to units of local government for those entitlement periods or that State's fiscal years specified on the report:

(1) The State's own source funds.

(2) The State's total funds.

(3) The State's own source transfers to units of local government.

(4) The State's total transfers to units of local government.

(i) *Reduction in entitlement.* If the Secretary has reason to believe that paragraph (a) of this section requires a reduction in the entitlement of any State government for any entitlement period, he shall give reasonable notice and opportunity for hearing to the State. If, thereafter, he determines that paragraph (a) of this section requires the reduction of such entitlement, he shall also determine the amount of such reduction and shall notify the Governor of such State of such determinations and shall withhold from subsequent payments to such State government under this subtitle an amount equal to such reduction.

(j) *Transfer to general fund.* An amount equal to the reduction in the entitlement of any State government which results from the application of this section (after any judicial review) shall be transferred from the Secretary's Trust Fund to the general fund of the Treasury on the day on which such reduction becomes final.

§ 51.28 Optional formula.

(a) *In general.* A State government may by law provide for the allocation of entitlement funds among county areas, or among units of local government (other than county governments Indian tribes, and Alaskan native villages): (1) On the basis of the population multiplied by the general tax effort factors of such areas or units of local governments; or, (2) on the basis of the population multiplied by the relative income factors of such areas or units of local government; or, (3) on the basis of a combination of those two factors. Any State which provides by law for such a variation in the allocation formula provided by subsections 108(a) or 108(b)(2) and (3) of the Act, shall notify the Secretary of such law not later than 90 days before the beginning of the first entitlement period to which such law is to apply. Any such law shall:

(1) Provide for allocating 100 percent of the aggregate amount to be allocated under subsections 108(a) or 108(b)(2) and (3) of the Act;

(2) Apply uniformly throughout the State; and

(3) Apply during the period beginning on the first day of the first entitlement period to which it applies and ending on December 31, 1976.

(b) *Single legislation required.* If a State government alters its county area allocation formula or its local government allocation formula, or both, such alteration may be made only once and must be made in the same legislative enactment.

(c) *Certification required.* Paragraph (a) of this section shall apply within a State only if the Secretary certifies that the State law complies with the requirements of such paragraph. The Secretary shall not certify any such law with respect to which he receives notification later than 30 days prior to the first entitlement period during which it is to apply.

§ 51.29 Adjustment of data factors.

The data factors and data definitions used in computing entitlements under the Act for any entitlement period will be made available to each State government and unit of local government as soon as practicable. Each such government will be given a reasonable opportunity to question those data factors by providing the Department with factual documentation demonstrating evidence of error. If the Secretary determines that any data factors used were erroneous, necessary adjustments will be made. Data factors which are used for more than one entitlement period will be subject to challenge and adjustment only for the first entitlement period in which they were used.

§ 51.30 Adjustment of maximum and minimum per capita entitlement; 100 percent criterion.

(a) *County area maximum and minimum per capita entitlement—(1) In general.* Pursuant to section 108(b)(6) of the Act, the per capita amount allocated to any county area shall be not less than 20 percent, nor more than 145 percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a county area allocation is greater than the 145-percent limit, its allocation shall be reduced to the 145-percent level and the resulting surplus shall be shared proportionately by all remaining unconstrained county areas.

(3) *Twenty-percent rule.* If, after the application of paragraph (a)(2) of this section, a county area allocation is less than the 20-percent limit, its allocation shall be increased to the 20-percent level and the resulting deficit shall be shared proportionately by all remaining unconstrained county areas.

(b) *Local government (other than a county government)—(1) In general.* Except as provided below, the per-capita amount allocated to any unit of local government (other than a county government) shall be not less than 20-percent, nor more than 145-percent, of two-thirds of the amount allocated to the State under section 106 of the Act, divided by the population of that State.

(2) *One hundred forty-five-percent rule.* If a unit of local government is allocated an amount greater than the 145-percent limit, its allocation shall be reduced to that level.

(3) *Twenty-percent rule.* If a unit of local government is allocated an amount less than the 20-percent limit, its allocation shall be increased to the lower of the 20-percent limit or 50 percent of the sum of that unit's adjusted taxes and transfers.

(c) *One hundred-percent criterion.* If the amounts allocated to recipient governments of a State do not total 100 percent of the amount allocated to that State, the amount to be allocated to county areas shall be adjusted appropriately, and the allocation process shall be repeated until the amounts allocated to recipient governments of a State total 100 percent of the amount allocated to that State.

Subpart D—Prohibition and Restrictions on Use of Funds

§ 51.40 Matching funds.

(a) *In general.* Entitlement funds may not be used, directly or indirectly, as a contribution in order to obtain any Federal funds under any Federal program. The indirect use of entitlement funds to match Federal funds is defined to mean the allocation of entitlement funds to a nonmatching expenditure and thereby releasing or displacing local funds which are used for the purpose of matching Federal funds. This prohibition on use of entitlement funds as matching

funds applies to Federal programs where Federal funds are required to be matched by non-Federal funds and to Federal programs which allow matching from either Federal or non-Federal funds.

(b) *Secondary recipients.* The prohibition of paragraph (a) of this section applies to a recipient government's entitlement funds which are transferred by it to another governmental unit or private organization. A violation of this section by a secondary recipient shall constitute a violation by the recipient government and the penalty provided by paragraph (f) of this section shall be imposed on the recipient government.

(c) *Certification required.* Pursuant to § 51.12, the chief executive officer of each recipient government must certify to the Secretary that entitlement funds received by it have not been used in violation of this section.

(d) *Increased State or local government revenues.* No recipient government shall be determined to have used funds in violation of paragraph (a) of this section with respect to any funds received for any entitlement period (or during its fiscal year) to the extent that net revenues received by it from its own sources during such period exceed the net revenues received by it from its own sources during the 1-year period beginning July 1, 1971 (or its fiscal year ending during the same period). In the case of the entitlement periods of 6 months, one-half of such net revenues shall be measured.

(e) *Presumptions of compliance.* No recipient government shall be determined to have used entitlement funds in violation of the indirect prohibition of paragraph (a) of this section to the extent that:

(1) The expenditure of entitlement funds was accompanied by an aggregate increase in nonmatching funds expenditures.

(2) The receipt of entitlement funds permitted that government to reduce taxes: *Provided,* Nonentitlement revenue is sufficient to cover all matching funds contributions.

(3) The matching funds contribution in question is accounted for by an in-kind contribution which was not financed directly or indirectly with entitlement funds.

(f) *Determination by Secretary of the Treasury.* If the Secretary has reason to believe that a recipient government has used entitlement funds to match Federal funds in violation of the Act, the Secretary shall give such government notice and opportunity for hearing. If the Secretary determines that such government has, in fact, used funds in violation of this section, he shall notify such government of his determination and shall request repayment to the United States of an amount equal to the funds so used. To the extent that such government fails to repay such amount, the Secretary shall withhold from subsequent entitlement payments to that government an amount of entitlement funds equal to the funds used in violation of this section or, if this method is impracticable, the Secretary may refer the matter to the Attorney General for appropriate civil action.

(g) *Use of entitlement funds to supplement Federal grant funds.* The prohibition on use of entitlement funds contained in paragraph (a) of this section does not prevent the use of entitlement funds to supplement other Federal grant funds. For example, if expenditures for a project exceed the amount available from non-Federal funds plus matched Federal funds, the recipient government may use entitlement funds to defray the excess costs: *Provided, however,* That the entitlement funds are not used to match other Federal funds: *And Provided further,* That in the case of a unit of local government, the use of entitlement funds to supplement Federal grants is restricted to the category of expenditures as set forth in § 51.41.

§ 51.41 Permissible expenditures for local governments.

(a) *In general.* Entitlement funds received by units of local government may be used only for priority expenditures. As used in this part, the term "priority expenditures" means:

(1) Ordinary and necessary maintenance and operating expenses for—

(i) Public safety (including law enforcement, fire protection, and building code enforcement);

(ii) Environmental protection (including sewage disposal, sanitation, and pollution abatement);

(iii) Public transportation (including transit systems and streets and roads);

(iv) Health;

(v) Recreation;

(vi) Libraries;

(vii) Social services for the poor or aged; and

(viii) Financial administration, and

(2) Ordinary and necessary capital expenditures authorized by law. No unit of local government may use entitlement funds for nonpriority expenditures which are defined as any expenditures other than those included in paragraph (a)(1) and (2) of this section. Pursuant to § 51.12, the chief executive officer of each unit of local government must certify to the Secretary that entitlement funds received by it have been used only for priority expenditures as required by the Act.

(b) *Use of entitlement funds for debt retirement.* The use of entitlement funds for the repayment of debt is a permissible expenditure provided that:

(1) Entitlement funds are not used to pay any interest incurred because of the debt,

(2) The debt was originally incurred for a priority expenditure purpose as defined in this section,

(3) The actual expenditure from the proceeds of the indebtedness (i.e., for materials, contractors, etc.) was made on or after January 1, 1972 (the beginning of the first entitlement period),

(4) The actual expenditures from the proceeds of the indebtedness were not in violation of any restrictions enumerated in this subpart.

(c) *Effect of noncompliance.* In the case of a unit of local government which uses an amount of entitlement funds for other than priority expenditures as defined in paragraph (a) of this section, it will pay over to the Secretary (for deposit in the general fund of the Treasury) an amount equal to 110 percent of any amount expended in violation of paragraph (a) of this section, unless such amount of entitlement funds is promptly repaid to the trust fund of the local government after notice by the Secretary and opportunity for corrective action.

§ 51.42 Wage rates and labor standards.

(a) *Construction laborers and mechanics.* A recipient government which receives entitlement funds under the Act shall require that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction project costing in excess of $2,000.00 and of which 25 percent or more of the cost is paid out of its entitlement funds: (1) Will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act as amended (40 U.S.C. 276a–276a–5); and (2) will be covered by labor standards specified by the Secretary of Labor pursuant to 29 CFR Parts 1, 3, 5, and 7.

(b) *Request for wage determination.* In situations where the Davis-Bacon standards are applicable, the recipient government must ascertain the U.S. Department of Labor wage rate determination for each intended project and insure that the wage rates and the contract clauses required by 29 CFR 5.5 and 29 CFR 5a.3 are incorporated in the contract specifications. The recipient government must also satisfy itself that the bidder is made aware of his labor standards responsibilities under the Davis-Bacon Act. Wage rate determinations may be obtained by filing a Standard Form 308 with the Employment Standards Administration of the applicable regional office of the U.S. Department of Labor at least 30 days before the invitation for bids or, in case of construction covered by general wage rate determinations, the appropriate rate may be obtained from the FEDERAL REGISTER.

(c) *Government employees.* A recipient government which employs individuals whose wages are paid in whole or in part from entitlement funds must pay wages which are not lower than the prevailing rates of pay for persons employed in similar public occupations by the same employer. However, this subsection shall apply with respect to employees in any category only if 25 percent or more of the wages of all employees of the recipient government in such category are paid from the trust fund established by it under § 51.70(a).

§ 51.43 Restriction on expenditures by Indian tribes and Alaskan native villages.

Indian tribes and Alaskan native villages as defined in § 51.2 are required to expend entitlement funds only for the benefit of members of the tribe or village residing in the county area from which the allocation of entitlement funds was originally made. Expenditures which are

so restricted will not constitute a failure to comply with the requirement of Subpart E of this part.

Subpart E—Nondiscrimination in Programs Funded With Entitlement Funds

§ 51.50 Purpose.

The purpose of this subpart is to effectuate section 122 of the Act to the end that no person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

§ 51.51 Definitions.

Unless the context requires otherwise, as used in this subpart, the term:

(a) "Facility" includes all or any part of structures, equipment, or other real or personal property or interests therein.

(b) "Funded" means that entitlement funds have been made available for expenditure in a designated program or activity through legislative action.

(c) "Program or activity" means any function conducted by an identifiable administrative unit of the recipient government, or by any other unit of government or private contractor receiving entitlement funds from the recipient government.

§ 51.52 Discrimination prohibited.

(a) *General.* No person in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with entitlement funds made available pursuant to subtitle A of title I of the Act.

(b) *Specific discriminatory actions prohibited.* (1) A recipient government shall not, under any program or activity to which the regulations of this subpart apply, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(i) Deny any service or other benefit provided.

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others.

(iii) Subject any person to segregated or separate treatment in any facility or in any matter or process related to receipt of any service or benefit.

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit.

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit.

(vi) Deny any person an opportunity to participate in a program or activity as an employee.

(vii) Deny any person an equal opportunity to participate as appointed members of planning or advisory bodies in connection with the disposition of entitlement funds.

(2) A recipient government may not utilize criteria or methods of administration which have the effect of:

(i) Subjecting individuals to discrimination on the basis of race, color, national origin, or sex.

(ii) Perpetuating the results of past discriminatory practices.

(iii) Defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(3) A recipient government may not, with respect to any program or activity to which this subpart applies, make selections of site or location of facilities which have the effect of:

(i) Excluding individuals from such facilities.

(ii) Denying the individuals the benefits of such facilities.

(iii) Subjecting individuals using the facilities to discrimination on the ground of race, color, national origin, or sex.

(4) Recipient governments are encouraged to take action with entitlement funds to ameliorate an imbalance in services or facilities provided to any geographic area or specific group in order to overcome the effects of prior discriminatory practice or usage. If entitlement funds are allocated to a program or activity which currently provides an imbalance of services or facilities to persons protected by this subpart, then such imbalance must be ameliorated.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

§ 51.53 Employment.

(a) *Employment practices.* In any program or activity funded in whole or in part with entitlement funds, a recipient government may not (directly or indirectly through contractual or other arrangements) subject any individual to discrimination on the ground of race, color, national origin, or sex in its employment practices. These practices include recruitment, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

(b) *Employee selection procedures.* The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with title VII of the Civil Rights Act of 1964, has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) to assist in establishing and maintaining equal employment opportunities. Among other things, these Guidelines forbid the use of employee selection practices, procedures, and devices (such as tests, minimum educational levels, and the like) which disqualify a disproportionate number of minority individuals or women for employment and which are not related to job performance. Recipient governments using selection procedures which are not in conformity with the EEOC Guidelines shall, upon request of the Secretary, set forth the reasons for any such noconformity, and, if necessary, the actions the recipient government is taking or will take to assure that its selection procedures are job related.

(c) *Self-evaluation.* Recipient governments are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection, or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employment opportunities to minority individuals or women.

(d) *Employment compliance reviews.* Compliance reviews of recipient governments will be scheduled by the Office of Revenue Sharing, giving priority to any recipient government programs funded with entitlement funds which show a significant disparity between the percentage of minority persons or women in the work force and the percentage of minority or women employees in the applicable programs.

§ 51.54 Sex discrimination.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in recruitment, hiring, or employment, whether full-time or part-time, under any program or activity funded in whole or in part with entitlement funds.

(b) *Recruitment and advertisement.* (1) Recipient governments engaged in recruiting activity must recruit employees of both sexes for all jobs.

(2) Advertisement in newspapers and other media for employment must not express a sex preference. The placement of an advertisement in columns headed "Male" or "Female" will be considered to be a discriminatory limitation.

(3) A recipient government shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such recruitment has the effect of discriminating on the basis of sex.

(c) *Job policies and practices.* (1) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform.

(2) Recipient governments must not make any distinction based upon sex in employment opportunities, wages, hours or other conditions of employment. It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex. It shall be an unlawful employment practice for an employer to provide for both unequal benefits and unequal contributions in the areas of insurance, pension or retirement plans, welfare or other fringe benefits programs. Further, it shall be an unlawful employment practice for an employer to provide for either unequal benefits or unequal contributions in such areas unless such unequal benefits or unequal contributions are directly related to actuarial differences. Proof of such ac-

tuarial differences shall be provided by the recipient government upon the request of the Secretary. In the areas of insurance, pensions, welfare programs and other fringe benefits, it shall be an unlawful employment practice for a recipient government to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees, which are not made available for male employees.

(3) Any distinction between married males and married females and any distinction between unmarried males and unmarried females will be considered to be a distinction made on the basis of sex. Similarly, a recipient government must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to persons of the opposite sex.

(4) A recipient government may not refuse to hire men or women, or deny men or women a particular job because there are no separate restrooms or other separate facilities. The recipient government's policies and practices must assure that appropriate facilities are available for use by both sexes.

(5) Recipient governments may not deny any employee the right to any job, which the employee is qualified to perform, in reliance upon a State "protective" law that does not apply equally to both sexes.

(6) A recipient government shall not:

(i) Classify a job as being for males or for females.

(ii) Maintain or establish separate lines of progression, seniority lists, career ladders, tenure, systems, position descriptions or job requirements which are based on sex or which classify persons on the basis of sex.

(d) *Marital or parental status.* In any program or activity funded in whole or in part with entitlement funds:

(1) *Family status.* A recipient government shall not treat an employee or applicant for employment differently on the basis of sex in any employment action or policy because of the employee's or applicant's marital status or status as a parent. Such action may also not be taken with respect to pregnancy unless the recipient government can demonstrate that the pregnancy of the individual concerned prevents adequate job performance by that individual. In no event may a recipient government have a policy or take an action which benefits a person because of his or her status as head of household or principal family wage earner.

(2) *Pregnancy as a temporary disability.* A recipient government shall treat any temporary disability arising from pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom in the same manner as it treats any other temporary disability for all job related purposes. The term "job related purposes" includes commencement, duration and extensions of leave, payment of disability income, reinstatement or termination of employment, reinstatement pay rate and position, fringe benefits, accrual of seniority or other benefit of service, and promotion.

(e) *Sex as a bona fide occupational qualification.* Nothing in these regulations shall prohibit the hiring of employees of one sex if sex is a bona fide occupational qualification. A bona fide occupational qualification is only allowed where there is a reasonable factual basis to believe that all, or substantially all, of one sex are unable to perform the job in question. Further, the burden of demonstrating that sex is a bona fide occupational qualification for a given job rests on the recipient government.

§ 51.55 Assurances required.

(a) *General.* In order to qualify for any payment for any entitlement period, each Governor of a State or each chief executive officer of a unit of local government shall, prior to the beginning of each entitlement period, execute to the satisfaction of the Secretary an assurance that all programs to be funded in whole or in part with entitlement funds will be conducted in compliance with the requirements of this subpart. Assurances required under this paragraph shall be submitted pursuant to § 51.10(b) and shall be in such form and detail as prescribed by the Secretary.

(b) *Failure to comply.* Any recipient government which fails to comply with paragraph (a) of this section shall have its entitlement payments withheld for the applicable entitlement period. Any recipient government to which a determination of noncompliance with paragraph (a) of this section has been made shall be entitled to notice and opportunity for hearing. However, notwithstanding § 51.59, no payments shall be made for the applicable entitlement period pending the outcome of such hearing.

§ 51.56 Compliance information and reports.

(a) *Access to sources of information.* Each recipient government shall permit access by authorized representatives of the Office of Revenue Sharing and Department of Justice during normal business hours to such of its facilities, books, records, accounts, personnel, and other sources of information as may be relevant to a determination of whether the recipient government is complying with this subpart. Where any information required of a recipient government is in the exclusive possession of any other agency, institution, or person, and such agency, institution, or person fails or refuses to furnish this information, the recipient government shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(b) *Compliance reports.* Each recipient government shall keep such records and submit on request of the Secretary timely, complete and accurate compliance reports at such times, in such form, and containing such information, as the Secretary may determine to be necessary or useful to enable the Office of Revenue Sharing to ascertain whether the recipient government has complied or is complying with this subpart. Recipient governments shall make available on request of Office of Revenue Sharing officials, racial, ethnic, male/female, and national origin data showing the extent to which minorities and females are or will be beneficiaries of entitlement funds. In the case of any program under which a primary recipient government extends or will extend entitlement funds to any other secondary recipient, such secondary recipient shall submit such compliance reports to the primary recipient as may be necessary or useful to enable the primary recipient to carry out its obligations as a recipient government under this subpart. Each recipient government shall identify, on request of the Office of Revenue Sharing, any State or local agency which has been legally authorized to monitor its civil rights compliance activities.

§ 51.57 Complaints and investigations.

(a) *Complaints.* Any person who believes anyone has been subjected to discrimination prohibited by this subpart, may personally or by a representative file with the Secretary a written statement setting forth the nature of the discrimination alleged and the facts upon which the allegation is based. No representative of a recipient government nor any of its agencies shall intimidate, threaten, coerce, or discriminate against any person or class of persons because of testimony, assistance, or participation in an investigation, proceeding, or hearing under this subpart.

(b) *Investigations.* The Secretary shall advise the chief executive officer of the recipient government of any complaint received pursuant to paragraph (a). If the Secretary has reason to believe that the complaint shows that a recipient government has failed to comply with the provisions of this subpart, he will cause a prompt investigation to be made by the Office of Revenue Sharing, or other appropriate Federal or State agency, of the program or activity concerned. Such investigation may be made, if necessary, with the assistance of complainants or of the recipient government.

§ 51.58 Compliance reviews and affirmative action.

(a) *Compliance reviews.* The Secretary shall monitor and determine compliance of recipient governments with the requirements of this subpart and of the Act. Compliance reviews will be undertaken from time to time, as appropriate, at the discretion of the Secretary.

(b) *Affirmative action.* Any recipient government which has been determined to be in violation of this subpart must take reasonable steps to remove or overcome the consequences of such discrimination where a practice or usage has in purpose or effect tended to exclude individuals from participation in, deny

them the benefits of, or subject them to discrimination under any program or activity to which this subpart applies, on the ground of race, color, national origin, or sex. The Secretary will, upon a finding of noncompliance, determine the steps necessary to remove the noncompliance and will determine a timetable for implementing those steps.

§ 51.59 Procedure for effecting compliance.

(a) *General.* Whenever the Secretary determines that a recipient government has failed to comply with this subpart, he shall notify the chief executive officer of the recipient government and the Governor of the State in which the government is located of the noncompliance and shall request the Governor to secure compliance. If, within a reasonable period of time not to exceed 60 days, the Governor fails or refuses to secure compliance, the Secretary is authorized:

(1) To refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted;

(2) To initiate an administrative hearing pursuant to the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d); or

(3) To take such other action as may be provided by law.

(b) *Administrative hearing.* An order of an administrative law judge to withhold temporarily, to repay, or to forfeit entitlement funds will not become effective until:

(1) There has been an express finding on the record, after notice and opportunity for hearing, of a failure to comply with a requirement of this subpart.

(2) At least 10 days have elapsed from the date of the order of the administrative law judge. During this period additional efforts will be made to assist the recipient government to comply with this subpart and to take appropriate corrective action.

(3) Thirty days have elapsed after the Secretary has filed with the Committee on Government Operations of the House of Representatives and the Committee on Finance of the Senate a full written report of the circumstances and the grounds for such action. The time limitation of subparagraphs (2) and (3) can run concurrently.

(4) The Secretary has notified the recipient government that, in addition to whatever sanctions have been imposed by the administrative law judge, the Office of Revenue Sharing shall withhold payment of all entitlement funds until such time as the recipient government complies with the order of the administrative law judge. Further, the amount of the forfeiture or repayment of entitlement funds, if any, will be limited to the program or activity in which the noncompliance has been found. Such funds shall be collected by a downward adjustment to future entitlement payments and will be deposited in the general fund of the Treasury. If the Secretary determines that adjustment to future entitlement payments is impracticable, he may refer the matter to the Attorney General for appropriate civil action to require payment of such amount to the United States.

(c) *Withholding pursuant to court action.* The Secretary may immediately withhold the payment of entitlement funds to a recipient government pending the entry of an affirmative action order by a Federal court if:

(1) A violation of the nondiscrimination provision of this subpart or the Act (Sec. 122) was alleged in the complaint before the court;

(2) The court finds that the recipient government has violated the nondiscrimination provision of this subpart or the Act; and

(3) The question of withholding has not been resolved by the court.

(d) *Action by Attorney General.* Nothing in these regulations is intended to preclude the United States, in a civil action initiated by the Attorney General of the United States pursuant to § 122 (c) of the Act, from seeking, or a court from granting, an order to require the repayment of funds previously paid under the Act, or an order that the payment of funds under the Act be terminated or withheld. In addition, the Secretary may initiate the procedure provided for in paragraph (a)(2) of this section against a recipient government which has been named as a defendant in such civil action if it is the Secretary's judgment, after consultation with the Attorney General, that an administrative withholding of entitlement funds is an appropriate measure to ensure compliance with this subpart.

§ 51.60 Hearing procedures.

Whenever a procedure which requires notice and opportunity for a hearing is invoked by the Secretary to effect compliance under this subpart, the procedural regulations promulgated in subpart G of this part shall govern.

§ 51.61 Jurisdiction over property.

The Office of Revenue Sharing shall have jurisdiction over any program or activity for purposes of this subpart for as long as a recipient government retains ownership or possession of any real or personal property or any interest therein, which was purchased in whole or in part with entitlement funds for the applicable program or activity. Further, if such property is transferred to another party, the Office of Revenue Sharing will retain jurisdiction over the recipient government for purposes of this subpart for as long as the property is used to provide benefits similar to those which were provided by the property before the transfer.

§ 51.62 Delegation.

The Secretary may assign to officials of the Department, officials of other departments or agencies of the Federal government, or officials of State agencies, responsibilities and authority to effectuate the purposes of this section including the achievement of effective coordination within the executive branch in the implementation of Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 2000e). Such delegation shall be made only with the consent of the affected departments and agencies, and in no event will the Secretary delegate authority to review the initial decision of an administrative law judge to officials outside the Department.

Subpart F—Fiscal Procedures and Auditing

§ 51.70 Procedures applicable to the use of funds.

A recipient government which receives entitlement funds under the Act shall:

(a) Establish a trust fund and deposit all entitlement funds received and all interest earned thereon in that trust fund. The trust fund may be established on the books and records as a separate set of accounts, or a separate bank account may be established.

(b) Use, obligate, or appropriate such funds within 24 months from the end of the entitlement period to which the check is applicable. Any interest earned on such funds while in the trust fund shall be used, obligated, or appropriated within 24 months from the end of the entitlement period during which the interest was received or credited. An extension of time in which to act on the funds, or interest earned thereon, must be obtained by application to the Secretary. Such application will set forth the facts and circumstances supporting the need for more time and the amount of additional time requested. The Secretary may grant such extensions of time as in his judgment appear necessary or appropriate.

(c) Provide for the expenditure of entitlement funds in accordance with the laws and procedures applicable to the expenditure of its own revenues.

(d) Maintain its fiscal accounts in a manner sufficient to:

(1) Permit the reports required by the Secretary to be prepared therefrom,

(2) Document compliance with the matching funds certification, and

(3) Permit the tracing of entitlement funds to a level of expenditure adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of this part.

The accounting for entitlement funds shall at a minimum employ the same fiscal accounting and internal audit procedures as are used with respect to expenditures from revenues derived from the recipient government's own sources.

(e) Provide to the Secretary and to the Comptroller General of the United States, on reasonable notice, access to and the right to examine such books, documents, papers or records as the Secretary may reasonably require for the purpose of reviewing compliance with the Act and the regulations of this part or, in the case of the Comptroller General, as the Comptroller General may reasonably require for the purpose of reviewing compliance and operations under the Act.

§ 51.71 Auditing and evaluation; scope of audits.

(a) *In general.* The Secretary shall provide for such auditing and evaluation as may be necessary to insure that

expenditures of entitlement funds by recipient governments comply with the requirements of the Act and regulations of this part. Detail audits, reviews and evaluations may be made on a sample basis through inspection of records, and of reports required under subpart B of this part, and through on-site examinations, to determine whether the recipient governments have properly discharged their financial responsibilities and to evaluate compliance with the Act and the regulations of this part.

(b) *Scope of audits.* The scope of such audits may include a review of entitlement fund transactions, accounts and reports. In addition, the scope of such audits may include an examination of the following areas:

(1) Compliance with assurances made under § 51.10.

(2) Compliance with the requirement that States must maintain transfers to local governments as required by section 107(b) of the Act.

(3) Compliance with the reporting requirements and accuracy of the reports submitted to the Secretary as set forth in Subpart B of this part.

(4) Accuracy of fiscal data reported to the Bureau of the Census.

(5) Accuracy of the public records required under § 51.13(c).

(c) *Reliance on State auditors and independent public accountants.* It is the intention of the Secretary to rely to the maximum extent possible on audits of recipient governments by State auditors and independent public accountants. The Secretary may accept such audits and audits by local government auditors when such acceptance is consistent with the objectives of the Act and regulations of this part, and provided:

(1) Audits are performed in accordance with generally accepted auditing standards. Recipient governments are encouraged to have such audits performed, to the extent they consider practicable, in accordance with standards for the *Audit of Governmental Organizations, Programs, Activities and Functions* issued by the Comptroller General in June 1972.

(2) Audits include coverage as set forth in paragraph (b) of this section.

(3) Audit workpapers and related audit reports are retained for 3 years after the issuance of the audit report, and are available upon request to the Secretary and the Comptroller General or to their representatives; and,

(4) Audit reports shall contain a clear statement of the auditor's findings as to compliance or noncompliance with the requirements of the Act and the regulations of this part. In the event that an auditor is unable to review compliance with all of the provisions of paragraph (b), the audit report shall reflect those areas in which a compliance review was not performed. Audit reports which disclose or otherwise indicate a possible failure to comply substantially with any requirements of the Act or the regulations of this part will be submitted to the Secretary by the Governor or chief executive officer.

Subpart G—Proceedings for Reduction in Entitlement, Withholding, or Repayment of Funds

§ 51.80 Scope of subpart.

The regulations of this subpart govern the procedure and practice requirements involving adjudications where the Act requires reasonable notice and opportunity for hearing.

§ 51.81 Liberal construction.

The regulations in this subpart shall be liberally construed to secure just, expeditious, and efficient determination of the issues presented. The Rules of Civil Procedure for the District Courts of the United States, where applicable, shall be a guide in any situation not provided for or controlled by this subpart, but shall be liberally construed or relaxed when necessary.

§ 51.82 Reasonable notice and opportunity for hearing.

Whenever the Secretary has reason to believe that a recipient government has failed to comply with any section of the Act or of the provisions of this part, and that repayment, withholding, or reduction in the amount of an entitlement of a recipient government is required, he shall give reasonable notice and opportunity of hearing to such government prior to the invocation of any sanction under the Act.

§ 51.83 Opportunity for compliance.

Except in proceedings involving willfulness or those in which the public interest requires otherwise, a proceeding under this part will not be instituted until such facts or conduct which may warrant such action have been called to the attention of the chief executive officer of the recipient government in writing and he has been accorded an opportunity to demonstrate or achieve compliance with the requirements of the Act and the regulations of this part. If the recipient government fails to meet the requirements of the Act and regulations within such reasonable time as may be specified by the Secretary, a proceeding shall be initiated. If the recipient government is a unit of local government, a copy of all written communications regarding the alleged violation shall be transmitted by the Secretary to the Governor of the State in which the unit of local government is located.

§ 51.84 Institution of proceeding.

A proceeding to require repayment of funds to the Secretary, or to withhold funds from subsequent entitlement payments, or to reduce the entitlement of a recipient government, shall be instituted by the Secretary by a complaint which names the recipient government as the respondent.

§ 51.85 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against it so that it is able to prepare a defense to the charges.

(b) *Demand for answer.* Notification shall be given in the complaint as to the place and time within which the respondent shall file its answer, which time shall be not less than 30 days from the date of service of the complaint. The complaint shall also contain notice that a decision by default will be rendered against the respondent in the event it fails to file its answer as required.

§ 51.86 Service of complaint and other papers.

(a) *Complaint.* The complaint or a true copy thereof may be served upon the respondent by first-class mail or by certified mail, return receipt requested; or it may be served in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return Postal Service receipt duly signed on behalf of the respondent shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon the respondent or upon its attorney of record by first-class mail. Such mailing shall constitute complete service.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding under this part, and the place of filing is not specified in this subpart or by rule or order of the administrative law judge, the paper shall be filed with the Director, Office of Revenue Sharing, Treasury Department, Washington, D.C. 20226. All papers shall be filed in duplicate.

(d) *Motions and requests.* Motions and requests may be filed with the designated administrative law judge, except that an application to extend the time for filing an answer shall be filed with the Director, Office of Revenue Sharing, pursuant to § 51.87(a).

§ 51.87 Answer; referral to administrative law judge.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint, unless on application the time is extended by the Secretary. The respondent's answer shall be filed in duplicate with the Director, Office of Revenue Sharing.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which it knows to be true; nor shall a respondent state that it is without sufficient information to form a belief when in fact it possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegation in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved, and no further evidence in respect of such allegation need be adduced at a hearing.

(d) *Failure to file answer.* Failure to file an answer within the time prescribed in the complaint, except as the time for answer is extended under paragraph (a) of this section, may constitute an admission of the allegations of the complaint and a waiver of hearing, and the administrative law judge may make his findings and decision by default without a hearing or further procedure.

(e) *Reply to answer.* No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the Secretary may file a reply in his discretion and shall file one if the administrative law judge so requests.

(f) *Referral to administrative law judge.* Upon receipt of the answer by the Director, or upon filing a reply if one is deemed necessary, or upon failure of the respondent to file an answer within the time prescribed in the complaint or as extended under paragraph (a) of this section, the complaint (and answer, if one is filed) shall be referred to the administrative law judge who shall then proceed to set a time and place for hearing and shall serve notice thereof upon the parties at least 15 days in advance of the hearing date.

§ 51.88 Supplemental charges.

If it appears that the respondent in its answer falsely and in bad faith, denies a material allegation of fact in the complaint or states that it has no knowledge sufficient to form a belief, when in fact it does possess such information, or if it appears that the respondent has knowingly introduced false testimony during the proceedings, the Secretary may thereupon file supplemental charges against the respondent. Such supplemental charges may be tried with other charges in the case, provided the respondent is given due notice thereof and is afforded an opportunity to prepare its defense thereto.

§ 51.89 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the administrative law judge may order or authorize amendment of the pleading to conform to the evidence: *Provided*, The party that would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegation of the pleading as amended. The administrative law judge shall make findings on any issue presented by the pleadings as so amended.

§ 51.90 Representation.

A respondent or proposed respondent may appear in person through its chief executive officer or it may be represented by counsel or other duly authorized representative. The Secretary shall be represented by the General Counsel of the Treasury.

§ 51.91 Administrative law judge; powers.

(a) *Appointment.* An administrative law judge, appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105), shall conduct proceedings upon complaints filed under this subpart.

(b) *Powers of administrative law judge.* Among other powers provided by law, the administrative law judge shall have authority, in connection with any proceeding under this subpart, to do the following things:

(1) Administer oaths and affirmations;

(2) Make ruling upon motions and requests. Prior to the close of the hearing no appeal shall lie from any such ruling except, at the discretion of the administrative law judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct. In determining the place of hearing the administrative law judge may take into consideration the requests and convenience of the respondent or its counsel;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written arguments on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial findings and decision.

§ 51.92 Hearings.

(a) *In general.* The administrative law judge shall preside at the hearing on a complaint. Testimony of witnesses shall be given under oath or affirmation. The hearing shall be stenographically recorded and transcribed. Hearings will be conducted pursuant to section 7 of the Administrative Procedure Act (5 U.S.C. 556).

(b) *Failure to appear.* If a respondent fails to appear at the hearing, after due notice thereof has been served upon it or upon its counsel of record, it shall be deemed to have waived the right to a hearing and the administrative law judge may make his findings and decision against the respondent by default.

(c) *Waiver of hearing.* A respondent may waive the hearing by informing the administrative law judge, in writing, on or before the date set for hearing, that it desires to waive hearing. In such event the administrative law judge may make his findings and decision based upon the pleadings before him. The decision shall plainly show that the respondent waived hearing.

§ 51.93 Stipulations.

The administrative law judge shall prior to or at the beginning of the hearing require that the parties attempt to arrive at such stipulations as will eliminate the necessity of taking evidence with respect to allegations of facts concerning which there is no substantial dispute. The administrative law judge shall take similar action, where it appears appropriate, throughout the hearing and shall call and conduct any conferences which he deems advisable with a view to the simplification, clarification, and disposition of any of the issues involved.

§ 51.94 Evidence.

(a) *In general.* Any evidence which would be admissible under the rules of evidence governing proceedings in matters not involving trial by jury in the Courts of the United States, shall be admissible and controlling as far as possible: *Provided that*, the administrative law judge may relax such rules in any hearing when in his judgment such relaxation would not impair the rights of either party and would more speedily conclude the hearing, or would better serve the ends of justice. Evidence which is irrelevant, immaterial or unduly repetitious shall be excluded by the administrative law judge.

(b) *Depositions.* The deposition of any witness may be taken pursuant to § 51.95 and the deposition may be admitted.

(c) *Proof of documents.* Official documents, records, and papers of a respondent shall be admissible as evidence without the production of the original provided that such documents, records and papers are evidenced as the original by a copy attested or identified by the chief executive officer of the respondent or the custodian of the document, and contain the seal of the respondent.

(d) *Exhibits.* If any document, record, paper, or other tangible or material thing is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions he deems proper. An original document, paper or record need not be introduced, and a copy duly certified (pursuant to paragraph (b) of this section) shall be deemed sufficient.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as permitted by the administrative law judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the right of either party to the proceeding.

§ 51.95 Depositions.

(a) *In general.* Depositions for use at a hearing may, with the written approval of the administrative law judge, be taken by either the Secretary or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 15 days written notice to the other party, before any officer duly authorized to administer an oath for general purposes. Such written notice shall state the names of the witnesses and the time and place where the depositions are

to be taken. The requirement of 15 days written notice may be waived by the parties in writing, and depositions may then be taken from the persons and at times and places mutually agreed to by the parties.

(b) *Written interrogatories.* When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogatories shall be mailed by first class mail or delivered to the opposing party at least 10 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the administrative law judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 51.96 Stenographic record; oath of reporter; transcript.

(a) *In general.* A stenographic record shall be made of the testimony and proceedings, including stipulations and admissions of fact in all proceedings, but not arguments of counsel unless otherwise ordered by the administrative law judge. A transcript of the proceedings (and evidence) at the hearing shall be made in all cases.

(b) *Oath of reporter.* The reporter making the stenographic record shall subscribe an oath before the administrative law judge, to be filed in the record of the case, that he (or she) will truly and correctly report the oral testimony and proceedings at such hearing and accurately transcribe the same to the best of his (or her) ability.

(c) *Transcript.* In cases where the hearing is stenographically reported by a Government contract reporter copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Department of the Treasury, a copy thereof will be supplied to the respondent or its counsel at actual cost of duplication. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (31 U.S.C. 483(a)).

§ 51.97 Proposed findings and conclusions.

Except in cases where a respondent has failed to answer the complaint or has failed to appear at the hearing, or has waived the hearing, the administrative law judge, prior to making his initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 51.98 Initial decision of the administrative law judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, but in no event later than 30 days after the submission of proposed findings and conclusions if they are submitted, the administrative law judge shall make his initial decision in the case. The initial decision shall include a statement of the findings of fact and the conclusions therefor, as well as the reasons or basis therefor, upon all the material issues of fact, law or discretion presented on the record, and shall provide for one of the following orders:

(a) An order that the respondent pay over to the Secretary an amount equal to 110 percent of any amount determined to be improperly expended by the respondent in violation of § 51.41 relating to priority expenditures; or

(b) An order that the respondent pay over to the Secretary an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(c) An order that the Secretary withhold from subsequent entitlement payments to the respondent an amount equal to the amount of entitlement funds determined to be expended in violation of the Act and the provisions of this part; or

(d) An order that the entitlement of a recipient government be reduced and the amount of such reduction to be withheld from subsequent entitlement payments; or

(e) An order dismissing the proceedings.

§ 51.99 Certification and transmittal of record and decision.

After reaching his initial decision, the administrative law judge shall certify to the complete record before him and shall immediately forward the certified record, together with a certified copy of his initial decision, to the Secretary. The administrative law judge shall serve also a copy of the initial decision by certified mail to the chief executive officer of the respondent or to its attorney of record.

§ 51.100 What constitutes record.

The transcript of testimony, pleadings and exhibits, all papers and requests filed in the proceeding, together with all findings, decisions and orders, shall constitute the exclusive record in the matter.

§ 51.101 Procedure on review of decision of administrative law judge.

(a) *Appeal to the Secretary.* Within 30 days from the date of the initial decision and order of the administrative law judge, the respondent may appeal to the Secretary and file his exceptions to the initial decision and his reasons therefor. The respondent shall transmit a copy of his appeal and reasons therefor to the Director of the Office of Revenue Sharing, who may, within 30 days from receipt of the respondent's appeal, file a reply brief in opposition to the appeal. A copy of the reply brief, if one is filed, shall be transmitted to the respondent or its counsel of record. Upon the filing of an appeal and a reply brief, if any, the Secretary shall make the final agency decision on the record of the administrative law judge submitted to him.

(b) *Appeal by the Director of the Office of Revenue Sharing.* In the absence of an appeal by the respondent, the Director of the Office of Revenue Sharing may, on his own motion, within 45 days after the initial decision, serve on the respondent by certified mail a notice that he will appeal the decision to the Secretary, for review. Within 30 days from such notice, the Director of the Office of Revenue Sharing or his counsel will file with the Secretary his exceptions to the initial decision and his supporting reasons therefor. A copy of the exceptions shall be transmitted to the respondent or its counsel of record, who, within 30 days after receipt thereof, may file a reply brief thereto with the Secretary and submit a copy to the Director of the Office of Revenue Sharing or his counsel. Upon the filing of a reply brief, if any, the Secretary will make the final agency decision on the record of the administrative law judge.

(c) *Absence of appeal.* In the absence of either exceptions by the respondent or a notice of appeal by the Director of the Office of Revenue Sharing within the time set forth in paragraphs (a) and (b) of this section, or a review initiated by the Secretary on his own motion within the time allowed to the Director of the Office of Revenue Sharing, the initial decision of the administrative law judge shall constitute the final decision of the Department.

§ 51.102 Decision of the Secretary.

On appeal from or review of the initial decision of the administrative law judge, the Secretary will make the final agency decision. In making his decision the Secretary will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. The Secretary may affirm, modify, or revoke the findings and initial decision of the administrative law judge. A copy of the Secretary's decision shall be transmitted immediately to the chief executive officer of the respondent or its counsel of record.

§ 51.103 Effect of order of repayment or withholding of funds.

In case the final order against the respondent is for repayment of funds to the United States, such amount as determined by the order shall be repaid upon request by the Secretary. To the extent that the respondent fails to do so upon request of the Secretary, the Secretary shall withhold from subsequent entitlement payments to the respondent an amount equal to the amount not repaid. In case the final order against the respondent is for the withholding of an amount of subsequent entitlement payments, such amounts as ordered shall be withheld by the Director of the Office of Revenue Sharing after notice to the chief executive officer of the recipient government that if it fails to take corrective action within 60 days after receipt of the notice, further entitlement payments will be withheld until the Secretary is satisfied that appropriate corrective action has been taken and there is full compliance with the Act and regulations of this part. In every case in which the

respondent is a unit of local government, a copy of the final order and notice shall be submitted to the Governor of the State in which the respondent is located.

§ 51.104 Publicity of proceedings.

(a) *In general.* A proceeding conducted under this subpart shall be open to the public and to elements of the news media provided that, in the judgment of the administrative law judge, the presence of the media does not detract from the decorum and dignity of the proceeding.

(b) *Availability of record.* The record established in any proceeding conducted under this subpart shall be made available to inspection by the public as provided for and in accordance with regulations of the Department of the Treasury pursuant to 31 CFR Part 1.

(c) *Decisions of the administrative law judge.* The statement of findings and the initial decision of the administrative law judge in any proceedings, whether or not on appeal or review, shall be indexed and maintained by the Director of the Office of Revenue Sharing and made available for inspection by the public at the public documents room of the Department. If practicable, the statement of findings and the decisions of the administrative law judge shall be published periodically by the Department and offered for sale through the Superintendent of Documents.

§ 51.105 Judicial review.

Actions taken under administrative proceedings pursuant to this subpart shall be subject to judicial review pursuant to section 143 of Subtitle C of the Act. If a respondent desires to appeal a decision of the administrative law judge which has become final, or a final order of the Secretary for review of appeal, to the U.S. Court of Appeals, as provided by law, the Secretary, upon prior notification of the filing of the petition for review, shall have prepared in triplicate, a complete transcript of the record of the proceeding, and shall certify to the correctness of the record. The original certificate together with the original record shall then be filed with the Court of Appeals which has jurisdiction.

[FR Doc.75-31236 Filed 11-17-75;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

Appendix A—Schedule

On September 25, 1975, there was published in the FEDERAL REGISTER (40 FR 44157) a notice of proposed amendments to Appendix A to 7 CFR, Part 1, Subpart A. This appendix constituted the Department of Agriculture's (USDA) fee schedule for the handling of requests pursuant to the Freedom of Information Act (5 U.S.C. 552). Interested parties were given the opportunity to submit, not later than October 24, 1975, comments regarding these proposed amendments.

No comments have been received, and the proposed amendments are hereby adopted without change. As a matter of public convenience, however, the entire fee schedule (including the amendments) is set forth below so that members of the public will be able to learn all fees charged by USDA from one document.

The previous fee schedule, published at 40 FR 7344 is superseded in its entirety.

Effective date: This fee schedule shall be effective November 18, 1975.

Done at Washington, D.C., this 12th day of November, 1975.

GEORGE C. KNAPP,
Acting Director,
Office of Operations.

FEE SCHEDULE

Sec. 1. *General.* This schedule sets forth fees to be charge for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies and constituent units of the Department of Agriculture.

Sec. 2. *Facilities.* Records and related services are available at the locations specified by the agencies in their statements of organization and services. Each agency is responsible for promulgating procedures to facilitate public inspection and copying of its records. Any materials offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such materials for public sale.

Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

Sec. 3. *Fees for materials and services.* All agencies of the Department shall be guided by the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

Sec. 4. *Circumstances governing exceptions to the charging of fees for records and related services.* (For photographic reproductions, see Sec. 12.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are $3.00 or less.

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country or an international organization.

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved.

b. *Fees not to be charged for records and related services.* Fees shall not be charged under the following conditions:

(1) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefiting the general public.

(2) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number.

(3) When members of the public provide their own copying equipment, in which case no copying fee will be charged.

(4) When any notices, decisions, orders, or other material are required by law to be served on a party in any proceedings or matter before any Department agency.

c. Where both a and b above apply to a matter, b shall be controlling.

Sec. 5. *Limitations of copies.* a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

Sec. 6. *Search Services.* a. Search services are services of agency personnel—clerical, supervisory or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

Sec. 7. *Payments of fees and charges.* a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Except as otherwise stipulated by agency procedures, payment shall be made by check, draft, or money order made payable to the Treasury of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed $50.00, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search, the requester should be notified of that fact, and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform his request to meet his needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 4b (1), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a depcsit of 50% of the estimated fee where appropriate.

Sec. 8. *Fees for records and related services.* a. Photocopies, 8½" x 14" or smaller; $0.10 for the first copy and $0.05 for each additional copy of the same page.

b. Photocopies in excess of 8½" x 14": $0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of $4.00 per hour for clerical time and $9.00 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charges will be assessed the requester.

e. Computer searches will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except that where commercial time-sharing computer sources are the required search media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual Section 3.4—Administrative Policies and Procedures-Rates. pp. 3-4 through 3-7.

Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colorado 80521.

New Orleans Computer Center Users Manual Appendix B—New Orleans Computer Center Rates. pp. 1 through 5.

New Orleans Computer Center, U.S. Department of Agriculture, 13800 Old Gentilly Road, Building 350, New Orleans, Louisiana 70129.

Kansas City Computer Center Users Manual Appendix D-2-Rates. pp. 65-80.

Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, Missouri 64141.

Washington Computer Center Users Handbook Appendix B—Washington Computer Center Rates. pp. 1-10.

Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Ave. SW., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the St. Louis Computer Center will be based on actual computer configuration used and be based on direct costs only.

St. Louis Computer Center, U.S. Department of Agriculture, Farmers Home Administration, Business Services Branch, 1520 Market Street, St. Louis, Missouri 63103.

f. The fees do not include and no charge shall be made for (a) time spent examining records to determine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, or (c) time spent in monitoring a requester's inspection of agency records.

g. Certifications, $1.00 each; Authentications under Department Seal (including aerial photographs), $2.00 each.

h. Except as provided in section 9, for services not subject to the Freedom of Information Act, and not covered by (g) above, agencies may set their own fees in accordance with applicable law.

i. The fees specified in a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 USC 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 4. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in g and h of this Section and in Sections 9 through 16 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees at 31 USC 483a and other applicable law.

Sec. 9. *Photographic reproduction, microfilm, mosaic and maps.* Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

Sec. 10. *Agencies which furnish photographic reproductions.*—a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), Room 3405 Auditor's Building, Washington, D.C. 20250.

Forest Service (FS), 24 LOB RP-E, Arlington, Virginia 22209, or nearest Forest Service Regional Office.

Soil Conservation Service (SCS), Cartographic Division, SCS, Washington, D.C. 20250 or Cartographic Unit in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (Address above).

Office of Communication, Photographic Division, Room 536A, Washington, D.C. 20250.

Soil Conservation Service, Information Division, Audio Visual Branch, Washington, D.C. 20250.

National Agricultural Library, Information Officer, Room 204, Beltsville, Maryland 20705.

Sec. 11. *Photographic Sales Committee.* The Photographic Sales Committee consists of representatives designated by Department agencies principally concerned with the sale of photographic reproductions. The Committee recommends prices at which photographic and mosaic reproductions, except library material, shall be sold, and other matters related to photographic reproductions.

Sec. 12. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Sec. 13. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Sec. 14. *Sales of positive prints under Government contracts.* The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Sec. 15. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Sec. 16. *Photographic reproduction prices.* The prices for photographic reproductions listed here are the most generally requested items.

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Microfilm—$1.00 for each 30 pages or fraction thereof. Photoreproduction—$1.00 for each 10 pages.

b. *General photographic reproductions.* Minimum charge $1.00 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work:		Price
1. Black and white copy negatives and film positives:		
4 by 5	each	$3.60
5 by 7	do	3.90
8 by 10	do	4.50
11 by 14	do	7.00
2. Black and white enlargements:		
Up to 8 by 10	do	2.70
11 by 14	do	4.20
Over 11 by 14	per square ft	3.60
3. Reductions (from any size negative)		3.60
4. Mounting	per square ft	2.20
5. Slides: Black and white (from copy negative):		
2 by 2 cardboard mounted	each	2.40
3¼ by 3¼	do	3.60
Original color (from flat copy)	do	1.80
Duplicate color (2 by 2 cardboard mounted)	do	.90
(Duplicate color slides are slides copied from 35mm color slides only.) Slides made from black and white material, or from transparencies larger or smaller than 35 mm, will be charged at the same rates shown for black and white and original color slides.		
6. Color transparencies (4 by 5)	do	8.00
7. Color prints		(1)
8. Current USDA slide sets in stock:		
1-50 frames		13.00
51-60 frames		14.00
61-75 frames		15.00
76-95 frames		17.50
96-105 frames		18.50
106-130 frames		21.00
(Prices include printed narrative guide.)		
The following can be purchased for the corresponding slide sets above:		
Cassettes		3.00
Records		3.00
Audio-tape		1.50
9. Milk sedimentation standards (5 by 7) black and white photograph)	each	1.25
10. Seeds and seedlings (any size)	do	2.40

[1] By quotation.

c. *Aerial photographic reproductions.* No minimum charge on aerial photographic reproductions. All prints are furnished unmounted and untrimmed.

1. *Contact prints.* The prices for contact prints are set forth below. The size refers to the approximate size of the contact print.

	Each
Size 9 by 9 on commercial grade paper	$2.00

For polyester base paper, add $0.75 per contact print (Available from ASCS only).

	Each
Size 70mm contact prints	$1.50
Size 70mm contact transparencies	3.00

2. *Enlargements* (projection prints). The prices for enlargements of various sizes are set forth below. The size in each case refers to the approximate size of paper required to produce the enlargement ordered.

Size:	Price each
9 by 9 in. (from 70mm)	$3.00
13 by 13 in	4.00
17 by 17 in	5.00
24 by 24 in	6.50
38 by 38 in	13.00

For larger size reproductions, add $2.00 for each additional 12 inches or fraction thereof, linear measurement.

3. *Aerial photo-index sheets.*

Size 20 x 24 inches

Quantity:	Price each
Any quantity	$5.00

4. *Film positives.* Contact printed from aerial negatives, size 9 x 9 inches.

Quantity:	Price each
Any quantity	$5.00

5. *Copy negatives.* On film, aerial exposures, size 9 x 9 inches.

Quantity:	Price each
Any quantity	$3.00

6. *Aperture Cards and Printouts.*

	1st unit	Each additional unit
Duplicate of an aperture card	$1	$0.10
Aperture card from photoindex sheet	1	.25
Printout from aperture card	1	.50

7. *Color Photography.* Furnished only by the Regional Forest Service Aerial Photography Laboratories at Ogden, Utah and San Francisco, California, and the Agricultural Stabilization and Conservation Service Aerial Photography Field Office in Salt Lake City, Utah.

Positive contact print made from negative	$7.00
Transparency 9 by 9 inches	12.00
Enlargements 13 by 13 inches	12.00
Enlargements 17 by 17 inches	15.00
Enlargements 24 by 24 inches	20.00
Enlargements 38 by 38 inches	40.00

8. *Landsat/Skylab Imagery.* Furnished only by the Agricultural Stabilization and Conservation Service Aerial Photography Field Office in Salt Lake City, Utah.

	Black and White	Color
Contact print (70 mm)	$1.50	
Transparencies (70 mm)	3.00	$5
Contact print 9 by 9	3.00	7
Transparencies 9 by 9	5.00	12
Enlargements 12 by 12	6.00	15
Enlargements 17 by 17	8.00	20
Enlargements 24 by 24	15.00	25
Enlargements 38 by 38	25.00	40
Composite negative 9 by 9		16

9. *Special Needs.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in Section 10a or the Coordinator, Aerial Photographic Work of the Department of Agriculture, ASCS, Aerial Photography Field Office, USDA-ASCS-AS Division, 2505 Parley's Way, Salt Lake City, Utah 84109.

(5 U.S.C. 301; 5 U.S.C. 552; 31 U.S.C. 483a; and 7 CFR 2.79(a)(3)(iii).)

Done at Washington, D.C., this 12th day of November 1975.

GEORGE C. KNAPP,
Acting Director.

[FR Doc.75-31080 Filed 11-17-75;8:45 am]

CHAPTER VI—SOIL CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

PART 630—(LONG TERM CONTRACTING)

PART 631—GREAT PLAINS CONSERVATION PROGRAM

Republication

Pursuant to 5 U.S.C. 553 the rules contained in 7 CFR Chapter VI, Part 630 and 631 are hereby republished.

The purpose of this republication is to combine the amendments which have been made to the section since it was published December 17, 1973 (39 FR 34644-34653). Changes are either procedural or editorial in nature and are done as a matter of reader convenience in conjunction with the next revised edition of Title 7 of the Code of Federal Regulations. Consequently the public rule making procedures of 5 U.S.C. 553, which might otherwise apply, would be impracticable and unnecessary.

(Catalog of Federal Domestic Assistance Program No. 10.900 National Archives Reference Services.)

Dated: November 7, 1975.

WILLIAM M. JOHNSON,
Acting Administrator.

Sec.
630.1 Purpose.
630.2 [Reserved.]

§ 630.1 Purpose.

The purpose of this subchapter is to provide for programs to extend cost sharing and technical assistance through long term contracts to landowners and others for making land use changes and to install measures to conserve, develop, and utilize the soil, water, and related natural resources on their lands.

§ 630.2 [Reserved]

Subpart A—General Provisions

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Subpart B—Cost-Share Payments

631.12 Cost-share payments.
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631.16 Manner and time of cost-share payments.
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631.22 Actions that tend to defeat the purposes of a contract.
631.23 Appeals.
631.24 Contract violations.
631.25 Contract violations procedure.
631.26 Assignments.
631.27 Cost-share payments not subject to claim.
631.28 Filing of false claims.
631.29 Setoffs.
631.30 Compliance with regulatory measures.
631.31 Misuse of authorizations.
631.32 Access to operating unit and program records.
631.33 State conservationist approval of designated county program determinations.
631.34 Effect on acreage allotment and marketing quota programs.

AUTHORITY: Pub. L. 75-430, 49 Stat. 1151 (16 U.S.C. 590d); Pub. L. 84-1021, 70 Stat. 1115 (16 U.S.C. 590p(b)); Pub. L. 91-118, 83 Stat. 194 (16 U.S.C. 590d).

Subpart A—General Provisions

§ 631.1 Purpose.

The Great Plains Conservation Program (GPCP) is a long-range voluntary program in addition to other U.S. Department of Agriculture (USDA) programs in the Great Plains area to assist farmers and ranchers to work out a land use development and treatment program which will help them prevent or reduce the effects of the erratic climate of the Great Plains area. In carrying out this program, the Administrator will enter into contracts based upon approved plans of operations with producers and share the costs of carrying out eligible conservation practices for which cost sharing is appropriate and in the public interest.

§ 631.2 Definitions.

The terms defined shall have the following meaning in this part and all contracts, forms, documents, instructions and procedures in connection therewith, unless the context or subject matter requires otherwise. Words in the singular form shall be considered to impart the plural, and vice versa, as the case may demand.

Administrator. The Administrator of the Soil Conservation Service (SCS), USDA.

Average cost. The constructed cost which is based on actual costs and current cost estimates considered necessary to carry out an identifiable unit.

Conservation practice or practice. A specific measure applied to land and

water according to standards and specifications. It is a part of a resource management system to protect, improve, and use soil, water, and related resources to sustain the highest practical economic, environmental, and social benefits.

Conservation treatment unit. A field or fields in a specific land use requiring a particular type of management and the use of related conservation practices.

Contracting officer. The SCS employee authorized to sign GPCP contracts on behalf of the Administrator.

Cost. The amount actually paid or engaged to be paid by the producer for equipment use, materials and services for carrying out an identifiable unit, or if the producer uses his own forces in carrying out an identifiable unit, the constructed value of his own labor, his own equipment use and the materials he produced and used.

County program committee. The designated SCS technician, who shall be the chairman, the chairman of the county ASC committee of a designated county, and the county supervisor of the Farmers Home Administration of a designated county. The county agricultural extension agent and the governing body of any soil and water conservation district in a designated county shall be invited to participate. As determined by the county program committee, other local, state, and federal agencies operating in the designated county may be invited to participate.

Designated county. Any county in the Great Plains area within a Great Plains state, which has been designated by the Administrator where the program is applicable specifically.

Designated technician. The employee who is designated for a county by the state conservationist to be responsible for development and maintenance of the county practice list and for the SCS functions relating to county program committee activities.

Great Plains area. The currently recognized area determined by the Administrator within the Great Plains states where the program is applicable generally.

Great Plains Conservation Program (GPCP). The program provided for by the Act of August 7, 1956, (70 Stat. 1115, as amended (16 U.S.C. 590d)).

Great Plains states. The states of Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Identifiable unit. All of an eligible conservation practice or a part thereof, that when carried out, can be clearly identified as a segment in the sequence of carrying out the conservation practice.

Operating unit. A parcel or parcels of land whether contiguous or noncontiguous, constituting a single management unit for agricultural purposes. An operating unit shall be regarded as located in the designated county in which the principal dwelling is situated, or if there is no dwelling thereon, it shall be regarded to be in the designated county in which the major portion of the land is located.

Other land. Land other than farm and ranch land, that can be covered by contract, on which erosion must be controlled to protect adjacent farm or ranch land.

Person. An individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other nonpublic legal entity. It includes two or more persons having a joint or common interest.

Plan of operations. A written plan of farming or ranching operations so designed to protect the natural resource base for sustained production. It schedules the producer's decisions concerning land uses, management systems, and cost-shared and noncost-shared practices to be installed on all land in the unit to protect, develop, and use the soil, water, and related resources. A plan for land other than farm or ranch land provides only for controlling erosion to protect adjacent farm or ranch land.

Producer. Any person who has control of a farm, ranch, or other land, and enters into a contract for participation in GPCP.

Secretary. The Secretary of Agriculture of the United States or other representative of the USDA acting in his stead pursuant to delegated authority.

Soil and water conservation district (SWCD). A soil conservation district, soil and water conservation district, conservation district, natural resources district, or similar district established under state law, with which the Secretary of Agriculture cooperates pursuant to the Soil Conservation Act of 1935. The members of the governing bodies of these organizations are known as supervisors, directors, or commissioners.

Specified maximum cost. The maximum amount, with respect to an identifiable unit to which cost sharing will apply.

State conservationist. The SCS employee assigned to direct and supervise SCS activities in a state.

State program committee. The state conservationist, who shall be the chairman, the chairman of the state ASC committee, the state director of the Farmers Home Administration, the state director of the Federal Crop Insurance Corporation, and a representative of the Forest Service in each Great Plains state. The state director of the State Cooperative Extension Service, the director of the state agricultural experiment station and a representative of the state soil conservation committee (board or commission) shall be invited to participate. Representatives of other interested agencies or groups working in a Great Plains state may be invited to participate, as determined by the state program committee.

§ 631.3 Administration.

The Soil Conservation Service is responsible for administration of GPCP. Contracting officers are authorized to sign contracts subject to certification of availability of funds by SCS state offices. County ASC committees certify that cost-share payments to be made by SCS are not duplicates of payments made under U.S. Department of Agriculture (USDA) programs administered by them, and will determine the status of indebtedness of producers shown on the county register of indebtedness.

(a) *State program committee.* The state program committee advises on development of the state practice list, policies, and general operating procedures best suited to the Great Plains area in the state.

(b) *County program committee.* The county program committee advises on development of the county practice list, policies, and general operating procedures best suited in the designated county.

(c) *Coordination with other programs.* The program shall be carried out in close cooperation with interested federal, state and local governmental units and organizations. The program in designated counties shall be coordinated with the work plan of SWCD's operating in such counties and with other USDA activities.

§ 631.4 Land eligible for the program.

The program shall be applicable to (a) privately owned land, (b) nonfederally owned public land under private control for the contract period and included in the producer's operating unit, and (c) federally owned land when the applicability thereto is for installation of conservation practices which directly and primarily conserve or benefit nearby or adjoining privately owned land of persons who maintain and use the federal land under agreement with the department or agency having jurisdiction over such land.

§ 631.5 Program applicability.

The program its applicable only in counties located in the Great Plains area of the Great Plains states and which are designated for participation by the Administrator.

§ 631.6 Producer eligibility.

Any producer may file an application for participation in GPCP with any USDA agency in a designated county. Applications taken by other agencies will be transmitted to the SCS field office. A producer who submits a plan of operations to the district conservationist in compliance with the terms and conditions of the program is eligible to sign a contract.

§ 631.7 Plan of operations.

Producers are responsible for developing their plans of operations. An approved plan of operations developed in cooperation with an SWCD shall form a basis for a contract. Technical assistance will be provided through the district conservationist and each plan of operations must be approved by the district conservationist.

(a) Producers signatory to contracts are responsible for accomplishing the plan of operations and may use all available sources of assistance, including any phase of other USDA programs that contribute to achieving the conservation aims. Technical assistance will be pro-

vided through the district conservationist.

(b) SCS may also utilize the services of private, state and other federal agencies in discharging its responsibility for technical assistance.

§ 631.8 Contracts.

In order to participate in the program, a producer must enter into a contract in which he agrees to accomplish his plan of operations. Any person who controls or shares control of the operating unit for the proposed contract period must sign the contract. Evidence of control which is satisfactory to the contracting officer must be furnished by the producer.

(a) *Period of contract.* The contract shall be for a period that is needed to carry out and establish all of the conservation practices scheduled in the plan of operations. Contracts may be entered into during the period ending not later than December 31, 1981. The period of any contract shall not exceed 10 years (120 months).

(b) *Approval of contract.* The contracting officer having determined that the plan of operations is adequate for a contract may execute the contract with the producer subject to certification in the SCS state office that funds are available. It is the responsibility of the producer who signs a contract to keep the contracting officer currently informed of his mailing address.

(c) *Transfer of contract.* If, during the contract period, all or part of the right and interest of any producer signatory to the contract in an operating unit is transferred by sale or otherwise, his successor, as transferee, during the contract period may upon his request be substituted under the contract for that transferred by executing the prescribed form.

(d) *Termination of contract.* Contracts previously entered into with a producer may be terminated upon mutual agreement of the contract signers and the contracting officer, only if such termination is specifically approved by the Administrator or is authorized under general policies. No contract may be so terminated unless it is determined either specifically or in the general policies that such termination would be in the public interest.

(e) *Modification of contract.* Requirements of contracts previously entered into with a producer may be waived or modified by the contracting officer only if such waiver or modification is specifically approved by the Administrator or is authorized under general policies. No requirement of a contract may be so waived or modified unless it is determined either specifically or in the general policies that such waivers or modifications are desirable to carry out the program purposes or to facilitate the practical administration thereof.

(1) *Practice failed to achieve desired results.* The contracting officer may find, in accordance with standards determined by the Administrator that an identifiable unit has been carried out in accordance with applicable program provisions but, due to conditions beyond the control of the producer signatory to the contract, has failed to achieve the desired results. In such cases the contracting officer may agree to modify the contract to authorize cost-share payments for again carrying out the identifiable unit: *Provided,* That the remaining period of the contract is of such length of time as to allow the carrying out and establishment of the identifiable unit. The producer may not be required to again carry out an identifiable unit that has failed due to conditions beyond his control.

(2) *Practice deterioration.* The contracting officer may find, in accordance with standards determined by the Administrator that an identifiable unit has been carried out in accordance with applicable program provisions and has achieved the desired results but, due to conditions beyond the control of the producer signatory to the contract, subsequently deteriorated during the contract period to the point of need of repeat application. In such cases the contracting officer may agree to modify the contract to authorize cost-share payments for again carrying out the identifiable unit: *Provided,* That the remaining period of the contract is of such length of time as to allow the carrying out and establishment of the identifiable unit. The producer may not be required to again carry out an identifiable unit that has deteriorated due to circumstances beyond his control.

§ 631.9 Selection of conservation practices.

(a) The producer decides how he will use his land and selects the conservation practices which are needed to achieve acceptable levels of protection against wind and water erosion and to develop and utilize the soil and water resources. At the exclusive option of the producer, practices may be included in the plan of operations for the purposes of enhancing fish and wildlife and recreation resources, promoting the economic use of land, and reducing or controlling agriculture-related pollution.

(b) All conservation practices scheduled in the plan of operations shall be carried out in accordance with specifications obtained from the SCS field office. Practices may be carried out according to specifications applicable at the time of installation or when the contract was signed.

§ 631.10 Conservation practice maintenance.

Each producer signatory to a contract shall agree to maintain the conservation practices installed under the contract and any practices on the land before contract for which maintenance is specified in the plan of operations. Failure to maintain practices for the contract period, or for the period of control of the operating unit if lesser, shall be considered a violation of the contract.

§ 631.11 Eligible conservation practices.

(a) The following conservation practices are eligible for federal cost sharing under GPCP when carried out as scheduled in the plan of operations and according to SCS specifications:

(1) *GP–1 Establishment of permanent vegetative cover.* Establishing vegetative cover on land presently in cultivation or land that has been out of cultivation less than 5 years prior to the date of the contract.

(2) *GP–2 Initial establishment of field or wind stripcropping.* Growing crops in a systematic arrangement of strips or bands across the general slope or at angles to offset adverse effects of prevailing winds. Strips of grass or close-growing crops are alternated with strips of clean-tilled crops or fallow, or strips of grass are alternated with strips of close-growing crops.

(3) *GP–3 Initial establishment of contour stripcropping.* Growing crops in a systematic arrangement of strips or bands on the contour. Strips of grass or closegrowing crops are alternated with strips of clean-tilled crops or fallow, or strips of grass are alternated with strips of close-growing crops.

(4) *GP–4 Initial establishment of contour farming operations on nonterraced land.* (This practice not applicable to contract entered into after Dec. 31, 1970).

(5) *GP–5 Reestablishing grasslands.* Improving vegetative cover by artificial seeding, sprigging, or sodding on land that has been out of cultivated crop use longer than 5 years prior to the date of the contract.

(6) *GP–6 Establishment of trees or shrubs.* Establishing a stand of suitable trees or shrubs. No federal cost sharing will be allowed for planting orchard trees, or for plantings for ornamental purposes, and nursery stock.

(7) *GP–7 Establishment of permanent waterways.* Constructing waterways and establishing needed protective cover for safe disposal of excess water.

(8) *GP–8 Terraces.* Constructing an earth embankment or ridges and channels across the slope at suitable spacings. Necessary protective outlet or waterway must be provided. Construction cost may include necessary leveling and filling.

(9) *GP–9 Diversions.* Constructing a channel with a supporting ridge on the lower side and located across the slope. Necessary protective outlet or waterway must be provided. Construction cost may include necessary leveling and filling.

(10) *GP–10 Grassland mechanical treatment.* Renovating grassland by pitting, furrowing, chiseling, ripping, scarifying, listing or other mechanical means. Mechanical operations must be performed as nearly as practicable on the contour.

(11) *GP–11 Erosion control, detention, or sediment retention dams.* Installing floodwater retarding structures, debris basins, and similar structures to prevent or heal gullying or to retard and control the release of water.

(12) *GP–12 Grade stabilization structures.* Installing channel lining, chutes, drop spillways, pipe drops, inlets or similar structures to protect and stabilize grades, outlets and channels that dispose of excess water.

(13) *GP–13 Streambank or shore protection and stabilization; channel clearance, enlargement or realignment; or construction, enlargement or realignment of floodways, levees or dikes.* Installing structures or establishing vegetation to prevent erosion or flood damage. This practice shall not be approved if there is any likelihood that it will create an erosion or flood hazard to adjacent land or where its primary purpose is to bring new land into agricultural production.

(14) *GP–14 Diversion dams and spreader ditches or dikes to divert and spread water.* Installing structures to permit beneficial use of runoff, to replenish ground water supply or to prevent erosion.

(15) *GP–15 Reorganizing irrigation systems.* This practice must be carried out in accordance with a reorganization plan for an existing system to conserve water and prevent erosion, approved by the responsible technician. Federal cost sharing will not be allowed for cleaning ditches, or for structures primarily for the convenience of the producer, or for portable pipe. No federal cost sharing will be allowed for reorganizing an irrigation system if the primary purpose of the reorganization is to bring additional land under irrigation.

(16) *GP–16 Irrigation land leveling.* Reshaping the surface of land to planned grades for efficient use of irrigation water and to prevent erosion based on adequate soil information. Federal cost sharing will not be allowed for floating or restoration of grade. No federal cost sharing will be allowed for leveling land if the primary purpose of the leveling is to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture.

(17) *GP–17 Constructing, enlarging, or sealing dams, pits or ponds for irrigation water.* Installing, enlarging or sealing a reservoir to regulate or store an irrigation water supply necessary for the conservation of soil and water resources. No federal cost sharing will be allowed for constructing or sealing dams, pits, or ponds, for the primary purpose to bring into agricultural production land which was not devoted to the production of cultivated crops or crops normally seeded for hay or pasture.

(18) *GP–18 Lining irrigation ditches, canals or laterals.* Installing a permanent lining of impervious material in field ditches, canals or laterals that are properly located or relocated and constructed as a part of an existing irrigation system to prevent erosion and loss of water by seepage.

(19) *GP–19 Wells.* Constructing or deepening wells. Pumping equipment must be installed, except for artesian wells. Needed water storage and watering facilities must be provided. No federal cost sharing will be allowed for irrigation wells and wells constructed primarily for the use of headquarters or for pumping facilities.

(20) *GP–20 Developing springs and seeps.* Improving springs and seeps by excavating, enlarging, cleaning, intercepting, capping, and providing collection facilities. Needed water storage and watering facilities must be provided. No federal cost sharing will be allowed for developing springs and seeps primarily for the use of headquarters.

(21) *GP–21 Construction, enlarging or sealing dams, pits or ponds.* Installing or sealing a dam, pit or pond, for impoundment of water for purposes other than irrigation.

(22) *GP–22 Pipelines.* Installing pipelines for conveyance of water for purposes other than irrigation. Needed storage and watering facilities must be provided. No federal cost sharing will be allowed for installing pipelines primarily for the use of headquarters.

(23) *GP–23 Controlling competitive shrubs.* Controlling undesirable competitive shrubs to permit growth of desirable vegetative cover on noncropland. This practice shall not be approved on areas where it is determined that the control of competitive shrubs will reduce the vegetative cover to such an extent as to induce erosion, unless followed by reseeding or other approved erosion control measures.

(24) *GP–24 Fences.* Installing needed permanent fences. No federal cost sharing will be allowed for outside boundary fences of an operating unit or to fence out a road.

(25) *GP–25 Critical area treatment.* Establishing permanent vegetative cover such as adapted grasses or legumes, trees, shrubs, or vines by seeding, sodding, sprigging, planting seedlings, cuttings, or other means on sediment producing and eroding areas. Includes needed grading and shaping.

(26) *GP–26 Irrigation tailwater recovery system.* Installing facilities for collecting and storing irrigation tailwater for reuse in the irrigation distribution system and to reduce transporting of agriculture-related pollutants. Includes pickup ditches and sumps, pits or ponds. Cost sharing may be allowed for needed pipelines only if the recovery system is installed on an existing irrigation system. No federal cost sharing will be allowed for pumping equipment or for chemical treatment equipment.

(27) *GP–27 Disposal lagoons.* Constructing an excavated pit, dam embankment, dike, levee or combination of these for disposal of animal wastes. No federal cost sharing will be allowed for pumping equipment or for chemical treatment equipment.

(28) *GP–28 Recreation land grading and shaping.* Altering the surface of the land to meet the requirements of recreation facilities. Needed protective cover must be established.

(29) *GP–29 Water storage facilities.* Constructing storage and watering facilities for purposes other than irrigation. Facilities must be needed, permanent and adequate for the intended use. No federal cost sharing will be allowed for constructing storage and water facilities primarily for the use of headquarters.

(30) *GP–30 Catchment basins.* Installing water collection facilities in areas where it is impractical to provide adequate water by other means, such as pipelines, wells, ponds, or springs. Needed storage and watering facilities must be provided and permanent fences must be installed to protect catchment basin.

(31) *GP–31 Shallow water areas.* Developing shallow water areas suitable for waterfowl, fur bearers, and other wildlife.

(32) *GP–32 Holding ponds and tanks.* Constructing or installing animal waste storage facilities such as holding ponds, pits, liquid manure tanks, collection basins, bins, or similar facilities. Cost sharing may be authorized for permanently installed equipment needed as an integral part of the system. No federal cost sharing will be allowed for portable pumps or for spreading equipment.

(33) *Special conservation practices.* Consistent with the principles set forth in this program, any conservation practice not included in this section which is needed to meet particular conservation problems in a designated county must be approved by the Administrator. Requests for approval must be made by the state conservationist and must include his findings (i) that the conservation problem exists on a substantial number of operating units in the designated county or counties, (ii) that the conservation practices listed in this program will not provide adequate treatment of the problem, (iii) that the proposed conservation practice would not be performed to the extent needed without federal cost sharing, (iv) that the proposed conservation practice will provide the most enduring solution to the problem practicably attainable under existing circumstances, and (v) that the proposed conservation practice is one on which the offering of financial assistance is fully justified as being appropriate and in the public interest. Costs will not be shared under a special conservation practice for elements of performance for which cost sharing is specifically precluded by the wording of a similar conservation practice or elsewhere in this program.

(b) *State practice list.* Each state conservationist shall select the eligible conservation practices for his state from the list in paragraph (a) of this section and set a maximum cost-share rate for each practice selected. The cost-share rate for carrying out any practice may not exceed 80 percent.

(c) *County practice list.* A county practice list shall be developed for each designated county by the designated technician in consultation with the county program committee. The practices are to be selected from the state list and only those which are needed in the county should be included. The list shall include a cost-share rate for each practice and the average cost or a specified maximum cost for each practice or identifiable unit.

(1) The cost-share rate for any practice may not exceed, but may be lower than, the rate set in the state list.

(2) Average costs and specified maximum costs shall be determined from cost data collected on a continuing basis.

(3) The county practice list is to be prepared for a 12-month period. It must be recommended by the designated tech-

nician and area conservationist and approved by the state conservationist or his designee not later than March 1 each year. Changes in any part may, however, be recommended and approved at any time.

Subpart B—Cost-Share Payments

§ 631.12 Cost-share payments.

(a) (1) Cost-share payments shall be made at cost-share rates specified in the contract, at the average cost, or the actual cost not to exceed the average cost or specified maximum cost as set forth in the contract: *Provided*, That if the average cost or the specified maximum cost applicable at the time of initial action to carry out the identifiable unit is less than the average cost or specified maximum cost set forth in the contract, payment shall be made on the basis of such lower average cost or lower specified cost: *Provided further*, That whenever the approved average cost or specified maximum cost in effect at the time of the initial action to carry out the identifiable unit is more than the average cost or specified maximum cost set out in the contract, payment may be made on the basis of the higher average cost or higher specified maximum cost.

(2) A contract modification will be necessary if the higher costs result in a significant increase in the cost-share obligation. Payment shall not be made until the modification reflecting the increase is approved. Cost-share payments for increased average costs or specified maximum costs which are not significant may be made without modification provided funds are available.

(b) Cost-share payments are made by SCS for carrying out identifiable units and are conditioned upon approval by the district conservationist of the certificate of performance and compliance. The county ASC committee certifies that cost-share payments to be made are not duplicates of payment made under USDA programs administered by it, and determines the status of indebtedness of producers shown on the county register of indebtedness. The district conservationist may utilize the assistance of private, state and other federal agencies in discharging his responsibility for certification of performance and compliance.

(c) A producer is not eligible to receive cost-share payments for an identifiable unit which was not carried out under GPCP.

(d) No funds appropriated after June 30, 1971, for cost sharing under GPCP may be used to make production or other payments, to any producer who after such date harvests, or knowingly permits to be harvested for illegal use, marihuana (Cannabis sativa) or other prohibited drug-producing plant on land owned or controlled by the producer. For the purpose of the regulations in this part, the following plants in addition to marihuana are prohibited: opium poppies (Papaver somniferum), coca bushes (Erythroxylum coca), cacti of the genus Lophophra, and other drug-producing plants, the planting, growing, or harvesting of which is prohibited by federal or state law.

§ 631.13 Conservation materials or services (Authorizations).

(a) Conservation materials or services needed by producers to carry out their contracts will be obtained or contracted for by producers. In sharing the cost of carrying out eligible conservation practices, the contract between the producer and the United States may provide that part or all of the federal cost share for an eligible conservation practice may be made to those who furnish conservation materials or services to the producer for use in carrying out the eligible conservation practice, after the conservation material or service has been purchased by the producer and supplied to him. This method may not be used if the producer signatory to the contract is indebted to the United States as indicated by the register of indebtedness maintained in the office of the county ASC committee, except in those cases where the agency to which the debt is owed waives its setoff rights in order to permit this method of cost sharing.

(b) Federal cost shares will be made as provided in this section with the approval of the contracting officer, not in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the producer.

(c) The producer signatory to the contract who purchases material or service as provided in this section will be relieved of responsibility for the material or service upon determination by the district conservationist that the material or service was used for the purpose for which it was purchased and that any other identifiable units on which the amount of the federal cost share toward the cost of the material or service was determined, have been carried out in accordance with applicable program provisions. If the producer uses any material or service obtained under this section for any purpose other than for which it was purchased, he shall be indebted to the United States. That part of the cost of the material or service used for other than the intended purpose shall be repaid to SCS or such amount will be withheld from the cost-share payments otherwise due the producer under the program.

§ 631.14 Materials and services; defective; inspection and analysis.

(a) As a condition to making payments under authorizations, opportunity must be given to inspect materials or services and to take necessary samples: *Provided, however*, That the inspection and analysis controls exercised by state regulatory authorities may be considered sufficient protection to the United States as to the quality standard of any material over which authority is exercised: *Provided further*, That this shall not deprive the United States of the opportunity of taking additional samples nor shall it deprive the United States of the opportunity for making separate inspections of materials in any case where such further action is necessary to adequately protect the interest of the United States.

(b) Conservation material or service furnished to a producer to be cost shared shall be considered to be defective if it does not meet the quality standard specified in the authorization.

(c) Conservation material or service found defective as provided herein may be accepted by the producer and the cost-share payment may be made only if (1) the material or service will satisfactorily serve the purpose for which it was procured, and (2) a deduction is made from the cost-share payment equal to the difference between the price of the conservation material or service of the quality specified and the value of the material or service furnished to the producer.

§ 631.15 Payments due persons who have died, disappeared, or have been declared incompetent.

(a) *Death*. If any person who is otherwise eligible to receive a cost-share payment dies before payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, in accordance with the following order of precedence:

(1) To the administrator or executor of the deceased person's estate.

(2) To the surviving spouse, if there is no administrator or executor and none is expected to be appointed, or if an administrator or executor was appointed but the administration of the estate is closed (i) prior to application by the administrator or executor for such payment, or (ii) prior to the time when a check, draft or certificate issued for such payment to the administrator or executor is negotiated or used.

(3) If there is no surviving spouse, to the children of the deceased person in equal shares. Children of a deceased child of a deceased person shall be entitled to their parent's share of the payment, share and share alike. If there are no surviving children of a deceased child of the deceased person, the share of a payment which otherwise would have been made to the child of the deceased person shall be divided equally among the surviving children of the deceased person and the estate of any deceased child if there are surviving direct descendants.

(4) If there is no surviving spouse and no direct descendant, payment shall be made to the father and mother of the deceased person in equal shares, or the whole thereof to the surviving father or mother.

(5) If there is no surviving spouse, no direct descendant, and no surviving parent, payment shall be made to the brothers and sisters of the deceased person in equal shares. Children of a deceased brother or sister shall be entitled to their parent's share of the cost-share payment, share and share alike. If there are no surviving direct descendants of the deceased brother or sister of the deceased person, the share of the payment which otherwise would have been made to a

brother or sister shall be divided equally among the surviving brothers and sisters of the deceased person and the estates of any deceased brothers or sisters if there are surviving direct descendants.

(6) If there is no surviving spouse, direct descendant, parent, or brothers or sisters or their descendants, the payment shall be made to the heirs-at-law in accordance with the law of the state of domicile of the deceased person. Any person entitled to payment under the above order of precedence who is a minor, payment of his share shall be made to his legal guardian, but if no legal guardian has been appointed, payment shall be made to his natural guardian or custodian for his benefit, unless the minor's share of the payment exceeds $1,000, in which event payment shall be made only to his legal guardian. Any cost-share payment which the deceased person could have received may be made jointly to the persons found to be entitled to payment of shares thereof under this section. A separate check may be issued to each person entitled to share in the payment.

(b) *Disappearance.* (1) A person shall be considered to have disappeared if he has been missing for a period of more than 3 months, a diligent search has failed to reveal his whereabouts, and the person has not communicated during such period with other persons who would be expected to have heard from him. Evidence of disappearance must be presented to the state conservationist in the form of a statement executed by the person making the application for payment, setting forth the above facts, and must be substantiated by a statement from a disinterested person who was well acquainted with the person who has disappeared.

(2) In case any person otherwise eligible to receive a cost-share payment disappears before receiving payment, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to one of the following in the order mentioned:

(i) The conservator or liquidator of his estate, if one be duly appointed.

(ii) The spouse.

(iii) An adult son or daughter or grandchild for the benefit of his estate.

(iv) The mother or father for the benefit of his estate.

(v) An adult brother or sister for the benefit of his estate.

(vi) A person as may be authorized under state law to receive payment for the benefit of his estate.

(c) *Incompetency.* If any person who is otherwise eligible to receive a cost-share payment is adjudged incompetent by a court or competent jurisdiction before payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to the guardian or committee legally appointed. Payment of not more than $1,000 may be made without regard to claims of creditors other than the United States, to one of the following in the order mentioned for the benefit of the incompetent person:

(1) The spouse.

(2) An adult son, daughter, or grandchild.

(3) The father or mother.

(4) An adult brother or sister.

(5) A person as may be authorized under state law to receive payment for the incompetent.

(d) In case any person entitled to apply for a cost-share payment pursuant to the provisions of this section, dies, disappears, or is adjudged incompetent, as the case may be, after he has applied for payment but before payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to the person next entitled thereto in accordance with the order of precedence set forth herein.

(e) *Definitions.* As used in this section, the term "person" when relating to one who dies, disappears, or becomes incompetent, prior to receiving payment, means an individual producer who is due a cost-share payment pursuant to these regulations. "Children" shall include legally adopted children who shall be entitled to share in any cost-share payment in the same manner and to the same extent as legitimate children of natural parents. "Brother" or "sister," when relating to one who, pursuant to the regulations, is eligible to apply for a cost-share payment which is due a person who dies, disappears, or becomes incompetent prior to the receipt of such payment, shall include brothers and sisters of the half blood who shall be considered the same as brothers and sisters of the whole blood. "Payment" means issuance of a check by the U.S. Treasury Disbursing Officer pursuant to these regulations. (7 U.S.C. 1385)

§ 631.16 Manner and time of cost-share payments.

Cost-share payments shall be made to the producer after he has carried out an identifiable unit of his plan of operations and arrangements therefor shall be made by the SCS state office. Payments shall be made as soon as practicable after the identifiable unit is carried out and the extent of performance has been established. It is the responsibility of the producer eligible for cost-share payments to establish his claim for payments. Cost-share payments for identifiable units carried out under the program will be made only upon application submitted to the district conservationist. Application shall be filed by June 30 of the year following the calendar year in which the identifiable unit was carried out, except that with respect to any application filed after that date the state conservationist may authorize cost-share payments to be made if in his judgment such action is warranted by the circumstances of the particular case. Applications for cost-share payments shall specify the proportion of each producer's contribution to the carrying out of each identifiable unit. Payments will be made for the identifiable units carried out in the year as shown on the time schedule of land use and treatment unless otherwise provided for by modification of the contract.

§ 631.17 Division of cost-share payments between producers signatory to a contract.

The federal cost share attributable to the use of conservation materials or services shall be credited to the producer to whom the authorization for purchase of materials or services is furnished. The remainder of the cost share shall be credited to the producer who carried out the remainder of the identifiable unit for which the cost share is earned. If more than one producer contributed to carrying out of an identifiable unit, the cost-share payment shall be divided among the producers in proportion to the extent which they contributed to the identifiable unit as set forth in the approved application for cost-share payments. The furnishing of land or the right to use water will not be considered as a contribution for carrying out any identifiable unit.

Subpart C—Miscellaneous

§ 631.18 Transfer of operating units—existing contracts.

Operating units shall be considered transferred and the contracts shall be modified under the following conditions:

(a) Two or more operating units as made up at the time a contract is entered into are later combined.

(b) One operating unit as made up at the time the contract is entered into is later divided into two or more operating units.

§ 631.19 Identifiable units carried out with state or Federal aid.

For the purpose of computing federal cost shares, the extent of any identifiable unit carried out shall be reduced by the percentage of the total cost furnished by a state or subdivision thereof, or federal agency, for the items on which costs are shared.

§ 631.20 Successors-in-interest.

(a) If during the contract period all or a part of the right and interest of any producer signatory to the contract in the operating unit is transferred by sale or otherwise, the contract shall terminate as to such producer with respect to the acreage which has been transferred. The producer whose right and interest is transferred shall forfeit all rights to further cost-share payments made to him under the contract with respect to the acreage which has been transferred and all cost-share payments made to him under the contract shall be refunded with respect to such acreage unless the transferee who acquires the right and interest is or becomes a party to a contract which assumes all obligations of the producer.

(b) The contract shall remain in full force and effect in accordance with the original terms and conditions of the contract with respect to the right and interest remaining in the producer. The contract shall be modified to reflect the

changes brought about by any transfer. If the necessary modifications cannot be agreed to with the contracting officer, the producer shall refund all cost-share payments made to him with respect to his remaining right and interest in the operating unit. If this refund is made, the producer will have no further rights or obligations under the contract.

(c) Except as this section may require otherwise, the transfer of all or part of the operating unit by any producer signatory to the contract shall not affect the rights and obligations of all other producers signatory to the contract.

§ 631.21 Pooling arrangements.

Producers in any local area may, with the prior approval of the contracting officer, enter two or more operating units jointly in the program if a plan of operations satisfactory to the district conservationist is developed that would result in a better land use and treatment program for the operating units through such joint participation than would be obtained through individual operating unit participation.

§ 631.22 Actions that tend to defeat the purposes of a contract.

(a) A producer who knowingly or negligently destroys or breaks up a conservation practice in the plan of operations, unless prior approval in writing is given by the contracting officer, shall be in violation of his contract.

(b) Adoption of any practice by a producer on an operating unit during the life of the contract, which tends to defeat the program purpose shall constitute a violation of the contract.

§ 631.23 Appeals.

(a) *Prior to execution of contract.* Any producer may request the contracting officer or the district conservationist to reconsider, prior to the execution of the contract by the producer, any determination made by him which would affect the contract except this may not include development of eligible conservation practices, cost-share rates and average costs.

(1) Requests for reconsideration shall be in writing and shall be filed within 15 days after receiving written notice of the determination. It shall be considered that a producer has received notice of the determination if a letter, form or other document which discloses such determination has been mailed or delivered to him. The contracting officer or the district conservationist shall notify the producer of his decision in writing within 15 days after the filing of the written request for reconsideration.

(2) If the producer is dissatisfied with the decision of the contracting officer or the district conservationist, he may within 15 days after receiving written notice of the decision, file a written appeal with the state conservationist. The contracting officer or district conservationist may submit statements or briefs, including a review of the case, to the state conservationist. The state conservationist shall notify the producer of his decision in writing within 30 days after filing of the appeal.

(3) If the producer fails to request reconsideration of a determination by the contracting officer or district conservationist, or fails to appeal from a decision of the contracting officer or the district conservationist, within the 15-day period, the determination or decision of the contracting officer or the district conservationist shall be final.

(b) *After execution of contract.* Any dispute concerning a question of fact arising under a contract, except contract violations, which is not disposed of by written agreement after a reasonable time shall be referred to the state conservationist for a decision.

(1) The state conservationist shall notify the producer in writing that the matter will be considered on a date specified in the notice, which shall be not less than 30 days subsequent to receiving the notice. If the producer files a request for such an opportunity within 15 days from receiving such notice, he will be afforded the opportunity to appear and present his views orally and to offer relevant evidence in support of his position. If the producer does not request an opportunity to appear and to present relevant evidence, the state conservationist shall promptly proceed to consider the matter on the basis of such information as may be available to him, including statements or briefs of the authorized representatives of the Administrator whose actions are in dispute. The state conservationist shall notify the producer of his decision in writing by mailing or delivery of the decision.

(2) Any producer adversely affected may appeal to the Administrator from a decision of the state conservationist. A producer who wishes to take such action must file his appeal and any briefs or statements in the office of the Administrator within 30 days from receiving notice of the decision of the state conservationist. The state conservationist may file a brief or statement in the office of the Administrator within 15 days after the producer's brief or statement is received there. Such an appeal shall be limited to the issues or disputes and records before the state conservationist. The state conservationist shall submit the record before him, which will include his decision, to the Administrator. The Administrator upon receipt of the record, will make a decision from which there shall be no further appeal in the U.S. Department of Agriculture (USDA). The producer shall be notified of this decision in writing.

(c) *Filing of documents.* Whenever the regulations in this section require the filing of a document, it is considered filed when received in the office of the individual concerned.

§ 631.24 Contract violations.

(a) *Contract to be terminated.* The producer shall agree by signing a contract to forfeit all rights to further cost-share payments under the contract and to refund all cost-share payments received thereunder, if the Administrator determines that there has been a violation of the contract during the time the producer has control of the operating unit and that the violation is of such a nature as to warrant termination of the contract. The producer who signs the contract will be obligated to refund all cost-share payments and all cost shares paid under authorization.

(b) *Contract not terminated.* The producer shall agree by signing a contract to make refunds of cost-share payments received under the contract or to accept payment adjustments in the contract, if the Administrator determines that there has been a violation of the contract during the time the producer has control of the operating unit and that such violation is of such a nature as not to warrant termination of the contract. Payment adjustments may include decreasing the rate of a cost share or deleting from the contract a cost-share commitment or withholding cost-share payments earned but not paid. The producer who signs the contract will be obligated to refund cost-share payments and cost shares paid under authorizations.

§ 631.25 Contract violations procedure.

This section prescribes the regulations for determining whether violation of a contract has occurred and for the effect and result of such violation. The Administrator reserves the right upon notice to modify, amend, revise, or supplement any of the provisions of this section at any time: *Provided*, That such action shall not adversely affect any producer if a determination has been made and the producer has been officially notified thereof before such action is taken. No cost-share payment shall be made pending the decision as to whether a contract violation has occurred.

(a) *Determination by contracting officer.* If the contracting officer receives information indicating that violation of a contract may have occurred but determines, without the issuance of a notice, with the approval of the state conservationist, that no violation has occurred, or that the violation does not call for any such forfeiture, refund, payment adjustment, no further action shall be taken. If all of the producers subject to a forfeiture, refund, payment adjustment, or termination agree in writing to accept such forfeitures, refund, payment adjustment or termination, no further proceeding shall be undertaken. The contracting officer and the state conservationist shall give approval to this agreement. The agreement shall specify what occurs to the contract.

(b) *Notice of alleged violation.* If the state conservationist believes, on information submitted by the contracting officer or otherwise, that a violation of a contract has occurred which would call for a forfeiture, refund, payment adjustment or termination, written notice thereof, on a form prescribed by the Administrator shall be given to each producer signatory to the contract.

(1) Notice to a producer may be shown by (i) a written statement by an authorized representative of the Administrator

that the notice was personally delivered to the producer; (ii) a written statement by a producer acknowledging receipt of the notice; and (iii) a post office return receipt showing that the notice was delivered at the last address of the producer or showing that the notice could not be delivered to the producer at his last address because he had moved without a forwarding address, or because the producer refused to accept delivery at his last address, or because the last address does not exist. A producer under this section will be considered to have received the notice at the time of personal receipt, at the time of the delivery of a registered or certified letter, or at the time of the return of an undelivered registered or certified letter.

(2) The notice shall set forth the nature of the alleged violation and shall inform the producer that he will be given an opportunity to appear at a hearing before a person designated by the state conservationist to conduct a hearing if he files a written request for such hearing in the SCS field office not later than 30 days after the time he received the notice. The producer shall be notified in writing by the hearing officer of the time, date, and place set for the hearing. When practicable, the hearing will be held in the designated county where the operating unit is regarded as being located. If the producer does not file written request for a hearing, or does not appear at the appointed time or is not represented at a hearing so requested, he shall have no further right to a hearing before a hearing officer. However, a hearing officer already appointed may in his discretion, permit such produced to appear before him. A request filed by any producer with the SCS field office shall be considered to be the request of all producers signatory to the contract.

(c) *Hearing.* The hearing before the hearing officer shall be held at the time and place and on the date set forth in the notice of the hearing to the producer. The hearing shall be conducted in the manner considered most likely to obtain the facts relevant to the alleged violation. The hearing officer shall have full authority to confine the presentation of facts and evidence to pertinent matters and to exclude irrelevant, immaterial or unduly repetitious evidence, information or questions. In so doing, the hearing officer shall not be bound by the strict rules of evidence as required in courts of law. Witnesses may be sworn at the discretion of the hearing officer. The hearing shall be public.

(1) The producer, or his representative, at the hearing shall be given a full opportunity to present facts and information relevant to the alleged violation and may present oral or documentary evidence. Statements and evidence may be submitted at the hearing by the United States. Individuals not otherwise represented at the hearing to give information or evidence may, in the discretion of the hearing officer, be requested or permitted to give information or evidence. The hearing officer, in his discretion, may permit witnesses to be cross-examined, including those individuals called by him.

(2) The hearing officer shall provide for the making of a record at the hearing as will enable him to make a summary of the testimony received at the hearing if the producer and the state conservationist agree. If the state conservationist feels that the nature of the case is such as to make a transcript desirable or if the producer requests such a transcript a reasonable period prior to the time that the hearing begins, a transcript of the hearing shall be made. If a transcript is desired only by a producer, he will be required to provide for its preparation and for the payment of expense thereof. If a transcript is desired by both the state conservationist and the producer, the producer will be required to pay only the expense of a copy of the transcript. The remainder of the expense will be paid by the United States.

(3) If, at the time scheduled for the hearing, the producer is absent and no appearance is made on his behalf, the hearing officer shall, after a lapse of such a period of time as he may consider proper and reasonable, close the hearing, or may, in his discretion, accept information and evidence submitted by others present for the hearing.

(4) In every case where a producer is sent a notice of an alleged violation pursuant to paragraph (b) of this section, except where the producer agrees to the forfeiture, refund, payment adjustment or termination as provided in paragraph (a) of this section, the hearing officer shall furnish the state conservationist with a written report setting forth his findings, conclusions, and recommendations. The report shall include the summary of testimony or transcript made of any hearing before the hearing officer and all other information which would be of aid to the state conservationist in reaching his determination.

(d) *Determination by state conservationist.* The state conservationist shall make a determination on the basis of the hearing officer's report, recommendation of the SWCD board, if any, and any other information available to him as to whether a violation of the contract has occurred, and in accordance with the provisions of this section, the amount of the forfeiture, refund, or payment adjustment. The determination of the state conservationist shall specifically state whether the violation is of such a nature as to warrant termination of the contract or that the violation does not warrant termination of the contract. Each producer who signed the contract shall be notified in writing of the determination reached by the state conservationist. The state conservationist may authorize or require the reopening of any hearing before a hearing officer for any reason at any time prior to his determination.

(e) *Appeal to the Administrator.* Any producer adversely affected by a determination of the state conservationist shall have the right of appeal to the Administrator. A producer who wishes to appeal to the Administrator must file his appeal in the office of the Administrator. This appeal and any briefs or statements must be received within 30 days after the producer has received notice of the determination of the state conservationist. The state conservationist may file a brief or statement in the office of the Administrator within 15 days after the producer's brief or statement is received there. The appeal shall be limited to the records and the issues made before the state conservationist which records shall be submitted to the Administrator by the state conservationist. The Administrator will make his decision from which there shall be no further appeal in the USDA. The decision will be based upon the record before him and the issues presented by the appeal and the producer shall be notified in writing.

(1) If the determination or decision is that the violation is of such a nature as to warrant termination of the contract, the determination or decision shall state that the contract is terminated and that all rights to further cost-share payments or grants under the contract are forfeited and that all cost-share payments received under the contracts shall be refunded. The determination or decision will state the amount of the refund and how payment may be accomplished.

(2) If the determination or decision is that the violation is of such a nature as not to warrant termination of the contract, the producer may be required to make a refund of cost-share payments or to accept payment adjustments. The determination or decision shall state the extent of refunds of cost-share payments or payment adjustments. In arriving at the extent of a refund of cost-share payments or payment adjustments under this section there will be considered (i) the extent of the violation, (ii) whether the violation was deliberate or the result of negligence or was due to circumstances beyond the control of the producer, (iii) the effect on the program if no refund or payment adjustment is required, (iv) the extent to which the producer benefited by the violation, (v) the effect of the violation on the contract as a whole, and (vi) other pertinent considerations including the appropriateness and reasonableness of the refund or payment adjustment.

§ 631.26 Assignments.

Assignments by any producer who may be entitled to any cost-share payment under the program are prohibited unless made in accordance with the provisions of section 203, Title 31, U.S.C., and any amendments thereto, and section 15, Title 41, U.S.C., and any amendments thereto.

§ 631.27 Cost-share payments not subject to claim.

Any cost-share payment, or portion thereof, due any producers hereunder shall be determined and allowed without deduction of claims for advances (except as provided in § 631.26 of this subpart and except for indebtedness to the United States subject to setoff); and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the owner of the operating unit or any other creditor.

§ 631.28 Filing of false claims.

No producer shall file a claim for a cost-share payment to which he knows he is not entitled under the provisions of the program, including claim for a cost-share payment for practices not carried out or for eligible conservation practices carried out in such a manner that they do not meet the required specifications therefor, and the filing of any such claim shall constitute a violation of the contract.

§ 631.29 Setoffs.

If any producer to whom compensation is payable under the program is indebted to USDA, or any agency thereof, including the Commodity Credit Corporation and Federal Crop Insurance Corporation, or is indebted to any other agency of the United States, and such indebtedness to another agency is listed on the county register of indebtedness maintained in the office of the county ASC committee, the compensation due the producer shall be set off against the indebtedness. Indebtedness owing to USDA, or any agency thereof, shall be given first consideration. Setoffs made pursuant to this section shall not deprive the producer of any right to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

§ 631.30 Compliance with regulatory measures.

Producers who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements or other approvals necessary to the carrying out and maintenance of the conservation practices in keeping with applicable laws and regulations. Producers shall save the United States harmless from any infringements upon the rights of others or from any failure to comply with applicable laws or regulations.

§ 631.31 Misuse of authorizations.

No producer shall knowingly use an authorization issued to him for obtaining conservation materials or services for a purpose other than for which it was issued and the misuse of the authorization shall constitute a contract violation.

§ 631.32 Access to operating unit and program records.

Any authorized SCS representative shall have the right to enter an operating unit and to examine any program records for the purpose of ascertaining the accuracy of any representations made in a contract or leading up to a contract, and performance of the terms and conditions of the contract. It shall include the right to measure acreages, render technical assistance, and to inspect any work undertaken under the contract.

§ 631.33 State conservationist approval of designated county program determinations.

The state conservationist, upon his own initiative, may revise or require revision of any determination made by the contracting officer or the district conservationist in connection with the program except that the state conservationist may not make a revision of any executed contract other than as may specifically be authorized herein.

§ 631.34 Effect on acreage allotment and marketing quota programs.

(a) The acreage on any operating unit which is diverted from the production of any commodity subject to acreage allotments or marketing quotas in order to carry out any contract entered into under this program is preserved so long as the producer maintains the diverted land in grass.

(b) In applying the provisions of paragraph (6) of Pub. L. 74, 77th Congress (7 U.S.C. 1340(6), and section 326(b) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1326(b)), relating to reduction of the storage amount of wheat, the acreage on any operating unit which is diverted from the production of wheat in order to carry out a contract shall be regarded as wheat acreage on the operating unit.

[FR Doc.75-31088 Filed 11-17-75;8:45 am]

Title 9—Animals and Animal Products

CHAPTER 1—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

PART 112—PACKAGING AND LABELING

PART 113—STANDARD REQUIREMENTS

Miscellaneous Amendments

● Purpose. To recodify a standard test procedure for clarification of references to its use and correct an oversight in a previous docket. ●

On August 4, 1975, there was published in the FEDERAL REGISTER (FR Docket 40-32753) a notice of proposed rulemaking which included amendments to § 113.6 (a). On October 2, 1975, this proposal was printed in final form in the FEDERAL REGISTER (FR Doc. 40-45419). The words "or imported into the United States" were inadvertently deleted. These amendments correct this oversight.

On September 10, 1975, there was published in the FEDERAL REGISTER (FR Docket 40-41995) a revision of § 112.7(f)(1)(i). Reference was made to (f)(i) instead of (f)(1)(i). These amendments clarify the intent of the amendments.

The cat safety test prescribed in § 113.139(d)(1) has been found useful in testing other products recommended for use in cats. In keeping with the policy of grouping such tests under a general heading of "Standard Procedures," these amendments recodify this test in § 113.39. § 113.139(d)(1) is further amended by revising it to include a reference to the test in § 113.39. Each word in the heading of § 113.139 is to be capitalized.

1. Section 112.7 is amended by revising paragraph (f)(1)(i) to read:

§ 112.7 Special additional requirements.

* * * * *

(f) * * *

(1) *Clostridium chauvoei* and/or *Clostridium septicum*. "Calves vaccinated under 3 months of age should be revaccinated at weaning or 4 to 6 months of age."

(i) If in combination with Pasteurella Haemolytica Bacterin or Pasteurella Multocida Bacterin or both, revaccination at 2 to 4 weeks shall be recommended; except that, the revaccination recommendation may be limited to the Pasteurella fraction(s) if a single dose for the other fractions has been established as sufficient for primary immunization.

* * * * *

2. Section 113.6 is amended by revising paragraph (a) to read:

§ 113.6 Veterinary services testing.

* * * * *

(a) The Deputy Administrator is authorized to cause a biological product, manufactured in the United States or imported into the United States, to be examined and tested for purity, safety, potency, or efficacy; in which case, the licensee or permittee shall withhold such product from the market until a determination has been made.

* * * * *

3. Part 113 is amended by adding a new § 113.39 to read:

§ 113.39 Cat safety test.

The cat safety test provided in this section shall be conducted when prescribed in a Standard Requirements or in the filed Outline of Production for a product.

(a) Each of two healthy cats shall be injected with 10 cat doses by the method recommended on the labels and the cats observed each day for 14 days.

(b) If unfavorable reactions attributable to the biological product occur during the observation period, the serial is unsatisfactory. If unfavorable reactions occur which are not attributable to the product, the test shall be declared inconclusive and repeated; *Provided*, That, if not repeated, the serial shall be unsatisfactory.

4. Section 113.139 is amended by revising paragraph (d)(1) to read:

§ 113.139 Feline Panleukopenia Vaccine.

* * * * *

(d) * * *

(1) *Safety Test.* The mouse safety test prescribed in § 113.33(a) and the cat safety test prescribed in § 113.39 shall be conducted.

* * * * *

(37 Stat. 832-833; 21 U.S.C. 151-158)

These amendments make administrative changes to conform with the established policy of grouping tests used for more than one product under the heading of Standard Procedures. They also correct an error made in previously published regulations. In order to be of maximum benefit, they must be made effective immediately.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and

other public procedure concerning these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective less than 30 days after publication in the FEDERAL REGISTER.

The foregoing amendments shall become effective upon issuance.

Done at Washington, D.C., this 12th day of November 1975.

PIERRE A. CHALOUX,
Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc.75-31079 Filed 11-17-75;8:45 am]

Title 10—Energy

CHAPTER 1—NUCLEAR REGULATORY COMMISSION

PART 2—RULES OF PRACTICE

Atomic Safety and Licensing Board Alternates

In F.R. Doc. 75-30093 appearing at page 51955 in FEDERAL REGISTER of November 7, 1975, paragraph (c) of § 2.704 appearing on page 51996 is corrected in the thirteenth line of that paragraph by adding the word, "Appeal", immediately following the words, "Safety and Licensing", and immediately before the word, "Board".

(Sec. 161, Pub. L. 83-703, 68 Stat. 948; Sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 2201, 5841)).

Dated this 12th day of November, 1975 at Washington, D.C.

For the Nuclear Regulatory Commission,

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.75-31121 Filed 11-17-75;8:45 am]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Reg. T]

PART 220—CREDIT BY BROKERS AND DEALERS

Arranging for Credit by a Broker or Dealer

On June 2, 1975, the Board of Governors published for comment in the *Federal Register* (40 FR 23768) a proposed amendment to § 220.7(a) of Regulation T which would relax the present rule that generally prohibits a broker or dealer from arranging credit unless it is the kind of credit a broker or dealer can extend.

The comments received were all favorable although many suggested enlarging the scope of the amendment. Some commentators suggested that the amendment be expanded to permit the arranging for credit extended in connection with securities sold pursuant to the "intra-State" exemption from registration contained in section 3(a)(11) of the Securities Act of 1933 (15 U.S.C. 77c(a)(11)). Such an expansion, however, would provide no relief for any person who acts as both a broker and a dealer in the distribution of a security because of the prohibitions of section 11(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(d)) and would otherwise appear to offer minimal benefit to brokers or dealers. Other suggested areas of expansion do not appear to the Board to be appropriate at this time.

Several commentators suggested changes in the language to ensure that the status of the security at the time credit for its purchase is arranged should be controlling rather than an historical or prospective status. The Board agrees, and the proposed amendment has been revised accordingly.

Other commentators asked that the Board clarify whether the amendment is intended to restrict allowable "arranging" only to those situations specified in the amendment and thereby forbids all others. In response to such comments the Board wishes to indicate that it regards the amendment as a relaxing one and an effort to provide certainty where possible in the determination of what arranging is permissible. Any situations not expressly within the provisions of § 220.7(a) are not prohibited provided they comply with standards set out in relevant judicial or administrative interpretations.

Pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78g and w), the proposed amendment, as revised, is hereby adopted as set forth below:

Section 220.7 is amended by revising paragraph (a):

§ 220.7 Miscellaneous Provisions.

(a) *Arranging for loans by others.* A creditor may arrange for the extension or maintenance of credit to or for any customer of such creditor by any person upon the same terms and conditions as those upon which the creditor, under the provisions of this Part, may himself extend or maintain such credit to such customer, but only upon such terms and conditions, except that this limitation shall not apply to the arranging by a creditor:

(1) For a bank subject to Part 221 of this Chapter (Regulation U) to extend or maintain credit on margin securities or exempted securities, or

(2) For any person to extend or maintain credit for the purpose of purchasing or carrying a security (including sale of a security with installment payments or other credit features) in a transaction which is exempt from the registration requirements of the Securities Act of 1933 by virtue of section 4(2) of that Act (15 U.S.C. 77d(2)) *Provided, That:* (i) The credit to be extended or maintained will not violate the provisions of Parts 207 and 221 of this Chapter; and

(ii) The credit will not be used to purchase or carry a security that is publicly-held. For the purpose of this paragraph, a security shall be deemed to be "publicly-held" if it is (a) a security of a class that is registered, or will be required to be registered (assuming existing circumstances requiring registration continue to prevail) within 120 days after the last day of the fiscal year of the issuer, under section 12 of the Act or would be required to be registered except for the exemptions provided by paragraphs (2)(B) and (G) of subsection 12(g), or (b) a security of a class any portion of which was registered under section 5 of the Securities Act of 1933 (15 U.S.C. 77e) and in connection with which the issuer is required to file periodic reports under section 15(d) of the Act.

* * * * *

The requirement of 5 U.S.C. 553(d) with respect to deferred effective date was not followed in connection with the amendment because the amendment relaxes a restriction previously imposed.

Effective date: This amendment is effective November 13, 1975.

By order of the Board of Governors, November 12, 1975.

[SEAL] THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.75-31148 Filed 11-14-75;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 75-EA-66; Amdt. 39-2431]

PART 39—AIRWORTHINESS DIRECTIVE

Canadair Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Canadair CL-44D4 and CL-44J type aircraft.

There have been reports of cracked main landing gear actuator attachment bolts on the subject aircraft. Failure of such bolts could result in the loss of the main landing gear. Since this deficiency can exist or develop in aircraft of similar type design, an airworthiness directive is being issued which will require an inspection and replacement when necessary.

In view of the foregoing and because the deficiency is one which affects air safety, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended by issuing a new Airworthiness Directive as follows:

CANADAIR. Applies to all CL-44D4 and CL-44J airplanes, certificated in all categories, but not altered in accordance with Canadair Service Bulletin 44-478.

Compliance required within the next 25 landings, unless already accomplished within the last 275 landings, and thereafter at subsequent intervals not to exceed 300 landings, after the effective date of this AD.

To detect fretted, pitted or cracked main landing gear actuator attachment bolts, P/N SD300-55880, SD300-65779 or SD300-65779-

128, inspect and, if necessary, replace bolts in accordance with Canadair Service Information Circular 328-CL44D4, Issue 2 or an approved equivalent inspection and part replacement.

Bolts found to be in good condition may be reinstalled provided:

(a) they are of a type specified for replacement in the Canadair SIC 328-CL44D4 or are approved equivalent bolts;

(b) they have not exceeded the life limits specified in Canadair SIC 328-CL44D4; and

(c) they have not been reworked.

Equivalent inspection or parts must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Upon request, with substantiating data submitted through an FAA maintenance inspector, the compliance time of this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

This amendment is effective November 25, 1975.

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

Issued in Jamaica, N.Y., on November 10, 1975.

DUANE W. FREER,
Director,
Eastern Region.

[FR Doc.75-31022 Filed 11-17-75;8:45 am]

[Airworthiness Docket No. 75-WE-51-AD; Amdt. 39-2429]

PART 39—AIRWORTHINESS DIRECTIVES

Lockheed L-1011-385 Series Airplanes

By telegram dated October 22, 1975 an airworthiness directive was adopted to require a daily visual check of the drain mast beneath the hydraulic service center for evidence of fuel leakage, on L-1011-385 series airplanes incorporating fuel line tube assembly, P/N 1515816-121, bearing the manufacturing date identification No. 533X190. The check was to be performed until a tube assembly, P/N 1515816-179, was installed per Lockheed Service Bulletin 093-28-033, dated October 17, 1975. FAA-approved equivalent checks and modifications were provided for. This AD was distributed to all known United States operators of the L-1011-385 series airplanes incorporating the tube assembly by individual telegrams dated October 22, 1975.

At the time of issuance of that AD, the affected tube assemblies were reported to bear the manufacturer's date identification No. 533X190, and were installed on certain serial number airplanes. However, additional information indicated that, in some cases, the manufacturer's date identification number may have been obliterated; and that the assemblies may have been installed on airplanes other than those previously identified in the telegram dated October 22, 1975. Certain airplanes, based upon information furnished by the manufacturer, may be excluded from this AD. As a result, the AD dated October 22, 1975 was superseded by an emergency AD, dated October 31, 1975, adopted and distributed to all known United States operators of L-1011-385 series airplanes incorporating tube assembly P/N 1515816-121. This action provided for the expanded applicability to other airplanes.

The AD was adopted because of a report of a massive, uncontrolled fuel spillage from Tank No. One because the swaged end fitting ferrule separated from the outboard end of the tube assembly, P/N 1515816-121. Investigation indicated that certain assemblies, identified by the manufacturing date No. 533X190, may be subject to the same condition. The occurrence of this massive fuel leak presents a substantial potential fire hazard.

Since it was found that immediate corrective action was required, notice and public procedure hereon was impractical and contrary to the public interest and good cause existed for making the airworthiness directive effective immediately as to the United States operators of Lockheed-California Company L-1011-385 series airplanes, incorporating fuel line tube assembly, P/N 1515816-121, bearing the manufacturing date No. 533X190, certificated in all categories, by telegram dated October 22, 1975. A superseding AD was made effective immediately as to all known United States operators of Lockheed-California Company L-1011-385 series airplanes by telegrams dated October 31, 1975, expanding the applicability of the AD. These conditions still exist and the superseding airworthiness directive is hereby published in the FEDERAL REGISTER to make it effective as to all persons.

LOCKHEED-CALIFORNIA COMPANY. Applies to L-1011-385 series airplanes, except serial numbers 193( )-1004, 193( )-1005, and 193( )-1007 through 193( )-1023 inclusive, certificated in all categories, incorporating a fuel line tube assembly, P/N 1515816-121, bearing the manufacturing date identification number 533X190, or if the manufacturing date identification number cannot be ascertained.

Compliance required as indicated, unless already accomplished, to prevent a potential fire hazard due to a massive fuel spillage from Tank One into the center section, accomplish the following:

(a) Within the next day after receipt of this telegram, and thereafter at intervals not to exceed one day, until the modification described in paragraph (b), below, is accomplished, perform a close visual check by a flight crew member or other qualified person of the drain mast beneath the hydraulic service center for evidence of fuel leakage. If fuel leakage is detected, perform the modification described in paragraph (b), below, before further flight.

(b) Within the next 300 hours additional time in service after receipt of this telegram, replace the fuel line tube assembly, P/N 1515816-121, with a tube assembly, P/N 1515816 -179 or -121 that has a legible manufacturing date identification number other than 533X190, in accordance with Lockheed Service Bulletin 093-28-033, dated October 17, 1975, or later FAA-approved revisions.

(c) Equivalent checks and modifications may be approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Special flight permits may be issued per FAR's 21.197 and 21.199 to operate the airplane to a base to perform the modification described in paragraph (b), above, provided there is no evidence of fuel leaks at the tube assembly coupling, P/N 1515816-121.

This amendment becomes effective November 24, 1975, for all persons except those to whom it was made effective by telegram, dated October 31, 1975.

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

Issued in Los Angeles, California on November 7, 1975.

ROBERT H. STANTON,
Director,
FAA Western Region.

[FR Doc.75-31020 Filed 11-17-75;8:45 am]

[Airspace Docket No. 75-WE-27]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Control Zone

On October 3, 1975 a notice of proposed rule making was published in the FEDERAL REGISTER (40 FR 45846) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would establish a new control zone at the North Las Vegas Air Terminal, North Las Vegas, Nevada.

Only two comments were received to the notice. The Air Transport Association of America supported the proposal. The Aircraft Owners and Pilots Association while commenting on the notice offered no objection to the establishment of the control zone. Since no objections were received, the proposed amendment is hereby adopted without change.

Effective date. This amendment shall be effective 0901 GMT, January 15, 1976.

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

Issued in Los Angeles, California on November 10, 1975.

LYNN L. HINK,
Acting Director,
Western Region.

In § 71.171 (40 FR 354) the following control zone is added:

NORTH LAS VEGAS, NEVADA

Within a 3-mile radius of the North Las Vegas Air Terminal (latitude 36°12'45" N., longitude 115°11'46" W.). This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously established in the Airman's Information Manual.

[FR Doc. 75-31021 Filed 11-17-75;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1014—POLICIES AND PROCEDURES IMPLEMENTING THE PRIVACY ACT OF 1974

On September 10, 1975 (40 FR 42025), the Consumer Product Safety Commission published a notice of proposed rulemaking to amend Title 16, CFR, by adding Part 1014 to implement the provisions of the Privacy Act of 1974. (Pub. L. No. 93-579). Interested persons were given

until October 10, 1975, to submit comments regarding the proposed regulations.

No comments were received by close of business October 10. Upon further consideration, however, the Commission has determined that certain modifications to the regulations, as proposed, are necessary in the interest of clarity and consistency with the Privacy Act and the Commission's proposed Notices of Systems of Records published September 30, 1975 (40 FR 45124). Therefore, the Commission has decided to make the following modifications in the regulations as proposed:

1. Section 1014.5, as proposed, provides that the Office of the Secretary or the Director of Resource Utilization, as applicable, shall promptly allow the individual access to a requested record or, in the alternative, make the determination that the requested records are exempt from this provision of the Act. In view of the fact that it is the System Manager who is responsible for maintenance of the record system and is the person most familiar with the record's character and content, the Commission has determined that the System Manager will make the initial determination whether to grant or deny access to the record. Section 1014.5 has been revised to make this change. The Office of the Secretary or the Director of Resource Utilization, as applicable, will continue to serve as the office to which the requests for access will be directed.

2. In § 1014.5(b), as proposed, the statement that the appropriate Commission official might determine that the requested records are exempt "from disclosure" is misleading. It should read: ". . . exempt from individual right of access."

3. In § 1014.8, as proposed, the title of the section should read: "Appeal of initial denial of access, correction or amendment"; the first sentence following "(a)" should read: "Any individual whose request for access, correction or amendment to a record is denied . . ."; and § 1014.8(b)(2) should read: "(2) Identify the record to which access is sought, or which is sought to be corrected or amended." These changes clarify the fact that an appeal to the Executive Director is available from an initial denial of a request for access as well as from denials of requests for correction or amendment, as is provided in section 1014.5(b).

4. Section 1014.12, as proposed, states that records relating to injury information maintained by the Commission's Bureau of Epidemiology, including the National Electronic Injury Surveillance System (NEISS), Accident Reports (In-Depth Investigations), and a compilation of Death Certificates furnished by selected state and local jurisdictions are statistical systems of records specifically exempted from certain provisions of the Act pursuant to 5 U.S.C. 552a(k)(4). Upon further evaluation, it was determined that neither the NEISS records nor the Death Certificates records are or can be retrieved by name or personal identifier and, therefore, are not "systems of records" as defined in the Privacy Act. NEISS Records contain product-related injury information reported to the Commission by selected hospital emergency rooms in a form which deletes the name of the individual being treated and the name of the treating physician. Death certificates relating to product related deaths are furnished to the Commission by selected state and local governments with the name of the decedent included. However, the Commission does not index or file the certificates by name or personal identifier and, therefore, does not have the capability to retrieve them by name or personal identifier. Furthermore, the Commission is precluded by contractual agreement with the reporting jurisdictions from divulging the name or other personal identifier of the deceased when releasing information from the record. Section 1014.12 is, therefore, modified to reflect the exclusion from application of the Act to these two groups of records. The system of records entitled Accident Reports (In-Depth) will remain subject to the Act.

5. Section 1014.12(a)(2), as proposed, provides that the systems of records described in § 1014.12(a)(1) "are exempted from disclosure pursuant to 5 U.S.C. 552a(k)(4), except that accident or investigation reports made by the Commission's employees are disclosable in accordance with paragraph (a)(3) of this section." Paragraph (a)(3) of § 1014.12 refers to section 25(c) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2074(c)) which requires the disclosure of accident or investigation reports provided the identity of the injured person or person treating him or her is not disclosed. To exempt Accident reports, under the Privacy Act, from "disclosure" would defeat the purpose of section 25(c) of the CPSA. Therefore, Accident Reports (In-Depth) are available for access in accordance with section 25(c), CPSA, but are exempted, pursuant to 5 U.S.C. 552a(k)(4), from the provisions of the Privacy Act relating to disclosure of accountings, right to correct or amend the record, the requirement of relevancy and the application of the Commission procedures for access, correction, amendment, etc. (subsections (c)(3); (d)(2) and (3); (e)(1); (e)(4)(G), (H) and (I); and (f) of 5 U.S.C. 552a).

Accordingly, with these changes, the proposed CPSA Policies and Procedures Implementing the Privacy Act of 1974 are adopted as set forth below.

Sec.

1014.1 Purpose and scope.
1014.2 Definitions.
1014.3 Procedures for requests pertaining to individual records.
1014.4 Requirements for identification of individuals making requests.
1014.5 Disclosure of requested information to individuals.
1014.6 Request for correction or amendment to a record.
1014.7 Agency review of request for correction or amendment of a record.
1014.8 Appeal of initial denial of access, correction or amendment.
1014.9 Disclosure of record to a person other than the individual to whom it pertains.
1014.10 Fees.
1014.11 Penalties.
1014.12 Specific exemptions.

AUTHORITY: Privacy Act of 1974 (5 U.S.C. 552a).

§ 1014.1 Purpose and scope.

This part sets forth the regulations of the Consumer Product Safety Commission implementing the Privacy Act of 1974 (Pub. L. 93-579). The purpose of these regulations is to inform the public about records maintained by the Commission which contain personal information about individuals, and to inform those individuals how they may seek access to and correct records concerning themselves. These regulations do not apply to requests for information made pursuant to the Freedom of Information Act (except where such disclosures would constitute an invasion of privacy of an individual).

§ 1014.2 Definitions.

As used in this part:

(a) "Individual" means a person who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Privacy Act" means the Privacy Act of 1974 (Pub. L. 93-579).

(c) "Record" means any item of personal information relating to an individual, such as educational, employment, financial or medical information.

(d) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

(e) "System of records" or "records systems" means a group of records maintained by the Commission from which information may be retrieved by the name of an individual or some other individual identifier.

(f) "Maintain" includes the collection, use, storage, and dissemination of information.

§ 1014.3 Procedures for requests pertaining to individual records.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made by mail or in person during business hours (8:30 a.m. to 5 p.m.) at the Office of the Secretary, Consumer Product Safety Commission, Suite 1025, 1750 K Street NW., Washington, D.C. 20207.

(b) An individual who believes that the Commission maintains a record pertaining to him or her but who cannot determine which record system may contain the record, may request assistance by mail or in person at the Office of the Secretary during business hours.

(c) A Commission officer or employee or former employee who desires to review or obtain a copy of a personnel record

pertaining to him or her may make a request by mail or in person at the Office of the Director, ORU, Room 600B, 5401 Westbard Avenue, Bethesda, Md. 20207.

(d) Each individual requesting the disclosure of a record or a copy of a record shall furnish the following information to the extent known with the request to the Office of the Secretary or to the Director of the Office of Resource Utilization, as applicable:

(1) A description of the record sought;

(2) The approximate date of the record;

(3) The name or other description of the record system containing the record;

(4) Proof as required in section 1014.4 that he or she is the individual to whom the requested record relates; and

(5) Any other information required by the notice describing the record system.

(e) An individual personally inspecting his or her records may be accompanied by other persons of his or her own choosing. The individual shall sign a written statement authorizing disclosure of the record in the other person's presence.

(f) Any individual who desires to have a record concerning himself or herself disclosed to or mailed to another person may authorize that person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and shall be notarized. An agent requesting the review or copy of another's record shall submit with the request the authorization and proof of his or her identity as required by § 1014.4(c).

(g) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar documents, and proof of the individual's identity in a form that complies with § 1014.4(c).

(h) An individual may request an accounting of all disclosures made to other persons or agencies of his or her record, except those disclosures made to law enforcement agencies pursuant to section (b)(7) of the Privacy Act (5 U.S.C. 552 a(b)(7)). A request for accounting, whenever made, shall be treated as a request for disclosure of records.

§ 1014.4 Requirement for identification of individuals making requests.

The following proof of identity is required for requests for records made pursuant to § 1014.3:

(a) An individual seeking a record about himself or herself in person may establish his or her identity by the presentation of a single document bearing a photograph (such as a passport or driver's license) or by a presentation of two items of identification which do not bear a photograph but do bear both a name and address. An individual who cannot provide documentation of his or her identity may provide a written statement affirming his or her identity and the fact that he or she understands the penalties for making false statements (18 U.S.C. 1001 and 5 U.S.C. 552a(i)(3)).

(b) An individual seeking a record by mail shall include a statement signed by the individual and properly notarized, that he or she appeared before a notary public and submitted proof of identity acceptable to the notary public.

(c) Requests made by an agent, parent, or guardian shall, in addition to establishing the identity of the minor or other person he or she represents as required by subparagraphs (a) and (b), establish his or her agency, parentage, or guardianship by documentation.

(d) In any case in which the Commission determines that the proof of identity is not adequate, it may request the individual to submit additional proof of identity.

§ 1014.5 Disclosure of requested information to individuals.

(a) Upon submission of proof of identity, the Office of the Secretary or the Director of Resource Utilization, as applicable, shall promptly forward the request to the system manager who will promptly allow the individual to see and/or have a copy of the requested record or send a copy of the record to the individual by mail, as requested by the individual. If the individual asks to see the record, the record should be made available for review and/or copying at the location where the record is maintained, in the Office of the Secretary, or the Director of Resource Utilization, or at the nearest Area Office.

(b) If the system manager should determine, for any reason, that the requested records are exempt from the right of access, a notice of denial shall be sent to the requester stating the reasons for denial, and the requester's right to appeal the denial in accordance with the procedures set forth in § 1014.8 of these regulations.

§ 1014.6 Request for correction or amendment to a record.

(a) Any individual who has reviewed a record pertaining to himself or herself may request the Commission official who furnished the record to correct or amend all or any part of the record.

(b) Each request for a correction or amendment of a record shall be in writing and shall contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name or other description of the system of records in which the record sought to be amended is maintained;

(3) The location of that record in the system of records to the extent that it is known;

(4) A copy of the record sought to be amended or a description of that record;

(5) A statement of the material in the record that should be corrected or amended;

(6) A statement of the specific wording of the correction or amendment sought; and

(7) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 1014.7 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after the receipt of the request for the correction or amendment of a record under § 1014.6, the responsible Commission official shall acknowledge receipt of the request and inform the individual whether further information is required before the correction or amendment can be considered.

(b) The responsible Commission official will promptly review the request and either make the requested correction or amendment or notify the individual of his or her refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided by § 1014.8.

(c) The responsible Commission official will make each requested correction or amendment to a record if that correction or amendment will correct anything within the record that is not accurate, relevant, timely, or complete. A copy of each corrected or amended record shall be furnished to the individual who requested the action. If an accounting of disclosure has been kept, all previous recipients of the record shall be notified of the correction and its substance.

§ 1014.8 Appeal of initial denial of access, correction or amendment.

(a) Any individual whose request for access, correction or amendment to a record is denied, in whole or in part, may appeal that decision within 30 working days to the Executive Director, Consumer Product Safety Commission, Washington, D.C. 20207.

(b) The appeal shall be in writing and shall:

(1) Name the individual making the appeal;

(2) Identify the record to which access is sought or which is sought to be corrected or amended;

(3) Name or describe the record system in which the record is contained;

(4) Contain a short statement describing the correction of amendment sought;

(5) State the name and location of the Commission official who initially denied the correction or amendment; and

(6) State the date of the intitial denial.

(c) Not later than 30 working days after the date on which the appeal is received, the Executive Director shall complete a review of the appeal and make a final decision thereon. However, for good cause shown, the Chairman of the Commission may extend the 30-day period. If the Chairman so extends the period, he or she shall promptly notify the individual requesting the review that the extension has been made.

(d) If after review of an appeal request, the Executive Director also refuses

to amend the record or grant access to the record in accordance with the request, he or she shall send a written notice to the requester containing the following information:

(1) The decision and the reasons for the decision;

(2) The right of the requester to institute a civil action in a Federal District Court for judicial review of the decision; and

(3) The right of the requester to file with the Executive Director a concise statement setting forth the reasons for his or her disagreement with the denial of the correction or amendment. A copy of the statement of disagreement shall be filed with the record in issue, and the record in issue shall be so marked as to indicate that there is a disagreement. The Executive Director shall make the statement of disagreement available to prior recipients of the disputed record to the extent that an accounting of disclosures was maintained, and to any person to whom the record is later disclosed, together with a brief statement, if deemed appropriate, of the reasons for denying the requested correction or amendment.

§ 1014.9 Disclosure of record to person other than the individual to whom it pertains.

(a) Any person or agency (other than an officer or employee of the Commission who has a need for individual records in the performance of his or her duty) seeking disclosure of personal records of another individual shall submit a request in writing to the Office of the Secretary, Consumer Product Safety Commission, 1750 K Street, N.W., Washington, D.C. 20207. The request must specify the records sought and must include either the written request or consent of the individual whose records are being sought or a statement specifying the provision of section (b) of the Privacy Act (5 U.S.C. 552a(b)), pursuant to which the record should be disclosed.

(b) The Secretary shall determine whether or not the requested disclosure is proper and so notify the requester. If the Secretary determines that the records may be disclosed, he or she shall inform the requester where and when the records may be viewed or shall mail copies of the records. The Secretary shall log the disclosure in such a manner that the individual to whom the records pertain can be informed of all disclosures to third parties made by the Commission. If the Secretary determines that the record may not be disclosed, he or she shall notify the requester in writing of the reasons for the denial and of the requester's right to appeal the decision to the Executive Director in accordance with the procedures set forth in § 1014.8.

§ 1014.10 Fees.

The Commission shall not charge an individual for the costs of making a search for a record, the costs of reviewing or copying a record, or the cost of correcting or amending a record.

§ 1014.11 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494, 495 and 1001; and 5 U.S.C. 552a(i)(3).

§ 1014.12 Specific exemptions.

(a) Injury information. (1) The Bureau of Epidemiology maintains a file of Accident Reports (In-Depth Investigations) which are conducted on a sample of product related injuries reported to the Commission by selected hospital emergency rooms. The purpose of this record system is to compile accident statistics for analyzing the incidence and severity of product related injuries.

(2) Inasmuch as the maintenance of the record system listed in subparagraph (1) of this section is authorized by section 5 of the Consumer Product Safety Act (15 U.S.C. 2054) and the data are used solely as statistical records, the system is exempted from the requirements of the Privacy Act relating to making available the accounting of disclosures, correction or amendment of the record and the application of these rules to the system of records. Specifically, the system is exempt from 5 U.S.C. 552a(c)(3); (d) (2) and (3); (e)(1); (e)(4) (G), (H) and (I); and (f). However, Accident Reports made by Commission employees are disclosable in accordance with paragraph (a)(3) of this section:

(3) Section 25(c) of the Consumer Product Safety Act (15 U.S.C. 2074(c)) provides that accident or investigation reports made by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any injured person or any person treating him or her, without the consent of the person identified. Consequently, an accident or investigation report which identifies individuals is available to the injured party or the person treating him or her but would not be available for disclosure to a third party without the consent of the injured party or person treating him or her.

(4) Since accident or investigation reports are compiled only for statistical purposes and are not used in whole or in part in making any determination about an individual, they are exempted from the requirement to correct or amend a record as provided by subsection (d)(2) of the Privacy Act (5 U.S.C. 552a (d)(2)). Exceptions from this paragraph, insofar as they relate to amendments or additions, may be allowed by the Executive Director.

Effective date: November 18, 1975.

Dated: November 12, 1975.

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

[FR Doc.75-31073 Filed 11-13-75;11:14 am]

PART 435—MAIL ORDER MERCHANDISE

Promulgation of Trade Regulation Rule

Correction

In FR Doc. 75-28203, appearing at page 49492, in the issue for Wednesday, October 22, 1975, some background material was inadvertently omitted. This material was subsequently published in a correction which appeared at page 51582 in the issue for Wednesday, November 5, 1975.

The following changes should be made to that text:

1. On page 51582, in footnote 6, change the number in the first line which now reads "R. 215-1-4" to read "R. 215-33-1-4".

2. On page 51583, in the first column, change the fifth word in the first line of the fifth paragraph from "prouct" to "product".

3. On page 51589, in the second column, change the section number which appears in the first line of the second paragraph from "§ 425.1 (b)(1)(ii)" to "§ 435.1 (b)(1)(ii)".

4. On page 51592, in the third column, change the second word in the third line from "is" to "in".

5. On page 51595, in the second line of footnote 168, change the second number from "8006" to "8086".

6. Also on page 51595, in the fourth paragraph of the third column, change the word "problem" appearing in the fourth line to "problems".

7. On page 51597, in the second column, delete the number 5 from the figure "§ 5435.1 (a)(1), which appears in the next to the last line of that column.

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 75-288]

PART 153—ANTIDUMPING

Electric Golf Cars from Poland

The Secretary of the Treasury makes public a finding of dumping with respect to electric golf cars from Poland. Section 153.43, Customs Regulations, amended.

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to this authority the Secretary of the Treasury has determined that electric golf cars from Poland are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of June 16, 1975 (40 FR 25497)).

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)),

gives the United States International Trade Commission responsibility for determinaton of injury or likelihood of injury. The United States International Trade Commission has determined, and on September 16, 1975, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of electric golf cars from Poland that are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. (Published in the FEDERAL REGISTER of October 21, 1975 (40 FR 49153)).

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to electric golf cars from Poland.

§ 153.43 [Amended]

Section 153.43 of the Customs Regulations is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise, Electric Golf Cars; *Country*, Poland; *T.D.*, 75-288.

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173)

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

NOVEMBER 13, 1975.

[FR Doc.75-31075 Filed 11-17-75;8:45 am]

CHAPTER II—UNITED STATES INTERNATIONAL TRADE COMMISSION

PART 201—RULES OF GENERAL APPLICATION

Adoption of Official Seal

Notice is hereby given that on September 18, 1975, the United States International Trade Commission, pursuant to section 331(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1331(g)), approved the use of a new seal. These amendments to Title 19, Part 201 of the Code of Federal Regulations add a new § 201.00 thereto. The purpose of these amendments is to implement 19 U.S.C. 1331(g), and is made pursuant thereto.

§ 200.00 Seal.

(a) Pursuant to section 331(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1331(g)), the United States International Trade Commission has adopted an official seal, the depiction of which follows:



(b) Custody and certification obligations. The Secretary shall have custody of the seal of the United States International Trade Commission and he, or the Acting Secretary, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of the United States International Trade Commission.

(Sec. 331(g) Tariff Act of 1930, as amended (19 U.S.C. 1331(g)))

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

Issued: November 13, 1975.

* * * * *

[FR Doc.75-31131 Filed 11-17-75;8:45 am]

Title 20—Employees' Benefits

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

[Regulations No. 4 and 16]

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Administrative Actions That Are Initial Determinations

On July 3, 1975, there were published in the FEDERAL REGISTER (40 FR 28095) a Notice of proposed rule making and proposed amendments to the regulations proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare.

In administering the program under title II of the Social Security Act (Federal old-age, survivors, and disability insurance) and the program under title XVI of the Act (supplemental security income for the aged, blind, and disabled), it is the policy of the Social Security Administration that the decision regarding who is designated to serve or continue to serve as representative payee is an initial determination. The proposed amendments reflected this policy and accorded the same appeal rights with respect to this decision as are already accorded with respect to the decision as to whether representative payment shall serve the interest of an individual by reason of his incapacity to manage his benefit payments, except decisions involving beneficiaries under age 18 or legally incompetent.

Under § 404.905(n) relating to representative payees for retirements, survivors, and disability insurance beneficiaries, only the beneficiary or his legal representative has the right to appeal the determination as to who shall be the representative payee. Therefore, the decision that a certain individual shall not be a payee shall not be considered an initial determination and no administrative appeal rights can flow therefrom.

Under § 416.1403(a)(3) relating to supplemental security income, only the recipient, his legal representative, or an essential person who can show in writing that he may be prejudiced thereby, has the right to appeal the decision as to who shall be the representative payee. Section 416.1403(b) is amended to specifically state that the denial of an application to be made representative payee shall not be considered an initial determination and, therefore, no administrative appeal rights can flow therefrom.

Interested parties were given 30 days within which to submit any data, views, or arguments. No comments were received. Accordingly, the amendments are hereby adopted as proposed, and are set forth below.

Effective date. These amendments shall be effective November 18, 1975.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security-Disability Insurance; 13.803 Social Security-Retirement Insurance; and 13.807, Supplemental Security Income Program.)

Dated: September 23, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: November 12, 1975.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Regulations No. 4 and 16 of the Social Security Administration (20 CFR Parts 404 and 416) are amended as follows:

1. Paragraph (n) of § 404.905 is revised to read as follows:

§ 404.905 Administrative actions that are initial determinations.

* * * * *

(n) *Need for representative payment.* The Social Security Administration shall make findings, setting forth the pertinent facts and conclusions and an initial determination under section 205(j) of the Act, as to (1) whether representative payment shall serve the interests of an individual by reason of his incapacity to manage his benefit payments, except that findings as to incapacity with respect to an individual under age 18 or with respect to an individual adjudged legally incompetent shall not be considered initial determinations; and (2) who shall be appointed or continued as representative payee on behalf of a beneficiary under title II of the Act (see § 404.1601)

(Secs. 205(a), (j), and (k), and 1102 of the Social Security Act as amended, 53 Stat. 1368, as amended, 53 Stat. 1372, 49 Stat. 647, as amended, 42 U.S.C. 405(a), (j), and (k), and 1302.)

2. Paragraph (c) of § 404.906 is revised to read as follows:

§ 404.906 Administrative actions which are not initial determinations.

* * * * *

(c) The denial of an application to be made representative payee for and on behalf of a beneficiary under title II of the Act (see § 404.1601).

(Secs. 205(a), (j), and (k), and 1102 of the Social Security Act as amended, 53 Stat. 1368, as amended, 53 Stat. 1372, 49 Stat. 647, as amended, 42 U.S.C. 405(a), (j), and (k), and 1302.)

3. Section 416.1403 is amended by renumbering present paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively; adding a new paragraph (a)(3); and revising paragraph (b) to read as follows:

§ 416.1403 Determinations.

(a) *Initial determinations.* * * *

(3) A determination regarding to whom representative payment shall be made or continue to be made; except that the parties (see § 416.1414) to such initial determination shall be restricted to the recipient and his legal representative; and may include an essential person as defined in § 416.243 who has shown in writing that he may be prejudiced by such determination.

* * * * *

(b) *Other determinations.* (1) The following are not initial determinations:

(i) The denial of an application to be made representative payee for and on behalf of a beneficiary under title XVI of the Act (see Subpart F of this part);

(ii) Determinations with respect to presumptive disability for the payment of benefits prior to a determination of disability; and

(iii) Determinations with respect to eligibility for, or amount of, emergency cash advances.

(2) However, when payment of presumptive disability benefits or emergency cash advances are made, a notice shall be sent, explaining the nature of the payments and the conditions under which they are made; and notice shall also be sent when no further presumptive disability payments can be made.

(Secs. 1102 and 1631(a) of the Social Security Act as amended, 49 Stat. 647, as amended, and 86 Stat. 1475 (42 U.S.C. 1302 and 1383 (a)).)

[FR Doc.75-31115 Filed 11-17-75;8:45 am]

[Regulations Nos. 4, 5, 10, 16, and 22]

EXPEDITED APPEALS PROCESS

Miscellaneous Amendments

Under present regulations, an individual is entitled to judicial review of a decision on a social security or "black lung" claim under section 205(g) of the Social Security Act, 42 U.S.C. 405(g), if he has received an adverse initial determination and has exhausted his administrative appeal rights at the reconsideration, hearing, and Appeals Council levels. However, the Supreme Court in its recent opinion in *Salfi* v. *Weinberger*, #74-214 (decided June 26, 1975), 95 S.Ct. 2457, after considering these exhaustion requirements, concluded, in the context of a challenge to the constitutionality of a provision of the Social Security Act, that it "would be inconsistent with the congressional scheme to bar the Secretary from determining in particular cases that full exhaustion of internal review procedures is not necessary for a decision to be 'final' within the language of § [205 (g) of the Social Security Act]." *Salfi supra* at 95 S.Ct. 2467. Accordingly, the Commissioner has proposed and the Secretary has approved regulations which will dispense with the prior requirement for full exhaustion of administrative appeal rights in that limited number of cases, involving a constitutional challenge to a statutory provision, in which the Secretary determines that such exhaustion would be futile for the individual and would require "a commitment of administrative resources unsupported by any administrative or judicial interest." *Salfi, supra* at 95 S.Ct. 2467.

Under these regulations, the parties to a determination or decision which is administratively reviewable will, if they so request and if certain requirements are met, be permitted to pursue an expedited judicial appeal. This expedited appeals process will, as *Salfi* indicates, be appropriate only if the individual "has presented his or her claim at a sufficiently high level of review to satisfy the Secretary's administrative needs"; "the only issue is the constitutionality of a statutory requirement"; and "the claim is neither otherwise invalid nor cognizable under a different section of the Act." *Salfi* v. *Weinberger, supra*, 95 S. Ct. at 2467. Consequently, the expedited process will be appropriate only if the party has received at least a reconsideration determination, has no dispute with the Secretary's findings of fact and application and interpretation of the controlling laws beyond a contention that a section of the applicable statute is unconstitutional, and pursues as the sole remaining issue a challenge to the constitutionality of a section of the pertinent statute which precludes favorable action on his claim. Consistent with *Salfi*, the Secretary will require administrative exhaustion to at least the reconsideration level, a "sufficiently high level" to afford the Secretary an opportunity to correct errors; to have a complete record with respect to the facts, law, and possible alternative bases of entitlement; and to seek to insure national uniformity in decisions. These requirements will not, in the Secretary's view, result in unduly delaying the claimant while meeting administrative needs; on the other hand, these requirements will assure full consideration of the facts and law before full exhaustion of administrative remedies could be dispensed with.

If the Secretary determines that the party's claim is appropriate for treatment under the expedited appeals process, an agreement will be executed by the party (or parties) and the Secretary or his delegate which will detail on its face or by incorporation the facts, law, and interpretations thereof; the constitutional issue for which review will be sought; and the decision of the Secretary which has become final for purpose of judicial review. The agreement will further provide that judicial review must be sought within 60 days of the date of the agreement and that failure to seek such review will render the Secretary's "final" decision final and binding. As the Supreme Court indicated in *Salfi*, "a court may not substitute its conclusion as to futility for the contrary conclusion of the Secretary." *Salfi* v. *Weinberger, supra*, 95 S. Ct. at 2467. The Secretary's determination denying the use of the expedited procedure consequently will not be subject to the right to administrative or judicial review.

These amendments are being promulgated without notice of proposed rule making. The reason is the Secretary's belief that a prompt regulatory response to the Supreme Court's decision is appropriate and that prompt enactment of the procedure will facilitate disposition of cases currently ripe for judicial review and alleviate hardships and delays for individuals affected by the subject matter of the regulations. In addition, the Supreme Court's decision points up a void in the Social Security Administration's appeals procedure which this regulation fills by providing a formal process to assist in expediting litigation where further administrative proceedings are clearly futile. Hence, it is considered appropriate to make these procedures effective November 18, 1975.

Although notice of proposed rule making is being dispensed with, for the above reasons, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in triplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 4146, 330 Independence Avenue, SW., Washington, D.C. 20201, until December 18, 1975.

(Secs. 205(a)-(d), (g), 221(d), 1102, 1869, 1871, and 1872 of the Social Security Act, and sec. 413(b) of the Federal Coal Mine Health and Safety Act; 53 Stat. 1363, as amended, 68 Stat. 1082, as amended, 49 Stat. 647, as amended, 79 Stat. 330, 79 Stat. 331, 79 Stat. 332, 86 Stat. 152; 42 U.S.C. 405(a)-(d), (g), 421(d), 1302, 1395ff, 1395hh, and 1395ll; and 30 U.S.C. 923(b).)

Effective date. These regulations shall be effective November 18, 1975.

(Catalog of Federal Domestic Assistance Programs Nos. 13.800-13.807, Health Insurance, Social Security, Coal Miners' Benefits, and Supplemental Security Income.)

Dated: October 8, 1975.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: November 7, 1975.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

1. Paragraph (j) is added to § 404.906 to read as follows:

§ 404.906 Administrative actions which are not initial determinations.

* * * * *

(j) The determination by the Social Security Administration that an individual is not qualified for use of the expe-

dited appeals process as provided in § 404.916a.

2. Section 404.915 is revised to read as follows:

§ 404.915 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed to the parties at their last known addresses. The reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing (see § 404.917), or, if appropriate, the requirements for use of the expedited appeals process (see § 404.916a).

3. Section 404.916 is revised to read as follows:

§ 404.916 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested in accordance with § 404.918 and a decision rendered or unless such determination is revised in accordance with § 404.956, or unless the expedited appeals process is used, in accordance with § 404.916a.

4. Sections 404.916a through 404.916f are added to read as follows:

§ 404.916a Expedited appeals process; conditions for use of such process.

In cases in which a reconsideration determination has been made or a higher level of appeal has been reached, an expedited appeals process may be used in lieu of the hearing and Appeals Council review, if the following conditions are met:

(a) A reconsideration determination has been made by the Secretary; and

(b) The individual is a party referred to in § 404.916c; and

(c) The individual has filed a written request for the expedited appeals process; and

(d) The individual has alleged, and the Secretary agrees, that the only factor precluding a favorable determination with respect to a matter referred to in § 404.905, is a statutory provision which the individual alleges to be unconstitutional; and

(e) Where more than one individual is a party referred to in § 404.916c, each and every party concurs in the request for the expedited appeals process.

§ 404.916b Expedited appeals process; place and time of filing request.

(a) *Place of filing request.* The request for the expedited appeals process must be made in writing and filed:

(1) At an office of the Social Security Administration; or

(2) In the case of an individual in the Phillipines, at the Veterans Administration Regional Office in the Philippines or with a presiding officer, or

(3) In the case of an individual having 10 or more years of service in the railroad industry (see Subpart O of this part), or of an individual entitled to an annuity on the basis of an award under the Railroad Retirement Act prior to October 30, 1951, who requests in writing the use of such process with respect to his application to establish a period of disability under section 216(i) of the Social Security Act, at an office of the Railroad Retirement Board.

(b) *Time of filing request.* The request for the expedited appeals process must be filed at one of the following times:

(1) No later than 6 months after the date on the notice to an individual of the reconsidered determination unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954; or

(2) If a request for hearing has been timely filed (see § 404.918), at any time prior to the individual's receipt of notice of the presiding officer's decision; or

(3) Within 60 days after the date on the notice to such individual, of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954; or

(4) If a request for review by the Appeals Council has been timely filed (see § 404.946), at any time prior to receipt by such individual of notice of the Appeals Council's final action.

§ 404.916c Expedited appeals process; parties.

The parties to the expedited appeals process shall be the person or persons who were parties to the reconsideration determination in question and, if appropriate, parties to the hearing.

§ 404.916d Expedited appeals process; agreement requirements.

(a) (1) An authorized representative of the Secretary shall, if he determines that all conditions for the use of the expedited appeals process are met (see § 404.916a), prepare an agreement for signature of the party (parties) and an authorized representative of the Secretary.

(2) (i) Where a request for hearing has been filed, but prior to issuance of a decision a request for the expedited appeals process is filed, the Chief Administrative Law Judge of the Bureau of Hearings and Appeals, or his designee, shall determine if the conditions required for entering an agreement are met.

(ii) Where a hearing decision was the last action, or where a request for review is pending before the Appeals Council, and a request for the expedited appeals process is filed, the Chairman or Deputy Chairman of the Appeals Council, or the Chairman's designee, shall determine if the conditions required for an agreement are met.

(b) An agreement with respect to the expedited appeals process shall provide that:

(1) The facts involved in the claim are not in dispute; and

(2) Except as indicated in paragraph (b)(3) of this section, the Secretary's interpretation of the law is not in dispute; and

(3) The sole issue(s) in dispute is the application of a statutory provision(s) which is described therein and which is alleged to be unconstitutional by the party requesting use of such process; and

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the Secretary is final for purposes of section 205(g) of the Act.

§ 404.916e Expedited appeals process; effect of agreement.

The agreement described in § 404.916d, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date on which the party (parties) and the authorized representative of the Secretary sign the agreement. Any civil action under the expedited appeals process must be filed within 60 days following the date on which the agreement is signed by, or on behalf of, the Secretary.

§ 404.916f Effect of a request that does not result in agreement.

If a request for the expedited appeals process does not meet all the conditions for use of the process, the Secretary shall so advise the party (parties) and shall treat the request as a request for reconsideration, a hearing, or Appeals Council review, whichever is appropriate.

5. Section 404.940 is reviewed to read as follows:

§ 404.940 Effect of presiding officer's decision.

The presiding officer's decision, provided for in § 404.939, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 404.948–404.950) or unless it is revised in accordance with § 404.956, or unless the expedited appeals process is used, in accordance with § 404.916a. If a party's request for review of the presiding officer's decision is denied (see § 404.947) or is dismissed (see § 404.952), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as is provided in section 205(g) of the Act, or unless the decision is revised in accordance with § 404.956.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

6. Paragraph (e) is added to § 405.705 to read as follows:

§ 405.705 Actions which are not initial determinations.

* * * * *

(e) Whether an individual is qualified for use of the expedited appeals process as provided in § 405.718.

7. Section 405.716 is added to read as follows:

§ 405.716 Notice of reconsidered determinations.

Written notice of the reconsidered determination shall be mailed by the Social Security Administration to the parties and their representatives at their last known addresses. Such notice shall state the specific reasons for the reconsidered determination and shall advise the parties of their right to a hearing if the amount in controversy is $100 or more, or, if appropriate, advise them of the requirements for use of the expedited appeals process (see § 405.718).

8. Section 405.717 is revised to read as follows:

§ 405.717 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties thereto unless a request for a hearing is filed with the Social Security Administration within 6 months after the date of mailing notice of the reconsidered determination to such parties and a decision rendered, or unless the reconsidered determination is revised pursuant to the provisions of § 405.750, or unless the expedited appeals process is used, in accordance with § 405.718.

9. Sections 405.718 through 405.718e are added to read as follows:

§ 405.718 Expedited appeals process; conditions for use of such process.

In cases in which a reconsideration determination has been made or a higher level of appeal has been reached, an expedited appeals process may be used in lieu of the hearing and Appeals Council review, if the following conditions are met:

(a) A reconsideration determination has been made by the Secretary; and

(b) The individual is a party referred to in § 405.718b; and

(c) The individual has filed a written request for the expedited appeals process; and

(d) The individual has alleged, and the Secretary agrees, that the only factor precluding a favorable determination with respect to a matter referred to in § 405.704, is a statutory provision which the individual alleges to be unconstitutional; and

(e) Where more than one individual is a party referred to in § 405.718b, each and every party concurs in the request for the expedited appeals process.

§ 405.718a Expedited appeals process; place and time of filing request.

(a) *Place of filing request.* The request for the expedited appeals process must be made in writing and filed:

(1) At an office of the Social Security Administration; or

(2) In the case of an individual in the Philippines, at the Veterans Administration Regional Office in the Philippines or with a presiding officer; or

(3) In the case of a qualified railroad retirement beneficiary (see § 404.368 of this chapter), at an office of the Railroad Retirement Board.

(b) *Time of filing request.* The request for the expedited appeals process must be filed at one of the following times:

(1) No later than 6 months after the date on the notice to an individual of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954 of this chapter; or

(2) If a request for hearing has been timely filed (see § 405.722), at any time prior to the individual's receipt of notice of the presiding officer's decision; or

(3) Within 60 days after the date on the notice to such individual of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 or § 404.954 of this chapter; or

(4) If a request for review by the Appeals Council has been timely filed (see § 404.946 of this chapter), at any time prior to receipt by such individual of notice of the Appeals Council's final action.

§ 405.718b Expedited appeals process; parties.

The parties to the expedited appeals process shall be the person or persons who were parties to the reconsideration determination in question and, if appropriate, parties to the hearing.

§ 405.718c Expedited appeals process; agreement requirements.

(a)(1) An authorized representative of the Secretary shall, if he determines that all conditions for the use of the expedited appeals process are met (see § 405.718), prepare an agreement for signature of the party (parties) and an authorized representative of the Secretary.

(2)(i) Where a request for hearing has been filed, but prior to issuance of a decision a request for the expedited appeals process is filed, the Chief Administrative Law Judge of the Bureau of Hearings and Appeals, or his designee, shall determine if the conditions required for entering an agreement are met.

(ii) Where a hearing decision was the last action, or where a request for review is pending before the Appeals Council, and a request for the expedited appeals process is filed, the Chairman or Deputy Chairman of the Appeals Council, or the Chairman's designee, shall determine if the conditions required for an agreement are met.

(b) An agreement with respect to the expedited appeals process shall provide that:

(1) The facts involved in the claim are not in dispute; and

(2) Except as indicated in paragraph (b)(3) of this section, the Secretary's interpretation of the law is not in dispute; and

(3) The sole issue(s) in dispute is the application of a statutory provision(s) which is described therein and which is alleged to be unconstitutional by the party requesting use of such process; and

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the Secretary is final for purposes of section 205(g) of the Act.

§ 405.718d Expedited appeals process; effect of agreement.

The agreement described in § 405.718c, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date on which the party (parties) and the authorized representative of the Secretary sign the agreement. Any civil action under the expedited appeals process must be filed within 60 days following the date on which the agreement is signed by, or on behalf of, the Secretary.

§ 405.718e Effect of a request that does not result in agreement.

If a request for the expedited appeals process does not meet all the conditions for the use of the process, the Secretary shall so advise the party (parties) and shall treat the request as a request for reconsideration, a hearing, or Appeals Council review, whichever is appropriate.

10. Section 405.730 is revised to read as follows:

§ 405.730 Court review.

To the extent authorized by section 1869, section 1876(f), and section 1879 (d) of the Act, a party to a decision of the Appeals Council (see § 404.950 of this chapter), or the decision of a presiding officer where the request for review by the Appeals Council was denied, may obtain a court review where the amount in controversy after Appeals Council review is $1,000 or more, by filing a civil action in a district court of the United States in accordance with the provisions of section 205(g) of the Act (see § 422.210 of this chapter for the filing procedure). A party to a reconsidered determination may obtain a court review where the amount in controversy is $1,000 or more and he requests and meets the conditions for the expedited appeals process (see § 405.718).

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS

11. Paragraph (i) is added to § 410.615 to read as follows:

§ 410.615 Administrative actions that are not initial determinations.

* * * * *

(i) The determination by the Social Security Administration that an individual is not qualified for use of the expedited appeals process, as provided in § 410.629a.

12. Section 410.628 is revised to read as follows:

§ 410.628 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed by the Social

Security Administration to the parties at their last known addresses. The reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing (see § 410.630), or, if appropriate, inform the parties of the requirements for use of the expedited appeals process (see § 410.629a).

13. Section 410.629 is revised to read as follows:

§ 410.629 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested in accordance with § 410.631 and a decision rendered or unless such determination is revised in accordance with § 410.671, or unless the expedited appeals process is used in accordance with 410.629a.

14. Sections 410.629a through 410.629f are added to read as follows:

§ 410.629a Expedited appeals process; conditions for use of such process.

In cases in which a reconsideration determination has been made or a higher level of appeal has been reached, an expedited appeals process may be used in lieu of the hearing and Appeals Council review, if the following conditions are met:

(a) A reconsideration determination has been made by the Secretary; and

(b) The individual is a party referred to in § 410.629c; and

(c) The individual has filed a written request for the expedited appeals process; and

(d) The individual has alleged, and the Secretary agrees, that the only factor precluding a favorable determination with respect to a matter referred to in § 410.610, is a statutory provision which the individual alleges to be unconstitutional; and

(e) Where more than one individual is a party referred to in § 410.629c, each and every party concurs in the request for the expedited appeals process.

§ 410.629b Expedited appeals process; place and time of filing request.

(a) *Place of filing request.* The request for the expedited appeals process must be made in writing and filed:

(1) At an office of the Social Security Administration; or

(2) With a presiding officer.

(b) *Time of filing request.* The request for the expedited appeals process must be filed at one of the following times:

(1) No later than 6 months after the date on the notice to an individual of the reconsidered determination, unless the time is extended for good cause shown; or

(2) If a request for hearing has been timely filed (see § 410.631), at any time prior to the individual's receipt of notice of the presiding officer's decision; or

(3) Within 60 days after the date on the notice to such individual of the presiding officer's decision or dismissal, unless the time is extended for good cause shown; or

(4) If a request for review by the Appeals Council has been timely filed (see § 410.661), at any time prior to receipt by such individual of notice of the Appeals Council's final action.

§ 410.629c Expedited appeals process; parties.

The parties to the expedited appeals process shall be the person or persons who were parties to the reconsideration determination in question and, if appropriate, parties to the hearing.

§ 410.629d Expedited appeals process; agreement requirements.

(a) (1) An authorized representative of the Secretary shall, if he determines that all conditions for the use of the expedited appeals process are met (see § 410.629), prepare an agreement for signature of the party (parties) and an authorized representative of the Secretary.

(2) (i) Where a request for hearing has been filed, but prior to issuance of a decision a request for the expedited appeals process is filed, the Chief Administrative Law Judge of the Bureau of Hearings and Appeals, or his designee, shall determine if the conditions required for entering an agreement are met.

(ii) Where a hearing decision was the last action, or where a request for review is pending before the Appeals Council, and a request for the expedited appeals process is filed, the Chairman or Deputy Chairman of the Appeals Council, or the Chairman's designee, shall determine if the conditions required for an agreement are met.

(b) An agreement with respect to the expedited appeals process shall provide that:

(1) The facts involved in the claim are not in dispute; and

(2) Except as indicated in paragraph (b)(3) of this section, the Secretary's interpretation of the law is not in dispute; and

(3) The sole issue(s) in dispute is the application of a statutory provision(s) which is described therein and which is alleged to be unconstitutional by the party requesting use of such process; and

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the Secretary is final for purposes of section 205(g) of the Act.

§ 410.629e Expedited appeals process; effect of agreement.

The agreement described in § 410.629d, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date on which the party (parties) and the authorized representative of the Secretary sign the agreement. Any civil action under the expedited appeals process must be filed within 60 days following the date on which the agreement is signed by, or on behalf of, the Secretary.

§ 410.629f Effect of a request that does not result in agreement.

If a request for the expedited appeals process does not meet all the conditions for the use of the process, the Secretary shall so advise the party (parties) and shall treat the request as a request for reconsideration, a hearing, or Appeals Council review, whichever is appropriate.

15. Section 410.655 is revised to read as follows:

§ 410.655 Effect of Administrative Law Judge's decision.

The decision of the Administrative Law Judge provided for in § 410.654, shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council (see §§ 410.663–410.665) or unless it is revised in accordance with § 410.671, or unless the expedited appeals process is used, in accordance with § 410.629a. If a party's request for review of the Administrative Law Judge's decision is denied (see § 410.662) or is dismissed (see § 410.667), such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States, as is provided in section 205(g) of the Social Security Act, as incorporated in the Federal Coal Mine Health and Safety Act by section 413(b) of that Act (see § 410.670a), or unless the decision is revised in accordance with § 410.671.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

16. Paragraph (b) of § 416.1403 is revised to read as follows:

§ 416.1403 Determinations.

* * * * *

(b) *Other determinations.* Determinations with respect to presumptive disability for the payment of benefits prior to a determination of disability and with respect to eligibility for, or amount of, emergency cash advances and with respect to whether an individual is qualified for use of the expedited appeals process as provided in § 416.1424 are not considered initial determinations. However, when payment of presumptive disability benefits or emergency cash advances are made, a notice shall be sent, explaining the nature of the payments and the conditions under which they are made. Notice shall also be sent when no further presumptive disability payments can be made or a determination is made that an individual has not qualified for use of the expedited appeals process.

17. Section 416.1422 is revised to read as follows:

§ 416.1422 Notice of reconsidered determination.

Written notice of the reconsidered determination shall be mailed to the parties at their last known addresses. The

reconsidered determination shall state the specific reasons therefor and inform the parties of their right to a hearing, or, if appropriate, inform the parties of the requirements for use of the expedited appeals process (see § 416.1424).

18. Section 416.1423 is revised to read as follows:

§ 416.1423 Effect of a reconsidered determination.

The reconsidered determination shall be final and binding upon all parties to the reconsideration unless a hearing is requested and a decision rendered or unless such determination is reopened and revised, pursuant to § 416.1475 and § 416.1477, or unless the expedited appeals process is used, in accordance with § 416.1424.

19. Sections 416.1424 through 416.1424e are added to read as follows:

§ 416.1424 Expedited appeals process; conditions for use of such process.

An expedited appeals process may be used if the following conditions are met:

(a) An initial and reconsideration determination or a hearing decision have been made by the Secretary; and

(b) The individual is a party referred to in § 416.1424b; and

(c) The individual has filed a written request for the expedited appeals process; and

(d) The individual has alleged, and the Secretary agrees, that the only factor precluding a favorable determination with respect to a matter referred to in § 416.1403(a), is a statutory provision which the individual alleges to be unconstitutional; and

(e) Where more than one individual is a party referred to in § 416.1424b, each and every party concurs in the request for the expedited appeals process.

§ 416.1424a Expedited appeals process; place and time of filing request.

(a) *Place of filing request.* The request for the expedited appeals process must be made in writing and filed at an office of the Social Security Administration.

(b) *Time of filing request.* The request for the expedited appeals process must be filed at one of the following times:

(1) No later than 35 days after the date on the notice to an individual of the reconsidered determination, unless the time is extended in accordance with the standards set out in § 404.612 of this chapter or § 416.1474; or

(2) If a request for hearing has been timely filed (see § 416.1426), at any time prior to the individual's receipt of notice of the presiding officer's decision; or

(3) Within 35 days after the date on the notice to such individual of the presiding officer's decision or dismissal, unless the time is extended in accordance with the standards set out in § 404.612 of this chapter or § 416.1474; or

(4) If a request for review by the Appeals Council has been timely filed (see § 416.1462), at any time prior to receipt of notice of the Appeals Council's final action.

§ 416.1424b Expedited appeals process; parties.

The parties to the expedited appeals process shall be the person or persons who were parties to the initial determination in question and, if appropriate, parties to the reconsideration and hearing.

§ 416.1424c Expedited appeals process; agreement requirements.

(a)(1) An authorized representative of the Secretary shall, if he determines that all conditions for the use of the expedited appeals process are met (see § 416.1424), prepare an agreement for signature of the party (parties) and an authorized representative of the Secretary.

(2) (i) Where a request for hearing has been filed, but prior to issuance of a decision a request for the expedited appeals process is filed, the Chief Administrative Law Judge of the Bureau of Hearings and Appeals, or his designee, shall determine if the conditions required for entering an agreement are met.

(ii) Where a hearing decision was the last action, or where a request for review is pending before the Appeals Council, and a request for the expedited appeals process is filed, the Chairman or Deputy Chairman of the Appeals Council, or the Chairman's designee, shall determine if the conditions required for an agreement are met.

(b) An agreement with respect to the expedited appeals process shall provide that:

(1) The facts involved in the claim are not in dispute; and

(2) Except as indicated in paragraph (b)(3) of this section, the Secretary's interpretation of the law is not in dispute; and

(3) The sole issue(s) in dispute is the application of a statutory provision(s) which is described therein and which is alleged to be unconstitutional by the party requesting use of such process; and

(4) Except for the provision challenged, the right(s) of the party is established; and

(5) The determination or decision made by the Secretary is final for purposes of section 205(g) of the Act.

§ 416.1424d Expedited appeals process; effect of agreement.

The agreement described in § 416.1424c, when signed, shall constitute a waiver by the parties and the Secretary with respect to the need of the parties to pursue the remaining steps of the administrative appeals process, and the period for filing a civil action in a district court of the United States, as provided in section 205(g) of the Social Security Act, shall begin as of the date on which the party (parties) and the authorized representative of the Secretary sign the agreement. Any civil action under the expedited appeals process must be filed within 60 days following the date on which the agreement is signed by, or on behalf of, the Secretary.

§ 416.1424e Effect of a request that does not result in agreement.

If a request for the expedited appeals process does not meet all the conditions for the use of the process, the Secretary shall so advise the party (parties) and shall treat the request as a request for reconsideration, a hearing, or Appeals Council review, whichever is appropriate.

20. Section 416.1458 is revised to read as follows:

§ 416.1458 Effect of presiding officer's decision.

The presiding officer's initial hearing decision, provided for in § 416.1457(a), shall be final and binding upon all parties to the hearing unless it is reviewed by the Appeals Council, or unless the expedited appeals process is used, in accordance with § 416.1424. If a party's request for review of the presiding officer's decision is denied, such decision shall be final and binding upon all parties to the hearing unless a civil action is filed in a district court of the United States as provided in section 1631(c)(3) of the Act, or unless the decision is revised in accordance with § 416.1475. If a party's request for review of the presiding officer's decision is dismissed, such decision shall be final and binding upon all parties to the hearing unless the decision is revised in accordance with § 416.1475.

PART 422—ORGANIZATION AND PROCEDURES

21. Section 422.210 is revised to read as follows:

§ 422.210 Court review.

(a) *General.* A claimant may obtain a court review of a decision by a presiding officer if the Appeals Council has denied the claimant's request for review or of a decision by the Appeals Council when that is the final decision of the Secretary. A claimant may also obtain a court review of a reconsidered determination or of a decision of a presiding officer under the conditions set forth in §§ 404.916e, 405.718d, 410.629e, or 416.1424d of this chapter, as appropriate. (For court review as to the amount of benefits for inpatient hospital services, posthospital extended care services, or posthospital home health services, under Part A of title XVIII of the Social Security Act, the amount in controversy must be $1,000 or more, as provided under section 1869(b) of the Act.) An institution or agency may obtain a court review of a decision by the Appeals Council that it is not a provider of services or of a decision by the Appeals Council terminating an agreement entered into by the institution or agency with the Secretary (see section 1866(b)(2) of the Act). (The Social Security Act does not provide for a right to court review of a final decision of the Secretary regarding the status of an entity which is not a "provider of services," such as an independent lab-

oratory.) (See sections 205(g) and 1869 (b) and (c) of the Act and §§ 404.931, 404.940, 404.951, and 404.954 of this chapter.)

(b) *Court in which to institute civil action.* Any civil action described in paragraph (a) of this section must be instituted in the district court of the United States for the judicial district in which the claimant resides or where such individual or institution or agency has his principal place of business. If the individual does not reside within any such judicial district, or if such individual or institution or agency does not have his principal place of business within any such judicial district, the civil action must be instituted in the District Court of the United States for the District of Columbia.

(c) *Time for instituting civil action.* Any civil action described in paragraph (a) of this section must be instituted within 60 days after the Appeals Council's notice of denial of request for review of the hearing examiner's decision or notice of the decision by the Appeals Council is mailed to the individual, institution, or agency, except that this time may be extended by the Appeals Council upon a showing of good cause. Where an agreement has been made pursuant to the expedited appeals procedures set forth in §§ 404.916d, 405.718c, 410.629d, or 416.1424c of this chapter, as appropriate, a civil action under section 205(g) of the Act must be commenced within 60 days from the date of the signing of such agreement by, or an behalf of, the Secretary, except where the time described in the preceding sentence of this paragraph (c) has been extended by the Secretary upon a showing of good cause.

(d) *Proper defendant.* Where any civil action described in paragraph (a) of this section is instituted, the person holding the office of Secretary of Health, Education, and Welfare shall, in his official capacity, be the proper defendant. Any such civil action properly instituted shall survive notwithstanding any change of the person holding the office of Secretary or any vacancy in such office. If the complaint is erroneously filed against the United States or against any agency, officer, or employee of the United States other than the Secretary, the plaintiff will be notified that he has named an incorrect defendant and will be granted 60 days from the date of mailing of such notice in which to commence the action against the correct defendant, the Secretary.

[FR Doc.75-31116 Filed 11-17-75;8:45 am]

Title 20—Employees' Benefits

CHAPTER V—MANPOWER ADMINISTRATION, DEPARTMENT OF LABOR

PART 619—SPECIAL UNEMPLOYMENT ASSISTANCE

Revisions of Regulations

Correction

In FR Doc. 29342 appearing at page 51600 in the issue for Wednesday, November 5, 1975, the following changes should be made:

(1) In the second column on page 51607, the 6th line from the top, the word "innaccurate" should read "accurate".

(2) In § 619.15(b) on page 51606, the 6th line from the bottom, "§ 19.23" should read "§ 619.22."

Title 21—Food and Drugs

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

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Tylosin

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (99-468V) filed by Allied Mills, Inc., 110 North Wacker Drive, Chicago, IL 60606, proposing safe and effective use of an additional tylosin premix for manufacture of swine feed. The supplemental application is approved, effective November 18, 1975.

The Commissioner is amending Part 558 to reflect this approval.

In accordance with § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)) of the animal drug regulations, a summary of the safety and effectiveness of data and information submitted to support the approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, Monday through Friday from 9 a.m. to 4 p.m., except on Federal legal holidays.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 3.120), Part 558 is amended in § 558.625 by revising paragraph (b)(33) as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(33) To 012323: 0.8 and 2 grams per pound; paragraph (f)(1)(vi)(*a*) of this section.

* * * * *

Effective date. This amendment shall become effective November 18, 1975.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: November 11, 1975.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc.75-31014 Filed 11-17-75;8:45 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 630-75]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Obstruction of Justice Prosecutions

This order clarifies responsibilities of the Assistant Attorneys General in obstruction of justice prosecutions. The Department's policy was first described in the Attorney General's Memorandum to the Heads of All Departments and Agencies in the Executive Branch of the Government, dated September 28, 1972. That memorandum stated that:

> Obstruction and perjury matters will be under the supervisory jurisdiction of the Division and Section of the Department having responsibility for the case or matter in which the obstruction occurred. When such responsibility for the subject matter cannot be identified, supervisory responsibility is with the General Crimes Section of the Criminal Division.

This order authorizes each Assistant Attorney General in charge of a Division of the Department of Justice to supervise and conduct enforcement of obstruction of justice and related matters such as perjury and fraud, when such charges arise in the context of a case or matter already under his supervisory jurisdiction.

Supervision of obstruction, perjury and fraud matters includes the authority to appoint special attorneys to present evidence to grand juries. Initial consultation with the Assistant Attorney General in charge of the Criminal Division is required, to determine the appropriate supervisory jurisdiction in each case. In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction, he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 515 and 5 U.S.C. 301, Part 0 of Chapter I of Title 28, Code of Federal Regulations, is amended by adding a new Subpart Z-1 immediately after Subpart Z.

Subpart Z-1—Prosecutions for Obstruction of Justice and Related Charges

Sec.
0.179 Scope.
0.179a Enforcement responsibility.

Subpart Z-1—Prosecutions for Obstruction of Justice and Related Charges

§ 0.179 Scope.

This Subpart applies to the following matters:

(a) Obstruction of justice and obstruction of a criminal investigation (18 U.S.C. 1501-1511);

(b) Perjury and subornation of perjury (18 U.S.C. 1621, 1622);

(c) False declarations before a grand jury or court (18 U.S.C. 1623);

(d) Fraud and false statements in matters within the jurisdiction of a government agency (18 U.S.C. 1001); and

(e) Conspiracy to defraud the United States (18 U.S.C. 371).

§ 0.179a Enforcement responsibilities.

(a) Matters involving charges of obstruction of justice, perjury, fraud or false statement, as described in section 0.179 of this Subpart, shall be under the supervisory jurisdiction of the Division having responsibility for the case or matter in which the alleged obstruction occurred. The Assistant Attorney General in charge of each Division shall have full authority to conduct prosecution of such charges, including authority to appoint

special attorneys to present evidence to grand juries. However, such enforcement shall be preceded by consultation with the Assistant Attorney General in charge of the Criminal Division, to determine the appropriate supervisory jurisdiction. (See 28 CFR 0.55(p).)

(b) In the event the Assistant Attorney General in charge of the Division having responsibility for the case or matter does not wish to assume supervisory jurisdiction he shall refer the matter to the Assistant Attorney General in charge of the Criminal Division for handling by that Division.

Dated: November 7, 1975.

EDWARD H. LEVI,
Attorney General.

[FR Doc.75-31098 Filed 11-17-75;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 75-1239]

PART 1—PRACTICE AND PROCEDURE

Order Regarding Practice and Procedure

1. In proceedings involving amendment of the FM Table of Assignments (§ 73.202 of the Rules) or the Television Table of Assignments (§ 73.606), it appears that 5 copies (an original and 4) of petitions for rule making, comments, reply comments and pleadings will suffice to meet the Commission's needs. We are therefore reducing the number of copies required by the rules.

2. Amendments to the rules are set out in the attached Appendix. Because they are procedural in nature, the prior notice and effective date requirements of 5 U.S.C. 553 are inapplicable. Authority for their adoption is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

3. Accordingly, it is ordered, effective November 18, 1975, that the Rules and Regulations are amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1092; 47 U.S.C. 154, 303).

Adopted: November 4, 1975.

Released: November 5, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.51(b) is revised, to read as follows:

§ 1.51 Number of copies of pleadings, briefs and other papers.

* * * * *

(b) In rule making proceedings which have not been designated for hearing, an original and 11 copies of all papers shall be filed. See, however, § 1.420(e).

* * * * *

2. Section 1.401(b) is revised to read as follows:

§ 1.401 Petitions for rule making.

* * * * *

(b) The petition for rule making shall conform to the requirements of § 1.49, 1.52 and 1.419(b) (or § 1.420(e), if applicable), and shall be submitted or addressed to the Secretary, Federal Communications Commission, Washington, D.C. 20554.

* * * * *

3. Section 1.420(e) is added, to read as follows:

§ 1.420 Additional procedures in proceedings for amendment of the FM or Television Table of Assignments.

* * * * *

(e) An original and 4 copies of all petitions for rule making, comments, reply comments, and other pleadings shall be filed with the Commission.

[FR Doc.75-31107 Filed 11-17-75;8:45 am]

[Docket No. 19555; FCC 75-1225]

PART 1—PRACTICE AND PROCEDURE

Memorandum Opinion and Order

In the matter of implementation of the National Environmental Policy Act of 1969.

1. A Report and Order in this proceeding was released on December 16, 1974 (FCC 74-1042, 49 FCC 2d 1313, 39 FR 43834, December 19, 1974). The Report and Order promulgated final rules implementing the National Environmental Policy Act (NEPA.)[1] Four petitions for stay of the effective date of those rules were filed; they were denied on January 24, 1975, FCC 75-97, 50 FCC 2d 814. Petitions for reconsideration have been filed by the following interested organizations:

American Radio Relay League, Inc. (ARRL)
Communications Properties, Inc. (CPI)
GTE Service Corporation (GTE)
MCI Telecommunications Corporation (MCI)
Frank K. Spain, doing business as Microwave Service Co., Microwave Service Company of Florida, Inc., and Alabama Microwave, Inc. (Mircowave Service Co.)
Midwestern Relay Company (Midwestern)
Teleprompter Corporation
United Video, Inc.
Utilities Telecommunication Council (UTC)

Reponsive pleadings have been filed by:

American Telephone and Telegraph Company (AT&T)
The Association of American Railroads (AAR)
Citizens for Cable Awareness in Pennsylvania and the Philadelphia Community Cable Coalition (CCAP)
Western Union

2. Most of the petitions question the difference between the treatment of microwave relay antenna towers and other antenna towers. Section 1.1305(a) of the rules provides, in part, that actions authorizing the construction of the following classes of communications facilities are major actions within the meaning of NEPA:

(2) Private and common carrier microwave relay antenna towers or supporting structures exceeding 100 feet in height, excluding pole mounted microwave antennas.

(3) Standard (AM), FM, television and international broadcast antenna towers or supporting structures which exceed 300 feet in height, and all AM directional arrays without regard to height.

(4) Other antenna towers or supporting structures, including pole mounted microwave antennas, which exceed 300 feet in height and are not located in areas devoted to heavy industry or to agriculture.

Petitioners uniformly state that general statements to the effect that microwave relay antenna towers are bulkier or more conspicuous than other antenna towers are erroneous, and that there is no factual basis for applying the rules to microwave facilities over 100 feet in height while applying the same rules to most other facilities only if they exceed 300 feet in height. On further consideration, we can only concede that the rules in this respect are based on unwarranted assumptions and that the disparate treatment of microwave towers cannot be justified. Some microwave towers are bulkier than other towers of the same height, but many are not. At this stage, a fresh look at the criteria for classifying towers appears to be warranted.

3. The following alternatives to the present rules are advanced in the petitions for reconsideration:

(1) A number of participants suggest that all antenna towers be listed as major facilities only if they exceed 300 feet in height.

(2) MCI and Western Union suggest a 300 foot cutoff for guyed towers and a 100 foot cutoff for self-supporting towers.

(3) Microwave Service Co. urges that we precisely define the type of towers less than 300 feet in height which are sufficiently bulky to be considered "major".

(4) United Video suggests that we use actual width and bulk as well as height in defining major actions.

(5) UTC suggests that we consider the girth at the top of the tower, to distinguish between the bulk of tapered and non-tapered towers. AAR supports UTC's position.

(6) AT&T suggests that we consider the height and location, but not the use of towers in devising criteria for major actions.

4. We have considered various possibilities for taking the bulk as well as the height of a tower into account in distinguishing between major and minor facilities, but none has proved entirely practicable. What is needed is a cutoff which is reasonable but is also simple and clear-cut and is based on information routinely submitted with applications for radio facilities. A cutoff based on tower height meets this test, but one based on bulk does not. We have decided on a basic cutoff of 300 feet for all towers; it will apply equally to either self-supporting or guyed towers. As provided in the original rules, AM directional arrays, facilities located in certain sensitive areas, and facilities whose construction will involve an extensve change in surface features will be considered major facilities.

5. It is important to understand the nature of the distinction between major and minor facilities. The distinction is not between facilities which will have significant environmental effect (and

[1] 42 U.S.C. 4321-4347.

which will therefore require an environmental impact statement) and those which will not. Such a distinction depends on many factors, including the specific location of the facilities, and cannot reliably be made in advance by rule. The distinction we are making, on the basis of the height of the facilities and other factors, relates to the likelihood of their having significant effect. It is a procedural device for concentrating our limited resources on those facilities which are most likely to have significant effect.[2] Any distinction of this kind is necessarily judgmental. However, some cutoff is needed and, in our judgment, 300 feet is a reasonable figure, based upon the comments, petitions, and responsive pleadings filed herein. Also judgmental is our decision to deal in the same way with self-supporting and guyed towers of the same height. As a number of the parties stress, the self-supporting tower is bulkier and more conspicuous. The guyed tower of the same height, with its guy wires, on the other hand, extends over a far greater land area and, we think, can reasonably be treated the same.

6. Section 1.1305(a) is being amended to reflect these changes and to eliminate the distinction between microwave relay and other antenna towers. The amended rule is set out in the attached Appendix.

7. Present § 1.1305(a)(4) classifies as "minor" antenna towers which are neither broadcast nor microwave towers and which are located in areas devoted to heavy industry or to agriculture. What we had in mind were facilities operated in support of the agricultural or industrial activities in question, bearing in mind that the number and scale of such facilities are likely to be in a reasonable proportion to the agricultural acreage or industrial facilities with which they are associated. This is true of microwave as well as land mobile and other towers operated in support of either an agricultural or industrial enterprise. It is not necessarily true, for example, in the case of a broadcast tower erected in an industrial area or of a microwave system which passes through an area devoted to agriculture. We are revising this provision to more clearly reflect our intent. The revised provision, set out as part of the note at the end of § 1.1305(a), reads as follows: "The provisions of this paragraph also do not apply to facilities located in areas devoted to heavy industry or to agriculture which are operated in support of the agricultural or industrial enterprises with which they are associated."

8. United Video urges that the time allowed by § 1.1315 for commenting on draft environmental impact statements be reduced from 45 to 15 days and that the time allowed for applicant's reply to such comments be reduced from 21 to 14 days. UTC, on the other hand, asks that the time for filing such replies be increased from 21 to 45 days. United Video states that the delays occasioned by such pleading period will be costly, whereas UTC contends that the 21 day period will be inadequate. The 45 day period is specified by the Council on Environmental Quality in its Guidelines for implementing NEPA and reflects the judgment of that expert agency concerning the time needed for filing comments. Less time should be required for the applicant's reply to such comments, and 21 days reflects our considered judgment as to the time needed. Fourteen days may well be insufficient. Except in comparative proceedings, where a single applicant lacks full control, an applicant can always expedite the process by filing early. If an applicant should need additional time, he may of course request an extension. United also suggests internal Commission procedures and timetables for the preparation of impact statements. We do of course have procedures and we will do our best to expedite processing.

9. United Video also suggests that top-mounted antenna lighting apparatus be excluded in computing tower height. The information we regularly receive on tower height is related to air safety considerations and includes all top-mounted apparatus (e.g., antennas, lights, lighting rods). This being the case, the exclusion of top-mounted apparatus for the purpose of environmental processing would tend to confuse and delay environmental processing. The suggestion is therefore rejected.

10. The American Radio Relay League (ARRL) asks the Commission to rule that the environmental regulations are not applicable to "applications for station licenses in the Amateur Radio Service other than applications for licenses for repeater and auxiliary link stations." In support of its request, ARRL states that an application for a station license in the amateur service "neither contains a description of any antenna system nor proposes to construct any particular antenna system." ARRL states further that an amateur station may be operated on a portable or mobile basis and that the amateur rules "contain no reference to or limitations upon the characteristics, including the size and height, of antenna systems." Quoting further, "An amateur may rebuild or otherwise modify his antenna system every day in the year if he so desires without seeking permission from or giving notice to the Commission."

11. This request is denied. While it is most unlikely that amateur operators will construct antenna towers which are major facilities under the environmental rules, it is possible for amateur operators to construct such facilities. Should such facilities be constructed, the fact that they are constructed by amateur operators is not a basis for exempting them from the requirements of the environmental rules. Contrary to the statement of ARRL, an amateur operator who plans to construct facilities which are "major" within the meaning of those rules may not do so without prior Commission approval pursuant to § 1.1311(c). In addition, prior Commission approval on the basis of air safety considerations is required by § 97.45 of the Amateur Rules.

12. This brings us to the comments of Citizens for Cable Awareness in Pennsylvania (CCAP), which raise a number of objections to the environmental regulations. The nature of the objections is implicit in the following discussion of them.

(1) We have adhered closely to the CEQ Guidelines in both letter and spirit. In our opinion, CCAP's statement to the contrary is totally erroneous. It should hardly be expected that our rules should be the same as those of other Federal agencies which have implemented the Guidelines, since the procedures recommended by CEQ have been merged with other procedural requirements applicable only to the Commission.

(2) The Commission's procedures do not mention, but also do not bypass, the "A-95 Clearinghouse" procedure. All staff units were instructed in January to forward impact statements to the appropriate State Clearinghouses and were furnished the addresses of those Clearinghouses.

(3) Section 1.1305(a)(1) provides that authorizing the construction of underground cable or wave guide routes and aerial transmission lines for long distance telecommunication is a major action within the meaning of NEPA. CCAP objects to the phrase, "for long distance telecommunication." However, the phrase is no more than a limitation of the provision to construction of the type over which the Commission exercises authority. The Commission does not regulate the activities of intrastate common carriers by wire and does not authorize the construction of distribution facilities by cable television systems. Actions with regard to these matters are State or local actions, not Federal actions, and are therefore not "major" Federal actions. The passage objected to adds nothing to the meaning of the provision and is being deleted.

(4) The Commission does not authorize the construction of buildings as such. Thus, for example, if an existing licensee should decide to build a new studio or transmitter shed on the same site, it would not need the Commission's approval. On the other hand, the Commission's approval of new communications facilities—e.g., transmitter and antenna—is required, and it is obvious that other structures would not be built if the construction permit for the communications facilities were denied. If the Commission's approval is required, consideration will be given to the environmental consequences of the total facility, includ-

[2] It is appropriate here to correct the Report and Order in one respect. The last sentence or paragraph 13 states that we found it unnecessary to consider the number of applications for which routine environmental processing would be useful and productive. However, we have taken that factor into consideration in distinguishing between major and minor facilities. It is important in this respect to appreciate that the likelihood that even "major" facilities will have significant effect is very small and that impact statements will be prepared for "minor" facilities whenever it appears that they will in fact have significant effect.

ing buildings at or near the transmitter site.

(5) It is expected that cross-references to the environmental regulations will eventually be added to the rules applicable to particular communications services (including the CARS service) and to appropriate forms. However, a cross-reference from the cable television rules (Part 76) would not be appropriate for reasons stated in (3) above.

(6) Environmental determinations are not "solely based upon the applicant's representations" (CCAP Petition, at p. 6). See § 1.1313.

(7) Section 1.1311(b) provides, in part, that, "If the applicant perceives unavoidable environmental consequences, it may be appropriate to attach a statement by an expert in the relevant disciplines * * *." CCAP apparently reads this provision as meaning that the applicant is required or allowed to make the environmental determination (Petition, at p. 7). That reading is not correct. However, the applicant is allowed to have perceptions and is not required to submit with his application expert statements concerning unavoidable environmental consequences which he does not perceive.

(8) CCAP states that "the Commission's procedures should require sufficient information to be submitted so that the decision can be made by its staff." That is indeed our purpose and, though we have not attempted an exhaustive list of information to be submitted, we believe we have accomplished the purpose. See § 1.1113 (a) and (b) and paras. 37–38 of the Report and Order.

(9) Information submitted by the applicant and others is maintained in a public file in the Public Reference Room.

(10) We fully appreciate that secondary social consequences of actions which affect the physical environment must be considered. Thus, construction of a road or sewer may increase population density and strain available social services, and the latter possibility should be considered. We also appreciate that the effect on the physical environment may itself be secondary, as where changes in tax or rent control laws may result in the deterioration of housing. What we state in paragraph 11 of the Report and Order and repeat here is that NEPA has no application if the action has no direct or indirect effect on the physical environment. When we state that non-environmental considerations are not discussed in impact statements, we do not mean that we will not consider secondary social consequences; rather, we mean that we do not reach such matters as communications efficiency and cost to the applicant and make a final judgment as to whether the facilities in question should be authorized. Or, to put it another way, the impact statement process is preliminary to, and not a substitute for, the decision-making process.

(11) We consider that the Federal Register provides entirely satisfactory notice of the actions of Federal agencies to any individual or group which has the initiative to refer to it. It is available on a subscription basis at a reasonable price ($45.00 a year) and in most public libraries. However, supplementary forms of notice and publicity are regularly utilized by the Commission. The most recent of these is a mailing list of public interest groups (including CCAP) and certain individuals. See FCC 75–949, 40 FR 34461, Aug. 15, 1975.

(12) Section 1.1319 of the rules makes it quite clear that cases may be designated for hearing on environmental issues. In Commission practice, hearings on applications are held when a substantial and material question of fact is presented or the Commission for any reason is unable to determine on the record prior to hearing that grant of the application will serve the public interest. See, e.g., 47 U.S.C. 309(e). The environmental rules are part of the Rules of Practice and Procedure (47 CFR Pt. 1), which specify the criteria for holding a hearing. See, e.g., 47 CFR 1.591 and 1.593.

(13) In view of the foregoing, it is ordered, effective December 19, 1975, That § 1.1305 of the Rules is amended as set forth below, and that the petitions for reconsideration are in other respects denied. Authority for this amendment is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in the National Environmental Policy Act, 42 U.S.C. 4321–4347.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Adopted: October 30, 1975.

Released: November 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Section 1.1305(a)(1), (2), (3) and (4), and the note at the end are revised to read as follows:

§ 1.1305 Major actions.

(a) * * *

(1) Underground cable and wave guide routes and aerial transmission lines.

(2) Antenna towers or supporting structures which exceed 300 feet in height.

(3) AM directional arrays without regard to height.

(4) [Reserved]

* * * * *

NOTE: The provisions of this paragraph do not encompass the installation of additional cable over existing underground cable routes or the mounting of microwave, FM, television or other antennas comparable thereto in size on an existing building or antenna tower. The use of existing routes, buildings and towers is an environmentally desirable alternative to the construction of new routes or towers and is encouraged. The provisions of this paragraph also do not apply to facilities located in areas devoted to heavy industry or to agriculture which are operated in support of the industrial or agricultural enteprises with which they are associated.

* * * * *

[FR Doc.75-31106 Filed 11-17-75;8:45 am]

[Docket No. 19869; FCC 75-1244]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS, GENERAL RULES AND REGULATIONS

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

Memorandum Opinion and Order

In the matter of amendment of the Commission's rules to establish a private operational-fixed microwave radio service (Part 94).

1. The Commission has under consideration a number of Petitions for Reconsideration which have been submitted with respect to rule changes that were adopted in the above-entitled proceeding in the Commission's Report and Order that was released May 6, 1975, and published in the FEDERAL REGISTER on May 13, 1975, (40 FR 93). The petitions have been filed by the Central Station Industry Frequency Advisory Committee (CSIFAC), Cardion Electronics (Cardion), International Microwave Corporation (IMC), American Petroleum Institute (API), Anixter-Mark, Dartmouth College (Dartmouth), and Utilities Telecommunications Council (UTC).

2. The rules adopted in this proceeding established the Private Operational-Fixed (Microwave) Service (Part 94 of the Commission's Rules) and cover the licensing and operation of private microwave systems in the frequency bands above 952 MHz. Each of the petitioners supports the general purposes and results of these rules, that were to take effect on August 1, 1975.[1] However, the petitioners raise a number of issues and note ambiguities as to certain of the standards and requirements of the new rules which they believe warrant consideration. An exception is Dartmouth's petition where reconsideration is sought only if our intent was to preclude continued licensing of its operations. Dartmouth is presently authorized to operate a wideband video system in the 6 GHz band and the College requests clarification as to whether its system may continue to be renewed on an indefinite basis notwithstanding the new provisions which preclude the licensing of such systems below 12 GHz. This matter is covered in new rule § 94.15, where it is provided that video systems that were authorized before the new rules take effect to employ more than 10 MHz bandwidth per channel in bands below 12 GHz, may continue to be authorized indefinitely. Of course, as Dartmouth recognizes, this exception does not apply to any additional stations which might be brought into its microwave video system after the rules take effect, as such stations would have to conform to the new rule provisions.

3. In view of the foregoing, Dartmouth's problem is already adequately

[1] By Order adopted August 6, 1975, the effectve date for the new rules was deferred pending Commission action on these reconsideration petitions and release of a further Order.

addressed in the new rules and its request for reconsideration is obviated. The other petitions, however, raise matters that the Commission finds warrant reconsideration action and are discussed in the following paragraphs.

4. The question of applicability of the new rules was raised in the API and UTC petitions with respect to license modifications. Here, the petitioners note that although a "grandfather" provision in Part 94 (§ 94.61(a)) permits the continued licensing of presently authorized stations until August 1, 1985, this provision does not apply to modifications of existing systems that have to be approved by the Commission under § 94.45. They seek assurance that the "grandfather" privilege will still apply to that part of an existing station or system which is not directly involved in the modification action. For example, API states, "it seems that the new rules could possibly be interpreted to require complete replacement of an existing 'backbone' station, not complying with the new rules, when an application is filed to add a 'spur' to the existing facility." "Certainly," API contends, "all equipment installed on the new 'spur' should meet the appropriate new standards; but the licensee should be permitted to continue operating the previously authorized 'backbone' station in accordance with those technical standards in force prior to August 1, 1985." The Commission agrees with these petitioners. It was our intent that only the part of an existing system affected by the modification being sought will have to comply with the new standards prior to August 1, 1985.

5. Objections of CSIFAC to the new rules relate to licensing and operations of central station alarm facilities. The new rules expanded the eligibility for the frequencies in the 952–960 MHz band to include all eligibles in the Business Radio Service and the petitioner asks for reconsideration of this action. To support its request, CSIFAC notes the national emphasis being placed on private protection services and the industry's efforts to develop viable alarm systems for microwave applications. Nevertheless, there is not a convincing showing that the number of frequencies generally available for operations of this nature would not be adequate to accommodate the reasonable demand for these facilities, and we are adhering to our finding that exclusive microwave allocations for central station alarm purposes within the Business Radio Service is not justified.

6. CSIFAC also requests that we allow either linearly or circularly polarized antennas to be used at the central station; that omnidirectional linearly polarized antennas be authorized for use at the outlying stations; and that the central station alarm systems generally be exempted from the antenna standards in the table in § 94.75(b). Each of these requested actions must be considered on the basis of the problems that could result with respect to intersystem interference. From this standpoint, the Commission concurs with the petitioner that the use of linear or circularly polarized antennas at the central stations would be appropriate. Thus, we are modifying our antenna rules to provide an exception for these stations. We do not agree, however, that the use of omnidirectional antennas at the outlying stations of a system will not increase the interference potential. Such use will serve to extend the perimeter of the operating area and thereby restrict the re-useability radius for these frequencies. We will require, therefore, that a directional antenna be used at the outlying stations with either circular or linear polarization which includes the directional gain and front-to-back ratio requirements given in revised § 94.25.

7. The new general antenna standards were objected to in a number of the petitions. Basically, the new standards provide that there will be either a Category A or a Category B type antenna. The Category A antenna is to be used in areas which are expected to be subject to significant frequency congestion, while the Category B antenna may be used in other areas. Cardion, IMC, and Anixter-Mark all argued for smaller microwave antennas. They contend that low power systems theoretically occupy less geospectral area when utilizing 3° beamwidth antennas than when using 1° beamwidth antennas and, therefore, the 3° beamwidth antennas are more efficient in the utilization of the spectrum. Their arguments were based upon keeping the transmitter output power the same in making comparisons among antennas. This is somewhat unrealistic, however, because the level of transmitter output power is as important in causing or preventing interference as are antenna characteristics. Thus, although we agree that there is some percentage of interference situations in which a narrow beam antenna is not the optimum one to use, high power systems are the most likely to cause interference (these have been excluded from the petitioner's analysis) and, in new systems, the transmitter power should be adjusted for higher gain antennas. Therefore, while in existing systems the tendency might be, when changing to a larger antenna, not to adjust the transmitter power to compensate for the increased antenna gain, we feel that in the interest of efficient spectrum utilization the maximum effective radiated power should be no more than that necessary for reliable communications, thus implying the necessity for a downward adjustment. Requirement to this effect is contained in § 94.73(a).

8. Some of the petitioners also objected to the standards that require high performance antennas, primarily because of cost considerations. We have reviewed these standards on the basis of the petitions and available industry data and, while we have concluded that upgrading of the standards is necessary and desirable, we agree with the petitioners that some changes are warranted. Thus, we have relaxed the criteria, particularly with respect to off-axis radiation and, in some cases, the beamwidth.[3] In reaching this conclusion, we considered a number of alternate suggestions, including one by IMC that sidelobe gain (i.e., gain above an isotropic radiator for off-axis radiation of an antenna) be specified instead of sidelobe suppression (i.e., the ratio of off-axis radiated power to on-axis radiated power). We feel that this proposal has some merit but is not justified in the light of generally accepted practices in the antenna industry. Antenna radiation patterns are almost universally specified in terms of radiation suppression with reference to gain on the antenna axis. Off-axis gain may be readily derived from these data for those who wish to use it. We also considered Anixter-Mark's suggestion that the antenna standards should be based upon a maximum effective radiated power (ERP) pattern instead of radiation suppression as now specified in the rules. However, this approach is also contrary to commonly accepted industry practices and to the general approach we have taken in Part 94 and it is, therefore, rejected.

9. As noted, the use of a Category B antenna is limited to areas where there is no "frequency congestion." Several of the petitioners suggested the need for guidance as to what areas could be considered under this term. Obviously, there is no practical way to delineate these areas where a Category B antenna could be employed since the system parameters and the situation at the specific time an application is made must be examined to determine whether an area qualifies. However, it is feasible to list areas that would be automatically excluded by virtue of apparent frequency congestion for use of Category B antennas. Accordingly, the Commission intends to provide a listing from time-to-time of those areas which are judged to be frequency congested areas and where the use of Category A antennas would be required.

10. One other matter with respect to antennas was noted by UTC who requested that the definition of a "periscope antenna system" be modified to limit the horizontal distance from the tower to the vertically mounted parabolic reflector to a maximum of 20 feet. However, we find this limitation would unduly restrict the engineering of microwave systems utilizing periscope antennas because it leaves little flexibility for adapting the antenna system to local site obstructions, different tower heights, etc. and we are denying this request.

11. The other major area of concern raised in the reconsideration petitions is in connection with the interference protection criteria set forth in § 94.63. Generally, the provisions under this section require applicants for new or modified microwave systems to make an analysis to determine that the proposed facilities will not cause interference to existing

[3] Notwithstanding the relaxation of some of the antenna standards, we have retained in the rules a requirement for the use of a high performance antenna where present or potential interference problems can be resolved by the use of such antennas.

systems above prescribed levels unless consent to higher interference is agreed to by the licensees involved. We provided that the interference protection criteria would be applied by calculating the ratio in dB between the desired (carrier) signal and the undesired (interfering) signal (C/I ratio) at the input to the receiver under investigation. Further, we decided that applicants would not be required to use any one method for determining C/I ratios, but could use any technique developed by any recognized authority which has been demonstrated to be capable of producing reliable data for interference calculations.

12. Notwithstanding the Commission findings as indicated above, UTC asks that the revised EIA Bulletin 10B be specified as the only procedure to be followed in determining interference levels. They contend that "endless confusion" will probably result if a number of different procedures are used, and they imply that using the EIA procedure will result in uniformity. We do not agree for at least the reason that we are not convinced that uniformity in this area is a benefit, especially since this approach would severely limit applicants with capability to do more detailed interference analysis than is afforded by EIA Bulletin 10B. Further, applicants ought to have the opportunity to follow any acceptable good engineering practice particularly when it is conceivable that better methodology will be developed by EIA or others than the present EIA procedures. UTC makes a more compelling argument that even if the Commission rejects its suggestion for allowing only present EIA methods, this appears to be the only procedure now being developed and it will take six months to one year for EIA to publish its Bulletin 10B. An extension of the effective date for requiring interference protection analysis is requested, therefore, until at least January 1, 1976. Here, we agree with the petitioner. While the rules provide guidelines that make it possible for an applicant to make a satisfactory interference analysis, we recognize that the use of methods such as those being developed by EIA may significantly facilitate this process. Thus, the Commission finds that the additional time requested to allow for development of EIA and other producers for doing this type of analysis may be warranted, and we are including this problem in our general discussion as to the need for delaying the effective date of the new rules. (See paragraph 22, *infra*.)

13. UTC requested that the interference protection criteria given in § 94.63 should include the number of exposures as well as the level of exposures. They argue that the total noise in a microwave system is not delineated unless both of these limitations are specified. The Commission feels that this position is correct in principle but that further study is necessary to determine the specific criteria to use in specifying the total interference levels to be allowed. Therefore, we are not changing the interference criteria in this respect as now set forth in the rules, but we will initiate a study to determine what total interference levels should be specified and will propose at the conclusion of this study that the resulting interference criteria be included in the rules.

14. Cardion argued that the alternate interference criteria given in § 94.63(d)(3) is not reasonable. They maintain that the co-channel carrier to interference (C/I) level ratio of 90 dB applicable to all bands (except the 952–960 MHz band) is too stringent and the 65 dB applicable to the 952 MHz band is too lenient. While we believe that the 90 dB figure is sound, we concur that the 65 dB C/I ratio for the 952–960 MHz band is too lenient and are, therefore, changing this to 75 dB. Cardion also suggested that there is no reason why the adjacent channel interference criteria (43 dB C/I ratio for the 952–960 MHz band given in § 94.63(d)(3)(ii) should be different from the other bands (56 dB C/I ratio). We agree with this position and are amending the rules to make the adjacent channel C/I ratio 56 dB for all bands, with the exception of one hop systems in the 952 MHz band used for control and fixed relay operation for which the ratio will remain 43 dB.

15. Cardion also suggested that we provide the same interference criteria for the 952 to 960 MHz band as for the other short haul bands. With one exception, the Commission believes this position is valid and we are amending our rules as requested. The exception involves very short (one hop) systems used for control links for radio repeaters in the land mobile services. For this case, the interference criteria for interference from other stations into these systems will remain 250 pWpO per exposure for co-channel sideband-to-sideband interference and 1000 pWpO per exposure for co-channel carrier beat interference. However, interference from these stations into other microwave systems will be required to meet the criteria for long and short haul systems as specified in § 94.63(b).

16. We have provided exceptions in § 94.63(e) to requirements for performing interference protection analysis in certain station modification applications. UTC asked for two additional exceptions. One is the situation in which a different transmitter is substituted for an existing one with equal frequency tolerance. The second case covers a decrease in the transmitter output power by any amount. The Commission finds that such provisions are warranted and § 94.63(e) has been changed to require no interference protection analysis in these two cases.

17. Channelling plans for the frequency bands above 952 MHz were another subject in some of the petitions. Cardion requested that the 952 MHz channel allocations should be changed to allow more 200 kHz channels. They advocate a frequency arrangement and realignment in this band that increases the 200 kHz channels, but at the cost of deleting 50 kHz and 100 kHz channels. This results in a drastic reduction in total frequency pairs. This we do not feel is justified at this time since it has not been adequately demonstrated that the practical need in this band is for greater numbers of 200 kHz channels. Should this need eventuate, this issue will be revisited. API and UTC requested that the channelling plans for the 6525 to 6875 MHz band be modified to change the unpaired frequencies to paired frequencies so as to alleviate potential interference problems while also increasing the useful frequency pairs in the band. We agree that the unpaired frequencies should be changed to paired frequencies to the extent that it is practical to do so. The rules have been amended to change the unpaired frequencies to paired frequencies in § 94.65(g)(1), but we are footnoting these corrected frequencies to permit their assignment for unpaired use as may be necessary. We also agree that the frequency table in § 94.65(g)(2) should be changed for the purpose of alleviating interference problems. The revised table avoids the pertinent interference problems while retaining the use of most of the frequencies of the original tables. However, because of the proximity of one frequency to the bandedge, special limitations have been imposed upon this frequency to prevent interference to the adjacent band. We are retaining one frequency pair for maintenance, emergency restoration and temporary use subject to the condition that such use will cause no interference to other frequencies in this band. Where this pair cannot be used because of frequency conflict, others may be authorized under existing STA procedures. We have looked into similar modifications in the other bands that have unpaired frequencies available but see no apparent need at this time for changes of the nature being adopted in the 6 GHz band.

18. A number of additional requests in the petitions under consideration, and matters that have come to our attention through studies and consultations, indicate the need for modifications of the new rules in the following areas. In the 12 GHz band there are some low power equipments utilizing double sideband AM, video and digital modulation. IMC said that the frequency tolerance and antenna requirements of the new rules would preclude these uses. While we believe that technical standards should be raised as the spectrum becomes more crowded and new technology is developed, we do feel that some provisions should be made in the rules for these low power, utilitarian-type systems serving specialized needs. To subject all such systems to the full burden of the technical requirements and additional costs of longer haul systems could seriously inhibit many worthwhile uses of the band. Therefore, systems of 3 tandem hops or less, and with stations operating at 55 dBm or less effective radiated power, which will accept a co-channel interference of −90 dBm will be authorized on four frequencies in the 12,200–12,700 MHz band. In addition, on these four frequencies, a band-width of up to 12 MHz may be made available upon a showing of need and the frequency tolerance will be relaxed to 0.01% provided that an antenna beamwidth of 4 degrees is not exceeded. The rules have been modified accordingly.

19. UTC questions the need for § 94.13 (b) concerning the interconnection of private microwave stations inasmuch as interconnection is permitted by § 94.11 (a) under points of communication. The difference in the § 94.13(b) provision is to require compliance with the filing and reporting requirements of § 94.17 for cooperative use of stations. However, it is not necessary that such requirements be met for interconnection of private systems and we are deleting § 94.13(b). The petitioner also requests that the requirement to have a transmitter identification card or plate affixed to each transmitter be deleted since this equipment may be readily identified from the station license. We agree with this request and paragraph (c) of § 94.107 is being deleted.

20. Another deletion we are making removes the requirements in § 94.81 for the submission of technical information for application reference as to antennas and certain receivers. It is likely, however, that these or similar requirements will be restored in connection with our planned further development of our microwave technical data base following a Commission study as to the specific nature of the information which will be of most value in these respects.

21. A number of minor deletions or changes essentially of an editorial or correction nature are included in the modifications resulting from this action. A specific change of note in this regard is to the power limitation table in § 94.73 (a)(1) where we have now properly aligned the limitations with the particular frequency bands involved.

22. In addition, Part 2.106 of the Rules is being amended to make Footnote NG 52 be consistent with § 94.25(h). The latter was amended to extend the 1976 licensing cutoff date in § 91.552(e) to August 1, 1980 for stations used for transmission of program material to Cable Television (CATV) systems.

23. The final matter to be considered concerns numerous requests for postponing the effective date of the new rules (which had been scheduled for August 1, 1975), to provide an opportunity for the orderly implementation of new requirements. As noted in paragraph 12, supra, there are apparent benefits in a postponement with regard to the development and use of industry methods for calculating interference protection analysis. Further, there is indication that, to a large extent, re-tooling for the manufacturing of new radio equipment to comply with our new equipment technical standards will necessitate more time than has been afforded by the January 1, 1976 effective date. In consideration of these compelling factors, the Commission determines that it is in the public interest to extend the effective date of the technical rules (subpart c) of Part 94 until July 1, 1976. There is no need to postpone the effective date of the remaining rules.

24. In consideration of the foregoing, the Commission finds that modification of the rules as shown in the attached appendix is in the public interest, convenience, and necessity. Therefore, the petitions for reconsideration identified above are granted to the extent indicated and are denied in all other respects.

25. Accordingly, *it is ordered* That, rule changes adopted for Part 2 and Part 94 by the Commission's Report and Order in this proceeding are amended as shown below. *It is further ordered* That, the Effective Date for Subpart C and § 94.15(b), Part 94, as amended herein, is extended from August 1, 1975 to July 1, 1976 and that those remaining Rules in Part 94 and Part 2 are effective January 1, 1976, pursuant to section 4(i) and 303(r) of the Communications Act of 1934 as amended. *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: November 5, 1975.

Released: November 14, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

Part 2 of the Commission's Rules is amended as follows:

1. Section 2.106, Footnote NG52 to the frequency table is revised to read as follows:

§ 2.106 **Table of Frequency Allocations.**

* * * * *

NG FOOTNOTES

* * * * *

NG52 Stations used for transmission of program material to cable television (CATV) systems, which are authorized to operate in the band 12.2–12.7 GHz on November 22, 1965, may continue to be authorized to so operate until August 1, 1980, under the conditions specified in that license.

* * * * *

Part 94 of the Commission's Rules are amended as follows:

1. Section 94.9(b)(3) is revised to read as follows:

§ 94.9 **Permissibility of communications.**

* * * * *

(b) * * *

(3) For transmission of program material to cable television systems, except for operations of this nature authorized pursuant to § 94.25(h).

2. Section 94.13 is revised as follows:

§ 94.13 **Interconnection of private operational-fixed microwave stations.**

Stations authorized under this part may be interconnected with facilities of common carriers subject to applicable tariffs.

3. Section 94.15(b) is revised to read as follows:

§ 94.15 **Policy governing the assignment of frequencies.**

* * * * *

(b) All applicants for new or modified stations shall make an engineering analysis of the potential interference between the proposed facilities and previously authorized facilities and pending applications. The applicant shall include as supplemental information with the application: (1) a certification that based upon frequency engineering analysis, the potential interference shall not exceed that prescribed by the interference criteria in § 94.63; or (2) if the potential interference is to exceed that prescribed by § 94.63, a statement to the effect that all parties affected have agreed to accept the higher level of interference. In either case, the applicant shall furnish the names of the licensees and the call signs of the stations which were considered in conducting the engineering analysis. Further, applicants shall notify these licensees of the filing of his proposal and they, in turn shall cooperate promptly and fully in the exchange of technical information necessary to perform frequency engineering analysis and, in the event of technical differences, cooperate in resolving these differences.

* * * * *

4. In Section 94.25, the first sentence of paragraph (h) is revised to read as follows:

§ 94.25 **Filing of applications.**

* * * * *

(h) Applications for authorizations to construct new microwave operational fixed radio stations for transmission of program material to cable television systems will not be accepted.

* * * * *

5. Section 94.63 is amended by revising (b) introductory paragraph, (b)(2), (d)(3) and (e):

§ 94.63 **Interference protection criteria for operational-fixed stations.**

* * * * *

(b) The interference protection criteria for operational fixed stations, other than those licensed under the provisions of § 94.65(h)(3) are as follows:

* * * * *

(2) To short-haul analog systems employing frequency modulated radio and frequency divison multiplexing to provide multiple voice channels, the allowable interference level per exposure:

(i) Due to co-channel sideband-to-sideband interference shall not exceed 25 pWpO except in the 952–960 MHz band interference into single link fixed relay and control stations shall not exceed 250 pWpO exposure.

(ii) Due to co-channel carrier-beat interference shall not exceed 50 pWpO except in the 952–960 MHz band interference into single link fixed relay and control stations shall not exceed 1000 pWpO per exposure.

* * * * *

(d) *Applying the criteria.*

* * * * *

(3) Except as provided in § 94.90, where the applicant's proposed facilities are of a type not included in paragraph (b) of this Section or where the development of the carrier to interference (C/I) ratio is not covered by generally acceptable procedures, or where the applicant does not wish to develop the carrier to interference ratio, the applicant shall, in the absence of criteria or

a developed C/I ratio, employ the following C/I protection ratios:

(i) Co-channel interference: Both sideband and carrier-beat, applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 90 dB except in the 952–960 MHz band where it shall be 75 dB.

(ii) Adjacent channel interference: Applicable to all bands; the existing or previously authorized system shall be afforded a carrier to interfering signal protection ratio of at least 56 dB.

* * * * *

(e) An applicant filing for a modification of an existing station under the provisions of § 94.45 need not perform the interference protection analyses required by this section if the only modifications made to the station are one or more of the following:

(1) Substitution of transmitting equipment having equal or tighter frequency tolerance.

(2) Any decrease in antenna primary lobe beamwidth which is accompanied by a corresponding decrease in antenna input power so as to not increase the effective radiated power in excess of a 2 to 1 ratio.

(3) Any decrease in transmitter output power by any amount.

6. Section 94.65 (g), (h)(2) and (i) are revised to read as follows:

§ 94.65 Frequencies.

* * * * *

(g) 6525–6875 MHz.

(1) 10 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (or receive):	*Receive (or transmit)*
6545 [2]	[3] 6715
6555 [2]	[4] 6725
6565	6735
6585	6745
6595	6755
6605	6765
6615	6775
6625	6785
6635	6795
6645	6805
6655	6815
6665	6825
6675	6835
6685	6845
6695	6855
6705	6865
6535 [1]	[1] 6575

(2) 5 MHz maximum bandwidth.

PAIRED FREQUENCIES

Transmit (or receive)—	*(Receive or transmit)*
6550.0	6730.0
6560.0	6740.0
6590.0	6750.0
6600.0	6760.0
6610.0	6770.0
6620.0	6780.0
6630.0	6790.0
6640.0	6800.0
6650.0	6810.0
6660.0	6820.0
6670.0	6830.0
6680.0	6840.0
6690.0	6850.0
6700.0	6860.0
6710.0	[3] 6870.0

UNPAIRED FREQUENCIES

6720 [3]

[1] Available only for emergency restoration, maintenance bypass, or other temporary-fixed purposes. Such uses are authorized on a non-interference basis to other frequencies in this band. Interference analysis required by § 94.63(a) does not apply to this frequency pair.

[2] These frequencies may be assigned for unpaired use.

[3] Use of this frequency is authorized on a non-interference basis to Broadcast operations in the band 6875–7125 MHz.

(h) 12,200–12,700 MHz.

* * * * *

(2) 10 MHz Maximum Bandwidth.

PAIRED FREQUENCIES

Transmit (or receive):	*Receive (or transmit)*
12,220 [2]	[2] 12,460
12,240	12,480
12,260 [2]	[2] 12,500
12,280	12,520
12,300 [2]	[2] 12,540
12,320	12,560
12,340 [2]	[2] 12,580
12,360	12,600
12,380	12,620
12,400	12,640
12,420	12,660
12,440	12,680

[1] Available for systems employing one-way transmissions.

[2] These frequencies may be assigned in accordance with § 94.90.

(i) Frequencies in bands authorized in § 94.61(b) above 13,000 MHz are not paired and will be specified in authorizations.

7. Section 94.67 is revised to read as follows:

§ 94.67 Frequency tolerance.

(a) Stations in this service shall maintain the carrier frequency of each authorized transmitter to within the following percentage of the assigned frequency.

Frequency band MHz:	*Tolerance as percentage of assigned frequency*
952–960 [1]	0.0005
1850–1990	0.002
2130–2150	0.001
2150–2160	0.001
2180–2200	0.001
2450–2500	0.001
2500–2690	(2)
6525–6875	0.005
12,200–12,700	[3] 0.005
Transmit (or receive)—	*(Receive or transmit)*
12,700–40,000	0.03
Above 40,000	(4)

[1] Transmitters operated at remote sites as part of a central protection alarm system are permitted a tolerance of .002%.

[2] In accordance with the technical standards contained in Subpart I, Part 74 of this chapter.

[3] For exceptions see § 94.90.

[4] To be specified in authorization.

8. Section 94.73 is revised to read as follows:

§ 94.73 Power limitations.

(a) On any authorized frequency, the average power delivered to an antenna in this service shall be the minimum amount of power necessary to carry out the communications desired. Application of this principle shall include, but not limited to requiring a licensee who replaces one or more of his antennas with larger antennas to reduce his antenna input power by an amount appropriate to compensate for the increased primary lobe gain of the replacement antenna(s). In no event shall the average effective radiated power (ERP) as referenced to an isotropic radiator, exceed the values specified below. Further, the output power of a transmitter on any authorized frequency in this service shall not exceed the following:

Frequency band:	*Maximum transmitter output power (Watts)*
952–960 MHz	[1] 20
1850–6875 MHz	20
12,200–40,000 MHz	10
Above 40,000 MHz	As specified in authorization

[1] When an omnidirectional transmitting antenna is authorized the maximum shall be 100 watts.

(2)

Frequency band:	*Maximum allowable ERP[2] dBm*
952–960 MHz	[3] 70
1850–2690 MHz	[3] [4] 75
6525–40,000 MHz	[4] [5] 80
Above 40,000 MHz	As specified in authorization

[1] Peak envelope power shall not exceed five times the average power.

[2] When an omnidirectional transmitting antenna is authorized in the bands 952–960 MHz and 2150–2160 MHz the maximum shall be 60 dBm.

[3] Except in the bands 2655–2690 MHz and 12,500–12,700 MHz the maximum allowable ERP is specified in § 94.77.

[4] Except as provided in § 94.90.

9. Section 94.75 (b), (c) and (e) are revised and (f) is added to read as follows:

§ 94.75 Antenna limitations.

* * * * *

(b) Directional antennas shall meet the performance standards (for parallel polarization) indicated in the following table:

Antenna standards

Frequency band (in megahertz)	Category	Maximum beamwidth to 3dB points (included angle in degrees)	Minimum radiation suppression at angle in degrees from centerline of main beam in decibels— 5 to 10	10 to 15	15 to 20	20 to 30	30 to 100	100 to 140	140 to 180
952 to 960 [1] [4]	A	14.0		6	11	14	17	20	24
	B	20.0			6	10	13	15	20
1850 to 2690 [2]	A	5.0	12	18	22	25	29	33	39
	B	8.0	5	18	20	20	25	28	36
6525 to 6875	A	1.5	26	29	32	34	38	41	49
	B	2.0	21	25	29	32	35	39	45
12,200 to 12,700 [3]	A	1.0	23	28	35	39	41	42	50
	B	2.0	20	25	28	30	32	37	47

Above 12,700—To be specified in authorization except that bands shared with domestic public radio services stations (part 21) shall conform to standards contained in § 21.108(c).

[1] Except for the frequencies 952.1, 952.2, 952.3, 952.4, 952.5, 952.6, 952.7, 956.4, 956.5, 959.8, and 959.9 MHz, where the maximum beamwidth is 360°.
[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360° and except for frequencies in the 2,500–2,690 MHz band where standards contained in subpart I, part 74, of this chapter apply.
[3] Except as provided in § 94.90.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dB, (2) the minimum front-to-back ratio must be at least 20 dB.

NOTE.—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(c) Applicatants shall request, and authorization for stations in this service will specify, the polarization of each transmitted signal. When periscope antenna systems or passive repeaters are employed, the applicant shall indicate the expected polarization of the reflected signal. The polarization should be expressed as either horizontal, vertical, or as an angle from vertical. Antenna polarizations of horizontal and vertical should be denoted by the abbreviations (H) and (V), respectively. For antennas using linear polarizations other than horizontal or vertical, the polarization should be stated in degrees measured from the vertical, with angles between 0° and +90° denoting the on-coming electric field vector displacement in a counterclockwise direction, and angles between 0° and −90° denoting the oncoming electric field vector displacement in a clockwise direction. In the event polarization diversity is authorized, the two polarizations must be separated by 90°. Antennas employing other than linearly polarized feed systems will not be authorized, except to stations operating in the 952–960 MHz band as a part of a central protection system.

* * * * *

(e) The provisions of paragraphs (a) and (c) of this section shall also apply to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

(f) Periscope antennas used at an electric power facility plant area will be excluded from the requirements of paragraphs (b) and (d) of this section on a case-by-case basis where technical considerations preclude the use of other types of antenna systems.

10. Section 94.77(a) is revised to read as follows:

§ 94.77 Interference to geo-stationary satellites.

* * * * *

(a) The transmitting antenna(s) for a station operating in the band 2655–2690 MHz and employing an equivalent isotropically radiated power exceeding +65 dBm, shall be so oriented that the direction of maximum radiation will be removed at least 2.0° from the geo- stationary orbit, taking into account atmospheric refraction. However, an exception may be authorized in unusual circumstances upon a showing that there is no reasonable alternative to the transmission path proposed, and there is no evidence that such exception would cause interference to the geo-stationary satellite orbit. In such case, a transmission path may be authorized where the maximum value of equivalent isotropically radiated power does not exceed: (1) +77 dBm in any direction within 0.5° of the geo-stationary orbit; or (2) +77 to +85 dBm on a linear decibel scale (8 dB degree), in any direction within 0.5° and 1.5° of the geo-stationary orbit, taking into account the effect of atmospheric refraction.

11. Section 94.81 is revised as follows:

§ 94.81 Type acceptance and technical information filings of microwave equipment.

Except for equipment used under a developmental authorization, type acceptance by the Commission is required for all transmitters employed in this service. Requirements for obtaining type acceptance by the Commission are contained in Subpart J Part 2 of this chapter.

* * * * *

12. Section 94.90 has been added to read as follows:

§ 94.90 Special provisions for low power, limited coverage systems in the 12,200–12,700 MHz band.

Notwithstanding any contrary provisions in this part, the frequency pairs 12,200/12,460, 12,260/12,500, 12,300/12,-540 and 12,340/12,580 may be authorized for low power, limited coverage systems subject to the following:

(a) Maximum effective radiated power (ERP) shall be 55 dBm.

(b) The rated transmitter output power shall not exceed 0.500 watts.

(c) Frequency tolerance shall be maintained to within 0.01 percent of the assigned frequency.

(d) Maximum beamwidth not to exceed 4 degrees. However, the sidelobe suppression criteria contained in Section 94.75(b) of this part shall not apply, except that a minimum front-to-back ratio of 38dB shall apply.

(e) Upon a showing of need, a maximum bandwidth of 12 MHz may be authorized per frequency assigned.

(f) Radio systems authorized under the provisions of this section shall have no more than three hops in tandem but in any event, the maximum tandem length of the system should not exceed 25 miles.

(g) Interfering signals at the receiver antenna terminals of stations authorized under this section shall not exceed −90 dBm and −70 dBm, respectively, for co-channel and adjacent channel interfering signals.

(h) Stations authorized under the provisions of this section shall provide the protection from interference specified in Section 94.63 of this part to stations operating in accordance with the other provisions of this part.

§ 94.107 [Amended]

13. Section 94.107(c) is removed.

[FR Doc.75-31109 Filed 11-17-75;8:45 am]

[Docket No. 20490]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Various Procedural Requirements for the Domestic Public Radio Service; Correction

In the matter of amendment of Parts 21 and 43 of the Commission's Rules and Regulations relative to various procedural requirements for the Domestic Public Radio Services.

In the First Report and Order, FCC75-1073, released October 6, 1975 at 40 FR 47496, the following corrections to the text are made:

1. The first sentences of paragraphs (c) and (d) of § 21.15 are revised to read as follows:

§ 21.15 Technical content of applications.

* * * * *

(c) Each application involving a new or modified antenna supporting structure or passive facility, the addition or removal of an antenna, or the repositioning of an authorized antenna for a station or receive only facility must be accompanied by a vertical profile sketch

of the total structure depicting its structural nature and clearly indicating the ground elevation (above mean sea level) at the structure site, the overall height of the structure above ground (including obstruction lights when required, lightning rods, etc.) and, if mounted on a building, its overall height above the building. * * *

(d) Each application proposing a new or modified antenna structure for a station (including a receive only facility or passive repeater) so as to change its overall height shall include a statement indicating whether or not notification of the Federal Aeronautics Administration (FAA) is required. * * *

* * * * *

2. In § 21.113(b) revise footnote 1 to the Table to read as follows:

§ 21.113 Quiet Zones.

* * * * *

(b) * * *

[1] Equivalent values of power flux density are calculated assuming free-space characteristic impedance of 376.7=120 πohms.

* * * * *

Released: November 7, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-31110 Filed 11-17-75;8:45 am]

[Docket No. RM-2379]

PART 73—RADIO BROADCAST SERVICES

Report and Order Regarding Termination of Proceeding

In the matter of amendment of § 73.606 (b), Table of Assignments, Television Broadcast Stations. (Anacortes and Bellingham, Washington).

1. The Commission has before it the *Notice of Proposed Rule Making*, adopted February 12, 1975, 40 FR 8232, inviting comments on a proposal to delete Channel 24 from Bellingham, Washington, and reassign it to Anacortes, Washington. The only commenting party is the petitioner, Ceorl Corporation, which states that if the channel is assigned it will apply for its use, and, if authorized, it will construct promptly.

2. Anacortes (pop. 7,701)[1], located on Fidalgo Island in the northwest corner of Washington, is the second largest city in Skagit County (pop. 52,381). Anacortes has an industrial base consisting of petroleum refining, fisheries, and lumber and plywood manufacturing. The petitioner also reports that Anacortes is an important seaport, handling commercial and ferry traffic from Vancouver Island (British Columbia). Economic growth in Skagit County is anticipated due to the county government's approval of a rezoning plan for a nuclear power plant and the zoning of 120 acres of land for industrial purposes in hopes that it will become a new industrial park.

3. Bellingham (pop. 39,375), from which the petitioner proposed to delete Channel 24, is located eighteen miles north-northeast of Anacortes. The petitioner states that it intends to provide service to the western portion of Skagit County which includes San Juan County (pop. 3,856) and Island County (pop. 27,011) as well as the communities of Mt. Vernon, pop. 8,804; Burlington, pop. 3,133; and Sedro-Wooley, pop. 4,593. Although not stated, it appears that the proposed assignment would also provide service to Bellingham.

4. The petitioner states that the proposed assignment would serve more than 65,000 persons who are presently within the Grade A contour of only one television station (KVOS-TV, Bellingham) and on the fringes of the Grade B contours of three commercial television stations (KOMO-TV, KING-TV, Seattle; KSTW, Tacoma) and an educational station (KCTS-TV, Seattle). It further states that this proposal is in the public interest because it would provide a first local television service. It should be noted that the deletion of Channel 24 from Bellingham would still leave Bellingham with two unoccupied television assignments, one commercial and one noncommercial educational, as well as the operating station, KVOS-TV.

5. In a letter addressed to the Commission, William T. Berry, General Manager of AM radio station KAGT, Anacortes, Washington, expressed concern about the proposed station's ability to raise enough revenues for operation due to the Canadian legislation denying tax benefits to Canadian advertisers on American stations. Mr. Berry also claims that the petitioner's proposed antenna site, Mt. Erie, is not available since Puget Sound Power and Light Co. refuses to allow any additional transmitting antennas on the mountain.

6. It should be noted that Mr. Berry's contention that the proposed station at Anacortes would be unable to raise enough revenues for operation does not diminish the petitioner's showing that assignment of the channel would create the possibility of providing a first local television service and a second television service to a large area. Mr. Berry does not allege that the grant of authorization to construct a TV station in Anacortes would diminish in any way the programming service of the existing aural broadcast stations in the community. If it was his intent to raise a Carroll issue, such an issue should be raised at the application stage.[2]

7. After Commission review of the terrain in the area around Anacortes, it is our opinion that other transmitter sites are available for use if the proposed site on Mt. Erie is indeed unavailable that would meet all engineering standards.

8. Anacortes is located within 250 miles of the U.S.-Canadian border. Therefore, under the Canadian-United States Television Agreement, the proposed amendment requires the consent of the Canadian government. This consent has been obtained.

9. We believe that the showing of Ceorl Corporation is sufficient to demonstrate a need for a television assignment to Anacortes. In addition, we note that such an assignment would bring Anacortes its first local television service. Remarks in opposition to the assignment have been unpersuasive. Therefore, the Commission finds that adoption of the Ceorl Corporation proposal is warranted.

10. In view of the foregoing and pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's Rules, *it is ordered*, That effective December 18, 1975, the Television Table of Assignments contained in § 73.606(b) of the Commission's Rules and Regulations is amended, insofar as the cities listed below are concerned, to read as follows:

§ 73.606 [Amended]

* * * * *

(b) * * *

City:	Channel No.
Anacortes, Washington	24
Bellingham, Washington	12+, *34, 64

* * * * *

11. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 5, 303, 307, 48 Stat., as amended, 1066, 1068, 1082, 1083; 47 U.S.C. 154, 155, 303, 307)

Adopted: October 30, 1975.

Released: November 5, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.75-31111 Filed 11-17-75;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Reclassification of the American Alligator and Other Amendments; Corrections

In FR Doc. 75-25480 appearing at page 44412 in the FEDERAL REGISTER of Friday, September 26, 1975, the following changes should be made:

1. On page 44418, under the "Scientific Name" column, the entry for "Gazelle, Clark's (Dibatag)" is corrected to read "*Ammodorcas clarkei*".

2. On page 44418, under the "Scientific Name" column, the entry for "Monkey, Red-backed Squirrel" is corrected to read "*Saimiri oerstedii* (*Saimiri sciureus oerstedii*)".

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[1] All population figures are from the 1970 U.S. Census.

[2] *Carroll Broadcasting Co.* v. *F.C.C.*, 258 F. 2d 440 (D.C. Cir. 1958).

3. On page 44419, under the "Scientific Name" column, the entry for "Prairie Dog, Mexican" is corrected to read "*Cynomys mexicanus*".

4. On page 44419, under the "Scientific Name" column, the entry for "Prairie Dog, Utah" is corrected to read "*Cynomys parvidens*".

5. On page 44419, under the "Common Name" column, the entry "Ratkangaroo, Hesueur's" is corrected to read "Ratkangaroo, Lesueur's".

6. On page 44420, under the "Scientific Name" column, the entry for "Gallinule, Hawaiian" is corrected to read "*Gallinula chloropus sandvicensis*".

7. On page 44420, under the "Scientific Name" column, the entry for "Goose, Hawaiian (Nene)" is corrected to read "*Branta sandvicensis*".

8. On page 44420, under the "Common Name" column, the entry "Hawk, Gallapagos" is corrected to read "Hawk, Galapagos".

9. On page 44422, under the "Special Rules" column, the entry for the "Darter, Bayou" is corrected to read "§ 17.44(b)".

10. On page 44422, under the "Scientific Name" column, the entry for "Salamander, Texas Blind" is corrected to read "*Typhlomolge rathbuni*".

11. One page 44423, under the "Scientific Name" column, the entry for "Snail, Manus Island Tree" is corrected to read "*Papustyla pulcherrima.*"

12. On page 44423, under the "Common Name" column, the entry "MOLLUSKS" is deleted and replaced by the word "CLAMS."

13. On page 44423, under the "common Name" column, below the new entry "CLAMS: [reserved]" is inserted "CRUSTACEANS: [reserved.]"

14. On page 44423 under the "Common Name" column, after the entry "INSECTS: [reserved]" the entry "OTHER FORMS: [reserved]" is deleted and replaced by the entry "COMMON SPONGES AND OTHER FORMS: [reserved]."

15. On page 44424 in the second line of section 17.21(f)(2) the word "carriers" is deleted and the word "carries" inserted and that line should now read "endangered wildlife which carries a";

16. Also, on page 44424 in section 17.22 (a)(6) the comma at the end of the second line should be changed to a colon.

17. On page 44427, section 17.40 is corrected by adding the following line after the last line of paragraph (a)(1)(i)(B): "by regulation prohibit any further commercial importation of such wildlife from that State."

18. Also on page 44427, in the fourth line of section 17.40(b)(1)(v) the word "this" is inserted after the word "by", "(a)(4)(ii)" is deleted and replaced with "(a)(1)", and that line should now read "act prohibited by this paragraph (a)(1)".

19. On page 44428, middle column, in section 17.42(a)(2)(iv), add the words "in the wild" after the word "threatened".

20. On page 44428, in section 17.42 the paragraph "(c) Special conditions" is redesignated as "(C) Special conditions".

21. On page 44429, section 17.45 is corrected to read "section 17.46 Special rules—snails and clams [Reserved]".

22. On page 44429, section 17.48 is corrected to read "section 17.48 Special rules—common sponges and other forms [Reserved]".

23. On page 44420, under the "Scientific Name" column, the entry for "Duck, Mexican" is corrected to read "*Anas diazi*".

24. On page 44425, section 17.23(b)(4)(ii) is corrected to read "Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and.".

Dated: November 12, 1975.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

[FR Doc.75-31134 Filed 11-17-75;8:45 am]

PART 28—PUBLIC ACCESS, USE, AND RECREATION

National Wildlife Refuges

The following special regulations are issued and are effective on January 1, 1976.

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

ARIZONA

CABEZA PRIETA NATIONAL WILDLIFE REFUGE

The Cabeza Prieta National Wildlife Refuge, Arizona, is open to public access, use, and recreational activities from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. For purposes of protecting human safety as well as the fragile environment of the 940,000-acre Cabeza Prieta National Wildlife Refuge, all entry into the refuge is subject to the possession of a valid permit issued by the Refuge Manager or his designated assistant. Such permit may be obtained at the offices of the U.S. Fish and Wildlife Service located at 356 W. First Street, Yuma, Arizona or at 1611 2nd Avenue, Ajo, Arizona, between the hours of 8 a.m. and 5 p.m., Mondays through Fridays (except holidays).

One permit will be required for each vehicle entering the refuge, the driver of which must apply in person to receive the permit and a copy of the public use regulations. Each person entering the refuge by means other than motorized vehicles is also required to possess an entry permit, obtainable as required for vehicular entry.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

KOFA GAME RANGE

The Kofa Game Range, Arizona, is open to public access, use, and recreational activities from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. For purposes of protecting wilderness values and the fragile desert environments of the 660,000-acre Kofa Game Range, all motorized vehicular travel is restricted to designated routes of travel. Maps delineating such routes may be obtained at the office of the U.S. Fish and Wildlife Service, 356 W. First Street, Yuma, Arizona between the hours of 8 a.m. and 5 p.m. Mondays through Fridays (except holidays).

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

ARIZONA AND CALIFORNIA

HAVASU NATIONAL WILDLIFE REFUGE

The Havasu National Wildlife Refuge, Arizona and California, is open to public access, use, and recreational activities from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area, and the following special conditions:

(1) Waterskiing is permitted only on the channelized segment of the Colorado River except for that portion of the river called "Topock Gorge" which is designated by buoys as being "Closed to Waterskiing". The north buoy line is located between the I-40 highway bridge and the A.T. & S.F. Railroad bridge. The south buoy line is located on an imaginary line between the southern entrance to Jops Landing on the Arizona shoreline and the southern entrance to Clear Bay on the California shoreline.

(2) The observer of a person in tow behind a boat shall continuously observe the person(s) being towed and shall display a flag immediately after the towed person(s) falls into the water and during the time preparatory to skiing while the person(s) is still in the water. Such flag shall be a bright or brilliant orange or red color, measuring no less than twelve inches on each side, mounted on a handle, and displayed as to be visible in every direction.

(3) Camping is restricted to tent and boat camping along the Arizona shoreline below the buoy line designating the southern entrance to Topock Gorge. This buoy line is located on an imaginary line between the southern entrance to Clear Bay on the California shoreline and the southern entrance to Jops Landing on the Arizona shoreline. Camping is prohibited at Mesquite Bay.

Recreational vehicles and tent camping is permitted at Five Mile Landing and Catfish Paradise concessions for a nominal fee. All camping is limited to stays of no longer than 7 days.

(4) Boating is permitted in all waters of the refuge except where restricted by appropriate signs. Wakeless speed only is permitted east of the buoys on the Bill Williams River and within the harbors of Five Mile Landing and Catfish Paradise.

(5) Wheeled vehicles, including motorbikes, are permitted only on designated roads and parking areas. Driving off roads or on roads closed by signs or barriers is prohibited.

(6) Swimming, wading, scuba diving, and skin diving are permitted except where restricted by signs.

(7) Fires may be built only in areas where camping is allowed.

(8) Litter facilities are provided only for recreational users who are swimming, boating, picnicking, fishing, hunting, hiking or camping. Other uses of litter facilities is prohibited.

(9) Additional attachments to mobile homes and travel trailers located at refuge concessions must be limited to cabanas, awnings, or similar types of shades that are easily removable, portable and not permanently fixed to the ground. They may be equipped with windbreaks of a similar portable nature that do not completely enclose the sides, but may not be utilized for regular living or sleeping space or to house household equipment other than lounge furniture.

(10) Residents are required to maintain their lots and trailers in a neat, orderly and hazard-free condition. No storage will be allowed under the mobile home, travel trailer, or porch area. The interior of the mobile home, travel trailer, storage shed or storage yard are the only authorized storage areas.

(11) Concession operators and tenants will maintain their facilities and residences in accordance with Title 25, Housing and Community Development; Chapter 5, Mobile Home Parks, Special Occupancy Trailer Parks and Campgrounds; California Administration Code; State of California.

(12) All trailers and attachments and other structures on the lots must be capable of being removed within 24 hours of notice. All tires must remain on the mobile home or travel trailer at all times.

(13) The mooring of unattended boats is allowed *only* at designated boat slips at Five Mile Landing and Catfish Paradise concessions.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

IMPERIAL NATIONAL WILDLIFE REFUGE

The Imperial National Wildlife Refuge, Arizona and California, is open to public access, use, and recreational activities from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations. The public use areas on the 25,764-acre Imperial National Wildlife Refuge are designated on maps available at refuge headquarters, Martinez Lake, Arizona, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and are subject to the following special conditions:

(1) An area on the west end of Martinez Lake, consisting of approximately 175 acres, and an area of approximately 60 acres in the north end of Ferguson Lake (areas as designated by signs or on above-mentioned map) shall be closed to public entry during the periods January 1 through March 1, 1976, inclusive; and October 1 through December 31, 1976, inclusive.

(2) Waterskiing is permitted only on certain sections of the main stream (channel) of the Colorado River where designated by signs. In general, these open areas are the main stream of the Colorado River in the Martinez and Ferguson Lakes area and adjacent to the Picacho State Recreational Area. Backwaters are closed to waterskiing.

(3) Boating is permitted in all waters of the refuge except where prohibited by appropriate signs and in those areas closed to public entry.

(4) Blocking of boat ramps or routes of public access is prohibited.

(5) Hiking, sightseeing, and photography are permitted except in those areas closed to public entry.

(6) The removal or disturbance of sand, gravel or rock is prohibited.

(7) Camping; i.e., overnight camping, is prohibited. It has been determined that camping is detrimental to the accomplishment of refuge wildlife ecological objectives.

(8) The removal or disturbance of dead wood is prohibited.

(9) Pets are permitted only if they are confined or kept on a leash not to exceed ten (10) feet in length, one end of which is secured so as to restrict the movements of the animal.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

OKLAHOMA

SALT PLAINS NATIONAL WILDLIFE REFUGE

The Salt Plains National Wildlife Refuge, Oklahoma, is open to public access, use, and recreational activities from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations. The public use areas on the 32,009-acre Salt Plains National Wildlife Refuge are designated on maps available at refuge headquarters, Jet, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and subject to the following special conditions:

(1) The public is permitted to enter upon the Great Salt Plains from the west along designated routes of travel to collect gypsum (selenite) crystals. Vehicles will be allowed only along such travel lanes and parking areas as are posted for such activity.

(2) Each individual may collect for his personal use up to a maximum of 10 pounds plus one crystal or crystal cluster per day.

(3) Digging for crystals will be confined to areas posted for such activity.

(4) The period of use shall be on Saturdays, Sundays and holidays, from April 1 through October 15, 1976, inclusive.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

SEQUOYAH NATIONAL WILDLIFE REFUGE

The Sequoyah National Wildlife Refuge, Oklahoma, is open to public access, use, and recreational activity from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. The refuge area, comprising approximately 20,800 acres, is delineated on maps available at refuge headquarters, Sallisaw, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and is subject to the following special conditions:

(1) An area of approximately 2,200 acres, south of Vian Creek and east of the refuge tour road, shall be closed, as posted, to all public access during the periods January 1 through March 31, 1976, inclusive, and October 1 through December 31, 1976, inclusive. This land is set aside to provide an area of minimum disturbance for waterfowl and other wildlife during the winter months.

(2) Some refuge roads may be closed to vehicle entry from January 1 through March 31, 1976, inclusive, and from October 1 through December 31, 1976, inclusive, as posted, to prevent disturbance of wintering and migrating waterfowl.

(3) Sightseeing, nature observation, photography and hiking are permitted.

(4) Picnicking is permitted only at the Vian Creek Recreation Area. Picnic fires may be built at the recreation area only in the fire grills provided or in camp stoves or charcoal grills.

(5) Overnight camping is not permitted except for youth conservation groups supervised by adults. Permits

must be obtained in advance from the Refuge Manager.

(6) Firearms and long bows and arrows are prohibited except as permitted by special hunting regulations. When permitted, firearms and/or long bows and arrows being transported in a motor vehicle must be unloaded and dismantled (in the case of firearms); unstrung (in the case of bows), or cased. Possession of any firearms and/or long bow and arrows on the refuge at night or in refuge areas closed to hunting is prohibited except as otherwise permitted by Title 50, Code of Federal Regulations.

(7) Boating is permitted in accordance with Federal and State regulations.

(8) Waterskiing is prohibited in all refuge waters.

(9) Pets are permitted only if they are confined or kept on a leash not to exceed ten (10) feet in length, one end of which is secured so as to restrict the movements of the animal, except that dogs may be used for hunting in accordance with refuge hunting regulations.

(10) Pecan picking is limited to one (1) gallon per person per day.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

WICHITA MOUNTAINS WILDLIFE REFUGE

The Wichita Mountains Wildlife Refuge, Oklahoma, is open to public access, use, and recreational activity from January 1 through December 31, 1976, subject to the provisions of Title 50, Code of Federal Regulations, and all applicable Federal and State laws and regulations and all official signs posted in the area. The public use area totals approximately 22,400 acres and is delineated on maps available at refuge headquarters, Cache, Oklahoma, and from the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, and subject to the following special conditions:

(1) Sightseeing, nature observation, photography and hiking are permitted.

(2) Camping and picnicking are permitted in recreation areas containing facilities for these purposes unless prohibited by signs. Exceeding posted visiting hours or unit capacities of these areas is prohibited. A written permit is required for stays exceeding seven (7) days.

(3) Fires are permitted only in recreation areas where camping or picnicking is allowed and only at such times or hours that the areas are open to these uses. Dead fallen timber may be used.

(4) Boating is permitted only on Elmer Thomas Lake. All other floating devices are prohibited on all refuge waters unless permitted by other Federal regulations. Boating is prohibited in marked scuba diving and swimming areas.

(5) Swimming, wading, snorkeling and skin diving are permitted only at designated swimming beaches, and only when these beaches are manned by refuge supervised lifeguards. Lifejackets and buoyant vests may be worn while swimming. Food, beverages and pets are prohibited on swimming beaches. Beach users must comply with all official beach signs posted on the area and with the directions of authorized lifeguards.

(6) Scuba diving is permitted only on Elmer Thomas Lake. Diving areas must be marked with appropriate warning flags when outside of marked swimming areas. Flags must be removed before leaving the area. Inflatable vests may be worn while diving.

(7) Pets are permitted only if they are confined or kept on a leash not to exceed ten (10) feet in length, one end of which is secured so as to restrict the movements of the animal.

(8) Vehicles found parked in any closed area, any "no parking" area, or in any area after posted visiting hours may be removed from the area. Any charges or expenses incurred by such removal, including storage fees, shall be borne by the owner of the vehicle.

(9) The use of gliders, including hanggliders, is prohibited.

(10) Possession or use of any alcoholic beverage by persons under twenty-one (21) years of age is prohibited.

The provisions of this special regulation supplement the regulations which govern public access, use and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1976.

W. O. NELSON, Jr.,
Regional Director,
Albuquerque, New Mexico.

NOVEMBER 10, 1975.

[FR Doc.75-31096 Filed 11-17-75;8:45 am]

PART 33—SPORT FISHING

Audubon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective November 13, 1975.

§ 33.5 Special regulations; sport fishing, for individual wildlife refuge areas.

NORTH DAKOTA

AUDUBON NATIONAL WILDLIFE REFUGE

Lake Audubon within Audubon National Wildlife Refuge is open to all fishing December 15, 1975 through March 28, 1976 and is closed from March 29 through December 14, 1976.

Sport fishing on the Audubon National Wildlife Refuge, Coleharbor, North Dakota is permitted on all water areas throughout the refuge. The water area, comprising 5,900 acres is delineated on maps available at refuge headquarters or at the office of the Area Manager, U.S. Fish and Wildlife Service, Bismarck, North Dakota 58501.

Sport fishing shall be in accordance with all applicable State regulations.

The provision of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 14, 1976.

DAVID C. MCGLAUCHLIN,
Refuse Manager, Audubon National Wildlife Refuge, Coleharbor, North Dakota 58531.

NOVEMBER 10, 1975.

[FR Doc.75-31097 Filed 11-17-75;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Federal Maritime Commission

Section 213.3367 is amended to show that one position of Confidential Assistant to the Chairman is excepted under Schedule C.

Effective November 18, 1975. Section 213.3367(c) is added as set out below:

§ 213.3367 Federal Maritime Commission.

* * * * *

(c) One Confidential Assistant to the Chairman.

(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.75-31311 Filed 11-17-75;9:30 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 20]

FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

Proposed Establishment of New Part

NOVEMBER 7, 1975.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

Notice is hereby given that it is proposed to add a new Part 20 to Subchapter D, Chapter I, of Title 25 of the Code of Federal Regulations. This addition is proposed pursuant to the authority contained in 25 U.S.C. 13.

The purpose of this addition is to set forth the regulations under which financial assistance and social services program will be made available to eligible Indians and Alaska Natives.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Director, Office of Indian Services, Bureau of Indian Affairs, Washington, D.C. 20245, on or before December 17, 1975.

It is proposed to add Part 20 to Subchapter D, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAM

Subpart A—Purpose and Definitions

Sec.

20.1 Definitions.
20.2 Purpose.
20.3 Policy.

Subpart B—Application Procedures

20.10 Application for assistance or services.
20.11 Securing information.
20.12 Decision.
20.13 Written notice.
20.14 Adjusting incorrect payments.

Subpart C—Eligibility Conditions

20.20 General.
20.21 General assistance.
20.22 Child welfare assistance.
20.23 Miscellaneous assistance.
20.24 Family and community services.
20.25 Consultation with tribes.

Subpart D—Appeals and Waivers

20.30 Hearings and appeals.
20.31 Waivers or exceptions.

AUTHORITY: 25 U.S.C. 13.

Subpart A—Purpose and Definitions

§ 20.1 Definitions.

As used in this Part:

(a) "Appeal" means the process of making a written request for correction of an action or decision claimed to violate a person's legal right or privileges as provided in 25 CFR Part 2.

(b) "Applicant" means an individual or persons on whose behalf an application has been made under this Part.

(c) "Application" means the process through which a request is made for services.

(d) "Area Director" means the Bureau official in charge of an Area Office.

(e) "Bureau" means the Bureau of Indian Affairs, United States Department of the Interior.

(f) "Child" means a person who is in gestation or under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage shall be deemed a child.

(g) "Child welfare assistance" means financial assistance provided on behalf of an Indian child, or an Indian under age 22 if assistance was initiated before age 18, whose special needs require placement in a foster home or specialized non-medical care facility; or provided when a child has special needs or, requires special services not available under general assistance in accordance with standards of payments established by the State pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620).

(h) "Commissioner" means the Commissioner of Indian Affairs.

(i) "Family and community services" means social services, including protective services, not involving money payment, usually provided through the social work skills of casework, group work or community development to solve social problems involving children, adults or communities.

(j) "Foster care service" means those social services provided when an Indian child lives away from the family home.

(k) "General assistance" means financial assistance as determined by the applicant's need less resources.

(l) "Indian" means any person who is a member, or a ¼ degree blood quantum descendant of a member, of any Indian tribe.

(m) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is federally recognized as eligible by the United States Government for the special programs and services provided by the Secretary to Indians because of their status as Indians.

(n) "Miscellaneous assistance" means a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other costs not defined in this Part but related to services for needy Indians.

(o) "Near reservation" means those areas or communities adjacent or contiguous to reservations which are recommended to the Commissioner by the local Bureau Superintendent in consultation with the tribal governing body of those reservations as locales appropriate for the extension of financial assistance and/or social services, based upon such general criteria as: (1) Number of Indian people native to the reservation residing in the area, (2) a designation by the tribal governing body that their members residing in the area are socially and economically affiliated with their respective tribe, (3) geographical proximity of the area to the reservation, and (4) administrative feasibility of providing an adequate level of services to the area. The Commissioner shall designate each area and publish the designations in the FEDERAL REGISTER.

(p) "Need" means the deficit between resources and money amounts necessary to meet the cost of basic items and/or special items by the applicant as established pursuant to the Social Security Act by the public welfare agency of the state in which the Indian resides and which shall be used by the Bureau in determining the amount of financial assistance to be provided to Indians residing in that state.

(q) "Public assistance" means those programs of assistance provided under Title IV of the Social Security Act (49 Stat. 620), as amended.

(r) "Recipient" means an individual or persons who have been determined eligible and are receiving financial assistance or services under this Part.

(s) "Reservation" means any Federally recognized Indian reservation, Indian trust land, public domain Indian allotment, the State of Alaska, and traditional Indian country in the State of Oklahoma.

(t) "Resources" means income or services available to an Indian person or family unless excluded by Federal statute for public assistance or Supplemental Security Income from being considered as income for the purpose of determining financial assistance.

(u) "Secretary" means the Secretary of the Interior.

(v) "Superintendent" means the Bureau official in charge of an agency office.

(w) "Supplemental Security Income" means those programs of assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

(x) "Traditional Indian country" means the State of Oklahoma except Oklahoma City and Tulsa.

§ 20.2 Purpose.

The regulations in this Part govern the provision of general assistance, child welfare assistance, miscellaneous assistance and family and community services to eligible Indians.

§ 20.3 Policy.

When assistance or services are not available or not being provided by state, local, or other agencies, general assistance, child welfare assistance, miscellaneous assistance and family and community services shall be provided for eligible Indians by the Bureau in a manner designed to promote personal and family unity and economic and social stability, working toward attainment of self-sufficiency.

Subpart B—Application Procedures

§ 20.10 Application for assistance or services.

(a) Written application by or on behalf of any individual or group will be accepted for assistance or services under this Part. In addition to applications from Indians desiring assistance or services, referrals will be accepted directly from relatives, interested individuals, social welfare agencies, law enforcement agencies, courts and others.

(b) Applications for assistance or services under this Part shall be made to the Superintendent or his designated representative.

§ 20.11 Securing information.

The applicants will be given an opportunity to present pertinent information regarding their circumstances. If it is necessary to secure information from other sources, the applicant will be asked to authorize the release of information. The applicant will be informed in advance of the kinds of information to be sought, the sources to be used, and that the information obtained will be used only in connection with the application for assistance or services under this Part.

§ 20.12 Decision.

Upon receipt of an application for assistance or services under this Part, the Superintendent will insure that:

(a) The application is promptly considered.

(b) A decision is made on whether the applicant meets the appropriate eligibility criteria given in Subpart C of this Part for the type of assistance requested.

(c) The financial assistance or services are provided as required to meet the needs of eligible applicants and recipients.

§ 20.13 Written notice.

Written notice of a decision will be provided to all applicants for financial assistance under this Part, including the reasons therefor. This written notice of a decision shall advise the applicant as to the right of appeal under § 20.30. A written notice of approval for financial assistance shall advise the recipient of his or her responsibility to report changes in his or her circumstances.

§ 20.14 Adjusting incorrect payments.

(a) When the Bureau finds that an incorrect payment of financial assistance has been made to an individual or family, proper adjustment or recovery shall be required, as appropriate to the circumstances that resulted in an incorrect payment.

(b) Applicants who knowingly and willfully provide the Bureau false, fictitious or fraudulent information are subject to a fine of not more than $10,000 or imprisonment for not more than five years, or both. (18 U.S.C. § 1001)

Subpart C—Eligibility Conditions

§ 20.20 General.

(a) Basic eligibility conditions shall be:

(1) The applicant must be an Indian, except that in the States of Alaska and Oklahoma a one-quarter degree Indian or Native blood quantum will be an additional eligibility requirement; and

(2) The applicant must reside on a reservation; or

(3) The applicant must reside near reservation and be a member of the tribe or tribes located on that reservation.

(b) The applicant must further meet the additional eligibility conditions for each of the specific programs of assistance or services as set forth in §§ 20.21 through 20.24 in order to be eligible for assistance under that program.

§ 20.21 General assistance.

Indians meetings the requirements prescribed in § 20.20(a) shall be considered eligible for general assistance under this Part provided that:

(a) Their resources do not meet their need.

(b) They do not receive and are not eligible to receive public assistance or Supplemental Security Income payments and are not included in such payments made to others. However, otherwise eligible Indians may receive general assistance under this Part upon application for and pending initial receipt of such payments.

(c) They reside in areas where general assistance is not available to all residents no the same basis from a State, county, or local public jurisdiction.

(d) They seek and accept available employment which they are able and qualified to perform.

§ 20.22 Child welfare assistance.

An Indian child meeting the requirements prescribed in § 20.20(a) shall be considered eligible for child welfare assistance or services under this Part provided that:

(a) The child's legally responsible parent or guardian:

(1) Is unable to provide necessary care and guidance for the child in the home and is unable to meet the cost of foster care, or

(2) Is unable to provide for the child's special needs which cannot be met through other assistance programs including the Bureau's general assistance program.

(b) The child is not receiving and is not eligible to receive public assistance or Supplemental Security Income payments and is not included in such payments made to others. However, an otherwise eligible child may receive child welfare assistance under this Part upon application for and pending initial receipt of such payments.

§ 20.23 Miscellaneous assistance.

In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians under the criteria set out in §20.20(a).

§ 20.24 Family and community services.

(a) Family and community services shall be provided for Indians who meet the criteria set out in § 20.20(a) who request such services or on whose behalf such services are requested.

(b) Family and community services may include, but are not limited to, the following:

(1) Family and individual counseling to assist in solving problems related to family functioning, housekeeping practices, care and supervision of children, interpersonal relationships, economic opportunity, money management, and problems related to illness, physical or mental handicaps, drug abuse, alcoholism and violation of law.

(2) Protection services which are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally retarded, physically handicapped or otherwise seriously disabled, and for children who have run away from home. Such services include but are not limited to the following:

(i) Response to requests from members of the community in behalf of children or adults alleged to need protective services.

(ii) Family supplemental services, including referral for homemaker and day care services, and which appropriately divert children from the juvenile justice system.

(iii) Assistance to responsible family members or guardians to seek appropriate court protections for the child or adult and, in the absence of such

responsible adult, to seek the appointment of a guardian.

(iv) Response to requests by a Court of Indian Offenses or tribal court for evaluation of alleged neglect, exploitation, or other disability, for planning treatment and, as appropriate, provide treatment of the causes of the condition.

(3) Probation services which are provided when after an adjudication of delinquency by a Court of Indian Offenses or tribal court, the child or youth is placed on probation and permitted to remain in the family home under supervision. Such services may include but are not limited to:

(i) Evaluation of alleged deliquency reported by members of the community and reporting for consideration, by the Court of Indian Offenses or tribal court, those children or youth who appear to come under the jurisdiction of the court.

(ii) Recommendation of a plan for the court's disposition of the case.

(iii) Supervision of the probation including recommendations for return to the court for violation of probation or for termination of probation.

(4) Foster care services for children which shall be provided when an Indian child is a recipient of child welfare assistance under § 20.22 of this Part and services are not available from another source, and may be provided as needed for an Indian child living away from its parent(s) in the absence of a child welfare assistance payment. Such services shall include but are not limited to:

(i) Determination that foster care is the best available plan for the child.

(ii) Development of an immediate and long range plan to establish a more stable emotional and social life for the child and its family, including referral of the child for adoption when indicated.

(iii) Assistance in the recruitment and development of suitable foster homes and other foster care facilities.

(iv) Assistance to responsible family members, or at the request of an Indian court, in the selection of a suitable foster care facility and a continued evaluation of the suitability of the facility.

(v) Assistance in the placement of an Indian child for long or short term foster care suited to his needs and to review the plan periodically.

(vi) Assistance to parent(s), foster parent(s), or other caretaker(s) to provide care and guidance for the child in foster care.

(5) Foster care services for adults which shall be provided when a general assistance payment under § 20.21 is made for their care in a foster care facility, or when needed in the absence of a general assistance payment. The services may include but are not limited to:

(i) Arranging for care in a private family home, or a facility for the care of the aged or disabled except where the primary service provided by the facility is medical.

(ii) Assistance to responsible family members, guardians, or at the request of an Indian court, in selecting a facility which will provide needed care.

(iii) Assistance with providing for continuity with family and community ties.

(iv) Assistance with the continual evaluation of the suitability of the selected care facility, including referral for other care as indicated.

(6) Community services which are services involving other groups, agencies, and facilities in the community may include but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens.

(ii) Treatment of the identified conditions that are within the competence of social services.

(iii) Maintenance of liaisonship with other community agencies for the purpose of:

(A) Identifying the availability of services that may be brought to bear on the social problems of individuals, families and children.

(B) Facilitating the use of available community services by Indian persons who need them.

§ 20.25 Consultation with tribes.

Bureau personnel shall provide consultation and adivce to tribal entities, including Courts of Indian Offenses and tribal courts, seeking to organize their community services to meet more effectively the social welfare needs of their members.

Subpart D—Appeals and Waivers

§ 20.30 Hearings and appeals.

Any applicant for or recipient of financial assistance under this Part who is adversely affected by any decision or action concerning eligibility or assistance provided may appeal and request a hearing before the Superintendent or his designated representative with privilege of counsel at no cost to the Bureau of Indian Affairs. If adversely affected by a decision made as a result of the hearing, the applicant may appeal to the Area Director and to subsequent levels of authority within the Bureau of Indian Affairs in accordance with procedures for appeals from administrative actions prescribed in 25 CFR Part 2.

§ 20.31 Waivers or exceptions.

The regulations in this Part shall not be deemed exhaustive of the authority of the Commissioner, and waiver of or exception to the regulations in this Part may be made upon a finding by the Commissioner that such waiver or exception is justified by circumstances not contemplated by these rules and that such action is desirable to carry out the purpose of 25 CFR 1.2.

(Catalog of Federal Domestic Assistance Programs No. 15.103, Indian Social Services—Child Welfare Assistance; No. 15.113 Indian Social Services—General Assistance; No. 15.132 Indian Social Services—Counseling.)

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.75-31092 Filed 11-17-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1036]

[Docket No. AO-179-A42]

MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Notice is hereby given of a public hearing to be held on December 3, 1975, at the Sheraton-Hopkins Motor Inn, 5300 Riverside Drive, Cleveland, Ohio (located at Cleveland-Hopkins International Airport) beginning at 10:00 a.m., with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order. In this regard, it should be noted that consideration of Proposal No. 1 may necessarily encompass a review of the order's schedule of payment dates to determine if such schedule is compatible with the proposed application of charges on overdue accounts.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY DAIRYLEA COOPERATIVE INC.

Proposal No. 1—Amend § 1036.78, Charges on overdue accounts, to read: Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1036.71, 1036.72, 1036.77, 1036.85 and 1036.86 shall be increased one percent effective the day following the due date of such obligation, and an additional one percent on the net obligation on the due date of each month thereafter until such obligation is paid.

PROPOSED BY THE DAIRY DIVISION, AGRICULTURAL MARKETING SERVICE

Proposal No. 2—Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, P.O. Box 30128, Cleveland, Ohio, 44130, or from the Hearing Clerk, Room 112-A, Administration Building,

United States Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on: November 14, 1975.

DONALD E. WILKINSON,
Administrator.

[FR Doc.75-31281 Filed 11-17-75;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 75-WE-53-AD]

AIRWORTHINESS DIRECTIVES

Douglas Model DC-10 Series Airplanes Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Douglas DC-10 Series airplanes incorporating Bertea Corporation P/N 216051 elevator actuator manifold assemblies. There have been two instances of single (inboard) elevator surfaces travelling to the extreme trailing edge up position (split elevators) and jamming in that position on Douglas Model DC-10 Series airplanes. Interference can exist between the internal control linkage and the manifold when the linkage is moved towards the actuator retract position, due to extreme tolerance conditions in certain manifold assemblies which occur during manufacturing. Since this condition is likely to exist or develop in other airplanes of the same type, the proposed airworthiness directive would require inspection of the Bertea P/N 216051 actuator manifold assemblies, and rework if required, in accordance with Bertea Service Bulletin No. 27-48, Revision 1.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. All communications received on or before December 22, 1975 will be considered by the agency before taking action upon the proposed rule. The proposals contained in the notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

This amendment is proposed 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, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

MCDONNELL DOUGLAS. Applies to all Douglas Model DC-10-10, -10F, -30, -30F, and -40 Series airplanes, certificated in all categories, incorporating Bertea Corporation P/N 216051 elevator actuator manifold assemblies with serial numbers 240 to 500, inclusive.

Compliance required within the next 1500 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent jamming of inboard elevator surfaces accomplish the following:

(a) Inspect the inboard eelvator actuator manifold assemblies for interference between the internal control linkage and the manifold, and rework if required, in accordance with Bertea Service Bulletin No. 27-48, Revision 1, dated October 9, 1975, or later FAA-approved revisions, or an equivalent inspection and rework procedure approved by the Chief, Aircraft Engineering Division, FAA Western Region. (Douglas Service Bulletin No. 27-141, dated October 10, 1975, calls attention to the Bertea service bulletin).

(b) Special flight permits may be issued per FAR's 21.197 and 21.199 to operate airplanes to a base for the accomplishment of maintenance required by this AD.

Issued in Los Angeles, California on November 7, 1975.

ROBERT H. STANTON,
Director, FAA Western Region.

[FR Doc.75-31023 Filed 11-17-75;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 75-NE-29]

ALTERATION OF TRANSITION AREA

Proposed Rule Making

Correction

In FR Doc. 75-29269 appearing at page 50726 in the issue for Friday, October 31, 1975, make the following changes:

1. On page 50727, the first column, the first complete paragraph, the fifth line, the figures "809" should read "800".

2. On the same page, the middle column:

a. The heading after the first paragraph should read:

PORTLAND, MAINE, TRANSITION AREA

b. The material in smaller print, the fifth line from the bottom which presently reads "longitude 69°57'0" W., then counterclock-" should read "longitude 69°57'00" W., then counterlock-".

[14 CFR Part 75]

[Airspace Docket No. 75-WA-20]

ALTERATION OF AREA HIGH ROUTE

Proposed Rule Making

Correction

In FR Doc. 75-30195 appearing at page 52409 in the issue for Monday, November 10, 1975, change the longitudinal reading in the third line of the fourth paragraph which reads 190°27'6" to read: "109°27'26"."

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Chapter 1]

COMMODITY OPTIONS

Temporary Regulations

Correction

In FR Doc 75-28432 appearing at page 49360 in the issue of Wednesday, October 22, 1975, the first and second complete paragraphs in the second column on page 49360 are part of footnote 3 and should be transferred to appear below the last line of footnote 3 reading, "modity for future delivery. . . ."

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 85]

[FRL 437-7]

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Emission Regulations for New Motorcycles

Correction

In FR Doc. 75-28178, appearing at page 49496, in the issue for Wednesday, October 22, 1975, as corrected at page 52415, in the issue for Monday, November 10, 1975, make the following change:

On page 52415, in the paragraph designated "6", the corrected equations should be transposed to read as follows:

6. On page 49509, in the third column, the equations should read as follows:

a. In § 85.478-23(a)(6)(vii):

$$\text{Percent efficiency} = [(v)-(iv)]/[(vi)-(iv)] \times 100 \text{ percent} \quad (A)$$

b. In § 85.478-23(a)(6)(viii):

$$\text{Percent efficiency} = [1+(v-vi)/(iii-iv)] \times 100 \text{ percent} \quad (A)$$

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 76]

[Docket No. 20496]

CABLE TELEVISION SYSTEM

Order Extending Time Regarding Signal Strength Contours

In the matter of amendment of Part 76 of the Commission's Rules and Regulations to modify or eliminate the use of signal strength contours for purposes of cable television system regulation.

1. The Commission has before it a motion in the above-captioned proceeding filed by Kaiser Broadcasting Company requesting that the Commission hold said rule making proceeding in abeyance or, in the alternative, extend for a period of sixty days the time for filing comments.[1]

2. As justification for its request, petitioner references the Commission's recently adopted Order specifying the contour prediction showings it would accept in required filings, contested cases, and in the application of its rule.[2] In this Order the Commission suspended the use of the terrain roughness correcting factor[3] for the filing of predicted signal strength contours and indicated that in the interim prima facie weight would be given to contours calculated form the newly modified propagation curves[4] absent correction for terrain roughness. The Commission stated that such a suspension for a period of six months would afford the time necessary for further study and ultimate resolution of the terrain roughness problem. Petitioner notes that the captioned proceeding is intended (1) to assess the impact of the new predicted contours on the rights and obligations of television broadcast stations and cable television systems in the context of the cable television regulations found in Part 76 of the Commission's Rules, and (2) to examine the propriety of substituting fixed mileage zones for contours in any or all of those cable television rules now referencing signal strength contours. In view of the above, petitioner contends that our recent Order has resulted in a significant change of circumstance that mandates either a suspension of the subject rule making proceeding or at least an extension of the time for filing comments. Petitioner states that it had planned to file evidentiary data based on the Commission's original contour prediction decision[5] which had required that contour calculations be made using both the new propagation curves and the terrain roughness factor, and that even if the Commission decides against deferring further comment or action in the captioned rule making proceeding, there is clearly inadequate time to have its study redone and to assess the impact of these changes on the issues set forth for comment.[6] While asking for an extension of sixty days for the filing of comments, petitioner, as noted above, also requests, in the alternative, that the Commission suspend the subject proceeding until the terrain roughness issue is resolved.

3. Because of the Commission's recent action concerning the use of the terrain roughness factor in predicting contour locations, it appears appropriate to grant an extension of time in this proceeding adequate to allow parties to consider the implications of possible changes in that area before commenting in this proceeding. For this purpose the comment and reply dates will be extended to December 15, 1975 and January 12, 1976, respectively. An indefinite extension would not appear to be appropriate in view of the extended time that may be required to resolve the terrain roughness question. And whatever the outcome of that consideration, it would appear that the problems prompting the issuance of the Notice in this proceeding will continue to exist.

Accordingly, *it is ordered*, That the dates for filing comments and replies in the above-captioned proceeding are extended to December 15, 1975 and January 12, 1976, respectively.

This action is taken by the Chief, Cable Television Bureau, pursuant to authority delegated by § 0.288(a) of the Commission's Rules.

Adopted: November 5, 1975.

Released: November 7, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] DAVID D. KINLEY,
Chief, Cable Television Bureau.

[FR Doc.75-31112 Filed 11-17-75;8:45 am]

[1] Kaiser states that counsel for Storer Broadcasting Company and Metromedia join Kaiser in these alternative requests.

[2] FCC 75 ——, —— FCC 2d —— (1975).

[3] See *e.g.* §§ 73.684 (h), (i), (j), (k), and (l) of the Commission's Rules.

[4] See *Report and Order in Dockets 16004 and 18052*, FCC 75-636, 53 FCC 2d 855 (1975).

[5] *Id.*

[6] Petitioner notes that the Commission announcement of its terrain roughness action was issued less than seven days prior to the November 10, 1975 comment due date established in this proceeding. Hence, petitioner seeks waiver of § 1.46 of the Commission's Rules which requires that motions for extensions of time in the filing of rule making comments be submitted at least seven days prior to the date set for the comments' receipt.

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Definition of Small Business for Purpose of Sales of Government Timber

Pursuant to a notice published in the FEDERAL REGISTER on July 31, 1975 (40 FR 32142), the Small Business Administration held public hearings at 9 a.m., on August 28, and September 4, 1975, respectively, in Portland, Oregon, and Atlanta, Georgia, on the question whether the currently effective 500-employee size standard applicable to sales of Government timber should be raised, lowered, or left at 500 employees.

The hearings were well-attended and various points of view were ably presented. Thereafter, the public was given until September 22, 1975, to submit additional data, evidence, and arguments in writing for inclusion in the record. Copies of the transcripts of both hearings and material submitted in connection therewith were made available, and are still available, for review in the Small Business Administration San Francisco, Seattle, and Atlanta Regional Offices, the Portland District Office, and in the Washington Central Office.

On the basis of all of the evidence submitted, the hearing panel has recommended to the Administrator of the Small Business Administration that the currently effective 500-employee size standard should be retained, and the Administrator has determined to adopt the panel's recommendation. The basis for the recommendation is as follows:

Careful consideration has been given both to the argument that the standard should be increased and the argument that the standard should be reduced. As for the former, it is conceded that the six to ten concerns which apparently now exist in the industry with employment somewhat in excess of 500 persons are relatively small with respect to the giants of the industry. However, this situation exists under the size standards for many industries in which there are very large concerns. For example, there are giant concerns in the petroleum refining industry, and, yet, we have just promulgated a size standard for such industry of 50,000 barrels per day capacity and, under such limitations, small refineries account for only about 7.8 percent of the total U.S. refining capacity.

In deciding where to establish a standard, we must consider not only the competitive position of companies of a particular size with respect to their larger competitors, but also must consider their position with respect to their smaller competitiors. In the case at hand, we have concluded that, generally speaking, concerns with under 500 employees need the protection of the set-aside program not only from the industry giants, but also from concerns with between 500 to 1,000 employees, even though there are a limited number of such somewhat larger concerns.

We recognize that when a single size standard is used on a national basis there probably will be particular instances of inequity. However, we do not deem it to be in the best interest of the standards program as a whole to attempt to maintain separate standards on a geographic or market basis.

As for the argument that the standard should be lowered, it is conceded that the current standard includes as small a very high percentage of the total number of concerns in the industry. However, this also is not unusual. Most of the industry size standards include 90 to 98 percent of the concerns in the industry. The problem is to decide what size concern needs the assistance of the program involved. We know of no specific method for determining the answer to the question. It simply is a matter of judgment.

In the instant case, it is our judgment that, despite the fact that a 500-employee standard includes a high percentage of the concerns in terms of numbers, concerns with between 250 and 500 do need protection under the timber set-aside program and cannot reasonably be expected to compete for timber with concerns employing from 500 to several thousand people. Many small firms have fully integrated in order to remain competitive, and such firms, with plywood, logging, etc., operations often employ more than 250 employees. Further, compliance with Government regulations requires additional administrative personnel. Lowering the size standard would seriously affect the competitive viability of companies in such a situation.

Although not the compelling reason, there was also taken into account the need, in the event of either an upward or downward adjustment of the standard, for a complete recalculation of the "Base Average Share." It was concluded that such action would be very expensive, both in terms of man-hours and dollars, and that, in view of the state of the economy, this would not be an appropriate time to undertake such a project.

In the course of our inquiry, it was suggested that consideration be given to using "board-feet production" or "sales" as a standard rather than "number of employees." We do not rule this out as a possibility for the future; however, we still would have to make a judgment as to the size of a concern that needs protection and establish a standard which would identify the concerns we elect to consider eligible. It should here be noted that a board-feet standard, alone, would be unworkable. This is because concerns within such standard then would qualify even if owned by the leading concern in another industry. Obviously, it would not be appropriate for us to consider a sawmill owned by a large conglomerate to be a small business concern; thus the need for a standard in terms of total employment or total receipts.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Businesses)

Dated: November 10, 1975.

LOUIS F. LAUN,
Acting Administrator.

[FR Doc.75-31090 Filed 11-17-75;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.

[PUBLIC NOTICE: CM-5/126]

DEPARTMENT OF STATE

ADVISORY PANEL ON INTERNATIONAL LAW

Notice of Partially Closed Meeting

In accordance with Section 10(d) of the Federal Advisory Committee Act, notice is given that the Advisory Panel on International Law to the Legal Adviser of the Department of State will meet at 10:00 a.m. and at 3:00 p.m., on Friday, December 12, 1975, in Room 1207 of the Department of State. The 3:00 p.m. meeting will be open to the public, but the 10:00 a.m. meeting will not be open.

Topics to be discussed at the 3:00 p.m. meeting include the proposed sovereign immunity legislation, developments affecting the act of state doctrine, and questions relating to executive agreements.

The 10:00 a.m. meeting will be devoted to a discussion of executive agreements, their international and domestic legal effect, and what types of documents constitute executive agreements. Various types of intergovernmental communications will be considered. The discussion will necessarily involve classified national security information relating to executive agreements, disclosure of which would adversely affect United States foreign policy with other countries. As it has been determined that the meeting will involve discussion of material exempt from public disclosure under 5 U.S.C. 552(b)(1) and that the public interest requires that such discussions be withheld from disclosure, the meeting will not be open to the public.

MONROE LEIGH,
Legal Adviser.

NOVEMBER 11, 1975.

[FR Doc.75-31102 Filed 11-17-75;8:45 am]

[Public Notice: CM-5/124]

STUDY GROUP 4 OF THE U.S. NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR)

Notice of Meeting

The Department of State announces that Study Group 4 of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on December 3, 1975, at 10:00 a.m. in the First Floor Auditorium of the Comsat Building, 950 L'Enfant Plaza, S.W., Washington, D.C.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The main items of the agenda for the meeting on December 3 are:

a. Review of preparatory work for the international meeting of CCIR Study Group 4 in 1976;

b. Report on work under way or planned in support of U.S. preparations for the 1979 World General Administrative Radio Conference.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

DEXTER ANDERSON,
Executive Secretary,
U.S. CCIR National Committee.

NOVEMBER 10, 1975.

[FR Doc.75-31100 Filed 11-17-75;8:45 am]

[Public Notice: CM-5/125]

U.S. ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Notice of Meeting

The United States Advisory Commission on International Educational and Cultural Affairs will meet in open session on Thursday, December 11, 1975, in Room 6320 of the Main State Department Building, 2201 C Street NW. It is expected that the meeting will run from 9:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m.

The meeting will take the form of a symposium at which cultural leaders invited by the Commission will discuss with Commission members ways in which the private sector can help to implement the provisions of the Final Act of the Conference on Security and Cooperation in Europe which relate to international educational and cultural exchange: i.e. the so-called "Basket III" recommendations.

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 Staff Director by telephone in advance of the meeting. Telephone (202) 632-2764. Members of the public will be accompanied up to the seating capacity of the meeting room.

W. E. WELD, Jr.,
Staff Director,
Commission Secretariat.

NOVEMBER 10, 1975.

[FR Doc.75-31101 Filed 11-17-75;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

PRIVATE SCHOOLS

Revenue Procedure

By a notice of a proposed Revenue Procedure appearing in the FEDERAL REGISTER for February 18, 1975 (40 FR 6991), a Revenue Procedure was proposed setting forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption under sections 501 (a) and 501 (c)(3) of the Internal Revenue Code of 1954, or are presently exempt from tax, have racially nondiscriminatory policies as to students.

Finalization of revenue procedure. After consideration of the comments received from the public and all such relevant matters as was presented by interested persons regarding the proposed guidelines, the revenue procedure, as proposed, is hereby finalized with changes as set forth below.

DONALD C. ALEXANDER,
Commissioner of
Internal Revenue.

PART III. ADMINISTRATIVE, PROCEDURAL AND MISCELLANEOUS

26 CFR 601.201: Rulings and determination letters. (Also Part I, Section 501; 1.501(c)(3)-1.)

Revised Proceedings 75-50 [1]

SECTION 1. *Purpose.*

.01 This Revenue Procedure sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students.

SEC. 2. *Background.*

.01 A school that does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from Federal income tax. Rev. Rul. 71-447, 1971-2 C.B. 230.

.02 A school must show affirmatively both that it has adopted a racially nondiscriminatory policy as to students that is made known to the genaral public and that since the adoption of that policy it has operated in a bona fide manner in accordance therewith.

[1] Also released as TIR-1417, dated November 6, 1975.

.03 Internal Revenue Service experience with private schools has shown a need for more specific guidelines to insure a uniform approach to the determination of whether a private school has a racially nondiscriminatory policy as to students.

.04 This Revenue Procedure does not apply to public schools.

SEC. 3. *Definitions.*

.01 Rev. Rul. 71-447 states that a racially nondiscriminatory policy as to students means the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

.02 The Service considers discrimination on the basis of race to include discrimination on the basis of color and national or ethnic origin. A policy of a school that favors racial minority groups with respect to admissions, facilities and programs, and financial assistance will not constitute discrimination on the basis of race when the purpose and effect is to promote the establishment and maintenance of that school's racially nondiscriminatory policy as to students.

.03 A school that selects students on the basis of membership in a religious denomination or unit thereof will not be deemed to have a discriminatory policy if membership in the denomination or unit is open to all on a racially nondiscriminatory basis.

.04 For purposes of this revenue procedure, the term "school" has the same meaning it has in section 170(b)(1)(A)(ii) of the Code.

SEC. 4. *Guidelines.*

.01 *Organizational requirements.* A school must include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin.

.02 *Statement of Policy.* Every school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships. A statement substantially similar to the Notice described in subsection (a) of section 4.03, *infra*, will be acceptable for this purpose. Further, every school must include a reference to its racially nondiscriminatory policy in other written advertising that it uses as a means of informing prospective students of its programs. The following reference will be acceptable:

The M school admits students of any race, color, and national or ethnic origin.

.03 *Publicity.* The school must make its racially nondiscriminatory policy known to all segments of the general community served by the school.

1. The school must use one of the following two methods to satisfy this requirement:

(a) The school may publish a notice of its racially nondiscriminatory policy in a newspaper of general circulation that serves all racial segments of the community. This publication must be repeated at least once annually during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. Where more than one community is served by a school, the school may publish its notice in those newspapers that are reasonably likely to be read by all racial segments of the communities that it serves. The notice must appear in a section of the newspaper likely to be read by prospective students and their families and it must occupy at least three column inches. It must be captioned in at least 12 point bold face type as a notice of nondiscriminatory policy as to students, and its text must be printed in at least 8 point type. The following notice will be acceptable:

NOTICE OF NONDISCRIMINATORY POLICY AS TO STUDENTS

The M school admits students of any race, color, national and ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students at the school. It does not discriminate on the basis of race, color, national and ethnic origin in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

(b) The school may use the broadcast media to publicize its racially nondiscriminatory policy if this use makes such nondiscriminatory policy known to all segments of the general community the school serves. If this method is chosen, the school must provide documentation that the means by which this policy was communicated to all segments of the general community was reasonably expected to be effective. In this case, appropriate documentation would include copies of the tapes or script used and records showing that there was an adequate number of announcements, that they were made during hours when the announcements were likely to be communicated to all segments of the general community, that they were of sufficient duration to convey the message clearly, and that they were broadcast on radio or television stations likely to be listened to by substantial numbers of members of all racial segments of the general community. Announcements must be made during the period of the school's solicitation for students or, in the absence of a solicitation program, during the school's registration period. Communication of a racially nondiscriminatory policy as to students by a school to leaders of racial groups as the sole means of publicity generally will not be considered effective to make the policy known to all segments of the community.

2. The requirements of subsection 1 of this section will not apply when one of the following paragraphs applies:

(a) If for the preceding three years the enrollment of a parochial or other church-related school consists of students at least 75 percent of whom are members of the sponsoring religious denomination or unit, the school may make known its racially nondiscriminatory policy in whatever newspapers or circulars the religious denomination or unit utilizes in the communities from which the students are drawn. These newspapers and circulars may be those distributed by a particular religious denomination or unit or by an association that represents a number of religious organizations of the same denomination. If, however, the school advertises in newspapers of general circulation in the community or communities from which its students are drawn and paragraphs (b) and (c) of this subsection are not applicable to it, then it must comply with paragraph (a) of subsection 1 of this section.

(b) If a school customarily draws a substantial percentage of its students nationwide or worldwide or from a large geographic section or secitons of the United States and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, *supra*. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence either by showing that it currently enrolls students of racial minority groups in meaningful numbers or, when minority students are not enrolled in meaningful numbers, that its promotional activities and recruiting efforts in each geographic area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case.

(c) If a school customarily draws its students from local communities and follows a racially nondiscriminatory policy as to students, the publicity requirement may be satisfied by complying with section 4.02, *supra*. Such a school may demonstrate that it follows a racially nondiscriminatory policy within the meaning of the preceding sentence by showing that it currently enrolls students of racial minority groups in meaningful numbers. The question whether a school satisfies the preceding sentence will be determined on the basis of the facts and circumstances of each case. One of the facts and circumstances that the Service will consider is whether the school's promotional activities and recruiting efforts in each area were reasonably designed to inform students of all racial segments in the general communities within the area of the availability of the school. The Service recognizes that the failure by a school drawing its students from local communities to enroll racial minority group students may not necessarily indicate the absence of a racially nondiscriminatory policy as to students when there are relatively few

or no such students in these communities. Actual enrollment is, however, a meaningful indication of a racially nondiscriminatory policy in a community in which a public school or schools became subject to a desegregation order of a federal court or otherwise expressly became obligated to implement a desegregation plan under the terms of any written contract or other commitment to which any Federal agency was a party.

The Service encourages schools to satisfy the publicity requirement by the methods described in subsection 1 of this section, regardless of whether a school considers itself within subsection 2, because it believes these methods to be the most effective to make known a school's racially nondiscriminatory policy. In this regard it is each school's responsibility to determine whether paragraph (a), (b), or (c) of subsection 2 applies to it. On audit, a school must be prepared to demonstrate that the failure to publish its racially nondiscriminatory policy in accordance with subsection 1 of this section was justified by the application to it of paragraph (a), (b), or (c) of subsection 2. Further, a school must be prepared to demonstrate that it has publicly disavowed or repudiated any statements purported to have been made on its behalf (after the date this Revenue Procedure was issued as T.I.R. 1417) that are contrary to its publicity of a racially nondiscriminatory policy as to students, to the extent that the school or its principal officials were aware of such statements.

.04 *Facilities and Programs.* A school must be able to show that all of its programs and facilities are operated in a racially nondiscriminatory manner.

.05 *Scholarship and loan programs.* As a general rule, all scholarship or other comparable benefits procurable for use at any given school must be offered on a racially nondiscriminatory basis. Their availability on this basis must be known throughout the general community being served by the school and should be referred to in the publicity required by this section in order for that to be considered racially nondiscriminatory as to students. Consistent with section 3.02, *supra*, scholarships and loans that are made pursuant to financial assistance programs favoring members of one or more racial minority groups that are designed to promote a school's racially nondiscriminatory policy will not adversely affect the school's exempt status. Financial assistance programs favoring members of one or more racial groups that do not significantly derogate from the school's racially nondiscriminatory policy similarly will not adversely affect the school's exempt status.

.06 *Certification.* An individual authorized to take official action on behalf of a school that claims to be racially nondiscriminatory as to students must certify annually, under penalties of perjury, on an Internal Revenue form to be issued, that to the best of his knowledge and belief the school has satisfied the applicable requirements of sections 4.01 through 4.05 of this Revenue Procedure.

.07 *Faculty and Staff.* The existence of a racially discriminatory policy with respect to employment of faculty and administrative staff is indicative of a racially discriminatory policy as to students. Conversely, the absence of racial discrimination in employment of faculty and administrative staff is indicative of a racially nondiscriminatory policy as to students.

.08 *Failure to comply.* Failure to comply with the guidelines will ordinarily result in the proposed revocation of the exempt status of a school in accordance with the procedures set forth in Rev. Proc. 72-4, 1972-1 C.B. 706.

SEC. 5. Applications for tax exempt *status.*

.01 *Information required to be submitted.* Every school filing an application for recognition of a tax exempt status must supply the Service with the following information:

1. Racial composition, as of the current academic year and projected so far as may be feasible for the subsequent academic year, of—

(a) Student body, and

(b) Faculty and administrative staff.

2. Amount of scholarship and loan funds, if any, awarded to students enrolled and racial composition of students who have received such awards.

3. A listing of incorporators, founders, board members, and donors of land or buildings, whether individuals or organizations.

4. A statement whether any of the organizations described in subsection .01-3 of this section have at the time the application is filed an objective of maintaining segregated public or private school education and, if so, a statement whether any of the individuals described in subsection .01-3 of this section are officers or active members of such organizations at the time the application is filed.

5. Year of organization.

.02 *Limitations.*

1. For purposes of section 5.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily availble to the school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. However, a statement of the method by which the racial composition was determined must be supplied.

2. The information required to be submitted under section 5.01 should not identify individual students or members of the faculty and administraitve staff.

SEC. 6. *Public complaints of racial discrimination*

The Service is interested in receiving any information that an exempt private school is not operating under a racially nondiscriminatory policy as to students, including any judicial or administrative determination to this effect. This information may be sent to the local District Director of Internal Revenue or to the Commisisoner of Internal Revenue, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention E:EO.

SEC. 7. *Recordkeeping requirements.*

.01 *Specific records.* Except as provided in section 7.03, each exempt private school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, the following records for the use of the Service on proper request:

1. Records indicating the racial composition of the student body, faculty, and administrative staff for each academic year.

2. Records sufficient to document that scholarship and other financial assistance is awarded on a racially nondiscriminatory basis.

3. Copies of all brochures, catalogues, and advertising dealing with student admissions, programs, and scholarships. Schools advertising nationally or in a large geographic segment or segments of the United States need only maintain a record sufficient to indicate when and in what publications their advertisements were placed.

4. Copies of all materials used by or on behalf of the school to solicit contributions.

.02 *Limitation.*

1. For purposes of section 7.01, the racial composition of the student body, faculty, and administrative staff may be an estimate based on the best information readily available to the school, without requiring student applicants, students, faculty, or administrative staff to submit information to the school that the school otherwise does not require. For each academic year, however, a record of the method by which racial composition is determined must be maintained. A school may not discontinue maintaining a system of records that reflects racial composition of students, faculty, and administrative staff used on the date this Revenue Procedure was issued as T.I.R. 1417, unless it substitutes a different system that compiles substantially the same information, without the advance approval of the Internal Revenue Service.

2. The Service does not require that a school release personally identifiable records or personal information contained therein except in accordance with the requirements of the "Family Educational Rights and Privacy Act of 1974," 20 U.S.C. 1232g (1974). Similarly, the Service does not require a school to keep records the maintenance of which is prohibited under state or federal law.

.03 *Exceptions.* The records described in section 7.01 need not be independently maintained for Internal Revenue Service use if

1. Substantially the same information that each of these records would provide has been included in a report or reports filed in accordance with law with an agency or agencies of Federal, state, or local government, and this information is current within one year, and

2. The school maintains copies of these reports from which this information is readily obtainable. Records described in section 7.01 providing infor-

mation not included in reports filed with an agency or agencies must be maintained by the school for Service use.

.04 *Failure to maintain records.* Failure to maintain or to produce upon the proper request the required records and information will create a presumption that the organization has failed to comply with these guidelines.

SEC. 8. *Mississippi schools.*

The United States District Court for the District of Columbia has ordered specific guidelines and recordkeeping requirements for Mississippi private schools. *Green v. Connally*, 330 F. Supp. 1150, aff'd. *sub nom. Coit v. Green*, 404 U.S. 997 (1971). To the extent that the requirements of the Court's Order vary from the guidelines and recordkeeping requirements set forth in this Revenue Procedure, the Court's Order is controlling for Mississippi schools.

SEC. 9. *Effective date.*

.01 Section 4.02 is not applicable until February 4, 1976, ninety days after this Revenue Procedure was issued as T.I.R. 1417.

.02 To the extent that the publicity requirements set forth in section 4.03, *supra*, differ from those set forth in Rev. Proc. 72–54, 1972–2 C.B. 834, they shall not be effective until a school's first period of solicitation for students or, in the absence of a solicitation program during the school's first registration period beginning after November 6, 1975, the date that this Revenue Procedure was issued by the Service as T.I.R. 1417.

.03 The recordkeeping requirements set forth in section 7, *supra*, shall not be effective until January 1, 1976.

SEC. 10. *Effect on other documents.*

Rev. Proc. 72–54, 1972–2 C.B. 834, is superseded.

[FR Doc.75–31137 Filed 11–17–75;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

ARMED FORCES EPIDEMIOLOGICAL BOARD

Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

The Armed Forces Epidemiological Board will meet on 5 December in Room 3092 at the Walter Reed Army Institute of Research, Washington, D.C., from 0900 to 1630 hours. The proposed agenda includes reports from the Ad hoc Study Team on Cholinesterase Inhibitors and the Ad hoc Study Team on the Scope of Periodic Physical Examinations; a summary of the USAMRIID, USA MRDC planning session; reports from the Preventive Medicine Officers of the three services; consideration of Polio vaccine administration and hepatitis antigenemia in health-care personnel, and organizational matters.

This meeting is open to the public, but limited by space accommodations.

Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB in writing, prior to the meeting, at the following address: Executive Secretary, AFEB, Room 1B472 Pentagon, Washington, D.C. 20310.

DUANE G. ERICKSON,
LTC, MSC, USA,
Executive Secretary.

NOVEMBER 7, 1975.

[FR Doc.75–31018 Filed 11–17–75;8:45 am]

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 11, 1975.

The USAF Scientific Advisory Board ad hoc Committee on the Air Force Advanced ICBM Technology Program will hold meetings on December 11, 1975 from 9:00 a.m. to 5:00 p.m. in Room 4E343 and on December 12, 1975 from 8:30 a.m. to 5:00 p.m. in Room 5C1040, the Pentagon, Washington, D.C.

The Committee will receive classified briefings pertinent to the Air Force advanced ICBM programs. The Air Force and Navy advanced ICBM programs, the evaluation of ICBM guidance and control systems, mobility options and advanced ICBM concepts will be briefed. The Committee will hold classified discussions on the proposals and formulate recommendations.

The meetings concern matters listed in Section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly the meetings will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at 202–697–8404.

JAMES L. ELMER,
Major, USAF, Executive, Directorate of Administration.

[FR Doc.75–31089 Filed 11–17–75;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

NOVEMBER 10, 1975.

The USAF Scientific Advisory Board Ad Hoc Committee on Turbine Engines will hold a meeting on December 15, 1975 from 8:30 a.m. to 5:00 p.m. at the Pentagon, Washington, D.C.

The Committee will receive classified briefings and conduct classified discussions on current engine development programs.

This meeting concerns matter listed in section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and that accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

JAMES L. ELMER,
Major, USAF, Executive, Directorate of Administration.

[FR Doc.75–31090 Filed 11–17–75;8:45 am]

Department of the Army

WINTER NAVIGATION BOARD ON GREAT LAKES-ST. LAWRENCE SEAWAY

Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of a meeting of the Winter Navigation Board to be held on 20 January 1976 at the Host International Hotel at Detroit Metropolitan Airport in Romulus, Michigan. The meeting will be in session from 10:00 A.M. until 4:30 P.M.

The Winter Navigation Board is a multi-agency organization which includes representatives of Federal agencies and non-Federal public and private interests. It was established to direct the Great Lakes-St. Lawrence Seaway navigation season extension investigations being conducted pursuant to Public Law 91–611 and 93–251.

The primary purpose of the meeting is to discuss the completion of the presently authorized Great Lakes-St. Lawrence Seaway Winter Navigation Program. Other topics of discussion will include the St. Marys River ice navigation boom demonstration, operational plan for ice navigation boom test at Ogden Island in the St. Lawrence River, and the System Plan for All-Year Navigation in the St. Lawrence River (SPAN Study).

The meeting will be open to the public subject to the following limitations:

a. As the seating capacity of the meeting room is limited, it is desired that advance notice of intent to attend be provided. This will assure adequate and appropriate arrangements for all attendants.

b. Written statements, to be made part of the minutes, may be submitted prior to, or up to 10 days following the meeting, but oral participation by the public is precluded because of the time schedule.

Inquiries may be addressed to Mr. David Westheuser, U.S. Army Engineer District, Detroit, Corps of Engineers, P.O. Box 1027, Detroit, Michigan, 48231, telephone (313) 226–6770.

By authority of the Secretary of the Army:

Dated: November 12, 1975.

ROBERT G. FLOWERS, Jr.,
Lt. Colonel, U.S. Army,
Chief, Plans Office, TAGO.

[FR Doc.75–31019 Filed 11–17–75;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NEW ORLEANS OUTER CONTINENTAL SHELF OFFICE

Notice of Approval of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams approved on the dates indicated, are available, for information only, in the New Orleans Outer Continenal Shelf Office, Bureau of Land Management, New Orleans, Lou-

isiana. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Description: NI 18-7, NI 18-10.
Approval date: June 11, 1975, June 11, 1975.

2. Copies of these diagrams are for sale at two dollars ($2.00) per sheet by the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 3200, The Plaza Tower, 1001 Howard Avenue, New Orleans, Louisiana, 70113. Checks or Money Orders should be made payable to the Bureau of Land Management.

JOHN L. RANKIN,
Manager, New Orleans
Outer Continental Shelf Office.

[FR Doc.75-31011 Filed 11-17-75;8:45 am]

ARIZONA STRIP DISTRICT ADVISORY BOARD

Notice of Regular Meeting

Notice is hereby given that the Arizona Strip District Advisory Board will hold its Regular Meeting at 9 a.m. on January 8, 1976 at the Arizona Strip District Office, 196 East Tabernacle, St. George, Utah.

The Agenda will include District organization, the planning system, National Resource Defense Council Lawsuit, House Rock Valley selection by the Navajo Tribe, Non-Bureau Energy Initiated Programs, wildlife and recreation programs, and any other business that needs to come before the Board.

The meeting is open to the public insofar as seating is available. Persons interested in appearing before the Board may file a written statement with the District Manager for consideration by the Board.

GARTH M. COLTON,
District Manager.

NOVEMBER 11, 1975.

[FR Doc.75-31106 Filed 11-17-75;8:45 am]

[NM 26956]

NEW MEXICO

Notice of Application

NOVEMBER 11, 1975.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for a cathodic protection station right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 25 S., R. 12 W.,
Sec. 5, SW¼NW¼.

The cathodic protection station will occupy .735 acres of national resource lands in Luna County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1420, Las Cruces, [illegible] 88001.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.75-31094 Filed 11-17-75;8:45 am]

[NM 26957]

NEW MEXICO

Notice of Application

NOVEMBER 11, 1975.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½ inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 22 S., R. 24 E.,
Sec. 34, SW¼SE¼.
T. 23 S., R 24 E.,
Sec. 3, Lot 2, SW¼NE¼, SE¼NW¼ and NE¼SW¼.

These pipelines will convey natural gas across .793 mile of national resource lands in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, NM 88201.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.75-31095 Filed 11-17-75;8:45 am]

[NM 26955]

NEW MEXICO

Notice of Application

NOVEMBER 11, 1975.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185) as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½ inch natural gas pipeline right-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 8 W.,
Sec. 19, Lots 2 and 3.
T. 29 N., R. 9 W.,
Sec. 24, Lot 8.

This pipeline will convey natural gas across .472 mile of national resource lands in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, 3550 Pan American Freeway, NE, Albuquerque, NM 87107.

FRED E. PADILLA,
Chief, Branch of Lands
and Minerals Operations.

[FR Doc.75-31093 Filed 11-17-75;8:45 am]

OUTER CONTINENTAL SHELF OFFSHORE NORTHERN GULF OF ALASKA

Notice of Availability of Final Environmental Impact Statement Regarding Proposed Oil and Gas Lease Sale

OCTOBER 24, 1975.

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental impact statement relating to a proposed Outer Continental Shelf general oil and gas lease sale of 330 tracts of submerged lands on the Outer Continuental Shelf in the northern Gulf of Alaska.

Single copies of the final environmental statement can be obtained from the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the final environmental statement will also be available for public review in the main libraries in various coastal communities in the sale area.

FRANK H. EDWARDS,
Acting Associate Director,
Bureau of Land Management.

Approved: November 13, 1975.

STANLEY D. DOREMUS,
Deputy Assistant Secretary
of the Interior.

[FR Doc.75-31178 Filed 11-17-75;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

LONGLEAF ISLANDS UNIT PLAN

Notice of Availability of Final Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, Forest Service, Department of Agriculture, has preparaed a final environmental statement fo rthe Longleaf Islands Unit Plan, Ocala National Forest, Tallahassee, Florida, USDA-FS-R8-FES (Adm.) 75-11.

The management plan contains programmed actions for water, soils, recreation, timber, wildlife, range and aesthetics. The actions are directed toward maintainin gthe islands in a pleasant and natural condition and providing

open park-like space for dispersed recreation. In addition, a habitat will be developed and maintained which will support a readily harvestable population of quail.

The Longleaf Islands Unit Plan is a comprehensive management program for an 18,819-acre area on the Ocala National Forest. The unit is part of an 189,000-acre area currently managed by the Lake George Ranger District.

This final environmental statement was transmitted to CEQ November 10, 1975. Copies are available for inspection during regular working hours at the following locations:

U.S. Forest Service, South Agriculture Bldg., Rm. 3230, 12th St. and Independence Ave., SW, Washington, DC 20250.
USDA, Forest Service, 1720 Peachtree Rd., NW, Rm. 804, Atlanta, GA 30309.
USDA, Forest Service, Lake George Ranger District, P.O. Box 1206, Ocala, Fla. 32670.

A limited number of single copies are available upon request to Forest Supervisor Don Percival, National Forests in Florida, P.O. Box 1050, Tallahassee, Florida 32302.

DAVID F. JOLLY,
Regional Environmental Coordinator.

NOVEMBER 10, 1975.

[FR Doc.75-31105 Filed 11-17-75;8:45 am]

LOWER WEST FORK PLANNING UNIT; LAND USE PLAN

Notice of 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 Land Use Plan—Lower West Fork Planning Unit, Forest Service Report Number USDA-FS-DES (adm) R1-76-9.

The environmental statement concerns the proposed implementation of a revised Land Use Plan for the Lower West Fork Planning Unit, West Fork Ranger, District, Bitterroot National Forest, Ravalli County, Montana. About 147,927 acres of National Forest land are affected. The planning unit is divided into 10 subunits of similar resource potential and limitations to management. Significant values, management direction, and specific statements to guide land management have been developed for each subunit.

This draft environmental statement was transmitted to C.E.Q. on November 11, 1975.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3230, 12th and Independence Ave, SW, Washington, DC 20250.
USDA, Forest Service, Northern Region, Federal Building, Room 3077, Missoula, MT 59801.
USDA, Forest Service, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840.
USDA, Forest Service, West Fork Ranger Station, Darby, MT 59829.

A limited number of single copies are available upon request to:

Robert S. Morgan, Forest Supervisor, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840.
West Fork District Ranger, U.S. Forest Service, Darby, MT 59829.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the C.E.Q. 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 Forest Supervisor Robert S. Morgan, Bitterroot National Forest, 316 North Third Street, Hamilton, MT 59840. Comments must be received by January 12, 1976 in order to be considered in the preparation of the final environmental statement.

KEITH M. THOMPSON,
Acting Regional Forester, Northern Region, Forest Service.

NOVEMBER 11, 1975.

[FR Doc.75-31085 Filed 11-17-75;8:45 am]

Office of the Secretary

EXPERT PANEL ON NITRITES AND NITROSAMINES

Renewal

Notice is hereby given that the Expert Panel on Nitrites and Nitrosamines has been renewed by the Secretary. The purpose of the Panel is to advise the Secretary on research reports and other data and information concerning the safety of nitrites and nitrates in foods. Such renewal is in the public interest in connection with the duties imposed on the Department by law.

The Chairman of this Panel is the Assistant Secretary for Marketing and Consumer Services.

This notice is given in compliance with Pub. L. 92-463.

Dated: November 13, 1975.

J. PAUL BOLDUC,
Deputy Assistant Secretary for Administration.

[FR Doc.75-31136 Filed 11-17-75;8:45 am]

Soil Conservation Service

CARPINTERIA VALLEY WATERSHED PROJECT, CALIFORNIA

Notice of Availability of Draft Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650.7(e) of the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a draft environmental impact statement for the Carpinteria Valley Watershed Project, Santa Barbara County, California, USDA-SCS-EIS-WS-(ADM)-75-3-(D)-CA.

The environmental impact statement concerns a plan for watershed protection and flood prevention. The planned works of improvement provide for conservation land treatment, approximately 5.7 miles of channel work, about 22 acres salt marsh modification and a debris dam and basin. The channel work will include tree removal, enlargement and concrete lining of channels on Santa Monica and Franklin Creeks. The debris basin will provide storage for sediment deposits averaging 14 acre-feet annually on Santa Monica Creek and is needed to protect lined channel on Santa Monica Creek and the El Estero salt marsh from sedimentation. The sections of both creeks being modified are ephemeral, flowing only during periods of runoff following storms. The completed project will protect Carpinteria Valley from flooding and sedimentation and increase the life span of the El Estero salt marsh.

A limited supply of copies is available at the following locations to fill single copy requests:

Soil Conservation Service, 2828 Chiles Road, Davis, California 95616.
Soil Conservation Service, 151 East Carrillo, Santa Barbara, California 93102.

Copies of the draft environmental impact statement have been sent for comment to various federal, state, and local agencies as outlined in the Council on Environmental Quality Guidelines. Comments are also invited from others having knowledge of or special expertise on environmental impacts.

Comments concerning the proposed action or requests for additional information should be addressed to George H. Stone, State Conservationist, Soil Conservation Service, P.O. Box 1019, Davis, California 95616.

Comments must be received on or before December 22, 1975, in order to be considered in the preparation of the final environmental impact statement.

Date: November 10, 1975.

(Catalog of Federal Domestic Assistance Program No. 10.904, National Archives Reference Services.)

JAMES W. MITCHELL,
Acting Deputy Administrator for Water Resources Soil Conservation Service.

[FR Doc.75-31086 Filed 11-17-75;8:45 am]

YANTIC RIVER WATERSHED PROJECT, CONNECTICUT

Notice of Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; Part 1500 of the Council on Environmental Quality Guidelines (38 FR 20550, August 1, 1973); and Part 650 of

the Soil Conservation Service Guidelines (39 FR 19650, June 3, 1974); the Soil Conservation Service, U.S. Department of Agriculture, has prepared a final environmental impact statement (EIS for the Yantic River Watershed Project, New London and Tolland Counties, Connecticut, USDA–SCS–EIS–WS–(ADM)–75–1 (F) CT.

The environmental impact statement concerns a plan for watershed protection, flood prevention, and recreation. The planned works of improvement include conservation land treatment, supplemented by channel work, three water control structures, and recreation development. The channel work will involve about 1.3 miles which flows through an industrial, commercial, and urban area. This work consists of 0.8 mile of reinforced concrete channel and 0.4 mile of earth channel on previously modified and natural perennial channel and 0.1 mile of double-box reinforced concrete conduit on previously modified intermittent channel. The recreational development will provide 149,500 visitor-days of recreation annually.

A limited supply is available at the following location to fill single copy requests: Soil Conservation Service, USDA, Mansfield Professional Park, Storrs, Connecticut 06268.

Date: November 12, 1975.

(Catalog of Federal Domestic Assistance Program 10.904, National Archives Reference Services.)

JAMES W. MITCHELL,
Acting Deputy Administrator for Water Resources, Soil Conservation Service.

[FR Doc.75-31087 Filed 11-17-75;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

NORTHWESTERN UNIVERSITY MEDICAL SCHOOL

Duty-Free Entry of Scientific Article; Notice of Decision on Application

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (40 F.R. 12253 et seq., 15 CFR 701, 1975).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00018-33-46040. Applicant: Northwestern University Medical School, 303 E. Chicago Avenue, Chicago, Illinois 60611. Article: Electron Microscope HS-9. Manufacturer: Hitachi Inc., Japan. Intended use of article: The article is intended to be used to scan large areas of tissue at low magnifications followed by photography of the nerve endings found therein at low and high magnifications in the study of nerve terminals in the peripheral nervous system. The article will also be used for training of graduate students in the following courses: (1) Research Rotation: Course No. 1445-E90, (2) Pharmacology of the Autonomic Nerve System: Course No. 1445-D24-I and Pharmacology of the CNS: Course No. 1445-D24-II, and (3) Ultrastructural Correlations.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign articles was ordered (June 4, 1975). Reasons: The foreign article provided high quality micrographs over a magnification range from 500 to 100,000 magnifications, without a pole-piece change. At the time the foreign article was ordered the most closely comparable domestic instrument available was the Model EMU-4C, manufactured by the Adam David Company. The Model EMU-4C with its low magnification pole-piece provides high quality micrographs over a magnification range from 500 to 70,000 magnifications and with the standard pole-piece 1400 to 240,000 magnifications. Thus, with the 4C provisions of high quality micrographs over the range covered by the foreign article requires a pole-piece change. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated October 17, 1975 that the full magnification range of the article without a pole-piece change is pertinent to the purposes for which the article is intended to be used. HEW also advised that (1) the EMU-4C does not cover the required range without a pole-piece change and (2) the Model PA-1 supplied by the Adam David Company was in development at the time the article was ordered. In this regard, we note that a prototype of the Model PA-1 was first shown by the Adam David Company in November, 1974 but as of the date of this decision, neither the Department nor its consultant's have been able to determine or verify the capabilities of the Model PA-1. Thus the Department does not have a sufficient basis for ruling that the Adam David Company was able to supply the PA-1 at the time the foreign article was ordered, or that it is the scientific equivalent of the article. For these reasons, we find that the Model EMU-4C was not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

B. BLANKENHEIM,
Acting Director, Special Import Programs Division.

[FR Doc.75-31082 Filed 11-17-75;8:45 am]

UNIVERSITY OF RHODE ISLAND ET AL

Duty-Free Entry of Scientific Articles; Notice of Applications

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Special Import Programs Division, Office of Import Programs, Washington, D.C. 20230, on or before December 8, 1975.

Amended regulations issued under cited Act, (40 F.R. 12253 et seq. 15 CFR 701, 1975) prescribe the requirements applicable to comments.

A copy of each application is on file, and may be examined during ordinary Commerce Department business hours at the Special Import Programs Division, Department of Commerce, Washington, D.C. 20230.

Docket Number: 76-00178-85-45300. Applicant: University of Rhode Island—Graduate School of Oceanography, South Ferry Road, Narragansett, R.I. 02882. Article: Three Spectrometer electron microprobe, Model JXA-50A. Manufacturer: JEOL Inc., Japan. Intended use of article: The article is intended to be used in geologic research which will include the following:

(1) Studies on the partitioning of minor and major elements between basaltic melts and crystals,

(2) Mineralogic Petrologic studies of basaltic rocks from the mid-ocean ridges.

(3) Study of minor element concentrations in calcareous skeletons of marine microorganisms.

In addition, the article will be used for the following educational purposes:

(1) Graduate petrological laboratory course dealing with the utilization and applications of the electron microprobe to petrologic, geologic and oceanographic problems.

(2) Electron microprobe analyses of earth material conducted by graduate students, in conjunction with their PhD and M.S. thesis research requirements.

(3) Electron microprobe analyses by faculty members and research associates

in conjunction with their own research in oceanography and earth science in general.

(4) Use of teaching materials and information acquired in several courses including Petrology of the Oceanic Crust OCG–645 and Geochemistry OCG–630. Application received by Commissioner of Customs: October 23, 1975.

Docket Number: 76–00179–33–46500. Applicant: University of Rochester School of Medicine and Dentistry, 600 Elmwood Avenue, Rochester, New York 14642. Article: Ultramicrotome, Model Om U3. Manufacturer: C. Reichert Optische Werke AG, Austria. Intended use of article: The article is intended to be used to study the cellular mechanisms of calcium absorption and homeostasis. In addition, the article will be used in the Laboratory course in Biochemistry to provide first and second year graduate students experience with biochemical techniques likely to be employed in students' subsequent research. In the course Biological Ultrastructure, the article will be used to provide various levels of graduate students experience with interpretation of various biophysical research programs. Application received by Commissioner of Customs: October 23, 1975.

Docket Number: 76–00180–33–90000. Applicant: The Queen's Medical Center, 1301 Punchbowl Street, Honolulu, Hawaii 96813. Article: EMI Scanner System. Manufacturer: EMI Limited, United Kingdom. Intended use of article: The article is intended to be used for threefold functions: teaching, clinical service and research. Medical students, interns and residents are receiving training in the principles of operation and advantages of the technique of the scanner system. Research will be conducted on neurological patients (e.g. rapid differentiation of cerebral (cortical) atrophy versus normal pressure hydrocephalus). A retrospective study of the cost effectiveness of the article will also be performed. Application received by Commissioner of Customs: October 23, 1975.

Docket Number: 76–00181–33–43400. Applicant: Texas Tech University School of Medicine, P.O. Box 4050, Lubbock, Texas 79409. Article: Micromanipulator Mark III. Manufacturer: Singer Instrument Company Limited, United Kingdom. Intended use of article: The article is intended to be used for the placement of microelectrodes on the live embryos of small animals (i.e., rats) in utero, and for the cannulation of microscopic sized blood vessels leading to and from the embryos and to and from the various endocrine glands. Experiments will be conducted to learn the controlling factors of embryo development and maldevelopment as well as the endocrine glands controlling mechanisms and product variation. The article will also be used for teaching the microcannulation and the microelectrode placement techniques to medical and graduate students. Application received by Commissioner of Customs: October 23, 1975.

Docket Number: 76–00182–79–20750. Applicant: University of Notre Dame, Radiation Laboratory, ERDA Contract E(11–1)–38, Notre Dame, Indiana 46556. Article: Gas Test Box and Accessories. Manufacturer: Figaro Engineering Inc., Japan. Intended use of article: The article when combined with suitable electronic circuitry will be used to form a low cost safety device that will signal that hazardous levels of carbon monoxide are present. Application received by Commissioner of Customs: October 23, 1975.

Docket Number: 76–00183–33–46500. Applicant: Dept. of Health, Education, and Welfare, NIH, NIAID, Rocky Mountain Laboratory, Hamilton, MT 59840. Article: Ultramicrotome, Model Om U3 with accessories. Manufacturer: C. Reichert Optische Werke AG, Austria. Intended use of article: The article is intended to be used for studies of medically important arthropod vectors of disease agents. Developmental studies on normal vs. rickettsial and viral interaction with arthropod host tissues at cellular and subcellular levels will be conducted. Application received by commissioner of customs: October 23, 1975.

Docket Number: 76–00184–33–46040. Applicant: National Cancer Institute, Building 10, Room 8B14, Bethesda, Maryland 20014. Article: Electron Microscope, Model EM 301 and accessories. Manufacturer: Philips Electronic Instruments NVD, The Netherlands. Intended use of article: The article is intended to be used for the examination of plastic sections of tissue, replicas of cell and tissue surfaces prepared on a freeze-etch device, and stained monolayers of biological molecules. Membrane receptor molecules will be investigated both as they exist on tumor cell surfaces and in isolated form as discrete molecules. Application received by Commissioner of Customs: October 24, 1975.

Docket Number: 76–00185–33–46040. Applicant: Texas College of Osteopathic Medicine, Department of Basic Health Sciences, North Texas State University, TCOM, Box 13046, Denton, Texas 76203. Article: Electron Microscope, Corinth 500 and accessories. Manufacturer: AEI Scientific Apparatus Ltd., United Kingdom. Intended use of article: The article is intended to be used to examine biological specimens and replicas of biological specimens, specifically: sensory receptors of lateral line organs of fish; neuromuscular junctions isolated from frogs, crayfish and cats; neuroendocrine tissue from rabbits and cats; endocrine tissue from rabbits; cardiovascular tissue from rabbits; isolated intracellular organelles; and freeze etched replicas of neuromuscular junctions. Experiments will be conducted to:

(1) Study the effects of various chemicals on the synthesis, storage and release of transmitter substances of the neuromuscular junction of the frog.

(2) Study basement membranes of capillaries found in muscle pouch biopsy to determine structural variations in various pathological conditions.

(3) Study neuroendocrines in an attempt to further define the roles of the adrenergic neurotransmitter substances of the basal hypothalamus in the control of the release of the hypophysiotrophic hormones.

In addition, the article will be used for educational purposes in Biology courses for graduate and undergraduate students.

Application received by Commissioner of Customs: October 24, 1975.

B. BLANKENHEIM,
Acting Director,
Special Import Programs Division.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

[FR Doc.75-31083 Filed 11-17-75;8:45 am]

National Oceanic and Atmospheric Administration

G. CAUSEY WHITTOW

Issuance of a Permit To Take Marine Mammals

On July 2, 1975, notice was published in the FEDERAL REGISTER (40 FR 27959), that an application had been filed with the National Marine Fisheries Service by G. Causey Whittow, Department of Physiology, School of Medicine, University of Hawaii, Honolulu, Hawaii 96822, for a permit to conduct studies on Hawaiian monk seals (*Monachus schauinslandi*) for the purpose of scientific research.

Notice is hereby given that on November 7, 1975, and as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a permit for the above mentioned taking to G. Causey Whittow, to take up to 18 Hawaiian monk seals per year for three years and to conduct general observational studies subject to certain conditions therein.

The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and in the Office of the Regional Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 7, 1975.

JACK GEHRINGER,
Deputy Director, National Marine Fisheries Service.

[FR Doc.75-31007 Filed 11-17-75;8:45 am]

NAVAL UNDERSEA CENTER

Notice of Modification of Permit

Notice is hereby given that, pursuant to the provisions of Sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (39 F.R. 1851, January 15, 1974), the Scientific Research Permit issued to the Naval Udersea Center, Biosystems Research Department, on March 7, 1974, as modified on July 8, 1974 (39 F.R. 24932), on August 2, 1974 (39 F.R. 27933), on February 26, 1975 (40 F.R. 8240), on April 22, 1975 (40 F.R. 17770), and on September 11, 1975 (40

F.R. 42230), is further modified, by means of Modification No. 7, in the following manner:

The period of validity of the Permit is extended from December 31, 1975, to June 30, 1976.

This modification is effective November 18, 1975.

The Permit as modified is available for review in the Office of the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, and in the Office of the Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 3, 1975.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

[FR Doc.75-31010 Filed 11-17-75;8:45 am]

STATE OF ALASKA

Notice of Receipt of Application for Scientific Research Permit

Notice is hereby given that the following Applicant has applied in due form for a permit to take marine mammals for the purpose of scientific research, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals:

State of Alaska, Department of Fish and Game, Subport Building, Juneau, Alaska 99801, to take by killing two hundred (200) Pacific harbor seals (*Phoca vitulina richardii*) and two hundred northern (Steller) sea lions (*Eumetopias jubata*), and by marking 7,000 northern (Steller) sea lions (*Eumetopias jubata*) for the purpose of scientific research.

The proposed research will be conducted in the Gulf of Alaska by personnel of the Alaska Department of Fish and Game. The research proposal involves the following:

1. Determining the numbers and biomassage and sex composition, patterns of movement, population identity and discreteness, and changes in seasonal abundance of northern sea lions in the Gulf of Alaska;

2. Determining age of sexual maturity, overall birth rates, age, specific birth rates, duration of reproductive activity, and survival rates for various sex and age classes of northern sea lions and harbor seals in the Gulf of Alaska;

3. Determining the food habits of northern sea lions and harbor seals in the Gulf of Alaska, relative to variation with season and habitat type, and prey abundance and type;

4. Assessments of pathology, environmental contaminant loads, critical habitat and fishery depredation relative to northern sea lions and harbor seals in the Gulf of Alaska.

Specimen materials not utilized in Department of Fish and Game projects will be made available to other researchers. Skeletal materials will be placed in the collections of the University of Alaska and the Smithsonian Institution. Usable remains will be given, where feasible, to coastal residents for food.

Documents submitted in connection with this application are available in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and the Office of the Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801.

Concurrent with the publication of this notice in the FEDERAL REGISTER the Secretary of Commerce is sending copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, National Marine Fisheries Service, Washington, D.C. 20235, on or before December 18, 1975. The holding of such a hearing is at the discretion of the Director.

All statements and opinions contained in this notice in support of this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Dated: November 12, 1975.

HARVEY M. HUTCHINGS,
Acting Associate Director for Resource Management, National Marine Fisheries Service.

[FR Doc.75-31009 Filed 11-17-75;8:45 am]

UTICA ZOOLOGICAL SOCIETY

Issuance of a Permit for Marine Mammals

On September 11, 1975, notice was published in the FEDERAL REGISTER (40 FR 42231), that an application had been filed with the National Marine Fisheries Service by the Utica Zoological Society, Steele Hill Road, Utica, New York 13501, to take two (2) California sea lions (*Zalophus californianus*) for the purpose of public display.

Notice is hereby given that on November 10, 1975, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a permit for two (2) California sea lions (*Zalophus californianus*) to the Utica Zoological Society subject to certain conditions set forth herein.

The Permit is available for review by interested persons in the Office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, and the Office of the Regional Director, National Marine Fisheries Service, Northeast Region, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01939, and the Office of the Regional Director, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 10, 1975.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

[FR Doc.75-31008 Filed 11-17-75;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEE

Notice of Meeting Change

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 announced in a notice published in the FEDERAL REGISTER of October 21, 1975 (40 FR 49115), public advisory committee meetings and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act.

Notice is hereby given that the entire meeting of the Toxicology Advisory Committee scheduled for November 20 and 21 will be open to the public.

Dated: November 13, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.75-31183 Filed 11-17-75;8:45 am]

Office of Education

NATIONAL COUNCIL ON BILINGUAL EDUCATION

Notice of Public Meeting

Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), that a meeting of the Budget Sub-committee of the National Advisory Council on Bilingual Education will be held from 9:00 a.m. to 5:00 p.m. on Tuesday, December 2, 1975. The Council will meet in Plaza del Sol, 600 N. 2nd Street, N.W. Albuquerque, New Mexico.

The National Advisory Council on Bilingual Education is established pursuant to Section 732 (a) of the Bilingual Education Act (20 U.S.C. 880b) to advise the Secretary of Health, Education and Welfare and the Commissioner of Education concerning matters arising in the administration of the Bilingual Education Act.

The meeting shall be opened to the public. The proposed agenda for the Council meeting is:

A. Review of Proposed Budget for FY 76.

Records shall be kept of all proceedings and shall be available for public inspection at Room 421, Reporter's Building, 300 7th Street, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on November 11, 1975.

JOHN C. MOLINA,
Acting Director, Office of Bilingual Education.

[FR Doc.75-31006 Filed 11-17-75;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D 75-386]

REGIONAL COUNSELS

Authority Delegation; With Respect To Approving the Legality of Title VIII Subpenas and Interrogatories

Pursuant to Delegation of Authority 35 F.R. 6877, April 30, 1970, the Assistant Secretary for Fair Housing and Equal Opportunity and the Deputy Assistant Secretary for Fair Housing and Equal Opportunity each is authorized to exercise the power and authority of the Secretary of Housing and Urban Development under Title VIII (Fair Housing) of the Civil Rights Act of 1968, Public Law 90-284 (42 U.S.C. 3601-3619), except that the General Counsel or his designee is required to approve the legality of the issuance of a subpena or an interrogatory under section 811 of the Act (42 U.S.C. 3611).

The General Counsel designates each Regional Counsel to act for the General Counsel in approving the legality of the issuance of a subpena or an interrogatory under section 811 of the Act (42 U.S.C. 3611).

Effective date. This designation is effective as of November 11, 1975.

DOUGLAS M. PARKER,
Deputy General Counsel.

[FR Doc.75-31135 Filed 11-17-75;8:45 am]

CIVIL AERONAUTICS BOARD

ADVISORY COMMITTEE ON PROCEDURAL REFORMS

Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Civil Aeronautics Board Advisory Committee on Procedural Reforms will be held at 9:30 a.m. on Saturday, December 6, 1975, in Room 1027 of the Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

The Advisory Committee was established to study the procedural aspects of Civil Aeronautics Board regulation, and to recommend changes designed to reduce cost and delay.

The members of the Advisory Committee are:

Elroy H. Wolff, Chairman
Richard J. Barber
Emory N. Ellis, Jr.
Marvin H. Kosters
Monte Lazarus
Richard S. Maurer
Adrian M. McDonough
Gerard R. Moran
Paul S. Quinn
Bert W. Rein
Reuben B. Robertson, III
J. Kerwin Rooney
Kelly Rueck
Walter D. Scott
Jerrold Scoutt, Jr.
Robert B. Shapiro
James Lawrence Smith
John M. Steadman
Frank M. Wozencraft

The Committee will work on the preparation of its final report. At the close of the general meeting the subcommittees may continue to meet. The subcommittees are: (1) The Board Members; (2) Staff Organization and Functions; (3) Formal Proceedings; (4) Informal Matters; (5) International Matters; and (6) Delay.

The meeting will be open to the public. Any member of the public may file written statements concerning the matters to be discussed. Oral presentations should be requested in advance.

Persons wishing further information, or wishing to make written or oral presentations should contact Edmund W. Kitch, Executive Director, Civil Aeronautics Board Advisory Committee on Procedural Reforms, Civil Aeronautics Board, Washington, D.C. 20428, telephone (202) 382-3216 or 382-7263 (ask for Mr. Campbell).

Minutes of the meeting will be available for public inspection by December 8, 1975, in Room 425 of the Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

[SEAL] EDWIN Z. HOLLAND,
Secretary,
Civil Aeronautics Board.

NOVEMBER 13, 1975.

[FR Doc.75-31132 Filed 11-17-75;8:45 am]

[Docket 21136 *etc.*; Order 75-11-46]

REMANDED RENO-PORTLAND/SEATTLE NONSTOP SERVICE INVESTIGATION

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of November, 1975.

By Order 75-11-46, issued contemporaneously herewith, the Board has decided, *inter alia*, to award Hughes Airwest nonstop authority between Reno, on the one hand, and Portland and Seattle, on the other. Airwest's service proposal for this route calls for two-stop flights between Santa Ana and Seattle (via Las Vegas and Reno). As a technical matter, such operations would seem to violate an existing three-stop restriction on Santa Ana-Seattle flights in Airwest's certificate.

As noted in our attached opinion (footnote 32, p. 13), at the time this proceeding was instituted, Airwest had unrestricted Santa Ana-Las Vegas rights and could unquestionably have tacked such authority to a new Las Vegas-Seattle route so as to provide one-stop or two-stop Santa Ana-Seattle service. The three-stop restriction on such service was adopted later at Airwest's own suggestion when the Board approved a realignment of the carrier's routes and was never intended to affect any improved authority that the carrier could obtain as a result of the *Reno-Portland/Seattle* case. Clearly, the Board never meant to foreclose any beyond service that Airwest was actually proposing in this proceeding. To implement the Board's intention, we tentatively find and conclude that Airwest's certificate should be amended to permit two-stop operations between Santa Ana and Seattle if Reno is served as one of the intermediate stops.

Interested persons will be given twenty days following service of this order to show cause why the tentative findings and conclusions set forth herein should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If any evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary, and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained.

Accordingly, it is ordered that:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein;

2. Any interested persons having objections to the issuance of an order making final the proposed findings and conclusions set forth herein shall, within 20 days after service of a copy of this order, file with the Board and serve upon all parties to this proceeding a statement of objections together with a summary of testimony, statistical data, and such evidence as is expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board; and

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived, and the matter will be submitted to the Board for final action.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.75-31133 Filed 11-17-75;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Executive Advisor to the Administrator, Office of the Administrator, National Fire Prevention and Control Administration.

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

[FR Doc.75-31078 Filed 11-17-75;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant to the Secretary, Secretary's Immediate Office, Office of the Secretary.

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

[FR Doc.75-31077 Filed 11-17-75;8:45 am]

DEPARTMENT OF LABOR

Notice of Grant Authority To Make a Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Labor to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Under Secretary, Office of the Under Secretary, Office of the Secretary.

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

[FR Doc.75-31076 Filed 11-17-75;8:45 am]

FEDERAL EMPLOYEES PAY COUNCIL

Notice of 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, December 3, 1975. This meeting will be held in room 5323 of the U.S. Civil Service Commission building, 1900 E Street, NW., and will consist of continued discussions on future comparability adjustments for the statutory pay systems of the Federal Government, which are defined in section 5301 of title 5, United States Code.

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:

JAMES N. WOODRUFF,
Acting Advisory Committee Management Officer for the President's Agent.

[FR Doc.75-31128 Filed 11-17-75;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

PRIVACY ACT OF 1974

Notices of Systems of Records; Modifications and Corrections

The Consumer Product Safety Commission published, on September 30, 1975 (40 FR 45124), its proposed Notices of Systems of Records for purposes of implementing the Privacy Act of 1974, and invited public comment thereon. No comments were received. However, a modification of consistency with the Commission's Policies and Procedures Implementing the Privacy Act of 1974 as follows:

In the Notice of Systems Records identified as CPSC-1, Accident Report (In-Depth)-CPSC, the notice of exemption from certain provisions of the Act which indicates that the system is exempted from subsection (d) should be modified to indicate exemption from subsection (d)(2) and (3) only. Records in this system are disclosable to the individual to whom they pertain pursuant to section 25(c) of the Consumer Product Safety Act, 15 U.S.C. 2074(c). (See CPSC Policies and Procedures Implementing the Privacy Act, which appears elsewhere in this issue of the FEDERAL REGISTER.)

In addition, the following corrections are necessary: 1. In column 1 of page 45124, the Table of Contents, the FEDERAL REGISTER identifiers following the system names for systems 2 through 19 which reads "CPCS" should read "CPSC."

2. In column 2 of page 45124, the system name for System of Records CPSC-2 should read "Advisory Committee Applications."

3. In column 2 of page 45124, system notice CPSC-2, the paragraph entitled "Contesting record procedures' should read "same as notification. In addition, immediately after the aforementioned paragraph, the following new paragraph should be added: "Rceord source categories: Information is provided by individuals seeking a position on an advisory committee or by a person nominating another for such position."

4. In column 2 of page 45127, the last word of subparagraph (2) under the paragraph entitled "Routine uses of records maintained in the system, including categories of users and the purposes of such uses,' should read "thereto.

5. In column 1 of page 45130, in the first line, the figure "5" should be inserted following the word "system" and before "USC."

6. In column 1 on page 45130, the paragraph which reads "Contesting record procedures: Same as notification. HR Information in these records. . . .," should read "Contesting record procedures: Same as notification." In addition, immediately after the aforementioned paragraph, the following new paragraph should be added: "Record source categories: Information in these records is furnished by: (1) Individual to whom the record pertains (2) Agency and/or commission officials (3) Affidavits or statements from employee (4) Testimonies of witnesses (5) Official documents relating to appeal, grievance or complaints (6) Correspondence from specific organization or persons."

7. In column 1 on page 45131, the paragraph which reads, "Categories of records in the system" GPM Chapters 333-713" should read "Authority for maintenance of the system: FPM Chapters 333 and 713.

8. In column 1 on page 45132 the address of the Boston Area Office should read: "100 Summer St., 16th Fl., Rm. 1607." In the second column on page 45132, the address of the Cleveland Area office was omitted. It should read: "21046 Brookpark Road, Cleveland, Ohio 44135."

Therefore, with these modifications and corrections, the proposed Notices of Systems of Records are adopted.

Dated: November 12 ,1975.

Effective date: November 18, 1975.

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

[FR Doc.75-31074 Filed 11-13-75;11:14 am]

ENVIRONMENTAL PROTECTION AGENCY

[(FRL 457-4) OPP-33000/336 & 337]

NOTICE OF 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 each 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 January 19, 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 December 19, 1975.

Dated: November 11, 1975.

MARTIN H. ROGOFF,
Associate Director, Acting Director, Registration Division.

APPLICATIONS RECEIVED (OPP-33000/336)

EPA File Symbol 1730-UR. American Cyanamid Co., Industrial Chemicals & Plastics Div., 859 Berdan Ave., Wayne NJ 07470. CYTOX 3522N INDUSTRIAL MICROBIOCIDE. Active Ingredients: Methylenebis (thiocyanate) 10%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 4-189. Bonide Chemical Co., Inc., 2 Wurze Ave., Yorkville NJ 13495. KETHANE EC. Active Ingredients: 1,1-Bis (p-Chlorophenyl) - 2,2,2 - trichloroethanol 18.5%; Xylene 73.0%. Method of Support: Application proceeds under 2(c) of interim policy. Pm13

EPA File Symbol 3125-EII. Chemagro Agr. Div., Mobay Chem. Corp., PO Box 4913, Kansas City MO 64120. MESURAL 75% WETTABLE POWDER INSECTICIDE. Active Ingredients: 3,5-Dimethyl-4-(methylthio)-phenol methylcarbamate 75%. Method of Support: Application proceeds under 2(a) of interim policy. PM12

EPA File Symbol 7616-GN. Chem Lab Products Inc., 2850 E. Coranado St., Anaheim CA 92806. KEM SAN 70. Active Ingredients: Paraformaldehyde 70.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM33

EPA File Symbol 239-EUUG. Chevron Chemical Co., 940 Hensley St., Richmond CA 94804. ORTHENE FOREST SPRAY. Active Ingredients: Acephate (O,S-Dimethyl acetylphosphoramidothioate) 75%. Method of Support: Application proceeds under 2(b) of interim policy. PM16

EPA Reg. No. 5736-46. Dubois Chemicals, 3630 E. Kemper Rd., Sharonville OH 45241. BGC-3. Active Ingredients: Sodium lauryl ether sulfate 9.00%; Sodium ortho-phenylphenate 8.90%; Sodium ortho-Benxyl-para-Chlorophenate 8.29%; Isopropyl alcohol 7.50%; Sodium para-Teritiary-Amylphenate 2.05%; Sodium 4- and 6-Chloro-2-Phenylphenate 2.00%; Trisodium Ethylenediamine Tetraacetic Acid 1.00%. Method of Support: Application proceeds under 2(a) of interim policy. PM32

EPA Reg. No. 1471-79. Elanco Products Co., PO Box 1750, Indianapolis IN 46206. PAARLAN. Active Ingredients: Isopropalin (2,6-dinitro-N,N-dipropylcumidine) 68.6%. Method of Support: Application proceeds under 2(a) of interim policy. PM25

EPA File Symbol 10079-U. Jersey Chemicals, Inc., 775 River St., Paterson NJ 07524. TOPCHLOR CHLORINE SANITIZER FOR MODERN SWIMMING POOL CARE. Active Ingredients: lithium hypochlorite 29%. Method of Support: Application proceeds under 2(c) of interim policy. PM34

EPA Reg. No. 10107-5. Harris Serum & Supply Co., Box 410, McCook NB 69001. METHOXYCHLOR E2. Active Ingredients: Technical methoxychlor 25.0%; Xylene 71.0%. Method of Support: Application proceeds under 2(c) of interim policy. PM13

EPA File Symbol 1182-RI. Hubman Chemicals 1123 W. Goodale Blvd., Columbus OH 43212. SANAMAX B22. Active Ingredients: Didecyl dimethyl ammonium chloride 4.5%; Tetrasodium Ethylenediamine Tetraacetate 2.0%; Sodium Carbonate 1.0%; Sodium metasilicate, anhydrous 0.5%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 37889-R. M. A. Johnson Co., 371 Moose Rd., Taylorsville NC 28681. BLOCKADE TERMITE PRE-TREAT. Active Ingredients: Technical Heptachlor 5.92%; Related Compounds 2.08%. Method of Support: Application proceeds under 2(b) of interim policy. PM15

EPA File Symbol 33660-RN. Levy, Bivona & Cohen, Counselors at Law, 10 East 40th St., New York NY 10016. DICOFOL TECHNICAL. Active Ingredients: dicofol [1,1-bis(p-chlorophenyl) - 2,2,2 - trichloroethanol] 85%. Method of Support: Application proceeds under 2(a) of interim policy. Republished: Added uses. PM13

EPA File Symbol 491-EEG. National Chemical Division of Selig Chemical Industries, 840 Selig Drive, SW, Atlanta GA 30338. NP-10L. Active Ingredients: Poly[oxyethylene(dimethyliminio) - ethylene(dimethyliminio) ethylene dichloride] 3.33%. Method of Support: Application proceeds under 2(b) of interim policy.

EPA File Symbol 4389-TU. Pacific Chemical, Div. of Pace National Corp., 500 7th Ave., Kirkland WA 98033. CHEMPROCIDE. Active Ingredients: Isopropanol 13.0%; Didecyl dimethyl ammonium chloride 7.5%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM31

EPA Reg. No. 432-492. S. B. Penick & Co., Com. Dev. Pesticide, 215 Watchung Ave., Orange, NJ 07050. SBP-1382 AQUEOUS PRESSURIZED SPRAY INSECTICIDE 0.25 FOR HOUSE AND GARDEN. Active Ingredients: (5-Benzyl-3-furyl)methyl 2,2-dimethyl - 3 - (2 - methylpropenyl) cyclopropanecarboxylate 0.250%; Related Compounds 0.034%; Aromatic petroleum hydrocarbons 0.331%; Petroleum distillate 6.500%. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM17

CORRECTED ITEM

The following is a correction to the list of Applications Received previously published in the FEDERAL REGISTER.

EPA File Symbol 14819-U. Universal Chem. & Supplies, Inc., 3043 Walnut St., Denver CO 80205. SWIMMING POOL ALGAECIDE UNIVERSAL ALGI-FECT. (Originally published with incorrect File Symbol.) PM25 (40 FR 51223)

APPLICATIONS RECEIVED (OPP-33000/337)

EPA File Symbol 3125-GNO. Chemagro Agr. Div., Mobay Chem. Corp., PO Box 4913, Kansas City MO 64120. MERSUROL 50% HOPPER-BOX TREATER BIRD REPELLENT. Active Ingredients: 3,5-Dimethyl-4-(methylthio)phenol methylcarbamate 50%. Method of Support: Application proceeds under 2(a) of interim policy. PM12

EPA File Symbol 559-EE. Davies-Young Co., 2700 Wagner Place, Maryland Heights MO 63043. FORMULA 168. Active Ingredients: Didecyl dimethyl ammonium chloride 4.25%; Tetrasodium ethylene-diamine tetraacetate 1.60%; Sodium Carbonate 2.00%, Sodium metasilicate, anhydrous 0.50%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 1015-LI. Douglas Chemical Co., Highways 210 & 291, PO Box 297, Liberty MO 64069. DOUGLAS D-372 SOLVENT. Active Ingredients: Carbon Tetrachloride 78.9%; Carbon Disulfide 15.6%; Ethylene Dibromide 5.1%; Pentane (maximum) 0.4%. Method of Support: Application proceeds under 2(c) of interim policy. PM11

EPA File Symbol 13442-T. Environment Engineering Inc., 1310 Headquarters Dr., Greensboro NC 27405. CV-200. Active Ingredients: Disodium cyanodithioimidocarbonate 0.59%; Potassium N-methyldithiocarbamate 0.81%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 778-GI. Miller-Norton Co., PO Box 6235, Richmond VA 23230. SERGEANT'S LONG-LASTING HOUSEHOLD INSECTICIDE. Active Ingredients: Naled (1,2 - dibromo - 2,2 - dichloroethyl dimethyl phosphate) 25.0%. Method of Support: Application proceeds under 2(a) of interim policy. PM16

EPA File Symbol 37259-R. Noris Chemical Corp., 17612 Beach Blvd., Huntington Beach CA 92647. STRYCHNINE ALKALOID N.F.X. POWDER. Active Ingredients: Strychnine Alkaloid 100%. Method of Support: Application proceeds under 2(a) of interim policy. PM11

EPA File Symbol 4389-TL. Pacific Chemical, Division Pace National Corp., 500 7th Ave., So., Kirkland WA 98033. MICROCIDE LD-60. Active Ingredients: Disodium cyanodithioimidocarbonate 4.06%; Potassium N-methyldithiocarbamate 2.94%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA Reg. No. 432-172. S. B. Penick & Co., 1050 Wall Street W., Lyndhurst NJ 07071. NOXFISH FISH TOXICANT. Active Ingredients: Rotenone 5.0%; Other cube extractives 10.0%. Method of Support: Application proceeds under 2(b) of interim policy. PM11

EPA File Symbol No. 37879-G. San Joaquin Chemicals, Inc., 4684 East Hedges Avenue, Fresno CA 93703. SANACIDE 2011. Active Ingredients: Disodium cyanodithioimidocarbonate 3.68%; Potassium N-methyldithiocarbamate 5.07%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

EPA File Symbol 37879-U. San Joaquin Chemicals, Inc., 4684 East Hedges Ave., Fresno CA 93703. SANACIDE 2021. Active Ingredients: Disodium cyanodithioimidocarbonate 7.35%; Potassium N-methyldithiocarbamate 10.15%. Method of Support: Application proceeds under 2(b) of interim policy. PM33

[FR Doc.75-31004 Filed 11-17-75;8:45 am]

[FRL 457-5]

SECONDARY BRASS AND BRONZE PLANTS

Reevaluation of Opacity Standards of Performance for New Sources

Under section 111 of the Clean Air Act, as amended, standards of performance for secondary brass and bronze ingot production facilities were promulgated on March 8, 1974 (39 FR 9308). The standards included a limitation on the con-

centration and opacity of the effluent from reverbertory furnaces and an opacity standard only for electric and blast (cupola) furnaces. The opacity standards have been reevaluated by the Agency in light of the revisions to Reference Method 9 for determining opacity of emissions promulgated on November 12, 1974 (39 FR 39872). As a result of the reevaluation, it has been determined that there is no need to revise the opacity standards. A report has been prepared on this reevaluation, and a copy is available for inspection at the Public Information Reference Unit (EPA Library), Room 2922 West Tower, 401 M Street SW., Washington, D.C. In addition, copies may be obtained upon written request from the EPA Public Information Center (PM-215), 401 M Street SW., Washington, D.C. 20460 (specify: Reevaluation of Standards of Performance for Secondary Brass and Bronze Ingot Production Facilities, October 1975).

Date: November 11, 1975.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.75-31003 Filed 11-17-75;8:45 am]

[FRL 457-6]

SECONDARY LEAD SMELTERS

Reevaluation of Opacity Standards of Performance for New Sources

Under section 111 of the Clean Air Act, as amended, standards of performance for secondary lead smelters were promulgated on March 8, 1974 (39 FR 9308). The standards included a limitation on the concentration and opacity of the effluent from reverberatory and blast (cupola) furnaces and an opacity standard only for pot furnaces. The opacity standards have been reevaluated by the Agency in light of the revisions to Reference Method 9 for determining the opacity of emissions which were promulgated on November 12, 1974 (30 FR 39872). As a result of the reevaluation, it has been determined that there is no need to revise the opacity standards. A report has been prepared on this reevaluation, and a copy is available for inspection at the Public Information Reference Unit (EPA Library), Room 2922 West Tower, 401 M Street SW., Washington, D.C. In addition, copies may be obtained upon written request from the EPA Public Information Center (PM-215), 401 M Street SW., Washington, D.C. 20460 (specify: Reevaluation of Standards of Performance for Secondary Lead Smelters, October 1975).

Date: November 11, 1975.

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

[FR Doc.75-31002 Filed 11-17-75;8:45 am]

[FRL 458-2]

OHIO

Air Pollution Control: Implementation Plan for the Control of Sulfur Dioxide; Public Hearing

Section 110(c) of the Clean Air Act, as amended (42 U.S.C. § 1857c-5), directs the Administrator of the Environmental Protection Agency to publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if the State fails to submit a portion within the time prescribed, or if a portion is determined by the Administrator not to be in accordance with the requirements of section 110 of the Act. On November 10, 1975 (40 FR 52410) the Administrator published regulations setting forth an implementation plan for the proposal will be held in Cincinnati, stated in that publication, hearings on the proposal will be held in Cincinnati, Cleveland, Steubenville and Columbus. The time and location of each of the hearings is set forth below.

The proposed regulations are available for inspection at local and State air pollution control agency offices. For more detailed information, see proposed rulemaking notice referred to above.

The public is encouraged to participate in the rulemaking by submitting comments in accordance with the conditions specified in the notice of proposed rulemaking published on November 10, 1975. In addition, public hearings will be held on the proposed regulations in order to provide the general public a greater opportunity to comment. Accordingly, notice of the time and place of the public hearings concerning these proposed regulations is given as indicated below.

A presiding officer will be designated for each hearing. He will have the responsibility for maintaining order; excluding irrelevant or repetitious material; scheduling presentations; and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

Interested persons wishing to make a statement at the hearing will be afforded the opportunity to do so. The time for making a statement will be limited. Such persons are requested to file a notice of their intentions to make a statement no later than 10 days prior to the hearing, and to submit no later than 5 days prior to the hearing, if practicable, five copies of the proposed statement to Ms. Loretta Barsamian, Compliance Section, Enforcement Division, EPA, Region V, 230 South Dearborn, Chicago, Illinois 60604. All other inquiries and comments prior to and after the hearing should be addressed to the same.

Hearings on the proposed regulations for the control of sulfur dioxide emissions in Ohio will be held at the times and places below.

CINCINNATI

December 18, 1975 at 9 a.m. at the Netherland Hilton (Continental Room) 35 West Fifth Street Cincinnati, Ohio 45201.

CLEVELAND

January 6, 1976 at 9 a.m. at the Hollenden House (Ballrooms C and D), East Sixth and Superior Avenue, Cleveland, Ohio 44114.

STEUBENVILLE

January 8, 1976 at 9 a.m. at the Holiday Inn, Stony Hollow Boulevard, Steubenville, Ohio 43952.

COLUMBUS

January 13, 1976 at 9 a.m. at the Carrousel Inn (Scott's Inn) 4900 Sinclair Road, Columbus, Ohio 43229.

Dated: November 7, 1975.

FRANCIS T. MAYO,
Regional Administrator Region V.

[FR Doc.75-31310 Filed 11-17-75;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

ADVISORY COMMITTEE TO ASSIST FCC STEERING COMMITTEE IN PREPARATION FOR 1979 ITU WORLD ADMINISTRATIVE RADIO CONFERENCE

Notice of Meeting

NOVEMBER 11, 1975.

A meeting of the Industry Advisory Committee to the Federal Communications Commission Steering Committee for the 1979 General World Administrative Radio Conference is scheduled to be held on Monday, December 15, 1975, at 10:00 A.M. in Room 8210 of the Commission's offices located at 2025 M Street, N.W., Washington, D.C

This meeting will be held to consider the progress of the various WARC '79 preparatory sub-elements, to evaluate that progress, and to solicit suggestions from the Advisory Committee regarding the WARC '79 preparatory effort. Additionally, issues accepted at the previous meeting on November 3, 1975, as well as any new issues identified, will be discussed. Membership on the Committee is limited to Commission invitation; however, attendance at this meeting will be open to the general public and any written comments will be accepted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-31114 Filed 11-17-75; 8:45 am]

[Docket No. 20181; File No. BHP-8408 and Docket No. 20182; File No. BHP-8798]

ROCKET RADIO, INC., AND APOSTOLIC COUNCIL OF CHURCHES, INC.

Correction [40 FR 50132]

In re applications of Rocket Radio, Inc. Fort Valley, Georgia Apostolic Council

of Churches, Inc., Fort Valley, Georgia for construction permits.

1. Paragraph 6 of the Memorandum Opinion and Order, (FCC 75R-385, released October 22, 1975), [40 FR 50132] is corrected, as follows:

6. Accordingly, *it is ordered*, That the petition to enlarge issues, filed March 17, 1975, by Rocket Radio, Inc., is granted to the extent indicated herein, and is denied in all other respects; and

Released: October 30, 1975.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-31113 Filed 11-17-75;8:45 am]

BROADCAST BUREAU SERVICE GROUPS SCHEDULE OF MEETINGS

NOVEMBER 14, 1975.

Pursuant to Public Law 92-463, notice is hereby given of schedule of meetings of the Broadcast Bureau Service Working Groups for the 1979 World Administrative Radio Conference:

The meetings are as follows:

DECEMBER 3, 1975

The AM Broadcasting Service Group, Donald G. Everist, Chairman, and Elizabeth L. Dahlberg, Vice-Chairman, will hold its second meeting on December 3, 1975, in Room 752, Federal Communications Commission, 1919 M St. NW., Washington, D.C. The meeting will be open to broadcast industry representatives and interested members of the public. The agenda for the meeting is as follows:

1. Call to order by the Chairman.
2. Approval of the minutes of the October 22, 1975 meeting.
3. Report of the Channel Separation and Additional Channel Task Force Chairman, L. R. duTreil.
4. Report of the Stereo, Percentage Modulation and SSB Task Force Chairman, Harold Kassens.
5. Report of the Directional Antenna, Interference, Coverage and Power Limitation Task Force Chairman, Marianna Cobb.
6. Further discussion.
7. Setting next meeting date and adjournment.

DECEMBER 11, 1975

Meeting of the TV Broadcasting Service Working Group will be held at 9:30 a.m.-12 Noon, in Room 752, 1919 "M" Street NW.

The Agenda is as follows:

1. Approval of Agenda.
2. Approval of Minutes of last meeting.
3. Report of Task Force Chairmen.
4. Any further business.
5. Adjournment.

DECEMBER 11, 1975

The next meeting of the Broadcast Auxiliary Service Working Group, John Serafin (ABC), Chairman, Martin Meaney (NBC), Vice-Chairman, and A. Jarratt (FCC), Secretary, is scheduled at 1:30-4:30 p.m., Room 752, 1919 "M" Street NW.

The Agenda is as follows:

1. Call to order and approval of Minutes of October 22nd meeting.
2. Reports from Task Groups:
1. ITU Regulations—M. Meaney.
2. Spectrum Requirements—N. Smith.
3. Technology—To be announced.
4. External Proposals—J. Parker.
3. Further discussion including possible new task groups.
4. Setting of next meeting time and adjournment.

DECEMBER 12, 1975

Meeting of the Broadcasting Satellite Service Working Group is scheduled at 9:30 a.m.—12 Noon, Room 752, 1919 "M" Street NW.

The agenda is as follows:

1. Approval of Agenda.
2. Approval of Minutes of last meeting.
3. Report of Task Force Chairmen.
4. Any further business.
5. Adjournment.

DECEMBER 12, 1975

The meeting of the FM Broadcasting Service Working Group to assist the FCC Broadcast Bureau's Steering Committee in preparation for the 1979 WARC conference is scheduled to be held Friday, December 12, 1975 at 1:30-4:30 p.m. in Room 752, 1919 "M" Street NW., Washington, D.C.

The Agenda for the meeting will be the same as listed for the Broadcasting Satellite Service Working Group.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Secretary.

[FR Doc.75-31234 Filed 11-17-75;8:45 am]

FEDERAL COUNCIL ON THE AGING

NOTICE OF MEETING

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29) for the purpose of advising the President, the Secretary of Health, Education and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92-463 that the Council will meet on December 3, 1975 from 9:30 a.m. to 5 p.m., on December 4, 1975 from 9:00 a.m. to 5 p.m. and on December 5, 1975 from 9:00 to 3 p.m., in Room 4563, Donohoe Building, 400 Sixth Street, S.W., Washington, D.C. The agenda will consist of: Approval of Benefits Study Recommendations; Approval of Tax Study Recommendations; the Approval of Recommendations of Task Force on the Frail Elderly; Revision of Charter for Older Americans; Approval of Recommendations Regarding National Policy Concerns for Older Women; Progress Report on HEW Aging Research Plan; Proposed Hearings for Manpower Needs in the Field of Aging; and Approval of FCA Annual Report.

This meeting open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Room 4022, Donohoe Building, 400 Sixth Street, S.W., Washington, D.C. 20201, telephone: (202) 245-0441.

NOVEMBER 11, 1975.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

[FR Doc.75-31117 Filed 11-17-75;8:45 am]

FEDERAL ELECTION COMMISSION

[Notice 1975-52]

ADVISORY OPINION

Federal Election Campaign Act

Correction

In FR Doc. 75-26071, appearing at page 45292, in the issue for Wednesday, October 1, 1975, the following correction should be made: On page 45293, in the first column, in the paragraph entitled "*7. Honorariums*", a line was inadvertently omitted. This line should be inserted between the sixteenth and seventeenth lines of the paragraph and should read "limitations of 18 U.S.C. § 608. The Com-".

FEDERAL ENERGY ADMINISTRATION

MANDATORY BEVERAGE CONTAINER DEPOSIT LEGISLATION: ECONOMIC AND ENERGY IMPACTS

Extension of Date for Submission of Comments

The FEA requested comments on a study of economic and energy impacts of mandatory beverage container deposit legislation in a notice published October 20, 1975 (40 F.R. 3976). The period for comment on that study is hereby extended until November 28, 1975. All comments with respect to the study which are received by November 26, 1975 will be considered for incorporation into the final report.

Issued in Washington, D.C., November 14, 1975.

DAVID G. WILSON,
Acting General Counsel
Federal Energy Administration.

[FR Doc.75-31192 Filed 11-14-75;12:07 pm]

FEDERAL MARITIME COMMISSION

[FMC-142(a) (Rev. 2-74)]

SEATRAIN INTERNATIONAL, S.A. AND STAR SHIPPING, INC.

Notice of Agreement Field

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, La., San Juan, Puerto Rico and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 25, 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:

Neal M. Mayer, Esq., Coles & Goertner, 1000 Connecticut Avenue NW., Washington, D.C. 20036.

Agreement No. 10202 is an arrangement between Seatrain International, S.A. (Seatrain) and Star Shipping, Inc. (Star) whereby Seatrain will (1) time charter the vessel STAR TARANGER for service in the trade between Japan and the U.S. Pacific Coast; (2) space charter a certain number of container slots on the vessels STAR BULFORD and IRISH STARDUST serving the trade from Japan to the U.S. Pacific Coast; and (3) have the option of chartering space on the vessels STAR ASTORIA, STAR BULFORD, STAR BOXFORD and STAR ASTORIA on successive eastbound voyages from Japan and Korea to the U.S. Pacific Coast. The time chrater shall be for a term of 60 to 90 days and each of the space charters will be for a single voyage of the ships in question.

Seatrain's chartering of Star's vessels is necessary because the M/V PLUTOS, one of Seatrain's two vessels serving the Pacific trade, blew its engine on November 3, 1975.

By Order of the Federal Maritime Commission.

Dated: November 14, 1975.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.75-31230 Filed 11-17-75;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CS71-1052]

A. O. PHILLIPS

Redesignation of Estate

NOVEMBER 7, 1975.

By letter dated June 12, 1975, and filed June 15, 1975, the Estate of A. O. Phillips advised the Commission that A. O. Phillips died September, 1972, and the Estate has operated his properties since that time.

Notice is hereby given that the name in the above-docketed matter is redesignated from A. O. Phillips to Estate of A. O. Phillips.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31047 Filed 11-17-75;8:45 am]

[Docket Nos. ER76-137, ER76-126, E-7775]

APPALACHIAN POWER CO.

Order Granting Intervention

NOVEMBER 11, 1975.

On September 18, 1975, Appalachian Power Company (Apco) tendered for filing supplements to its FPC Rate Schedule No. 30 for the City of Salem, Virginia in Docket No. ER76-137, which would place Salem under Apco's Tariff WS and replace the fuel adjustment clause of Tariff WS.

Notice of Apco's filing for Salem was issued September 26, 1975 with comments, protests and petitions to intervene due on or before October 8, 1975. On October 8, 1975, the City of Salem filed a petition to intervene in Docket No. ER76X137.

The Commission finds:

Participation by Salem in these proceedings may be in the public interest and good cause exists for permitting such intervention.

The Commission orders:

(A) The above-mentioned petitioner is hereby permitted to intervene in this proceeding, subject to the Rules and Regulations of the Commission, *Provided, however,* that the participation of such intervenor shall be limited to matters affecting the rights and interests specifically set forth in its petition to intervene; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition that it might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(B) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31062 Filed 11-17-75;8:45 am]

[Project No. 618]

ALABAMA POWER CO.

Notice of Issuance of Annual License

NOVEMBER 6, 1975.

On September 8, 1972, Alabama Power Company, Licensee for Jordan Dam Project No. 618, located in Elmore, Chilton, and Coosa Counties, near the Cities of Wetumpka and Elmore, Alabama, filed an application for a new license under the Federal Power Act and Commission regulations thereunder.

The license for Project No. 618 was issued effective November 7, 1925, for a period ending November 6, 1975. In order to authorize continued operation of the Jordan Dam Project pending completion of Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Alabama Power Company for continued operation and maintenance of Project No. 618.

Take notice that an annual license is issued to Alabama Power Company (Licensee) for the period November 7, 1975, to November 6, 1976, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 618, subject to the terms and conditions of its present license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31039 Filed 11-17-75;8:45 am]

[Docket No. RP75-80]

ALABAMA-TENNESSEE NATURAL GAS CO.

Notice of Further Extension of Procedural Dates

NOVEMBER 7, 1975.

On November 5, 1975, Tennessee Valley Municipal Gas Association filed a motion to extend the procedural dates fixed by order issued April 24, 1975, as most recently modified by notice issued August 25, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Intervenor Testimony, January 19, 1976.
Service of Company Rebuttal, February 9, 1976.
Hearing, February 24, 1976 (10:00 a.m. EST).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31024 Filed 11-17-75;8:45 am]

[Docket No. RP75-88]

ALGONQUIN GAS TRANSMISSION CO.

Notice of Extension of Procedural Dates

NOVEMBER 10, 1975.

On October 31, 1975, Algonquin Gas Transmission Company filed a motion to extend the procedural dates fixed by order issued May 19, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Company Rebuttal, November 28, 1975.
Hearing, January 13, 1976 (10:00 a.m. e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31054 Filed 11-17-75;8:45 am]

[Docket No. RP75-88]

ALGONQUIN GAS TRANSMISSION CO.

Order Granting Motion for Summary Disposition, Requiring Refunds and Submission of Revised Tariff Sheet

NOVEMBER 10, 1975.

On October 7, 1975, Bay State Gas Company, *et al.*, (Bay State), an inter-

venor in the instant proceeding, filed a motion for partial summary disposition of the increased rates proposed herein by Algonquin Gas Transmission Company (Algonquin). On October 20, 1975, Algonquin requested an additional week to reply to Bay State's motion. This request was granted by notice issued October 23, 1975, and Algonquin filed its reply to the motion on October 29, 1975. We shall grant Bay State's motion, order refunds of any excess amounts collected, and order Algonquin to file a revised tariff sheet reflecting the relief herein granted.

The increased rates proposed herein were filed by Algonquin on April 8, 1975. By order issued May 19, 1975, we, *inter alia*, accepted Algonquin's proposed rate increase for filing and suspended its effectiveness for five months, or until October 23, 1975, when the rates were permitted to become effective, subject to refund. By letter order issued November 3, 1975, we advised Algonquin that these rates would be permitted to become effective October 23, 1975, subject to refund and subject to action on Bay State's motion.

Bay State moves that the demand charge contained in Algonquin's Rate Schedule SNG–1 be based on the full capacity of the SNG plant of 118,200 MMBtu per day instead of the 107,395 MMBtu per day used by Algonquin in support of its proposed demand charge. As support for the relief sought, Bay State cites the following language from the Initial Decision adopted in *Algonquin SNG, Inc., Et Al.*, Opinion No. 637, 48 FPC 1216 (1972):

> (6) (iv) notwithstanding the provisions of any rate schedule or applicable service agreement, said applicant shall not, without prior Commission approval, file any rate schedule providing for any increase in rates based in any part, directly or indirectly, upon any fixed unit costs calculated upon the basis of a total volume of production of synthetic gas by the aforesaid reforming plant, during any period from October 16 through April 15 in any year, less than the equivalent of 151 days' production at the rate of 120,000 Mcf/d . . . 48 FPC at 1252.

The demand charge proposed by Algonquin is based on 10,805 MMBtu per day less than full capacity of the SNG plant.

Algonquin in response argues that summary disposition is improper as inconsistent with Opinion No. 637, would improperly prejudge an issue before the Presiding Administrative Law Judge in Docket No. RP74–92 (Algonquin's prior rate case), and that decision on this issue should be based on a complete record. Specifically, Algonquin argues that it is entitled to a hearing on this matter under Section 4 of the Natural Gas Act and Opinion No. 637. Algonquin quotes the following language from our Opinion:

> The condition we impose is limited to the initial rates under which Algonquin Gas will operate when this project is completed and placed in service. We do not prejudice the right of Algonquin Gas to demonstrate, through a 4(e) filing, that rate increases are necessitated by an increase in the cost of purchased SNG. Any such filing will be judged on its own merits, governed by traditional 4(e) standards, that is whether the increase is cost-based, and whether the cost increase has been reasonably and prudently incurred. 48 FPC at 1224

From this, Algonquin argues that it has filed its rate increase under Section 4 of the Act and is entitled to demonstrate the justness and reasonableness of its rates in a hearing under section 4(e).

The language quoted by Algonquin follows and refers to the condition we imposed in addition to the conditions in the Judge's Initial Decision, that:

> [O]ur approval of Algonquin Gas' request for authorization to transport and sell SNG is conditioned upon Algonquin Gas selling SNG at an initial maximum rate of $1.80/Mcf. . . .

Nothing in the condition or our description of it detracts from the requirement of prior Commission approval of an increase in rates based on less than the full daily production of the SNG plant.

Algonquin argues that the merits of this issue were tried in Docket No. RP74–92, now being briefed to the Presiding Administrative Law Judge. We note, however, that the rates Algonquin filed in that proceeding were based on the full capacity of the SNG plant. Our grant of Bay State's motion does not prejudge any issue. It merely requires Algonquin to conform to the condition imposed earlier by Opinion No. 637. We shall decide the merits of any of the issues raised or to be raised, including a request by Algonquin for approval of a change in the basis of its rates, when such questions are before us.

Algonquin also quotes testimony submitted by Bay State in the instant proceeding, again arguing that the proposals should be tested at hearing and on brief in the instant proceeding. This argument similarly fails to reach the requirement of prior Commission approval. Algonquin's final argument, based on our affirmance of the Initial Decision in Docket No. RP71–131, *et al.*, again does not reach this requirement.

For these reasons, we shall grant Bay State's Motion for Summary Disposition. We shall also require Algonquin to file a revised tariff sheet reflecting a demand charge under Rate Schedule SNG–1 based on the full capacity of the SNG plant within 30 days of the issuance of this order. We shall also require Algonquin to refund, with interest a 9% per annum, any amounts collected in excess of this revised rate within thirty days of the filing of the revised tariff sheet.

The Commission finds:

Good cause exists to grant Bay State's Motion for Summary Disposition and to order the filing of a Revised Tariff Sheet and to order refunds of any amounts collected in excess of such tariff revised tariff sheet.

The Commission orders:

(A) Bay State's Motion for Summary Disposition is hereby granted.

(B) Within 30 days of the issuance of this order, Algonquin shall file a revised tariff sheet reflecting a demand charge under Rate Schedule SNG–1 based of the full capacity of the SNG plant of 118,200 MMBtu per day.

(C) Within 30 days of the filing of such revised tariff sheet, Algonquin shall make refunds, with interest at 9% per annum, to its customers of any amounts collected in excess of the revised rate herein ordered.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31037 Filed 11-17-75;8:45 am]

[Docket No. E-8302]

BANGOR HYDRO-ELECTRIC CO.

Notice of Certification of Proposed Settlement

NOVEMBER 10, 1975.

Take notice that on October 23, 1975, the Presiding Administrative Law Judge certified to the Commission a proposed settlement in the above-entitled proceeding. The settlement agreement, if approved, would resolve the rate for the wheeling service which Bangor Hydro-Electric Company provides to Eastern Maine Electric Cooperative.

Any person wishing to do so may file comments concerning the proposed settlement agreement. All such comments should be submitted in writing to the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 25, 1975. The Commission will consider all comments in determining the proper action to be taken.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31055 Filed 11-17-75;8:45 am]

[Docket No. E-9037]

BOSTON EDISON CO.

Order Approving Settlement Agreement

NOVEMBER 6, 1975.

On September 23, 1974, the Boston Edison Company (Edison) tendered for filing a proposed subtransmission rate schedule[1] for wheeling service it would provide for the New England Power Company (NEPCO) over Edison's 14/24 Kv facilities to serve approximately half of the load requirement of NEPCO's isolated Quincy-Weymouth service area. Edison proposed to wheel power generated by NEPCO under the filed rate schedule, this service replacing the firm requirements service being rendered by Edison to the area.[2] The proposed rate schedule provides for a monthly charge of approximately $92,786 ($1.24 per Kw per month).

Prior to 1972 the total requirements of NEPCO's Quincy-Weymouth service

[1] Designated as Boston Edison Company, Supplement No. 3 to Rate Schedule FPC No. 46 (Subtransmission Service).

[2] The other half of NEPCO's load in the area is presently served at 115 Kv under a transmission wheeling agreement between the parties, which is currently under investigation in Docket No. E-8187, *et al.* (briefs have recently been submitted by the parties to the Presiding Administrative Law Judge).

area were supplied by Edison under its wholesale for resale rates. In November of 1972 NEPCO converted approximately half of the Quincy-Weymouth load from Edison generation to its own generation, relying on Edison to provide the wheeling service via its transmission system. The remainder of the Quincy-Weymouth load was converted in November, 1974, requiring Edison to provide not only transmission service but also subtransmission service on Edison's existing 14 and 24 Kv subtransmission facilities connecting Edison's high voltage transmission system with the lower voltage portion of the Quincy-Weymouth load, the rate for which is the subject of this docket.

Although Edison filed the subtransmission rate as an initial rate schedule, in our order issued October 31, 1974 we treated it as a change in rate pursuant to Section 205 of the Commission's Rules and Regulations, and suspended the rate for one day to become effective November 2, 1974. The matter was set for hearing and consolidated with the proceeding on Edison's Rate S–3 general wholesale increase, Docket No. E–8855.

Edison filed application for rehearing of our order treating the subject filing as a change in rate on two separate occasions, November 29, 1974 and January 6, 1975. Both applications were denied by orders issued December 27, 1974 and February 5, 1975, respectively. Edison thereupon submitted an appeal of this issue, on March 26, 1975, to the United States Court of Appeals for the District of Columbia Circuit, No. 75–1307.

On April 8, 1975, Edison and NEPCO jointly submitted the proposed settlement agreement. The agreement provides that the subtransmission rate should be allowed to continue in effect as filed, so as to discharge Edison from any refund obligation to NEPCO upon termination of Docket No. E–9037. Furthermore, the joint motion for approval of the settlement agreement notes that "upon approval of the settlement Edison proposes to withdraw its petition to review the Commission's orders" inasmuch as "the question of whether the firm power subtransmission rate filing was an initial rate filing or rate change filing becomes immaterial and is mooted (except for the one-day suspension, as to which the amount is inconsequential)." As support for the proposed settlement, the prepared testimony and exhibits of Edison, NEPCO, and the Staff pertaining to the subtransmission rate were tendered as an appendix to the joint motion.

Notice of the proposed settlement agreement was issued April 25, 1975, with comments, protests, or petitions to intervene due on or before May 13, 1975. On August 8, 1975, the Staff filed comments in support of the agreement, "inasmuch as Staff's cost-revenue analysis indicates that Edison's proposed rates are justified from a cost of service standpoint".

Attached to the proposed settlement agreement was a leter to Staff Counsel from Counsel for the Towns of Concord, Norwood, and Wellesley, Massachusetts (Towns)[2] which indicated opposition to the proposed settlement because there was a possibility that the proposed settlement might have an impact upon Towns in some fashion. Inasmuch as no formal comments were submitted by Towns in response to the April 25, 1975 notice and there being some question as to Towns' position, the Commission by order issued September 2, 1975, provided Towns with a further opportunity to file comments on or before September 15, 1975, so as to ascertain whether Towns had any serious objections to the proposed settlement. No comments were received.

Our review of the proposed settlement agreement, and the comments filed pursuant thereto, indicates that it is a reasonable and appropriate resolution of the issues in this proceeding in the public interest and that, accordingly, it should be adopted as hereinafter ordered.[4]

The Commission finds:

The proposed settlement of this proceeding as filed by Edison and NEPCO with the Commission on April 8, 1975, is reasonable and proper and in the public interest in carrying out the provisions of the Federal Power Act and should be approved, as hereinafter ordered and conditioned.

The Commission orders:

(A) The proposed settlement filed by Edison and NEPCO on April 8, 1975, is incorporated herein by reference and made a part hereof and is approved and adopted to be effective as of November 2, 1974.

(B) Edison's refund obligation to NEPCO with regard to the subtransmission rate filed in this docket is hereby terminated.

(C) Pursuant to the settlement agreement, Edison is hereby directed to withdraw within 10 days of the issuance of this order, its petition filed on March 26, 1975, in the United States Court of Appeals for the District of Columbia Circuit, No. 75–1307.

(D) This docket is hereby terminated upon issuance of this order.

(E) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its staff, Edison or by any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against Edison or any other person or party.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[2] Towns are intervenor-customers under Edison's Rate S–3, such rate being the subject of Docket No. E–8855. Docket Nos. E–8855 and E–9037 were consolidated by order issued October 31, 1974.

[4] We recognize and adopt Staff's cost of servive and capitalization structure (shown at Appendices A and B attached hereto) as the supportive data upon which this proposed agreement is predicated. As previously noted, this information was included in the subject motion for approval thereof.

APPENDIX A.—*Boston Edison Co.—Settlement cost of service—Test period, 12 mos ended Dec. 31, 1973*

[Docket No. E–8855, Exhibit No. (S–1) R, Schedule No. 1]

				Wholesale service at issue	
	In	All	Out	Total electric Department	Customer Group No. 3
				(A)	(D)
1 Rate base			RRE1	$810,504	$2,830
2 Proposed revenues			RRE2	$281,672	$1,113
3 Operating expenses before taxes			RRE3	$205,117	$847
4 Income taxes					
5 Federal			RRE4	$11,249	$13
6 State			RRE5	$344	−$5
7 Total income taxes			RRE6	$11,593	$8
8 Return			RRE7	$74,972	$261
9 Total revenue requirements			RRE8	$291,682	$1,116
10 Excess revenues			RRE9	−$10,010	−$3
11 Return on excess revenues			RRE0	−$4,866	−$1
12 Total return earned			TRTE	$70,106	$260
13 Rate of return earned			RTRE	8.650	9.230
14 Revenue increase—company vs. staff					
15 Present revenues			RREA	$280,672	$1,113
16 Revenues proposed by company			RREB	$281,672	$1,113
17 Increase request by company			RREC	$1,000	0
18 Increase request by company (percent)			RRED	0.356	0.0
19 Increase justification by staff			RREE	−$920	$3
20 Increase justification by staff (percent)			RREF	−0.328	0.270
21 Rate of return recommended by staff			RREG	9.250	9.250

NOTE.—Rate base—midyear average. Capacity allocation method—average of 12 monthly coincident peaks. All data as adjusted by staff summary of revenue requirements.

APPENDIX B.— *Boston Edison Co.—Settlement capitalization*

[As of June 30, 1974, adjusted]

	Capitalization		Component return	Weighted component return
	Amounts	Ratios		
	Thousands	*Percent*	*Percent*	*Percent*
Long-term debt	$382,400	60.03	7.98	4.79
Preferred stock	82,907	8.55	6.66	.57
Deferred accumulated Federal income taxes (account 281)	2,803	.29	0	0
Common equity	302,000	31.13	12.50	3.89
Total capitalization	970,110	100.00		
Overall rate of return				9.25

[FR Doc.75-30686 Filed 11-17-75;8:45 am]

[Docket No. CI75-601]

BRIGHT & SCHIFF

Order To Show Cause, Setting Matter for Hearing and Prescribing Procedures

NOVEMBER 10, 1975.

On April 9, 1975, Bright & Schiff (Applicant) filed in Docket No. CI75-601 an application pursuant to Section 7(b) of the Natural Gas Act for authorization to abandon the sale of natural gas in interstate commerce to South Texas Natural Gas Gathering Company (So-Tex) from the Reynolds No. 1 Well, Whitted Field, Hidalgo County, Texas (R.R. District No. 4, Gulf Coast Area), under a contract dated November 1, 1958. The sale to So-Tex was authorized in Docket No. G-18608, at a rate of 15.5 cents per Mcf. So-Tex resells the gas to Transcontinental Gas Pipe Line Corporation (Transco) pursuant to a contract dated February 17, 1959.[1] Applicant has received a small producer certificate in Docket No. CS71-70.

Applicant proposes to abandon the Whitted Field sale in view of the fact that the reservoir pressure has allegedly declined to the extent that Applicant believes it is no longer economically feasible to continue production. By agreement dated March 5, 1975, So-Tex has agreed to cancel and terminate the 1958 contract since production has ceased from the only producing gas well on the acreage and leases covered by the contract. The Reynolds well has been shut in since March of 1975. By letter dated July 30, 1975, in reply to a Staff inquiry of June 20, 1975, Applicant estimated total remaining reserves of 60,000 Mcf and a productive life of one to two years with an average daily flow of 90 Mcf at 50 psi if sufficient compression were installed in the Reynolds well. Applicant further alleges that to produce the remaining reserves under the 1958 contract with So-Tex would require the installation of two stages of compression at an estimated cost of $20,000 per stage, plus fuel and other operating costs. Applicant also concluded that it would not be feasible to request special relief under Section 2.76 (18 CFR 2.76) of the Commission's Statement of Policy and Interpretation,[2] or to risk the necessary capital required to continue sales to So-Tex.

Additionally, by letter dated September 17, 1975, to its legal representative (a copy of which was furnished to the Secretary on September 24, 1975), Applicant has disclosed that if there is any further delay the matter will become moot since Applicant will lose its lease and rights to produce the remaining reserves. Applicant has submitted a copy of its lease agreement dated June 29, 1957, evidencing the right of lessor to terminate the lease. Applicant indicates that the remaining 60,000 Mcf of reserves could be sold at low pressures and volumes to owners of irrigation wells in the local citrus farming community or to others, and that it will attempt to market the remaining gas should the Commission approve its abandonment application.

From the foregoing is clearly appears to this Commission that quantities of gas which have been dedicated to the interstate market have been removed without Commission approval pursuant to Section 7(b) of the Natural Gas Act. It is well established that there can be no withdrawal of gas once dedicated to the interstate market from continued interstate movement without approval of the Commission under section 7(b).[3] Therefore, the sale proposed to be abandoned by Applicant may only be lawfully terminated after such Commission approval. Furthermore, this Commission finds it necessary to join So-Tex as a respondent in the instant proceeding in view of the fact that it is an integral link in the interstate sale of the subject gas to Transco, and has not filed an opposition to Applicant's unauthorized shutting in of the Reynolds Well. So-Tex as a "natural gas company" also has a duty under Section 7(b) of the Natural Gas Act to continue "service" including the transportation and resale of that gas in interstate commerce.[4]

Therefore, this order will direct that a hearing be convened to ascertain facts and circumstances underlying the jurisdictional operations of Applicant and So-Tex pursuant to the Natural Gas Act, 15 U.S.C. 717, *et seq.*, with regard to all dedications of natural gas to Applicant and to the interstate market by Applicant to So-Tex as hereinbefore mentioned. In view of the foregoing we are directing Applicant and So-Tex in this proceeding to show cause why either or both of them should not be found in violation of Section 7(b) of the Natural Gas Act and the Commission's regulations thereunder for not having secured the requisite authorization before abandoning jurisdictional sales of natural gas.

In order to develop a complete record in this proceeding, such proceeding should develop, and the parties shall be required to submit evidence and testimony concerning but not limited to:

1. The original 1958 gas purchase contract between Applicant and So-Tex as well as So-Tex's 1959 sales contract with Transco.

2. A detailed evidentiary presentation regarding what additional costs and/or prices would be required to maintain the production of the remaining producible reserves to the interstate market with full documentation as to the unit price at which such undertaking would be feasible.

3. A detailed analysis and presentation of remaining reserves in the subject well including a complete explanation of all tests conducted, and technical data relied upon to arrive at the estimated reserves.

4. Why Applicant has not sought to avail itself of the relief available under Section 2.76 of the Commission's General Policy and Interpretations in order to obtain a rate above the existing applicable area rate in order to extract the subject low pressure gas.

5. A presentation by Applicant of the type of customers (based upon an end use analysis) and prices for sale by Applicant in the intrastate market should the abandonment application be granted.

6. The monthly rate of production for the previous three years from the subject well.

The Commission finds: (1) It may be that Bright & Schiff and So-Tex are in violation of the Natural Gas Act and the Commission's Regulations thereunder.

(2) It is necessary and proper in carrying out the provisions of the Natural Gas Act that a full evidentiary hearing be held on the matters involved and issues presented in this proceeding as hereinbefore described.

(3) Bright & Schiff are hereby ordered *Pendente Lite* to refrain from engaging in the sale of natural gas produced from the subject well with any party other than So-Tex, and shall take no action to terminate the subject leases as a matter of law, and take all steps necessary to restore service to So-Tex from the subject well.

(4) Participation by So-Tex is in the public interest.

The Commission orders: (A) Bright & Schiff and So-Tex shall show cause, if any, at a hearing directed in Paragraph (D) below why they or each of them should not be held in violation of Section 7(b) of the Natural Gas Act and the Commission's Regulations thereunder for

[1] This contract is on file as So-Tex's Gas Rate Schedule No. 2 which was authorized in Docket No. G18907.

[2] Policy With Respect to Rates Where Reduced Pressures, Need for Reconditioning, Deeper Drilling, or Other Factors Make Further Production Uneconomical at Existing Prices.

[3] *Atlantic Refining Co.* v. *P.S.C.N.Y.* 360 U.S. 378, 389 (1954); *Sunray Mid Continental Oil Co.* v. *FPC*, 364 US 136, 156 (1960).

[4] *United Gas Pipeline Company* v. *F.P.C.*, 385 U.S. 83, 89 (1966).

not having obtained authorization before abandoning jurisdictional sales, service, and related facilities as hereinbefore described.

(B) So-Tex is hereby joined as a party to this proceeding and shall be prepared to explain at the formal hearing ordered herein among other things to what extent it acquiesced in the abandonment of the Applicant's sale to it.

(C) Pending the hearing set forth in Paragraph (D) below, and a decision in this proceeding, Applicant shall refrain from engaging in the sale of natural gas produced from the above described well with any other party, other than So-Tex, shall take no action to terminate the subject leases as a matter of contract law, and shall immediately take all steps necessary to reinstate service under the certificate issued in Docket No. CS71-70.

(D) Pursuant to the authority of the Natural Gas Act, particularly Sections 7, 14, 15, 16, 20 and 21 and the Regulations under the Natural Gas Act [18 CFR Chapter 11, a public hearing concerning the matters involved and the issues presented in these proceedings as hereinbefore set forth will be held in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 commencing at 10:00 a.m., (EST) December 2, 1975. Applicant and So-Tex shall file with the Secretary of the Commission and serve on all parties including the Commission staff, testimony and exhibits addressing the specific issues as set forth in this order as well as any other testimony and exhibits which comprise their cases in chief on or before November 17, 1975.

(E) An Administrative Law Judge to be designated by the Chief Administrative Law Judge—[see Delegation of Authority 18 CFR 3.5(d)]—shall preside at the hearing in this proceeding and shall prescribe all relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31038 Filed 11-17-75;8:45 am]

[Docket No. RP76-13]

CITIES SERVICE GAS CO.

Order Granting Interventions

NOVEMBER 11, 1975.

On October 22, 1975, the Commission issued an order which, inter alia, instituted a hearing and established procedures in the above-captioned proceedings. Comments and petitions to intervene were due by October 10, 1975, pursuant to notice issued September 29, 1975.

A timely protest and petition to intervene was filed by Midwest Gas Users Association. Untimely petitions to intervene were filed by the Gas Service Company of Kansas City, Missouri, Peoples Natural Gas Division of Northern National Gas Company, and Kansas Municipal Utilities, Inc. together with thirty-two Kansas cities.[1] In addition, a notice of intervention was filed by the State Corporation Commission of the State of Kansas.

We note that in the order issued October 22, 1975, we inadvertently failed to specifically grant the timely petitions to intervene mentioned therein.[2]

Having reviewed the above petitions to intervene as well as those listed in the original order, we believe that all the petitioners have sufficient interest in the proceedings to warrant interventions.

The Commission finds: It is desirable and in the public interest to allow the above-named petitioners to intervene.

The Commission orders: (A) The above-named petitioners are hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission; *Provided, however,* that participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The interventions granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31063 Filed 11-17-75;8:45 am]

[Docket No. RP75-27]

CITIES SERVICE GAS CO.

Notice of Further Extension of Procedural Dates

NOVEMBER 7, 1975.

On October 28, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued November 22, 1974, as most recently modified by notice issued May 8, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, November 18, 1975.

Service of Intervenor Testimony, December 3, 1975.

Service of Company Rebuttal, January 19, 1976.

Hearing, January 28, 1976 (10:00 a.m. EST).

By direction of the Commission.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31046 Filed 11-17-75;8:45 am]

[Docket No. RP74-4]

CITIES SERVICE GAS CO.

Order Approving Settlement with Reserved Issues with Conditions

NOVEMBER 6, 1975.

On May 30, 1975, Cities Service Gas Company (Cities) filed a stipulation and agreement concurred in by all parties, including staff, which would settle all issues outstanding in this docket with the exception of three issues specifically reserved for hearing and decision. On June 9, 1975, the presiding Administratice Law Judge certified to the Commission the entire record exclusive of supplemental evidence relating to reserved issues.[1]

On July 23, 1973, Cities filed in this docket revised tariff sheets reflecting a proposed increase in jurisdictional revenues of $20,990,103, including a change in the base cost of purchased gas in Cities' PGA clause, together with certain other tariff changes. The Commission's order of August 22, 1973 accepted the revised sheets for filing (with certain modifications) and suspended the effectiveness thereof until January 23, 1974.

On April 23, 1974, a prehearing conference was held at which Cities' direct evidence and the Staff's evidence were placed on the record and settlement discussions were initiated. Due to the failure of the parties to resolve any of the issues through these discussions, revised Staff evidence, evidence of the intervenors and the Company's rebuttal evidence were served. Thereafter, Cities, intervenors again undertook to seek a basis for settlement through conferences held on August 22, and 23, and September 9, 1974. These conferences resulted in the agreement reflected in a previous Stipulation and Agreement dated September 10, 1974. By order issued January 23, 1975, we rejected that Stipulation and Agreement stating (*mimeo*, p. 2):

"* * * we are remanding the settlement agreement for full consideration in an evidentiary hearing of the issues related to cost classification, cost allocation and rate design.

"We do not object to the settlement cost of service. Staff objected to the rate of return included in the settlement. However, we are satisfied that both the overall return and the return on equity are reasonable. * * *"

Pursuant to our order of November 22, 1974, in Docket No. RP75-27, Cities' most recent general rate increase filing of Oc-

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[1] Cities of Abbyville, Altamong, Argonia, Auburn, Burlingame, Cassoday, Chanute, Danville, Effingham, Eskridge, Garnett, Hamilton, Howard, Humboldt, Iola, Kechi, Lancaster, Lebo, McLouth, Neodesha, Neosho Rapids, Norwich, Olivet, Osage City, Partridge, Plevna, Reading, Sharon, Stark, Sylvia, Uniontown and Viola, Kansas.

[2] The City of Springfield, Missouri and and Board of Utilities of Springfield, Missouri; City Group Gas Defense Association; and Union Gas System, Inc.

[1] By agreement of the parties hearing on the reserved issues is to go forward in accordance with the procedural schedule presently established in this docket.

tober 23, 1974, as revised, became effective subject to refund on April 23, 1975. Thus, the rates in the instant proceeding in Docket No. RP74–4 were collected for a locked-in period from January 23, 1974, through April 22, 1975.

In further conferences among the parties, including Commission Staff, on April 8–9 and 29–30, 1975, and May 20, 1975, the parties reached the agreement reflected in the Stipulation now before us for the settlement with certain reserved issues, for the locked-in period in Docket No. RP74–4.

The Stipulation reflects a cost of service based on actual per book costs and other actual data for the twelve-month period ended January 31, 1975.[2] The parties agreed that Cities' jurisdictional cost of service and refunds for the 15-month locked-in period would be based upon this cost of service and actual data for the twelve-month period subject to the Commission's decision as to three issues specifically reserved for hearing and decision: (1) the propriety of the inclusion in working capital of certain amounts of unrecovered purchased gas costs, (2) the propriety of the inclusion in cost of service of certain expenses related to specified research and development projects, and (3) the classification and allocation of costs and rate design.

The stipulated cost of service reflects the overall rate of return of 8.975 percent (resulting in a return on common equity of 9.60 percent which we specifically approved in our January 23, 1975, order.[3] In addition the stipulation provides for refunds for the locked-in period from January 23, 1974, through April 22, 1975, on the basis of each customer's actual billing for the locked-in period with the rates of refund based on the test period determined by the Commission in its decision on the issues reserved.

Certain of the issues reserved may affect the amount of refund for the locked-in period. Article II of the Settlement in Section 2 specifically itemizes a number of components in research and development expenses and reserves the issue as to whether or not these expenses are properly included in cost of service. This section further reserves the issue as to whether or not certain amounts representing unrecovered purchased gas costs are properly included in working capital. Finally, the issues as to the classification and allocation of costs and rate design are reserved.

With regard to advance payments the agreement provides that in the event within a period of five years (or such other period as may be authorized by the Commission) Cities recoups less than the full amount of its advances outstanding on January 22, 1975, it shall file and place into effect a reduction of its rates equal to the reduction in its jurisdictional cost of service to the then unrecovered portion of such advance payments. A similar provision is made for those advance payment agreements subject to Commission orders Nos. 465 and 499.

The Stipulation is to apply to the locked-in period extending from January 23, 1974, through April 22, 1975.

Two parties to the stipulation, while concurring in it filed what might be styled as "reservations". Intervenor, City Group Defense Association (City Group) appends a "clarification" to this stipulation to insure that City Group's "concurrence in the Stiplation and Agreement be not construed as implying agreement on its part that the question of [cost classification, cost allocation and rate design] be resolved on the basis of the holding in *Consolidated*, Opinion 703–A." The other reservation is contained in staff's comments in which it states that it believes that the Stipulation should be approved but that it wishes to state its understanding of the language set forth in Article II Section 3 of the Stipulation with reference to evidence to be submitted in this proceeding on the reserved issues.

With reference to City Group's "clarification", we agree that its concurrence in the Stipulation and Agreement does not constitute agreement on its part with reference to cost classification, cost allocation and rate design, since these matters are still pending in the reserved issues in this proceeding. We also concur in staff's view that Section 3 of Article II is not intended to in any way limit the scope of relevant or material evidence that may be submitted for consideration in this proceeding.

The Commission finds: Approval as hereinafter ordered of the settlement in this proceeding on the basis of the agreement filed on May 30, 1975, is just and reasonable and in the public interest in carrying out the provisions of the Natural Gas Act, subject to the conditions set forth below.

The Commission orders: (A) The settlement agreement filed herein on May 30, 1975, is incorporated herein by reference, approved and made effective as hereinafter ordered and conditioned.

(B) Further refunds might be required upon Commission disposition of the reserved issues in this proceeding.

(C) The Commission reserves its right to assign such effective date to the just and reasonable cost classification, cost allocation and rate design as it deems appropriate after hearing the evidence and the settlement is hereby conditioned to so provide.

(D) Cities shall fully comply with each of the provisions of the settlement agreement and with the terms and conditions of this order.

(E) This order is without prejudice to any findings or orders which have been made or which will hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order, in any proceeding now pending or hereafter instituted by or against Cities or any other person or party.

(F) Within 30 days of the date of issuance of this order Cities shall file revised tariff sheets in compliance with the settlement agreement and the terms and conditions of this order.

(G) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A.—*Cities Service Gas Co.—Docket No. RP74–4—Settlement cost of service*

[12 months ended Jan. 31, 1975]

Line No.	Description	Total	Gas supply	Gathering	Products extraction	Storage	Transmission
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Operation and maintenance:						
1	Gas purchased	$104,604,054	$104,604,054				
2	Gas stored underground—net	(1,057,488)	(1,057,488)				
3	Gas used by company	(4,308,997)	(4,308,997)				
4	Other gas supply expenses	1,942,973	1,942,973				
5	Gathering expenses	3,158,114		$3,158,114			
6	Products extraction expenses	1,280,900			$1,280,900		
7	Underground storage expenses	1,625,586				$1,625,586	
8	Transmission expenses	10,992,669					$10,992,669
9	Customer accounting and collecting expense	553,046		553,046			
10	Sales expenses	158,639		158,639			
11	Administrative and general expenses	8,332,386	966,229	1,666,142	46,605	518,485	5,134,925
12	Total operation and Maintenance expenses	127,181,882	102,056,771	5,535,941	1,327,505	2,144,071	16,117,594
13	Depreciation expenses	11,633,111		2,261,634	39,499	764,337	7,967,641
14	Amortization expense	44,444		6,665	97	2,435	35,247
15	Taxes other than income taxes	6,299,036	80,467	1,170,712	19,576	530,290	4,497,991
16	State income taxes	2,017,300	148,049	355,972	5,345	232,366	1,275,668
17	Federal income tax	18,368,810	1,348,079	3,241,355	48,672	2,114,928	11,615,776
18	Return	19,360,047	1,413,480	3,398,596	51,065	2,217,566	12,179,340
19	Other gas revenues—credit	(766,185)	(17,138)	13,742	(640,874)	(10,173)	(111,742)
20	Subtotal	183,438,445	105,029,708	15,984,617	850,885	7,995,720	53,577,515
21	Transfer Arkla cost of gathering and transmission	0	(2,093,096)	462,741	0	0	1,630,355
22	Total cost of service	183,438,445	102,936,612	16,47,348	850,885	7,995,720	55,207,870

[2] See Appendix A hereto which is identical to Appendix A of the proposed Stipulation and Agreement.

[3] See Appendix B hereto which is identical to Appendix G of the proposed Stipulation and Agreement.

APPENDIX B.—*Cities Service Gas Co.—Docket No. RP74-4—Capitalization and rate of return*

[In percent]

Class of capital	Cost of capital	Applicable weights	Col. (2) × col. (3)	Overall cost of capital
(1)	(2)	(3)	(4)	(5)
Long-term debt	7.53	29.12	2.193	
Preferred stock	5.01	.54	.027	
Common stock equity	9.60	70.34	6.755	
Total		100.00		8.975

NOTE.—Based on capitalization and cost of long-term debt and preferred stock in FPC Staff Exhibit 19.

[FR Doc.75-30887 Filed 11-17-75;8:45 am]

[Docket No. CP75-359]

COLUMBIA GULF TRANSMISSION CO.

Notice of Amendment to Application

NOVEMBER 7, 1975.

Take notice that on October 14, 1975, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP75-359 an amendment as supplemented October 24, 1975, to its application filed in said docket pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities to connect gas reserves in Block 595, West Cameron Area, offshore Louisiana, which request for authorization is amended to include construction and operation of facilities connecting additional reserves in the West Cameron Area, all as more fully set forth in the amendment to application on file with the Commission and open to public inspection.

Applicant requests authorization to construct and operate approximately 18.6 miles of 30-inch pipeline which would connect to the facilities proposed in Docket No. CP75-262.[1] The proposed pipeline would extend from Block 616 to Block 601, West Cameron Area, offshore Louisiana. Applicant also proposes to construct and operate approximately 5.7 miles of 16-inch pipeline which would extend from a producing platform in Block 595, West Cameron, Area, offshore Louisiana to a point of interconnection with the forementioned Block 616 to 601 pipeline in Block 607, West Cameron Area.

It is stated that the facilities would provide a delivery capacity of 185,000 Mcf per day in lieu of 100,000 Mcf per day capacity proposed project as set forth in the original application. The facilities are said to cross or pass near blocks which are believed to contain reserves that are expected to become available in 1977 or 1978. In addition, Columbia Gas Transmission Corporation is said to have the preferential right to purchase from Exxon Company, U.S.A. 25 (Exxon), 25 percent of the gas reserves of Exxon in Blocks 616 and 630, West Cameron Area, which reserves are expected to become available in December 1976, and 1978, respectively. The expected deliverability as stated in the supplemented amendment of the 25 percent interest that Columbia Gas is said to have preferential rights to purchase is estimated at 116,000 Mcf per day upon complete development about January, 1979.

Applicant further states that Northern Natural Gas Company has the preferential right to purchase 30 percent of Exxon's Blocks 616 and 630 reserves, and that the amendment as supplemented projects the deliverability of such reserves at 140,000 Mcf per day.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 28, 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. Persons who have heretofore filed protests, petitions to intervene, or notices of intervention in the instant docket need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31033 Filed 11-17-75;8:45 am]

[Docket No. RI76-34]

CONTINENTAL OIL CO.

Notice of Extension of Procedural Dates

NOVEMBER 7, 1975.

On November 5, 1975, Continental Oil Company filed a motion to extend the procedural dates fixed by order issued September 30, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Company Rebuttal, December 8, 1975.

Hearing, January 19, 1976 (10:00 a.m. EST).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31025 Filed 11-17-75;8:45 am]

[Docket No. E-9453]

DUKE POWER CO.

Notice of Further Extension of Procedural Dates

NOVEMBER 6, 1975.

On November 3, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued June 18, 1975, as most recently modified by notice issued August 7, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, January 16, 1976.

Service of Intervenor Testimony, January 30, 1976.

Service of Company Rebuttal, February 13, 1976.

Hearing, February 24, 1976 (10:00 a.m. EST).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31041 Filed 11-17-75;8:45 am]

[Docket No. RI76-21]

EXXON CORP.

Order Granting Petition for Special Relief

NOVEMBER 7, 1975.

On August 18, 1975, Exxon Corporation (Exxon) filed a petition for special relief from the Other Southwest Area rate ceiling pursuant to Opinion No. 607[1] and Section 1.7(b) of the Commission's Rules of Practice and Procedure (18 CFR § 1.7(b)) for a sale of natural gas to Arkansas Louisiana Gas Company (Arkla) from the Federal King Well No. 1 located in the Kinta Field, Haskell County, Oklahoma.

Exxon owns a 25% working interest in the Federal King Well No. 1. Exxon is currently collecting a rate of 17.2775 cents per Mcf for the sale to Arkla pursuant to a gas sales contract dated February 1, 1967 and designated as Exxon's FPC Gas Rate Schedule No. 420. On June 12, 1975, Exxon and Arkla entered into an amendment to their gas sales contract whereby Arkla agreed to pay Exxon 32 cents per Mcf[2] for gas produced from the subject well in consideration of Exxon's share of the cost of certain remedial measures performed by the operator on the well. Exxon states that these corrective measures include the replacement of the well's tubing and packer, the cleaning out of the well bore

[1] Application was filed by Columbia Gulf Transmission Company, and Tennessee Gas Pipeline Company, a Division of Tenneco Inc., notice published September 9, 1975 (40 FR 41842).

[1] 46 F.P.C. 900 (1971).

[2] The rate sought by Exxon does not take into account any effect on Exxon's tax liability resulting from the repeal of the percentage depletion allowance by the Tax Reduction Act of 1975.

through the producing zone, the stimulation of the producing zone with acid, and the installation of a compressor.

Notice of Exxon's petition for special relief was issued on August 27, 1975, and appeared in the FEDERAL REGISTER on September 5, 1975, at 40 FR 41189. No protests or petitions to intervene have been filed.

Based on its analysis of Exxon's petition and data pertaining to the subject well, Staff estimates that gross recoverable reserves of 192,000 Mcf remain to be produced over a period of six years and concludes that the proposed rate is cost justified. After a careful review of the costs to be incurred and the reserves to be recovered, we conclude that it is in the public interest to grant Exxon's petition.

The Commission orders: (A) The petition for special relief of Exxon is hereby granted.

(B) Exxon is authorized to collect 32.0 cents per Mcf at 14.65 psia for all gas produced from the Federal King Well No. 1 effective as of the date of issuance of this order.

(C) Exxon's June 12, 1975 contract amendment with Arkla and the related rate increase filing are hereby accepted as Supplement Nos. 13 and 14, respectively, to Exxon Corporation's FPC Gas Rate Schedule No. 420, effective as of the date of issuance of this order.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31034 Filed 11-17-75;8:45 am]

[Docket Nos. E-8769, E-8770 and E-9119]

FLORIDA POWER AND LIGHT CO.

Notice of Further Extension of Procedural Dates

NOVEMBER 6, 1975.

On October 31, 1975, Florida Power and Light Company filed a motion to extend the procedural dates fixed by order issued July 3, 1975, as most recently modified by notice issued September 18, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Company Testimony, January 6, 1976.
Service of Staff Testimony, March 2, 1976.
Service of Intervenor Testimony, March 16, 1976.
Service of Company Rebuttal, March 26, 1976.
Hearing, April 15, 1976 (10:00 a.m. EST).

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31042 Filed 11-17-75;8:45 am]

[Docket No. ER76-5]

INDIANA AND MICHIGAN POWER CO.

Order Granting Late Petition To Intervene

NOVEMBER 7, 1975.

On July 3, 1975, as completed on September 8, 1975, Indiana and Michigan Power Company (I&M Power) tendered for filing as an initial rate filing an agreement with Indiana & Michigan Electric Company (I&M Electric), its parent company, providing for the sale of power and energy to I&M Electric.

By order issued October 8, 1975, the Commission accepted I&M Power's agreement for filing, instituted a Section 206 investigation, and granted intervention to certain petitioners. On October 10, 1975, a petition for late intervention was filed on behalf of Wabash Valley Power Associations, Inc., Jay County Rural Electric Membership Corp., Noble County Rural Electric Membership Corp., Paulding-Putnam Electric Cooperative, Inc., United Rural Electric Membership Corp., Wayne County Rural Electric Membership Corp., and Whitley County Rural Electric Membership Corp.

Petitioners state that they did not realize the extent to which their interests might be affected by the determination made by the Commission in these proceedings until the October 8, 1975 order was issued.

The Commission finds: Participation by the petitioners in this proceeding may be in the public interest and good cause exists for permitting such intervention.

The Commission orders: (A) The above-mentioned petitioners are hereby permitted to intervene in this proceeding, subject to the Rules and Regulations of the Commission, *Provided, however,* that the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in their petition to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(B) The late intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31052 Filed 11-17-75;8:45 am]

[Docket No. CI75-602]

ROY M. HUFFINGTON, INC.

Order Granting Late Interventions

NOVEMBER 7, 1975.

On April 9, 1975, Roy M. Huffington, Inc. (Huffington) filed a petition for permission under Section 7(b) of the Natural Gas Act to abandon the sale of gas to Michigan Wisconsin Pipe Line Company from the Lawson Field, Acadia Parish, Louisiana, covered under a contract dated June 6, 1966. Alternatively, Huffington requests authorization to abandon approximately 30 percent of the sale, attributable to the royalty interest shares of the gas, and to increase the price for the working interest share. Huffington's petition was noticed by the Commission on April 24, 1975 with protests or petitions to intervene due on or before May 15, 1975. By notice of the Commission's Secretary of August 29, 1975, the hearing in this matter was deferred to October 21, 1975.

Late petitions to intervene were filed by Tenneco Oil Company on August 1, 1975, by Natural Gas Pipeline Company of America on August 5, 1975 and by Shell Oil Company on September 23, 1975. Having reviewed the above petitions to intervene we believe that the petitioners have sufficient interest in the proceedings to warrant intervention.

The Commission finds: (1) Since participation by the aforesaid petitioners will not delay the instant proceeding, good cause exists for accepting their late petitions to intervene.

(2) Participation by the aforesaid petitioners may be in the public interest.

The Commission orders: (A) The above-named petitioners are hereby permitted to intervene in these proceedings subject to the rules and regulations of the Commission; *Provided, however,* that participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* that the admission of such interveners shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The interventions granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious determination of this proceeding.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31053 Filed 11-17-75;8:45 am]

[Docket No. ER76-206]

IOWA ELECTRIC LIGHT AND POWER CO.

Notice of Rate Schedule Changes

NOVEMBER 7, 1975.

Take notice that Iowa Electric Light and Power Company (Iowa Electric) on October 31, 1975 tendered for filing proposed changes to its Rate Schedules RES-1 and RES-2 contained within its FPC Electric Service Tariff, Original Volume No. 1. The proposed changes would increase revenues from expected jurisdictional sales by $1,428,672 for the 12-month period ending June 30, 1976. Iowa Electric requests that the proposed rates be allowed to become effective as of January 1, 1976. The filing also includes an initial Fuel Cost Adjustment Clause to be incorporated within the above identified rate schedules in conformance with Section 35.14 of the Commission's Regulations and its Order No. 517 dated November 13, 1974.

The reasons for this increase in Iowa Electric's FPC jurisdictional rates are increased costs of capital, wages, property and payroll taxes, and fixed costs associated with the placing in service of generating facilities necessary to meet its customers' requirements. The Company contends that increased revenues are necessary to provide a reasonable return to the Company and its investors.

Copies of the filing were served upon the Company's jurisdictional customers and the Iowa State Commerce Commission.

Any person desiring to be heard or to protect said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 204.6, in accordance with Section 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 November 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 this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31026 Filed 11-17-75;8:45 am]

[Project No. 2754]

CITY OF KEENE, N.H.

Notice of Application for Preliminary Permit

NOVEMBER 6, 1975.

Public notice is hereby given that an application for a preliminary permit was filed on June 6, 1975, under the Federal Power Act (16 U.S.C. §§ 791a–825r) by the City of Keene, New Hampshire (Correspondence to: Mayor and City Council, City of Keene, c/o City Manager Peter L. Cheney, Keene City Hall, 3 Washington Street, Keene, New Hampshire 03431) for proposed Project No. 2754, to be known as the Ashuelet River Hydroelectric Project, located on the Ashuelot River in Cheshire County, New Hampshire. The Ashuelot River is a navigable waterway of the United States.

According to the application, the proposed Ashuelot River Hydroelectric Project would consist of a series of small dams located on the Ashuelot River and its tributaries. Each dam, 50 to 100 feet in height, would be either a compacted earth and rockfilled structure or a concrete gravity structure. A power plant with an installed capacity of between 4,000 and 5,000 kW would be constructed several hundred feet below each dam and connected to the upstream reservoir by a penstock.

Applicant is considering, among others, the following areas as potential dam sites: (1) Bald Hill, on the Ashuelot River 4 or 5 miles upstream of the Surry Mountain Dam, an existing flood control dam; (2) Otter Brook, upstream of South Keene; (3) Cat Den Mountain vicinity, on the Ashuelot River 1.5 miles upstream of the Town of Hinsdale; and (4) Biscuit Hill vicinity, on the Ashuelot River 0.5 miles downstream of the Cat Den Mountain site.

A preliminary permit does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering and economic feasibility of the proposed project, the market for the power, and all other necessary information for inclusion in an application for license.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 21, 1976, 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 or 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. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31040 Filed 11-17-75;8:45 am]

LANDS WITHDRAWN

Order Vacating Land Withdrawal

NOVEMBER 6, 1975.

The Forest Service, United States Department of Agriculture, has requested that the land withdrawal for transmission line Project No. 1404 be vacated in its entirety, thereby requiring Commission consideration under Section 24 of the Federal Power Act.

Portions (totaling about 15.15 acres) of the following described subdivisions were withdrawn pursuant to the filing on November 10, 1936, by the Climax Molybdenum Company, of an application for license for Project No. 1404 for which the Commission gave notice of land withdrawal to the General Land Office (now Bureau of Land Management) by letter dated June 23, 1937:

SIXTH PRINCIPAL MERIDIAN, COLORADO

T. 8 S., R. 79 W.,
Sec. 3, W½NE¼, SE¼NE¼, N½NW¼, SE¼NW¼, NE¼SE¼;
Sec. 4, NE¼NE¼.

All of the subject lands lie within the White River or Arapaho National Forests.

Project No. 1404 consisted of a 13 kv distribution line, approximately 1.94 miles long, which supplied power to a pumping plant at Robinson Lake near the town of Climax, Colorado. The 25-year license for the project expired April 27, 1962, and the line was then authorized by Forest Service special use permit.

The line that constituted Project No. 1404 was not a primary line or part of a "project" as defined in Section 3(11) of the Federal Power Act.

The Commission finds: The withdrawal for Project No. 1404 serves no useful purpose and should be vacated.

The Commission orders: The withdrawal of the subject lands pursuant to the application for Project No. 1404 is hereby vacated.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31043 Filed 11-17-75;8:45 am]

[Docket No. RP76-31]

LOUISIANA-NEVADA TRANSIT CO.

Notice of Tariff Changes

NOVEMBER 10, 1975.

Take notice that on October 30, 1975, Louisiana-Nevada Transit Company (LNT) tendered for filing the following revised tariff sheets:

Original Volume No. 1

Fifth Revised Sheet No. PGA-1.
First Revised Sheet No. 12E.

The proposed effective date for the tariff changes is December 1, 1975. LNT states that such tariff changes would increase the base rate of Rate Schedule G-1 from 39.50 cents per Mcf (14.65 psia) to 54.90 cents per Mcf and would change the purchased gas cost adjustment clause notice provision to 30 days.

LNT states that these changes are made necessary by a reduction in gas supplies available from the Walker Creek Field and by a judgment against LNT that was obtained by various Walker Creek producers.

Copies of the filing were served by mail upon the City of DeQueen, Alabama and upon the Public Service Commissions of the States of Alabama and Louisiana.

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, N.E., 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 November 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31056 Filed 11-17-75;8:45 am]

[Docket No. RP76-25]

McCULLOCH INTERSTATE GAS CORP.

Order Rejecting Proposed Rate Increase

NOVEMBER 6, 1975.

On October 9, 1975, McCulloch Interstate Gas Corporation (McCulloch) tendered for filing a proposal[1] to increase the rate for transporting gas for Mountain Fuel Supply Company (Mountain Fuel). The filing would raise the rate charged to Mountain Fuel from 3.5¢ per Mcf (2.77¢ per MMBtu) to 9.76¢ per Mcf (7.73¢ per MMBtu). Based on test period transportation volumes of 4,010, 325 MMBtu, the 4.96¢ per MMBtu increase would yield an additional $198,912 in revenues annually.

Notice of the proposed change in rates was issued on October 17, 1975, with comments, protests, and petitions to intervene due on or before October 31, 1975. To date, no petitions to intervene have been received, but on October 22, 1975, Mountain Fuel filed a timely protest.

Mountain Fuel claimed that McCulloch's proposed change is "unsupported", pointing to McCulloch's failure to comply with Section 154.63(b) of our Regulations.

Examination of the record shows Mountain Fuel's assertion to be well founded. We deem McCulloch's filing to be for a major rate increase as defined in 18 CFR § 154.63(a)(2). Accordingly, we find McCulloch's filing to be deficient insofar as the Statements required by 18 CFR § 154.63(b)(3), have not been filed. Special attention is called to the need for a Statement I, providing for the allocation of costs to each of the classes of service rendered by McCulloch.

McCulloch did not explicitly request waiver of our filing requirements, but in its transmittal letter McCulloch attempted to present the instant filing as though it were an amendment to its filing in Docket No. RP75-98.[2] We shall treat that as constituting an implied request for waiver. We find, however, that good cause does not exist to waive our filing requirements. Consequently, pursuant to 18 CFR § 154.63(c)(4) we reject McCulloch's filing for noncompliance with our Regulations.

The Commission finds: (1) Good cause exists to reject McCulloch's proposed rate increase as filed on October 9, 1975.

(2) Good cause does not exist to grant waiver of Section 154.63(b) of the Commission's Regulations.

The Commission orders: (A) McCulloch's proposed increased rates as filed on October 9, 1975, are hereby rejected, without prejudice to McCulloch's right to file proposed increased rates with supporting data conforming to the Commission's Regulations.

(B) Waiver of Section 154.63(b) is hereby denied.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31044 Filed 11-17-75;8:45 am]

[1] First Revised Sheet No. 38 to McCulloch's Federal Power Commission Gas Tariff, Original Volume No. 1.

[2] *See* order issued May 30, 1975. The proceeding in Docket No. RP75-98 involves an increase in rates to be charged to Colorado Interstate Gas Company, McCulloch's sole jurisdictional sales customer.

[Docket No. RP75-98]

McCULLOCH INTERSTATE GAS. CORP.

Order Granting Untimely Petition To Intervene

NOVEMBER 7, 1975.

On April 30, 1975, McCulloch Interstate Gas Corporation tendered for filing proposed changes in its FPC Gas Tariff Original Volume No. 1, to become effective June 1, 1975. Notice of said filing was issued on May 8, 1975, with comments, protests or petitions to intervene due on or before May 20, 1975.

An untimely petition to intervene was filed by Mountain Fuel Supply Company on October 7, 1975. Having reviewed said petition, we believe that Mountain Fuel has an interest in this proceeding which is sufficient to warrant its intervention herein.

The Commission finds: It is desirable and in the public interest to permit Mountain Fuel Supply Company to intervene in the above-referenced proceeding, provided such intervention is conditioned as hereinafter ordered.

The Commission orders: (A) Mountain Fuel Supply Company is hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission; *Provided, however,* that participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) The intervention granted herein shall not be the basis for delaying or deferring any procedural schedules heretofore established for the orderly and expeditious disposition of this proceeding.

(C) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31035 Filed 11-17-75;8:45 am]

[Docket No. CP76-128]

MICHIGAN CONSOLIDATED GAS CO. ET AL.

Notice of Application

NOVEMBER 7, 1975.

Take notice that on October 14, 1975, Michigan Consolidated Gas Company (Michigan Consolidated), One Woodward Avenue, Detroit, Michigan 48226, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), One Woodward Avenue, Detroit, Michigan 48226, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, and Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, jointly Applicants, filed in Docket No. CP76-128 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the delivery and exchange of natural gas at an interconnection between Michigan Wisconsin and Trunkline near Elkhart, Indiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application indicates that Michigan Consolidated and Panhandle have entered into a gas storage agreement dated May 1, 1975, under the terms of which Michigan Consolidated would receive and store up to 6,162,630 Mcf of natural gas for the account of Panhandle during the period from May 1 through October 31, 1975. During the following November through February winter period, Michigan Consolidated would cause an equivalent volume of gas to be redelivered to Panhandle, primarily through the presently existing point of interconnection between Michigan Consolidated, Panhandle and Southeastern Michigan Gas Company at Adair, Michigan, and in April, 1976 by displacement at Michigan Consolidated's River Rouge Station. Applicants allege that the Adair delivery point may not provide sufficient redelivery capability at all times; therefore, Applicants have entered into a gas exchange agreement which would permit Panhandle to designate the volumes of gas it desires Michigan Consolidated to cause to be delivered to Trunkline for Panhandle's account at the interconnection of the pipeline systems of Michigan Wisconsin and Trunkline near Elkhart, Indiana.

Applicants state that because the redelivery points at Adair and Birch Run, Michigan, may not provide sufficient redelivery capability, Michigan Consolidated and Panhandle have also entered into a gas exchange agreement with Michigan Wisconsin and Trunkline dated July 15, 1975, which is said to provide that not later than 15 days prior to the beginning of any month during the period of November, 1975, through April, 1976, excluding March, Panhandle would have the right to advise Michigan Consolidated, Michigan Wisconsin and Trunkline of the volumes of natural gas it desires to cause to be delivered to Trunkline for Panhandle's account at the interconnection of the pipeline systems of Michigan Wisconsin and Trunkline near Elkhart, Indiana. Simultaneously, with the deliveries of Michigan Wisconsin to Trunkline, Trunkline would increase its deliveries to Panhandle at the interconnection of the pipeline systems of Panhandle and Trunkline near Tuscola, Illinois, by an amount equal to that delivered by Michigan Wisconsin to Trunkline for Panhandle's account. The

agreement is said to provide that on any day that Michigan Wisconsin delivers gas to Trunkline, Michigan Consolidated would reduce its receipt of gas from Michigan Wisconsin by the sum of the deliveries from Michigan Wisconsin to the extent that the sum of the deliveries to Michigan Consolidated on such a day including the volumes delivered to Trunkline for the account of Panhandle, would exceed Michigan Consolidated's total authorized entitlement for such day under the service agreements between Michigan Consolidated and Michigan Wisconsin.

It is stated that no additional facilities would be required by the proposed exchange, nor would any additional charge be made to any party in connection with the proposed service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 28, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31027 Filed 11-17-75;8:45 am]

[Docket No. ER76-104]

NEW ENGLAND POWER SERVICE CO.

Order Accepting for Filing and Making Effective, Subject to Refund, Proposed Agreement and Tariff, Instituting Investigation, and Denying Waiver of Notice Requirements

NOVEMBER 7, 1975.

On August 29, 1975, the New England Power Service Company (NEPCO) tendered for filing Unit Contracts with Bangor Hydro-Electric Company (Bangor), Montaup Electric Company (Montaup), New Bedford Gas and Electric Light Company (NBG&E), and Vermont Electric Power Company (VELCO) with respect to the sale of the partial output of Brayton Point No. 4. Deliveries are to be made at the points of interconnection between these systems. The terms of these agreements began on December 20, 1974 and run to certain specified dates, as follows: Bangor, until October 31, 1975; Montaup, until the earlier of October 31, 1976 or the day preceding commercial operation of Canal Unit No. 2; NBG&E, until October 31, 1975; VELCO until October 31, 1976. Service under the agreements commenced on December 20, 1974. Notice of the filing of the agreements was issued on September 12, 1975, with comments due on or before September 30, 1975. To date, no comments, protests, or petitions to intervene have been received.

By certified letter dated October 1, 1975, the Secretary of the Commission notified NEPCO that this filing was assessed as deficient under Section 35.12 (b)(2)(ii) of the Commission's Regulations, as it failed to indicate cost support in sufficient detail to justify its proposed rates. Specifically, NEPCO was asked to provide a breakdown of the various components of cost comprising the 18.42% "Investment, F.I.T. and Massachusetts Franchise Expense" that is applied to No. 4 Unit and associated transmission rate base, the rate of return portion of the above percentage with cost and capitalization information, and breakdown, i.e., rate of return (including cost and capitalization information), depreciation, income taxes, etc., of the transmission Annual Charge Rate, for each of the two periods contained in the cost support as submitted.

Because the contract contains an associated transmission charge and a transmission charge based on the annual cost of the New England Electric System pool transmission facilities, NEPCO was asked to indicate if the associated transmission is also included within the pool transmission facilities. The letter indicated that a filing date would not be assigned until the information was received. On October 10, 1975, NEPCO complied with the deficiency letter and filed the requested information.

We have reviewed the Agreement filed on August 29, 1975, and the information provided on October 10, 1975, by NEPCO and we have concluded that, *inter alia*, the proposed rate, overall return and cost basis of the rate may be excessive and therefore the proposed rate may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Moreover, NEPCO's filings as completed were not made with the Commission until 8 months after the commencement date for the service. Under the provisions of the Federal Power Act and the Regulations thereunder public utilities are required to file rate schedules at least 30 days prior to the date on which service under such schedules is to commence. This notice requirement may be waived for good cause shown. However, under circumstances when a public utility completes a rate filing schedule of possibly only 8 months' duration (Bangor and NBG&E) and 22 months duration (Montaup and VEPCO) approximately 8 months after such service commences and prevents a thorough examination of such rate schedule before service terminates, our ability to protect the consumer against what may be unjust unreasonable, unduly discriminatory or otherwise unlawful rates and charges is seriously jeopardized.[1]

Consequently, we shall not waive the notice requirements of our Regulations and shall assign the agreement an effective date of November 10, 1975, 30 days after the completion of the filing. Pursuant to our authority in Section 309 of the Federal Power Act, we shall also make such filing subject to the refund of any amounts found to be excessive after the hearing which shall be hereinafter ordered. Moreover, we shall require NEPCO to refund all amounts collected under the agreement prior to November 10, 1975, without prejudice to NEPCO's filing within 15 days of the issuance of this order a request that we accept the rate schedule to become effective as of December 20, 1974, NEPCO's proposed effective date, based upon an agreement by NEPCO that the rates charged under this agreement shall be subject to refund pending final disposition upon the conclusion of the hearing to be held in this proceeding. After receipt of NEPCO's response, if any, we shall issue a further order taking appropriate action.

The Commission finds: (1) The requested waiver of Section 35.3 of the Commission's Regulations should be denied.

(2) The proposed Agreement should be accepted for filing to become effective subject to refund, November 10, 1975, 30 days after completion of the filing.

(3) Good cause exists to require NEPCO to refund all amounts collected under the Agreement prior to November 10, 1975, without prejudice to NEPCO's filing with the Commission within 15 days of the issuance of this order a request that the Commission accept the Agreement Tariff to be effective as of December 20, 1974, Pacific's proposed effective date, based upon an

[1] *Pacific Power and Light Company*, —— FPC ——, issued September 25, 1975, in Docket Nos. E-9173 and E-9121.

Florida Power and Light Company, —— FPC ——, issued July 3, 1975, in Docket Nos. E-8769, E-8770, E-8008, E-9119.

Bangor Hydro-Electric Company, —— FPC ——, issued June 4, 1975, in Docket No. E-8302.

Arizona Public Service Company, —— FPC ——, issued July 15, 1974, in Docket Nos. E-8621, E-8004, E-8767, E-8019, E-8023, E-8688, E-8779, E-8620, E-7904, E-8689, E-7907, E-7905.

Connecticut Light and Power Company, —— FPC ——, issued June 21, 1974, in Docket Nos. E-8105 and E-8811.

Boston Edison Company, —— FPC ——, issued June 21, 1974, in Docket No. E-8810.

Northeast Utilities Company, —— FPC ——, issued May 31, 1974 in Docket Nos. E-8756, *et al.*

agreement by Pacific that the rates charged under the Agreement and Tariff shall be subject to refund as of that effective date, pending final disposition upon the conclusion of the hearing hereinafter ordered.

(4) It is necessary and appropriate and in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Pacific's Agreement and Tariff.

The Commission orders: (A) The requested waiver of Section 35.3 of the Commission's Regulations is hereby denied.

(B) The proposed Agreement is accepted for filing to become effective November 10, 1975, subject to refund, 30 days after completion of the filing.

(C) NEPCO shall refund all amounts collected under the agreement prior to November 10, 1975, without prejudice to NEPCO filing with the Commission, within 15 days of the issuance of this order, a request that the Commission accept the contract to be effective as of December 20, 1974, NEPCO's proposed effective date, based on an agreement by NEPCO that the rates charged under the contract shall be subject to refund as of that effective date pending final disposition upon the conclusion of the hearing hereinafter ordered.

(D) Pursuant to the authority of the Federal Power Act, and the Commission's Rules and Regulations and the Regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held on April 13, 1976, at 10:00 a.m., in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, concerning the lawfulness of NEPCO's agreement.

(E) NEPCO shall serve its prepared testimony and exhibits on or before December 23, 1975. The Commission Staff shall serve its prepared testimony and exhibits on or before February 24, 1976. All intervenor evidence shall be served on or before March 16, 1976. Any rebuttal evidence by NEPCO shall be served on or before March 30, 1976.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for the purpose (See Delegation of Authority, 18 CFR 3.5(d)) shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided and shall control this proceeding in accordance with the policies expressed in the Commission's Rules of Practice and Procedure.

(G) Nothing contained herein should be construed as limiting the rights of the parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(H) The Commission Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31048 Filed 11-17-75;8:45 am]

[Docket No. ID-1769]

NICHOLAS A. RICCI

Notice of Application

NOVEMBER 10, 1975.

Take notice that on October 2, 1975, Nicholas Ricci (Applicant) filed an initial application with the Federal Power Commission. Pursuant to Section 305(b) of the Federal Power Act, Applicant seeks authority to hold the following positions:

Vice President, Wisconsin Electric Power Company, Public Utility.
Vice President, Wisconsin Michigan Power Company, Public Utility.

Wisconsin Electric Power Company is engaged principally in the generation, transmission, distribution and sale of electric energy to 223 communities in a territory having an area of approximately 4,015 square miles in southeastern Wisconsin, including the metropolitan Milwaukee area, and having an estimated population of 1,927,000. Company also sells power at wholesale and supplies steam for heating in a portion of the downtown business section of Milwaukee.

Wisconsin Michigan Power Company is engaged in the generation, transmission, distribution and sale of electric energy in a territory having an area of approximately 8,630 square miles in the Fox River Valley and northern Wisconsin and in the upper peninsula of Michigan, and having an estimated population of 245,000. Electric service is furnished in 173 communities, of which 107 are in Wisconsin and 66 are in Michigan.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.75-31057 Filed 11-17-75;8:45 am]

[Docket No. ER76-50]

NORTHERN INDIANA PUBLIC SERVICE

Notice of Supplemental Data to Proposed Change in Rates and Charges

NOVEMBER 7, 1975.

Take notice that on November 3, 1975, Northern Indiana Public Service Company (NIPSCO) tendered for filing a motion to make effective a Settlement Agreement dated October 21, 1975, which NIPSCO states "reflects a settlement with the 8 municipal utilities (Municipals) of all matters in controversy between NIPSCO and the Municipals in this docket." NIPSCO also requests by this motion a termination of the proceedings pending in this docket.

Docket No. ER76-50 was initiated when NIPSCO tendered for filing with the Federal Power Commission proposed changes in its FPC electric service tariff on August 1, 1975. Notice of this filing was issued on August 7, 1975, with comments due on or before August 18, 1975. Petitions for leave to intervene were filed on August 14, 1975, by 12 REMCs and Wabash Valley Power Association, Inc.[1] and on August 18, 1975, by 8 municipal utilities.[2]

September 18, 1975, NIPSCO filed a Settlement Agreement dated September 5, 1975, reflecting a settlement of all matters in controversy in this proceeding with its 12 REMC customers.

By letters dated August 29 and October 15, 1975, the Secretary of the Commission notified NIPSCO that, upon the Commission's review of the filing, the filing was assessed as deficient in respect to certain requirements of the Commission's Regulations under the Federal Power Act. To date NIPSCO has not cured this deficiency, and its filing remains incomplete. No filing date has been assigned to NIPSCO's submittals. This Settlement Agreement, like that filed on September 18, 1975, also purports to settle a filing still incomplete and pending before the Commission.

On November 3, 1975, NIPSCO also tendered for filing as part of its FPC electric service tariff its supplement marked "Second Revised Volume No. 1", which contained the below listed tariff sheets applicable to wholesale electric service for resale to its 8 Municipal customers.

NIPSCO states that the purpose of this filing is to submit to the FPC the settlement rates applicable to the Municipals which are agreed to by NIPSCO and the Municipals in the Settlement Agreement dated October 21, 1975.

Copies of the filing were served upon NIPSCO's jurisdictional customers, the Public Service Commission of Indiana and the United Rural Electrification Administration.

Any person desiring to be heard or to protest said filing should file a petition to

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[1] See Appendix A.
[2] See Appendix B.

intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules or Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31028 Filed 11-17-75;8:45 am]

APPENDIX A

Carroll County Rural Electric Membership Corporation
Fulton County Rural Electric Membership Corporation
Jasper County Rural Electric Membership Corporation
Kankakee Valley Rural Electric Membership Corporation
Kosciusko County Rural Electric Membership Corporation
Lagrange County Rural Electric Membership Corporation
Marshall County Rural Electric Membership Corporation
Newton County Rural Electric Membership Corporation
Noble County Rural Electric Membership Corporation
Steuben County Rural Electric Membership Corporation
Warren County Rural Electric Membership Corporation
White County Rural Electric Membership Corporation

APPENDIX B

Town of Argos
Town of Bremen
Town of Brookston
Town of Chalmers
Town of Etna Green
Town of Kingford Heights
Town of Walkerton
Town of Winamac

[Docket Nos. E-9497]

OHIO EDISON CO. ET AL.

Order Referring Pleadings to Presiding Administrative Law Judge

NOVEMBER 7, 1975.

Ohio Edison Company, City of Cuyahoga Falls, Ohio; Docket No. E-9497; v. Ohio Edison Company, City of Galion, Ohio; Docket No. E-9068, v. Ohio Edison Company; Docket No. E-9118.

On October 1, 1975, the Cities of Amherst, Beach City, Ohio, *et al.*, (Cities) who are wholesale customers purchasing electrical energy from Ohio Edison Company (Edison), filed a motion for an order directing production of documentary evidence pursuant to Section 1.23 of the Commission's Rules of Practice and Procedure in the above captioned dockets. In its motion Cities states that by letter dated August 20, 1975, the Cities sent a data request to Edison and that by letter dated September 10, 1975, Edison refused to supply certain data. Thereafter, Cities filed on October 1, 1975, its motion in issue to compel production of this data. On October 10, 1975, Edison filed an application for a hearing to be held on Cities motion of October 1, 1975.

The data which Cities seeks as identified in their pleading is as follows:

4. Copies of internal monthly financial and operating reports from January, 1974 to present. Continue sending as additional reports become available.

10. Copies of the Company's federal income tax returns for the years 1973 and 1974. Have they been audited by the IRS and have settlements been reached or any adjustments proposed by IRS?

15. A copy of all interchange pooling, power supply or other similar contracts with all other utilities with which the Company is interconnected and a copy of all correspondence implementing the terms of these agreements.

16. A copy of existing and proposed industrial and large light and power rate schedules.

23. The data, work papers and supporting information utilized in estimating the purchase price of coal and oil. Please provide a copy of all contracts with coal supplies.

41. A large scale transmission system map similar to that presented in Exhibit I. In addition to the information shown, the map should indicate . . .

d. The location and type of all other customers served from the same facilities alluded to in item (c) above.

Upon review of the subject pleadings we believe that the matters raised by Cities are more properly ruled upon by the Presiding Administrative Law Judge in these proceedings. We shall so order.

The Commissions finds: The pleadings preferred to above should be ruled upon by the Presiding Administrative Law Judge in these proceedings.

The Commission orders: (A) The Presiding Administrative Law Judge in these proceedings is hereby directed to rule upon the above mentioned pleadings.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31049 Filed 11-17-75;8:45 am]

[Docket No. ER76-17]

OHIO POWER CO.

Notice of Extension of Procedural Dates

NOVEMBER 6, 1975.

On October 17, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued August 29, 1975, in the above-designated proceeding.

On October 28, 1975, Ohio Power filed a response opposing Staff's motion. On November 3, 1975, The Public Service Commission of West Virginia filed a response supporting Staff's motion.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Staff Testimony, December 11, 1975.
Service of Intervenor Testimony, January 2, 1976.
Service of Company Rebuttal, January 23, 1976.
Hearing, February 9, 1976 (10:00 a.m. EST).

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31045 Filed 11-17-75;8:45 am]

[Docket No. ES76-23]

PACIFIC POWER & LIGHT CO.

Notice of Application

NOVEMBER 7, 1975.

Take notice that on October 16, 1975, the Pacific Power & Light Company (Applicant), filed an application with the Federal Power Commission seeking authority pursuant to Section 204 of the Federal Power Act to engage in negotiations with underwriters regarding the proposed issuance and sale of up to 1,600,000 shares of its no par Serial Preferred Stock with a $25 stated value, via negotiated offering. It is anticipated that proceeds from the sale of the securities will be used to retire outstanding short-term indebtedness issues to temporarily finance part of the Company's 1975 construction program.

Applicant is incorporated under the laws of the State of Maine, with its principal business office at Portland, Oregon and is engaged primarily in generating, purchasing, transmitting and distributing electricity in the States of Oregon, Wyoming, Washington, California, Montana and Idaho.

Any person desiring to be heard or to make any protest with reference to this application should, on or before November 24, 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31036 Filed 11-17-75;8:45 am]

[Docket No. ID-1358]

ROBERT H. ENGELS

Notice of Application

NOVEMBER 10, 1975.

Take notice that on October 14, 1975, Robert Engels, (Applicant) filed a supplemental application with the Federal Power Commission. Pursuant to Section 305(b) of the Federal Power Act, Appli-

cant seeks authority to hold the following positions:

Director, Northern States Power Company (Minnesota), Public Utility.
Director, Turbodyne Corporation, Supplying Electrical Equipment.

Northern States Power Company, Minnesota, has its principal office at 414 Nicollet Mall, Minneapolis, Minnesota. It owns and operates utility properties and furnishes electric service at retail in 418 communities and adjacent rural territories and electric energy at wholesale for resale in 28 additional communities and to 20 other utility companies including its only utility subsidiary, Northern States Power Company (Wisconsin). Of the 446 communities so served, 390 (including Minneapolis and Saint Paul) are located in Minnesota, 18 in North Dakota, and 38 in South Dakota. The Company also furnishes natural gas at retail in Saint Paul and 61 other communities in Minnesota and in five communities in North Dakota; steam heating service in central business districts of Saint Paul, Minnesota; and telephone service in Minot, North Dakota, and vicinity.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31058 Filed 11-17-75;8:45 am]

SOUTHERN CALIFORNIA EDISON CO.

[Project No. 1933]

Notice of Application for Approval of Revised Exhibit L

NOVEMBER 10, 1975.

Public notice is hereby given that an application was filed on September 8, 1975, under the Federal Power Act (16 U.S.C. §§ 791a-825r) by Southern California Edison Company (Correspondence to: Mr. P. B. Peecook, Manager, Right-of-Way and Land Department, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770) for Commission approval of a revised Exhibit L for Project No. 1933, known as the Santa Ana No. 1 and No. 2 Project. The project is located on the Santa Ana River and its tributaries in San Bernardino County, California, and affects lands of the United States within San Bernardino National Forest.

The revised (as built) Exhibit L drawing shows the new stone masonry Alder Creek Diversion Dam which was constructed in 1973 to replace a temporary diversion dam. The temporary diversion dam had been constructed in 1971 after a flood destroyed the original 54-foot-long and 10-foot-high concrete diversion dam.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1976, 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 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any 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. The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31059 Filed 11-17-75;8:45 am]

[Docket No. ER76-205]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Tariff Changes

NOVEMBER 7, 1975.

Take notice that Southern California Edison Company, on October 31, 1975, tendered for filing proposed changes in its FPC Electric Service Tariffs, R-1 and R-2. The proposed effective date for the tariff changes is January 1, 1976. Edison states that such tariff changes would increase revenues from base rates and fuel adjustment applicable to jurisdictional sales and service by an estimated $16,891,900 if applicable during the 12-month period ending December 31, 1976.

The increase in charges averages an estimated 31.1% for R-1 service and an estimated 14.1% for R-2 service.

The reasons given by Edison for the proposed increase are the following: the inadequacy of existing rates to cover present and projected levels of operating costs including a return component commensurate with present and projected cost of capital.

Copies of the filing were served upon the utility's jurisdictional customers, the California Public Utilities Commission, and upon the Arizona Corporation 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, N.E., 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 November 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 this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31029 Filed 11-17-75;8:45 am]

[Docket No. RP76-22]

SOUTH GEORGIA NATURAL GAS CO.

Order Accepting for Filing and Suspending Proposed Rate Increase, Allowing Intervention, and Setting Procedures

NOVEMBER 7, 1975.

On October 10, 1975 South Georgia Natural Gas Company (South Georgia) tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1.[1] The proposed changes are based on the twelve month period ending August 31, 1975, as adjusted, and would increase revenues from jurisdictional sales by $1,563,000. South Georgia proposes an effective date of November 10, 1975.

Notice of South Georgia's filing was issued on October 20, 1975 with protests and petitions to intervene due on or before October 31, 1975. A petition to intervene has been filed by the Gas Section of the Georgia Municipal Association. Good cause exists to allow intervention by the above-named party.

Review of the filing reveals that South Georgia has based its increased rates on a claimed need for a 12% return on common equity which produces an overall return of 10.04% and an increase in depreciation rates from 4% for compressor stations and 3% on other transmission, and structures and improvements to an overall rate of 4.89%. The present gas shortage in this country, to which this Commission has often called attention, is a problem which is shared by most if not all major interstate transmission pipelines in varying degrees of magnitude. The effect upon the risk of capital invested in gas pipeline operations resulting from inadequate and declining gas supplies as well as the uncertainties and contingencies inherent in possible supplemental sources of supply are of direct and primary concern to us. It also seems clear that the gas shortage may result in situations where the useful or economic life of gas pipeline facilities may be substantially less than their physical life. Accordingly, we request that the evidence in this proceeding, including that to be filed by our Staff, give full and careful consideration to these factors in the development of recommendations on the issues of rate of return and depreciation so as to enable this Commission to formulate sound regulatory policies in these areas.

Other issues which need to be addressed at the hearing ordered herein in-

[1] See Appendix A.

clude adjustments to operating expenses, the appropriate level of test period volumes, and questions of cost classification, cost allocation and rate design. With respect to the latter issues, review of the filing reveals that South Georgia has used a Seaboard[2] classification of costs. In addition South Georgia has allocated all purchased gas demand costs to jurisdictional customers. Tranmission demand costs have been allocated on the basis of the coldest consecutive three days (rather than the three day system peak).

In Opinion No. 671 we expressed our concern over the worsening gas supply situation and particularly as it existed on United's system. Based upon the record in that case we concluded that more weight should be given to annual use of United's pipeline system than is characteristic of the unmodified *Seaboard* methodology. Therefore, we assigned 75 percent of fixed costs to the commodity component of two-part rates and to the straight-line rates. Part of our rationale was that in view of the gas supply shortage, low priority usage should be discouraged and the price gap and alternate fuels in the interruptible industrial market should, at the minimum, be narrowed.

In light of our policy of considering competitive fuel prices in setting commodity rate levels and of the present supply and market conditions on the South Georgia system, all parties to this proceeding should direct their attention, and file any evidence they wish to submit, as to the propriety of the use of the *Seaboard* method of cost classification, the allocation method proposed herein by South Georgia, as well as to the propriety of South Georgia's rate design proposed herein. Further, we urge all parties to suggest alternative methods of cost classification, allocation and rate design which they believe may more closely reflect or implement the Commission's objectives in this area. In this connection we refer the parties to our rulemaking Docket No. RM75–19, issued February 20, 1975.

South Georgia has proposed other changes in its tariff, the propriety of which should be addressed in the testimony of the parties. These changes include:

(1) Eligibility for availability of Rate Schedule G–1 has been increased from 3,500 Mcf per day to 5,000 Mcf per day.

(2) Rates have been moved from all Rate Schedules to the "Statement of Currently Effective Rates" which is a schedule showing all effective rates.

(3) Penalty charges for taking unauthorized over-run gas have been increased in all Rate Schedules from $3.00 to $5.00.

(4) Discretionary waiver of penalty charges for taking unauthorized over-run gas has been eliminated in Rate Schedules I–1 and I–2.

(5) Rate Schedule AC–1, Seasonal Service, has been eliminated.

(6) The provision in the General Terms and Conditions whereby customers may request additional delivery points has been eliminated.

(7) Interest on unpaid amounts has been changed from 6% to the current "Prime Rate" charged by The Chase Manhattan Bank, N.A.

(8) The Sales Lateral Line Policy has been changed to reflect a policy of not constructing or contributing to the cost of constructing any sales lateral pipelines.

(9) A uniform method has been established to bill deliveries to G–1 customers which are delinquent in providing billing information.

The foregoing is without prejudice to the rights of the parties, including Commission Staff, to file such further evidence as they deem relevant and material.

South Georgia's proposed rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Accordingly, we shall suspend the increase for five months, to become effective April 10, 1976.

The Commission finds: (1) Good cause exists to accept for filing South Georgia's revised tariff sheets as shown in Appendix A and suspend them for five months, to become effective April 10, 1976.

(2) Good cause exists to allow the above-named petitioner to intervene in these proceedings.

The Commission orders: (A) South Georgia's revised tariff sheets as shown in Appendix A are hereby accepted for filing and suspended for five months, to become effective April 10, 1976.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4 and 5 thereof, the Commission's Rules of Practice and Procedure, and the Regulations Under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held on April 6, 1976, at 10 a.m., EST, in a hearing room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, concerning the lawfulness of the rates, charges, classification, and services contained in South Georgia's FPC Gas Tariff, as proposed to be amended herein.

(C) On February 27, 1976, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of all intervenors shall be served on or before March 12, 1976. Any rebuttal evidence by South Georgia shall be served on or before March 26, 1976.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose, (See Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall preserve relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's Rules of Practice and Procedure.

(E) The above mentioned petitioner is hereby permitted to intervene in this proceeding, subject to the Rules and Regulations of the Commission; *Provided, however,* That the participation of such intervenor shall be limited to matters affecting the rights and interests specifically set forth in the petition to intervene; and *Provided, further,* That the admission of such intervenor shall not be construed as recognition that they might be aggrieved because of any order or orders issued by the Commission in this proceeding.

(F) Nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

(G) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

APPENDIX A

PROPOSED TARIFF SHEETS

Original Volume No. 1

Second Revised Sheet No. 1
First Revised Sheet No. 2
Eleventh Revised Sheet No. 3
Fourteenth Revised Sheet No. 3A
Third Revised Sheet No. 4
Thirty-Ninth Revised Sheet No. 5
Second Revised Sheet No. 5A
Original Sheet No. 5B
Thirty-Eighth Revised Sheet No. 6
Fourth Revised Sheet No. 7
Third Revised Sheet No. 8
Thirtieth Revised Sheet No. 9
Fourth Revised Sheet No. 10
First Revised Sheet No. 10A
Twenty-Ninth Revised Sheet No. 11
Third Revised Sheet No. 12
Thirty-Third Revised Sheet No. 12B
Second Revised Sheet No. 13
First Revised Sheet No. 13A
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17
Original Sheet No. 17A
Fifth Revised Sheet No. 19
Second Revised Sheet No. 19A
Third Revised Sheet No. 19B
First Revised Sheet No. 19C
First Revised Sheet No. 19D
Twenty-Second Revised Sheet No. 23

[FR Doc.75–31050 Filed 11–17–75;8:45 am]

[Docket No. ER76–207]

SOUTHWESTERN ELECTRIC POWER CO.

Notice of Rate Schedule Changes

NOVEMBER 7, 1975.

Take notice that Southwestern Electric Power Company (SWEPCO), on October 31, 1975, tendered for filing proposed changes in the existing fuel adjustment clause applicable to SWEPCO's FPC Rate Schedule No. 69. SWEPCO states that the proposed changes are being made to conform the fuel clause to FPC Order No. 517. The proposed effective date for these changes is January 1, 1976.

[2] *Atlantic Seaboard Corporation*, 11 FPC 43 (1952).

Copies of the fuel clause have been mailed to the City of Bentonville, Arkansas 72712.

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, N.E., 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 November 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 this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31030 Filed 11-17-75;8:45 am]

[Docket No. ER76-208]

SOUTHWESTERN ELECTRIC POWER CO.

Notice of Rate Schedule Changes

NOVEMBER 7, 1975.

Take notice that Southwestern Electric Power Company (SWEPCO), on October 31, 1975, tendered for filing proposed changes in the existing fuel adjustment clause applicable to CWEPCO's FPC Rate Schedule No. 66. SWEPCO states that the proposed changes are being made to conform the fuel clause to FPC Order No. 517. The proposed effective date for these changes is January 1, 1976.

Copies of the fuel clause have been mailed to the City of Siloam Springs, Arkansas 72761.

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 November 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 this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31031 Filed 11-17-75;8:45 am]

[Docket No. CP75-262]

TENNESSEE GAS PIPELINE CO.

Notice Postponing Prehearing Conference

NOVEMBER 7, 1975.

On November 5, 1975, Columbia Gulf Transmission Company and Tennessee Gas Pipeline Company (Applicants) filed a motion to postpone the prehearing conference set by order issued July 21, 1975, as most recently extended by notice issued September 3, 1975 in the above-designated proceeding, pending action by the Commisison on applicants' filing of October 23, 1975.

Notice is hereby given that the prehearing conference in the above proceeding is postponed from November 11, 1975 to and including January 15, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31032 Filed 11-17-75;8:45 am]

[Docket No. E-9147]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Further Extension of Procedural Dates

NOVEMBER 7, 1975.

On October 29, 1975, Staff Counsel filed a motion to extend the procedural dates fixed by order issued January 22, 1975, as most recently modified by notice issued September 23, 1975, in the above-designated proceeding.

Upon consideration, notice is hereby given that the procedural dates in the above proceeding are modified as follows:

Service of Intervenor Testimony, January 9, 1976.

Service of Staff Testimony, January 30, 1976.

Service of Company Rebuttal, February 20, 1976.

Service of Intervenor Rebuttal, March 5, 1976.

Hearing, March 23, 1976 (10:00 a.m. EST).

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31051 Filed 11-17-75;8:45 am]

[Docket No. RP74-52; PGA 76-1]

TRANSWESTERN PIPELINE CO.

Order Making Small Producer Sellers Parties Respondents

NOVEMBER 10, 1975.

Pursuant to ordering paragraph (B) of our order in this docket issued on September 30, 1975, Transwestern Pipeline Company (Transwestern) on October 14, 1975[1] filed with the Commission a list of small producers making sales to Transwestern in excess of the "130% Formula" rates prescribed by the Commission in Opinion 742.

Accordingly, we believe that the small producer sellers so listed, as set forth in Appendix A hereof, should be made respondents in this investigation for the purposes set forth in the aforementioned order.

The Commission finds: Good cause exists to make the named small producer sellers parties respondents in this proceeding.

The Commission orders: (A) The small producer sellers named in Appendix A hereof are hereby made respondents in this investigation for the purposes discussed in the body of our order in this docket issued on September 30, 1975.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

APPENDIX A

TRANSWESTERN PIPELINE COMPANY

Small Producers Making Sales to Transwestern in Excess of the "130% Formula"

Yates Petroleum Corporation, 207 South 4th Street, Artesia, New Mexico 88210.
T. H. McElvain, Jr., Catherine Harvey, George B. Broome, P.O. Box 2148, Santa Fe, New Mexico 87501.
David Fasken, Richard S. Brooks, 608 First National Bank Bldg., Midland, Texas 79701.
Harvey E. Yates Co., Inc., Suite 1099, Security National Bank Bldg., Roswell, New Mexico 88201.
American Liberty Oil Co., 4100 First National Bank Bldg., Dallas, Texas 75202.
Alan J. Antwell, P.O. Box 2010, Hobbs, New Mexico 88240
Michael P. and Corinne Grace, P.O. Box 1418, Carlsbad, New Mexico 88200.
Texas Oil & Gas Corp., 2700 Fidelity Union Tower Building, Dallas, Texas 75201.
Joseph I. O'Neill, Jr., 410 W. Ohio, Midland, Texas 79701.
Read & Stevens, Inc., Box 2126, Roswell, New Mexico 88201.
Western Reserves Oil Company, P.O. Box 993, Midland, Texas 79701.
H. L. Brown, Jr., P.O. Box 2237, Midland, Texas 79701.
Flag-Redfern Oil Company, P.O. Box 23, Midland, Texas 79701.
Jones & Pellow Oil Co., 2821 Northwest 50th Street, Oklahoma City, Oklahoma 73112.
Champlin Exploration Inc. 1973, 700 First National Bldg., Enid, Oklahoma 73701.
C & K Petroleum, Inc., 607 Midland National Bank Bldg., Midland, Texas 79701.
Commanche Oil & Gas Co., 306 Building of the Southwest, Midland, Texas 79701.
Hanson Oil Corporation, Box 1515, Roswell, N. Mexico 88201.
Randall B. Johnson, P.O. Box 1824, Midland, Texas 79701.

[FR Doc.75-31060 Filed 11-17-75;8:45 am]

[Project No. 2546]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Application for Exchange of Project Lands

NOVEMBER 10, 1975.

Public notice is hereby given that an application was filed on September 22, 1975, under the Federal Power Act (16 U.S.C. §§ 791a–825r) by the Wisconsin Public Service Corporation (Correspondence to: Mr. C. A. McKenna, Secretary, Wisconsin Public Service Corporation, 1029 North Marshall Street, Milwaukee, Wisconsin 53201) for an exchange of project lands for constructed Project No. 2546, known as the Sandstone Rapids Project, located on the Peshtigo River, a navigable waterway of the United States, in Marinette County, Wisconsin.

Wisconsin Public Service Corporation, licensee for Sandstone Rapids Project No. 2546, is requesting authorization to remove from within the Sandstone

[1] As amended by letter on October 15, 1975.

Rapids Project area a 1.627-acre parcel of land. The area to be removed is located on Government Lot 5, Section 16, T. 32 N., R. 19 E., in the Town of Stephenson, Marinette County, Wisconsin. A cottage owned by Lloyd Connors was constructed on the land to be removed from the project area without knowledge that it was project land. The subject project land would be exchanged for a 2-acre parcel, which would be included within the project. This parcel of land is located on the SW¼ of SW¼ of Section 9, T. 32 N., R. 19 E., in the Town of Stephenson, Marinette County, Wisconsin. Applicant states that approval of this exchange of land would provide sufficient land to construct a road for better access to an otherwise little-used area of the project reservoir designated for "Fly Fishing Only."

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 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 C.F.R. § 1.8 or § 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any 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. The application is on file with the Commission and is available for public inspection.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act (16 U.S.C. § 825g, § 825h) and the Commission's Rules of Practice and Procedure, specifically Section 1.32(b) (18 C.F.R. § 1.32(b)), as amended by Order No. 518, a hearing may be held without further notice before the Commission on this application if no issue of substance is raised by any request to be heard, protest or petition filed subsequent to this notice within the time required herein, and if the applicant or initial pleader requests that the shortened procedure of Section 1.32(b) be used. If an issue of substance is so raised or applicant or initial pleader fails to request the shortened procedure, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant or initial pleader to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31061 Filed 11-17-75;8:45 am]

[Docket No. E-9408]

AMERICAN ELECTRIC POWER SERVICE CORP.

Order Granting Request for Prehearing Conference

NOVEMBER 14, 1975.

On October 20, 1975, Kaiser Aluminum and Chemical Corporation (Kaiser) and Ormet Corporation (Ormet), intervenors in this proceeding, filed a joint motion for a pre-hearing conference in this proceeding. In support of this request the intervenors state that they have been unsuccessful in obtaining responses to certain data requests served upon American Electric Power Service Corporation (AEP). Kaiser and Ormet request therefore that the Commission establish a prehearing conference and that a Presiding Administrative Law Judge be appointed.

On October 20, 1975 Kaiser and Ormet additionally filed a joint application for subpoena for the production of certain documents.

Upon review of Kaiser's and Ormet's requests we hereby order that a prehearing conference be convened in this proceeding on Tuesday, November 18, 1975 at 10 a.m. in the offices of the Federal Power Commission and that such prehearing conference be presided over by an Administrative Law Judge. We find it appropriate that the appointed Presiding Administrative Law Judge rule on petitioners' request for the subpoena and production of certain documents.

The Commission finds. Good cause exists to grant petitioners' request for a prehearing conference.

The Commission orders. (A) A prehearing conference, to be presided over by an Administrative Law Judge, shall be convened in this proceeding on Tuesday, November 18, 1975, at 10 a.m. in the offices of the Federal Power Commission.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.75-31338 Filed 10-17-75;10:19 am]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

Notice of Committee Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, effective January 5, 1973, notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, December 4, 1975
Thursday, December 11, 1975
Thursday, December 18, 1975

The meetings will convene at 10 a.m. and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The committee's primary responsibility is to study the prevailing rate system and from time to time advise the Civil Service Commission thereon.

At these scheduled meetings, the committee will consider proposed plans for implementation of Public Law 92-392, which law establishes pay systems for Federal prevailing rate employees.

The meetings will be closed to the public on the basis of a determination under section 10(d) of the Federal Advisory Committee Act (Public Law 92-463) and 5 U.S.C., section 552(b)(2), that the closing is necessary in order to provide the members with the opportunity to advance proposals and counter-proposals in meaningful debate on issues related solely to the Federal Wage System with the view toward ultimately formulating advisory policy recommendations for the consideration of the Civil Service Commission.

However, members of the public who wish to do so, are invited to submit material in writing to the Chairman concerning matters felt to be deserving of the committee's attention. Additional information concerning these meetings may be obtained by contacting the Chairman, Federal Prevailing Rate Advisory Committee, Room 5451, 1900 E Street, NW., Washington, D.C. 20415.

DAVID T. ROADLEY,
Chairman, Federal Prevailing Rate Advisory Committee.

NOVEMBER 13, 1975.

[FR Doc.75-31127 Filed 11-17-75;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Temp. Reg. F-361]

FEDERAL PROPERTY MANAGEMENT REGULATIONS

Revocation of Delegations of Authority

1. *Purpose.* This regulation revokes certain delegations of authority to represent the consumer interests of the executive agencies of the Federal Government in communication proceedings which have been terminated.

2. *Effective date.* This regulation is effective immediately.

3. *Expiration date.* This regulation expires December 15, 1975.

4. *Revocation.* This revocation identifies those delegations which are no longer in force due to completion of the proceedings for which they were issued. Accordingly, the following FPMR temporary regulations are hereby revoked:

No.	Date	Subject
F-126	Oct. 15, 1971	Delegation of authority of Secretary of Defense—regulatory proceeding.
F-137	Feb. 22, 1972	Do.
F-207	Jan. 25, 1974	Do.
F-229	Aug. 12, 1974	Do.

DWIGHT A. INK,
Acting Administrator of General Services.

NOVEMBER 7, 1975.

[FR Doc.75-31091 Filed 11-17-75;8:45 am]

LEGAL SERVICES CORPORATION

COMMITTEE ON APPROPRIATIONS AND AUDIT

Meeting

NOVEMBER 13, 1975.

The next meeting of the Committee on Appropriations and Audit of the Board of Directors of the Legal Services Corporation will be held on Thursday, November 20, 1975. The meeting will be held at the Marriott Hotel at the O'Hare Airport, Chicago, Illinois.

The meeting will begin at 9:30 a.m. and will be for the purpose of discussing the Fiscal Year 1977 budget request.

The meeting is open to the public.

ROGER C. CRAMTON,
Chairman.

[FR Doc.75-31064 Filed 11-17-75;8:45 am]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

NOTICE OF OPEN MEETING

NOVEMBER 13, 1975.

The National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Thursday and Friday, December 18 and 19, 1975. Both sessions will be open to the public and will be held in room 6802 of the U.S. Department of Commerce Building, 14th Street between Constitution and E, NW., Washington, D.C. beginning at 9:00 a.m.

The Committee, consisting of 25 non-Federal members appointed by the President from State and local governments, industry, science and other appropriate areas, was established by Congress by Public Law 92-125, on August 16, 1971 as amended. Its duties are to (1) undertake a continuing review of national ocean policy, coastal zone management and the progress of the marine and atmospheric science and service programs of the United States, (2) submit a comprehensive annual report to the President and to the Congress setting forth an overall assessment of the status of the Nation's marine and atmospheric activities on or before 30 June of each year, and (3) advise the Secretary of Commerce with respect to the carrying out of the purposes of the National Oceanic and Atmospheric Administration.

A general agenda consists of the following items:

Thursday—

Federal agency briefings on the general topics of: Scientific basis for air pollution control regulations Marine transportation.

NACOA reports on work in progress including examinations of: Sea Grant Program; Weather and air safety; Protection of offshore assets; Federal organization; Coastal zone management.

Future plans for the Committee.

Friday—

Federal agency briefings on the general topics of: Mariculture; Weather Modification; NOAA response to NACOA recommendations with regard to disaster warning.

Continuation of NACOA reports on work in progress.

The public is welcome at these sessions and will be admitted to the extent of the seating available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the Committee's Executive Director, Dr. Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, Department of Commerce Building, Room 5225, Washington, D.C. 20230. The telephone number is 967-3343.

DOUGLAS L. BROOKS,
Executive Director.

[FR Doc.75-31147 Filed 11-17-75;8:45 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (75-95)]

PRIVACY ACT

Notices of Systems of Records

On September 22, 1975, the National Aeronautics and Space Administration ("NASA") in accordance with 5 U.S.C. 552a(e) (4) and (11), the Privacy Act of 1974 (Pub. L. 93-579) ("The Act") published on page 43685 in the FEDERAL REGISTER a proprosed notice for a NASA system of records subject to the Act, NASA 73FHAP. Interested persons were given until October 17, 1975, to submit comments. No such comments were received.

Accordingly, the proposed NASA notice of this system of records, NASA 73FHAP is adopted without change, effective November 7, 1975.

DUWARD L. CROW,
Associate Deputy Administrator.

[FR Doc.75-31071 Filed 11-17-75;8:45 am]

[Notice (75-96)]

PRIVACY ACT

Notices of Systems of Records

In the notices of systems of records published by the National Aeronautics and Space Administration on Monday, September 22, 1975, make the following changes:

1. In NASA 10BRPA [page 43678] after the item entitled "System Manager(s) and address" change the first sentence to read "Director of Public Information at Location 1".

2. In NASA 10EEOR [page 43678] under the item "System manager(s) and address", following the words: "Subsystem managers:" change "Director of Administration and Management at Location 4" to read "Head, Equal Opportunity Programs Office at Location 4"—and change "Technical Management Assistant, Manpower Office at Location 6" to read "Equal Opportunity Officer at Location 6".

3. In NASA 10GMVP, [page 43679] change the words after: "System location" to "Locations 1 through 15 inclusive as set forth in Appendix A".

Under the item "System Manager(s) and address", after the words: ". . . ; Contract and Property Specialist, Location 13;" insert the words "Chief, Maintenance and Administration Office, Location 14;".

4. In NASA 10PAYS [page 43680] change the item "Categories of records in the system", to read "the data contained in this system of records includes payroll, employee leave, insurance, labor and manpower distribution and overtime information.

5. In NASA 10SECR [page 43681] change the item: "System location" to read "Locations 1 through 12 inclusive and location 15 as set forth in Appendix A". Under the item "System manager(s) and address, after ". . . Location 10;" insert the words "Safety and Security Officer at Location 15;".

6. In NASA 10SMED [page 43682] under the item "System location" change the numeral "14" to "15". Under the item "System manager(s) and address" change the numeral "14" to "15".

7. In NASA 10XROI [page 43683] under the item "System manager(s) and address" change "Chairman, NASA exchange, Location 9" to read "Exchange Operations Manager, Location 9".

DUWARD L. CROW,
Associate Deputy Administrator.

[FR Doc.75-31072 Filed 11-17-75;8:45 am]

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

ADVISORY COMMITTEE; EDUCATION PANEL

Notice of Meeting

NOVEMBER 11, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463) notice is hereby given that a meeting of the Education Panel will convene at 9:00 a.m. each day at Washington, D.C., on December 15 and 16, 1975.

The purpose of the meeting is to review Projects applications submitted to the National Endowment for the Humanities for grants to educational institutions and non-profit organizations.

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 meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting 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.

[FR Doc.75-31138 Filed 11-17-75;8:45 am]

EDUCATION PANEL; ADVISORY COMMITTEE

Notice of Meeting

NOVEMBER 11, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463) notice is hereby given that a meeting of the Education Panel will convene at 9:00 a.m. each day at Washington, D.C., on December 18 and 19, 1975.

The purpose of the meeting is to review Projects applications submitted to the National Endowment for the Humanities for grants to educational institutions and non-profit organizations.

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 meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting 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, N.W., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.75-31139 Filed 11-17-75;8:45 am]

FELLOWSHIPS PANEL; ADVISORY COMMITTEE

Notice of Meeting

NOVEMBER 5, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463) notice is hereby given that a meeting of the Fellowships Panel will be held at Washington, D.C. on December 5, 8, 9, 10, 15, and 20, 1975, from 9:00 a.m. to 5:30 p.m.

The purpose of the meeting is to review Fellowships in Residence for College Teachers 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 meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552 (b) and that it is essential to close the meeting 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, N.W., Washington, D.C. 20506, or call area code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.75-31140 Filed 11-17-75;8:45 am]

PUBLIC PROGRAMS PANEL; ADVISORY COMMITTEE

Notice of Meeting

NOVEMBER 3, 1975.

Pursuant to the provisions of the Federal Advisory Committee (Public Law 92–463) notice is hereby given that a meeting of the Public Programs Panel will meet at Washington, D.C. on December 15 and 16, 1975, commencing at 9:00 a.m.

The purpose of the meeting is to review Humanities Museums and Historical Organizations grant proposals that have been submitted to the Endowment for possible grant funding.

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 meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting 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, N.W., Washington, D.C. 20506, or call Area Code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.75-31141 Filed 11-17-75;8:45 am]

PUBLIC PROGRAMS PANEL; ADVISORY COMMITTEE

Notice of Meeting

NOVEMBER 5, 1975.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463) notice is hereby given that a meeting of the Public Programs Panel will meet at Washington, D.C. on December 8 and 9, 1975, commencing at 9:30 a.m.

The purpose of the meeting is to review Humanities Media Grant proposals that have been submitted to the Endowment for possible grant funding.

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 meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting 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, N.W., Washington, D.C. 20506, or call Area Code 202–382–2031.

JOHN W. JORDAN,
Advisory Committee
Management Officer.

[FR Doc.75-31142 Filed 11-17-75;8:45 am]

NATIONAL LABOR RELATIONS BOARD

CHAIRMAN'S TASK FORCE ON THE NATIONAL LABOR RELATIONS BOARD

Notice of Establishment and Certification

Pursuant to Section 9(a)(2) of the Federal Advisory Committee Act (86 Stat. 770, 5 U.S.C. App. I, Sec. 1, et seq.), the Chairman of the National Labor Relations Board, with the approval of the Board, hereby announces the establishment, effective January 2, 1976, of the Chairman's Task Force on the National Labor Relations Board.

The establishment of this committee has been authorized by the Director, Office of Management and Budget, as being in accord with the Federal Advisory Committee Act. The Chairman of the National Labor Relations Board hereby certifies that creation of this task force is in the public interest and will further the purposes and objectives of the National Labor Relations Board and of the National Labor Relations Act, as amended.

The Chairman's Task Force on the National Labor Relations Board will be comprised of individuals from labor, management, academia, and the public who are familiar with the processes of the National Labor Relations Board and experienced in the complexities of collective bargaining and the need for swift resolution of labor disputes. The purpose and objectives of the task force will be to (1) review and evaluate existing structure, practices, procedures, rules, and regulations for the investigation, prosecution, hearing, decision, and enforcement of cases filed with the Agency; (2) advise the Board or the General Counsel, where appropriate, of its recommendations on the means and methods of improving the Agency's processes; (3) make recommendations to

the Board on the recruitment and productivity of administrative law judges; (4) serve as a forum for exchange of ideas and opinions of interested persons.

Dated, Washington, D.C., November 7, 1975.

By Order of the National Labor Relations Board.

[SEAL] JOHN C. TRUESDALE,
Executive Secretary.

[FR Doc.75-31012 Filed 11-17-75;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

TASK FORCE ON DEMONSTRATION PROJECTS AS A COMMERCIALIZATION INCENTIVE

Meeting

NOVEMBER 14, 1975.

In accordance with provisions of Public Law 92-463 (Federal Advisory Committee Act), the Task Force on Demonstration Projects as a Commercialization Incentive will hold its first meeting from 9 a.m. to 5 p.m. on Wednesday, December 3, 1975, in room 2010 (second floor), New Executive Office Building, 726 Jackson Place NW., Washington, D.C. This meeting will be open to the public. The purpose of the meeting is to review past experience in federally sponsored demonstration projects and to consider the applicability of certain analytical and information-gathering techniques which might be used in planning and designing prototype commercial demonstrations. The tentative agenda for the meeting is as follows:

9:00 The Role of the Federal Government in Supporting Commercial Demonstrations of New Technology—Mr. Hugh Loweth, Office of Management and Budget.
9:30 Introduction, Organization, Modus Operandi.
10:15 Welcome—Dr. Robert Seamans, Jr.
10:30 Break.
10:45 Historical Experience with Government-sponsored Demonstration Projects—RAND Corporation.
12:30 Recess.
1:30 Decision Analysis—Stanford Research Institute.
3:15 Personal Interview Methodology for Soliciting Industry Experience in Program Planning—International Planning Management Corporation.
3:45 Break.
4:00 Task Force Discussion of Project Initiation Issue.
4:45 Task Force Internal Organization.
5:00 Adjournment.

Practical considerations may dictate alterations in the above agenda or schedule.

The membership of the Task Force represents the principal groups involved in commercialization decisions in the field of energy. The chairman of the Task Force is Dr. Robert A. Charpie, President of the Cabot Corporation. The other members of the Task Force and the sectors they represent are:

I. Product Development Companies: 5 members.
Mr. Robert C. Gunness, retired Vice-Chairman of the Board, Standard Oil Co. (Indiana).
Dr. Edward E. David, Jr., Executive Vice-President, Gould, Inc.
Dr. Denis M. Robinson, Chairman of the Board, High Voltage Engineering Corporation.
Mr. Howard K. Nason, President, Monsanto Research Company.
Dr. Thomas Paine, Sr., Vice-President, General Electric Company.
II. A & E/Design—Construct Firms: 1 member.
Mr. W. Kenneth Davis, Vice-President, Bechtel Power Corporation.
III. Investment Companies:
A. Commercial Banks: 1 member.
Mr. William Cross, Jr., Executive Vice-President, Morgan Guaranty Bank.
B. Investment Bank: 1 member.
Mr. George Montgomery, Senior Vice-President, White, Weld & Co.
IV. Delivery Organizations:
A. Utilities: 2 members.
Mr. Wallace B. Behnke, Executive Vice-President, Commonwealth Edison Company.
Mr. Robert A. Baker, Sr.—retired Executive Vice-President, Public Service Electric & Gas Company.
B. Local Government: 1 member.
Mr. Eli Freedman, City Manager, Rochester, New York.
V. Regulators:
A. Federal: 1 member.
Mr. John Quarles, Jr., Deputy Administrator, Environmental Protection Agency.
B. State: 1 member.
Dr. Allan Pasternak, Commissioner, California State Energy Resources Conservation and Development Commission.

The Chairman is empowered to conduct the meeting in a manner that in his judgement will facilitate the orderly conduct of business.

With respect to public participation in agenda items, scheduled above, the following requirements shall apply:

(a) Persons wishing to submit written statements on agenda items may do so by mailing 12 copies thereof, postmarked no later than December 1, 1975, to the Director, Office of Industry, State and Local Relations, U.S. Energy Research and Development Administration, Washington, D.C. 20545. Comments shall be directly relevant to the above agenda items. Minutes of the meeting will be kept open for 30 days for the receipt of written statements for the record.

(b) Information as to whether the meeting has been rescheduled or relocated can be obtained by a prepaid telephone call on December 2, 1975, to the Office of Industry, State and Local Relations on (202) 376-4119 between 8:30 a.m. and 5:00 p.m. E.S.T.

(c) Questions at the meeting may be propounded only by members of the Task Force and ERDA officials assigned to participate with the Task Force in its deliberations.

(d) Seating to the public will be made available on a first-come, first-served basis.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course 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.

(f) Copies of minutes will be made available for copying, following their certification by the Chairman, in accordance with the Federal Advisory Committee Act, at the Energy Research and Development Administration's Public Document Room, 20 Massachusetts Avenue NW., Washington, D.C. 20545, upon payment of all charges required by law.

HARRY L. PEEBLES,
Deputy Advisory Committee Management Officer.

[FR Doc.75-31340 Filed 11-17-75;11:15 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS PROCEDURES SUBCOMMITTEE

Notice of Meeting

In accordance with the purposes of Sections 29 and 182 b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Procedures Subcommittee will hold a meeting at 1:30 p.m., on December 3, 1975, in Room 1010, 1717 H Street, N.W., Washington, D.C. 20555. This meeting will be closed to the public.

The Subcommittee will meet in closed Executive Session to discuss proposed changes to Committee policy and practices including procedures related to the conduct of ACRS meetings, the respective duties and responsibilities of ACRS Subcommittees and the full Committee, preparation of ACRS reports to the Nuclear Regulatory Commission, the make-up of ACRS Subcommittees, and the nomination of candidates for ACRS membership. Individual members will exchange and discuss their personal opinions and recommendations regarding proposed changes in these procedures leading to a final recommendation by the Subcommittee to the ACRS.

I have determined in accordance with Subsection 10(d) of Public Law 92-463 that it is necessary to hold this meeting in closed session, as noted, to protect the free exchange of opinion during the Committee's deliberative process. Separation of factual information from the individual advice, opinion, or recommendations of ACRS members is not considered practical.

Dated: November 13, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-31125 Filed 11-17-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE KOSHKONONG NUCLEAR POWER PLANT

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on the Koshkonong Nuclear Power Plant will hold a meeting on December 3, 1975, in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555. The purpose of this meeting is

to continue the review of the application of the Wisconsin Electric Power Company, et al., for a construction permit.

The agenda for subject meeting shall be as follows:

Wednesday, December 3, 1975, 8:30 a.m. The Subcommittee will meet in closed Executive Session, with any of its consultants who may be present, to explore their preliminary opinions, based upon their independent review of safety reports, regarding matter which should be considered during the open session in order to formulate a Subcommittee report and recommendations to the full Committee.

9:00 a.m. until the conclusion of business. The Subcommittee will meet in open session to hear presentations and hold discussions with the NRC Staff and representatives of the Wisconsin Electric Power Company, et al., regarding design features and site-related aspects of the application for a construction permit as well as other matters relating to review of the Safety Analysis Report.

At the conclusion of the open session, the Subcommittee will caucus in a brief, closed session to determine whether the matters identified in the initial closed session have been adequately covered and whether the project is ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their final opinions and recommendations on these matters. Upon conclusion of this caucus, the Subcommittee will meet again in brief open session to announce its determination.

In addition to these closed deliberative sessions, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information, particularly with regard to specific features of the plant design and plans related to plant security.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process (5 U.S.C. 552(b)(5)) and to protect confidential proprietary or plant security information (5 U.S.C. 552(b)(4)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

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 providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than November 26, 1975 to Mr. R. L. Wright, ACRS, NRC, Washington, D.C. will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 and at the Dwight-Foster Public Library, P.O. Box 88, Fort Atkinson, WI 53538, and the Municipal Reference Service, Room 103-B, Madison Public Library, Madison, WI 53709.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 2, 1975 to the Office of the Executive Director of the Committee (telephone 202/634-1413, Attn: Mr. R. L. Wright) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) 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.

(f) Persons with agreements or orders permitting access to proprietary information, other than plant security information, may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. R. L. Wright of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 10, 1975 at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555, and at the Dwight-Foster Public Library, P.O. Box 88, Port Atkinson, WI 53538, and the Municipal Reference Service, Room 103-B, Madison Public Library, Madison, WI 53709.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 after March 3, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: November 13, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-31126 Filed 11-17-75;8:45 am]

[Docket Nos. STN 50-456 and STN 50-457]

COMMONWEALTH EDISON CO.; BRAIDWOOD STATION, UNITS 1 AND 2

Notice of Availability of Second Partial Initial Decision of Atomic Safety and Licensing Board

Pursuant to the National Environmental Policy Act of 1969 and the Commission's regulations in Appendix D of 10 CFR Part 50, the Atomic Safety and Licensing Board in the above-captioned proceeding issued a Partial Initial Decision on January 8, 1975, relating to environmental and site suitability matters. Notice of availability of the Partial Initial Decision was published in the FEDERAL REGISTER on February 11, 1975 (40 F.R. 6392). On October 29, 1975, the Atomic Safety and Licensing Board issued a Second Partial Initial Decision related to 10 CFR 50.10(e)(3) activity for the Commonwealth Edison Company's Byron Station, Units 1 and 2, and Braidwood Station, Units 1 and 2.

The Second Partial Initial Decision modified the Partial Initial Decision dated January 8, 1975 in respect to the Braidwood Station, Units 1 and 2, in that certain site clearing techniques, imposed as conditions to the issuance of the limited work authorization, should be modified to allow disposal of trees to be removed from the Braidwood site by burning rather than by chipping and burial, in accord with Illinois law. Notice of the issuance of the Limited Work Authorization was published in the FEDERAL REGISTER on November 6, 1975 (40 F.R. 51694).

A copy of (1) the Partial Initial Decision issued January 8, 1975, and (2) the Second Partial Initial Decision dated October 29, 1975 are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C., and in the Wilmington Township Public Library, 201 South Kankakee Street, Wilmington, Illinois.

Single copies of the Partial Initial Decision and the Second Partial Initial Decision by the Atomic Safety and Licensing Board may be obtained upon request addressed to the U.S. Nuclear Regu-

latory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Licensing.

Dated at Rockville, Maryland, this 11th day of November 1975.

For the Nuclear Regulatory Commission.

B. J. YOUNGBLOOD,
Chief, Environmental Projects Branch 3, Division of Reactor Licensing.

[FR Doc.75-31123 Filed 11-17-75;8:45 am]

[Docket Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Notice of Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments No. 14, 14, and 11 to Facility Operating Licenses No. DPR-38, DPR-47, and DPR-55, respectively, issued to Duke Power Company which revised Technical Specifications for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments allow the momentary passage of personnel through the outer door of a containment hatch which is inoperable due to a failed inner door gasket. The momentary passage would be permitted for repair or test of the inner door.

The application for the amendments 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 amendments. Prior public notice of these amendments is not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendments dated January 15, 1975, (2) Amendments No. 14, 14, and 11 to Licenses No. DPR-38, DPR-47, and DPR-55, with Changes No. 24, 19, and 11, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina 29691.

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 11th day of November 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Chief, Operating Reactors Branch No. 1, Division of Reactor Licensing.

[FR Doc.75-31122 Filed 11-17-75;8:45 am]

[Docket Nos. 50-259 and 50-260]

TENNESSEE VALLEY AUTHORITY

Notice of Issuance of Amendments to Facility Operating Licenses

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility Operating License No. DPR-33 and Amendment No. 13 to Facility Operating License No. DPR-52 issued to Tennessee Valley Authority which revised Technical Specifications for operation of the Browns Ferry Nuclear Plant, Units 1 and 2, located in Limestone County, Alabama. The amendments are effective as of the date of issuance.

The amendments revise the licenses and the Technical Specifications to provide for standard provisions for special nuclear, source and byproduct materials.

The application for these amendments 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 amendments. Prior public notice of these amendments is not required since the amendments do not involve a significant hazards consideration.

For further details with respect to this action, see (1) the application for amendments dated October 10, 1975, (2) Amendment No. 16 to License No. DPR-33 and Amendment No. 13 to License No. DPR-52 with Change No. 15, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Athens Public Library, South and Forrest, Athens, Alabama 35611.

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 11th day of November 1975.

For the Nuclear Regulatory Commission.

ROBERT A. PURPLE,
Operating Reactors Branch No. 1, Division of Reactor Licensing.

[FR Doc.75-31124 Filed 11-17-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY GUIDES

Notice of 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 Subcommitee on Regulatory Guides will hold a meeting on December 3, 1975 in Room 1062, 1717 H Street, N.W., Washington, D.C. This meeting will have both open and closed sessions.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

Wednesday, December 3, 1975, 8:45 a.m. until about 11:00 a.m.

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

1. Regulatory Guide 1.94, Rev. 1, "Quality Assurance Requirements for Installation, Inspection, and Testing of Structural Concrete and Structural Steel During the Construction Phase of Nuclear Power Plants," dated October 15, 1975.

2. Regulatory Guide 1.96, Rev. 1, "Design of Main Steam Isolation Valve Leakage Control Systems for Boiling Water Nuclear Power Plants."

3. Regulatory Guide 1.20, Rev. 2, "Comprehensive Vibration Assessment Program for Reactor Internals During Preoperational and Initial Startup Testing."

In connection with the above agenda items, the Subcommittee may hold one or more Executive Sessions, not open to the public, at approximately 8:30 a.m. and 11:00 a.m. on December 3 to consider matters related to the above reviews. These sessions will involve an exchange of opinions and discussions of preliminary views and recommendations of Subcommittee members and internal deliberations for the purpose of formulating recommendations to the ACRS.

After the above portion of the meeting is concluded, the Subcommittee will meet in closed sessions with the NRC Staff and any consultants at about 11:00 a.m. until the close of business to discuss the following working papers:

1. "Quality Assurance Requirements for Installation, Inspection, and Testing of Mechanical Equipment and Systems," Regulatory Guide 1.XX.

2. "Periodic Testing of Class 1-E Power and Protection Systems," Regulatory Guide 1.XX.

This portion of the meeting may include Executive Sessions both before and after the closed sesisons with the NRC Staff.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463,

that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process and that other closed sessions will be held to discuss and exchange views on working papers (5 U.S.C. 552 (b)(5)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

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 Regulatory Guides 1.94, 1.96, and 1.20 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St. NW., Washington, D.C. 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than November 26, 1975 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, D.C. 20555 will normally be received in time to be considered at this meeting.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 2, 1975 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) 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.

A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 10, 1975 at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555. Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St. NW., Washington, D.C. 20555 after March 3, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: November 14, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-31205 Filed 11-17-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON C. F. BRAUN BALANCE OF PLANT

Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on C. F. Braun Balance of Plants will hold a meeting on December 3, 1975, in Room 1062, 1717 H Street, N.W., Washington, D.C. 20555. The purpose of this meeting is to develop information for consideration by the ACRS in its review of the application of C. F. Braun & Company for a preliminary design approval of its Standard Safety Analysis Report.

The agenda for subject meeting shall be as follows:

Wednesday, December 3, 1975, 2:00 p.m. The Subcommittee will meet in closed Executive Session, with any of its consultants who may be present, to explore their preliminary opinions, based upon their independent review of safety reports, regarding matters which should be considered during the open session in order to formulate a Subcommittee report and recommendations to the full Committee.

2:30 p.m. until the conclusion of business. The Subcommittee will meet in open session to hear presentations and to hold discussions with the NRC Staff and representatives of C. F. Braun & Company regarding design features of the application for a preliminary design approval as well as other matters relating to review of the Safety Analysis Report.

At the conclusion of the open session, the Subcommittee will caucus in a closed session to determine whether the matters identified in the initial closed session have been adequately covered and whether the matter is ready for review by the full Committee. During the session Subcommittee members and consultants will discuss their final opinions and recommendations on these matters. Upon conclusion of this caucus, the Subcommittee will meet again in brief open session to announce its determination.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it is necessary to conduct the above closed sessions to protect the free interchange of internal views in the final stages of the Subcommittee's deliberative process (5 U.S.C. 552(b)(5)). Separation of factual material from individuals' advice, opinions, and recommendations while closed Executive Sessions are in progress is considered impractical.

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 providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than November 26, 1975 to Mr. J. C. McKinley, ACRS, NRC, Washington, D.C. 20555 will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in 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 wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chraiman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on December 2, 1975 to the Office of the Executive Director of the Committee (telephone 202/634-1371, Attn: Mr. J. C. McKinley) between 8:15 a.m. and 5:00 p.m., EST

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) 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.

(f) Persons with agreements or orders permitting access to proprietary information, other than plant security information, may attend portions of ACRS meetings where this material is being discussed upon confirmation that such

agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. J. C. McKinley of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion of the meeting will be available for inspection on or after December 10, 1975 at the NRC Public Document Room 1717 H St., N.W., Washington, D.C. 20555. Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 after March 3, 1976. Copies may be obtained upon payment of appropriate charges.

Dated: November 14, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-31206 Filed 11-17-75;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Proposed Subcommittee and Full Committee Meetings

In order to provide advance information regarding proposed ACRS Subcommittee and full Committee meetings, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed Subcommittee and full Committee meetings published in FR Vol. 40, No. 205, Pg. 49412, October 22, 1975. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 4–6, 1975 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-1406, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m. EST.

SUBCOMMITTEE MEETINGS

**Tyrone Energy Park, Units 1 and 2*, Nov. 20–21, 1975, Eau Claire, WI, to review the application of the Northern States Power Company for a permit to construct Units 1 and 2. Notice published in FR Vol. 40, No. 214, p 51505, Nov. 5, 1975.

**Inspection and Enforcement Activities*, Nov. 21, 1975, Wash., D.C., to discuss third-party inspection and the roles of inspection and examination organizations in relation to nuclear safety. Notice published in FR Vol. 40, No. 214, p 51506, Nov. 5, 1975.

Siting Evaluation, Dec. 2–3, 1975, Wash., D.C., to discuss working papers and NRC Staff recommendations for possible changes in nuclear power reactor siting regulations and policies. Notice published in FEDERAL REGISTER of November 17, 1975.

* *C. F. Braun Balance of Plant*, Dec. 3, 1975, Wash., D.C., to review the application of the C. F. Braun Company for a preliminary design approval of its Standard Safety Analysis Report. Notice appears elsewhere in this issue.

**Koshkonong Nuclear Power Plant*, Dec. 3, 1975, Wash., D.C., to continue the review of the application of the Wisconsin Electric Power Company for a construction permit. Notice appears elsewhere in this issue.

Procedures, Dec. 3, 1975, Wash., D.C., to discuss proposed changes to Committee policy and practices regarding preparation of ACRS reports to the Nuclear Regulatory Commission. Notice appears elsewhere in this issue.

**Regulatory Guides*, Dec. 3, 1975, Wash., D.C., to review working papers regarding future Regulatory Guides and proposed changes to existing Guides. Notice appears elsewhere in this issue.

**Seismic Activity*. The two-day Subcommittee meeting planned during the period Dec. 8–20, 1975 has been postponed.

* *Anticipated Transients Without Scram (ATWS)*, Dec. 11–12, 1975, Denver, CO, to review Class B plant design changes, as proposed by reactor vendors, to assure that the consequences of anticipated transients would be acceptable in the event of a postulated failure to scram.

**Diablo Canyon Nuclear Power Station, Units 1 and 2*, Dec. 17, 1975, San Luis Obispo, CA, to continue the review of the application of the Pacific Gas and Electric Company for an operating license.

**Perkins Nuclear Station, Units 1, 2, and 3*, Dec. 17, 1975, Charlotte, NC, postponed.

**Hartsville Nuclear Power Plant, Units 1, 2, 3, and 4*, Dec. 17–18, 1975, Hartsville, TN, to review the application of the Tennessee Valley Authority for a permit to construct Units 1, 2, 3, and 4.

**Cherokee Nuclear Station, Units 1, 2, and 3*, Dec. 18, 1975. Charlotte, NC, postponed.

**Emergency Core Cooling Systems (ECCS)*, Dec. 19–20, 1975, Wash., D.C., to discuss on Dec. 19 "A Critique of the Computer Safety Prediction Methods," by C. J. Hocevar, and to discuss on Dec. 20 the status of the review of Westinghouse Upper Head Injection (UHI).

**General Electric Water Reactors*, Dec. 29–30, 1975, Wash., D.C., to discuss on Dec. 29 design and performance of the Mark I, II, and III Pressure Suppression Containments, and to discuss on Dec. 30 the status of the General Electric Standard Safety Analysis Report (GESSAR).

**Inspection and Enforcement Activities*, Jan. 6, 1976, Chattanooga, TN, to continue discussion of third-party inspection and the roles of inspection and examination organizations in relation to nuclear safety.

**D.C. Cook Nuclear Plant, Unit 1*, Jan. 7, 1976, Wash., D.C., to review the application of the Indiana-Michigan Electric Company for a permit to increase the power level of Unit 1.

**Regulatory Guides*, Jan. 7, 1976, Wash., D.C., to review working papers regarding future Regulatory Guides and proposed changes to existing Guides.

**Stone and Webster Standard Safety Analysis Report (SWESSAR)*, tentatively scheduled for Jan. 22, 1976, Wash., D.C., to review the application of the Stone and Webster Engineering Corporation for a preliminary design approval of its Standard Safety Analysis Report.

FULL COMMITTEE MEETINGS

December 4–6, 1976

A. *Koshkonong Nuclear Plant, Units 1 and 2,—Construction Permit.

B. *Tyrone Energy Park, Units 1 and 2,—Construction Permit.

C. *Braun Standard Safety Analysis Report—Preliminary Design Approval.

January 8–10, 1976

Agenda to be published later.

Dated: November 14, 1975.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.75-31207 Filed 11-17-75;8:45 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 November 12, 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, 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.

The symbol (x) identifies proposals which appear to raise no significant issues, and 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).

NEW FORMS

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

National Institute of Education, Staff Development Activities (a) Initiators Questionnaire, (b) Participants Questionnaire, Form NIE 138 A&B, occasional, individuals or households, Human Resources Division, 395–3532.

DEPARTMENT OF COMMERCE

Departmental, Impact of Federal Policy on Capacity Expansion & Material Shortages, Form —, single time, business firms, Hulett, D., 395–4730.

Maritime Administration, LESL Impact Manufacturer Questionnaire, Form NBS–1029, single time, business firms, George Hall, 395–6140.

Economic Development Administration, Economic Development Through State Planning Survey, Form ED–438Q, single-time, Government agencies, C. A. Ellett, 395–5867.

Bureau of the Census:
1976 National Survey of Scientists and Engineers, Form PMS–26A, B, C, single time, individuals, A. Strasser, 395–5867.
Application for Establishment of a Capital, construction fund, Form ____, occasional, business, R. L. Lowry, 395–3772.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, Blueberry Survey (Michigan), Form ____, single time, farms, R. L. Lowry, 395–3772.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of the Census, Survey of Local Govment Tax Revenues and Intergovernmental Revenues—Municipalities and Townships, Form RS–9A, annual, government agencies, C. A. Ellett, 395–5867.

DEPARTMENT OF DEFENSE

Department of the Air Force, Missile and Space Propellants Report (by Contractor), Form AF 859, occasional, business firms, Harry Sheftel, 395–5870.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Office of Education, A Proposal Submitted to Commissioner of Education for Special Services Programs in Division of Student Support and Special Programs, Form OE 1251, annual, government agencies, R. L. Lowry, 395–3772.

DEPARTMENT OF LABOR

Manpower Administration, Process Evaluation of Decentralized CETA Programs, Form MT–1062, single time, government agencies, A. Strasser, 395–5867.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service, Monthly Report of Lunch Service Operations in Commodity Only Schools, Form FNS–130, monthly, Marsha Traynham, 395–4529.

DEPARTMENT OF COMMERCE

Bureau of the Census:
Particleboard (Production & Shipments)—Annual Report, Form MA–24L, annual, business firms, M. Peterson, 395–5631.
Survey of Industrial Research & Development During 1975, Form RD–1, annual, business firms, D. T. Hulett, 395–4730.

Maritime Administration:
Vessel Utilization & Performance Reports—Dry Cargo—Inbound and Outbound, Form MA721, occasional, business firms, Marsha Traynham, 395–4529.

DEPARTMENT OF THE TREASURY

Bureau of Customs, Declaration and Entry of Crew Members for Imported Articles, Form CF–5123, occasional, individuals, Marsha Traynham, 395–4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75–31180 Filed 11–17–75;8:45 am]

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 November 13, 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 thru 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 AGRICULTURE

Statistical Reporting Service: Fruit Tree Survey (South Carolina), single-time, fruit growers, Lowry, R. L., 395–3772.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Social and Rehabilitation Service: Physician Administrative Cost Survey, SSA–3222, single-time, office based physicians in 60 PSUS, Reese, B. F., 395–3211.

Health Services Administration:
Placement Analysis of Family Planning Public Service TV Announcements, HSABCHS 1022, single-time, public service TV professionals, Dick Eisinger, 395–6140.

National Institutes of Health:
Investigations of Family Planning Decision Making as a Function of Perceptions, Attitudes and Normative Beliefs, NIH–CH–30, single-time, white couples in Seattle SMSA with child born in 1970, Human Resources Division, Dick Eisinger, 395–3532.

Office of Education:
Grant Payment Request, Title VII, HEA of 1965, OE 1026, semi-annually, institutions of postsecondary education, Lowry, R. L., 395–3772.

Alcohol, Drug Abuse and Mental Health Administration:
Inventory of Psychiatric Halfway Houses and Community Residences, ADM 25–4, single-time, halfway houses, Dick Eisinger, 395–6140.

Health Services Administration:
Health Maintenance Organization—National Reporting Requirements, HSABCHS1028, quarterly, federally funded HMOS, Human Resources Division, Lowry, R. L., 395–3532.

Health Resources Administration:
Complement Survey for the National Inventory of Family Planning Services, HRANCHS1015, annually, potential providers of family planning services, Dick Eisinger, 395–6140.

REVISIONS

VETERANS ADMINISTRATION

Statement of Fee Appraisers and Compliance Inspectors, 26–6684, on occasion, fee appraisers and compliance inspectors, Caywood, D. P. 395–3443.

DEPARTMENT OF AGRICULTURE

Economic Research Service: New England Landownership Survey, single-time, owners of land in rural New England, Lowry, R. L., 395–3772.

EXTENSIONS

IMMIGRATION AND NATURALIZATION SERVICE

Alien Address Report Card, I–53, annually, all aliens in the U.S., Marsha Traynham, 395–4529.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Earth Resources Survey Data User Questionnaire, single-time, Energy and Science Division, Caywood, D. P., 395–3810.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service: Regulations—Agricultural Trade Development and Assistance (Title I PL 480), on occasion, Marsha Traynham, 395–4529.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.75–31181 Filed 11–17–75;8:45 am]

POSTAL SERVICE

INTERNATIONAL POSTAL RATES AND FEES

Increases

On September 25, 1975, there was published in the FEDERAL REGISTER (40 FR 44203) a notice of intention to change certain rates of postage and fees for international mail. Interested persons were invited to submit written comments relative to the proposed changes at any time on or before October 24, 1975.

One commenter responded, stating that, in his opinion, the proposed airmail letter rates were excessive. The Postal Service does not agree that the proposed new airmail rates are excessive. The new rates reflect not only the increased air transportation costs incurred by the Postal Service in carrying this mail, but

also the continuing inflation of costs generally.

After review and consideration of the one comment received, the Postal Service has determined to adopt the proposed rates and fees as published, with the following correction. The regular surface rate to Canada and Mexico for printed matter and small packets weighing more than 64 ounces, which appears in Table I,A,3, showed a rate of $0.93 for each additional 4 ounces. The correct rate is $0.93 for each additional 32 ounces.

The new regular surface rates to Canada and Mexico for letter mail, post and postal cards, and printed matter and small packets (Table I, A, 1, 2, 3), and the new airmail rates to Canada and Mexico for letter mail and post and postal cards (Table I, C, 1, 2) will be effective on December 28, 1975. All other rates and all fees will be effective on January 3, 1976.

Appropriate sections of Subchapter B, International Mail, of Title 39, CFR, will be amended in due course to reflect the new rates and fees.

Accordingly, the Postal Service hereby adopts, with the effective dates described, the changes in international postal rates and fees appearing below.

(39 U.S.C. 401, 403, 404(2), 407, 410(a))

ROGER P. CRAIG,
Deputy General Counsel.

I. CANADA AND MEXICO

A. REGULAR SURFACE RATES

1. *Letter mail.* 13 cents first ounce; 11 cents each additional ounce up to 13 ounces; eight-zone priority-mail rates for heavier weights.

2. *Post and postal cards.* 9 cents each.

3. *Printed matter and small packets.*

Ounces	Printed matter	Small packets
2	$0.13	$0.13
4	.24	.24
6	.34	.34
8	.45	.45
10	.56	.56
12	.66	.66
14	.77	.77
16	.88	.88
32	1.15	[1] 1.15
64	1.44	
Each additional 4 oz.	.93	

[1] To Mexico only.

4. *Parcel post.* $1.75 for the first 2 pounds and 50 cents for each additional pound or fraction.

B. EXCEPTIONAL SURFACE RATES FOR PRINTED MATTER

1. Canada:

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.30	$0.05	$0.06
4	.30	.09	.11
8	.30	.17	.20
16	.30	.30	.37
32	.51	.51	.61
64	.72	.72	.86
Each additional 32 oz.	.46	.46	.55

2. *Mexico:*

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.26	$0.04	$0.06
4	.26	.08	.11
8	.26	.14	.20
16	.26	.26	.37
32	.43	.43	.61
64	.61	.61	.86
Each additional 32 oz.	.39	.39	.55

C. AIRMAIL RATES

1. *Letter mail.* 17 cents first ounce; 15 cents each additional ounce.

2. *Post and postal cards.* 14 cents each.

3. *Printed matter, matter for the blind, and small packets.*

(i) To Canada. Letter mail rates.

(ii) To Mexico. 60 cents for the first 2 ounces and 16 cents for each additional 2 ounces.

4. *Air parcel post.*

(i) To Canada. Letter mail rates.

(ii) To Mexico. $1.77 for the first 4 ounces and 35 cents each additional 4 ounces.

II. COUNTRIES OTHER THAN CANADA AND MEXICO

A. REGULAR SURFACE RATES

1. Letter mail, printed matter, and small packets:

Ounces	Letter mail	Printed matter	Small packets
1	$0.18	$0.13	$0.24
2	.31	.13	.24
4	.41	.24	.24
8	.82	.45	.45
16	1.58	.77	.77
32	2.75	1.15	1.15
64	4.46	1.44	
Each additional 32 oz.		.93	

2. *Post and postal cards.* 12 cents each.

3. *Parcel post.*

(i) Central America, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: $1.75 for the first 2 pounds and 50 cents for each additional pound or fraction.

(ii) Other countries: $1.90 for the first 2 pounds and 57 cents for each additional pound or fraction.

B. EXCEPTIONAL SURFACE RATES

1. *Postal Union of the Americas and Spain (PUAS) countries:*

Ounces	Books and sheet music [1] [2]	Publishers' second class [1]	Publishers' controlled circulation
2	$0.26	$0.04	$0.06
4	.26	.08	.11
8	.26	.14	.20
16	.26	.26	.37
32	.43	.43	.61
64	.61	.61	.86
Each additional 32 oz.	.39	.39	.55

[1] Except Canada.
[2] Except Spain and Spanish possessions.

2. *Other countries:*

Ounces	Books and sheet music	Publishers' second class	Publishers' controlled circulation
2	$0.30	$0.05	$0.06
4	.30	.09	.11
8	.30	.17	.20
16	.30	.30	.37
32	.51	.51	.61
64	.72	.72	.86
Each additional 32 oz.	.46	.46	.55

C. AIRMAIL

1. *Letter mail.*

(i) Central America, Colombia, Venezuela, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: 25 cents per half-ounce up to and including 2 ounces, 21 cents each additional half-ounce.

(ii) Other countries 31 cents per half-once up to and including 2 ounces, 26 cents each additional half-ounce.

(iii) As an exception to (ii) above airmail letters from American Samoa to Western Samoa and from Guam to the Philippines: 25 cents per half-ounce up to and including 2 ounces, 21 cents each additional half-ounce.

2. *Air post and postal cards.* 21 cents each.

3. *Aerogrammes.* 22 cents each.

4. *Airmail other articles* (printed matter, matter for the blind, and small packets).

(i) Central America, Colombia, Venezuela, the Caribbean Islands, Bahamas, Bermuda, and St. Pierre and Miquelon: 60 cents for the first 2 ounces and 16 cents for each additional 2 ounces.

(ii) South America (except Colombia and Venezuela) Europe (except Estonia, Latvia, Lithuania, and U.S.S.R.), and Mediterranean Africa: 73 cents for the first 2 ounces and 29 cents each additional 2 ounces.

(iii) Other countries: 86 cents for the first 2 ounces and 42 cents for each additional 2 ounces.

5. *Air parcel post.* Individual country rates increased by 24 percent (rounded up to the nearest cent).

III. FEES

A. RECALL AND CHANGE OF ADDRESS

The fee will be increased to $1.00.

B. INTERNATIONAL REPLY COUPONS

Price will be increased to 42 cents.

C. RETURN RECEIPTS

(i) Requested at the time of mailing. Beginning January 1, 1976, all return receipts will be returned by air mail. The fee will be 32 cents.

(ii) Requested after mailing. This service will be eliminated on January 1, 1976. Such requests will be handled under the existing inquiry procedures.

D. CUSTOMS CLEARANCE AND DELIVERY

Fee for *all mail items* on which customs duty or internal revenue tax is collected will be increased to $1.00.

E. STORAGE CHARGES

1. On parcels unde: $10,000 value: 20 cents per day for the first 10 days, and 35 cents per day thereafter.

2. On parcels of $10,000 or more value:

Number of storage charge days	Rate	Total	Number of storage charge days	Rate	Total
1	$0.20	$0.20	31	$2.40	$31.40
2	.20	.40	32	2.50	33.90
3	.20	.60	33	2.60	36.50
4	.20	.80	34	2.70	39.20
5	.20	1.00	35	2.80	42.00
6	.20	1.20	36	2.90	44.90
7	.20	1.40	37	3.00	47.90
8	.20	1.60	38	3.10	51.00
9	.20	1.80	39	3.20	54.20
10	.20	2.00	40	3.30	57.50
11	.40	2.40	41	3.40	60.90
12	.50	2.90	42	3.50	64.40
13	.60	3.50	43	3.60	68.00
14	.70	4.20	44	3.70	71.70
15	.80	5.00	45	3.80	75.50
16	.90	5.90	46	3.90	79.40
17	1.00	6.90	47	4.00	83.40
18	1.10	8.00	48	4.10	87.50
19	1.20	9.20	49	4.20	91.70
20	1.30	10.50	50	4.30	96.00
21	1.40	11.90	51	4.40	100.40
22	1.50	13.40	52	4.50	104.90
23	1.60	15.00	53	4.60	109.50
24	1.70	16.70	54	4.70	114.20
25	1.80	18.50	55	4.80	119.00
26	1.90	20.40	56	4.90	123.90
27	2.00	22.40	57	5.00	128.90
28	2.10	24.50	58	5.10	134.00
29	2.20	26.70	59	5.20	139.20
30	2.30	29.00	60	5.30	144.50

[FR Doc.75-31016 Filed 11-17-75;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24SF-4062; Administrative Proceeding File No. 3-4716]

AMERICAN SOLAR ENERGY CORP.

Order Permanently Suspending Exemption and Statement of Reasons Therefor

I

NOVEMBER 11, 1975.

American Solar Energy Corporation (the "Issuer"), 2960 Westwood Street, No. 20, Las Vegas, Nevada 89102, was incorporated under the laws of Nevada on February 5, 1974. The Issuer's Articles of Incorporation authorized the issuance of 25,000 shares of common and 2,500 shares of preferred stock. The firm's offices are located at 2960 Westwood Street, Unit No. 20, Las Vegas, Nevada 89102.

On May 16, 1974, the Issuer filed a Regulation A Notification and Offering Circular covering 25,000 shares of $1.00 par value common stock, offered at $2.00 per share, and 2,500 shares of $20.00 par value 8% preferred stock, offered at $20.00 per share, for an aggregate offering price of $100,000. The Notification was later amended to provide for a reduction of the number of common shares to be offered to 22,500, thereby lowering the aggregate offering price to $95,000. The filing was made for the purpose of obtaining an exemption from the registration requirements of the Securities Act of 1933, pursuant to the provisions of Section 3(b) thereof, and Regulation A thereunder. No underwriter was designated in the original Notification and the sale of the stock was to be conducted by the Issuer's president, Alexander R. Tarsey.

II

On September 9, 1975, the Commission temporarily suspended the Regulation A exemption of the Issuer, stating that it had reasonable cause to believe that:

A. The Notification and Offering Circular of the Issuer contained untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, particularly with respect to:

1. The failure to disclose that on June 12, 1975, the Issuer filed a voluntary petition in bankruptcy with the United States District Court for the District of Nevada;

2. The failure to disclose its actual financial condition;

3. The failure to disclose that Alexander R. Tarsey is an affiliate of the Issuer in that he is a controlling person owning over 10% of each class of stock outstanding; and

4. The failure to disclose that the number of common and preferred shares offered under the Notification, when added to those amounts already outstanding, would exceed the amounts which the Issuer is authorized to issue by its Articles of Incorporation.

B. The issuer failed to cooperate with the Commission in that the Issuer and its principle officer have resisted numerous attempts by the Commission and its staff to assist the Issuer in complying with the requirements of Regulation A in that, *inter alia*, the Issuer failed or refused to reply to a January 31, 1975 comment letter and four telephone respect to the Commission's staff with respect to the amending of the Notification and Offering Circular or to its withdrawal.

C. The offering, if permitted to occur, would be made in violation of Section 17 of the Securities Act of 1933, as amended.

III

No hearing having been requested by the Issuer within thirty days after the entry of the order temporarily suspending its exemption under Regulation A, the Commission finds that it is in the public interest and for the protection of investors that the exemption be permanently suspended.

It is ordered, pursuant to Rule 261 of the General Rules and Regulations under the Securities Act of 1933, as amended, that the exemption of the Issuer under Regulation A be permanently suspended.

By the Commission.

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

[FR Doc.75-31017 Filed 11-17-75;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 915]

ASSIGNMENT OF HEARINGS

NOVEMBER 13, 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 921 Sub 28, Dan Truck Line, Inc., continued to November 18, 1975 at the Mississippi Public Service Commission, Jackson, Mississippi.

MC 133703 Sub 6, Wisconsin Cheese Service, Inc., now being assigned January 13, 1976 (1 day), at St. Paul, Minnesota, in a hearing room to be later designated.

MC 135813 Sub 5, Parr Trucking Service, Inc., now assigned December 11, 1975 at Louisville, Kentucky, is canceled and the application is dismissed.

MC 114052 Sub 6, Cantencamp Transfer & Storage, Inc., now being assigned January 14, 1976 (1 day), at St. Paul Minnesota, in a hearing rooom to be later designated.

MC 133189 Sub 8, Vant Transfer, Inc., now being assigned January 15, 1976 (2 days), at St. Paul, Minnesota, in a hearing room to be later designated.

MC 133689 Sub 63, Overland Express, Inc., now assigned November 14, 1975 at St. Paul, Minnesota; is postponed Indefinitely.

MC 130262, Crimson Travel Service, Inc., dba Crimson Travel Service, now being assigned Continued December 8, 1975 (1 Week) at the Custom House, Tax Court, 1-8 McKinley Square, Boston, Massachusetts.

AB 7 Sub 8, Chicago, Milwaukee, St. Paul and Pacific Railway Company Abandonment Between St. Clair Junction and St. Clair, In Freeborn, Waseca and Blue Earth Counties, Minnesota, now being assigned January 19, 1976, (1 week), for continued hearing at Albert Lea, Minnesota, in a hearing room to be later designated.

MC 128273 Sub 167, Midwestern Distribution, Inc., now being assigned December 11, 1975, in Room 183 Federal Building, 600 Federal Place, at Louisville, Kentucky.

MC 87103 Sub 15, Miller Transfer and Rigging Co., has been continued to November 20, 1975, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 115331 Sub 383, Truck Transport, Incorporated and MC 128220 Sub 13, Ralph Latham Dba Latham Trucking Company, now assigned December 1, 1975, will be held in the Moot Court Room, St. Louis University Law School, 3642 Lindell Blvd., at St. Louis, Mo.

MC 139193 Sub 19, Roberts & Oake, Inc., now assigned December 2, 1975, at St. Louis, Mo., will be held in the Moot Court Room, St. Louis University Law School, 3642 Lindell Blvd.

MC 130209, B. J. Marsh, dba B. J. Marsh Sports, now assigned December 4, 1975 at St. Louis, Mo., will be held in the Moot Court Room, St. Louis University Law School, 3642 Lindell Blvd.

MC–C–8666, Cape Transit Corporation, dba St. Louis-Cape Bus Line—Investigation and Revocation of Certificate—, now assigned December 8, 1975, at St. Louis, Mo., will be held in the Moot Courtroom 2—Room No. 742, U.S. Courthouse & Customs, 1114 Market Street.

MC–F–12535, Olin R. Flottmann and John H. Meyer—Investigation of Control—Beaufort Transfer Company and Langer Truck Lines, Inc., now assigned December 9, 1975, at St. Louis, Mo., will be held in Courtroom 2—Room No. 742, U.S. Courthouse & Customs, 1114 Market Street.

MC 69116 Sub 172, Spector Freight Systems, Inc., now assigned December 10, 1975, at St. Louis, Mo., will be held in U.S. Courthouse & Customs, 1114 Market Street.

MC 107496 Sub 992, Ruan Transport Corporation, now assigned December 11, 1975, at St. Louis, Mo., will be held in U.S. Courthouse & Customs, 1114 Market Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–31145 Filed 11–17–75;8:45 am]

[AB 19 (Sub-No. 13)]

BALTIMORE AND OHIO RAILROAD CO.

Abandonment

NOVEMBER 13, 1975.

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 to 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 Tuscarawas County, Ohio, on or before November 28, 1975 and certify to the Commission that this has been accomplished.

And it is further ordered, That notice of this finding shall be given to the general public by depositing a copy of this order and the attached notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy of the notice to the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER as notice to interested persons.

Dated at Washington, D.C., this 5th day of November, 1975.

By the Commission, Commissioner Brown.

[SEAL] ROBERT L. OSWALD,
Secretary.

The Interstate Commerce Commission hereby gives notice that by order dated November 5, 1975, it has been determined that the proposed abandonment of the 0.43 mile connection of the Baltimore and Ohio Railroad Company at Mineral City, Tuscarawas County, Ohio, 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 this railroad segment has been out of service since 1970, no land use plans are dependent on the continuation of this line, and any associated fuel consumption, air quality, water quality, transportation, historic, and ecological effects 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 202–343–7966.

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 December 15, 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.75–31143 Filed 11–17–75;8:45 am]

[Notice No. 119]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 18, 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 Commissions' Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before December 8, 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–76064. By order of November 13, 1975, the Motor Carrier Board on reconsideration approved the transfer to G&R Trucking, Inc., Florissant, Mo., of the operating rights in Permits Nos. MC–138743 (Sub-Nos. 2, 5 and 7) issued March 21, 1975, June 11, 1975, and March 19, 1975, respectively, to Snowball, Ltd., St. Louis, Mo., authorizing the transportation of cement asbestos pipe, from the plant site and storage facilities of Certain-Teed Products Corporation (1) at Bellefontaine Neighbors and Riverview, Mo., to points in Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, West Virginia, Wisconsin, and Wyoming; (2) at Hillsboro, Tex., to points in Arkansas, Colorado, Iowa, Kansas, Mississippi, and Ohio, and (3) at McPherson, Kans., to points in Colorado, Indiana, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Oklahoma, and Pennsylvania. Terrence D. Jones, 1126 Sixteenth Street, NW., Washington, D.C. 20036 Attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–31146 Filed 11–17–75;8:45 am]

TRAFFIC MOVING TO AND FROM CANADA

Application Disclosure Requirement

NOVEMBER 14, 1975.

The Commission wishes to call to the attention of motor carrier applicants and their representatives that the requirements of the Commission (39 FR 42440) published in the FEDERAL REGISTER issue of December 5, 1974 and effective March 3, 1975 concerning applications for operating authority on traffic moving to and from Canada are twofold: evidentiary and informative. With respect to the presentation of more information, the requirements provide that applicants specify *at the time of filing their application* the Canadian points they intend to serve as well as the port of entry points involved in their requested authority. Applicant's indication will appear in the FEDERAL REGISTER notice of the application filing in order that interested parties may participate in the proceeding with a better knowledge of the applicant's proposed operation. Evidentiary support, such as copies of complementary Canadian authority, must be presented with an applicant's verified statement.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.75–31144 Filed 11–17–75;8:45 am]

federal register

TUESDAY, NOVEMBER 18, 1975

PART II:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

■

OFFICE OF EDUCATION

Libraries and Learning Resources:
Educational Innovation and Support

Title 45—Public Welfare

CHAPTER I—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

LIBRARIES AND LEARNING RESOURCES: EDUCATION INNOVATION AND SUPPORT

Final Regulations

Notice of proposed rulemaking was published in the FEDERAL REGISTER on March 12, 1975 (40 FR 11686) which set forth regulations for Title IV of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 1801 et seq.), added by section 401 of Pub. L. 93-380. The notice of proposed rulemaking also proposed to revise § 100c.1 of 45 CFR.

Title IV of the Elementary and Secondary Education Act (hereinafter referred to as ESEA) provides for the consolidation of certain education programs into two parts, B and C. Part B consists of the programs authorized by Title II of the ESEA (school library resources, textbooks, and other instructions materials), so much of Title III of ESEA as relates to testing, counseling, and guidance, and Title III (except for section 305 thereof) of the National Defense Education Act of 1958 (financial assistance for strengthening instruction in academic subjects). Part C consists of Title III (except for programs of testing, counseling, and guidance) of ESEA (supplementary educational centers and services), Title V of ESEA (strengthening State and local educational agencies), section 807 of ESEA (dropout prevention), and section 808 of ESEA (demonstration projects to improve school nutrition and health services for children of low-income families). Under Title IV, State, educational agencies are required to submit an annual program plan under which subgrants are made by the State to local educational agencies. The statute provides for the participation of children from nonprofit private schools.

It should be noted that the District of Columbia and Puerto Rico are not presently eligible for Title IV grant funds. A technical amendment to the Education Amendments of 1974 has been proposed which would correct this situation if enacted by Congress. In anticipation of these amendments becoming law, the District of Columbia and Puerto Rico are included in the definition of State in the final regulations (see § 134.2). However, funds for these jurisdictions for Part B and Part C of the Act will not be allotted until action on the technical amendment is completed.

The notice of proposed rulemaking contained "comment" sections which explained many of the substantive sections of the proposed rules. These comment sections have been retained in the final regulations.

A. *Summary of comments; changes in the regulations.* Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed rules. Numerous comments were submitted to the Office of Education in writing. A summary of the comments follows. After each comment, a response is set forth stating changes which have been made in the regulations or the reason why no change is deemed necessary. General comments on the regulations are set forth first, followed by specific comments arranged in order of the sections of the final regulations to which they pertain. Where the section number in the final regulations differs from that in the proposed rule, the proposed section number is also identified.

1. *General Comments.* Five comments were received which questioned the statement in the preamble to the proposed regulations which stated, in part: "With respect to this material, comments should be directed to the need (or lack of a need) for regulations, rather than to its substance." The comments objected to the limitation on the extent of their comments.

Response. The sentence to which these comments objected was the second sentence in the paragraph. The first sentence reads: "Reviewers should also note that where statutory language has been repeated in these proposed rules, it is to indicated by the use of quotation marks which will be deleted when the final regulations are published." If these two sentences are read together, it should be clear that the second sentence means that with respect to statutory language, comments should be directed to the need (or lack of a need) for regulations which will further explain the statutory language, rather than to the substance of the statutory language.

Comment. One comment noted that section 403(a) of the Act, which requires the annual program plan to contain information "in such detail as the Commissioner deems necessary" should not be misused to the extent of legislating by regulation. The comment stated that had the Congress desired extensive reporting requirements and paperwork, it would have authorized additional funds for these purposes instead of reducing funds for administration of the annual program plan.

Response. There is no intent to legislate by regulation. The regulations do not go beyond legislative authority. The "type of detail" required in the annual program plan is needed to administer the program. For example, § 134.13(b), in repeating the statutory requirement that any State unable to meet the requirements of section 406 of the Act must submit a certification to that effect, requires that the certification be from the State attorney general or other appropriate legal officer. It is reasonable to require that a certification relating to a State's legal authority be from such an official.

Comment. A commenter stated that sections 403(b)(1), (3), and (4) of the Act regarding approval of State plans, the annual public meeting of the State advisory council, and the authorization for the State advisory council should be reflected in the regulations.

Response. Since these requirements are stated in the statute, and the Office of Education does not intend at this time to supplement them with regulations, it is not necessary to repeat the requirements in the regulations.

Comment. One comment suggested that the requirement in section 432 of the Act that persons broadly representative of the cultural and educational resources of the area to be served shall be involved in the planning and carrying out of all programs and projects funded under Part C (except those referred to in section 431(a)(3) of the Act) is not set forth in the regulations. The reviewer suggested that regulatory language incorporating this requirement should be included.

Response. A new § 134b.3 has been added relating to applications by local educational agencies which should satisfy the request of the comment.

Comment. One comment was received which suggested that the provisions of section 403(c) of the Act regarding the Commissioner's responsibility to approve State plans and modifications are not, but should be, set forth in the regulations.

Response. The language in section 403(c) imposes a requirement on the Commissioner. It is the general practice not to use the regulations to repeat statutory requirements which do not require action on the part of the recipient of Federal funds. Therefore, there is no change in the regulations.

Comment. A commenter suggested that a provision be added to the regulations allowing State educational agencies to reallocate funds allocated but not used by local educational agencies.

Response. The addition of a new section which would accomplish this purpose is being considered and if the suggestion is adopted, will be published as a proposed rule subject to public comment.

Comment. A comment stated that no additions should be made to the proposed regulations since they already exceed the intent and language of the statute. Two comments stated that the intent to consolidate programs, provide forward funding, and develop a single application was useful but the proposed regulations present administrative difficulties. Another reviewer commented that inviting comment on proposed rules that merely repeat the statute without interpretation is wasteful of the time of both the Office of Education and the public and delays promulgation of meaningful regulations. A comment suggested that guidelines for Title IV should be subjected to the same review process as regulations. One reviewer inquired about the opportunities, implications, and limitations in Title IV for a professor seeking funds to conduct research in teacher education. Three reviewers stated that the proposed regulations carry over the provisons of earlier statutory language of categorical programs, indicating continuance of categorical programs with no real intent to consolidate. Another reviewer said that the Office of Education has made no visible attempt to provide the administrative structure necessary for Title IV and has not informed State educational agencies which unit in the Office will approve annual program plans. Another

reviewer stated that by allowing annual program plans to flow through the various categorical program offices, the time constraints will be prohibitive. This reviewer said that the split consolidation-categorical program for fiscal year 1976 is wasteful of staff time and funds.

Response. The changes made in the revised regulations are intended to clarify the proposed rules and resolve some of the administrative difficulties referred to in the comments received by the Office of Education. It is the position of the Office of Education that it is always useful to obtain comments on proposed rules. Generally, since guidelines are limited to suggestions and recommendations and do not contain the rules for the operation of the program, proposed rulemaking procedures are not required by law. Whether public comments would be solicited would be a matter for consideration when a particular set of guidelines is developed. Title IV of the Act is intended to support elementary and secondary school programs rather than provide funds for research in teacher education. The regulations do incorporate some of the provisions of the categorical programs consolidated under Title IV. The authorities for incorporating these provisions are sections 421(b) and 431(b) of Title IV of the Act. The Office of Education has developed an appropriate structure for receiving, reviewing, and approving Title IV annual program plans. The memorandum from Thomas J. Burns and Dick W. Hays to the Chief State School Officers dated April 8, 1975, provided directions to State educational agencies for submitting annual program plans to the Office of Education. The split categorical-consolidated program which will be in effect for fiscal year 1976 is required by section 401(c) of the Act.

Comment. Two reviewers commented that the sequence of preparation and release of the Title IV regulations put States at an extreme disadvantage in commenting because of the fact that the regulations for section 434(b) of GEPA were published later. The commenter suggested that the Commissioner should accept the assurances in the general application until the State plan assurances are completed, precluding the loss or suspension of Federal funds for education at State and local levels and allowing State educational agencies sufficient lead time for development of the annual program plan.

Response. While it would undoubtedly have been more convenient to be able to review the regulations implementing the provisions of section 434(b) of the General Education Provisions Act (hereinafter referred to as GEPA) at the same time as the regulations governing Title IV of the Act, it was felt that the latter regulations were too important to delay their publication any longer than necessary. Regulations for section 434(b) of GEPA have since been published in proposed form (see 40 FR 19204, May 2, 1975). By statute, certain assurances and provisions are necessary for approval of the Title IV annual program plan. A State is not permitted to obligate its Title IV funds until its annual program plan is received by the Office of Education in substantially approvable form. (See 45 CFR 100b.32.)

Comment. A reviewer suggested that the annual program plan format should have been given to the States in final form early enough to allow more than token participation of the Advisory Council in preparation of the plan. A reviewer commented that the proposed regulations appear to be in conflict with the concept of consolidation and the simplified administrative arrangement. Another reviewer stated that in view of the delay in publishing regulations, the time allowed for drafting an annual program plan and developing guidelines and application forms is insufficient. Another reviewer stated that an extension should have been made for the period allowed for public comment to allow all interested parties time to prepare an indepth analysis and react more intelligently.

Response. Since it was believed that the development of proposed regulations had a greater priority than the design of the format for the annual program plan, the format design was delayed somewhat; however, the annual program plan format has been developed and distributed. The proposed regulations are fully consistent with the provisions of the applicable statutes. Though it is recognized that the time for implementation of the Title IV program is short, the proposed regulations were published as soon as they were ready. Even though the time for formal comments was not as long as some reviewers would have wished, the time satisfies all rulemaking requirements. The administration of Title IV will continue to be scrutinized and amendments or additions to the regulations may be proposed at a future date.

Comment. Three comments on the Title IV regulations concerned section 437 of GEPA, added by section 512, Pub. L. 93-380 (Responsibility of States to furnish information). Two of the comments stated that States should have had available the regulations for this requirement when commenting on the proposed Title IV regulations, in order to provide for a coordinated approach to data collection. The second comment stated that the proposed Title IV regulations should reflect the requirements of Section 437 of GEPA, in order to facilitate early gathering and compilation of the required information by State and local educational agencies.

Response. At this time, it does not appear that any regulations will be necessary to implement the provisions of section 437 of the General Education Provisions Act. The statute is clear and probably can stand without implementing regulations.

2. § 134.2 *Definitions. Comment.* Three comments were received which suggested that the term "academic subjects" be defined in § 134.2 as including only those subjects which are included in the definition for the NDEA Title III program.

Response. A definition of the term "academic subjects" has been added to these regulations which includes, but is not limited to, the original twelve subjects. Given the broader purpose for which Part B funds can be spent under the consolidation, it is felt that a broader definition is both legally supportable and more appropriate from an administrative standpoint.

Comment. Two comments were received which questioned the use of the word "imperfect" in the definition of "children with specific learning disabilities," stating that perfection cannot be attained by any child.

Response. The definition of "children with specific learning disabilities" is the same as the definition in section 602(15) of the Education of the Handicapped Act (20 U.S.C. 1402(15)). That definition is being used to provide consistency in the administration of Federal programs. No change has been made in the definition.

Comment. There was a comment which suggested that the definition of the word "construction" included the erection of new structures. The reviewer went on to state that limited funds in the program prohibit the erection of new structures and the definition should be changed accordingly.

Response. It should be noted that construction is authorized only in section 431(a)(1) of Title IV of the Act. If in any State the level of funding effectively prevents the erection of new structures, then the definition should cause no problem. The definition has not been changed.

Comment. One comment suggested that there was no need to define "cultural and educational resources" since it was defined by a direct quotation from the Act.

Response. While there may be no need to quote a definition directly from the Act, it is included as a matter of convenience and completeness and to show that the term as used in the regulations has the same meaning as used in the statute.

Comment. Five commenters suggested that the definition for "handicapped children" should be the same as the definition in the regulations governing the Education of the Handicapped Act. Two commenters suggested that the definitions of "handicapped children" and "children with specific learning disabilities" be combined and one asked why the two definitions were separated.

Response. The definition of "handicapped children" has been reworded so that it is the same as the definition in 45 CFR Part 121 (the general regulations which govern the administration of the Education of the Handicapped Act (EHA)). There is a separate definition for "children with specific learning disabilities" because the two terms are used in section 403(a)(8)(B) of the Act.

Comment. Several reviewers were interested in the definition of "local educational agency" and the question of whether funds under Part B would be allocated to local school districts, to intermediate units, or to both. One reviewer

questioned whether the terms included non-public schools; another questioned whether it included teacher-training institutions.

Response. The definition of "local educational agency" includes local school districts and certain types of intermediate units. An intermediate unit is generally an administrative organization established to function between the State educational agency and local school districts serving both the State educational agency and local school districts, and usually serves two or more local school districts. It will be necessary for the State educational agency to designate the type of local educational agency that will be a recipient of funds under Part B. In some States, intermediate units that have been recipients of funds under other Federal programs have been chiefly concerned with the distribution of audiovisual materials and equipment. Selecting such agencies as recipients of funds under Part B might create a problem in relation to section 403(a)(5) of the Act which gives local educational agencies complete discretion in determining how the funds it receives under Part B will be spent among the three consolidated purposes: school library resources, textbooks, and other instructional materials; equipment and minor remodeling; and testing, counseling, and guidance. It would be difficult for an intermediate unit concerned only with the distribution of audiovisual materials and equipment, for example, to reflect accurately the full range of choices of local school districts and private school representatives. It is the interpretation of the Commissioner that a local educational agency that is the recipient of funds under Part B must have the authority to provide all materials, equipment, and services authorized under section 421(a) of the Act. (20 U.S.C. 1803(a)(5)). The term "local educational agency" does not include non-public schools. If "teacher-training institutions" means colleges and universities that train teachers, such institutions are not local educational agencies. However, a laboratory school of a public teacher-training institution could qualify as a local educational agency if, for example, it has administrative control or direction of a public elementary or secondary school.

Comment. One comment suggested that the regulations should define "school" to include only those schools that are recognized by the State educational agency to prevent the possibility of Federal funds being used by unapproved schools. A similar comment was made about private nonprofit schools. Another commenter said that the Office of Education should not define "school."

Response. Section 100.1 of the General Provisions Regulations (45 CFR 100.1) defines the terms "elementary school" and "secondary school" as day or residential schools which provide elementary or secondary school education as determined under State law. The term "private" and "nonprofit" are also defined in § 100.1 of the General Provisions Regulations. Section 134.3 of the proposed regulations provides that assistance under Title IV of the Act is subject to the applicable provisions of the General Provisions Regulations.

Comment. Five comments were received on the definition of "school library resources." Two comments suggested that the omission of the words "processed and organized for use" weakened the definition and that the force of regulations was useful in having schools get library materials organized for ease of use. One reviewer suggested that the word "suitable" be omitted from the definition. Another reviewer suggested that the definition of the term should include non-reusable workbooks. The final comment concerned the interpretation that "school library resources" includes only those materials that are in existence at the time of acquisition and prohibits advance subscription even if actual delivery of materials is within the time period for liquidation of obligations.

Response. As the comment section following the proposed rule indicated, the definition of "school library resources" in the proposed rules was not intended to make any change in the types of library resources and instructional materials eligible under Title IV of the Act from those which were purchased under Title II of the Act. The definition of "school library resources" has been changed to conform to that used in the Title II regulations (45 CFR 117.1). Items consumable in use such as non-reusable workbooks are not eligible for acquisition under either Title II or Title IV of the Act. With respect to the last comment, the general concept that a fiscal year's allotment may be used only for a need for that fiscal year would not prohibit subscribing to a publication for a reasonable period of time, e.g., three years, if the rate is less under those circumstances. This could be treated as a current need whereas a long-term subscription, e.g., ten years, would not be so treated.

Comment. Three comments were received on the definition of "teacher." The first suggested that the definition of "teacher" should include school principals. The second suggested that the term "school library/media specialist" be substituted for "school librarian." The third inquired about the meaning of supervisory staff.

Response. The definition of "teacher" has been clarified by explicitly including any person who is engaged in carrying out the instructional program of an elementary or secondary school, including a principal, guidance counselor, school librarian/media specialist, or other member of the instructional or supervisory staff.

Comment. Four comments were received suggesting that the definition of "testing" should be expanded to include educational achievement. Two comments suggested that the definition be expanded to include interest tests or inventories; one of these comments also wished to include self-concept scales. Another comment suggested that the definition be stricken from the regulations and left to the discretion of State educational agencies.

Response. The varied interpretations of the proposed definition indicate the need to revise the definition for testing. The definition proposed was not intended to exclude achievement testing interest inventories, or self-concept scales if they pertain to an individual's educational or career development. The definition has therefore been altered for clarification.

Comment. Two comments were received about the definition of "textbook." The first comment stated that the proposed definition allows schools to purchase a variety of materials as basic resources rather than as supplementary resources and that such a definition would not require the local educational agency to provide basic resources. The reviewer questioned whether the intent of the Act is to permit a school to put all its Part B funds into textbooks. The second reviewer suggested deleting the last part of the definition: "a copy of which is expected to be available for the individual use of each student in such class or group."

Response. Section 134.15, which sets forth statutory language, gives local educational agencies discretion in the division of funds among Part B purposes. Therefore, the statute permits local educational agencies to put all Part B funds into textbooks (taking into account the requirements of section 406 of the Act). The language in the definition quoted by the second reviewer which is identical with that used in the regulations applicable to Title II of the Act (45 CFR 117.1) is not intended to preclude the use of multiple textbooks, such as two or more books designed for different academic levels.

Comment. One comment suggested that all terms used in Title IV which have been defined in the General Provisions Regulations (Parts 100–100c) be repeated in § 134.2. Another comment suggested that the term "secondary" be defined.

Response. The purpose of the General Provisions Regulations in Parts 100, 100a, 100b, and 100c, is to collect in one place all of the regulations which are generally applicable to Office of Education programs so that they will not have to be set forth or repeated in the regulations for separate programs, which in the past had led to varied practice and interpretation. Therefore, it is not considered appropriate to repeat those definitions in this section. Since the term "secondary school" is defined in § 100.1 of the General Provisions Regulations, it is not repeated here.

Comment. A comment was received which requested that the word "equitable" and the term "severe educational disadvantage" be defined.

Response. To define any term is necessarily to limit it. It is felt that with respect to these terms, it is better to retain flexibility. No change has been made in the regulations.

3. § 134.10 *Submission. Comment.* Three comments were received relating

to the provisions in § 134.10 with respect to an annual program plan. One comment suggested that paragraph (a) be changed to require both a general application and an annual program plan. A second comment suggested that an annual program plan should be required only for the consolidated programs under Title IV and not for the separate categorical programs which are being consolidated under Title IV. The third suggested that the last ten lines of the comment printed with the proposed rules be deleted. A fourth comment suggested that only one annual program plan should be submitted which would cover all of the programs identified by a State educational agency in the general application. Three comments suggested that the annual program plan requirements in the regulations require an excessive amount of paperwork, would increase reporting requirements, necessitating employing additional State educational agency personnel, thus detracting from providing technical assistance to local educational agencies. A final comment suggested that the provisions of section 434(b) of GEPA do not apply to Hawaii, the District of Columbia, Puerto Rico, and the Outlying Areas (in that funds are not granted to local educational agencies through, or under the supervision of, the State educational agency, since these jurisdictions are legally both State and local educational agencies), and therefore, the sections of the regulations which refer to annual program plans should be declared not applicable to these jurisdictions. The comment suggested that either specific State plan requirements be declared applicable, or that the general application and annual program plan requirements be extended to these jurisdictions under the provisions of section 434(b) of the General Education Provisions Act.

Response. With respect to the first comment, the general application requirement will be subject to 45 CFR Part 100b, proposed rules for which have been published and appear on pages 19204–19207 of the FEDERAL REGISTER of May 2, 1975. The requirement for annual program plans for the categorial programs which are consolidated under Title IV for fiscal year 1976 is likewise included in 45 CFR 100b. That question should not be dealt with in these regulations which govern only Title IV of the Act. With respect to the third comment, the language in the printed comment on § 134.10 in the proposed rules was intended to be explanatory only and does not constitute a regulatory requirement in and of itself. The idea is to allow State educational agencies to submit annual program plans when they are ready in order to facilitate meeting the requirements for submission of these plans. The proposed amendments to Part 100b (referred to above) state that "where a particular State does not administer the funds provided under a particular program through its State educational agency, or does not make grants to local educational agencies with any of those funds, that State would not be required to submit an annual program plan with respect to such program" (FEDERAL REGISTER, Vol. 40, No. 86, p. 19204 (May 2, 1975)). With respect to the District of Columbia, Puerto Rico, and Hawaii, it is the view of the Office of Education that section 434(b) of GEPA applies, since each has an agency which acts as both the State and the local educational agency. The same arrangement is being made with respect to the Outlying Areas. The authority of the Commissioner under the provisions of section 402 of the Act to allot funds to the Outlying Areas for the purpose of Title IV gives him authority to establish the requirements those jurisdictions must meet to obtain such funds. It is therefore under this authority that the Commissioner has established the requirements in Subpart D of Part 134 for annual program plans from the Outlying Areas.

4. § 134.11 *State educational agency. Comment.* A comment stated that if the State files a general application it should be evident that it is the "sole agency" and the requirement of § 134.11 that this detail be provided in the annual program plan is not necessary.

Response. The language used in § 134.11 is based on the statutory requirement of section 403(a)(1) of the Act. The requirements of section 434(b) of GEPA state that an annual program plan shall be submitted in lieu of a State plan and "* * * be prepared and administered in a manner consistent with specific State plan requirements of the appropriate applicable statutes affecting the program for which the annual program plan is applicable * * *" It is therefore necessary that State educational agencies state that they are the sole agency in the annual program plan submitted under Title IV of the Act.

5. §§ 134.11–134.21 *Provisions to be included in annual program plan. Comment.* A commenter stated that the funds available for schools under Part B are so limited for fiscal year 1976 and that the possibilities for leadership on the part of the State educational agencies so hampered by the regulations of §§ 134.11–134.21, that the general impact upon the learning and teaching environment is questionable.

Response. The provisions to be included in the annual program plan as required in §§ 134.11, 134.12(a), 134.13, 134.14, 134.15, 134.16(a), 134.17, 134.18, 134.19, 134.20, and 134.21 are required by section 403(a) of the Act. It should be noted that § 134.12 (b) and (c) apply only to Part C, and not to Part B.

6. § 134.12 *Allowable expenditures. Comment.* Ten comments were received concerning the use of measurable objectives with concerns expressed regarding the mandating of a system of management by objectives. Another reviewer objected to the requirements of § 134.12(b) in relation to Part B of the Act because it would violate the requirements of section 403(a)(5) of the Act with respect to complete discretion of local educational agencies.

Response. The intent of this section is to provide a uniform method for writing descriptions of the programs which will be carried out under funds authorized for Part C of Title IV. Receiving uniform information in this format will expedite the review process for the annual program plans in the Office of Education. There is no intent to prescribe a method, system, or style of administration or management and this requirement will not do so. Section 134.12 (b) and (c) have been changed to require specific objectives rather than measurable objectives and § 134.12 (b), (c), and (d) has been changed to require inclusion in the annual program plan of *estimated* amounts of funds to achieve objectives and to carry out activities. With respect to the last comment, sections 134.12 (b) and (c) refer only to activities related to Part C of Title IV of the Act. The local discretion required by section 403(a)(5) of the Act only applies to Part B.

7. § 134.12(d) *Allowable expenditures. Comment.* Eight comments were received concerning the use of the word "detailed" in relation to a description of the activities of the State advisory council and/or a listing of the funds which will be available to carry out those activities. A final comment stated that § 134.12(d) should be deleted as it lacked statutory authority and placed restrictions on the State educational agency which should be within the purview of the State advisory council.

Response. Section 403(b) mandates several important functions of the State advisory council, and authorizes each State advisory council to obtain the services of such professional, technical, and clerical personnel, and to contract for such other services as may be necessary to carry out their function. Further, the Commissioner is required to assure that funds sufficient for these purposes are made available to each council. In order for the Commissioner to assure that the funds are sufficient for the purposes, he must know (1) what activities have been planned and (2) the estimated amount of funds which will be provided for carrying out those activities. No change has been made in the regulations.

8. § 134.13 *Participation of children and teachers in private schools. Comment.* One comment suggested that if a State cannot meet the requirements of section 406 of the Act and of § 134.13 of the regulations regarding participation of private school children, it should so indicate in the general application. The comment observed that there is no provision in section 434(b) of GEPA to indicate such inability to serve.

Response. The requirements for the general application will be set forth in the regulations in part 100b, and are not set forth separately with the regulations for each program covered. If the State cannot meet the requirements of section 406 of the Act, section 403(a)(3) of the Act requires that that State so indicate in the annual program plan (see § 134.13 (b)). There is no need to change the wording of the regulation in this section.

9. § 134.14. *Distribution of funds to local educational agencies. Comment.* One comment was received which asked that a State be prohibited from imposing re-

quirements on Part C funds (e.g., requiring local contributions). Three comments on § 134.14 stated that under the previous categorical programs that are now consolidated under Title IV, some States funded projects among two or more local educational agencies when it was mutually beneficial and economically feasible to do so. The reviewers suggested that this same arrangement should be allowed under Title IV. One reviewer suggested that if such an arrangement is allowed, it should be completely voluntary on the part of the participating local educational agencies and should not constitute a violation of § 134.15. Another of the reviewers suggested that a project of this type should be under the supervision of the State educational agency.

Response. The statute provides that Part C funds are to be distributed on an "equitable basis recognizing the competitive nature of grant-making." The State must publish the criteria it has developed and will apply in distributing funds on this basis. Certain criteria might preclude the possibility of an equitable competition. It is possible that such a problem could occur if a State imposed matching requirements which only the wealthier local educational agencies could meet. The Office of Education will review these questions on a case-by-case basis in reviewing the annual program plans. The need for further regulations will be considered if problems develop. There is nothing in the regulations or the Act which would preclude local educational agencies from contracting with other local educational agencies for services or from jointly applying for funds with such agencies if this is believed to promote a better program. This would not violate the provisions of § 134.15. All local educational agency projects are under the supervision of the State educational agency.

10. § 134.14(a)(1) *Distribution of funds to local educational agencies. Comment.* A commenter stated that the distribution of funds as required in § 134.14(a)(1) in a State with large numbers of school districts would result in the allocation of insignificant amounts under Part B, especially in small districts. The reviewer stated that the regulations should limit an eligible local educational agency to one with a minimum of 10 pupils. This reviewer also stated that the regulations should permit an intermediate unit to serve groups of small schools in its area. A third reviewer stated that the term "substantial" should be defined in order to carry out the intent of Congress. A final comment stated that the regulations should clarify whether or not the requirements of § 134.14(b) violate the requirement concerning complete discretion (§ 134.15).

Response. Funds made available under Part B of Title IV of the Act are to be distributed on the basis of enrollment, relative tax effort, and numbers or percentages of children whose education imposes a higher than average cost. Eligible children in public and private nonprofit elementary and secondary schools must be permitted an opportunity to participate in the program, regardless of the size of the school they attend. The definition of "local educational agency" includes operating school districts and certain intermediate units. The terms "substantial," "substantially greater," and "sparsely populated" have not been defined. National quantitative criteria or measures concerning relative amounts to be made available to local educational agencies based on differences in tax effort and numbers or percentages of children whose education imposes a higher than average cost have not been added to the regulations under an interpretation, based on a statement in the legislative history of Title IV (H.R. No. 93-805 (p. 28)), that each State should write its own formula. The requirements of § 134.14(a)(1) and (b) apply to the distribution of Part B funds and do not violate the intent of § 134.15 (which repeats statutory language in section 403(a)(5) of the Act). Once Part B funds are allocated to a local educational agency, that local educational agency has complete discretion over the division of funds among the Part B purposes, subject to the requirements of Section 406 of the Act.

11. § 134.14(a)(2) *Distribution of funds to local educational agencies. Comment.* One comment suggested that "equitable basis" as applied to Part C funds should not mean equal or proportional amounts but should mean an equal opportunity to compete. The commenter also suggested that each State educational agency should set forth criteria in its annual program plan which it will use in providing this equal opportunity to local educational agencies. Another reviewer noted that funds under Title II of the Act were allocated according to relative need and the reviewer felt that § 134.14(a)(2) ties it to competitive nature of the grantmaking. The reviewer felt that State educational agency resources could be put to better use than helping local educational agencies compete for funds they need.

Response. The first comment correctly states the proper meaning of § 134.14(a)(2). That is, the section provides for an equal opportunity to compete. Further, the language in § 134.14(b) calls for setting forth the criteria the State educational agency will apply in meeting the requirements of § 134.14(a)(2); thus, the State educational agency will include the criteria to be used in providing this equal opportunity within its annual program plan. Therefore, there is no need to change the language of this section. With respect to the last comment, § 134.14(a)(2) applies to Part C rather than Part B funds. The requirements for the distribution of Part B funds are set forth in section 403(a)(4)(A) of the Act and § 134.14 (a)(1) and (b) of the regulations. The requirements which were objected to in the comment are mandated for Part C by Section 403(a)(4) of the Act.

12. § 134.15 Part B Funds: *Discretion of local educational agencies. Comment.* Seven comments were received concerning § 134.15 of the proposed regulations. One comment suggested that the section should offer more specific guidance in giving local educational agencies complete discretion in the use of Part B funds. Two comments suggested changing the wording of the proposed rule to: "The annual program plan shall provide an assurance that each * * *" A final group of comments stated that § 134.15 was explicit in giving local educational agencies complete discretion in the division of Part B funds among the three purposes set forth in section 421(a) of the Act. These comments questioned the relationship of this requirement to section 434(b) of GEPA which requires State educational agencies to provide assurances that Federal funds will not supplant State and local funds.

Response. This section repeats the statutory requirement in Section 403(a)(5) of the Act. The statute is clear that discretion over the division of funds among the program purposes of Part B is given to local educational agencies and not to the State. Further, the statute does not use the term "assurance" in relation to this requirement. In response to the final group of comments, local educational agencies are given complete discretion in the distribution of Part B funds among the three purposes in section 403(a)(5) of the Act. They are, however, still precluded from supplanting non-Federal funds by section 434(b)(1)(A)(IV) of the General Education Provisions Act, as amended.

13. § 134.16 *Evaluation, dissemination, and adoption of promising practices. Comment.* Two comments suggested that an assurance concerning effective procedures would be sufficient. Nine comments were concerned primarily with the requirement for a calendar of activities because too much specificity would be required. Two reviewers commented on the requirement of § 134.16 that the State advisory council evaluate "* * * programs and projects assisted under the annual program plan." These comments suggested that the regulations should allow a State educational agency to develop an application form requiring sufficient information relative to evaluation criteria and data related to local expenditures in the programs included under Part B. These reviewers also suggested that the regulations should allow the State educational agency to collect and report evaluative data deemed necessary to fulfill the State advisory council evaluation requirements.

Response. Section 403(a)(6) of the Act requires that the State plan provide for the adoption of effective procedures for evaluation, dissemination, and adoption. This requirement is not in the form of an assurance. The three major activities referred to in § 403(a)(6) of the Act involving both the State advisory council and State educational agency staff indicate a need for planning and coordinating these activities. The description and calendar required by § 134.16(b) are the type of detail which the Commissioner deems necessary to carry out his responsibilities. The Commissioner needs a calendar in order to be informed about the schedule of activ-

ities. The calendar would, of course, be a projected schedule. For example, it could be a projection of activities on the basis of quarters of the fiscal year. In response to the last group of comments, the regulations do not prohibit the State educational agency from requiring that local educational agencies submit whatever information is necessary for an adequate evaluation of Title IV programs. (See § 134.37(a).)

14. § 134.17 *Single application. Comment.* Eleven reviewers commented on § 134.17 of the proposed regulations. Six comments suggested that § 134.17 should allow State educational agencies to develop a single application with separate sections for Parts B and C. Two comments suggested that Parts B and C are separate programs with separate authorizations and should have separate applications from local educational agencies for the two parts. Three comments suggested separate due dates for application. Two comments suggested that the requirement of § 134.17 be treated as an assurance in the annual program plan.

Response. The proposed regulation repeated the statutory language. Section 134.17(a) permits State educational agencies to develop a single application with separate sections for Parts B and C. The submission date for the application can be established to accommodate the longer preparation time needed for a competitive proposal under Part C. A local educational agency may, but cannot be required to, submit more than one application or submit separately the separate sections for Parts B and C. The section therefore remains as written.

15. § 134.18 *Use of funds. Comment.* A reviewer stated that the comment following § 134.18 implied that administration funds could be weighted heavily toward Part B. The reviewer suggested that such a determination should be made by State educational agencies without specific direction in Federal regulations.

Response. The material which follows § 134.18 is merely intended as an example of the mathematical calculations which must be made to determine the various set-asides. Parts B and C may be administered separately or together at the State's discretion; but in either case the expenditure for such administration must be attributable to the respective Part B or C allotment.

16. § 134.18(b) *Use of funds. Comment.* A reviewer stated that the proposed regulations for Title IV do not recognize the requirement of section 613 of the Education of the Handicapped Act (EHA) which requires State educational agencies to develop plans for extending education to all handicapped children. The reviewer stated that there is further elaboration of this requirement in H.R. 93-805, p. 64-65 which stated that it was the committee's intention that this plan include "* * * a resource allocation plan that details how the State intends to finance the implementation of the plan. It is also the Committee's intent that all Federal funds for the education of the handicapped under the various Federal acts which go directly to the States or which require State approval, should be included in the resource allocation plan * * *" A second comment stated that State educational agencies should require that appropriate State personnel responsible for the education of handicapped children and children with specific learning disabilities should review recommendations on all aspects of the annual program plan and all projects pertaining to the set-aside for such children under Title IV. The commenter also recommended that the innovative and exemplary concept pertaining to the set-aside for special education which prevailed under ESEA Title III should be continued under Title IV.

Response. The requirements of section 613 of EHA with respect to plans for education for all handicapped children relate only to the content of the annual program plan under that program (EHA Part B). Therefore, no specific reference in the Title IV regulations is necessary. There is nothing in these regulations which would preclude a review within the State educational agency of plans for programs for handicapped children by any official which the chief State school officer wishes. Nor is there anything in the regulations which could prevent the inclusion of the plan for the use of Title IV funds for handicapped children from being included within the annual program plan for EHA. With respect to the final comment, the Act does not require that all projects funded under section 431(a)(1), (2), and (3) of the Act, including projects for handicapped children and children with learning disabilities, be innovative and exemplary.

17. § 134.19 *Use and access by handicapped persons. Comment.* Two comments were received suggesting that "accessible to" and "usable by" refers only to the portions of the facilities which are repaired or remodeled.

Response. It is the view of the Office of Education that the statute means that only those portions of the facilities which are repaired, remodeled, or constructed under a Title IV project are required to be accessible to and usable by handicapped persons.

18. § 134.20 *Commingling of funds. Comment.* A comment was received which suggested that provision should be made to authorized investment of advanced funds together with "other monies" to ensure a greater return as long as there is an assurance that the Federal funds will be returned in the original amount.

Response. The obligation of Federal funds by the Office of Education at the beginning of the fiscal year does not mean that funds are available to States in advance of need. The transfer of Federal funds to a State by means of a letter of credit is intended to make funds available at the time the funds are needed. Thus, there is no occasion for a State to invest Federal funds. There is no need to change the language of this section.

19. § 134.21 *Maintenance of expenditures from non-Federal sources. Comment.* The numerous comments on § 134.21 fit into seven general areas. The first group of comments suggested that the statutory requirements be interpreted to mean that the "aggregate amount" refers to the separate totals of State and local expenditures for each of the three Part B program purposes. A second group of comments requested that maintenance of per pupil expenditures be required rather than aggregate expenditures. The third set of comments requested that exceptions be granted to the requirement of section 403(a)(11) of the Act when unusual circumstances occur in a State or local educational agency (such as where there was a very large outlay in one year for non-recurring expenditures or because of economic conditions). The fourth group of commenters felt that since maintenance of expenditures by a State and its local educational agencies is required, an entire State might be out of compliance with this requirement because of large reductions in expenditures in one or more local educational agencies. Several of these commenters suggested that the State educational agency should be able to require that each local educational agency maintain expenditures from State and local sources for programs described in section 421(a) of the Act. These commenters felt that unless the State educational agency can make this requirement, it will be difficult for the State to comply with the assurance. The fifth group of comments requested whether nonpublic schools are included in this requirement. The sixth group of comments suggested that because of a lag in collecting expenditure date for "the preceding fiscal year," the second preceding fiscal year should be used. A final group of comments questioned the relationship of the provision of section 403(a)(11) of the Act and section 434(b)(1)(A)(IV) of GEPA. One commenter questioned whether section 434(b)(1)(A)(IV) of the General Education Provisions Act applied to nonpublic schools. A final comment suggested either omitting or clarifying the term "satisfactory."

Response. It is the interpretation of the Office of Education that the term "aggregate amount" refers to the total amount expended for all of the three Part B program purposes combined. State and local school administrators are free to budget and expend funds from State and local sources among any one or more of the purposes so long as the total support is not less than the amount expended in the preceding year. In response to the second group of comments, the statute refers to the aggregate amount of expenditures rather than per pupil expenditures. Although local and State effort may be maintained on the basis of per pupil expenditures, State and local educational agencies are required to report only the total amount of funds derived from non-Federal sources to assure compliance with this provision. If a State cannot comply with the section 403(a)(11) assurance, the Office of Education will review the problems of State and local educational agencies (e.g., unusual circumstances) on a case-by-case

basis. With respect to the fourth group of comments, State educational agencies may require that each local educational agency maintain its local expenditure from State and local sources for the Part B program purposes. In response to the fifth group of comments, the expenditures of non-public schools enrolling children who benefit under Part B of Title IV of the Act are not included in the requirement of section 403(a)(11) of the Act because such expenditures are not made by "the State and its local educational agencies." In response to the sixth group of comments, regulations cannot alter the statutory requirement that the "preceding fiscal year" be used in determining compliance with the requirement. In response to the final group of comments, Section 434(b)(1)(A)(IV) of GEPA requires that the State assure in its general application that it will implement policies to prevent non-Federal funds from being supplanted by Federal funds. No supplant restrictions such as this provision prohibit State and local educational agencies from using Federal funds to replace specific expenditures that were previously paid from non-Federal sources. Section 403(a)(11) of ESEA, on the other hand, requires that the State assure that the aggregate amount of non-Federal expenditures by State and local educational agencies for Part B purposes be maintained. As stated, these two assurances are separate requirements and must be complied with separately. Finally, the term "satisfactory assurance" is statutory in origin. The Office of Education will determine on a case-by-case basis what constitutes "satisfactory assurance" that the requirements of section 403(a)(11) of the Act will be met. Usually, an assurance which repeats the statutory language would be sufficient. No change has been made in the regulations.

20. § 134.37 *Application by a local educational agency. Comment.* One comment suggested the insertion of the words "receiving applications and" immediately following the word "from."

Response. The purpose of such a change would be to establish two separate applications—for Part B and Part C—with the attendant opportunity to establish two separate due dates for the receipt of the two applications. This matter is addressed in the response under § 134.17 above, and for the reasons set forth in that response there is no change in the language of this section.

21. Subpart C—*State Advisory Council. Comment.* Several comments suggested that provision be made for the funding of the costs of the State Advisory Council from April through June 1975.

Response. A technical amendment concerning financial support to the State Advisory Councils during fiscal year 1975 has been introduced as H.R. 3801. Also, funds available to the State educational agency under Section 503 of Title V of the Act may be used to pay the costs of the State advisory council before July 1, 1975, if the Title V application was appropriately amended. Furthermore, Title IV funds may be used to pay for the activities of State Advisory councils occuring before July 1, 1975, through a reimbursement process. This conclusion is based on two provisions of the General Provisions Regulations (45 CFR 100b), which set forth the rules for determining allowable costs and the effective dates of State plans and amendments. These regulations will be applicable to Title IV (See § 134.3 of these regulations and section 100b.10(d) of the General Provisions Regulations as well as a proposed updating of the list of programs to which Part 100b applies (40 FR 19205)) (1) Subpart (c)(6) of Part II of Appendix B—Cost Principles for State and local governments—which is incorporated into the General Provisions Regulations by § 100b.81 (45 CFR 100b.-81) provides for preagreement costs, which are only allowable with the approval of the grantor agency when specifically provided for in the annual program plan. (2) Section 100b.32, which sets forth the basic rule for determining the effective dates of State plans and amendments, places a limit on preagreement costs allowable in a State administered program. It states that: "Federal funds, except funds made available expressly for the *development of State plans*, shall not be available for obligation with respect to binding comments * * * prior to the effective date of the State plan (or State application as the case may be)." (Emphasis added.) The activities of a State advisory council mandated by Title IV and occurring in fiscal year 1975 would be primarily, if not wholly, for the development of State plans to be submitted for fiscal year 1976 funding. Therefore, if specifically set forth in the annual program plan and approved by the Commissioner, these costs could be paid for out of Title IV funds.

22. § 134.51 *Membership. Comment.* There were 47 comments on § 134.51 of the proposed regulations pertaining to the membership of the State Advisory Council. Twenty-seven of these comments stated that the regulatons should require specific representation on the State Advisory Council of the school library/media field or libraries and learning resources. Three comments stated that the membership of the State Advisory Council should be representative of the various educational disciplines, two of these emphasizing representation of the programs consolidated under Title IV of the Act. One reviewer asked for specific regulatory authority to permit State educational agency personnel to serve on the council. Another reviewer stated that one individual should be allowed to represent more than one particular area on the council so long as the council is broadly representative of the cultural and educational resources of the State. Two comments stated that the proposed regulations could possibly result in a large and unwieldy council. Thirteen comments were directed to the interpretation of section 403(b)(1)(A)(iii) of the Act by § 134.51(a)(5), (6), (7), (8), and (9) of the regulations. Two of these comments stated that one person to represent each of the five fields of professional competence in dealing with children needing special education for various reasons (section 403(b)(1)(A)(iii) of the Act) was not the intent of the legislation. Another comment stated that the State Advisory Council as proposed would be made up of a disproportionately large number of people with interests in special education. Another comment made a similar statement and noted that the representatives of special interests far outweigh the one representatve of public elementary and secondary schools whose constituents make up 85 percent of the recipients of benefits under Title IV of the Act. One of the comments further suggested that the use of the word "or" between "limited English-speaking ability" and "gifted and talented" in section 403(b)(1)(A)(iii) of the Act meant that either of these two representatives is required but not both. This reviewer also noted that it was not useful to have a representative for children needing special education because of limited English-speaking ability when there are no bilingual programs or problems in a State. One reviewer stated that in § 134.51(a), the repetition of the category of professional educators tended to diminish lay participation on the council and commented on the values of nonprofessional representation. A final comment stated that the proposed rules inverted the order and emphasis of section 403(b)(1)(A) of the Act, noting that the proposed rules skip over the first part of that section and go first to section 403(b)(1)(A)(i) of the Act.

Response. There is no basis in the statute for a regulaton requiring specific representation on the State Advisory Council of the school library/media field or libraries and learning resources. However, these and other groups including the public must be represented on the council if necessary to make it broadly representative of the cultural and educational resources of the State and of the public. "State educational agencies" are included in the definition of "cultural and educational resources." State educational agency personnel may therefore serve on the State Advisory Council. The interpretation in § 134.51(a) that the membership of the State Advisory Council must include at least one person representative of each of the areas cited in § 134.51(a)(1)–(9) is based on the following legislative history in H.R. No. 93–805, p. 28: "The Committee intends that the interests which are listed as those having to be represented on the State Advisory Council are each meant to represent a different person. For instance, there must be a person representing public schools and a different person representing private schools" (Emphasis added). This legislative history is reflected in the citation of legal authority following § 134.51. With respect to representatives of fields of professional competence in dealing with children needing special education because of "limited English-speaking ability or be-

cause they are gifted or talented," the legislative history cited above suggests that these two interests are both to be represented on the council. It is the interpretation of the Office of Education that both should be represented on the council because all States have gifted and talented children who should be represented and all or nearly all States have children of limited English-speaking ability who also should be represented. In changing the order, there was no intent to shift the emphasis from that provided in section 403(b)(1)(A) of the Act. The suggestion in the comment is accepted and the regulation has been changed.

23. § 134.52. *Certification and qualification of members; § 134.54. Notification of acceptance of certification. Comment.* There were nine comments on §§ 134.52 and 134.54 of the proposed rules. Two comments on § 134.52 suggested that the State educational agency should designate the chairman of the State Advisory Council. The remaining comments stated that the requirement in § 134.52 that the address of the chairman be furnished to the Commissioner and the requirement in § 134.54 that the Commissioner notify the chairman of acceptance of the certification of the State Advisory Council should be deleted. The Commissioner should not by-pass the State educational agency in any contact with the chairman of the State Advisory Council.

Response. Section 403(b)(1) of the Act states: "The State Advisory Council, established pursuant to subsection (a) shall (A) be appointed by the State educational agency or as otherwise provided by State law." Section 403(b)(2) of the Act states: "Not less than ninety days prior to the beginning of any fiscal year for which funds will be available for carrying out this title, each State shall certify the establishment of, and membership of (including the name of the person designated as chairman), its State advisory council to the Commissioner." If there is a State law that governs the establishment of advisory councils and the selection of a chairman, then that State law should be followed. If there is no such State law governing advisory councils, then the statute provides for the State educational agency to appoint the State Advisory Council and the Chairman. The regulations have been modified by deleting the requirement for furnishing the address of the Chairman of the State Advisory Council to the Commissioner. The Chairman of the Council will be notified of acceptance of certification of the Council through the State educational agency.

24. § 134.53 *Advisory functions. Comment.* Six comments objected to the comment section following § 134.53 from which they inferred that the Advisory Council should review each local educational agency application. One comment suggested that no language from the printed comment section should appear in the final regulations. One comment suggested that the words "including the development of criteria for the distribution of funds and the approval of applications for assistance under Title IV of the Act" should be deleted as repetitious. Several comments were received which suggested that the State Advisory Councils should not review activities under section 431(a)(3) of the Act.

Response. There was no intent to require the Advisory Council to review each local educational agency application. The State educational agency at its discretion may request the State advisory council to perform this function. The written comment section was intended to make that clear. With respect to the next comment, the language of the comment sections is being printed with the revised regulations for clarification. As for the last comment, the language proposed for deletion is statutory. Therefore, there is no need to make any changes in the language of this section. Section 403(b)(1)(B) of the Act requires that the State advisory council "advise the State educational agency in the preparation of, and policy matters arising in the administration of, the State plan * * *" Activities under section 431(a)(3) are described in the annual program plan (which is submitted in lieu of the State plan under section 434(b) of GEPA) and therefore are subject to review by the State advisory council.

25. § 134.55 *Evaluation of programs and projects. Comment.* Two comments objected to the terms "scope and quality." Three comments stated that the evaluation design should be determined by the State Advisory Council and the State educational agency. One comment stated that the evaluation should relate in a comprehensive way to § 134.12(b). One comment suggested that Part C project budgets designate up to 5 percent for evaluation.

Response. Section 403(b)(1)(C) of the Act requires the State Advisory Council to evaluate all programs and projects assisted under Title IV of the Act. In addition, the State educational agency has the responsibility of evaluating the operation of programs to meet the requirements of the performance reports under § 100b.432 of the General Provisions Regulations (45 CFR 100b.432). In view of the work load and the amount of administrative funds available, it is assumed that there will be careful cooperative planning by the State Advisory Council and the State educational agency in the area of designing and carrying out the evaluation of programs and projects. Certainly the scope (the range of the project) and the quality (the essential character) of the activities would be included in the evaluation of a project. The evaluation may also include the extent to which project objectives were met. States have the authority to permit local educational agencies to spend a portion of individual project funds for evaluating Part C project activities. A phrase has been deleted from § 134.55(b) because it referred to § 134.12(b) which applies only to sections 431(a)(1), (2), and (4) of the Act. Since § 134.55 applies to both Parts B and C of the Title IV of the Act, it appeared appropriate to delete the reference to § 134.12(b). There is no statutory authority for requiring that a specified portion of funds be set aside for evaluation.

26. § 134.56 *Report to the Commissioner. Comment.* A reviewer suggested that §§ 134.55 and 134.56 be combined under § 134.53, and that the objectives indicated in § 134.55 should be deleted. The reviewer also felt that Part B evaluation will be very different from Part C and suggested the difficulty of evaluating all Part B projects annually. The reviewer also recommended that the reports of State advisory councils be carefully reviewed and responded to. The reviewer stated that it would be helpful to have this requirement included in the revised regulations.

Response. Sections 134.53, 134.55, and 134.56 each relate to a different function of the State advisory council, and therefore, it was thought appropriate to use separate sections. The reference to objectives as set forth pursuant to § 134.12(b) has been deleted, with the intent that this aspect of evaluation be made permissive under the regulations rather than mandatory. A State advisory council is required under § 134.16(a)(1) to evaluate Part B and C programs and projects annually on a Statewide basis. However, it need not evaluate every local educational agency project annually; the requirements of § 134.55(a) are satisfied if the State advisory council evaluates each local educational agency project at reasonable intervals. The Office of Education will review the State advisory council reports.

27. § 134.72 *Single application. Comment.* One comment suggested that, if an outlying area chose to designate administrative units as applicants for Title IV funds under § 134.70, it should be free to accept applications for one Part and still make all the allocations for the other Part without the need for a single application for Parts B and C together.

Response. Since local educational agencies can be required to submit only one application for funds under Title IV of the Act, the same requirement is made as a matter of policy for the Outlying Areas and the Departments of Defense and Interior if they designate administrative units as recipients of funds.

28. § 134.81 *Standards for selection of personal property. Comment.* There were five comments on § 134.81. Three reviewers questioned the statutory authority for this provision. One comment asked whether the standards for selection of personal property applied to Part C as well as Part B, and suggested a change in language for clarification. Two reviewers questioned the use of the language: "The State educational agency shall develop standards which may be used * * *" (Emphasis added.) One reviewer stated that § 134.81 was confusing and should be rewritten to make it clear that the subject is education standards.

Response. Section 203(a)(2) of Title II of the Act provided for the development and revision of standards for school library resources, textbooks, and other

instructional materials acquired under ESEA Title II, and Section 303(a)(4) of the National Defense Education Act of 1958 provided for the establishment of standards on a State level for laboratory and other special equipment acquired with assistance furnished under that title. These purposes are incorporated in Title IV regulations under the authority of Section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modification imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part *must be used only for the same purposes* and for the same types of programs authorized under this provision." (Emphasis added.) The use of the language, "The State educational agency *shall* develop standards which *may* be used * * *." is intentional (Emphasis added.) The State educational agency must develop standards for selection of personal property; however, local educational agencies may, but are not required to, use them in assessing needs under Part B and making divisions with respect to the division of funds among the Part B purposes and selection of the personal property to be acquired because of requirement in § 134.15. Section 134.81 applies only to Section 421(a) (1) and (2) of Part B of the Act and the language of the regulation has been changed to make this clear.

29. § 134.89 Scope of subpart. *Comment.* One reviewer asked that this section be clarified to indicate whether or not private school children could be served if the local educational agency in which eligible private school children attended school is not a recipient of funds. A second reviewer suggested that a second local educational agency could agree to serve private school children if the local educational agency in which the private school children attended school did not apply. A third reviewer commented that confusion would be created because under Title IV, private school participation is limited to chil-children in both profit and nonprofit children in both profit and nonprofia schools can participate in Title I programs.

Response. Title IV of the Act does not provide for the participation of private school children who are in the area served by a local educational agency which is not an applicant and recipient of funds under the program. In response to the third comment, private nonprofit schools in Title IV is limited to children in private nonprofit schools because of the requirements of section 406(a) of the Act.

30. § 134.90 *Consultation with private school officials,* (proposed § 134.95). *Comment.* Two comments asked that § 134.95 be renumbered and placed in the regulations immediately following § 134.-89 on the grounds that this was more orderly and more indicative of the chronological order of the local educational agency's responsibilities. Two comments suggested that consultation with private school officials on "all" matters before making "any" decisions in a requirement which exceeds the statutory authority. One comment suggested, on the other hand, that the word "all" be inserted before the word "requirements." Another comment suggested that the regulation exceeds the requirement of the statute and should be modified or deleted. A final comment stated that the term "consult" as used in this section should be defined in § 134.2.

Response. The suggestion to renumber § 134.90 as § 134.95 has been adopted, and the change has been made. The use of the words "all" and "any" in the proposed rule refers only to the requirements of Subpart F of Part 134 and is not excessive in that context. With these two words left in, it should not be necessary to add another word "all" before the word "requirements." Therefore, except for the numbering change, no changes are made in this section. The statutory authority for the regulation is section 406(a) of the Act. "Consult" is not defined in the regulations. This permits the term to be applied to the varied types of contacts to which the consultation requirement refers.

31. § 134.91 *Benefits.* (proposed § 134.-90). *Comment.* There were two comments which indicated that the services, materials, and equipment referred to in § 134.91 (proposed § 134.90) which are made available to nonpublic school children do not have to be the same as those made available to public school children, only equitable. One comment asked for language which would state that services, materials, and equipment for nonpublic school children be located in the nonpublic schools and that, only if such an arrangement is not feasible, should they be located elsewhere, and only then if the local educational agency would provide for equitable participation of nonpublic school children in the purposes and benefits of Title IV. One comment asked that specific reference be made to auxiliary services, including the services of speech therapists, psychological services, social services, and speech and hearing services as appropriate. The comment also asked that § 134.91(b) (proposed § 134.-90(b)) include the words "after consultation with the appropriate private school officials." One commenter suggested that § 134.97 should require that the State's annual program plan specify the criteria to be used which would provide for equitable participation of private school children and the criteria by which a method for providing services and benefits to private school children is selected. Another reviewer suggested that State planning for private school children is preferable to local educational agency planning. Another commenter stated that the requirements of § 134.97 presented problems in towns where the only public school is elementary and private school is secondary with different needs and facilities.

Response. § 134.91 (proposed § 134.90) does not preclude the provision of different services, materials, and equipment for nonpublic school children from those provided to public school children to meet the needs of such private school children. It is anticipated that the consultation with appropriate private school officials by local educational agency officials can result in satisfactory arrangements over the location of the provision of such services, materials, and equipment, consistent with law. Section 406(a) of the Act provides that it is the responsibility of the local educational agency to provide for equitable participation of private school children in Title IV projects. In response to the last comment, a local educational agency under § 134.94 (proposed § 134.93) must adjust the average per pupil expenditure levels according to the needs of the private school children and the cost per child of meeting these needs.

32. § 134.92 Number of private school children to be served, (proposed § 134.-92). *Comment.* Two comments suggested that private school children should be counted on the basis of residence.

Response. Section 406 of the Act provides that local educational agencies are required to provide benefits under Title IV of the Act to private school children "in the school district" of the local educational agency. The statutory language may be interpreted as referring to private school children attending private schools in the school district. There was a general consensus among the several hundred persons representing State and local educational agencies and private schools who participated with Department of Health, Education, and Welfare employees in the developmental phase of the regulations that it would not be feasible to have several local educational agencies attempting to provide services, materials, and equipment to children enrolled in a single private school. For the purpose of establishing feasible and desirable administrative procedures the determination was made that such services, materials, and equipment should be provided by the local educational agency in which the private school is located. In order to receive sufficient funds from the State for such purposes, that local educational agency will need to report to the State all of the private school children who are enrolled in the private school regardless of the place of residence.

33. §134.93 *Expenditures.* (proposed § 134.92). *Comment.* One comment was received which stated that the word "equal" was quoted out of context and that the rest of the appropriate statutory language should also be cited to preserve the context. Another comment asked whether private school children could receive greater than equal funding per child.

Response. The added language of the statute which is the context in which the word "equal" is used is: "Expenditures for programs (for private school children) shall be equal (consistent with the

number of children to be served) to expenditures for (public school children), taking into account the needs of the individual children and other factors (pursuant to criteria supplied by the Commissioner) which relate to such expenditures . . ." It is the intent of § 134.94 (proposed § 134.93) to draw attention to the fact that the needs of individual children are to be considered and to set forth the criteria which the Commissioner is supplying. This is the purpose of the opening clause of § 134.93 (proposed § 134.92), which reads: "subject to § 134.94 (proposed § 134.93), * * *" It is the purpose of § 134.94 (proposed § 134.93) to cover a situation where the needs of private school children differ from the needs of public school children. In such a situation, there may be different per pupil funding.

34. § 134.94 *Criteria for adjustment of expenditure,* (proposed § 134.93). *Comment.* Several comments were received concerning the criteria for adjustment of expenditures. One comment suggested that the procedure of requiring equal average expenditures per child subject to adjustments pursuant to § 134.94 (proposed § 134.93) would cause difficult problems in practice. Two comments suggested a change which would require that any adjustments pursuant to § 134.94(a) (proposed § 134.93(a)) not affect assistance to public school children. One of these comments argued that Congress intended expenditures on individual private school children to be adjusted but did not intend any adjustment to affect the average expenditure on private school children. A fourth comment suggested that the State educational agency rather than the local educational agency is in a better position to make determinations of expenditures on private school children. A fifth comment asked what agency is responsible for the needs assessment referred to in this section.

Response. Sections 134.93 and 134.94 (proposed §§ 134.92 and 134.93) of the regulations are based on section 406(b) of the Act. The statute envisions a division of services between public school children and private school children. The above cited sections of the regulation establish the factors to be considered in establishing expenditure levels for such services. The statute prescribes more differentiation in this division than a simple equal average per pupil breakdown. Thus, depending on the needs of private school children and the cost of meeting these needs, the average per pupil expenditure on public school children in any local educational agency could be greater or less than the average per pupil expenditure on private school children. Section 134.94 (b) (proposed § 134.93(b)) provides that any variation from equal average per pupil expenditure shall be designed to assure equitable participation of public and private school children. In response to the fourth comment, the statute imposes upon the local educational agency, after consultation with appropriate private school officials, the responsibility of providing services to private school children. This obligation includes the determination of expenditure levels. In response to the fifth comment, the assessment of needs to determine expenditure levels is also the responsibility of the individual local educational agency.

35. § 134.94 *Criteria for adjustment of expenditures.* (proposed § 134.93); § 134.95 *Concentration of programs or projects* (proposed § 134.94). *Comment.* A reviewer asked if the requirements of § 134.94 (a) and (b) (proposed § 134.93 (a) and (b)) mean that after the State establishes its Part B formula and makes a district entitlement, a local educational agency can "adjust" or set its own formula as far as private school children are concerned.

Response. Section 406(b) of the Act requires the local educational agency to take into account the needs of the individual children and other factors (pursuant to criteria supplied by the Commissioner) in determining expenditures for private school children. Section 134.94 is intended to supply the criteria to be used by local educational agencies in making this determination.

35. § 134.95 *Concentration of programs or projects.* (proposed § 134.94) *Comment.* A comment suggested that this section could lead to problems in terms of equity and perhaps be used to exclude private school children.

Response. Sections 134.92, 134.93, 134.94, and 134.95 (proposed §§ 134.91, 134.92, 134.93, and 134.94) need to be considered as a whole, i.e., the number of private school children to be served; equal expenditures, adjustments of expenditures to assure equitable participation; and equitable participation in cases of concentration of programs or projects. In all instances there must be equitable participation of private school children in compliance with section 406 of the Act. It should be noted that this section repeats statutory language from section 406(b) of the Act. Changes in the section would therefore not be appropriate.

37. § 134.97 *Information in the project application. Comment.* Several reviewers objected to the requirements of § 134.97, stating that it exceeded statutory authority. One commenter suggested that States should be free to develop the content of the project application. Two reviewers felt that if the information was otherwise available, it should not be required in the application. Two comments stated that the application should indicate whether or not services, materials, and equipment for the use of private school children were to be provided in one or more private schools, and if not, the reasons why it was necessary to provide the "other arrangements" referred to in § 134.90(b).

Response. Section 134.97 is intended to provide the State educational agency with sufficient information to determine if private school children are being provided "equitable participation" under Title IV of the Act. Even though some information required by § 134.97, e.g., enrollment data, may be available elsewhere in the State educational agency, it is necessary to provide the information on the application so that reviewers will have all the information needed for the review. Most of the information required by this section to be in the local educational agency's application relates to the proposed provision of services to private school children and therefore would not be available to the State educational agency unless provided in the application. It is assumed that the State and local educational agencies will cooperate in compiling the necessary information.

38. § 134.99 *Limitations on personnel providing services. Comment.* One comment was received which asked if the term "independent" referred to any religious organization which has a formal relationship to the particular private school in question. A second comment asked if members of the clergy may be employed by public agencies to provide services to private school children.

Response. The statute provides that the employees of the public agency (or the contractor) who provide services must be independent of the private school and of any religious organization "in the provision of such services." Whether a particular situation would give rise to a problem under this requirement would be determined in light of all the facts of the case, and would be considered at that time.

39. § 134.101 *Avoidance of separate classes. Comment.* Two comments received suggested that if this section were not required for civil rights purposes it should be deleted. They went on to state that equitable services could be provided in separate classes and also might be administratively more feasible.

Response. There does not appear to be any reason why joint participation in a project should involve separation on the basis of religion or school enrollment. Further, the purpose of Title IV programs is not administrative feasibility but educational service. Therefore, there is no change in the language of the proposed rule. It should be noted that this provision appears in regulations for other Office of Education programs which have similar statutory requirements for the participation of private school children.

40. § 134.102 *Complaint procedure. Comment.* A comment questioned the authority in the law for any person to file a complaint. The reviewer suggested that complaint procedures should be limited to parents of affected private school children and that private school and public school officials confer before complaints are sent to the State.

Response. Opportunities to file a formal complaint should not be limited to parents of affected children. The State educational agency is responsible for monitoring operation of the program and should have the benefit of whatever sources of information might be of assistance. The objective is to set any formal complaint before the appropriate State officials so that an investigation can be made. The State is required to provide assurances that the requirements of section 406 of the Act will be

met. The complaint procedure is one of the means by which the State fulfills its responsibilities under the assurance.

41. § 134.107 *Cost of services under an arrangement by the State educational agency or the Commissioner. Comment.* A comment was received which suggested that a third paragraph be added which would provide that the "cost of such services" as used in the regulation would include the cost of administering the services if the State educational agency and/or the Commissioner so desires.

Response. The "cost of such services" includes the cost of administering the arrangement to provide services to private school children. There is, therefore, no need to change this regulation.

42. § 134.108 *Suspension and termination. Comment.* A reviewer suggested that § 134.108 should be modified to give meaning and effect to section 406(b) of the Act. The reviewer disagreed with the interpretation of the comment following this section of the regulations, that the Commissioner would be required to cut off all funds if there is a substantial failure to comply with section 406 of the Act, stating that Congress intended private school children to receive services in such a case through the Commissioner, without the denial of all services to all children by cutting off funds.

Response. The comment following § 134.108 was intended to make clear that in cases where there is substantial failure to serve private school children, no waiver can be granted and the local educational agency would lose its Title IV funds for the affected part of the Act. However, under the authority of section 406(c) of the Act and §§ 134.105–134.107 of the regulations, the State educational agency or the Commissioner would arrange for the provisions of services to the affected private school children.

43. § 134a.2 *Authorized activities (Part B). Comment.* A comment was received suggesting that provisions should be made in the regulations for inservice education for librarians, media specialists, and teachers under section 421(a)(1) of the Act, such as those made for persons engaged in guidance and counseling programs in § 134a.2(c)(3) of the proposed regulations. A second comment suggested that funds be specifically set aside under § 134a.2(a) for the use of school library resources and a third suggested that States should be allowed to restrict expenditures for textbooks as they did under ESEA Title II if there is less need for them than for other eligible items. Another comment stated that the enumeration of activities in § 134a.2(c)(2) limits activities in that area and goes beyond legislative intent. Another commenter noted that § 134a.2(a) specifically refers to private elementary and secondary schools but §§ 134a.2 (b) and (c) refer only to elementary and secondary schools.

Response. Section 421(a)(3)(b)(iii) and (C) of the Act makes specific provision for inservice education for persons engaged in counseling and guidance programs; however, Section 421(a)(1) of the Act makes no such provisions for training librarian, media specialists, and teachers. To allow amounts to be set aside for school library resources or to restrict the acquisition of textbooks, or to place any restrictions on local educational agencies in the use of funds allotted under Part B of Title IV of the Act would be in violation of section 403(a)(5) of the Act which gives local educational agencies complete discretion over the division of funds among the various programs described in section 421 of the Act, except that in the first year, discretion is given with respect to only 50 percent of the funds allotted. With respect to the next comment, § 134a.2 is a direct quotation from section 421(a) of the Act; the regulation therefore is not changed. As for the last comment, it is the interpretation of the Office of Education that the use of the term "elementary and secondary schools" in section 421(a)(3) and (4) of the Act and § 134a.2(b) and (c) refers to private nonprofit elementary and secondary schools as well as public elementary and secondary schools.

44. § 134a.3 *Use of funds. Comment.* Thirteen comments were received on § 134a.3(a) of the proposed rules. Except for one, these comments objected to the section and felt it should be deleted because of lack of statutory authority. Several reviewers felt that monitoring funds for audit purposes would be expensive. One comment stated that this section restricts local educational agencies from channeling funds into one school. Another comment stated that the section limited the sole discretion provided in § 134.15 and that the requirement of § 134a.3(a) was authorized in § 134.94. Two comments stated that § 134a.3(a) was mislabeled, since it in fact provided a limit on the use of funds. Two comments stated that the criteria to establish "educational needs" provided in § 134a.3(b) should be established by the State educational agency with the advice of the State advisory council and local educational agencies. These reviewers felt that the criteria established should be included in the annual program plan and become part of the evaluation design required in § 134.16.

Response. With respect to the first comment, section 403(a)(4)(A)(ii) of the Act requires that a substantial amount of the funds appropriated under section 401(a) of the Act be distributed to local educational agencies with the greatest numbers or percentages of children whose education imposes a higher than average cost. It is within the discretion of the Office of Education to establish a policy that funds earned by a local educational agency because of the presence of children whose education imposes a higher than average cost be spent on those children. Costs for monitoring the expenditure of these funds can be paid from administration funds. With respect to the comment that § 134a.3(b) restricts local educational agencies from channeling funds into one school, it should be noted that § 134a.3(b) specifically allows (but does not require) local educational agencies to concentrate in one or more schools according to educational need the funds earned through enrollment and relative tax effort. As for the third comment, no limit is placed by § 134a.3 on the services, materials, or equipment to be acquired by local educational agencies with Part B funds. The only limit placed by § 134.3 on the use of funds is the requirement that funds earned because of the presence of children whose education imposes a higher than average cost be spent on these children; the purpose of § 134a.3 is to set forth requirements relating to the provisions of section 403(a)(4)(A) of the Act and § 134.14(a)(1) and (b) of the regulations. Section 134.15 (proposed § 134.94) relates to the requirements of section 406 of the Act. With respect to the last group of comments, to allow State educational agencies to establish criteria for the use of local educational agencies in deciding on the use of Part B funds would violate the provisions of section 403(a)(5) of the Act.

45. § 134a.5 *Allowable costs. Comment.* Five comments were received suggesting that in § 134a.5(a), the word "shall" should be changed to "may." Another reviewer stated that the costs referred to in this section are part of indirect costs and questioned whether the funds referred to in § 134a.5 could be used for inventory, distribution, and audit costs.

Response. The Office of Education accepts the first suggestion and has made the change in § 134a.5(a). Indirect costs are a method of calculating those costs for administration which are not readily subject to treatment as direct costs. The costs referred to in § 134a.5 are for costs of acquisition, including costs of processing materials and equipment and the installation of equipment. These costs may be paid from funds allotted to local educational agencies for the acquisition of services, materials, and equipment under section 421 of the Act. If State educational agencies make State administrative funds available to local educational agencies under § 134a.11 for the distribution and control of school library resources, textbooks, and other instructional materials, such funds could be used for inventory and distribution. Audit costs of the State relating to the services, materials, and equipment acquired by local educational agencies under section 421 of the Act could be paid from funds made available for administration of the annual program plan.

46. § 134a.10 *Consideration of the areas of occupational education. Comment.* Seven comments were received saying that the requirement of § 134a.10 that the State educational agency develop specific criteria to be used by local educational agencies in acquiring school library resources, textbooks, and other instructional materials under section 421(a)(1) of the Act so as to give consideration to the needs for instruction, orientation, and guidance and counseling in occupational education is not required by the Act. One of these reviewers said that the requirement would limit a local edu-

cational agency's ability to meet the varied needs of children. Another reviewer said that the requirement was provided for under the authority of §§ 134.15 and 134a.2(c).

Response. This requirement was added to Title II of the Act by Section 509(a)(1) of the Education Amendments of 1972 (Pub. L. 92-318). This purpose is incorporated in Title IV regulations under the authority of Section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act, and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part must be used only for the same purposes and for the same type of programs authorized under those provisions." This section is not intended to limit the complete discretion of local educational agencies (set forth in section 403(a)(5) of the Act) in determining how the funds it receives from appropriations made under Part B of Title IV of the Act will be divided among the various programs described in section 421(a) of the Act.

47. § 134a.11 *Administrative costs of local educational agencies. Comment.* A comment was received suggesting that §§ 134a.4 and 134a.11 appear to be inconsistent and that the regulations should state clearly that the costs of administration referred to in §134a.11 must be paid out of State administration funds which are made available to local educational agencies.

Response. The Office of Education has expanded § 134a.11 to clarify the fact that State educational agencies may, but are not required to, make available to local educational agencies from funds for administration of the annual program plan, the costs of distribution and control by a local educational agency of school library resources, textbooks, and other instructional materials acquired under § 134a.2(a) for the use of children and teachers in public and private elementary and secondary schools. This purpose was authorized in the ESEA Title II program under section 203(a)(B)(II) of the Act and is incorporated in Title IV regulations under the authority of section 421(b) of the Act which provides: "It is the purpose of this part to combine within a single authorization, subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title II and so much of Title III as relates to testing, counseling, and guidance, of this Act and Title III (except for section 305 thereof) of the National Defense Education Act of 1958, and funds appropriated to carry out this part must be used only for the same purposes and for the same types of programs authorized under those provisions."

48. § 134a.20 *Expansion or improvement of services. Comment.* A reviewer questioned the meaning of "other authorized activities" in § 134a.12 which permits the State to use funds it receives for administration of Part B of Title IV of the Act for expansion or improvement of supervisory or related services in public and private elementary and secondary schools, as well as other authorized activities.

Response. This provision was authorized in the NDEA Title III program under Section 303(a)(5)(A) and is incorporated in Title IV regulations under the authority of section 421(b) of the Act for the reasons set forth in the responses to the comment on § 134a.10 above.

49. § 134b.2 *Authorized activities. Comment.* Two comments were received stating that the authorized activities in § 134b.2 expand upon the intent of Congress without legislative authority from the statute. A third reviewer suggested that the phrase "subject to the provisions of section 406 of the Act" be added to § 134b.2 to insure that private school children participate in the benefits of section 431(a)(1), (2), and (4) of the Act.

Response. The authorized activities in § 134b.2 (a), (b), and (c) are direct quotations from section 431(a)(1), (2), and (3) of the Act, and do not constitute an expansion of the intent of the Congress. The regulation therefore is not changed. In response to the final comment, the provisions of section 406 of the Act apply to programs supported under the authority of section 431(a)(1), (2), and (4). It is not considered necessary to include such a provision in § 134b.2.

50. § 134b.10 *Activities. Comment.* Twelve comments were received with respect to this section. Nine comments stated that the section should be deleted or revised because it exceeded the statutory language of section 431(a)(1) of the Act. One reviewer suggested that the first sentence of § 134b.10 be changed to read: "Activities under § 134b.2(a) may include . . ." thereby dropping the word "only." A comment suggested that the adult education services referred to in § 134b.10(c)(2) are no longer a proper purpose under Title IV.

Response. The statutory authority for the activities listed under § 134b.10 is section 431(b) of the Act, which provides: "It is the purpose of this part to combine within a single authorization subject to the modifications imposed by the provisions and requirements of this title, the programs authorized by Title III (except for programs of testing, counseling, and guidance) and Title V and sections 807 and 808 of this Act, and funds appropriated to carry out this part must be used only for the same purposes and for the same types of programs authorized under those provisions." Therefore it is appropriate to set forth the purposes from section 303(b)(3) of the Act in these regulations, and to retain the reference to adult education services is a proper purpose. The first sentence of § 134b.10 has been modified by substituting the word "are" for "may only include." The latter change is not intended to change the meaning of the regulation which repeats statutory language.

51. § 134b.20 *Health and nutrition projects. Comment.* One comment was received which objected to the requirement that a private educational organization could be funded only through a contract with a local educational agency.

Response. This requirement was included in the regulations since the sections 403(a)(4)(B) and 403(a)(8)(A) of the Act provide for applications from local educational agencies only. The proposed rules provide a means whereby private organizations may receive Federal funds to conduct a demonstration project. Therefore, there is no need to make a change in this section.

52. § 134b.30 *State educational agency activities:* § 134b.40 *Local educational agency activities:* § 134b.50 *Comprehensive educational planning and evaluation activities. Comment.* Nine comments were received which suggested that these sections of the proposed rules should be deleted as exceeding the intent of the legislation. One comment suggested that, in § 134b.30(j), the first word "and" should be replaced by the word "or."

Response. The statutory authority for the activities listed in these three sections is contained in Section 431(b) of the Act. Since the language in these sections is copied directly from sections 503, 523, and 532 of Title V of the Act, the specific change of "or" for "and" is not proper. Therefore, no changes are made in the proposed rules.

B. *Other changes.* 1. Several typographical and technical corrections have been made. 2. The definition of "minor remodeling" in § 134.2 has been changed to clarify the fact that minor remodeling is permitted where necessary to make use of any instructional equipment eligible under section 421(a)(2) of the Act. 3. Section 134.12(c) has been amended to require that the description in the annual program plan of activities for strengthening the State educational agency under section 431(a)(3) of the Act include the results or benefits expected to be derived from each objective. 4. Section 134.102(a) has been amended to require that any written complaint filed with the State educational agency with respect to any Title IV project by an organization or individual be signed. 5. Section 134.102(b) has been amended to require that a copy of any report filed with the Commissioner with respect to a written complaint be sent to the affected local educational agency. 6. Section 134.102(c) has been amended to require the Commissioner to review matters related to a complaint, if after the sixty-day period has elapsed, the affected local educational agency feels that the problem has not been satisfactorily resolved. 7. Section 134a.11 has been amended to clarify the fact that a State educational agency may, but is not required to, make available to local educational agencies from funds available for the administration of the annual program plan, the costs of distribution and control by a local educational agency of school library resources, textbooks, and other instructional materials acquired under § 134a.2(a).

C. *Effective date.* Pursuant to section 431(d) of the General Education Provisions Act, as amended (20 U.S.C. 1232 (d)), these regulations have been transmitted to the Congress concurrently with the publication of this document in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

(Catalog of Federal Domestic Assistance Program Nos. 13.570-13.571; Libraries and Learning Resources, Education Innovation and Support)

Dated: September 22, 1975.

T. H. BELL,
U.S. Commissioner of Education.

Approved: November 7, 1975.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 100c—INDIRECT COSTS UNDER CERTAIN PROGRAMS

1. Section 100c.1 is revised by adding a new paragraph (c-1), to read as follows:

§ 100c.1 Scope.

* * * * *

(c-1) Part C of Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 1831);

* * * * *

2. New Parts 134, 134a, and 134b are added, to read as follows:

PART 134—LIBRARIES AND LEARNING RESOURCES; EDUCATIONAL INNOVATION AND SUPPORT

Subpart A—General

Sec.
134.1 Scope of part.
134.2 Definitions.
134.3 General provisions regulations.

Subpart B—Annual Program Plans

GENERAL

134.10 Submission.

PROVISIONS TO BE INCLUDED IN ANNUAL PROGRAM PLAN

134.11 State educational agency.
134.12 Allowable expenditures.
134.13 Participation of children and teachers in private schools.
134.14 Distribution of funds to local educational agencies.
134.15 Part B funds; discretion of local educational agencies.
134.16 Evaluation, dissemination, and adoption of promising practices.
134.17 Single application from a local educational agency.
134.18 Use of funds.
134.19 Use and access by handicapped persons.
134.20 Commingling of funds.
134.21 Maintenance of expenditure from non-Federal sources.

REQUIREMENTS RELATING TO CERTAIN ANNUAL PROGRAM PLAN PROVISIONS

134.37 Application by a local educational agency.
134.38 State administrative funds in fiscal year 1976.
134.41 Data relating to maintenance of expenditures from non-Federal sources.

Subpart C—State Advisory Council

134.50 Establishment.
134.51 Membership.
134.52 Certification and qualification of members.
134.53 Advisory functions.
134.54 Notification of acceptance of certification.
134.55 Evaluation of programs and projects.
134.56 Report to the Commissioner.

Subpart D—Outlying Areas; Departments of Defense and Interior

134.70 Annual program plans.
134.71 Application procedures.
134.72 Single application.
134.73 Distribution of funds on the basis of educational needs.
134.74 Apportionment of funds.

Subpart E—Administration

134.80 Allowable costs.
134.81 Standards for selection of personal property.
134.82 Charges for use.

Subpart F—Participation by Children Enrolled in Private Schools

134.89 Scope of subpart.
134.90 Consultation with private school officials.
134.91 Benefits.
134.92 Number of private school children to be served.
134.93 Expenditures.
134.94 Criteria for adjustment of expenditures.
134.95 Concentration of programs or projects.
134.96 Separate compliance for Parts B and C.
134.97 Information in the project application.
134.98 Control by public agency.
134.99 Limitations on personnel providing services.
134.100 Private schools not to benefit.
134.101 Avoidance of separate classes.
134.102 Complaint procedure.
134.103 Award of subgrants to local educational agencies.
134.104 Waiver in the case of legal prohibition.
134.105 Provision of services by the State educational agency.
134.106 Provision of services by the Commissioner.
134.107 Cost of services under an arrangement by the State educational agency or the Commissioner.
134.108 Suspension and termination.
134.109 Notice; opportunity for hearing; judicial review.

AUTHORITY: Title IV, Pub. L. 89-10, as amended, 88 Stat. 535-544 (20 U.S.C. 1801-1832), unless otherwise noted.

Subpart A—General

§ 134.1 Scope of part.

(a) This part applies to the Federal programs authorized by Title IV of the Act.

(b) Regulations which apply specifically to Part B of Title IV of the Act are set forth in Part 134a of this chapter.

(c) Regulations which apply specifically to Part C of Title IV of the Act are set forth in Part 134b of this chapter.

(20 U.S.C. 1801)

§ 134.2 Definitions.

As used in this part and Parts 134a and 134b of this chapter:

"Academic subjects" includes, but is not limited to, the following elementary and secondary school subjects: The arts, civics, economics, English, geography, history, the humanities, industrial arts, mathematics, modern foreign languages, reading, and science.

(20 U.S.C. 1821(a)(2))

"Act" means the Elementary and Secondary Education Act of 1965, as amended.

(20 U.S.C. 1801)

"Children who do not complete their secondary school education" means children who were enrolled during a regular school term in an elementary or secondary school and withdrew before graduating from secondary school or before completing an equivalent program of studies. The term includes such an individual (a) whether he or she left school during or between regular school terms, (b) whether he or she left school before or after reaching the compulsory school attendance age, and (c) where applicable, whether or not he or she completed a minimum required amount of school work.

"Children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such terms does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental disadvantage.

(20 U.S.C. 1803(a)(8)(B))

"Construction" means: (a) the erection of new or expansion of existing structures, and the acquisition and installation of equipment therefor; (b) the acquisition of existing structures not owned by the local educational agency making application for assistance under section 431(a)(1) of the Act; (c) the remodeling or alteration (including the acquisition, installation, modernization, or replacement of equipment) of existing structures; or (d) a combination of any two or more of the foregoing.

(20 U.S.C. 1831(a)(1))

"Cultural and educational resources" includes: State educational agencies, local educational agencies, private nonprofit elementary and secondary schools, institutions of higher education, public and nonprofit agencies such as libraries, museums, musical and artistic organizations, educational radio and television, and other cultural and educational resources.

(20 U.S.C. 1832)

"Handicapped children" means mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or otherwise health impaired children, who by reason thereof require special education and related services. The term includes children with specific learning disabilities to the extent that such children are health impaired children who by reason thereof require special education and related services.

(20 U.S.C. 1803(a)(8)(B))

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(20 U.S.C. 1803(a)(4))

"Minor remodeling" (notwithstanding the definition set forth in § 100.1 of this chapter) means minor alterations which are (a) made in a previously completed building used or to be used as a laboratory or classroom for instructional subjects, and (b) needed to make effective use of equipment in providing instruction in such subjects. The term does not include building construction, structural alterations to buildings, or building maintenance, repair, or renovation.

(20 U.S.C. 1821(a)(2))

"Outlying Areas" means each of the following: Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1802(a))

"School library resources" are books, periodicals, documents, pamphlets, photographs, reproductions, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, including but not limited to those on discs and tapes; processed slides, transparencies, films, filmstrips, kinescopes, and video tapes, or any other printed and audiovisual materials of a similar nature made by any method now developed or hereafter to be developed, and which are processed and organized for use by elementary or secondary school children and teachers. The term includes those printed and published materials which are suitable for use and are to be used by children and teachers in elementary or secondary schools, and which with reasonable care and use may be expected to last more than one year. The term does not include furniture or equipment.

(20 U.S.C. 1821(a)(1))

"State," except as used in § 134.14, means the several States in the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. 1802(a))

"State advisory council" means the advisory council established under section 403(b) of the Act.

(20 U.S.C. 1803(b))

"State educational agency" means the State board of education or other agency or officer primarily responsible for State supervision of public elementary and secondary schools.

(20 U.S.C. 1803(a)(1))

"Teacher" includes any person who is engaged in carrying out the instructional program of an elementary or secondary school, including a principal, guidance counselor, school librarian/media specialist, or other member of the instructional staff.

(20 U.S.C. 1812(a))

"Testing" means the use of tests which measure abilities, educational achievement, interests, or aptitudes pertaining to an individual's educational or career development.

(20 U.S.C. 1821(a)(3)(A))

"Textbook" means a book, reusable workbook, or manual, whether bound or in looseleaf form, intended for use as a principal source of study materials for a given class or group of students, a copy of which is expected to be available for the individual use of each student in such class or group.

(20 U.S.C. 1821(a)(1))

§ 134.3 General provisions regulations.

Assistance under Title IV of the Act is subject to applicable provisions contained in subchapter A of this chapter (relating to fiscal, administrative, property management, and other matters).

(20 U.S.C. 1801)

Subpart B—Annual Program Plans

General

§ 134.10 Submission.

(a) Any State which desires to receive grants under Title IV of the Act shall submit to the Commissioner an annual program plan in such detail as the Commissioner deems necessary.

(20 U.S.C. 1232c(b)(1)(A)(i); 1803(a))

(b) The annual program plan shall contain the provisions set forth in this subpart and section 434(b)(1)(B)(ii) of the General Education Provisions Act, as amended.

(20 U.S.C. 1232c(b)(1)(B)(ii); 1803(a))

Comment. Section 434(b) of the General Education Provisions Act (added by Section 511 of Pub. L. 93-380, enacted August 21, 1974) provides for the submission by each State of (1) a general application containing five assurances, and (2) an annual program plan for each Office of Education program under which funds are provided to local educational agencies through, or under the supervision of, the State educational agency. Regulations governing submission of these documents will be published in the FEDERAL REGISTER as amendments to the Office of Education General Provisions Regulations (45 CFR Part 100b, which applies to the State-administered programs). Under section 434(b) and the implementing regulations, the submission of the general application and an annual program plan will be in lieu of submission of a State plan for Title IV. The provisions to be included in the annual program plan for Title IV are set forth in proposed §§ 134.11–134.21 of these regulations and Section 434(b)(1)(B)(ii) of the General Education Provisions Act, which states that each annual program plan shall "set forth a statement describing the purposes for which Federal funds will be expended during the fiscal year for which the annual program plan is submitted."

Provisions To Be Included in Annual Program Plan

§ 134.11 State educational agency.

The annual program plan shall designate the State educational agency as the State agency which shall, either directly or through arrangements with other State or local public agencies, act as the sole agency for the administration of the annual program plan.

(20 U.S.C. 1803(a)(1))

§ 134.12 Allowable expenditures.

(a) The annual program plan shall set forth a program under which funds paid to the State from its allotments under section 402 of the Act will be expended solely for the programs and purposes authorized by Parts B and C of Title IV of the Act, and for administration of the annual program plan.

(20 U.S.C. 1803(a)(2))

(b) The annual program plan shall include a detailed description of activities planned for the purposes authorized under section 431(a)(1), (2), and (4) of the Act and for the purpose of strengthening local educational agencies under section 431(a)(3) of the Act. This description shall include: (1) specific objectives, (2) the specific activities planned to achieve each such objective, (3) the affected populations, and (4) the estimated amount of funds allocated to meet each such objective.

(20 U.S.C. 1803(a))

(c) The annual program plan shall include a detailed description of activities planned for the purpose of strengthening the State educational agency under section 431(a)(3) of the Act. This description shall include: (1) specific objectives, (2) the specific activities planned to achieve each such objective, (3) the results or benefits expected to be derived, (4) the estimated amount of funds allocated to meet each such objective, and (5) with respect to each such objective, an indication whether the State educational agency intends to contract for services or equipment.

(20 U.S.C. 1803(a))

(d) The annual program plan shall include (1) a detailed description of the activities to be carried out by the State advisory council and (2) the estimated

amount of funds which will be provided for each such aetivity from funds available for administration of the annual program plan.

(20 U.S.C. 1803 (a), (b) (4))

Comment. Section 403(b)(4) of the Act requires the Commissioner to assure that funds sufficient for the functions of the State advisory council "are made available to each council from funds available for administration of the [annual program] plan." The information asked for in § 134.12(d) is designed to serve this purpose, and is deemed to be the type of "detail" which the Commissioner is authorized to require in the annual program plan, which shall be "in such detail as the Commissioner deems necessary." (section 403(a) of the Act.)

§ 134.13 Participation of children and teachers in private schools.

(a) The annual program plan shall provide assurances that the requirements of section 406 of the Act (relating to the participation of pupils and teachers in private nonprofit elementary and secondary schools) will be met, or shall certify that such requirements cannot be met in such State.

(20 U.S.C. 1803(a)(3); 1806(a))

(b) A certification that a State cannot legally meet the requirements of section 406 of the Act shall be made by the State attorney general or other appropriate legal officer.

(20 U.S.C. 1803(a)(3))

§ 134.14 Distribution of funds to local educational agencies.

(a) The annual program plan shall provide assurance that:

(1) funds which the State educational agency receives from appropriations made under section 401(a) of the Act will be distributed among local educational agencies according to the enrollments in public and nonpublic schools within the school districts of such agencies, except that substantial funds will be provided to: (i) local educational agencies whose tax effort for education is substantially greater than the State average tax effort for education, but whose per pupil expenditure (excluding payments made under Title I of the Elementary and Secondary Education Act) is no greater than the average per pupil expenditure in the State, and (ii) local educational agencies which have the greatest number or percentages of children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language; and

(2) funds which the State educational agency receives from appropriations made under section 401(b) of the Act will be distributed among local educational agencies on an equitable basis recognizing the competitive nature of the grantmaking except that the State educational agency shall provide assistance in formulating proposals and in operating programs to local educational agencies which are less able to compete due to small size or lack of local financial resources.

(b) The annual program plan shall set forth the specific criteria the State educational agency has developed and will apply to meet the requirements of paragraph (a) of this section.

(20 U.S.C. 1803(a)(4))

§ 134.15 Part B funds; discretion of local educational agencies.

The annual program plan shall provide that each local educational agency will be given complete discretion (subject to the provisions of section 406 of the Act) in determining how the funds it receives from appropriations made under section 401(a) of the Act will be divided among the various programs described in section 421 of the Act except that, in the first year in which appropriations are made pursuant to Part B of Title IV of the Act each local educational agency will be given complete discretion with respect to 50 per centum of the funds appropriated for that part attributable to that local educational agency.

(20 U.S.C. 1803(a)(5))

§ 134.16 Evaluation, dissemination, and adoption of promising practices.

(a) The annual program plan shall provide for the adoption of effective procedures (1) for an evaluation by the State advisory council, at least annually, of the effectiveness of the programs and projects assisted under the annual program plan, (2) for the appropriate dissemination of the results of such evaluations and other information pertaining to such programs or projects, and (3) for the adoption, where appropriate, of promising educational practices developed through innovative programs supported under part C of Title IV of the Act.

(20 U.S.C. 1803(a)(6))

(b) The annual program plan shall include a description of and calendar for each of the activities set forth in paragraph (a) of this section.

(20 U.S.C. 1803(a))

§ 134.17 Single application from a local educational agency.

The annual program plan shall provide that local educational agencies applying for funds under Title IV of the Act shall be required to submit only one application for such funds for any one fiscal year.

(20 U.S.C. 1803(a)(7))

§ 134.18 Use of funds.

The annual program plan shall provide that:

(a)(1) of the funds the State receives under Section 401 of the Act for the first fiscal year for which such funds are available, the State educational agency will use for administration of the annual program plan not to exceed whichever is greater: (i) 5 per centum of the amount so received ($50,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), excluding any part of such amount used for purposes of section 431(a)(3) of the Act or (ii) the amount it received for the fiscal year ending June 30, 1973, for administration of the programs referred to in section 421(b) and 431(b) of the Act and the remainder of such funds shall be made available to local educational agencies to be used for the purposes of parts B and C, respectively of Title IV of the Act, and

(2) of the funds the State receives under section 401 of the Act for fiscal years thereafter, it will use for administration of the annual program plan not to exceed whichever is greater: (i) 5 per centum of the amount so received ($50,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands), excluding any part of such amount used for purposes of section 431(a)(3) of the Act or (ii) $225,000, and the remainder of such funds shall be made available to local educational agencies to be used for purposes of parts B and C, respectively of Title IV of the Act;

(b) not less than 15 per centum of the amount received pursuant to section 401(b) of the Act in any fiscal year (not including any amount used for purposes of section 431(a)(3) of the Act) shall be used for special programs or projects for the education of children with specific learning disabilities and handicapped children, and

(c) not more than the greater of (1) 15 per centum of the amount which such State receives pursuant to section 401(b) of the Act in any fiscal year, or (2) the amount available by appropriation to such State in the fiscal year ending June 30, 1973, for purposes covered by section 431(a)(3) of the Act shall be used for purposes of section 431(a)(3) of the Act (relating to strengthening State and local educational agencies).

(20 U.S.C. 1803(a)(8))

Comment. The following example shows how the set-asides referred to in the above section should be calculated:

Assume that a State has an allotment of $1 million for Part B and an allotment of $1 million for Part C.

The set-aside for section 431(a)(3) purposes should be calculated first since this amount is deducted from the base figure for calculating the set-asides for administration and for the education of children with specific learning disabilities and handicapped children. The State may use for the purpose of strengthening State and local educational agencies an amount not to exceed the greater of: (1) 15 percent of the State's Part C allotment or (2) the amount available to that State for section 431(a)(3) purposes in fiscal year 1973. Assuming that the 15 percent figure is the larger and assuming the full 15 percent is used for this purpose, the set-aside would be $150,000 in this example.

The next set-aside to be calculated is the 5 percent maximum for administration. In the present example, this would be 5 percent of the $1 million for Part B plus 5 percent of the remaining $850,000 for Part C. (It should be noted that the statute provides that in the first year of consolidation a State can use up to the amount available to that State in fiscal year 1973 for administration of the categorical programs if this amount is greater than the 5 percent figure. In subsequent years the State can use for administration up to the 5 percent figure referred to above or

$225,000, whichever is greater. For the purposes of this example, the 5 percent figure is used to calculate the amount available for State administration.) Thus, in the example, administrative expenses cannot exceed $50,000 for administration of Part B and $42,500 for administration of Part C.

The last set-aside to be calculated is 15 percent (as a minimum) of the Part C allotment (after the set-aside for strengthening State and local educational agencies is taken out) for special programs or projects for the education of children with specific learning disabilities and handicapped children. In this example, the 15 percent set-aside would be calculated against $850,000 and would equal $127,500.

In the example, therefore, of the $1 million allotted for Part B, $50,000 is available for administration and the remaining $950,000 is available for program purposes.

Of the $1 million allotted for Part C, assuming $150,000 is set aside for strengthening State and local educational agencies and assuming $42,500 is set aside for administration of the annual program plan for Title IV, $807,500 ($1 million—($150,000+$42,500) is available for program purposes, and of that amount at least $127,500 is for programs for the handicapped.

§ 134.19 Use and access by handicapped persons.

The annual program plan shall provide assurances that in the case of any project for the repair, remodeling, or construction of facilities, that the facilities shall be accessible to and usable by handicapped persons.

(20 U.S.C. 1803(a)(9))

§ 134.20 Commingling of funds.

The annual program plan shall set forth policies and procedures which give satisfactory assurance that Federal funds made available under Title IV of the Act for any fiscal year will not be commingled with State funds.

(20 U.S.C. 1803(a)(10))

§ 134.21 Maintenance of expenditures from non-Federal sources.

The annual program plan shall give satisfactory assurance that the aggregate amount to be expended by the State and its local educational agencies from funds derived from non-Federal sources for programs described in section 421(a) of the Act for a fiscal year will not be less than the amount so expended for the preceding fiscal year.

(20 U.S.C. 1803(a)(11))

Requirements Relating to Certain Annual Program Plan Provisions

§ 134.37 Application by a local educational agency.

(a) The application by a local educational agency under § 134.17 shall be submitted to the State educational agency in accordance with such instructions and forms as the State educational agency may prescribe, consistent with the requirements of Title IV of the Act, this part, and Parts 134a and 134b of this chapter.

(b) The submission of a single application under § 134.17 shall not preclude the State educational agency from making separate subgrants under Parts B and C of Title IV of the Act to the local educational agency.

(20 U.S.C. 1803(a)(7); H. Rept. No. 93-805, p. 26 (1974))

§ 134.38 State administrative funds in fiscal year 1976.

(a) Funds provided under § 134.18(a) for administration of the annual program plan shall be used only for the administration of the State's annual program plan under Title IV of the Act.

(b) Funds for State administration in fiscal year 1976 of Titles II and III of the Elementary and Secondary Education Act of 1965 and Title III-A of the National Defense Education Act of 1958 may be drawn from the respective allotments for such programs under section 401(c) (1) and (2) of the Act, subject to any applicable limitations on State administrative funds set forth in such Acts.

(20 U.S.C. 1801; 1803(a)(8))

§ 134.41 Data relating to maintenance of expenditures from non-Federal sources.

The State educational agency shall collect and maintain data to verify compliance with the provision set forth in § 134.21, and make such data available to the Commissioner on request.

(20 U.S.C. 1803(a)(11))

Subpart C—State Advisory Council

§ 134.50 Establishment.

Any State which desires to receive grants under Title IV of the Act shall establish an advisory council as provided in section 403(b) of the Act.

(20 U.S.C. 1803(a))

§ 134.51 Membership.

The membership of the State advisory council shall be broadly representative of the cultural and educational resources of the State and of the public, and shall include at least one person representative of each of the following:

(a) public elementary and secondary schools;

(b) private elementary and secondary schools;

(c) institutions of higher education;

(d) fields of professional competence in dealing with children needing special education because of physical or mental handicaps;

(e) fields of professional competence in dealing with children needing special education because of specific learning disabilities;

(f) fields of professional competence in dealing with children needing special education because of severe educational disadvantage;

(g) fields of professional competence in dealing with children needing special education because of limited English-speaking ability;

(h) fields of professional competence in dealing with children needing special education because they are gifted or talented; and

(i) fields of professional competence in guidance and counseling.

(20 U.S.C. 1803(b)(1)(A); H. Rept. No. 93-805, p. 28 (1974))

§ 134.52 Certification and qualification of members.

(a) The certification required under section 403(b)(2) of the Act shall include the name of each person who is to serve on the State advisory council (including the name of the Chairman), the cultural or educational reources of the State which each person represents, and a statement that the persons appointed are qualified to represent those resources.

(20 U.S.C. 1803(b)(2))

(b) The State shall maintain on file, and furnish to the Commissioner at his request, the qualifications of the persons appointed to the State advisory council.

(20 U.S.C. 1803(b)(1)(A))

§ 134.53 Advisory functions.

The State advisory council shall advise the State educational agency on the preparation of, and policy matters arising in the administration of, the annual program plan, including the development of criteria for the distribution of funds and the approval of applications for assistance under Title IV of the Act.

(20 U.S.C. 1803(b)(1)(B))

Comment. This section repeats the statutory language of section 403(b)(1)(B) of the Act. The State advisory council is required to advise on each of the matters set forth in that section: preparation of the annual program plan and policy matters arising in the administration of the annual program plan. The council shall advise regarding the development of criteria for the distribution of funds and shall advise regarding the approval of applications under Title IV of the Act.

§ 134.54 Notification of acceptance of certification.

The Commissioner will provide written notification to the State educational agency and the Chairman of the State advisory council when the certification under Section 403(b)(2) of the Act has been accepted.

(20 U.S.C. 1803(b) (2), (3))

§ 134.55 Evaluation of programs and projects.

(a) The State advisory council shall evaluate all programs and projects assisted under Title IV of the Act at least annually.

(b) Evaluations by the State advisory council shall include the scope and quality of programs and projects for children enrolled in public elementary and secondary schools and private nonprofit elementary and secondary schools.

(20 U.S.C. 1803(b)(1)(C), (D); 1806(a))

§ 134.56 Report to the Commissioner.

The State advisory council shall prepare at least annually and submit through the State educational agency a report of its activities, recommendations, and evaluations, together with such ad-

ditional comments as the State educational agency deems appropriate, to the Commissioner.

(20 U.S.C. 1803(b)(1)(D))

Subpart D—Outlying Areas; Departments of Defense and Interior

§ 134.70 Annual program plans.

(a) Any Outlying Area which desires to receive funds under Title IV of the Act shall submit an annual program plan which meets the substance of the requirements of Subpart B of this part, except §§ 134.14, 134.15, and 134.17.

(b) The Department of the Interior may apply for funds under section 402(a)(1) of the Act by submitting an annual program plan (to provide programs authorized by Title IV of the Act to children and teachers in elementary and secondary schools operated by it for Indian children) which meets the substance of the requirements of §§ 134.12(a), 134.16(a) (2) and (3), (b), 134.18(b) and 134.19, and section 434(b)(1)(B)(ii) of the General Education Provisions Act, as amended.

(c) The Department of Defense may apply for funds under section 402(a)(1) of the Act by submitting an annual program plan (to provide programs authorized by Title IV of the Act to children and teachers in its overseas dependents schools) which meets the substance of the requirements of §§ 134.12(a), 134.16(a) (2) and (3), (b), 134.18(b), 134.19, and section 434(b)(1)(B)(ii) of the General Education Provisions Act, as amended.

(20 U.S.C. 1802(a)(1))

Comment. Neither the Department of the Interior nor the Department of Defense may use the funds received for Part C programs for activities authorized by section 431(a)(3) of the Act.

§ 134.71 Application procedures.

(a) The Departments of Defense and Interior and the Outlying Areas may designate administrative units to submit applications for funds under Title IV of the Act.

(b) Applications under paragraph (a) of this section shall be submitted to the appropriate Department or Outlying Area in accordance with such instructions and forms as it may prescribe.

(c) Each application under paragraph (a) of this section shall include a description of the purposes for which such funds will be used.

(20 U.S.C. 1802(a)(1))

§ 134.72 Single application.

Administrative units designated under § 134.71(a) shall be required to submit only one application for funds under Title IV of the Act for any one fiscal year.

(20 U.S.C. 1802(a)(1))

§ 134.73 Distribution of funds on the basis of educational needs.

The Departments of Defense and Interior and each Outlying Area, receiving funds under Title IV of the Act, shall use a substantial amount of such funds to provide services, materials, and equipment to schools attended by children having the greatest educational needs for those services, materials, and equipment.

(20 U.S.C. 1802(a)(1))

§ 134.74 Apportionment of funds.

(a) Funds appropriated under section 402(a)(1) of the Act will be apportioned among the Outlying Areas and the Departments of Defense and Interior on the basis of the number of children enrolled in the schools of such Outlying Areas and Departments.

(b) The amount of funds of an Outlying Area or Department under paragraph (a) of this section which the Commissioner determines will not be required for any fiscal year will be reapportioned to the other Outlying Areas and Departments in proportion to their original apportionments for that year.

(20 U.S.C. 1802(a)(1))

Subpart E—Administration

§ 134.80 Allowable costs.

Allowability of costs under Title IV of the Act is governed by Subpart G of Part 100b of this chapter.

(20 U.S.C. 1803(a)(2))

§ 134.81 Standards for selection of personal property.

The State educational agency shall develop standards which may be used by local educational agencies in acquiring, under section 421(a) of the Act, expendable and non-expendable personal property (as defined in § 100.1 of this chapter) of appropriate quality and in appropriate quantities.

(20 U.S.C. 443(a)(4); 823(a)(2)(B)(i); 1803(a)(5); 1821(b); 1831(b))

Comment. This section is not intended to limit the complete discretion of local educational agencies (set forth in section 403(a)(5) of the Act) in determining how the funds it receives from appropriations made under Part B of Title IV of the Act will be divided among the various programs described in setcion 421 of the Act.

§ 134.82 Charges for use.

No charge shall be levied against children or school personnel for the ordinary use of expendable and nonexpendable personal property acquired under Title IV of the Act.

(20 U.S.C. 1801)

Subpart F—Participation by Children Enrolled in Private Schools

§ 134.89 Scope of subpart.

(a) For the purposes of this subpart, local educational agency means any local educational agency which is a recipient of funds under Title IV of the Act or which serves the area in which a program or project assisted under Title IV of the Act is located.

(b) For the purposes of this subpart, private school children means children who are enrolled in private nonprofit elementary and secondary schools in the school district of a local educational agency to which this subpart applies.

(20 U.S.C. 1806(a))

Comment. Section 406(a) of the Act requires that benefits be provided to private school children by any local educational agency "which is a recipient of funds under" Title IV of the Act "or which serves the area in which a program or project is located." No guidance is provided in the legislation itself or its legislative history as to how a local educational agency which does not receive funds under Title IV is to provide these benefits. Therefore, § 134.89(a) merely repeats the statutory language.

§ 134.90 Consultation with private school officials.

The local educational agency shall consult with appropriate school officials with respect to all matters including planning, relating to the requirements of this subpart prior to making any determinations or decisions affecting such matters.

(20 U.S.C. 1806 (a), (b))

§ 134.91 Benefits.

(a) The local educational agency shall provide for the benefit of private school children secular, neutral, and nonideological services, materials, and equipment authorized under Title IV of the Act, including the repair, minor remodeling, or construction of public school facilities as may be necessary for their provision (consistent with §§ 134.98 and 134.99).

(b) If the local educational agency determines that it is not feasible or necessary to locate the services, materials, and equipment referenced in paragraph (a) of this section in one or more private schools, the local educational agency shall provide such other arrangements as will assure equitable participation of private school children in the purposes and benefits of Title IV of the Act.

(20 U.S.C. 1806(a))

§ 134.92 Number of private school children to be served.

The number of private school children to receive benefits under Title IV of the Act shall be determined by the local educational agency on a basis comparable to that used in determining the number of children enrolled in public schools to receive such benefits.

(20 U.S.C. 1806(a))

§ 134.93 Expenditures.

Subject to § 134.94, the average expenditure per child for private school children who receive benefits under Title IV of the Act shall be equal to the average expenditure per child for children enrolled in public schools who receive such benefits.

(20 U.S.C. 1806(b))

§ 134.94 Criteria for adjustment of expenditures.

(a) The local educational agency shall adjust its average expenditure per private school child if (1) the needs of private school children with respect to benefits under Title IV of the Act differ from such needs of children enrolled in public schools, and (2) the actual cost per child of such benefits to meet the needs of private school children is lesser or greater than the actual cost per child of such benefits to meet the needs of public school children.

(b) Any such adjustments shall be designed to assure the equitable participation of private school children in the purposes and benefits of Title IV of the Act.

(20 U.S.C. 1806(a), (b))

§ 134.95 Concentration of programs or projects.

In addition to the requirements set forth in §§ 134.94 and 134.93, when funds available to a local educational agency under Title IV of the Act are used to concentrate programs or projects on a particular group, attendance area, or grade or age level, private school children who are included within the group, attendance area, or grade or age level selected for such concentration shall be assured equitable participation in the purposes and benefits of such programs or projects.

(20 U.S.C. 1806(b))

§ 134.96 Separate compliance for Parts B and C.

(a) Matters relating to assistance under Part C of Title IV of the Act shall have no bearing on a determination of whether a State or local educational agency is in compliance with section 406 of the Act or this subpart with respect to assistance under Part B of Title IV of the Act.

(b) Matters relating to assistance under Part B of Title IV of the Act shall have no bearing on a determination of whether a State or local educational agency is in compliance with section 406 of the Act or this subpart with respect to assistance under Part C of Title IV of the Act.

(20 U.S.C. 1801(a), (b))

§ 134.97 Information in the project application.

Each application submitted to the State educational agency shall (a) describe how the local educational agency will fulfill the requirements of §§ 134.90–134.95 (inclusive) and (b) contain information indicating: (1) the number of private school children in the school district of the local educational agency; (2) the number of private school children to be served by the project and the basis on which such children were selected; (3) the manner in which and the extent to which appropriate private school officials were consulted; (4) the places at which and the times during which private school children will be served; (5) the differences, if any, in the kind and extent of services to be provided public and private school children and the reasons for such differences; and (6) the adjustments (if any) which the local educational agency has made under §§ 134.93 and 134.94, and the basis on which such adjustments were made.

(20 U.S.C. 1806(a), (b))

§ 134.98 Control by public agency.

The control of funds provided under Title IV of the Act and title to materials, equipment, and property repaired, remodeled, or constructed therewith shall be in a public agency for the uses and purposes provided in Title IV of the Act, and a public agency shall administer such funds and property.

(20 U.S.C. 1806(c)(1))

§ 134.99 Limitations on personnel providing services.

The provision of services pursuant to this subpart shall be provided by employees of a public agency or through contract by such public agency with a person, an association, agency, or corporation who or which in the provision of such services is independent of such private school and of any religious organization, and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under Title IV of the Act shall not be commingled with State or local funds.

(20 U.S.C. 1806(c)(2))

§ 134.100 Private schools not to benefit.

(a) Use of funds under Title IV of the Act shall not inure to the benefit of any private school.

(b) Personal property acquired under Title IV of the Act shall not become a part of the permanent structure of any private school and must be capable of being installed and removed without requiring remodeling of the premises.

(20 U.S.C. 1806(c); *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971))

§ 134.101 Avoidance of separate classes.

Any project to be carried out in public facilities which involves joint participation by children enrolled in private schools and children enrolled in public schools shall include such provisions as are necessary to avoid the separation of participating children by school enrollment or religious affiliation.

(20 U.S.C. 1806(a))

§ 134.102 Complaint procedure.

(a) Any organization or individual may file a written signed complaint with the State educational agency setting forth: (1) an allegation that, with respect to a program or project under Title IV of the Act being conducted or approved by the State educational agency to be conducted, eligible private school children will not receive benefits on an equitable basis, and (2) the facts on which such allegation is based.

(b) The State educational agency shall, within sixty days from the receipt of the complaint, file a report with the Commissioner, with a copy to the complainant and the affected local educational agency, setting forth the nature of the complaint and the actions taken to resolve the matter.

(c) If after such sixty-day period has elapsed, either the State educational agency, the affected local educational agency, the Commissioner, or the complainant feels that the problem has not been satisfactorily resolved, the Commissioner will review the matter and take appropriate action.

(20 U.S.C. 1806(e))

§ 134.103 Award of subgrants to local educational agencies.

The State educational agency shall not make any subgrant under Part B or Part C of Title IV of the Act which does not meet the requirements of section 406 of the Act and this subpart.

(20 U.S.C. 1806(a), (b))

§ 134.104 Waiver in the case of legal prohibition.

(a) If a State is prohibited by law from providing for the participation in programs of private school children as required under Section 406 of the Act and this subpart, the Commissioner may waive such requirements.

(20 U.S.C. 1806(d))

(b) The State educational agency shall not approve an application subject to paragraph (a) of this section until the Commissioner has waived such requirement.

(20 U.S.C. 1806 (a), (b), (d))

(c) The State educational agency shall promptly notify the Commissioner when approval of any application is being delayed under paragraph (b) of this section, and shall, in addition to the certification provided under § 134.13(a), provide the Commissioner with a written interpretation of the applicable law, prepared by the State attorney general or other appropriate State legal officer.

(20 U.S.C. 1232c(b)(1)(A)(ii)(III); 1806(d))

§ 134.105 Provision of services by the State educational agency.

(a) If at any time after the approval of its application, the local educational agency substantially fails to provide for the participation on an equitable basis of private school children as required by section 406 of the Act and this subpart, the State educational agency may make arrangements either directly or through contract (subject to the provisions in Subpart I of Part 100b of this chapter), for such participation.

(20 U.S.C. 1806(e))

(b) In each such case, the State educational agency shall promptly notify the Commissioner whether it intends to take action under paragraph (a) of this section.

(20 U.S.C. 1806(e))

Comment. This section provides State educational agencies with an opportunity to remedy substantial failures by local educational agencies to serve private school chil-

dren. If the State and local educational agency are the same (for example, in an Outlying Area), this section would not apply.

§ 134.106 Provision of services by the Commissioner.

In the case of a prohibition of law described in § 134.104(a), or if a State educational agency does not make satisfactory arrangements under § 134.105(a) within a reasonable period of time, the Commissioner will arrange for the provision of services to the affected private school children.

(20 U.S.C. 1806(e))

§ 134.107 Cost of services under an arrangement by the State educational agency or the Commissioner.

(a) When the State educational agency makes arrangements for services under § 134.105, it shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate amount granted to the affected local educational agency.

(b) When the Commissioner makes arrangements for services under § 134.106, he shall, after consultation with the appropriate public and private school officials, pay the cost of such services from the appropriate allotment of the State under Title IV of the Act.

(20 U.S.C. 1806(f))

§ 134.108 Suspension and termination.

(a) Section 434(c) of the General Education Provisions Act (as amended) (1) requires that whenever the Commissioner finds, after reasonable notice and an opportunity for hearing, that there has been a failure by a recipient to comply substantially with the terms of a Federal program for which the Commissioner has administrative responsibility, he shall notify such recipient that payments will not be made to such recipient under that program until there is no longer any such failure to comply, and (2) provides for suspension of payments to the recipient pending such hearing.

(20 U.S.C. 1232c(c))

(b) Since the Commissioner will provide services under § 134.106 only where a State or local educational agency has failed to comply substantially with section 406 of the Act, section 434(c) of the General Education Provisions Act requires that payments shall be withheld from such State or local educational agency until there is no longer any such failure to comply.

(c) Where the Commissioner proposes to provide services under § 134.106, the notice and opportunity for hearing provided under section 406(g)(1) of the Act shall be combined with the notice and opportunity for hearing provided under section 434(c) of the General Education Provisions Act.

(20 U.S.C. 1232c(c); 1806(g)(1))

(d) This section shall not apply where the Commissioner has granted a waiver under § 134.104(a).

(20 U.S.C. 1232c(c); 1806(d), (e))

Comment. Under section 406(d) of the Act, the Commissioner may (but is not required to) waive the requirement of section 406 where a State is prohibited by law from providing for the participation of private school children under Title IV. Section 406(e), which applies to situations where a State or local educational agency has "substantially failed" to provide for such participation, does not authorize the Commissioner to waive the requirement of section 406. Therefore, in those cases in which no waiver is granted and there is substantial failure, the local educational agency would lose its Title IV funds for the affected Part.

This statutory language is in contrast with the provisions applicable to Title I of the Elementary and Secondary Education Act (which were enacted in the same law as Title IV—Pub. L. 93-380). The Title I provisions specifically require the Commissioner to waive the requirement for participation of private school children when he arranges for services to them, both where there is a legal prohibition and where there has been a substantial failure by the local educational agency. (See sections 141A(b)(1) and 141A(b)(2) of Title I, added by section 101(a)(6) of Pub. L. 93-380.)

If the requirement for participation under section 406 is not waived (and in the case of substantial failure, it cannot be waived), a finding of failure to comply with section 406 (for the purposes of section 406(d) and (e)) would also constitute a "failure * * * to comply substantially" with the terms of Title IV under section 434(c) of the General Education Provisions Act (added by Section 511 of Pub. L. 93-380). This section of the regulations combines the necessary proceedings under section 406(g)(1) of Title IV and section 434(c) of the General Education Provisions Act.

§ 134.109 Notice; opportunity for hearing; judicial review.

Final actions by the Commissioner under this subpart are subject to the requirements relating to notice, opportunity for hearing, and judicial review set forth in section 406(g) of the Act.

(20 U.S.C. 1806(g))

PART 134a—LIBRARIES AND LEARNING RESOURCES

Subpart A—General

Sec.

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Subpart B—School Library Resources, Textbooks, and Other Instructional Materials

134a.10 Consideration of the needs of occupational education.
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134a.20 Expansion or improvement of services.

AUTHORITY: Part B of Title IV, Pub. L. 89-10, as amended, 88 Stat. 542-543 (20 U.S.C. 1821), unless otherwise noted.

Subpart A—General

§ 134a.1 Scope.

(a) This part applies to Federal financial assistance under Part B of Title IV of the Act (as defined in § 134.2 of this chapter).

(b) Regulations applicable to both Part B and Part C of the Act are set forth in Part 134 of this chapter.

(20 U.S.C. 1801, 1821)

§ 134a.2 Authorized activities.

Each State may receive a grant under this part (pursuant to the annual program plan approved under section 403 of the Act):

(a) for the acquisition of school library resources, textbooks, and other printed and published instructional materials for the use of children and teachers in public and private elementary and secondary schools;

(b) for the acquisition of instructional equipment (including laboratory and other special equipment, including audio-visual materials and equipment suitable for use in providing education in academic subjects) for use by children and teachers in elementary and secondary schools, and for minor remodeling of laboratory or other space used by such schools for such equipment; and

(c) for (1) a program of testing students in the elementary and secondary schools,

(2) programs of counseling and guidance services for students at the appropriate levels in elementary and secondary schools designed (i) to advise students of courses of study best suited to their ability, aptitude, and skills, (ii) to advise students with respect to their decisions as to the type of educational program they should pursue, the vocation they should train for and enter, and the job opportunities in the various fields, and (iii) to encourage students to complete their secondary school education, take the necessary courses for admission to postsecondary institutions suitable for their occupational or academic needs, and enter such institutions, and such programs may include short-term sessions for persons engaged in guidance and counseling in elementary and secondary schools, and

(3) programs, projects, and leadership activities designed to expand and strengthen counseling and guidance services in elementary and secondary schools.

(20 U.S.C. 1821(a))

§ 134a.3 Distribution of resources.

(a) Local educational agencies receiving funds under § 134.14(a)(1)(ii) (for children whose education imposes a higher than average cost per child, such as children from low-income families, children living in sparsely populated areas, and children from families in which English is not the dominant language) shall use such funds (taking into account the requirements of section 406 of the Act) to provide services, materials, and equipment under Part B of Title IV of the Act (1) in schools attended by such children (subject to § 134.91(b)) and (2) for the benefit of such children.

(20 U.S.C. 1803(a)(4)(ii))

(b) Local educational agencies receiving funds under § 134.14(a)(1) of this

chapter (except subdivision (ii) thereof) may concentrate the services, materials, and equipment provided under Part B of Title IV of the Act in one or more schools according to the educational needs of the children attending such schools (taking into account the requirements of Section 406 of the Act).

(20 U.S.C. 1803(a)(4))

§ 134a.4 Administrative costs of local educational agencies.

No administrative costs, except those properly incurred by the State educational agency, shall be allowable under Part B of Title IV of the Act, either on a direct cost or on an indirect cost basis.

(20 U.S.C. 1821 (a), (b))

§ 134a.5 Allowable costs.

(a) For the purposes of this part, "acquisition," as defined in § 100.1 of this chapter, may include the costs of processing and installation.

(b) Expenditures for equipment under this part may include (1) the cost of raw or processed materials or component parts to be made into finished products, and (2) the cost of making and assembling the equipment.

(20 U.S.C. 1821(a) (1) and (2))

Subpart B—School Library Resources, Textbooks, and Other Instructional Materials

§ 134a.10 Consideration of the needs of occupational education.

The State educational agency shall develop specific criteria to be used by local educational agencies in acquiring school library resources, textbooks, and other instructional materials under section 421(a)(1) of the Act so as to give consideration to the needs for instruction, orientation, and guidance and counseling in occupational education. Such consideration shall be on a basis equal with the consideration given to meeting other educational needs.

(20 U.S.C. 1821(b); 823(a)(3)(D))

§ 134a.11 Distribution and control.

From funds made available for administration of the annual program plan, State educational agencies may make available to local educational agencies funds for the distribution and control of school library resources, textbooks, and other printed and published instructional materials acquired under § 134a.2 (a) for the use of children and teachers in public and private elementary and secondary schools.

(20 U.S.C. 1821(b); 823(a)(2)(B)(ii))

Subpart C—Instructional Equipment and Minor Remodeling

§ 134a.20 Expansion or improvement of services.

The State educational agency may use funds it receives for administration of Part B of Title IV of the Act for expansion or improvement of supervisory or related services in public elementary and secondary schools in the fields of academic subjects, as well as other authorized activities.

(20 U.S.C. 1821(b); 443(a)(5)(A))

PART 134b—EDUCATIONAL INNOVATION AND SUPPORT

Subpart A—General

Sec.
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134b.2 Authorized activities.
134b.3 Participation in planning and carrying out of projects.

Subpart B—Supplementary Centers and Services

134b.10 Activities.

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134b.20 Health and nutrition projects.

Subpart D—Strengthening State and Local Educational Agencies

State Educational Agencies

134b.30 State educational agency activities.
134b.31 Interstate transfer funds.

Local Educational Agencies

134b.40 Local educational agency activities.

Comprehensive Planning and Evaluation

134b.50 Comprehensive educational planning and evaluation activities.

Authority: Part C of Title IV, P.L. 89-10, as amended, 88 Stat. 543-544 (20 U.S.C. 1831), unless otherwise noted.

Subpart A—General

§ 134b.1 Scope.

(a) This part applies to Federal financial assistance under Part C of Title IV of the Act (as defined in § 134.2 of this chapter).

(b) Regulations applicable to both Part B and Part C of Title IV of the Act are set forth in part 134 of this chapter.

(20 U.S.C. 1801, 1831)

§ 134b.2 Authorized activities.

Each State may receive a grant under this part (pursuant to the annual program plan approved under section 403 of the Act):

(a) for supplementary educational centers and services to stimulate and assist in the provision of vitally needed educational services (including preschool education, special education, compensatory education, vocational education, education of gifted and talented children, and dual enrollment programs) not available in sufficient quantity or quality, and to stimulate and assist in the development and establishment of exemplary elementary and secondary school programs (including the remodeling, lease, or construction of necessary facilities) to serve as models for regular school programs;

(b) for the support of demonstration projects by local educational agencies or private educational organizations designed to improve nutrition and health services in public and private elementary and secondary schools serving areas with high concentrations of children from low-income families, and such projects may include payment of the cost of (1) coordinating nutrition and health service resources in the areas to be served by a project, (2) providing supplemental health, mental health, nutritional, and food services to children from low-income families when the resources for such services available to the applicant from other sources are inadequate to meet the needs of such children, (3) nutrition and health programs designed to train professional and other school personnel to provide nutrition and health services in a manner which meets the needs of children from low-income families for such services, and (4) the evaluation of projects assisted with respect to their effectiveness in improving school nutrition and health services for such children;

(c) for strengthening the leadership resources of State and local educational agencies, and for assisting those agencies in the establishment and improvement of programs to identify and meet educational needs of States and of local school districts;

(d) for making arrangements with local educational agencies for the carrying out by such agencies, in schools which (1) are located in urban or rural areas, (2) have a high percentage of children from low-income families, and (3) have a high percentage of such children who do not complete their secondary school education, of demonstration projects involving the use of innovative methods, systems, materials, or programs which show promise of reducing the number of such children who do not complete their secondary school education."

(20 U.S.C. 1831(a))

Comment. Section 134b.2 repeats the statutory language in section 431(a) of the Act. With respect to § 134b.2(d), which refers to "schools * * * located in urban or rural areas," neither the Act nor its legislative history suggests what type or types of area should be excluded from this phrase (if any). It is the interpretation of the Commissioner that there is no type of area that would be excluded as not falling within the meaning of the terms "urban" or "rural areas."

§ 134b.3 Participation in planning and carrying out of projects.

Each application from a local educational agency for a subgrant for the purposes of § 134b.2 (a), (b), or (d) shall describe how persons broadly representative of the cultural and educational resources of the area to be served are being involved in the planning and carrying out of the programs or projects to be supported.

(20 U.S.C. 1832)

Subpart B—Supplementary Centers and Services

§ 134b.10 Activities.

Activities authorized under § 134b.2(a) are:

(a) planning for and taking other steps leading to the development of programs or projects designed to provide supplementary educational activities and services described in paragraphs (b) and (c) of this section, including pilot projects designed to test the effectiveness of plans so developed;

(b) the establishment or expansion of exemplary and innovative educational programs for the purpose of stimulating

the adoption of new educational programs (including those described in § 134b.30(d) and special programs for handicapped children) in the schools of the State; and

(c) the establishment, maintenance, operation, and expansion of programs or projects, including the acquisition of necessary equipment, designed to enrich the programs of local elementary and secondary schools and to offer a diverse range of educational experience to persons of varying talents and needs by providing, especially through new and improved approaches, supplementary educational services and activities, such as:

(1) remedial instruction, and school health, physical education, recreation, psychological, social work, and other services designed to enable and encourage persons to enter, remain in, or reenter educational programs, including the provision of special educational programs and study areas during periods when schools are not regularly in session;

(2) comprehensive academic services and where appropriate, vocational guidance and counseling, for continuing adult education;

(3) programs designed to encourage the development in elementary and secondary schools of occupational information and counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education;

(4) specialized instruction and equipment for students interested in studying advanced scientific subjects, foreign languages, and other academic subjects which are not taught in the local schools or which can be provided more effectively on a centralized basis, or for persons who are handicapped or of preschool age;

(5) making available modern educational equipment and specially qualified personnel, including artists and musicians, on a temporary basis for the benefit of children in public and other nonprofit schools, organizations, and institutions;

(6) developing, producing, and transmitting radio and television programs for classroom and other educational use;

(7) in the case of any local educational agency which is making a reasonable tax effort but which is nevertheless unable to meet critical educational needs (including preschool education), because some or all of its schools are seriously overcrowded, obsolete, or unsafe, initiating and carrying out programs or projects designed to meet those needs, particularly those which will result in more effective use of existing facilities;

(8) providing special educational and related services for persons who are in or from rural areas or who are or have been otherwise isolated from normal educational opportunities, including, where appropriate, the provision of mobile educational services and equipment, special home study courses, radio, television, and related forms of instruction, bilinqual education methods and visiting teachers' programs;

(9) encouraging community involvement in educational programs;

(10) providing programs for gifted and talented children; and

(11) other specially designed educational programs or projects which meet the purposes of this subpart.

(20 U.S.C. 1831(b); 843(b))

Subpart C—Health and Nutrition

§ 134b.20 Health and nutrition projects.

A demonstration project under section 431(a)(2) of the Act may be administered by a private educational organization only if: (a) such organization meets the requirements of § 134.99 of this chapter, and (b) such organization administers the project under a contract with a local educational agency.

(20 U.S.C. 1806(c); 1831(a)(2); 1803 (a)(4)(B), (a)(8(A))

Subpart D—Strengthening State and Local Educational Agencies

STATE EDUCATIONAL AGENCIES

§ 134b.30 State educational agency activities.

Funds available under § 134b.2(c) may be used by the State education agency for the planning of, and for programs for, the development, improvement, or expansion of activities promoting the purposes set forth in § 134b.2(c), such as:

(a) Educational planning on a statewide basis, including the identification of educational problems, issues, and needs in the State and the evaluation on a periodic or continuing basis of education programs in the State;

(b) Providing support or services for the comprehensive and compatible recording, collection, processing, analyzing, interpreting, storing, retrieving, and reporting of State and local educational data, including the use of automated data systems;

(c) Dissemination or support for the dissemination of information relating to the condition, progress, and needs of education in the State;

(d) Programs for conducting, sponsoring, or cooperating in educational research and demonstration programs and projects such as (1) the development in elementary and secondary schools of programs of occupational information, counseling and guidance, and instruction in occupational education on an equal footing with traditional academic education, (2) establishing and maintaining curriculum research and innovation centers to assist in locating and evaluating curriculum research findings, (3) discovering and testing new educational ideas (including new uses of printed and audio-visual media) and more effective educational practices and putting into use those which show promise of success, and (4) studying ways to improve the legal and organizational structure for education and the management and administration of education in the State;

(e) Publication and distribution, or support for the publication and distribution, of curricular materials collected and developed at curriculum research centers and elsewhere;

(f) Programs to improve the quality of teacher preparation, including student-teaching arrangements, in cooperation with institutions of higher education and local educational agencies;

(g) Programs and other activities specifically designed to encourage the full and adequate utilization and acceptance of auxiliary personnel (such as teacher aides) in elementary and secondary schools on a permanent basis;

(h) Studies or support for studies concerning the financing of public education in the State;

(i) Support for statewide programs designed to measure the educational achievement of pupils;

(j) Training and otherwise developing the competency of individuals who serve State or local educational agencies and provide leadership, administrative, or specialist services throughout the State, or throughout the area served by a local educational agency, through the initiation, improvement, and expansion of activities such as (1) sabbatical leave programs, (2) fellowships and traineeships (including educational expenses and the cost of travel) for State educational agency personnel to pursue graduate studies, and (3) conducting institutes, workshops, and conferences (including related costs of operation and payment of the expenses of participants);

(k) Providing local educational agencies and the schools of those agencies with consultative and technical assistance and services relating to academic subjects and to particular aspects of education such as the education of the handicapped, and gifted and talented children, school building design and utilization, school social work, the utilization of modern instructional materials and equipment, transportation, educational administrative procedures, and school health, physical education, and recreation;

(l) Evaluation and demonstration projects to insure that benefits obtained by children in Head Start and other preschool programs are not lost during their early elementary school years, but are instead enhanced so as to provide continuity in and accelerated development of the child's learning, academic and other social achievements; and

(20 U.S.C. 1831(b); 863)

(m) Experimental projects for developing State leadership or for the establishment of special services which hold promise of making a substantial contribution to the solution of problems common to the State educational agencies of all or several States.

(20 U.S.C. 1831(b); 865)

§ 134b.31 Interstate transfer of funds.

One or more State educational agencies may, consistent with State law, transfer grant funds to another State agency or combine grant funds from several State educational agencies for the joint support of the cost of carrying out one or more programs or activities which may

be conducted pursuant to the provisions of section 431(a)(3) of the Act, including experimental projects for developing State leadership and the establishment of special services which hold promise of making a substantial contribution to the State educational agencies of all or several States. Such funds shall be administered by the receiving State on behalf of all of the participating States.

(20 U.S.C. 1831(b); 862(b)(2))

LOCAL EDUCATIONAL AGENCIES

§ 134b.40 Local educational agency activities.

(a) Funds available under § 134b.2(c) may be used to stimulate and assist local educational agencies in strengthening the leadership resources of their districts, and to assist those agencies in the establishment and improvement of programs to identify and meet the educational needs of their districts.

(20 U.S.C. 1831(b); 866(a))

(b) Activities authorized under paragraph (a) of this section may include:

(1) Educational planning on a district basis, including the identification of educational problems, issues, and needs in the district and the evaluation on a periodic or continuing basis of educational programs in the district;

(2) Providing support or services for the comprehensive and compatible recording, collecting, processing, analyzing, interpreting, storing, retrieving, and reporting of educational data including the use of automated data systems;

(3) Programs for conducting, sponsoring, or cooperating in educational research and demonstration programs and projects such as (i) establishing and maintaining curriculum research and innovation centers to assist in locating and evaluating curriculum research findings, (ii) discovering and testing new educational ideas (including new uses of printed and audiovisual media) and more effective educational practices, and putting into use those which show promise of success, and (iii) studying ways to improve the legal and organizational structure for education, and the management and administration of education in the district of such agency;

(4) Programs to improve the quality of teacher preparation, including student-teaching arrangements, in cooperation with institutions of higher education and State educational agencies;

(5) Programs and other activities specifically designed to encourage the full and adequate utilization and acceptance of auxiliary personnel (such as instructional assistants and teacher aides) in elementary and secondary schools on a permanent basis;

(6) Providing such agencies and the schools of such agencies with consultative and technical assistance and services relating to academic subjects and to particular aspects of education such as the education of the handicapped, the gifted and talented, and the disadvantaged, vocational education, school building design and utilization, school social work, the utilization of modern instructional materials and equipment, transportation, educational administrative procedures, and school health, physical education, and recreation;

(7) Training programs for the officials of such agencies; and

(8) Carrying out any such activities or programs, where appropriate, in cooperation with other local educational agencies.

(20 U.S.C. 1831(b); 866(b))

COMPREHENSIVE PLANNING AND EVALUATION

§ 134b.50 Comprehensive educational planning and evaluation activities.

(a) Funds available under § 134b.2(c) may be used for activities by State and local educational agencies in order to assist and stimulate them to enhance their capability to make effective progress, through comprehensive and continuing planning and evaluation, toward the achievement of opportunities for high-quality education for all segments of the population.

(20 U.S.C. 1831(b); 867(a))

(b) Funds available to local educational agencies under paragraph (a) of this section may be used for demonstration projects to plan, develop, test, and improve planning and evaluation systems and techniques consistent with, and to further the purposes of, paragraph (a) of this section.

(20 U.S.C. 1831(b); 867a(b)(5))

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TUESDAY, NOVEMBER 18, 1975



PART III:

FEDERAL TRADE COMMISSION

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PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Final Regulations, Proposed Amendment and Statement of Basis and Purpose

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Promulgation of Trade Regulation Rule and Statement of Basis and Purpose

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, *et seq.*, the provisions of Part I, Subpart B, of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, *et seq.*, and Section 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code (Administrative Procedure) has conducted a proceeding for the promulgation of a Trade Regulation Rule concerning Preservation of Consumers' Claims and Defenses. The proposed rule was published in the FEDERAL REGISTER for comments and hearings thereon on January 26, 1971 (36 F.R. 1211). A revised version thereof was published in the FEDERAL REGISTER for comments and hearings thereon on January 5, 1973 (38 F.R. 892).

Written comments from interested parties have been received by the Commission. Public hearings have been held in New York, New York (June 7–9, 1971); Chicago, Illinois (July 12–14, 1971; May 7–9, 1973); and Washington, D.C. (September 20–23, 1971 and March 12–15, 1973). See 36 FR 6592, 7865; and 38 FR 8600.

Accordingly, the Commission hereby amends Subchapter D, Trade Regulation Rules, Chapter I of 16 CFR by adding a new Part 433 as follows:

Sec.
433.1 Definitions.
433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

AUTHORITY: 38 Stat. 717, as amended; (15 U.S.C. 41, *et seq.*)

§ 433.1 Definitions.

(a) *Person.* An individual, corporation, or any other business organization.

(b) *Consumer.* A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor.* A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; *Provided,* such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan.* A cash advance which is received by a consumer in return for a "Finance Charge" within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who (1) refers consumers to the creditor or (2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) *Financing a sale.* Extending credit to a consumer in connection with a "Credit Sale" within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract.* Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement.* Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer.* A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract.* Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan" transaction or a "financed sale" as defined in paragraphs (d) and (e).

(j) *Seller.* A person who, in the ordinary course of business, sells or leases goods or services to consumers.

§ 433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of Section 5 of that Act for a seller, directly or indirectly, to:

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or, (b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICE OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Effective: May 14, 1976.

Promulgated by the Federal Trade Commission November 14, 1975.

CHARLES A. TOBIN,
Secretary.

STATEMENT OF BASIS AND PURPOSE

PREFACE

It is the Commission's purpose, in issuing this statement, to review thoroughly the information, data, and tesimony which was received in the course of proceedings on this rule. It is also the Commission's purpose to state, with particularity, the purpose of each provision of the rule together with the Commission's reasons for adopting certain revisions as a result of information elicited during these proceedings.

The precise format of such statements may change from rule to rule, as a function of the complexity of the issues involved and the nature and extent of information received and evaluated.

CHAPTER I. HISTORY OF THE PROCEEDING

On January 21, 1971, the Commission announced a Trade Regulation Rule to Preserve Buyers' Claims and Defenses in Consumer Installment Sales.[1] The proposed rule was published in the FEDERAL REGISTER on January 26, 1971.[2] All interested parties were invited to file written data, views, or arguments concerning the proposed rule or to testify at public hearings in Washington, D.C.,[3] New York City,[4] and Chicago.[5]

As a result of the public record developed in the initial round of hearings, the Commission published a revised version of its proposed rule entitled Preservation of Consumers' Claims and Defenses on January 5, 1973.[6] In the reopened proceeding hearings were held in Washington, D.C.[7] and Chicago.[8] The closing date for written comments and submissions was June 11, 1973.[9]

In the course of two rounds of hearings on this rule, conducted by the Assistant Director for Rulemaking,[10] every person who expressed a desire to present his views had an opportunity to do so. The 2,250 page transcript of the hearings has been included in the public record of these proceedings, together with 7,362 pages of written comment.[11] In this *Statement* references to the transcript of hearings are designated by the prefix "Tr." References to written submissions on the record are designated by the prefix "R".

As a result of the information, testimony, and data elicited in the course of proceedings on this rule, the Commission has concluded that final enactment of a revised version of the rule would be in the public interest. The final revisions are fully explained herein below and supported by substantial evidence on the record of this proceeding.

Accordingly, pursuant to Section 6(g) of the Federal Trade Commission Act together with Section 202 (c) of the Federal Trade Commission Improvements Act (Public Law 93–637, January 4, 1970), the Commission herewith announces final adoption of its Trade Regulation Rule pertaining to Preservation of Consumers' Claims and Defenses in credit-sale transactions. *This Statement of Basis and Purpose* is published to

See footnotes at end of chapter.

define, with particularity, the reasons the Commission has decided to take this action together with the purposes of the rule.

[1] FTC News Release of January 21, 1971.
[2] 36 FR 1211.
[3] 36 FR 7865 (April 27, 1971). Washington hearings were originally scheduled to begin May 10, 1971, but were rescheduled and held September 20–23, 1971.
[4] 36 FR 6592 (April 7, 1971). Hearings were held in New York on June 7–9, 1971 at the Federal Building, 26 Federal Plaza (Foley Square).
[5] 36 FR 7865 (April 27, 1971). Hearings were held in Chicago on July 12–14, 1971 at the Everett Dirksen Building.
[6] 38 FR 892.
[7] March 12–15, 1973.
[8] 38 FR 8600 (April 4, 1973). Hearings were held May 7–9, 1973 at the La Salle Hotel.
[9] 38 FR 8600 (April 4, 1973).
[10] Pursuant to Commission Directive, 35 FR 15164.
[11] F.T.C. File 215–31.

CHAPTER II. BACKGROUND

General introduction. In 1971, the year this proceeding was commenced, aggregate consumer installment debt in the United States amounted to 137.2 billion dollars.[1] This figure represented a five-fold increase in outstanding consumer credit from the year 1950, for a compound annual growth rate, over the 21 year period of 9 percent.[2] Forty-eight percent of all U.S. families allocated some 14.7 percent of all U.S. disposable personal income to the repayment of installment obligations.[3] By 1974, aggregate installment indebtedness had increased to 154.5 billion dollars, a large part of which was employed in the acquisition of consumer goods and services.[4]

Over the past two decades, banks and credit unions have vigorously pursued emerging opportunities in the consumer credit market. They held 54.4 billion dollars in consumer installment credit as of December 1970, or 53.8% of the market. In December 1950, commercial banks and credit unions held only 6.3 billion dollars in consumer installment credit.[5] Manufacturers of automobiles and other "large ticket" items in the consumer inventory have created huge consumer finance subsidiaries to meet the needs of both dealers and consumers. At the same time, large independent consumer finance companies have experienced equally prodigious growth in servicing demand from consumers who do not or cannot obtain bank credit. Finally, the larger retail establishments have created credit departments and subsidiaries to service customers at the same location where purchases are made.[6]

Credit institutions have thus become active, and frequently dominant, partners in the retail distribution of consumer goods and services. In many instances, they finance dealers and consumers alike, extending credit for the acquisition of inventory and receiving increased "acceptance" or "discount" business from the dealer as his business grows.[7] Where smaller retailers lack the resources or volume to justify a credit subsidiary or a continuing relationship with an acceptance company, it is not uncommon for them to enter into one or more formal or informal arrangements with consumer finance outlets serving their community. Buyers may be referred for loans to a cooperative consumer finance company on a more periodic basis.

As of August, 1974, finance companies, retailers, and other financial institutions which are directly subject to the Federal Trade Commission's jurisdiction held in excess of 75 billion dollars in consumer installment debt.[8] This constitutes a major commitment to the retailer market on the part of these institutions. It is this major commitment, together with widespread evidence of abuse and injury discussed below in this *Statement*, which suggests a need for this rule. The rule is directed at what the Commission believes to be an anomaly. To a varying extent, depending on the jurisdiction where a credit sale is completed and the procedure employed to execute the sale, the party financing the transaction is able to assert rights which are superior to those of the seller. The creditor may assert his right to be paid by the consumer despite misrepresentation, breach of warranty or contract, or even fraud on the part of the seller, and despite the fact that the consumer's debt was generated by the sale.

How sellers separate the consumer's duty to pay from the seller's duty to perform. There are two methods of eliminating creditor exposure to consumer claims or defenses arising from a credit sale. In the first case the seller is the initial creditor. He executes a retail installment sales agreement with his buyer, together with a promissory note where this is permitted, and he then sells (discounts) the contract and/or note to a sales finance company or a bank. In the second case the seller acts as a conduit, referring his buyers to local consumer finance outlets for personal loans, the proceeds of which are then applied to cash purchases. Where the arranged loan is used, the goods purchased are usually collateral for the debt.

Installment sales transactions: The discount method. Sellers and creditors may succeed in insulating the creditor's claim to repayment from any and all seller misconduct in the underlying transaction by compelling the consumer buyer to enter the commercial paper market. This is accomplished by the use of promissory notes, in the sales finance component of the transaction, or by the incorporation of a waiver of defenses clause in a retail installment sales contract.

The use of a promissory note entails the execution and subsequent assignment of what commercial law calls a "negotiable instrument." Under Article Three of the Uniform Commercial Code, pre-existing equities are foreclosed when a negotiable instrument is purchased by a third party in good faith and without notice of claims, defenses, or infirmities arising from the transaction between the makers. When a third party purchases a consumer's promissory note, he will receive the note as a "holder in due course" free and clear of any claim or grievance that the consumer may have with respect to the seller. He may claim and receive payment notwithstanding anything that may have been done or said by the seller in the prior transaction which spawned the note, provided he has no knowledge of seller misconduct.

The definition of "holder in due course" which appears in Article Three of the UCC is a recapitulation of principles which were first articulated in *Miller v. Race*, 97 Eng. Rep. 398 (K.B. 1758). To protect the burgeoning commercial paper market the court in *Miller* decided that a bona fide purchaser of an instrument which was negotiable on its face should not be required to look behind the face of the obligation. A promissory note drawn on the bank of England was stolen and subsequently sold to a legitimate merchant. The court determined that the draft should be treated as money, and that the bona fide purchaser who had no notice of the history of the note would prevail over all other claimants. The rationale behind this decision was the social utility to be obtained from a system which encouraged and protected commercial transactions. If businessmen were required to look behind an instrument which on its face was negotiable, the soundness of the entire commercial system would be threatened. At that time promissory notes drawn on the bank of England were not "legal tender." Like modern day bank drafts, they changed hands frequently and rapidly and served many of the functions served by specie. These same principles underpinned the English Bills of Exchange Act of 1882 and the Uniform Negotiable Instruments Law enacted in this country in 1896. The Uniform Commercial Code superseded the Negotiable Instruments Law.

Over two centuries, the holder in due course doctrine has served the two-fold interest of liquidity and confidence in the commercial paper market.[9] The term negotiable instrument has come to encompass a variety of short and long term obligations. Included are checks, banker's acceptances, bills of exchange, letters of credit, bills of lading, and promissory notes. Each of these devices has a variety of commercial applications. Each is technically different from the rest, but all have one essential feature in common. They contain an "unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power. . . ."[10]

While the principles articulated in *Miller v. Race* have validity in commercial exchanges and transfers, their application to consumer credit sales is anomalous. Consumers are not in the same position as banks, bond issuers, or shippers of freight; nor are they in an equivalent position to vindicate their rights against a payee. The considerations which underpin the laws of negotiability have little or no application in consumer transactions where the integrity of the commercial paper market is not a concern. Unfortunately, where promissory notes are employed in connection with credit sales, consumers are forced

See footnotes at end of chapter.

to enter this market. The average consumer would hardly expect that his sales agreement will receive the same treatment as a sight draft on the Bank of England, in the event that his seller fails to perform as promised. This result is nonetheless assured. When an acceptance company purchases a consumer's promissory note and sends a payment book in the mail, it can assert rights which are superior to those of the seller. For the consumer to defeat the creditor's right to be paid in the face of gross seller misconduct, he must prove that the creditor holding the note had actual knowledge of seller abuse in the prior transaction. Where a negotiable instrument is employed in a consumer transaction, defeating holder in due course status is always difficult and often impossible.[11]

Where law or commercial expediency forbid the use of promissory notes in consumer sales, creditors and sellers still have an indirect procedure for accomplishing the same end. An assignee of a retail installment contract, as distinguished from a note because of the inclusion of mutual promises and obligations, may, under UCC 9-206, assert rights analogous to those of a holder in due course if the contract contains an "agreement not to assert defenses against an assignee." [12] Creditor and seller need only insert a waiver of defenses clause in the consumer's sales agreement with the seller. If the same tests of good faith and lack of notice are met, the creditor who buys the contract is in the same position as a holder in due course.

State law affecting the discount method. Some forty jurisdictions have enacted legislation bearing on foreclosures of equities in installment sales. Existing enactments fall into two categories. The first category consists of statutes which render "holder in due course" principles inapplicable in consumer sales transactions.[13] Such enactments prevent the use of negotiable instruments in credit sales, but often have no effect on the continuing use of a waiver of defenses to achieve the same result. The second category consists of "complaint period" statutes which restrict cut-offs of consumer rights for a stated time period during which the consumer is permitted, after receipt of notification that his obligation has been assigned to an acceptance company, to communicate sale-related grievances directly to the creditor.[14] Any claim or defense which is raised during this time may be asserted in a subsequent suit to defeat or diminish a creditor's claim for payment.

The original draft of the Uniform Consumer Credit Code (UCC) reflected both of these approaches. It invalidated the use of negotiable instruments in sales transactions. This prohibition was followed by two alternative approaches to waivers of defenses, designated alternative A and alternative B. Under alternative A, waivers of defenses were flatly prohibited. Under alternative B, a ninety-day complaint period was provided. Enacting states were free to select between the two alternative approaches to waivers. Of seven enacting jurisdictions all selected alternative B, and several reduced the length of the complaint period substantially.[15] Mounting criticism of the complaint period approach and unsatisfactory experiences in complaint period jurisdictions have induced the draftsmen of the revised UCC to delete alternative B.[16]

In addition to legislative enactments, judicial decisions in some jurisdictions have mitigated harsh applications of the law of negotiability in certain specific cases. Creditors have been held to share a sufficient community of interest and endeavor to persuade some jurists that "knowledge" should be imputed to the creditor or that the creditor should be liable as a primary party to the transaction.[17] The common law doctrine of unconscionability has also been used to set aside oppressive instances of boilerplate waivers of defenses on similar grounds.[18]

More recently, certain state courts have undertaken a frontal assult on the law of negotiability as it pertains to consumer transactions. These decisions suggest mounting expert opinion that commercial banking doctrines have no place in retail sales. The Georgia Court of Appeals recently held that retail installment contracts will no longer be treated as negotiable instruments.[19] The Florida courts have invalidated the use of boilerplate waivers of defenses;[20] and the California Supreme Court has extended application of a recent legislative enactment to place consumers in an offensive position, permitting the assertion of claims and defenses whether or not a creditor files suit for payment.[21]

These developments have had significant impact on the continuing vitality of these principles of law. They reflect widespread public concern about mechanical abrogations of consumer rights.[22] Unfortunately, holder in due course principles still affect consumers in many jurisdictions. As detailed below, the hearings and written submissions received in the course of this three-year proceeding reveal a continuing need for meaningful Federal intervention.

Vendor-related loans. The second alternative which is available to sellers and creditors is the direct personal loan. After a buyer selects an item for purchase and requests credit terms, the seller may refer the buyer to a local loan outlet. Referral can and does include accompanying the buyer to the loan office, remaining present while applications are processed and accepting a loan proceeds check endorsed to both seller and buyer. For this reason, this practice has been referred to as body-dragging.

The law continues to regard a prearranged loan of this kind as indistinguishable from a spontaneous transaction solicited by a borrower. The existence of a formal or informal business relationship between seller and lender does not alter this fact. Despite continuing referrals, affiliation, or even actual knowledge on the lender's part that the seller engages in questionable sales practices, the loan and sale transactions continue to receive discrete treatment. The lender's claim for repayment remains wholly independent of any sales agreement between borrower and seller. The vendor-related loan thus presents a convenient alternative to discount financing. Issues such as knowledge, community of interest, or bad faith never arise. The hearings and written submissions received in the course of this proceeding indicate that substantial increases in body-dragging have been spawned by state enactments abrogating holder-in-due-course law. This fact is directly reflected in the recent Massachusetts enactment which was drafted to cover related-lender financing.[23]

Direct loan financing is discussed in detail below, at Chapter IV. Suffice it to say at this point that this type of financing offers a viable alternative to the discount method, one which has proved increasingly attractive in jurisdictions where the discount method has been restricted.

The balance of this statement. The remainder of this Statement of Basis and Purpose is devoted to a discussion of the information obtained in the course of proceedings on this rule, the conclusions drawn by the Commission after review of the record, and an exegesis of the nature and purpose of the rule which we have prepared to deal with a nationwide problem. Our reasons for selecting a particular approach in lieu of others which were suggested in the course of these proceedings are fully explained.

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[1] *Consumer Credit in the United States*, Rept. of the National Commission on Consumer Finance 5 (December, 1972) (hereinafter *NCCF Rept.*).

[2] *Id.*

[3] NCCF Rept. at pages 16-17.

[4] Fed. Res. Bull., Vol. 60, No. 10 at A-47 Oct. 1974.

[5] NCCF Rept. at page 11.

[6] As of December 1970, retailers held 14.1 billion dollars in installment credit or 13.9% of the market.

[7] In August, 1974, consumer finance companies held 38.9 billion dollars in installment credit. Fed. Res. Bull. *supra* note 15, at A-47, A-48. This prodigious sum may be contrasted with the 5.3 billion dollars they held in December, 1950. *NCCF Rept.* at 11.

[8] This figure is derived from subtracting the 73.3 billion in installment credit held by commercial banks which are exempt from 15 U.S.C. 41 *et seq.* from the 154.5 billion outstanding as of August, 1974. Fed. Res. Bull., *supra* note 15.

[9] *See* Littlefield, Good Faith Purchase of Consumer Paper, 39 *Southern Cal. L. Rev.* 48 (1966).

[10] Uniform Commercial Code Sec. 3-104.

[11] Note, "Consumer Financing, Negotiable Instruments, and the Uniform Commercial Code: A solution to the Judicial Dilemma", 55 *Cornell L. Rev.*, 611 (1970); Comment, "Judicial and Statutory Limitations on the Rights of a "Holder in Due Course": in Consumer Transactions, "11 *B.C. Ind. & Comm. L. Rev.* 90 (1969); Comment, "The Role of Cut-Off Devices in Consumer Financing", 1968 Wisc. L. Rev. 505; Comment, "Financing Consumer Goods Under the Uniform Commercial Code: Installment Buyers

and Defaulting Sellers", 37 *U. Chi. L. Rev.* 513 (1970).

[22] "The following is an example of a typical waiver of defense clause:

"If the seller should assign the contract in good faith to a third party, the buyer shall be precluded as against such third party from attacking the validity of the contract on grounds of fraud, duress, mistake, want of consideration. . . ."

NCCF Rept. at 34–35.

[23] *E.g.*, Md. Ann. Code art. 83, § 147 (1968); Mass. Gen. Laws Ann. ch. 225, § 12C (1968); Vt. Stat. Ann. tit. 9, § 2455 (Supp. 1968); Rev. Code Wash. Ann. tit. 63, § 14.020 (Supp. 1968).

[24] *E.g.*, Del. Code Ann. tit. 6, § 4312 (Supp. 1966) (15 days); Ill. Rev. Stat. Ch. 121 ½, § 262D (Smith-Hurd Supp. 1968) (5 days). *See* also Murphy, "The Consumer and the Code: A Cross-sectional view", 23 Univ. of Miami L. Rev. 11, 65 (1968); C. Katz, ed., *The Law and the Low Income Consumer* 249–51 (1968).

[25] CCH Consumer Credit Guide Paragraph 5104: "Local Modifications".

[26] Murphy, "Lawyers for the Poor View the UCC", 44 N.Y.U. Rev. 298, 310 (1969).

[27] *E.g.*, Commercial Credit Corp. v. Childs, 199 Ark. 1073, 137 S.W. 2d 260 (1949); Commercial Credit Corp. v. Orange County Mach. Works, 34 Cal. 2d 766, 214 p. 2d 819 (1950) Mutual Fin. Co. v. Martin, 63 So. 2d 65 (Fla. 1953).

[28] Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967).

[29] Geiger Finance Co. v. Graham, 123 Ga. App. 771, 182 S.E.2d 521 (1971). This case is discussed in a *Georgia State Bar Journal* 400 (Feb. 1972).

[30] Rehurek v. Chrysler Credit Co., 262 so. 2d 452 (1972).

[31] Vasquez v. Superior Ct. of San Joaquin County, 4 Cal. 3d 800, 823; 484 P. 2d 964, 979 (1971).

[32] *See, e.g.*, Wallace, "The Logic of Consumer Credit Reform," 82 *Yale L.J.* 461 (1973); Note, "Direct Loan Financing of Consumer Purchases," 85 *Harv. L. Rev.* 1409 (1972); Note "Consumer Financing, Negotiable Instruments, and the Uniform Commercial Code: A Solution to the Judicial Dilemma," 55 *Cornell L. Rev.* 611 (1970); Comment, "Financing Consumer Goods Under the Uniform Commercial Code: Installment Buyers and Defaulting Sellers," 37 *U. Chi. L. Rev.* 513 (1970); Comment, "Judicial and Statutory Limitations on the Rights of A Holder in Due Course; in Consumer Transactions," 11 *B.C. Ind. & Comm. L.Rev.* 90 (1969); Littlefield, "Preserving Consumer Defenses: Plugging the Loophole in the New U.C.C.C.," 44 *N.Y.U.L. Rev.* 272 (1969); Kripke, "Consumer Credit Regulation: A Creditor-Oriented Viewpoint, 68 *Colum. L. Rev.* 455, 459–473 (1968); Comment, "Consumer Protection—The Role of Cut-Off Devices in Consumer Financing," 1968 *Wisc. L. Rev.* 505; Symposium on Consumer Credit "Developments in the Law: Finance Companies and Banks as Holders in Due Course of Consumer Installment Credit Paper," 55 *Nw. U. L. Rev.* 339 (1961); Gilmore, "The Commercial Doctrine of Good Faith Purchase," 63 *Yale L.J.* 1057, 1097–1100 (1954); Kripke, "Chattel Paper as a Negotiable Specialty Under the Uniform Commercial Code," 59 *Yale L.J.* 1209, 1215–1216 (1950).

[33] Gen. Laws Mass. Ch. 255D, § 22A.

CHAPTER III. COMMISSION FINDINGS WITH RESPECT TO THE USE OF NEGOTIABLE INSTRUMENTS AND WAIVERS OF DEFENSES IN CONSUMER INSTALLMENT SALES TRANSACTIONS

This chapter discusses the Commission's findings with respect to foreclosures of consumer claims and defenses in sale transactions. We will concentrate on installment sales, where a promissory note or a waiver of defenses insulates the creditor from seller misconduct. Arranged loans will be discussed in Chapter IV.

Criticism of application of the holder in due course doctrine to consumer transactions has concentrated on the fact that it places the risk of a seller's misconduct on the party least able to bear the burden—the individual consumer. It also enables a merchant who engages in disreputable and unethical sales practices to establish and maintain a source of payment which assures him a place in the market, notwithstanding continuing breaches of contract and warranty. The relatively equal bargaining power which characterizes dealings between merchants is absent in consumer transactions, which are consummated by the use of standard form contracts which the customer must sign as a condition of purchase. Consumers without sufficient resources or business sophistication are frequently unable to press their claims effectively against dishonest sellers;[1] moreover, the seller may be beyond the reach of an effective remedy.[2] Because he is prevented from asserting the seller's breach of warranty or failure to perform against the assignee of the consumer's instrument, the consumer loses his most effective weapon—nonpayment.

Between an innocent consumer, whose dealings with an unrealiable seller are, at most, episodic, and a finance institution qualifying as "a holder in due course," the financer is in a better position both to protect itself and to assume the risk of a seller's reliability. The financer may have recourse against the seller based on the seller's endorsement of the instrument, or it may have a full recourse agreement with the seller and withhold part of the payments to the seller as a reserve.[3] In addition, financial institutions usually protect themselves by warranties from the merchant as to freedom of the obligation from customer defenses.[4] As the National Commission on Consumer Finance recognized, financial institutions which purchase consumer paper are in a better position to control the credit practices of retail merchants:

> They can choose the retailers and suppliers with whom they will do business. If a financial institution is subject to consumers' defenses against payment, such as failure of consideration, nondelivery, etc., it will discontinue purchase of paper from those merchants who cause trouble thereby forcing the many merchants who desire to stay in business but need financial institutions to buy their consumer credit paper to "now react responsibly to consumer complaints in order to keep the avenue of credit open."[5]

The foregoing discussion suggests that waivers of defenses and promissory notes which result in foreclosures of substantial pre-existing equities between parties to a transfer of money have little or no place in consumer transactions. The insulation obtained by creditors in consumer transactions is the product of an inappropriate application of legal principles developed by and for merchants and bankers. The following example, drawn from the transcript of the New York Hearings, is included as an illustration:

> *Interpreter:* Mr. Suarez says, my name is Jose Suarez and I live on Westchester Avenue, the Bronx. I don't know how to write or speak English.
>
> On or about December 29, 1970 two salesmen visited at my home; one of them Spanish speaking asked me if I knew how to talk English. I answered that I didn't and he asked me would I like to learn. I answered that I would and they came into my house. The Spanish speaking salesman told me that his name was Mr. Hernandez and started talking about English language lessons. Mr. Hernandez explained that this course was composed of records, lessons and some tapes that I will have to record in my voice and send to Columbia Institute for some teachers to go over. He told me that it would be very easy to learn English with this method.
>
> He also showed to me some drawings of the equipment. This looked like big equipment. Mr. Hernandez told me that the price of the course was $483.
>
> Mr. Hernandez gave me a contract to sign, but since this contract was in English I could not read it. He repeated that the price was $483 to be paid in installments of $24. I gave him $15 as a down payment and I signed the contract.
>
> Two or three weeks after this I received the same equipment. This was not what I expected. It was a small tape recorder and I didn't know how to use it. I have not been able to use it.
>
> Shortly after this a friend of mine who knows how to read English saw the contract and told me that I was owing them almost $600. When I learned that I tried immediately to get in touch with Mr. Hernandez. I called the telephone number that was printed on the contract. The person with whom I talked told me that Mr. Hernandez had another telephone number and she gave it to me. I have been calling there several times and Mr. Hernandez is never available. I think that once Mr. Hernandez answered the phone but he lied and he told me he was another person.
>
> Meanwhile I stopped payments because this was the only way I would make them hear my case.
>
> Two months ago I started receiving letters from Lincoln Budget telling me that I owed them money. I thought I had to pay to Columbia and I didn't know I had to pay to another company.
>
> More or less at the time a person went to my place of work and asked me why I was not Paying. I explained the problem. I explained why I stopped payments and I told him that I wanted to talk to Mr. Hernandez. This person told me that I had to pay and that we would see each other in court.
>
> More or less by April 10th I received another letter from Lincoln Budget telling me that this was going to be in court.[6]

The experience related above contains many of the problems arising from application of the holder in due course doctrine to consumer transactions. From analysis of the record, the Commission finds:

(1) That sellers and creditors frequently subject consumers to foreclosures of sale-related equities in the course of effectuating credit sales.

In the proceedings conducted pursuant to the proposed rule no witnesses—not even industry spokesmen—suggested that application of the holder in due course doctrine to consumer sales never results in the loss of legitimate consumer

See footnotes at end of chapter.

claims, although some maintained that the problem was insignificant.[7] The major issue, therefore, is whether the frequency of such occurrences indicates that action is desirable.

The record contains over fourteen thousand indications of foreclosures of asserted claims and defenses in credit sale transactions. There are over one hundred cases represented by consumer histories provided spontaneously for this proceeding—both in written submissions [8] and in oral testimony at public hearings.[9]

The magnitude of the problem is made clear through the aggregate statistics supplied by various consumer groups,[10] legal aid agencies [11] and the Office of Economic Opportunity.[12] Statistics compiled by the Office of Economic Opportunity (OEO) are especially noteworthy.

At the request of the Commission, the OEO Office of Legal Services polled its neighborhood legal services projects on the incidence of consumer injury arising from the use of negotiable notes and waiver of defense agreements. OEO arranged for a survey to be conducted by an outside service, the Bureau of Social Science Research, Inc. The survey results from the backbone of the record demonstrating the magnitude of consumer injury spawned by the two cut-off devices.[13]

The survey reflected the results of detailed returns from 59 projects in 32 states and territories, and from each of the ten OEO regions. The 59 projects "include very large and very small projects operating in both urban and rural areas [and] . . . during the year closed, in the aggregate, 179,314 cases. This number is nearly one-fourth (23.9 percent) of the total projected Legal Services Projects caseload for the current fiscal year (750,000 cases)." [14] Thus, the OEO sample is large and varied enough to permit generalization as to the contours of the problem.

The analysis reports:

> The same 59 projects, handled a total of 13,781 holder in due course and waiver of defenses cases, or combinations thereof, during the period [May 1, 1970 to April 30, 1971]. Thus, these cases comprised 7.7 percent of their aggregate caseloads. Or, to put it in another way, one out of every 13 cases involved holder in due course or waivers of defenses. Considering the great variety of types of civil cases handled by Neighborhood Legal Services Offices, this would appear to be a rather heavy concentration for a single pair of related types.
>
> Of the three possibilities—holder in due course, waiver of defenses and the combination of the two—cases involving holder in due course are by far the most common . . . :

TABLE 1.—*Distribution of types of cases*

Type of case	Number	Percent
Holder in due course	10,122	73.5
Waiver of defense	1,004	7.9
Combination	2,565	18.6
Total	13,781	100.0

See footnotes at end of chapter.

> Holder in due course is involved in 92.1 percent of all these cases, including the "combination" cases; waiver of defenses is involved in . . . 26.5 percent, again including "combination" cases.[15]

In assessing the OEO figures it is important to keep several points in mind. First, although the problems associated with the holder in due course doctrine are most keenly felt by the poor in our society, the OEO statistics—which are drawn from the legal projects' lower income clientele—do not represent their full extent. Such problems are not limited to the poor.

Secondly, not all persons, rich or poor, are knowledgeable enough to seek legal aid when confronted with a "holder" or waiver problem. In general, the number of persons seeking the aid of Neighborhood Legal Services agencies is only a fraction of those with legal problems.[16] Therefore, only a fraction of the low-income consumers wronged by cutoff devices show up in caseload statistics. In short, "[the] magnitude of the problem indicated by this sample is frightening." [17]

In addition to the statistics just summarized, the record contains testimony and written comment of a more general nature, yet from authoritative sources. Individals, state agencies and legal aid groups submitted comments which contained information concerning consumer injury from foreclosures of rights in generalized or summary fashion. Much of this information was submitted by persons highly qualified to draw just such generalizations.[18]

From the hearings, for example:

> I am an associate judge of the Circuit Court of Cook County. From September [1970] through April, 1971 I heard and disposed of over 3,000 cases involving . . . creditors actions.
>
> I use the words "vast majority." I keep statistics on dispositions but I don't keep statistics on what proportion are plaintiffs and who they are, but I would say a very, very large number are brought on behalf of finance institutions [as holders in due course] . . . Many of the businesses are no longer available . . . They have their money so they are not interested in pursuing it any further . . .
>
> I remember last year we had quite a surge of health club contract suits . . .
>
> We had many of these refrigerator and meat franchises where the meat is substandard in quality or not of the type ordered, things of that nature. It's a breach of warranty argument. We see it quite often. I, again, have not kept statistics on it.[19]

The written record also contains comments of a more general nature. For example, "Though statistics are not available as to the exact percentage [of 585 consumer complaints received by the Wisconsin Attorney General's Office of Consumer Protection in 1969] which involved a financing arrangement with an alleged holder in due course, a significant proportion did." [20]

Similarly, "of the hundreds of consumer cases handled yearly by our offices a very significant majority involve installment sales transactions out of which develop a number of defenses which could be raised against the seller, but which are effectively lost through the negotiation or assignment of the instrument evidencing the sale to a so-called holder-in-due-course." [21]

Thus, in both specific cases and generalized yet authoritative testimony, the record solidly establishes the magnitude of consumer injury arising from the use of promissory notes and waivers of defenses in credit sale transactions.

(2) That sellers and creditors rely on such cutoff devices in a wide variety of consumer transactions.

Having established the magnitude or extent of consumer injury from forfeited claims and defenses in credit sale transactions, the Commission requested and received specific information as to the areas or sectors of retail sales endeavor where such injury appeared to be most prominent. This inquiry was initiated to determine whether or not a rule could be prepared along narrow lines to delineate those areas where relief was most needed, without unduly affecting sectors of the retail market where foreclosures of equities might have some commercial utility. The record is overwhelmingly suggestive of the need for across-the-board relief. While the most serious instances of foreclosure of asserted claims would appear to be found in the most marginal sales transactions (e.g., inner-city door-to-door-sales), the simple range of transactions brought to the attention of the Commission in actual case histories precludes any effort at narrowing or delineation along the lines discussed above. Creditors and sellers rely on devices to insulate the creditor from consumer claims and defenses in a complex and extensive variety of retail transactions.

Among the types of consumer goods or services involved in the case histories on the record are:

Courses of training or instruction. The most notable development in this category was a large number of cases in which the holder in due course doctrine or waivers of defenses figured in health club or so-called "health spa" deceptions.[22]

One case involves 1,500 families.[23] The fact that so many of the health spa operations have used negotiable instruments or waivers of defenses is strong reason to refrain from limiting the scope of the rule to specified consumer sales. It affords evidence that these techniques are seized upon by those who set out to exploit new fields of consumer fraud and deception.

Other cases brought to our attention include courses of English language instruction,[24] television and modeling school courses [25], computer schools,[26] flying lessons,[27] a karate school,[28] and other miscellaneous courses of training or instructions.[29]

Furniture and appliances. Many consumers indicated they were unable to assert defenses (such as the seller's failure to deliver or refusal to honor warranties or service agreements, delivery of shoddy or inferior goods or items other than those picked by the consumer) against third-party finances of pur-

[23] Missouri, Tr. 600–610 R. 1243–1258.

chases in the furniture and appliance category. Cases frequently involved televisions and stereo sets.[50] Other cases concerned furniture,[51] a washing machine,[52] sewing machines,[53] curtains [54] and miscellaneous items.[55]

Home improvements. Home improvements have long been an area subject to considerable deception and outright fraud.[56] In one especially outrageous scheme, which cost hundreds of homeowners millions of dollars, a few homeowners' suits are finally being heard in the courts. Because the contractor has become bankrupt, however, and because consumers cannot maintain claims or defenses against holders in due course of their negotiable instruments, consumers who are fortunate enough to obtain favorable judgments in court will receive only about five cents on the dollar when the remaining meager assets of the contractor are distributed to satisfy debts and judgments.[57]

A related field of deception is the sale of aluminum siding.[58] The record reflects numerous cases of abuse in siding sales and subsequent collection efforts by third party holders of promissory notes.[59] Such sales occur nationwide, often involve a referral scheme or "model home" ploy and invariably produce substantial indebtedness for the consumer.[60]

Freezer meats and other food plans. This is an area of longstanding abuse.[61] Typically, the consumer is led to believe that a food or meat supply plan is being purchased.

In fact, the consumer is buying a freezer, often at grossly inflated cost,[62] and with no assurance that food will continue to be supplied. Frequently the consumer finds that the quality of food actually received is inferior, that the monthly shipments soon cease, and that his contract has been negotiated to a third party who insists on payment.[63]

Automobiles. Automobile sales often resulted in cases on the record in which the promissory notes or other cut-off devices were invoked to defeat assertion of seller-related defenses by the purchaser of the car.[64] Several state statutes restricting this practice are expressly limited to auto sales. [65] The abuses arise about twice as often with used cars as with new. [66] One of the most egregious cases on the record, however, concerns an expensive, brand-new specialty car.[67]

Carpeting. Carpet sales are another area in which substantial consumer injury has been documented. Sellers of carpeting, especially wall-to-wall "specials" of various kinds, often rely on quickly discounted notes obtained through deceptive sales tactics.[68] In addition carpet companies seem especially prone to mercurial tenure in the marketplace.[69] The record for this proceeding contains substantial evidence of reliance on cut off devices subsequent to deceptive carpet sales.[70]

Alarm Systems. As with "health spas," discussed above, sales of fire and burglar alarm systems appear to be an especially fertile field for consumer fraud and abuse of the privileged status the law confers third party holders of promissory notes.[71] The record contains several case histories, one involving a number of individual consumers.[72] Dubious referral sales techniques and amounts of indebtedness which grossly exceed the actual value of the goods sold are common features of these cases.[73]

Swimming pools. Consumer frauds are most often associated with the poor and less advantaged of the community. Certainly this is correct to some extent,[74] but the same procedures used by the predatory inner city merchant can and do permit consumer fraud in certain commodity lines generally regarded as the province of the more well-to-do. Swimming pools are one such commodity. A swimming pool may cost no more than many of the home improvement projects mentioned earlier. However, swimming pools are a luxury item. For this reason, the fact that cases are related on the record is of interest.[75] It shows, together with other examples of expensive purchases, that more privileged consumers are victimized by similar practices and is further justification for across the board relief.

Miscellaneous. Holder in due course and other cut-off devices operated to foreclose consumer defenses in a wide variety of other consumer purchases. Among them: vacuum cleaners,[76] kitchen utensils,[77] encyclopedias,[78] cemetery plots,[79] clothing,[80] a hearing aid,[81] and an employment placement service.[82]

Common elements in all the cases on the record. In the cases on this record, operation of the holder in due course doctrine or other cutoff devices reflects a number of common elements; (1) the execution by the consumer of a promissory note or waiver of defenses and subsequent negotiation or assignment of the contract by the seller to a third party financer; (2) seller misconduct in the transaction between seller and consumer—that is, an infirmity in the original sale—or the development of a fault or defect following the sale; (3) failure of the seller to remedy the defect or otherwise deal with the complaint of the consumer, either through absolute unwillingness on the part of the seller or due to the seller's disappearance from the market; (4) interruption in payments by the consumer to the financer; and (5) assertion by the financer of its protected status in order to obtain payment on the obligation.

It should be noted that the last element—assertion by the financer of its protected status—need not occur in the context of a law suit. The protected position of the holder may be made known to the consumer in collection efforts prior to litigation. Thus the record contains numerous instances where consumers were told that the financer "has no interest" in the original transaction and because the financer is not connected with the seller, payments must be maintained.[83] Frequently such an approach is sufficient and the financer need not assert "holder in due course" status in the formal context of a court suit.[84]

All of the elements outlined above are contained in the many case histories summarized above. In addition, the record shows that in cases where holder in due course status was asserted in collection efforts, a promissory note had often been negotiated hastily,[85] frequently across state lines.[86] These factors suggest a deliberate effort to take unfair advantage of protections afforded by law to third party creditors.

Nearly every witness at the hearings,[87] and many written submissions,[88] emphasized the degree to which a creditor's unfettered right to payment in these cases contributes to discontent among consumers, particularly the poor and less advantaged consumer.[89]

> Oftentimes we have found a client sending a letter to a finance company explaining defects in the merchandise that they have purchased and they explain the reason for not making payments.
>
> The finance company totally ignores that and they say you will have to talk to the person who sold it to you, and that person has gone, and the corporation explains the warranty is invalid or some other b.s.—excuse me. I have felt their frustration and their quiet outrage that they can't talk to the person that they owe money to about the problems of the piece of merchandise that they have purchased.[91]

Witnesses pointed out that the consumer has no opportunity or ability to bargain and often has no alternative to dealing with certain merchants.[92] All proponents of the rule stressed that the proposed rule would help restore confidence in the law and in the legal system, including the courts.

Mrs. Knauer, the President's Special Assistant for Consumer Affairs observed:

> What is involved here is the fundamental idea of fairness and equity, the individual consumer's belief that the "system" serves him fairly; and the right of the people to have their economic and governmental institutions work for their benefit and protection. The "holder-in-due-course" doctrine contributes materially to the affected consumer's feeling of helplessness—and the feeling that the "system" does not serve him fairly.
>
> In effect, the consumer caught in the "holder-in-due-course" game feels he is batted back and forth like a tennis ball—never turning up on the winning side.[93]

(3) Affirmative suits by consumers are not an adequate remedy.

The Commission further finds that aggrieved consumers are often not in a position to take advantage of the legal system. Where seller misconduct in a credit sale transaction has given rise to consumer injury, the consumer is theoretically in a position to seek damages or other relief from the seller in court. This would be the case even where a creditor financing the sale has a valid "holder in due course" defense which will insulate his claim for repayment. However, in such cases the consumer must pay the creditor holding his note or contract whether or not he ultimately receives a judgment against the seller. The amount of a consumer's damages in such a case may be substantial in real terms, hundreds of dollars or more, but such damages are rarely enough to at-

See footnotes at end of chapter.

tract competent representation. The sheer costs of recourse to the legal system to vindicate a small claim, together with the days of work that must be missed in order to prosecute such a claim to judgment, render recourse to the legal system uneconomic. In addition, the worst sellers are likely to be the most volatile entities where market tenure is concerned. They prove difficult to locate and serve, and the marginal liquidity which characterizes their operations makes collection of a judgment difficult or impossible even if they are successfully served. Bankruptcy or insolvency becomes a final barrier to recovery.

The evidence supporting this finding is substantial.[74] For example, Judge Arthur Dunn of Chicago testified as follows:

> It's [a] terribly cumbersome device, necessitates the expense of discovery, difficulty of service of summons or proper service, difficulty of a defendant becoming a plaintiff, but one of the most disappointing areas of this is the area of the result which might be reached and receiving or the taking by the consumer of a judgment which is, for all intents and purposes, unenforceable. [Because] a corporation, that is defunct or just unable—unsusceptible of being located.[75]

And Ronald Fritsch, of the Chicago Legal Aid Bureau:

> Now, many people ask, "Well, why is a holder-in-due-course rule such a problem for a consumer? The consumer can always sue the seller or he can bring the seller in as a third-party defendant." . . . [B]ut this right of the consumer to file a suit against the seller or bring him in as a third-party defendant is clearly [illusory. It is illusory] because it forces him to become a plaintiff and the plaintiff has many, many problems. He's got to effect good service of summons on the defendant.
>
> The plaintiff usually has the burden of proof in his case. The plaintiff must obtain the evidence for his case through costly discovery procedures; and, if the plaintiff is fortunate enough to have a judgment entered for him, he must go through lengthy and expensive post-judgment proceedings to discover, attach, and/or garnish the assets of the defendant.
>
> I have represented defendants in quite a few cases such as this, either on behalf of a buyer or against a seller or a third-party action against a seller, and I have found that, by and large, the buyers in these cases are more solvent than the sellers.
>
> The seller is either an individual proprietorship or, if the seller happened to have been a corporation, the corporation [is in existence] only a couple years, and by the time the buyer gets around to suing or bringing the seller in as a third-party defendant, the seller is gone. Either the corporation is defunct or, if it's not a corporation, if it's an individual seller, the individual seller is self-employed, he has no wages to attach.
>
> The credit consumer also has a very difficult row to hoe when it comes to seeking legal representation. If he is eligible for a Legal Aid attorney from one of the legal aid organizations, that legal aid attorney usually has many, many more clients to represent than he can possibly represent to the full in court.
>
> If he gets a private attorney, if he has to seek a private attorney to represent him, that private attorney usually doesn't have the resources to bring in a seller as a third-party defendant.[76]

See footnotes at end of chapter.

These problems are compounded where a consumer tries to defeat "holder in due course status" in defending a proceeding brought by the creditor to compel payment. To show that a creditor is not entitled to superior rights which render the debt independent of seller misconduct, the consumer must prove that the creditor had "knowledge" of the seller's misconduct and/or that the instrument relied on by the creditor was obtained in "bad faith". Periodically, a continuing close relationship between a seller a creditor has enabled an aggrieved consumer to meet these tests.[77] But success depends on obtaining skilled counsel; and heavy expenses must be incurred to obtain the discovery and documentation needed to show concerted efforts on the part of the seller and creditor. There is also a significant likelihood, whenever a consumer undertakes to defend a creditor's suit for non-payment, that such efforts will fail. Major consumer finance companies continue to rely on operating procedures which may be asserted to contest any subsequent effort on a consumer's part to show "bad faith" or "knowledge". In this connection, warranties of delivery and satisfaction are customarily obtained by the finance company from merchants whose paper is purchased. Whether or not a finance company elects to pursue a merchant under such a warranty after a deal goes sour, the warranty may always be produced in court to persuade the trier of fact that the finance company could not possibly have had knowledge of seller misconduct in the underlying transaction.

A specific example of the problems confronted by consumers who are victimized by unfair or abusive sales practices and seek to assert seller misconduct as a defense to a creditor's suit for payment is provided by the following letter, submitted for the record by a private attorney. The sale in question involved a swimimng pool to a Northern Virginia family.

> The tragedy of this situation is that Mrs. Keatts and her husband are unable to provide themselves with counsel. . . . [A]s you know, in order to make a case based upon the Unico doctrine, considerable time would have to be expended in conducting discovery in the form of interrogatories, requests for admissions and possible depositions which might also include motions to be argued before the court concerning the copying of documents which, may be necessary to establish a link between the lender, the financier and the seller of the goods. Most attorneys, especially in a case of this kind where "new ground is being plowed" require a sizable deposit for costs, probably in the neighborhood of $200.00. Additionally, the total attorney's fee in a matter such as this may be well over $500.00. When faced with this set of realistic facts most clients who get into such a situation in the first place are unable to provide themselves with protection in the form of adequate counsel.[78]

Where waivers of defenses are permitted, the aggrieved consumer may have special problems. Inasmuch as the waiver relied on by the creditor is contained in the consumer's installment contract, the consumer may be said to have had constructive, if not actual, notice of its presence and significance. This may be the case, even though consumers are seldom aware of the existence or meaning of such boilerplate, and even though the waiver appears in a form instrument which is certainly not the product of bargaining between the parties to the sale.

For these reasons a number of state courts have held that boilerplate waivers in installment contracts violate public policy.[79] Such clauses invoke the harsh consequences of negotiability by mere stipulation of the parties. Negotiability by stipulation or agreement was not countenanced by the Uniform Negotiable Instruments Law,[80] nor is it sanctioned by the Uniform Commercial Code.[81] Moreover, many states have banned the use of waivers outright or curtailed their use in consumer transactions.[82] It must also be noted that a waiver of defenses may arise in a manner legally identical to holder-in-due course status.[83] That is, the waiver of rights can arise by operation of law, without the knowledge of the consumer.

Support for the waiver ban in the proposed Rule was widespread.[84] Many witnesses emphasized that such agreements were really contracts of adhesion, designed to deprive the consumer of his right to raise defenses.[85] Whether a waiver arises by contract or by law, its effect is analogous to the use of a promissory note. In this connection the Uniform Commercial Code expressly analogizes waivers to "Holder in Due Course" status.[86]

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[74] *See* Countryman, "The Holder in Due Course and Other Anachronisms in Consumer Credit," 52 *Texas L. Rev.* 1, 2–11 (1973).

[75] *E.g.*, Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967) (seller insolvent); Norman v. World Wide Distrib., Inc., 202 Pa. Super. 53 195 A.2d 115 (1963) (seller disappeared).

[76] *Country man supra*, note 1 pages 10–11.

[77] Kripke, "Consumer Credit Regulation: A Creditor-Oriented Viewpoint," 68 *Colum. L. Rev.* 445, 472 (1968).

[78] *Consumer Credit in the United States*, Report of the Natl. Commission on Consumer Finance (1972) page 36.

[79] Tr. 47–49.

[80] E.g., Robert Doyle, American Bankers Association, Tr. 1108; David Gezon, Volkswagen American Dealers Association, Tr. 1271; "There is no doubt that some limitations should be placed upon the applicability of the holder in due course doctrine and the enforceability of waiver of defenses clauses as they relate to certain consumer transactions." Michael Larson, Marine National Exchange Bank, R. 60; "I will readily concede that there are and have been abuses in the Seller-Holder-in-Due-Course relationship." R. E. Dean, President, Security Mutual Finance Corp., R. 95; "I have seen many abuses of the consumer by unscrupulous businessmen." Joseph L. Kaufman, Vice President, Pacemaker Corp. [boat manufacturer], R. 371; "There can be no question that there have been numerous abuses of the holder-in-due-course concept whereby retail sellers have, by immediately discounting their retail paper deprived a retail buyer of a practical means of asserting wholly valid defenses. . . ." Arthur B. Locke, Esq., on behalf of Connecticut Credit Union League, R. 166–1; see also R. 81, 83, 372, 1272, 1363, 1649, 1656, 1670, 1703, 1729, 1990, 2028. " . . . [T]he abuses are

a . . . very small percentage." H. W. Klockow, Vice President, First Wisconsin letter, R. 1701, 1704, 1705, 1706, 3383, 3384; "[T]his [proposed rule] is tantamount to amputating a leg because of an ingrown toenail." Stephen B. Friedman, General Counsel, Carte Blanche Corp., R. 3404.

[8] *E.g.*, R. 62–63, 338–344, 581, 1297, 1590–92, 2487–95, 3428–31, 3587.

[9] *E.g.*, Tr. 43, 109, 287, 422, 617, 874, 928, 1153, 1346.

[10] *E.g.*, Sandon Members United To Act, Tr. 600–610; R. 1243–1258. Presentation by Robert Wagmen, Assistant Dean, St. Louis University Law School, on behalf of members of "Norm Sandon's Health Club." "This health club chain came to a quick demise in March [1971] when Internal Revenue seized the assets of the clubs for back taxes. At the time of the closing there were an estimated ten thousand or more [St. Louis area] families who had purchased membership in the clubs and as many as fifteen hundred who still were making payments on the notes." R. 1246. See individual cases at R. 2515 (Burns) and 2516 (Carrera), as well.

[11] E.g., Memphis and Shelby County Legal Services Association (100 cases), R. 1626–27; Legal Aid Society of St. Joseph County, South Bend, Ind., R. 1308–1310 (21 clients left with notes to pay when computer training school closed. "One day . . . the student arrived at the school to find that it had closed and that the building had been vacated during the previous night." R. 1308. "The . . . twenty-one students . . . represent only part of the class . . . [T]he ex-students will pay about $2000 each for a training program which they did not receive." R. 1309).

[12] R. 2116–2141, see especially R. 2120.

[13] Legal Action Support Project, Analysis of the Response to the Questionnaire for Legal Services Projects (Leonard H. Goode, Project Director, Bureau of Social Science Research, Inc., Washington, D.C., September 14, 1971) R. 2117–2145.

[14] *Id.* at R. 2119–2120.

[15] *Id.* at R. 2120.

[16] ". . . [I]f all of the millions of poor with legal problems utilized legal services, it would be impossible to handle them." Fred Speaker, Director of Legal Services, Office of Economic Opportunity, Tr. 1026, R. 2112.

[17] *Id.* at Tr. 1027, R. 2112.

[18] *E.g.*, Howard I. Kaufman, Chief, Consumer Fraud and Protection, Office of Attorney General, Illinois, Tr. 497; Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, Tr. 894; Steven Mindell, Assistant Attorney General, Bureau of Consumer Frauds, State of New York, Tr. 9; Alan Sims, New Haven Legal Assistance, Tr. 212.

[19] Hon. Arthur Dunn, Tr. 757, 762, 765, 768. See also, *e.g.*, Mindell, Assistant Attorney General, New York State, Chief of Bureau of Consumer Frauds, Tr. 23: "We don't keep statistical records, but [abuse of the holder in due course doctrine and waivers of defense] was the greatest single problem affecting the low income consumer." Fritsch, Tr. 756 (75% of Chicago Legal Aid cases involve HDC or W/D abuses); Groups, Tr. 886; Leatherberry, Tr. 1011; Myerson, Tr. 367.

[20] Memorandum Brief of the Wisconsin Department of Justice in support of the Proposed Trade Regulation Rule, R. 1756–1762.

[21] Richard F. Halliburton, Legal Aid and Defender Society of Greater Kansas City, Inc., R. 2009. See also, *e.g.*, R. 20, Atlanta Legal Aid Society; R. 31, Omaha Legal Aid Society ("our files are full of hdc abuses"); R. 1497, Civil Rights-Civil Liberties Research Committee, Harvard Law School. "We are confronted almost daily with the harsh and inequitable effects of the holder in due course doctrine. Legal Aid Society of Metropolitan Denver R. 3446.

[22] *E.g.*, R. 1218; 2515–16; 3437–40; 3491–95; Tr. 414–416; Patricia Ahearn (Figure-Tone Spa of Staten Island, N.Y.) Tr. 55–61, documentation at R. 919–944; Lynn Burgess (Chicago Health Clubs, Inc.), R. 2569–2589. See also Federal Trade Commission cases in same subject area, e.g., Dkt. C–1851, Holiday Health Spas, Inc.; C–2134, Plaza Club, Inc.—European Health Spa, Inc.

[23] Norm Sandon's Health Club, St. Louis,

[24] Tr. 47–51; Tr. 210–212; Tr. 474–475.

[25] R. 101; R. 2511–2512; Tr. 563.

[26] R. 102, Tr. 626–628.

[27] Tr. 556–557.

[28] Tr. 638–639.

[29] Dale Carnegie course, R. 112–123; medical receptionist training, Tr. 51–55; "sales academy," Tr. 617–619.

[30] *Televisions:* R. 2055–2056, 2197, 2380, 2381–2382, 3428–3431; Tr. 110–112, 219–221, 300–301, 942–945, 1351, 1353–1356, 1387–1388. See also R. 101 (Stereophonic Phonograph set); R. 378–380 ($1,000 color television-stereo combination); R. 1712–1715 (hi-fi set, referral sales technique).

[31] R. 70–72; Tr. 287–290, Tr. 744–747.

[32] R. 2050–2052.

[33] Tr. 243–244; Tr. 376–378.

[34] Tr. 428–431.

[35] R. 73 (Piano); Tr. 110–112 ("quartz broilers, central vacuum cleaner systems"; referral sales plan; postal fraud conviction); Tr. 301–302 (refrigerator-freezer); Tr. 744–747 (Sofa covers).

[36] See Comment, "A Case Study of the Impact of Consumer Legislation: The Elimination of Negotiability and the Cooling Off Period," 78 *Yale L.J.* 618, 619–621; Note, "The Pennsylvania Home Improvement Finance Act," 10 *Villanova L. Rev.* 309 (1965); Symposium, "Consumer Protection," 64 *Mich. L. Rev.* 1197 (1966). See also Magnuson and Carper, *The Dark Side of the Marketplace* 3–9, 24–25, 31, 39, 46, 68–69, 79, 105, 112–113 (1968). See also Federal Trade Commission cases on the subject, *e.g.*, Dkt. 882, Southern States Distributing Co.; C–2218, Four States Enterprises, Inc.; file 692 3051, Arlen Realty and Development Corp., E.J. Korvette, Inc.

[37] R. 1542. "Distrlct Couple Wins Suit in 1965 Home Fraud Case", *Washington Evening Star*, March 4, 1971, § B, p. 4. Plaintiffs received a $22,000 award but Atlas Financial Corporation, the Philadelphia holder of the note, successfully defended against judgment being entered against them as holders in due course. A "restitution fund" established by the principals of the defunct Monarch Construction Company contained a grant total of $5,800 for restitution of *all* 700 inner-city families which the U.S. Attorney's Office states were victimized by Monarch. See Jean Carper, *Not With A Gun*, (1973).

[38] See, *e.g.*, Federal Trade Commission cases: Dkt. C–1920, Midwestern Construction and Supply Co.; Dkt. C–2217, Brolan Manufacturing Co.; Dkt. 8875, Certified Building Products, Inc.

[39] Aluminum siding: R. 124, Louisiana* ("over $10,000") R. 125, Louisiana* ("over $25,000" note, including siding "never completed," and debt consolidation); R. 125–126, Louisiana; R. 332, Kansas*; R. 1362, Illinois ($,162; "I have no redress against Mastercraft.") Tr. 204–208 and R. 670–674, New York (over $2,900) Tr. 821–821 Illinois* (over $5,000); Tr. 856–857, Michigan.

Other home improvements: R. 100 (Bridge City, Louisiana); Tr. 465–466, R. 382–384 and R. 582–584 (Toms River, N. J.; $4,897 kitchen remodeling; shoddy workmanship, never completed), R. 566–568 Englewood, N. J.; heating system; R. 581–582 (West New York, N. J.) R. 904–908 (Elmont, New County, Georgia); R. 1684–1685 (Bayshore, N. Y., central air conditioning; over $1,700); R. 2196 (Philadelphia, Pa., $1,863 furnace*); R. 2609–2622 (Ridgefield, N. J.); R. 3425–3426 (Modesto, California); Tr. 113 (N.Y. furnace repair/replacement scheme); Tr. 296–297 (New Jersey); Tr. 408–411 (Elmont, N. Y.) Tr. 639–640, 661–662 Tr. 874–882, R. 1340–1356 (Chicago, Illinois).

[40] *Id.* Referral technique indicated above by asterisk (*).

[41] *E.g.*, Magnuson and Carper, *supra* note 36, at 14, 17, 51. See also Federal Trade Commission cases, *e.g.*, Dkt. C–2211, Cattlemen's Quality Meat, Inc.; Dkt. 8880, Seekonk Freezer Meats, Inc.

[42] Payment of well over $1,000 for a freezer which could be purchased for $250 at most stores is not unusual. See note 43 infra.

[43] Royal Foods of East Providence, Rhode Island: "Induced by advertisements . . . promising reduced prices and increased convenience and the *use* of a food freezer, accompanied by the give-away of a dinnerware set, people contracted for the offered monthly food service. The predominant consumer complaints . . . were that the food supplied by Royal was inadequate . . . that reference to 'use' of a freezer meant, in fact, that the consumer was required to purchase the freezer. The freezers . . . were often sold . . . at unconscionable prices, frequently in the range of $1,000," R. 953–955, documentation at R. 957–962. "Mr. Allen . . . realized that he had agreed to buy, rather than rent, a freezer for $1,087 . . . Mr. Allen went to see his union's lawyer and was told there was no way he could get out of the contract since it was sold to a finance company. The lawyer told him that if he stopped payments he would be sued, have his wages garnisheed, and probably be fired from his job." Case history submitted by New York City Department of Consumer Affairs, R. 1024–1026; see also R. 1517–1518; 2195; 2197; 3517; Tr. 236–237; Tr. 413–414; Tr. 498–499; Tr. 543–544.

[44] Note 46 *infra*. See also FTC cases, *e.g.*, Dkt. C–2129, Town and Country Auto Sales, Inc.; Dkt. C–2195, Jordan Motor Company.

[45] *E.G.*, Illinois, Massachusetts, Michigan, Oregon, Pennsylvania, Mississippi and Texas (waivers only). But note that some states specifically exclude automobile sales from statutes restricting the holder doctrine or similar creditor remedies; *e.g.*, District of Columbia (related creditors provision), Illinois.

[46] *New Cars:* Kirkland, R. 92–93, 2529; Cochario, R. 569; Fuller, R. 2053–2054, Tr. 928–930; Heitzman, R. 2198; Block, R. 2314–2349.

Used Cars: Lucas, R. 375–377; Hatch, R. 2193, Tr. 1159–1162 (related creditor); Gant, R. 2383–2384, Tr. 1356–1359 (related creditor); Combs, R. 3433–3434; R. 3516–3517; Washington, Tr. 43–46 Oswin, Tr. 66–69; Schlossberg, Tr. 857.

[47] The Block case, related by Benny Kass, Commissioner, National Conference of Commissioners on Uniform State Laws, at R. 1199–1202, R. 2314–2349. See Block v. Ford Motor Credit Co., 286 A.2d 228 (D.C. 1972). See also "Moves Gain to Halt Some Credit Practices Assailed by Consumers," *Wall Street Journal*, June 7, 1971, p. 1, col. 1.

[48] Note, "Translating Sympathy for Deceived Consumers into Effective Programs for Protection," 114 *U. Pa. L. Rev.* 395, 398–403 (1966). See also FTC Dkt. 8846, Kustom Enterprises, Inc.

[49] See note 50 *infra*.

[50] *E.g.*, "I have had no satisfactory results from G.E. . . . who financed the carpet. In fact, they feel that they have no responsibility to me whatever and so stated." Mrs. Sophia Bell, Washington, D.C. (carpet firm out of business), R. 62; Dominick Fiorenza, testimony at Tr. 461–464, statement at R. 894, documentation at R. 587–593; "Mrs. Collins received a payment book from Budget Finance requiring her to pay . . . $1,202.68, more than half of her yearly income, for

three small rooms of carpeting. [After the carpet began to come up] . . . Mrs. Collins called Budget Finance to discover that the carpet company had gone out of business. She . . . was told that Budget was not responsible for any promises [to 'make repairs free of cost for 25 years'] made by the store. She would have to continue making payments, rug or no rug." Case history submitted by New York City Department of Consumer Affairs, R. 1026–1028; R. 2196; Tr. 112–113 ("Pyramid or chain referral plan . . . wall-to-wall carpeting at prices ranging from $27 to $30 per square yard . . . which could be purchased retail locally for approximately $7 a square yard"; postal fraud conviction); Tr. 358 (referral sales).

[51] A particularly alarming case is related in Schrag, "On Her Majesty's Secret Service: Protecting the Consumer in New York City," 80 *Yale L.J.* 1529, 1553–1585. The case is that of Foolproof Protection, Inc., which sold $4 million in burglar and fire alarm systems door-to-door, exclusively in ghetto areas of greater New York City.

[52] R. 2195–2196 (fire alarms: Consumers "Emma Jackson, Ada Brewington and others. Merchants: Protect-A-Life Corp., R&S Fire Security Co. Holders in due course: 1st Pennsylvania Bank; Beneficial Finance Corp., Mercantile Banking Corp." Referral scheme in some cases. Amounts of indebtedness ranged from $862.20 to $1,031.40); R. 3400 (Fire alarm; referral technique); Tr. 83–85 (burglar alarm); Tr. 612–616 (fire alarm: $556).

[53] The New York City Fire Department certified to the Department of Consumer Affairs that the retail value of the fire alarm systems being sold by Foolproof for $750 was no more than $75. Shrag, *supra* note 50.

[54] See generally, Katz, *The Law and the Low Income Consumer* 215–250, 330–339 (1968).

[55] R. 64–65 (Virginia); Arthur Roddey (Englishtown, N.J.), testimony at R. 100–109; statement and documentation at R. 909–918 but see Walter G. Bellaris, Vice President, Industrial Valley Bank and Trust Co., Jenkintown, Pa., R. 562–563; R. 2197 (Philadelphia, Pennsylvania; $4,985).

[56] R. 101.

[57] R. 338–344.

[58] R. 952–953 (door-to-door); Tr. 416.

[59] R. 1618–1623.

[60] R. 1686.

[61] R. 2198–2199.

[62] R. 3516.

[63] R. 1153–1158.

[64] *E.g.*, Kessler, Tr. 1063; Williams, Tr. 70–73; Huffman, Tr. 84; Douglas, Tr. 1543; Scholl, Tr. 1723; Bluestone, Tr. 1849; Ryan, Tr. 1981.

[65] Weiner, Tr. 1153; Roberts, Tr. 420; Crandal, Tr. 1906; Nelson, Tr. 2117; Tahnk, Tr. 2199; Latturner, Tr. 229; Williams, R. 395; see also R. 20, 544, 1647, 5973, 7395.

[66] "[O]ut of sheer exhaustion . . . the lady put her name on the paper to the tune of $1,000 [for pots and pans]. When she went to rescind the contract the following day, the [salesman] told her he forwarded the paper to a finance company and that it was impossible to rescind the contract." Edwin P. Palumbo, Rhode Island Consumers Council, R. 416; "The consumer signs a contract committing him to pay about twice the fair market value for the freezer . . . These installment contracts are immediately sold to a finance company, which refuses to honor buyers' defenses on the ground that the misrepresentations made by the salesman do not appear on the face of the contract . . ." Lucy McCabe, Attorney California Rural Legal Assistance, R. 3426; Furness, Tr. 33; Weiner, Tr. 1153.

[67] "All the examples of our testimony—you will have a locally incorporated vendor and a foreign loan company. In one case, the frozen foods corporation, I believe it was the reverse, a freight vendor and a Rhode Island incorporated [finance] company, but they are all interstate in one way or another." Roberts, Tr. 420. See also, *e.g.*, Eisendrath, Tr. 831; John Keller, Office of Superintendent of Public Instruction, State of Illinois ("many" finance agencies are outside the state), Tr. 568; Sims, Tr. 214, 224. Specific cases, *e.g.*, Fuller, Tr. 928 (D.C.—Maryland); Roddey, Tr. 100 (New Jersey—Pennsylvania); Scates, Tr. 938 (D.C.—Maryland).

[68] *E.g.*, Elberson, Tr. 275; Gregg, Tr. 1361; Kripke, Tr. 450; Mindell, Tr. 22; Pettus, Tr. 1352; Sims, Tr. 223; Williams, Tr. 62, 70.

[69] *E.g.*, R. 9, 32, 111, 388, 889, 1286–87, 1486.

[70] *E.g.*, Cain, Tr. 1164; Charney (on behalf of Rep. Bella Abzug), Tr. 458; Rice, Tr. 75; Speaker, Tr. 1030.

[71] Allan Sims, New Haven Legal Assistance Association, Tr. 223.

[72] *Eg.*, Charney, Tr. 458; Judge Arthur Dunn, Tr. 758, 768; Fritsch, Tr. 749; Rice, Tr. 75.

[73] Virginia Knauer, Special Assistant to the President for Consumer Affairs, Tr. 896, 897–898.

[74] *E.g.*, Furness, Tr. 37; Carpenter, Tr. 845; Matsen, Tr. 285; Mullins, Tr. 1192.

[75] Tr. 760.

[76] Tr. 735–738.

[77] *E.g.*, Unico v. Owen, 50 N.J. 101, 232 A. 2d 405 (1967); Rehurek v. Chrysler Credit Corp., 262 So. 2d 452 (Fla. 1972); Westfield Ind. Co. v. Fellers 74 N. J. Super 575 181 A. 2d 809 (1962); Commercial Credit Company v. Childs, 199 Ark. 1073, 137 S.W. 2d 260 (1940).

[78] Patrick D. Molinari, Esq., R. 64.

[79] American National Bank v. A. G. Sommerville, 191 Cal. 364, 216 P. 376 (1923). See also Fairfield Credit Corp. v. Donnelly, 158 Conn. 543, 264 A. 2d 547 (1969); Quality Finance Co. v. Hurley, 337 Mass. 150, 148 N.E. 2d 385 (1958).

[80] Warren, "Comments' on Vasquez v. Superior Court," 18 *U.C.L.A.L. Rev.* 1065, 1067 (1971).

[81] U.C.C. § 3–104, Comment 2.

[82] *E.g.*, Colorado, Laws H. 1076 § 2–303; Delaware, Title 6, § 4311(a); Hawaii, Rev. Stats. § 476–18(d); Maine, Rev. Stats. Title II, §§ 3–302 5(c) and 5(d); Massachusetts Gen. Laws. ch. 255D, § 10(d); Minnesota, Laws. Ch. 276 §§ 2(a) and 3(a); New Mexico, Pers. Prop. Law, ch. 41, art. 10, §§ 403(3)(a), 413(10)(e).

[83] Under Section 9–206(1) of the U.C.C. . . . an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor enforceable by an assignee. . . . A buyer who as part of one transaction signs both a negotiable instrument and a security agreement *makes such an agreement.*" (Emphasis added.)

[84] *E.g.*, Eovaldi, Tr. 796; Kessler, Tr. 1057; Mindell, Tr. 25; Preloznik, Tr. 543, R. 924, 1201.

[85] *E.g.*, Martin-Trigona, Tr. 584; Newman, Tr. 997.

[86] C.F. U.C.C. 9–206(1).

CHAPTER IV. COMMISSION FINDINGS WITH RESPECT TO THE USE OF SALE RELATED LOANS IN CONSUMER TRANSACTIONS.

A concern that the intended effect of the original proposed rule might be circumvented by merchant-arranged "direct loans" proved to be a significant issue as the proceedings on the proposed rule developed. Many spokesmen addressed this subject in general terms and urged the Commission to broaden the proposal by covering spurious "direct loans."[1]

For the sake of simplicity, the practice—variously referred to as "vendor-related loans," "specious cash sales," "interlocking sales/loans" and, more colloquially, "dragging the body"—will be termed "vendor related loans" in this Statement. The practice arises when a merchant, desiring to circumvent restriction upon the holder in due course doctrine, arranges for a consumer purchase to be financed by a cooperating financing agency. The resultant financial transaction has the appearance of a direct cash loan, payment of which can be enforced by the loan company without reference to the underlying transaction. An example, related by a consumer witness at the 1971 Washington hearings, will illustrate:

John Hatch, a witness, testified as follows:

"*Mr. Hatch:* Mr. Chairman, my name is John Hatch. I went to buy a used car. They gave me all kinds of guarantees. This was my first car, so I was very much excited. Mr. Compact says, 'I have some boys to take care of you.'

"He took me to the American Consumer Discount House . . . I went into one room and he went into another room. They had the papers set up for me.

"This car wasn't financed under the Pennsylvania Motor Vehicle Law. They tried to say after I got the car it was a personal loan.

"I received the car and they told me the car was guaranteed for 30 days; anything after 30 days I would have to pay half the cost.

"I like to not got the car off the lot. After that I complained so much that after three days after I received the car I went back to the finance company. They said, 'This is your baby. We didn't finance any car. We gave you a personal loan'.

"They made out the check to Mr. Compact and me. The only thing I did was to sign the check.

"I could not use the car. The finance company wouldn't make the dealer fix the car. The dealer refused to fix the car.

"My home and all of my possessions were up for a sheriff's sale.

"They repossessed the car. They sold it to me for $1,512, and about a month later they sold the same car for $300 because it wasn't in good shape."[2]

The transcript[3] and record[4] contain additional consumer case histories involving related creditor sales in several jurisdictions and in connection with various consumer purchases. Automobile sales seem to predominate, perhaps because in several jurisdictions automobile sales have been the subject of legislation specifically restricting the use of promissory notes and waivers of defenses.[5]

Most notable, however, was the experience in New York State. For many years New York had a 10-day "notice" provision, generally regarded as ineffective by consumer representatives.[6] In 1971 the New York legislature enacted a more rigorous, direct restriction upon the availability of cut-offs to third party assignees of consumer paper.[7] Although the law was still, in the view of consumer interest spokesmen, far from compre-

See footnotes at end of chapter.

hensive,[7] the enactment placed New York among the handful of states with relatively effective legislation on the subject.

A startling development at the New York hearings—held only four months after the effective date of the new law—was the speed and extent to which the vendor related loan abuse had been seized upon by merchants and financers desirous of circumventing the new law. The record contains several case histories concerning New York consumers caught in a "specious cash sale," as the practice is termed in New York.[8] Numerous witnesses familiar with the New York experience expressed alarm at the sudden prevalence of the practice and urged the Commission to broaden the proposed rule to meet the related creditor abuse.[9]

As a result of the comments received in the first set of hearings, the second published version of the rule included provisions making it applicable to vendor related loans. In the reopened proceeding, this section of the rule received widespread support on the record, both through individual consumers who testified about their own experiences,[11] and from consumer and industry witnesses who approved of such a provision and urged its adoption.[12] Legal aid and community legal services attorneys in particular stressed the need for such a provision based upon the extensive experience in states which had enacted restrictions upon the holder in due course doctrine but had not addressed related creditors.

The second published version of the rule specified a number of situations indicative of a cooperative arrangement between seller and creditor. The specified situations included the following:

(1) Relation between creditor and seller by blood or marriage.[13] This definition was supported by testimony on the record.[14]

(2) and (3) Relation due to the preparation of forms used in processing credit applications.[15] This definition was supported by both comment and testimony.[16]

(4) Common control or affiliation of creditor and seller. This provision was similar to a feature of the District of Columbia "related lenders" law [17], and is supported on the record.[18]

"If there is a close relationship * * * I think it puts into [the] Rule what the courts have long held the close relationship between the * * * retailer and the finance company.

"It is the Universal Acceptance Corporation against Russell case that speaks of item 4.

"The director of Universal Acceptance was also director of wig Fair. They sold their wigs before Christmas with six-month servicing, only to go out of business in February, whereupon the Universal director put on his other hat and sued on the negotiable instrument. I mean this is something that somehow the court said were two different people * * *." [19]

(5) Joint venture. Recommendation of Professor Fairfax Leary.[20]

(6) Payment of consideration by creditor to seller. A feature of the District of Columbia Consumer Credit Protection Act [21] and Arizona's related creditor statute.[22] Support for the provision was offered by legal services lawyers.[23]

(7) Guarantee of loan by seller. This section derived from a provision of the Maryland "related creditors" law.[24]

(8) Five or more loans. This provision was an adaptation of the Massachusetts statute, which deems a sufficient connection with the seller to exist where the lender has made two or more loans in a one-year period the proceeds of which were used in transactions with the same seller and the lender was recommended by the seller.[25] The National Consumer Act contains a similar provision which specifies twenty such referrals.[26] This approach was also urged upon the Commission by the office of the United States Attorney for the Southern District of New York.[27] Several legal services representatives stressed that in their work under state law a provision similar to subsection 8 would be particularly useful. They suggested that FTC enforcement experience would parallel their own practice and that this subsection would, therefore, be most necessary.[28]

"We feel that provision is one of the most important in that in many cases we find again that by using discovery processes, we are still unable to find any type of connection between the lender and the seller.

"Most often we have been able to find that the same lender and seller have engaged in the same transactions 10, 15 or 20 times; that we feel that Subsection 8 is important, that it is useful." [29]

(9) Relation by knowledge of seller misconduct. This subsection was derived from the Wisconsin Consumer Act and was similar to provisions of an analogous Illinois statute.[30] The knowledge of adverse claims and defenses and absence of good faith are classic tests used to deny holder in due course status to the assignee of a note. The provision received support on the record.[31]

As a whole, the related creditor portion of the rule received widespread support in this proceeding.[32] Most opposition to this rule was directed to the entire rule; that is, there is relatively little opposition on the record directed specifically to a related creditor section. Whatever specific opposition was registered focused on the alleged overbreadth of the related creditor portion of the rule. Additionally, opponents argued that the several individual provisions in the definition portion of the rule were vague or overly broad.[33]

From the record, and particularly from comments elicited in response to the nine cases of concerted conduct between sellers and creditors which were explored on the record, the Commission concludes that vendor related loans should be covered by any Commission rule in this area. Sellers should not be permitted to evade the rule by diverting business from the discount window to the loan booth. Many of the largest acceptance or discount financers in the country are equally active in the "small loan" industry. The prearranged loan is an efficient method of sales finance, since the costs involved to creditor and seller are comparable to those borne in a discount transaction. The revised version of the rule which we now promulgate has been designed to eliminate the related creditor problem, by treating all credit sales the same way. The final revisions of this important section will be discussed below, in Chapter VII.

See footnotes at end of chapter.

[1] *E.g.*, Forham, Tr. 630; Nelson, Tr. 725; Eovaldi, Tr. 806; Leary, Tr. 968, 979–980; Kessler, Tr. 1050; Kass, Tr. 1027; Gregg, Tr. 1364. R. 47, 70, 904, 1294, 1369, 2377–2378.

[2] Tr. 1159–1161. See also R. 2198.

[3] *E.g.*, Tr. 887–888 (Illinois; used cars); Tr. 1153–1156 (Pennsylvania; employment placement service; consumer referred to a specific official at cooperating loan company); Tr. 1356–1359 (Maryland; used car).

[4] *E.g.*, R. 125–126 (Louisiana; aluminum siding); R. 904–908 (New York; home improvements); R. 1590–1592 (Michigan; camper); R. 1684–1685 (New York; air conditioner); R. 2383–2384 (Maryland; used car).

[5] "In other words, it is written up as if the consumer went to the bank first, made a loan, and then came to this automobile dealer to buy the car."

". . . this practice is so widespread, I would say it occurs in one-third of all automobile financing transactions in Philadelphia." Scholl, Community Legal Services, Inc. Tr. 1172.

[6] Mindell, Tr. 10–28, R. 682; Flicker, R. 971; Huffman, Tr. 87–90.

[7] N.Y. Pers. Prop. Law § 401 *et seq.*

[8] *E.g.*, Furness, Tr. 34, Elberson, Tr. 276.

[9] *E.g.*, Givens, Tr. 3–4 (aluminum awnings), 354 (clothing peddled door-to-door), 357 (furniture), 358 (rug, referral sales); Spence, Tr. 114–115.

[10] Mindell, Tr. 18–21; Furness, Tr. 37–38; Spence, Tr. 114–115; Seymour, Tr. 246; Hynes, Tr. 247–249; Elberson, Tr. 403; Schnapper, Tr. 482.

[11] *E.g.*, School, Tr. 1723; Jeffrey, Tr. 1805; Kaufman, Tr. 1987; Crandall, Tr. 1906; Betty Burton, Tr. 1988; Wenclawski, Tr. 2213–19.

[12] *E.g.*, Knauer, Tr. 1403; Guttman, Tr. 1523; School, Tr. 1722; Schick, Tr. 1738; Jeffrey, Tr. 1804; Ryan, Tr. 1978; Eovaldi, Tr. 2183.

[13] *E.g.*, N.Y. Pers. Prop. Laws § 254(a); Md. Rev. Stats. Art. 11, § 197A(b)(1), Art. 58A, § 24(b)(1).

[14] *E.g.* Patricia Hynes, Tr. 249; Fairfax Leary, R. 2086.

[15] *E.g.* N.Y. Pers. Prop. Law § 254 (b) and (c); Md. Rev. Stats. Art. 11, § 196A(b)(5); 28 D.C. Code 3809(a)(1).

[16] *E.g.*, Hynes, Tr. 249; Douglas, Tr. 1543; Leary, R. 2087.

[17] 28 D.C. Code 3809(a)(2).

[18] Hynes, Tr. 248; Prof. Egon Guttman, Tr. 1529; Leary, R. 2087.

[19] Guttman, Tr. 1529.

[20] Public Interest Research Group, currently University of Pennsylvania Law School, R. 2087.

[21] 28 D.C. Code 3809(a)(3).

[22] ARIZ. Rev. Stat. Ann. § 44–145(b)

[23] David Scholl, Delaware County Legal Services, Tr. 1729–1730; Utah Legal Services, R. 4391; Kansas City Legal Aid and Defender Society, R. 4717.

[24] Md. Rev. Stats. Art. 11, § 196A(b)(4); Art. 58A, § 24(b)(4).

[25] Mass. Gen. Laws Ann. Ch. 255, § 12F.

[26] National Consumer Act § 2.407 (1970), R. 2689–2690.

[27] Tr. 248–249.

[28] *E.g.* Scholl, Tr. 1729, 1730–1731, Byrd, Tr. 1770.

[28] Jerry Byrd, United Planning Organization, Washington, D.C. Tr. 1770.
[29] Ill. Rev. Stats., 1969, Chap. 121 ½, §§ 517, 576.
[31] *E.g.*, Byrd, Tr. 1770.
[32] *E.g.*, Prof. Egon Guttman, Tr. 1529; Blair Shick, National Consumer Law Center, Tr. 1738–39; Jerry Byrd, United Planning Organization, Tr. 1769–70; Mildred Jeffery, UAW, Tr. 1805; Stuart Bluestone, Consumer Federation of America, Tr. 1849; Agnes Ryan, Chicago Legal Aid Society, Tr. 1980; Helen Nelson, Tr. 2114–15; Prof. Thos. Eovaldi, Northwestern Univ. Law School, Chicago Council of Lawyers, Tr. 2186; Thos. Tahnk, Supervisor of Consumer Credit, Minnesota, Tr. 2202.
[33] *E.g.*, Pray, Tr. 1641–42; Morris, Tr. 1701; Alabama Independent Auto Dealers, R. 5307; See also R. 3472, 4660, 5140.

CHAPTER V. COMMISSION FINDINGS WITH RESPECT TO THE USE OF WAIVERS OF DEFENSES IN CREDIT CARD CONTRACTS

Americans carry over 275 million credit cards of all types including 55 million bank-issued cards and 5 million travel and entertainment cards.[1] All are issued by means of a master contract which contains a waiver of defenses analogous to that used in installment sales. If a controversy arises over the underlying consumer purchase, the cardholder cannot withhold payment from the issuer.[2] The effect for the consumer is much the same as the financing arrangements discussed above. The method—the charge card procedure—is, of course, different.

In the initial proceeding on the proposed rule, the possibility of the use of credit cards as a method of avoiding the consequences of restrictions on other cut-off devices received considerable attention. Proponents of the rule maintained that credit cards should be included in any final rule on the subject of buyers' claims and defenses.[3]

Opponents felt that credit cards should be excluded, largely because the procedure involved in a credit card transaction differed from that in other credit sales.[4]

In the original proceeding few demonstrated cases of consumer injury were cited.[5] There was general agreement by consumer witnesses that the credit card issuer's ability to insulate itself from card-holder claims and defenses does not result in widespread abuse.[6] The thrust of consumer testimony was that credit cards must be covered in any final rule to meet potential abuses.[7] This position was premised on several assertions.

(1) Use of credit cards is rising and the potential for abuses analogous to holder in due course is great.

(2) Reasons similar to those advanced in the case against contractual waivers of defenses; that is, that such waivers are contracts of adhesion and against public policy.[9]

(3) That credit card issuers are similar to "related creditors" in that they are aware of the business practices of the merchant.[10]

(4) Such waivers are unfair in an absolute sense.[11]

(5) The acceptance by merchants of credit cards, and the display of credit card seals or "logos," gives rise to an implied warranty by the credit card issuer as to the merchant's reliability.[12]

Adverse witnesses at the original proceeding based their opposition to inclusion of credit cards largely on the following grounds.

(1) The Commission lacks jurisdiction over bank-issued credit cards.[13]

(2) Credit card waivers are not abused.[14]

(3) A ban on waiver agreements in credit card contracts would (a) make it impossible for credit card issuers to operate [15] and (b) hamper development of modern automated electronic banking improvements.[16]

(4) The credit card issuer has no way to control the retail selling practices of the merchant.[17]

(5) Credit card transactions are inherently different, or unique.[18]

In a reopened proceeding, the Commission revised its rule to contain a provision which would prohibit sellers from accepting credit cards issued in return for a waiver of defenses effective against the issuer.[19] In publishing the proposal the Commission was aware of the fact that—at the time—three states had regulated the use of waiver of defenses clauses in credit card transactions.[20] The Commission believed that both consumers and industry should have an opportunity to comment on the subject, in the context of a specific proposal, and that the degree to which credit card waivers might be productive of consumer injury should be explored on the record.

In the reopened proceeding many of the same arguments, both pro and con, were heard with respect to restriction of credit card waivers. Opponents, in addition to renewing their previous objections, noted that the Commission proposed to regulate such waivers indirectly through a requirement on retail sellers.[21] Banking interests maintained that the Commission could not indirectly control the activities of credit card issuers.[22] Industry representatives and other witnesses further noted the unique aspects of credit card transactions and the manner in which they differ from the other three-party financing arrangements addressed in the rule.[23]

Industry representatives again stressed the degree to which their operations are leading to sophisticated electronic transfer mechanisms which will greatly relieve an over-burdened funds transfer system. Opponents of credit card regulation maintained that to place restrictions upon such a system in its early stages of development would hamper the perfection of a system intended to bring long-term benefits to the public.

Consumer representatives repeated their requests that restrictions on credit card waivers be included in the final rule to close a substantial loop-hole in the protections afforded by the rule.[24] A few witnesses testified as to actual cases of consumer injury,[25] and a number of case histories were placed in the written record.[26] The majority of these involve billing errors or other practices unrelated to the existence of the credit card waiver.[27]

The Commission concludes that consumer injury from reliance on the standard form waiver in credit card contracts is infrequent, when viewed in the context of millions of transactions.[28] At the same time, the continuing relationship between the issuer of a credit card and the subscriber tends to render abusive reliance on the insulation conferred by the waiver counterproductive. If the issuer wishes to retain a subscriber's business, he must seek to insure customer satisfaction in most cases. Credit card issuers can and do undertake to intervene in consumer disputes with sellers.[29]

Mrs. Knauer, Special Assistant to the President for Consumer Affairs, summarized the relationship between issuers and users of credit cards thusly:

"The credit card company investigates both the card holder to whom it extends credit, and the retail credit company from which it buys the card holder's debt obligation.

"The expectations of the purchaser in an installment sale, therefore, can be quite different from those in a credit card transaction.

"The credit card holder, however, knows when he signed a credit card charge slip that his obligation to the retail store will be paid by the credit card company. Thus, the consumer, in a credit card situation, makes the credit assignment himself. He, in effect, directs the retail store to assign his note to the credit card company of his, the consumer's choice.

"Secondly, consumers in each of these transactions often have different economic advantages, as well.

"Installment sales financing is most often used by lower and middle income consumers, while credit card transactions are usually restricted to middle or upper income consumers, people who are presumably better equipped to defend their economic interest.

"Moreover, some credit cards, such as bank credit cards, have become a new medium of exchange for many Americans permitting them to purchase goods and services throughout this country and many foreign countries without the necessity of carrying large amounts of cash or establishing local credit. In this respect, credit cards may be used as a substitute for currency in what is considered by the card holder as essentially a cash purchase.

"Prohibiting waiver, of defenses could well compromise a considerable consumer benefit from bank cards, with their far-flung acceptability as a cash equivalent.

"Finally, there has been substantial evidence of abuse of the holder in due course doctrine in the area of installment sales. I am sure that is one statement we could all agree upon. But I am not aware of similar abuse in credit card transactions.

"To some extent, I believe that is the result of self-policing by credit card companies. Most of them carefully investigate the retailers with whom they deal, and do not hestitate to sever relations with them and with sellers who do not provide satisfactory merchandise or services. This is exactly the sort of voluntary business action that can often provide the best protection for consumers." [30]

In addition to the information discussed above which has suggested that waivers of defenses in credit card contracts are not abused to the same extent as the "holder in due course" doctrine, the Commission is cognizant of recent

See footnotes at end of chapter.

legislative developments, at the federal level, which will alleviate any existing problems in this area. The recently enacted Fair Credit Billing Act invalidates waivers of defenses in credit card contracts where a card is used to make a purchase of more than 50 dollars within the state where the user resides or within 100 miles of the place where the card is issued.[25] The Commission has no reason to believe that this legislation will not afford adequate protection to consumers at the present time.

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[1] Ross, "The Credit Card's Painful Coming-of-Age," *Fortune*, October, 1971. p. 108. Travel and entertainment cards ("T and E") are American Express, Diners Club and Carte Blanche. Nationally distributed bank cards are Master Charge (Interbank Card Association) and the Bank-Americard (National BankAmericard, Inc.).

[2] The cards issued by retail stores—at 120 million, the largest category of charge cards outstanding—do not pose this potential difficulty since they are not three party cards. Likewise, the 90 million travel cards currently held do not involve waiver agreements.

[3] *E.g.*, Kessler, Tr. 1066; Swankin, Tr. 1365; Willier, Tr. 1038.

[4] *E.g.*, Daniel (BankAmericard), Tr. 1235, 1254–5; Doyle (American Bankers Association), Tr. 109, 1128; Morgan Interbank Card Association ["Master Charge"], Tr. 1229; Serafine (Charge Account Bankers Association), Tr. 1073.

[5] *E.g.*, the "Richter Sewing Machine Case" cited by Bess Myerson, Tr. 376–377.

[6] *E.g.*, Eovaldi, Tr. 792; Forham, Tr. 630; Leatherberry, Tr. 1018; Swankin, Tr. 1371.

[7] *E.g.*, Flicker, Tr. 404; Kass, Tr. 1209; Myerson, Tr. 368; Eisdendrath, Tr. 382–3. See also R. 334, 891, 1369.

[8] Eovaldi, Tr. 792; Kass Tr. 1209; Leary, Tr. 986; Martin-Trigona, Tr. 583; Willier, Tr. 1046.

[9] Eovaldi, Tr. 796; Kessler, Tr. 1066; Leary, Tr. 981.

[10] *E.g.*, Buxbaum, Tr. 1306; Furness, Tr. 36; Leatherberry, Tr. 1018; Myerson, Tr. 368; Willier, Tr. 1046–1049.

[11] *E.g.*, Eovaldi, Tr. 807; Leary, Tr. 981.

[12] Kass, Tr. 1209; Martin-Trigona, Tr. 575, 583.

[13] *E.g.*, Daniel, Tr. 1249, 1251, 1259; Serafine, Tr. 1074. R. 1737 *et seq.* (American Bankers Association [ABA]); R. 1767 *et seq.* (ABA, Interbank, National BankAmericard and two other bank card associations).

[14] *E.g.*, Badders, Tr. 1334, 1339; Serafine, Tr. 1086.

[15] *E.g.*, Daniel, Tr. 1237; 1242; Doyle, Tr. 1113, 1134; Serafine, Tr. 1089.

[16] *E.g.*, R. 1737, 1767 R. 2476–2479 (Charge Card Association). "It is clear that bank charge cards will form the foundation for a nationwide electronic payment system. [Submission included newspaper clippings in substantiation of this point]. To now burden that evolving system . . . would have intolerable consequences." Charge Card Association, R. 2477.

[17] *E.g.*, Daniel, Tr. 1238, 1245, 1258, 1264; Doyle, Tr. 110; Serafine, Tr. 1081. One banker, however, after making such an assertion, proceeded to relate precisely how a member bank encouraged a reform in the selling practices of a health spa. Morgan, Tr. 1221.

[18] *E.g.*, Daniel, Tr. 1235, 1254; Doyle, Tr. 1109, 1128; Morgan, Tr. 1229; Serafine, Tr. 1073, 1077.

[19] 38 Fed. Reg. 892. Proposed sections relevant to credit card waivers were:

(f) *Credit card issuer.* Any person, partnership, corporation or association, including a bank, which by agreement extends to a cardholder the right to use a credit card in connection with a consumer transaction.

(g) *Cardholder.* Any consumer who enters into an agreement with a credit card issuer extending to such consumer the right to use a credit card in connection with a consumer transaction.

In any consumer transaction it constitutes an unfair and deceptive act or practice for a seller to:

* * * * *

(d) Enter into any agreement, contract or other obligation for participation in a credit card plan with any credit card issuer who:

(1) Takes or receives from a cardholder any agreement, contract or other obligation, except one conforming to Section II(b) of this rule, which contains any provision whereby the cardholder agrees not to assert against the issuer claims or defenses arising out of consumer transactions arranged with the issuer's credit card, up to the full amount financed with the credit card in that transaction.

(2) Places any time limitation on the rights of a credit card holder to assert claims or defenses arising out of a consumer transaction which is shorter than the period in which payments are to be made for the sale or lease or the date of final delivery of the goods or the completion of the furnishing of the services, whichever is longest.

[20] Ariz. Rev. Stat. Ann. § 44–145(A) (Supp. 1971); Ch. 1019 § 4 [1971] Cal. Acts. 2152–55 (adding Cal. Civ. Code § 1747.90); Mass. Ann. Laws Ch. 225, § 12P (Supp. 1971).

[21] *E.g.*, Michael J. Larson, Vice-President, Marine National Exchange Bank, Milwaukee, Wisc., Tr. 2123; Ronald E. Brandel, representing Western States Bankcard Association, Tr. 1652; Joint Bankers Statement, R. 6392.

[22] *E.g.*, Witnesses cited note 17, *supra* and Hinckley, Tr. 1783; North American National Bank, R. 5891.

[23] *E.g.*, Witnesses cited note 18, *supra* and Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs, Tr. 1395; Prof. John C. Weistart, Assoc. Professor of Law, Duke University, Tr. 1469.

[24] *E.g.*, Professor Egon Guttman, American University Law School, Tr. 1509; Blair Shick, National Consumer Law Center, Tr. 1736; Stuart Bluestone, on behalf of Consumer Federation of America, Tr. 1844–48.

[25] Jeffery, Tr. 1809–10; Dale S. May, Tr. 1930; Samiany, Tr. 2105; E. Thos. Garman, Tr. 2207; Edie Rosenfels, Tr. 2233.

[26] Chase, R. 5760; Norris, R. 5663; Sweet, R. 5592.

[27] See notes 25 and 26, *supra*.

[28] Estimated at over 300 million transactions per year. Ross, op. cit. *supra*. note 1.

[29] Tr. 1221; Tr. 1930; R. 7670.

[30] Tr. 1403–1405.

[31] Public Law 93–495, October 28, 1974.

CHAPTER VI. OPPOSITION TO THE RULE

A. Opposition to the abolition of the holder in due course doctrine. Much of the support for the proposed Trade Regulation Rule concerning Preservation of Consumers' Claims and Defenses has been discussed above in previous chapters. Other, more generalized expressions of support for the proposal are discussed below.[1] This chapter will evaluate the opposition to the rule which was elicited in the course of public proceedings thereon.

For the most part, opponents of the rule directed their comments and testimony to the proposal as a whole. They did not emphasize particular provisions of the rule or focus on individual components of the proposal. Comments with respect to the proposed provisions relating to waivers of defenses in credit card transactions were the major exception. Our credit card proposal elicited the largest volume of specific commentary in opposition.

Effect on cost and availability of credit. In the course of rulemaking proceedings, industry representatives maintained that a Trade Regulation rule which restricted the use of promissory notes and waivers of defenses in consumer transactions would cause an increase in the cost of credit[2] and/or a decrease in the availability of consumer credit.[3] A negative impact on the operations of retail merchants was also predicted. It was argued that financial institutions would become unduly restrictive about the sellers from whom they purchased consumer paper[4] and they might even stop purchasing consumer paper altogether.[5] On the basis of these arguments, some businessmen suggested that their retail operations would be severely curtailed and that some among their ranks would be driven out of business due to a lack of financing.

David Gezon, President of the Volkswagen American Dealers Association testified that California and Pennsylvania legislation removing holder in due course status for assignees of contracts taken in connection with an automobile sale had "worked as a disadvantage to [dealers in those states]."

> "Particularly in the young cases, they [the dealers] feel the banks have become terribly what we call 'turn downsy.' The turn downs have increased since the advent of this.
>
> "In California * * * it has cut down sources of financing."[6]

Joseph L. Kaufman, Vice President of Pacemaker Corporation, a boat manufacturer and owner of a retail boat outlet in New York, wrote that the New York Statute which eliminates the holder in due course defenses "has resulted in a material decrease in the sales of our boats at the manufacturers' level, and also at the retail level in New York."[7]

Mr. George Jones of the Alabama Independent Automobile Dealers Association submitted a survey of the Association's membership which indicated that the practical impact of the Alabama "Mini-Credit Code" was adverse to both the Association membership and to Alabama consumers.[8] The survey, in Mr. Jones' estimation, tended to show that (i) consumers find it harder to get credit, (ii) there are more frequent credit rejections by banks since enactment of the code and (iii) many of those being rejected are worthy of credit. Mr. Jones concludes, therefore, that such restrictions will deprive "thousands of basically honest and decent" consumers of access to credit.[9]

Many businessmen predicted that damage to their businesses would result from the increased reserve accounts and recourse agreements that banks would require when buying consumer paper from sellers.[10] They argued that financial insti-

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See footnotes at end of chapter.

tutions did not want the responsibility of policing sellers and that sellers would not bear the risks or survive with additional red tape. Other arguments against the rule included the claim that many consumers would stop paying without cause,[11] and that the rule would interfere with free competition.[12] In particular, it was argued that the rule would result in unwarranted hardship for honest small businessmen, who cannot survive without readily available financing.[13]

There was also particular concern expressed for the individual, especially the minority businessman, just beginning a business without a previously established reputation.[14] This problem was discussed by Professor Homer Kripke:

> I must say in all candor that the result of such a rule may be to make it more difficult for dealers to get financing when they are just starting business and have no background or experience to demonstrate that they do and can perform satisfactorily and this is maybe particularly acute in the minority areas where we are making every effort to get started with small business, but here the problem is anyway a problem of subsidization of small business * * *
>
> That relatively narrow problem should not in my opinion be permitted to obstruct what is a very sound reform having much broader implications than the relatively narrow problem of aiding small business.[15]

Representatives of financial institutions made many of these same arguments. They contended that certain banks and finance companies would be forced to leave the consumer credit field; that those who remained would require larger reserve accounts and more stringent recourse agreements; and that these policies would mean increased costs for sellers which would be passed on to consumers. Financial institutions also asserted that they would have to switch to direct consumer loans. This, they argued, would work further hardship on sellers. Finally, in order to meet anticipated demands of consumers, financial institutions suggested that they would have to enter the repair business.

Eugene Hart, Vice President of a Wisconsin Bank, commented on his bank's experience under Wisconsin's administrative rule which eliminates the holder in due course doctrine in home improvement contracts.[17]

> Our main bank, Marine National, had been buying $400,000 a month home-improvement paper. That paper had dropped to $50,000 a month and we are making the fifty in direct loans. Our outstanding home improvement paper seven years ago was $7 million. It's now $3 million.[18]

Mr. Hart felt that banks will have to require large reserves which will decrease working capital and ". . . many will be forced out of business."[19]

Later in his testimony Mr. Hart was asked to elaborate on why there was such a great decline in the amount of home improvement paper accepted. He responded,

> I think there has been a drying up in the business . . . no one in the banking business wants any paper that generates problems. We look to the sellers, the dealers that give us good paper, and if we see any degree of problem, we just don't want them on our books, I think people have gone out of that business. . . . The home improvement business used to be strictly a time-selling business but now those people that remain are pretty legitimate.[20]

Creditor obligation to police the market. Industry members also asserted that they are in no position to know the status and reputation of retail merchants; that they cannot, realistically, be expected to police retail sellers.[21] This assertion is invalidated by other industry testimony which confirms that the volume of consumer sales-finance transactions is such that creditors have a full opportunity to detect and predict the incidence of consumer sales abuse on a statistically reliable scale.[22]

Additionally, this record reflects the fact that financial institutions have access to a variety of information which yields an accurate and reliable picture of a merchant's reputation. Creditors who finance consumer transactions can and do conduct through background investigations of any merchant negotiating consumer paper. This is true despite the fact that where a creditor occupies the protected status of a "holder in due course", he may look to the consumer debtor for payment notwithstanding seller misconduct.

In this connection, the record contains references to a variety of industry tools. For example, all lenders approved by the Federal Housing Administration to grant home-improvement loans automatically receive a list of individuals and firms which have failed to perform satisfactorily on FHA-insured home-improvement jobs. The list, maintained by HUD–FHA, is called the "Precautionary Measures List".

> The list, which is kept up to date (names are continually added, and deleted if the contractor reforms), has at present [approximately 5000] names of companies [and individuals] for which the FHA refuses to insure loans, on the theory that it has a responsibility to the public not to be a party to deceit. Thus, every lender handing out FHA-insured home-improvement loans knows which home-improvement companies have acted in an unreliable manner and has guideline for its judgments in this area.[23]

Many finance industry witnesses indicated that their companies always screen the paper they purchase.[24]

> We look to the sellers, the dealers that give us good paper; and, if we see any degree of problems, we just don't want them on our books.[25]

With reference to the Wisconsin Consumer Act, Mr. Bill W. Dixon, Vice President of the Wisconsin Installment Bankers Association, responded to the question, "has the Wisconsin law changed your operation in any way?" as follows:

> Not significantly. There are some changes. Quite frankly we always investigated the merchants with whom we do business. We do a little better job now in the area of our credit approval.
>
> There's not been any significant changes at this time, but we are taking a closer look at certain types, I'd say, of marginal credit as a result of the new Act * * *[26]

Richard P. McManus, Assistant Director, Law Department, Household Finance Corporation, testified,

> Other steps we feel [are important] in protecting the consumer are trying to investigate the merchant from whom we purchase contracts.
>
> This is probably a singularly most important aspect. In doing this, we make every effort to be sure that people from whom we buy contracts are ethical, responsible businessmen.
>
> We buy paper only from those that we have personally investigated and our personal investigation goes into such matters as ethics, financial ability, financial capacity, business ability, so forth.
>
> We catagorically reject any merchant that has had substantial and substantiated consumer complaints registered with the Better Business Bureau.
>
> * * * * *
>
> It has been our experience that the best time to resolve complaints is early in the game. After that we maintain complaint records on each merchant with whom we deal and when we find that a merchant has a number of complaints that go unresolved, where there's been misrepresentation, so forth, we terminate our dealing with this merchant.
>
> We think this program of merchant investigation and inspection is effective.
>
> * * * * *
>
> Once we establish an agreement with a merchant about paper, we conclude a financing agreement. United this arrangement we require him to repurchase any contract that relates to merchandise that has been unsatisfactory and not properly resolved.[27]

Alternatives available to creditors. Mr. McManus' final point adverts to a variety of contractual arrangements between creditors and retailers which operate to protect the financial institution in consumer transactions. One such arrangement is a "repurchase" or "recourse" provision in a contract between a retailer and a finance company. Such provisions obligate the retailer to assume full or partial liability for a consumer default on a related credit obligation. While it may be true that even the most conscientious program of screening sellers will not eliminate all risk of seller misconduct, a repurchase agreement of the use of a "reserve" account can protect the financial institution against any risk that remains. In this connection, the Uniform Commercial Code provides:

> any person who transfers an instrument and receives consideration warrants to his transferee . . . that . . . no defense of any party is good against him.[28]

The code thus expressly recognizes and mandates imposition of the assurances Mr. McManus' firm routinely obtains from sellers.

Professor Homer Kripke testified about the use of various recourse arrangements in consumer transactions. His testimony is based on his experiences as counsel for large finance companies.[29]

Banks and financial companies have frequently urged that freedom from merchandise-related defense is essential for a financial institution, in order that it can service the merchants by acquiring from them the obligations of their customers. In so far as

See footnotes at end of chapter.

these arguments rest on purported legal grounds, they seem to be without substance.

Thus, it is publicly argued by a finance company that if consumer installment obligations acquired by it from sellers were subject to consumer defenses, the obligations could not be carried on its balance sheet as assets and this disadvantage would make it impossible for the company to engage in the financing of consumer obligations for dealers. The same company, however, is heavily engaged in factoring, which likewise consists of holding obligations of buyers purchased from sellers (usually in a commercial context). No effort is made in the factoring business to protect the third party from defenses between the original parties by a waiver of defense clause or use of negotiable note, and yet the factoring receivables always appear on the balance sheet of the financing institutions handling them.

Similarly, the banks have sometimes publicly argued that if consumer installment obligations purchased from merchants were subject to defenses, they would not be legal for investment by banks, because they would not be firm obligations. This is specious reasoning, in my opinion. Banks have always discounted negotiable notes arising in merchandise transactions, and have relied on the holder in due course doctrine. That doctrine does not give protection against the "real" defenses of the maker, namely fraud in the factum, infancy, incapacity, duress, illegality including usury, etc. See Uniform Commercial Code Section 3-305 which is in force in nearly every state. This means, therefore, that whenever a bank discounts a note which had its inception between a buyer and a seller, the bank is subject to all the possibilities of holding an unenforceable note arising from usury, fraud in the factum, infancy, etc. Thus, there may be complete legal defenses to the obligation held by the bank, and the proposition asserted that banks may not hold obligations which may be unenforceable would preclude the bank from ever holding notes created by other parties. It obviously is not the law.

Thus the question of additional customer defenses arising from merchandise misrepresentations or breaches of warranty does not involve a basic change in the legal position of the banks, but merely a substantive change in the possible extent of the risks of uncollectibility which they provide for by their reserves for losses.

This brings us to the second and perhaps more significant aspect of the claims of the financial institutions, namely, that they cannot *afford* to handle consumer installment obligations if they are subject to the risks of customer dissatisfaction. I considered this question for many years when I was counsel for a large consumer finance organization and in subsequent years of practice specializing in that field. In 1950 I took the position in the Yale Law Journal that although the holder in due course doctrine was properly applicable in this situation, the question was really of little practical moment—it was much ado about nothing. *Kripke, Chattel Paper* as a Negotiable Specialty, 59 Yale L. J. 1209, 1214–1222 (1950). I was then speaking in the context of the business of a company which prided itself on its reputability and the character of the business it was doing, and would have been quick to refuse to do business with dealers who produced a significant amount of customer dissatisfaction. Subsequently, when the New York statutes [restricting the holder-in-due-course doctrine] were passed, the question arose in that financial organization whether we should insert in our contracts the clause authorized by statute that would invoke the waiver of defense argument. The Vice President then in charge of operations decided, with my advice and concurrence, that the nature of our operations was such that we would not need the protection. That company had long since voluntarily abandoned the negotiable note as a means of obtaining that kind of protection.

I cannot believe that banks do or should do a lesser quality of business than this or are in any greater need for protection from the customers of banking clients. It would be interesting to see whether any bank would so denigrate the quality of its own operations as to submit figures showing that this issue is important in its collections. I have a hunch that the issue will prove to be statistically meaningless for the banks, and rests more on a yearning for clear lawyers' opinions about enforceability than on facts.[30] A bank ought to do no less than a factoring company, namely, to investigate its client's experience with customer claims for adjustment and returns, and to refuse to do business with a merchant whose percentage thereof is too great.

It may be useful to clarify a point here. Some endorsements of negotiable notes by merchants for the sale of customer obligations to banks are 'without recourse'. Likewise, in the factoring business, which involves the sale of non-customers' obligations to the factor is done 'without recourse'. These terms do not mean that as between the financing institution and the merchant, the financing institution assumes the risk of customer dissatisfaction. The underlying agreements always contain a warranty by the merchant to the institution that the customer has received and has accepted the goods and has no claim with respect thereto; therefore if the customer does have a claim that a warranty was breached, the financing institution does have recourse against the merchant. This problem, therefore, can arise as ultimately significant only in cases where the merchant has become insolvent and the question is whether the customer or the financing institution must take the loss. Even with an insolvent merchant the financing institution frequently need not take the losses, because many financing arrangements involve the withholding from the merchant, exactly for this purpose, of a portion of the purchase price paid by the financing institution to the merchant for the customer obligation. In any event, the bank is in a far better position than the customer to determine whether a merchant is insolvent and is likely to be in a position where he cannot honor his warranties and representations as to the merchandise sold.

This problem has become acute as the installment credit system has moved from reputable merchants and financing institutions serving middle-class customers into the poverty areas where needy and ignorant customers are preyed on by disreputable merchants. In this context my assertion of 1950 that the problem is unimportant factually no longer holds true.

The question is whether banks and other financial institutions are going to make available an immunity in a third-party position to support business operations which inflict severe monetary damage and other distress on ignorant weak people by disreputable means. The only effective means of control of these merchants is by making it the interest of the financing institutions to deal only with reputable merchants. This can be done only by abolishing the financing institutions' opportunity to get free of merchandise defenses. The banks ought to be ashamed of arguing that they are serving merchants whose injuries to their customers are so substantial as to constitute a significant impairment of the collectibility of the obligations."

Commission resolution of cost and supply questions. As noted earlier in this chapter, one of the major points in opposition to the rule concerned anticipated adverse effects on the cost of supply of consumer credit. In considering this issue, the Commission has carefully reviewed the material in the public record, especially the testimony of law enforcement officials and other witnesses from those jurisdictions which have enacted or adopted effective statutory restrictions upon the holder in due course doctrine and other cutoff devices.[31] Additionally, the Commission has reviewed the comprehensive work of the National Commission on Consumer Finance on this specific issue [32] and has noted the testimony of representatives of the NCCF staff on the record for this proceeding.[33]

When the initial proposal in this proceeding was published, relatively little "hard evidence" or economic data was available concerning the demonstrated impact of legislative efforts aimed at restriction of the holder doctrine and other cutoff devices. The only evidence available at the time was ambiguous data drawn from the State of Connecticut.[34]

In the course of this proceeding the Commission has received considerable testimony concerning the impact of emerging state legislation similar to the rule. Almost without exception it supports the finding that there has been little, if any, negative impact from such legislation.[35] This conclusion was advanced by industry witnesses and was implicit in their assessment of the impact of laws in states with which they were familiar.[36] For example:

> It is fair to say then—let's narrow it to your experience in California . . . —that by and large the holder in due course doctrine is a dead letter, and that as a matter of fact financial institutions are still flourishing?
>
> Mr. Smith: They are flourishing . . .
>
> The bank financing of automobiles is expanding.
>
> * * * * *
>
> I don't think the Rees-Levering [Act] change has persuaded any banks to get out of the automobile financing business.[37]

Consumer witnesses made similar assertions. Blair Shick, Legislative Coordinator of the National Consumer Law Center, Boston, testified as to the Massachusetts experience.

> In Massachusetts, for example, it was the first state to abolish holder-in-due-course in a comprehensive sense through consumer transactions. There is absolutely nothing to indicate that as you compare Massachusetts with, say, Connecticut, a very analogous state, that anything has changed, that there was a need to change the rate structure, that people in Connecticut that are low income people are getting credit that aren't in Massachusetts. There was just no evidence of that.
>
> * * * * *
>
> The Massachusetts banks have a—almost a decade of experience. They don't come forward with their internal data. We can only look at the external and say it doesn't happen, it's never happened, that restricting one of these remedies or applying it here against a holder in due course has made any meaningful difference at all in availability of credit or the price of credit.[38]

See footnotes at end of chapter.

Finally, these facts were also confirmed by State law enforcement officials based on their experiences.

Richard Victor, Assistant Attorney General, Wisconsin Department of Justice, said:

> We are very fortunate in Wisconsin in that the problem which is dealt with by your proposed rule has been covered in depth by the Wisconsin Consumer Act.
>
> The Wisconsin Consumer Act prohibits negotiable instruments in consumer credit sales transactions as well as interlocking loan.
>
> These interlocking loans are substantially the same by definition as your related provisions.
>
> The Act also provides that waiver of defense clauses are ineffective for the first 12 months following assignment . . .
>
> It is clear that in the Wisconsin Consumer Act and yours as well fills an urgent need without unduly burdening the businessman.[38]

A nationwide survey conducted by the National Commission on Consumer Finance provides the most authoritative evaluation and prediction of expected impact of this rule.[39] It supports the assertion that this rule will not unduly burden business or consumers. Douglas F. Greer, Professor of Economics at the University of Maryland, and formerly Economic Consultant to N.C.C.F., discussed his work in this area during hearings on the rule.

> The second major part of my testimony relates to our attempt to . . . determine the extent to which credit availability would be reduced or interest rates affected by abolishment of these two remedies.
>
> * * * what we do with the econometrics * * * is to attempt to isolate the effect of one variable by holding the influence of all relevant variables constant, and in that way we can estimate the impact of one variable, a dependent variable, such as extensions of credit or interest rates.
>
> And this is basically the way we attempted to treat the matter here.
>
> * * * the observations in terms of denial of these remedies was in terms of those states that have prohibited both waiver and holder * * *
>
> * * * it can be concluded that denial of these remedies is likely to reduce credit availability of one particular type . . . That is: installment credit written at the retailer * * *[41]

Professor Greer predicted a reduction in the amount of credit extended in connection with certain consumer sales transactions in the neighborhood of 5 to 10 percent.[42] This suggests a very slight impact is likely from restrictions on cutoff devices in consumer sales. A finding that this rule may marginally reduce the aggregate amount of sales-related credit which is extended is not a persuasive argument against its adoption.[43]

Elimination of cutoff devices in consumer transactions should have the effect of causing creditors to be reluctant to finance transactions with merchants who engage in disreputable or unethical sales practices. Predatory merchants will thus find it more difficult to obtain a line of credit. At present, sellers are in a position to unload paper rapidly to willing acceptance creditors, leaving the creditor to worry about collection. The creditor, in turn, need not concern himself about abusive sales practices. He may rely on his statutory or contractual insulation from the seller in the event that a dispute arises in the process of collection.

An excellent example of such conditions and their adverse impact is afforded by the Monarch Construction case in the District of Columbia. Monarch Construction promised home improvements to owners of rowhouses in lower-middle income and lower income areas of the city. In return they took promissory notes which represented staggering consumer indebtedness—often many times the annual income of the maker. The promised home improvements were usually never undertaken; if begun, they were not completed. Had the promised work been done, its acknowledged value would have been far less than the indebtedness incurred.

Had this rule or a similar state statute been in effect, Monarch Construction Company would have been an obvious "reduction" in the amount of aggregate consumer credit outstanding in the District of Columbia. However, this reduction would not necessarily have included all of the potential demand for home improvement work that was ultimately absorbed by Monarch. It is reasonable to expect that those of Monarch's customers who really needed home improvement work, and reached this conclusion without the help of the high-pressure sales tactics which characterized the Monarch operation,[44] could and would have sought financing for legitimate contracts executed with reputable firms. The evidence that a reputable firm would have charged far less than Monarch, for vastly more comprehensive work. It should be clear that the reduction in outstanding credit occasioned by the application of the proposed rule to a Monarch-like seller reflects both social utility and an improvement in the financial situation of individual consumers.

> Let's suppose that abolition of the rule dries up the credit to the "food-freezer-racket" operator. This is the fellow who unloads freezers having a retail value of not more than $300 at a price of $900 to which he adds interest, insurance, and other charges. I think we should ask "Who needs that kind of credit?" We should ask the same question if we should find that the rule dries up credit to the seller of shoddily made sewing machines at outrageously high prices. We can also do without the credit that enables the home improvement swindler to move with the good weather up and down the East Coast.[45]

During these proceedings proponents from many of the jurisdictions which have enacted legislation similar to the rule indicated that no significant increases in cost or decreases in availability had been observed. They also pointed out that consumers in all economic classes have been harmed by application of the cutoff devices the rule will prohibit. We believe that the benefits to consumers occasioned by this rule vastly outweigh predicted impact on credit or supply.

Readily available credit from a fly-by-night salesman who does not deliver the goods or perform as promised does not benefit consumers. The record contains hundreds of examples of this type of transaction. We agree with the many proponents of the rule who stated that honest merchants, financial institutions and consumers alike will benefit by state and federal regulation which restricts the operation of predatory sellers.

The record of this proceeding shows that the inequities of the present system will be eliminated if a greater responsibility is placed upon the financial institutions to police the merchants with whom they deal. The costs associated with this rule will be shared by banks, other financial institutions, sellers, and ultimately consumers. Witnesses in support of the rule frequently likened increased costs to "insurance premiums" paid to obtain a general improvement in retail sales practices.

The industry argument that credit should be made available to marginal risks by retention of cutoff devices was uniformly rejected by proponents of the rule. If methods to extend availability of credit need to be found, they should be undertaken as an affirmative effort to develop innovative new programs, such as establishing incentives for reputable "general market" retailers to extend credit to the working poor or to open branches in low-income neighborhoods so that the poor might have access to quality goods at competitive prices. The solution to the problem does not lie in continuing a credit practice which has been shown to be injurious to all consumers.

Finally, the record reflects little likelihood of any significant impact on interest rates. This fact is confirmed by witnesses from reform states. It is also confirmed by the work of Dr. Greer and the NCCF, as Dr. Greer testified:

> The second major part of my testimony relates to our attempt to * * * determine the extent to which credit availability would be reduced or interest rates affected by abolishment of these two remedies * * *
>
> Finally, we attempted to estimate the effect of denial for the interest rate on such credit; that is, credit extended at the retailer's and we find that the interest rate is reduced slightly as a result of abolishment of these remedies, the interest rate charged to the consumer and also the net interest rate earned by financial institutions buying this credit paper.
>
> The retailer's participation does not seem to be affected; it is only the net rate earned by the financial institution and the consumer rate.
>
> Now, I think that this result is due to the fact that with abolishment of these provisions there is a change in the quality of the credit and also the risk burden borne by the financial institution, such that with the lower risk burden borne by the financial institution the rates of charge are going to be lower.[46]

We conclude this discussion with reference to the testimony of Thomas Tahnk, Supervisor of Consumer Credit for the Minnesota Department of Commerce. It summarizes many of the concerns raised in the course of proceedings on this rule.

See footnotes at end of chapter.

Information for this statement was gathered from a cross section of all licensed financial institutions and from consumer protection groups both in and outside of government.

The State of Minnesota enacted a law in 1971 similar to the proposed trade rule dealing with intra-state transactions.

To the extent that our two years of experience under the Act might provide some indication of its probable impact on the nation as a whole we would like to summarize the Act, its impact on our economy and its shortcomings.

We feel that the proposed trade rule will address itself on a national level to basically the same problems that our law deals with on the local level. We view the proposed trade rule as a companion to rather than a substitute for our law.

* * * * *

The real impact seems to have been on the smaller finance companies serving the lower middle class and poor areas. Such residents were unable to obtain bank financing—not because it wasn't desirable—they just didn't qualify. So they financed their purchases from car jockeys, bait and switch sewing machine companies and secondhand appliance dealers through local finance companies. Transactions were handled on both conditional sales contracts and loans through related creditors. These companies did employ the holder in due course doctrine on a regular basis.

The Legal Aid Society and Better Business Bureaus report that the new law has been very effective in persuading used car dealers that a $900 used car should have more than a five minute warranty; in convincing used furniture dealers that a sofa sits better with four legs; and that the stereo really isn't "free" when one has to purchase 50 record albums at $7.95 a piece. Reputable finance companies, out of economic necessity, were forced to carefully select their dealers.

Has the law hurt business?

Is it harder for the poor to obtain sufficient credit?

We don't think so.

Finance companies are out daily beating the pavement searching for good dealers; they find that there's never enough.

Legal Aid attorneys attempting to unweave the financial messes of their clients report that there is more than adequate credit available.

We conclude that the new law has helped those it was intended to help and has not, as was first feared, acted as a damper on the economy.

Minnesotans have lived under the Act for almost two years. From our vantage point, we feel that the Act has been good for the state, both its consumers and its businesses. None of the dampening effects on our economy that were feared have occurred.

We in Minnesota support the adoption of the proposed trade rule.[87]

B. Opposition based on related developments in the field. In the original proceeding, many parties urged that the Commission withhold action until the report of the National Commission on Consumer Finance was completed and published.[88] That report was released in January, 1973.[89] Among the recommendations are proposals to abolish the holder in due course doctrine and waivers of defenses, and to sharply restrict vendor-related loans.[90]

In the reopened proceeding, the Commission was urged to wait at least four years from the date of the NCCF report, in order that the individual states might have an opportunity to enact the NCCF recommendations.[91] Additionally, it was pointed out that the recommendations of the NCCF were intended to be considered as a comprehensive proposal which ought not to be acted upon piecemeal.[92]

The Commission does not agree that the restrictions embodied in this rule cannot be enacted as an independent regulation, separate and apart from the comprehensive, large-scale changes recommended by the NCCF. Many states have legislated restrictions similar to this rule without undertaking concurrent changes in the interest rate ceiling or other aspects of consumer finance. In addition, the Commission notes that NCCF statistics strongly suggest that alteration of rate ceilings is *not* necessary when considering a restriction of third party cutoff devices.[93]

The Commission has therefore determined that further delay in restriction of devices which serve to cut off consumers' defenses against third party financers is not warranted.

State action: Many states have acted in some manner to alter or eliminate the traditional holder in due course and waiver of defense doctrines as applied to consumer installment sales. The question thus arises whether state action has made Commission action unnecessary. In general, industry representatives said yes[93a] and consumer representatives said no.[94] After careful review of the statements in the record and existing state legislation the following observations can be made.

(a) Of all the states that have legislated, only a few have enacted a comprehensive measure.[95] Some states have abolished either the holder in due course doctrine or waiver of defense clauses, but not both.[96] Many states have not dealt with the problem of the vendor-related loan.[97] In other states, major exceptions or exclusions are contained in the legislation, or the statute applies to only one type of transaction, e.g., automobile sales, home solicitation sales, home improvement sales, to the exclusion of others.[98] These partial limitations do not reach the full extent of the problem.[99] (b) Consumer representatives noted on the record, that in states that have not acted, the opponents of consumer credit reform are so strong that no statute is likely to pass.[100]

(c) The considerable number of interstate consumer credit transactions which may elude even the most comprehensive state statutory protection[101] will be affected by this Rule.

(d) Proponents of the rule emphasized a need for uniformity of protection. They believe that a comprehensive trade regulation rule, uninfluenced by local pressure, would be a major step in achieving this goal.[102]

(e) While a growing number of state courts have held application of holder in due course or waiver of defenses to be unconscionable when applied in consumer transaction,[103] such decisions are not comprehensive in effect. Judicial relief requires more time and money than most consumers can afford and it is only available in the most extreme cases.[104]

For these reasons the Commission concludes that this Rule will serve as a model for further state legislation and give states which lack legislation impetus to act.[105] The argument that the Commission must always "wait for others to act" is not a persuasive one. Further delay of this measure would be inappropriate and unjustified.

See footnotes at end of chapter.

[1] Chapter VIII and Appendix.

[2] *E.G.*, Robert Doyle, Tr. 116, David Gezon, Tr. 1273; Louis Gross, II, Jr., Texas Independent Automobile Dealers Association, R. 53; Marvin G. Levin, President, Professional Remodelers Association of Greater Chicago, R. 1364.

[3] *E.g.*, Ira J. Lefton, Tr. 668; Warren J. McEleney, Tr. 1284; Robert Serafine, Tr. 1089; Leonard M. Cohen, General Counsel, Independent Finance Association of Illinois, R. 1376.

[4] E.g., Eugene W. Hart, Tr. 694; James J. Schintz, Texas Independent Auto. Dealers, R. 55; Michael Larson, Marine National Exchange Bank of Milwaukee, R. 58.

[5] E.g., David Gezon, Tr. 1274; Louis Gross, Tr. 385; J. Manly Head, Tr. 1140; Warren J. McElensey, Tr. 1288; Leonard Cohen, R. 1377; Jack S. Watson, Pennsylvania banker, R. 372.

[6] Tr. 1279.

[7] R. 370.

[8] R. 6011–6048.

[9] Tr. 1502.

[10] See notes 4 and 5, *supra*. Also, Ira J. Lefton, Tr. 668; E. D. Cartwright, Pennsylvania banker, R. 88.

[11] David Gezon, Tr. 1277; Ira J. Lefton, Tr. 685; L. A. Roseberry, Tennessee banker, R. 67; Leonard Cohen, R. 1377.

[12] R. 55.

[13] *E.g.*, George Jones, Tr. 1507–09.

[14] *E.g.*, Robert Doyle, Tr. 1137; Helen Nelson, Tr. 720.

[15] Tr. 549–50; see also Helen Nelson, Tr. 720.

[16] Jack Watson, Pennsylvania banker, R. 372.

[17] Wisc. Ann. Code 110.3 (1970).

[18] Hart, Tr. 695.

[19] Tr. 696.

[20] Tr. 705–706. Mr. Hart also attributed some of the decline to the 3-day cooling-off period requirement. Finally, when asked whether National Marine Bank's drop from $400,000 to $50,000 was due primarily to Wisconsin's restriction on the holder-in-due-course doctrine (promulgated one year before the hearings), Mr. Hart responded, "Well, this has been over a period of ten years. There's been a gradual diminution" (Tr. 710).

[21] *E.g.*, Tr. 387–390 Louis Gross, Boulevard Loan Company, New Jersey: Tr. 1272 (David Gezon, Volkswagen American Dealers Association); R. 81 (Cessna Finance Corp.); R. 1377 (Independent Finance Association of Illinois); R. 1640–41 (Richard P. Schaumann for Indiana Automobile Dealers Association); 1651–53 (Robert Holland, Ohio National Bank of Columbus); R. 1660–61 (Connecticut Credit Union League, Inc.); R. 1667–69 (Keith Nelson for Mercantile Credit Corp.) "The burden of such policing is really tremendous * * *;" R. 1703 (Don H. Reavis for bank of the Southwest, Amarillo, Texas); R. 1707 (Roland Bartson, Bell Federal Savings, Chicago); R. 1912 (Consumer Bankers Association), R. 2524 (John F. Cline, Minneapolis).

[22] *E.g.*, Hart, Tr. 691; Gross, Tr. 382; Doyle, Tr. 1108.

[23] Magnuson and Carper, *The Dark Side of*

the Marketplace 86 (1968). Information [in brackets] updated to June, 1972, by interview with Mr. Stansbury of the Property Improvement Office of FHA, by telephone, June 28, 1972. At the time the quoted material was written (1968), the number of firms on the Precautionary Measures List was "over 7,000". The number declined by approximately 30% over the years 1968–72, which period also marked a time of significant activity in the legislatures of about twenty states in enacting restrictions upon the holder in due course doctrine. Indeed, many of the statutes are specifically aimed at home improvements.

[24] *E.g.*, Hart, Tr. 705; Robert B. Evans, National Consumer Finance Ass'n., Tr., 1709; Richard P. McManus, Household Finance Corp., Tr. 2024; Bill W. Dixon, Wisconsin Installment Bankers Ass'n., Tr. 2154.

[25] Eugene W. Hart, Vice President, Marine National Exchange Bank, Milwaukee, Tr. 705.

[26] Tr. 2154–55.

[27] Tr. 2024–2025.

[28] UCC 3–417 (2)(d). The comment to this provision states: "The position is taken that the buyer does not undertake to buy an instrument incapable of enforcement, and that in the absence of contrary understanding the warranty is implied. Even where a buyer takes as a holder in due course who will cut off the defense, he still does not undertake to buy a lawsuit with the necessity of proving his status." Of course, the mere existence of this warranty makes it harder for consumers to defeat "holder" status.

[29] Tr. 427.

[30] [Statistics assembled by the National Commission on Consumer Finance confirm Prof. Kripke's assessment. See National Commission on Consumer Finance, "Consumer Credit in the United States" 36 (1972).]

[31] *E.g.*, Eugene W. Hart, Tr. 691; Prof. William F. Willier, Tr. 1033; Lawrence R. Buxbaum, Attorney General's Office, Commonwealth of Massachusetts, Tr. 1300; Jim Smith, Senior Vice President, Security Pacific National Bank, California, Tr. 1437; Robert B. Evans, Maryland, Tr. 1707; John S. Hinckley, National Automobile Dealers Association (Utah), Tr. 1794; McManus, Tr. 2023–47; Larson, Tr. 2123–45; Bill W. Dixon, Tr. 2145–60; Richard Victor, Assistant Attorney General, Wisconsin Department of Justice, Tr. 2173–2181.

[32] Alan R. Feldman and Douglas Greer, "Creditors' Remedies and Contractual Provisions: A Legal and Economic Analysis of Consumer Credit Collections", Volume V of the National Commission on Consumer Finance Studies, summarized in Consumer Credit in the United States, Report of the National Commission on Consumer Finance, pp. 34–38 (Washington, 1972), hereafter cited "NCCF Report".

[33] Milton W. Schober, General Counsel, Douglas F. Greer, Economic Consultant, NCCF.

[34] Note, "A Case Study of the Impact of Consumer Legislation: The Elimination of Negotiability and the Cooling-Off Period," 78 *Yale L. J.* 613 (1969), where, at p. 655, it is concluded from the study that

"Eliminating negotiability makes fraudulent dealers bad credit risks, and thus induces financial institutions to be reluctant to take their notes. The findings of this study suggest that financiers impose important new restrictions on dealers which should reduce the extent of fraud in sales. On the other hand, the conservative reaction by most banks and finance companies to the elimination of negotiability in Connecticut has created another cost—widespread difficulty in marketing consumer paper. This apparent overreaction has resulted in higher charges to consumers and damage to legitimate businessmen. Whether these costs more than offset the benefits from restrictions designed to penalize fraudulent dealers is impossible to calculate exactly."

[35] See notes 36–42(a) *Infra*.

[36] *E.g.*, Hart, Smith, Evans, Hickley, McManus, Larson, Dixon, note 31, *supra*.

[37] Jim Smith, Senior Vice President, Security Pacific National Bank, San Francisco, Tr. 1465–6.

[38] Tr. 1757–1758.

[39] Tr. 2174–756.

[40] NCCF Report, p. 36.

[41] Tr. 1594–95.

[42] Tr. 1595.

[43] It is significant that the N.C.C.F. recommended imposition of restrictions analogous to those contained in this rule, despite the predicted marginal diminution in aggregate credit. See N.C.C.F. *Report* at pages 34–38.

[44] *Not With A Gun*, Jean Carper (NY 1973).

[45] Fairfax Leary; R. 2073–2074.

[46] Tr. 1594, 1596.

[47] Tr. 2197–2200, 2203.

[48] *E.g.*, Paul Daniel, Tr. 1252; Virginia H. Knauer, Tr. 900; Robert Serafine, Tr. 1034; Jim Smith, Tr. 1105; David C. Todd, Tr. 1180, American Industrial Bankers Association, R. 29.

[49] National Commission on Consumer Finance, "Consumer Credit in the United States" (Washington, 1972).

[50] *Id.* at 34–38.

[51] *E.g.*, Milton W. Schober, Tr. 1617.

[52] Schober, Tr. 1616; Morris, Tr. 1701.

[53] See the testimony of Dr. Greer cited in footnote 46.

[54] E.g., Paul Daniel, Tr. 1253; Robert Doyle, Tr. 1109 1124; Louis Gross, Tr. 383; Eugene Hart, Tr. 694, 697; J. Manley Head, Tr. 1139–40; Warren J. McEleney, Tr. 1282, 1286; Robert S. Olson, Tr. 954, 960; James Schintz, Pennsylvania Independent Automobile Dealers Association, R. 55; Michael J. Larson, Marine Nat'l. Exchange Bank, Milwaukee, Wisconsin, R. 59.

[55] E.g., Ruth Charney, Tr. 459; Betty Furness, Tr. 34–35; Lester S. Goldblatt, Tr. 469; Virginia Knauer, Tr. 901; Fairfax Leary, Jr., Tr. 970; Bess Myerson, Tr. 365; Fred Speaker, Tr. 1627; David Swankin, Tr. 1372; William F. Willier, Tr. 1034, 1041; Robert Wagman, Chairman, Sandon Members United to Act, St. Louis, R. 1250; Robert Hadler, Legal Assistance Foundation of Champaign County, Illinois, R. 1294.

[56] E.g., Massachusetts, New York, New Jersey, Wisconsin. Interaction between statutory and decisional law probably makes California eligible for this list as well. The limited time that legislation has been effective in other jurisdictions makes evaluation difficult.

[57] E.g., Connecticut, Mississippi, Nevada, Texas, New Mexico.

[58] Massachusetts, New York, Maryland and the District of Columbia have explicitly closed this loophole.

[59] E.g., In California, the statute with the strongest protection excludes motor vehicle and home improvement sales; Connecticut (statute applied only to home solicitation sales); Delaware (excludes motor vehicle and home repair sales).

[60] Prof. Homer Kripke, Tr. 439; Robert S. Powell, Tr. 297.

[61] *E.g.*, Wilbur Leatherberry, Tr. 1016; Wagman, Tr. 609; William Willier, Tr. 1034.

[62] The following witnesses testified that transactions often involve an out-of-state party; Jack Eisendrath, Tr. 831; Julia Fuller, Tr. 929; Anthony Martin-Trigona, Tr. 910; Dennis J. Roberts, II, Tr. 420; Alan Sims, Tr. 214. See also note 67, *supra* p. 49.

[63] Dean W. Determan, Tr. 1006; Betty Furness, Tr. 42; Lester S. Goldblatt, Tr. 468–69; Howard I. Kaufman, Tr. 505; Virginia H. Knauer, Tr. 900; Homer Kripke, Tr. 440; Fairfax Leary, Jr., Tr. 970; Bess Myerson, Tr. 365; Helen Nelson, Tr. 721; Sarah H. Newman, Tr. 998; Edwin Palumbo, Tr. 413; Fred Speaker, Tr. 1027; Eve Widows, Tr. 94; William Willier, Tr. 1035; Views of the Atlanta Legal Aid Society, Tr. 23.

[64] E.g., Unico v. Owen, 50 N.J. 101, 232 A.2d 405 (1967); Commercial Credit Corp. v. Childs, 199 Ark., 1073, 137 S.W. 2d 160 (1940); Commercial Credit Corp. v. Orange County Mach. Works, 34 Cal. 2d 766, 214 P. 2d 819 (1950); Mutual Fin. Co. v. Martin, 63 So. 2d 65 (fla. 1953). Fairfield Credit Corp. v. Donnelly, 264 A.2d 547 (1969); Geiger Finance Co. v. Graham, 123 Ga. App. 771, 182 S.E. 2d 521 (1971).

[65] Judge Arthur Dunn, Tr. 770; Benny L. Kass, Tr. 1219; Homer Kripke, Tr. 438; Fairfax Leary, Jr., Tr. 969; Wilbur Leatherberry, Tr. 1016; Steven Mindell, Tr. 24; Agnes Ryan, Tr. 558; Alan Sims, Tr. 218.

[66] Many witnesses agree that a trade regulation rule would encourage rather than discourage further state action. E.g., Barbara Flicker, Tr. 407; Betty Furness, Tr. 32; Benny L. Kass, Tr. 1206; Steven Mindell, Tr. 29; Helen Nelson, Tr. 721; Stephen Schlossberg, Tr. 862; David Swankin, Tr. 1372; Cf. Robert S. Olson, Tr. 952; Rex Carpenter, Tr. 848, 852.

CHAPTER VII. WHAT THE REVISED RULE DOES AND WHY

Part One. *The purpose of this rule.* The Commission believes that it is an unfair practice for a seller to employ procedures in the course of arranging the financing of a consumer sale which separate the buyer's duty to pay for goods or services from the seller's reciprocal duty to perform as promised. The Commission's rulemaking procedures, which encourage broad participation on the part of interested parties and which result in a bright-line standard of conduct in appropriate cases, serve the three-fold interest of clarity, uniformity, and fairness to the regulated industry.[1] For this reason, where a Trade Regulation is found to be necessary and appropriate, any final rule must be as concise and straightforward as possible.

The final revisions of this rule reflect modifications for concision and coverage. As revised, the rule will prevent sellers from foreclosing consumer equities in credit sale transactions. It will prevent the use of direct-loan financing to accomplish the same end.

Policy considerations. In promulgating this rule for enactment the Commission has considered and resolved a variety of policy considerations. We will discuss these considerations here to place this rule in perspective.

Our primary concern, in the course of these proceedings, has been the distribution or allocation of costs occasioned by seller misconduct in credit sale transactions. These costs arise from breaches of contract, breaches of warranty, misrepresentation, and even fraud. The current commercial system which enables sellers and creditors to divorce a consumer's obligation to pay for goods and services from the seller's obligation to perform as promised, allocates all of these costs to the consumer/buyer. Consumers are generally not in a position to evaluate the likelihood of seller misconduct in a particular transaction. Misconduct costs are not incorporated in the price of the goods or services, nor are they reflected in any deferred payment

See footnotes at end of chapter.

price or unpaid balance of a sales-related loan. Seller misconduct costs are thus externalized in a way that renders many sales finance transactions inherently deceptive and misleading. In addition, to the extent that consumers are also compelled to bear the costs occasioned by the misconduct of another, while the "guilty" party avoids all liability, we believe that reliance on contractual foreclosures of equities in consumer transactions constitutes an unfair practice under Section Five of the F.T.C. Act.

The Commission believes that only when prices approach or approximate real social costs do consumer choices in the market tend towards an optimal allocation of society's resources.[2] Our objective then, in this rule, is two fold. First we would employ our remedial authority to modify existing commercial behavior such that the costs occasioned by seller misconduct in the consumer market are reduced to the lowest possible level in the retail distribution system. Second, where certain seller misconduct costs cannot be eliminated from the market we would require that such costs be internalized, so that the prices paid by consumers more accurately reflect the true social costs of engaging in a credit sale transaction.[3]

In the preceding chapters, we have discussed the nature and extent of seller misconduct costs which are allocated in all or part to consumers by means of discount financing and direct loan financing. We have also discussed the reasons why the current commercial system has these effects. Consumers are not in a position to police the market, exert leverage over sellers, or vindicate their legal rights in cases of clear abuse. The sheer expense of obtaining an accurate assessment of the likelihood of seller misconduct in a particular case are prohibitive. High-pressure sales tactics combined with documented misrepresentations in many lines of retail endeavor further reduce the likelihood that an individual buyer can successfully weigh the probability that a given transaction will spawn a claim or defense. Redress via the legal system is seldom a viable alternative for consumers where problems occur. Delays combine with the unpredictable results produced by the legal system to often result in increased harm for the consumer litigant.[4] Where a seller is sued, the consumer must undertake the further risk that his defendant will prove insolvent or unavailable on the day of legal reckoning.[5]

This rule approaches these problems by reallocating the costs of seller misconduct in the consumer market. It would, we believe, reduce these costs to the minimum level obtainable in an imperfect system and internalize those that remain.[6] As a practical matter, the creditor is always in a better position than the buyer to return seller misconduct costs to sellers, the guilty party. This is the reallocation desired, a return of costs to the party who generates them. The creditor financing the transaction is in a better position to do this than the consumer, because (1) he engages in many transactions where consumers deal infrequently; (2) he has access to a variety of information systems which are unavailable to consumers; (3) he has recourse to contractual devices which render the routine return of seller misconduct costs to sellers relatively cheap and automatic; and (4) the creditor possesses the means to initiate a lawsuit and prosecute it to judgement where recourse to the legal system is necessary.

We believe that a rule which compels creditors to either absorb seller misconduct costs or return them to sellers, by denying sellers access to cut-off devices, will discourage many of the predatory practices and schemes discussed above in Chapter III. Creditors will simply not accept the risks generated by the truly unscrupulous merchant. The market will be policed in this fashion and all parties will benefit accordingly. Where applicable economies militate against a creditor effort to return misconduct costs to a particular seller, due to the limited or irregular nature of such costs, the rule would require the creditor to absorb such costs himself. That is, where a consumer claim or defense is valid, but limited in amount, a creditor may choose to accept less payment from the consumer to save transaction costs associated with pursuing the seller whose conduct gave rise to the claim. The creditor may also look to a "reserve" or "recourse" arrangement or account with the seller for reimbursement. In such cases, the price of financing will more accurately reflect the actual costs of sales finance.

In cases where "repurchase" or "reserve" contracts, or other recourse devices available to creditors, facilitate the return of an account to a seller, or whenever serious harm is occasioned by seller misconduct, the creditor will compel the seller to carry the costs so occasioned. Again, the result will be a more accurate price for consumer goods.

The Commission, in adopting this rule, is mindful of the fact that a regulation which requires creditors to either absorb seller misconduct costs or return them to sellers, may have the effect of imposing some buyer misconduct costs on sellers too. This could occur where a repurchase contract facilitates the disgarding of bad debts by returning them to the seller who generated them. It is probably true that creditors are more efficient collectors of bad debts than are sellers. Thus, a system which engenders an increase in the number of bad debts sellers must collect may yield a slight reduction in efficiency with respect to "consumer misconduct" costs.

We are persuaded that such diseconomies will be substantially outweighed by the benefits which will attend a reorientation which causes the market to absorb seller misconduct costs. Creditors and sellers are in a position to engage in meaningful, arms-length, bargaining over the terms contained in recourse arrangements. The Commission has received substantial evidence that such agreements are routinely employed in sales-finance transactions, and that the provisions contained therein can be tailor-made to the needs of both parties. Such recourse contracts between sellers and creditors are constantly refined by the development and modification, based on experience, of reserve accounts which allocate risk and liability between the parties to correspond with actuarial assessments of risks.[7]

Section five of the F.T.C. act and the externalization of seller misconduct costs. The policy considerations discussed immediately above underpin our conclusion that the use of promissory notes, waivers of defenses, and vendor-related loan financing to foreclose consumer claims and defenses in credit sale transactions constitutes an unfair practice under 15 U.S.C. 45, as amended. It is unfair to subject an innocent party to costs and harm occasioned by a guilty party. Consumers are clearly injured by a system which forces them to bear the full risk and burden of sales related abuses. There can be little commercial justification for such a system. The desired reallocation of cost and risk will both reduce the costs of seller misconduct in the marketplace and return the residuum to the guilty parties. Consumers and honest merchants will benefit, as prices come to reflect actual transaction costs and honest merchants no longer need compete with those who rely on abusive sales practices.[8]

In announcing this rule, we are pursuing our statutory mandate to identify and prevent unfair or deceptive practices in the marketplace. This authority has been analogized by the United States Supreme Court to the jurisdiction of a commercial equity court.[9] We have thus weighed competing equities in the market in reaching our conclusion that the mechanical abrogation of consumer claims and defenses is unfair to consumers. We conclude that a consumer's duty to pay for goods or services must not be separated from a seller's duty to perform as promised, regardless of the manner in which payment is made. In reaching this conclusion we note thousands of instances, documented in the record of this proceeding, where the separation of what are normally regarded as reciprocal duties caused substantial injury to consumers. The common sense shock articulated by many of the consumer witnesses upon learning that their duty to repay a creditor was totally unrelated to their seller's promises is perhaps the clearest and most direct evidence of the injurious and distorted impact of the challenged practices.

Section Five of the FTC Act and Contracts of Adhesion. Furthermore, the Commission concludes that the economic injury to consumers discussed herein above results from terms contained in form contracts. Consumer witnesses and the many legal services groups who participated in the proceeding indicated repeatedly that promissory notes and waivers of defenses are inserted as boilerplate in installment agreements. They also stated that consumers rarely comprehend the significance of these devices at the time when the transaction is con-

See footnotes at end of chapter.

summated. Our detailed findings in this connection are set forth in Chapter III.

It is clear from the poll conducted by the Office of Economic Opportunity, and from statistics submitted by consumer groups and legal services offices, that the externalization of seller misconduct costs which causes substantial consumer injury is a function of an adhesive bargaining process. Promissory notes and waivers of defenses are presented to consumers on a take it or leave it basis. These contracts are drafted by sellers and creditors and they are not susceptible to modification at the point of sale.

The Commission believes that relief under Section five of the FTC Act is appropriate where sellers or creditors impose adhesive contracts upon consumers, where such contracts contain terms which injure consumers, and where consumer injury is not off-set by a reasonable measure of value received in return. In this connection, the Commission's authority to examine and prohibit unfair practices in or affecting commerce in the manner of a commercial equity court is appropriately applied to this problem.[8] Where one party to a transaction enjoys substantial advantages with respect to the consumers with whom he deals, it is appropriate for the Commission to conduct an inquiry to determine whether the dominant party is using an overabundance of market power, or commercial advantage, in an inequitable manner.

We have conducted the contemplated inquiry in this case. We have reached a determination that it constitutes an unfair and deceptive practice to use contractual boilerplate to separate a buyer's duty to pay from a seller's duty to perform. We are persuaded that this bifurcation of duties with its attendant externalization of costs injures both consumers and the market. We know of no substantial benefits which may be received by consumers in return for the valuable legal rights they are compelled to relinquish. We can imagine no reasonable measure of value which could justify requiring consumers to assume all risk of seller misconduct, particularly where creditors who profit from consumer sales have access to superior information combined with the means and capacity to deal with seller misconduct costs expeditiously and economically.

Our findings with respect to the use of vendor related loans to separate a consumer's duty to pay from his seller's duty to perform are detailed in Chapter IV. We are of the view that the use of direct loan agreements is no less adhesive than the use of installment sales contracts which incorporate waivers or promissory notes. We have received substantial evidence that sellers work cooperatively with lenders to foreclose consumer equities, and that such cooperation involves high-pressure sales tactics and deceptive and misleading statements. We have received substantial evidence that this rule would be seriously weakened by a failure to address the vendor related loan problem. We are therefore persuaded that the reasoning appearing above in this chapter applies with equal force to direct loan financing, and that our rule must apply to "purchase money" loan transactions.

Part Two. *What the revised rule does. What is meant by eliminating foreclosures of equities.* This rule is directed at the preservation of consumer claims and defenses. It will require that all consumer credit contracts generated by consumer sales include a provision which allows the consumer to assert his sale-related claims and defenses against any holder of the credit obligation. From the consumer's standpoint, this means that a consumer can (1) defend a creditor suit for payment of an obligation by raising a valid claim against the seller as a set-off, and (2) maintain an affirmative action against a creditor who has received payments for a return of monies paid on account. The latter alternative will only be available where a seller's breach is so substantial that a court is persuaded that rescission and restitution are justified. The most typical example of such a case would involve non-delivery, where delivery was scheduled after the date payments to a creditor commenced.

Thus, the rule will give the courts the authority to examine the equities in an underlying sale, and it will prevent sellers from foreclosing judicial review of their conduct. Sellers and creditors will be responsible for seller misconduct. The courts will remain the final arbiters of equities between a seller and a consumer. However, the liability occasioned by the contract modification imposed by this rule should have two effects. First, it will impel creditors to exercise reasonable care in financing certain sales transactions.[9] Second, it will induce credit outlets to take certain mechanical steps to facilitate the process whereby a contract is returned to a seller for cause.

Transactions to which this rule applies. The Commission has carefully weighed the commercial circumstances which justify imposition of this rule. We have concluded that consumer credit obligations should be subject to claims and defenses whenever credit is arranged or secured in connection with a continuing relationship between a seller and a creditor. In such cases, for the purposes of Section Five of the FTC Act, seller and creditor may properly be viewed as joint venturers.[11] The basic rationale for the rule, namely that sellers should not avoid the costs occasioned by their misconduct and creditors are always in a better position than consumers to return misconduct costs, applies in any situation where sellers and creditors work cooperatively to finance consumer sales.

Discount transactions. The revised rule applies to all consumer discount transactions. Such transactions contemplate the routine assignment of consumer credit obligations to acceptance creditors. In many cases the creditor who purchases this paper also finances the seller's acquisition of inventory. A close and continuing relationship is thus the norm. The revised rule defines "Creditor" as a person who "finances the sale of goods or services to consumers on a deferred payment basis". The words "Financing a Sale" are specifically tied to the Truth in Lending definition of "Credit Sale". The rule thus applies to all retail installment obligations affected by the Truth in Lending Act. A seller is a "Creditor" for the purposes of the rule whenever he executes a retail installment contract. In his capacity of seller and creditor, the seller is enjoined from taking or receiving a consumer credit contract, of any kind, which fails to contain the following provision:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

The rule expressly applies to credit contracts arising from sales of services, such as trade or vocational school agreements as well as sales of consumer tangibles. The record fully supports application of this rule to consumer service contracts.[13]

Our original proposed rule contained two distinct prohibitions in discount transactions. It required inclusion of a similar provision in any promissory note or other negotiable instrument taken in connection with a credit sale. It prohibited the use of waivers of defenses, rights, remedies, claims . . . etc. in connection with credit sales. The final version of the rule no longer draws a distinction between promissory notes and waivers. Instead of two prohibitions the rule contains only one, namely the requirement that the specified contract provision be inserted in all sale-related consumer credit contracts. Our definition of "Financing a Sale" makes it clear that the rule only applies to credit transactions within the meaning of the Truth in Lending laws. Our original prohibition on waivers would have applied to all sales, regardless of whether credit was involved. Such a prohibition would have affected warranties and other obligations which were not the subject of this proceeding.

Finally, by eliminating references to terms such as "negotiable" or "negotiable in form" we have simplified the rule. We have also avoided potential litigation in enforcement proceedings by eliminating consideration of the technical nature of a non-conforming contract.

Vendor-related loan transactions. The original rule proposed by the Commission did not look beyond discount or acceptance transactions. The rule was limited to installment sales contracts. This approach would have permitted widespread evasion of the rule.

Accordingly, as detailed in Chapter IV herein, we republished our proposed rule for additional hearings and comment with respect to the use of vendor-related loan financing. Our revised proposal contained a general definition of "Related Creditor" together with nine enumer-

See footnotes at end of chapter.

ated fact situations which were to create a rebuttable presumption that a creditor was sufficiently close to a seller to justify imposition of the rule. Our original definition of "Related Creditor" was broadly formulated. It read as follows:

> Any person, partnership, corporation, or association, except a credit card issuer with respect to his credit card operations, which is engaged in making loans to consumers to enable payment to be made for consumer goods or services, and which either participates in or is directly connected with the consumer transaction.

The nine specific fact situations which followed this definition are discussed in Chapter IV at pages 62–65. These specific criteria did not limit the scope of the above definition, but they were most useful in eliciting testimony on the myriad of different arrangements and relationships between consumer loan outlets and retail sellers which involve some continuing business relationship between the parties. Each of the criteria received specific support and documentation on the record.[14]

In preparing our final version of this rule the Commission has simplified and clarified its vendor-related loan provisions, taking full account of the information elicited during the second round of proceedings on the rule. The final version will afford the coverage which the record justifies with greater clarity and uniformity than our original proposal would have engendered. It will provide the Commission with a small degree of flexibility, in the same manner as the original proposal, while announcing a clear policy which is readily understood and easily followed.

To the extent that a lender is related to a seller by operation of the definition of "Purchase Money Loan", such a lender occupies a position which is functionally similar to that occupied by a discount creditor who purchases the seller's paper. Such lenders have the same access to information as discount creditors The record strongly suggests that they may also obtain equivalent guarantees and endorsements from sellers which embody a "repurchase" obligation.

The final version of this rule contains no rebuttable presumptions. Operation of the rule, in this context, turns on the three related definitions of "Purchase Money Loan", "Contract", and "Business Arrangement", a creditor being defined as a "person who lends purchase money".

The words "Purchase Money Loan" are defined as "a cash advance which is received by a consumer in return for a 'Finance Charge' within the meaning of the Truth in Lending Act and Regulation Z, and which is applied, in whole or substantial part, to a purchase of goods or services from a seller who:

"(a) refers consumers to the creditor, or

"(b) is affiliated with the creditor by common control, contract, or business arrangement."

See footnotes at end of chapter.

The words "Contract" and "Business Arrangement" are defined to include all formal or informal arrangements and procedures which, based on this record, would justify imputation of an established and continuing course of dealing between a lender and a seller. These definitions will encompass all of the situations enumerated in the rebuttable presumption segment of our original rule, with the exception of the ninth which involved knowledge of a seller's reputation. We are not persuaded that knowledge alone suggests a course of dealing, even though questions of a creditor's knowledge are relevant to a determination of his relationship with a seller. Such a test should not be dispositive. It raises too many problems of proof.

We have retained the "referral" test originally proposed as one of the rebuttable presumptions. As proposed it specified five or more referrals to a creditor. Based on this record we are persuaded that while the act of referral is sufficient to justify imposition of the rule, provided referrals are made in the course of some routine or arrangement, there is no justification for choosing a specific number. Such a number would be arbitrary and unsupportable. There is no reason why five referrals render a seller's conduct intrinsically unfair where four do not. One seller may do business in a small town where the smallest number of referrals justifies imposition of the rule; another may do business in a large city where a larger number would be required to impose the rule. As a general proposition, we believe that this record supports the proposition that referrals by a seller make a creditor "related". The word is stated in the plural in the rule. Any seller who arranges financing for his customers should be prevented from cutting off claims and defenses by means of the financing so arranged.

The four definitions of "Creditor", "Purchase Money Loan", "Contract", and "Business Arrangement" will reach every situation where a seller and a lender may be said to work cooperatively to finance consumer sales. We believe that the record in this proceeding supports application of the rule to all situations where concerted or cooperative conduct between sellers and creditors is employed to facilitate the retail distribution of goods and services to consumers. This is true without regard to the "type" of credit, loan or discount, which is used. The revised rule goes exactly this far and no further.

We have eliminated the "rebuttable presumption" mechanism because it is unnecessary. The Commission, after review of the comments and testimony received during this proceeding, has defined the situations it desires to reach. Presumptions may be appropriate absent adequate information; however, a presumption in this rule would work to encourage continuing litigation when enforcement efforts were made. A presumption would thereby engraft many of the undesirable features of adjudication onto a Trade Regulation Rule. It would encourage inconsistent results in successive enforcement proceedings, where one party extinguished the presumption and another failed to do so. It would contribute to continuing uncertainty and unjustified costs and delay in enforcement. As we noted at the outset of this Chapter, a Trade Regulation Rule should serve the threefold interest of uniformity, fairness and clarity.

Finally, in revising the provisions of the rule which are aimed at vendor-related loan transactions we have clarified the practice which is prohibited. The revised rule declares it an unfair practice within the meaning of Section Five for a seller to accept, as full or partial payment for any sale or lease of goods or services, the proceeds of a "Purchase Money Loan", *unless* any consumer credit contract which is made or taken in connection with the loan contains the following provision:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL BE LIMITED TO AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Sellers will thus be prevented from relying on vendor-related loan financing to avoid the other prohibitions contained in this rule. The most logical and concise way of accomplishing this end, in the text of a rule, is to prohibit the specific conduct which is challenged. For this reason we have focused this provision of the rule by applying a direct prohibition on the acceptance of loan proceeds as payment for a sale. Our original proposal did not specify what was to constitute the unfair practice beyond the act of "engaging in a sale".

By simplifying the definitions, focusing our operative language, and eliminating the broad general definition of "related creditor", we have narrowed our vendor-related loan proposal to correspond with what was learned in this proceeding. We have also revised our vendor-related loan provision so that it functions in a manner analogous to the balance of the rule.

The revised rule will require no consumer notice. Many consumers and consumerists urged the Commission to include a requirement in this rule that a notice be attached to pertinent legal documents employed in credit sales transactions to apprise consumers of their legal rights.[15] We received significant evidence that many consumers simply fail to read their contracts.[16] There was therefore a continuing concern expressed that consumers might forfeit the benefits conferred by the rule, more or less by default.

The industry opposed any detailed consumer notice with vigorous assertions that the actual text of the document proposed by FTC staff was extremely antibusiness in tone.[17] In this respect, certain consumer groups agreed that consumer education notices, prepared

for comment in the proceedings, were probably too inclusive in scope to be fair to the industry.[19]

In our view, the most persuasive case for imposing an additional burden on the industry in the form of a mandatory notice to accompany all consumer credit contracts used in credit sales was made by witnesses who discussed the problems of Spanish-speaking Americans in the course of the New York hearings.[19 20 21] These comments and testimony were supported by the testimony of various representatives of the Consumer Federation of America.[22] The Commission is persuaded that Spanish speaking Americans are more readily victimized by unscrupulous merchants and creditors. The Commission agrees that Spanish speaking Americans have more difficulty in comprehending and vindicating their legal rights.

However, despite the unique problems of Spanish speaking Americans, we are not prepared to impose a consumer notice requirement on sellers and creditors at this time. Any such requirement would involve duplication and attachment of a complex, two-page, document to all related sales contracts and forms. The contents of such a document could be construed as incorporated by reference in a sales agreement, where this was not the Commission's intention. Conversely, the contents of such a document might mislead consumers into relying on apparent legal rights which were ultimately not vindicated by the courts. The purpose of the rule is to permit courts of competent jurisdiction to examine the equities where a consumer has a claim against a seller. The rule thus prevents foreclosures of equities by various means of financing a sale, but it does not impose any other requirements on the parties. Finally, the simple duplication and annexation of a notice similar to the one proposed would involve considerable expense for sellers and creditors.

The rule requires sellers and creditors to include a simple "notice" in the text of every consumer credit contract which is connected with a sale of goods or services. The notice must appear in ten point bold face type. While the wording of the notice is legalistic, we believe that it will be understood by most consumers.

The Commission also anticipates a substantial consumer education effort on the part of its staff after enactment of this rule. We will direct our staff to take reasonable action via the media to publicize the existence of the rule and what it means to consumer buyers. Announcements directed at the Spanish community will appear in the Spanish language. As legal services offices, consumer groups, and individual consumers test the rule by periodic lawsuits against creditors and sellers, and as the courts thus become more receptive and accustomed to considering competing equities in consumer sale transactions, the rule will enjoy increasing knowledge and use on the part of all consumers. We will monitor developments in this regard, and we will take further action if special problems develop.

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[1] Natl. Petroleum Refiners Assoc., et al. v. F.T.C., 482 F.2d 672 (DC Cir. 1973). Also see 1 Davis, *Administrative Law Treatise* 6.15 (1970).

[2] C. Ferguson, *MicroEconomic Theory*, 391–92 (1966).

[3] *Id.*

[4] Littlefield, "The Plight of the Consumer in the Uniform Consumer Credit Code," 48 *Denver L. J.* 18 (1971); and "Preserving Consumer Defenses in Credit Card Transactions," 81 *Yale L. J.* 1 (1971).

[5] Commercial Credit Plan v. Beebe, 123 Vt. 317, 187 A.2d 502 (1963); Gross v. Appelgren, 467 P.2d 789 (Colo. 1970); Norman v. World Wide Distributors, 202 Pa. Super. 53, 195 A.2d 115 (1963); also see cases cited in Reply Brief for Appelants at 22 and 23, Payne v. United California Bank, 100 Cal. Rptr. 672 (1972).

[6] See, *e.g.*, G. Calabresi, *The Costs of Accidents* (1970) which contains a detailed explanation of this kind of analysis.

[7] The Commission has received copies of many such agreements in the course of this proceeding and related investigations. See Chapter VI, *supra* at note 29.

[8] See the discussion appearing in F.T.C. v. Curtis Publishing 78 FTC 1472, 1515 (1971) where the anticompetitive impact of permitting an unscrupulous merchant to retain unlawful gains may be a factor in determining that his conduct violates Section Five. Also see, FTC v. Algoma Lumber, 291 U.S. 67 (1934); Interstate Home Equip. Co. at 40 FTC 260 (1945); and FTC v. Winsted Hosiery, 258 U.S. 483 (1922) where similar theories are discussed.

[9] See Sperry and Hutchinson v. FTC, 405 U.S. 233, 244 (1972).

[9a] Sperry and Huchinson v. FTC *supra* note 9.

[10] Some courts have already taken steps to impose a duty of care, albeit a limited one, on creditors who willingly finance dubious sales transactions. See *e.g.* Connor v. Great Western Savings & Loan Assoc., 69 Cal. 2d 850, 447 P. 2d 609 (1968). While the S & L in this case took an active role in the financing of a residential development, and while this role included actively participating in the project, many consumer lenders are active and willing participants in sales transactions, offering "specials" for favored customers and suggesting borrowings for summer sales and Christmas gift needs. In such cases, the duty of care imposed in *Connor* seems highly appropriate.

[11] A joint venturer is defined as one who seeks a sepecific profit jointly with another, in a particular transaction. Ditscher v. Booth, 13 N.J. Super. 568, 571, 80 A.2d 648, 650 (1951). Also see *e.g.* Uniform Partnership Act, Sec. 13-15. Coventurers or partners are generally liable for each others' acts on their behalf. A joint venture may arise with no formal arrangement. It may be imputed inferentially. Cooperstein v. Shapiro, 122 N.J. Eq. 238, 192 A. 826 (1937).

[12] Forham, Tr. 626–28 (represented twenty-one students who had enrolled in a computer training school that went out of business and who were under pressure from various financial institutions to continue making payments); John Keller, Office of the Superintendent of Public Instruction, Illinois, Tr. 562–70 (his office has jurisdiction over 300 private business and vocational schools in Illinois and he cites two typical student complaints); Mindell, Tr. 19 (recent case where computer school went out of business); John C. Neubauer, Consumer Education & Protection Organization, Des Moines, Iowa. Tr. 622; Ronald Fritsch, Chicago Legal Aid Bureau, Tr. 743–44 (modeling-school case in Cook County); John F. Preloznik, Director, Wisconsin Judicare, Tr. 553; Phyllis Senegal, Legal Aid Society of Gary, Indiana, Tr. 638–39 (two cases involving a karate school); Scholl, Tr. 1177; Ryan, Tr. 556–57; Ralph S. Stone, Chief Attorney, Consumer Law Unit, Legal Aid Society of St. Louis, R–1327. Examples of consumer's experiences: Tr. 51–55, 617–19; R. 100, 101, 111, 1672, 1679, 1684, 1686, 1712. Ryan, Tr. 557. Patricia Hynes, Tr. 250, suggested that the definition "include a specific reference to services purchased by an individual to aid him or her in earning a livelihood". Such language has the advantage of encompassing fees charged by employment agencies (R. 1153–58), but the Commission considers the language overly broad for the purposes of this Rule.

[13] See footnotes 13–31 in Chapter IV, supra.

[15] Lawrence R. Buxbaum, Tr. 1313; Teresa Clark, Tr. 925; Barbara Flicker, Tr. 406; Richard Huffman, Tr. 89–90; Patricia Hynes, Tr. 252; Benny L. Kass, Tr. 1203; Gladys Kessler, Tr. 1059; Fairfax Leary, Jr., Tr. 981; Suzane Matsen, R. 284, 291; Bess Myerson, Tr. 369; Dennis J. Roberts II, Tr. 417.

[16] *E.g.*, Benny L. Kass, Tr. 1203; Gladys Kessler, Tr. 1059; Suzane Matsen, Tr. 284, 291; Wilbur Leatherberry, Tr. 1022; Bess Myerson, Tr. 369.

[17] *E.g.*, Hinckley, Tr. 1803; Bernard Davis, R. 5984–85.

[18] *E.g.*, James Latturner, Legal Aid Society, Chicago, Tr. 2226.

[19] Sarah Negron, Tr. 51–55, R. 895–897; Jose Suarez, Tr. 47–51, R. 900–901; Victor Tice, Tr. 210–212, R. 898–899.

[20] Rose Ferreira, R. 585–586; Amada Ortiz, R. 594–596; Aida Luz Nieves, R. 597–599.

[21] *E.g.*, Huffman, Tr. 82: ". . . T/he Spanish-speaking [clients] I had in the South Bronx were at a much greater disadvantage than other minority groups. The Spanish-speaking clients were generally easily swayed by interpretations of what the written English [on a contract] says." Lester S. Goldblatt, Legal Aid Society of New York, Tr. 474; Thos. Eovaldi, Chicago Council of Lawyers, Tr. 2186.

[22] *E.g.*, Williams, Tr. 70–71; Huffman, Tr. 90; Kessler, Tr. 1060 (Consumer Federation of America).

CHAPTER VIII. DISCUSSION AND DISPOSITION OF SUGGESTED ALTERNATIVES AMENDMENTS OR REVISIONS TO THE RULE

A. Limit consumer to defense or setoff. Many industry representatives suggested that the rule be amended so that the consumer may assert his rights only as a matter of defense or setoff against a claim by the assignee or holder.[1] Industry representatives argued that such a limitation would prevent the financer from becoming a guarantor and that any limitation in the extent of a third party's liability was desirable.[2]

The practical and policy considerations which militate against such a limitation on affirmative actions by consumers are far more persuasive. For example, Professor Egon Guttman, Professor of Law at American University and a member of the District of Columbia Ad Hoc Committee on Consumer Protection, stated at the hearings that such a limitation:

> May affect the credit rating of the consumer who, although he is under recent legislation entitled to demand the erasure of improperly determined credit ratings, may still find that his present needs for credit could have been affected by his refusal to pay a debt arising under a retail installment sales transaction.[3]

See footnotes at end of chapter.

Professor Guttman went on to say that the right to recover against an assignee "is nothing new in the law . . . Where does the right of financial institutions arise to make them different from the rest of the people?" [4]

California's Unruh Act which makes an assignee "subject to all claims and defenses of the buyer against the seller" but provides that the buyer may assert his rights only "as a matter of defense to a claim by the assignee," [5] has recently been interpreted by the California Supreme Court.[6] In a consumer class action seeking rescission of the plaintiffs' installment contracts, the assignee-finance companies claimed that the plaintiffs could not bring an affirmative action against them. The California Supreme Court disagreed, stating:

> The finance companies contend that under this section [of the Unruh Act] plaintiffs may not bring an affirmative action against them for recission but may only assert their defense of fraud in an action by the finance companies to collect on the contracts and then only to the extent of the amount still owing. Upon analysis, however, a number of considerations militate against such a restrictive interpretation. . . .
>
> The purpose of the Unruh Act is to protect consumers, and it should be liberally construed to that end. (Morgan v. Reasor, 69 Cal. 2d 881, 889.) If we were to adopt the concept of the finance companies it would . . . bestow upon them immunities and privileges against consumers unavailable to them in the ordinary commercial transaction. (Cf. Unico v. Owen (N.J. 1967) 232 A.2d 405, 417–418.)
>
> It is suggested by amicus curiae that Section 1804.2 was intended to eliminate the possibility that by depriving assignees of any right to take free of the buyer's defenses against the seller despite an agreement to the contrary, the section might subject assignees to products liability suits which might involve personal injuries and large damage claims.
>
> It would be ironic indeed if a provision in an act intended to benefit consumers could be invoked to their detriment to such an extent that they would stand in a less advantageous position than others in the commercial arena. . . . If, despite the allegations of the complaint—admittedly true on demurrer—we were to adopt the view of the finance companies, we would be according to financial institutions greater commercial advantage against consumers than they enjoy with reference to all others. Such a result cannot be justified.[7]

At the New York hearings Bess Myerson, Commissioner of the New York City Department of Consumer Affairs, discussed the New York statute which limits the consumer to a defense or setoff and stated, "without the right to initiate suit, . . . consumers are denied a basic weapon of protection against unresponsive third parties to installment credit contracts." [8] Another reason for not limiting consumers to a defensive position is that a stronger potential consumer remedy will encourage greater policing of merchants by finance institutions.[9]

The most persuasive reason for not limiting a consumer to a wholly defensive position is the situation referred to in Professor Guttman's testimony. A consumer may stop payment after unsuccessfully attempting resolution of a complaint with the seller, or he may have finally discovered that the seller has moved, gone out of business or reincorporated as a different entity. During this period the consumer may have been making payments to the financer in good faith, notwithstanding the prior existence of defenses against the seller.

If the consumer stops payment, he may be sued for the balance due by the third party financer. The financer may, however, elect not to bring suit, especially if he knows that he would be unable to implead the seller and he knows the consumer's defenses may be meritorious. Under such circumstances the financer may elect to not sue, in the hopes that the threat of an unfavorable credit report may move the consumer to pay.

Finally, it is important to remember that the contract provision this rule will require can only be enforced between the parties in a court of competent jurisdiction. The purpose of this rule is to mandate judicial scrutiny of a credit sale transaction, when a bona fide dispute develops between buyer and seller. The various cut-off devices discussed in this statement foreclose judicial review of the equities in such transactions. Consumers will not be in a position to obtain an affirmative recovery from a creditor, unless they have actually commenced payments and received little or nothing of value from the seller. In a case of nondelivery, total failure of performance, or the like, we believe that the consumer is entitled to a refund of monies paid on account.

B. *Set maximum amount.* Some industry representatives suggested that high price sales should be exempted from the rule for two reasons. First, the consumer who buys a high priced "luxury" item such as an airplane or a boat is generally more sophisticated than the average consumer and, therefore, is likely to read and understand the legal consequences of his contracts.[10] Second, the seller of such items relies on immediate sale of consumer installment contracts in order to replenish his costly inventory. If the market for this paper becomes tighter industry contends that many of these sellers would be driven out of business.[11] This assertion rests on assumptions about the alleged difficulty of assigning notes in the absence of cut-off devices. The weaknesses of these arguments have been examined above.[12] The price of a house full of furniture, an automobile, certain home improvements or other necessity items purchased by average consumers often exceeds the $2,500 or even the $5,000 urged by industry spokesmen as an upper limit to the rule. The rule should protect the rights of middle income consumers as well as low income consumers.[13]

The basis for the rule is a finding that reliance on various cut-off devices is an unfair practice under Section 5 of the FTC Act. The practice does not cease to be unfair simply because it involves a larger amount of money.

C. *Limitation upon the time in which defenses can be raised.* Some witnesses urged the Commission to adopt a rule which would set a limit upon the time in which a consumer could raise defenses and which would require the consumer to notify the third-party financer of any defenses within the specified period.[14] The suggestion is similar to the "complaint period" approach adopted in several state laws.[15]

The "complaint period" approach, touched upon earlier, requires the assignee of a consumer instrument to give notice to the consumer of the transfer and of the consumer's right to raise defenses or make claims within a set period—usually 10, 15 or 30 days. It has been suggested that even the most shoddy merchandise will stand up for 15 or 30 days, and that the complaint period will be of little use.[16] More fundamental is the criticism advanced by several commentators and witnesses in this proceeding—that any "complaint period" approach suffers several fatal flaws:

(i) It is reported that the financers' "notices" reach consumers buried in the midst of various junk mail [17] and that few, if any, consumers understand the requirement of the affirmative act of properly drafting and sending the notice.[18]

(ii) The fact of "non-complaint" may put the assignee holder in an even stronger legal position than he occupies under current law. "This kind of statute appears to give . . . an assignee as impregnable a legal position as one holding free of defenses by specific statutory mandate." [19]

Thus, for the uninformed, unsophisticated, or uneducated consumer—the person most in need of aid—the "complaint period" approach is unacceptable. The simple expedient of a delaying mechanism does not make a fundamentally unfair practice any less objectionable. The basic unfairness of the use of cut-off devices in consumer transactions remains after the expiration of the complaint period—be it five days or ninety.

D. *Miscellaneous suggestions.* The following revisions were suggested but found no substantial support in the record:

1. That consumer goods covered by an adequate warranty be excluded from the coverage of the rule.[20] The problem with this suggestion is two fold. It would be difficult to identify "adequate warranties in this context." In addition, the worst retailers go to great extremes to conclude sales. Frequently they misrepresent the actual warranty a consumer receives, in the course of getting the consumer to close the deal. This suggestion would leave the consumer with a substantial debt to a creditor and uncertain redress pursuant to a warranty.

2. That the rule's protection be extended to include small businessmen.[21] Such an extension would undermine a basic premise of the rule—that consumer transactions are essentially different from commercial transactions and the holder in due course doctrine originated in and is only appropriate for the latter. The need for such an extension of cov-

See footnotes at end of chapter.

erage is not demonstrated on the record for this proceeding.

3. That the consumer be required to make a written demand upon the seller before stopping payments.[22] In most cases a consumer will attempt to resolve complaints with the seller before stopping payment. Specifying in the rule the manner in which such consumer/seller negotiation must take place would introduce unnecessary formality into the procedure. The format of such efforts should remain flexible. The Commission is also concerned that formalistic requirements upon the consumer would serve to create other problems, especially of proof—*e.g.*, did the seller in fact receive notice?

4. Other miscellaneous suggestions and recommendations included: (i) expanding the rule to provide a comprehensive regulatory provision covering product warranties; [23] (ii) expand the rule to include a ban on confessions of judgment or cognovit notes; [24] (iii) proposals for a "Federal Credit Loss Insurance Corporation" and a "Consumer Credit Arbitration Service"; [25] and (iv) a proposal to ban "sewer service" of court papers.[26] In each case the Commission has rejected these proposals as being outside the scope of the instant rule. The Commission takes no position on the merits of these suggestions. They are more appropriate for separate consideration.

[1] *E.g.*, Eugene Hart, Tr. 712; Ira J. Lefton, Tr. 672–73; Robert Olson, Tr. 949–50; Robert Serafine, Tr. 1095; Max Denney, R. 28; Statement of American Bankers Association, et al., R. 1809–10.

[2] For example, Robert Olson stated that the rule "should not . . . provide the consumer with a new remedy, affirmative relief against an innocent third party assignee. A financial institution may be quite willing to accept the risk that the receivable it purchased from the seller is uncollectable because of some defect in the sale transaction. That same financial institution, however, would be most unwilling to become a guarantor of the seller's performance." Tr. 950.

[3] Tr. 1320.

[4] Tr. 1321.

[5] Cal. Civ. Code § 1804.2 (West Supp. 1971).

[6] Vasquez v. Superior Court of San Joaquin County, 94 Cal. Rptr. 796, 484 P.2d 964 (1971).

[7] *Id.* at 823–24, 484, p.2d at 979–80, 94 Cal. Rptr. at 811–12 [footnotes omitted].

[8] Tr. 363. Steven Mindel, Assistant Attorney General wih the Bureau of Consumer Frauds and Protection in New York also criticized the New York statute on this point.

"So the statute, in effect, on the one hand gives him rights and on the other hand says, you can't use these rights as a sword; you have to use them as a shield. It seems to me there is absolutely no justification for this second limitation. It puts the consumer in the guise of defendant. It doesn't permit him to go forward effectively when he feels that he may justifiably do so." Tr. 14.

[9] Frank Cochoran, Tr. 238–39.

[10] *E.g.*, David C. Todd, National Association of Engine and Boat Manufacturers, Tr. 1180; E. D. Chase, President, Cessna Finance Corporation, R. 81–82.

[11] *E.g.*, Jim Smith, Tr. 1136; David C. Todd, Tr. 1181.

[12] Pages 78–92, *supra*.

[13] *E.g.*, Barry Baime, Tr. 1187; Arthur Roddey, New Jersey consumer who describes the problems he had with a contractor to construct a swimming pool, Tr. 100. See also R. 64–65 (swimming pool).

[14] Hart, Tr. 698; Lefton, Tr. 672–3; Olson, Tr. 949; Todd, Tr. 1182.

[15] Murray, "The Consumer and the Code: A Cross-sectional View", 23 Univ. of Miami L. Rev. 11, 65 (1968). See also C. Katz, ed., *The Law and the Low Income Consumer* 249–51 (1968).

[16] Jordan and Warren, "The Uniform Consumer Credit Code", 68 *Columbia L. Rev.* 387, 434–435.

[17] Kripke, "Consumer Credit Regulation: A Creditor-Oriented Viewpoint", 68 *Colum. L. Rev.* 455, 473 n. 75 (1968).

[18] Murphy, "Lawyers for the Poor View the UCCC", 44 N.Y.U. Rev. 298, at 310 (1969).

[19] Jordan and Warren, *supra* n. 16, at 435.

[20] David Gezon, Tr. 1276–77; Warren J. McEleney, Tr. 1291.

[21] Delzer, New Jersey Consumer, Tr. 422; Betty Furness, Tr. 38; Anthony Martin-Trigona, Tr. 907, 914.

[22] Robert S. Olson, Tr. 949; *contra*, Gladys Kessler, Tr. 1064; Ronald Fritsch, Tr. 741.

[23] Wendy Larson, Editor in Chief, St. Paul University Law Review, Tr. 1971–78, R. 6701–41.

[24] McCulloch, R. 3750.

[25] Robert D. Breth, Certified Consumer Credit Executive, R. 5945–47.

[26] Hartnell, R. 2877.

Appendix: Public Comment on the Proposed Rule

Specific submissions in the public record have been discussed or footnoted in the appropriate topic sections above. A few general remarks about the scope of the record are included here.

Submissions came from a great variety of sources, *Support* ranged from one-line postcards [1] to lengthy, heavily-documented legal submissions.[2] There are over two hundred submissions on the record from individuals—not identified with a group or business—which express general support for the rule.[3]

A number of individuals (in addition to those submitting personal case histories) wrote longer, more detailed letters in support of the rule.[4]

Federal, state and local government officials expressed approval of the Rule.[5]

Two judges expressed support.[6] The Canadian Minister of Consumer and Corporate Affairs expressed approval of proposed Commission action,[7] and the Ministry supplied materials documenting the Canadian experience.[8]

Support for the rule was expressed by over one hundred consumer, labor and other associations and organizations.[9] Over thirty legal aid organizations are on record in favor of the rule.[10] A number of attorneys wrote as individuals, not on behalf of a client, in support of the rule.[11] Over one dozen educators wrote [12] or testified.[13]

Finally, the rule received strong support from a number of businessmen [14] and the backing of two bankers.[15]

Most *opposition* to the proposed rule was presented by businessmen, bankers and trade associations. There are also a number of letters opposing the rule submitted by individuals not identified as affiliated with a group or business.[16] Two public officials expressed disapproval.[17]

There are many letters in opposition from individual retailers, representing a variety of businesses.[18] Individual banks and bankers wrote to oppose the rule in fairly large numbers.[19] Finance companies are represented by submissions [20] including closely related finance companies.[21] Trade associations and similar organizations make up the bulk of the remainder of submissions in opposition.[22] By number, automobile dealers,[23] and banking or finance groups [24] predominate. Submissions were also received from credit card issuers and credit card associations.[25]

There are several letters expressing disapproval of the rule from attorneys not writing on behalf of a client bank or association,[26] and from the academic community.[27] Promulgated by the Federal Trade Commission November 14, 1975.

See footnotes at end of appendix.

[1] *E.g.*, "I strongly believe it is in the public interest to abolish the 'holder-in-due-course doctrine.' Thank you." H. Greenlee, Jr., R. 3453.

[2] *E.g.*, Statement of Civil Rights—Civil Liberties Research Committee, Harvard Law School, R. 1482–1515.

[3] *E.g.*, ". . . [I]f the seller and note holder both know that the law is on [the consumer's] side, the seller will make a better product that he can stand behind without fear." R. Stevens, R. 16; "Let us cease to legally screw the poor." Tony Scott, R. 78–79; "I realize that lenders will have to learn something about fair value of items, but don't you think that since the item is technically collateral that they should know what their collateral is really worth?" Arne Sampe, R. 348: ". . . one more thing we might do to help convince our young people there *really* is effective recourse for just grievances in America." Mrs. B. J. Parsons, R. 1587; "This ruling will give the consumer a little more assurance that the retailer will be as honest as he claims his product is good." Kenneth R. Parr, R. 2566; "I urge the Commission to abolish this antiquated and unconscionable practice." Rice Odell, R. 3442.

[4] *E.g.*, Bycer, R. 1602–1604; Marcellino, R. 2535–2538; DiBiaso, R. 3390–3392.

[5] *U.S. Representatives:*
Hon. Henry B. Gonzales, R. 361–362.
Hon. John M. Murphy, R. 998–1001.
Hon. Abner J. Mikva, R. 2032–2034.
Hon. Bella Abzug, Tr. 458–461.
Federal, appointive:
Virginia H. Knauer, Special Assistant to the President for Consumer Affairs, Tr. 894–906, 1395–1413; R. 2040–2048, R. 6830–6842. See also R. 3386–3387.
Richard W. McLaren, Assistant Attorney General, Antitrust Division, United States Department of Justice, R. 1925–1988.
Deputy Assistant Attorney General, Bruce B. Wilson, Antitrust Division, United States Department of Justice, R. 1925–1988.
Thomas E. Kauper, Assistant Attorney General, Antitrust Division, United States Department of Justice, R. 7105–7128.
Whitney North Seymour, Jr., United States Attorney for the Southern District of New York, Tr. 242–272, R. 1006–1011.
State and local:
Florida: Robert J. Bishop, Director of Consumer Services, Department of Agriculture and Consumer Services, R. 5646. City of Jacksonville: Thatcher Walt, Consumer Affairs Officer, Division of Consumer Affairs, Department of Human Resources, R. 5671.
Georgia: James Mason, Office of Comptroller General, State of Georgia, R. 1720–1723.
Illinois: Howard I. Kaufman, Chief, Consumer Fraud Division, for Attorney General, State of Illinois, Tr. 497–512, 1885–1902. Michael K. Bakalis, Superintendent of Public Instruction, State of Illinois, by John Keller, Assistant, Tr. 562–570, R. 2510–2514. Milton Hirsch, Acting Supervisor, Consumer Credit Division, Department of Financial Institutions, Tr. 2052–2063.
Indiana: Richard Burdge, Administrative Assistant to Director, Department of Financial Institutions, Tr. 1997–2019.
Kansas: Vern Miller, Attorney General, R. 5644.

Louisiana: R. Collins Vallee, Special Counsel, Consumer Protection Unit, Department of Justice, R. 5475–76.

Massachusetts: Lawrence R. Buxbaum, Assistant Attorney General, Chief, Consumer Protection Division, Department of the Attorney General, Commonwealth of Massachusetts, Tr. 1300–1314.

Minnesota: Thomas J. Tahnk, Supervisor of Consumer Credit, Banking Division, Department of Commerce, Tr. 2196–2207, R. 7145–49.

New Jersey: Carl F. Fianchi, Department of Community Affairs, State of New Jersey, R. 1639.

New York: Louis J. Lefkowitz, Attorney General, State of New York, R. 1004–1005; see also Tr. 9–31. Betty Furness, Chairman and Executive Director, New York State Consumer Protection Board, Tr. 31–43, R. 1216–1219. Thomas J. Mackell, District Attorneys, Queens County, R. 1012–1016. Bess Myerson, Commissioner, New York City Department of Consumer Affairs, Tr. 360–382, R. 1017–1023. Anita De Gregorio, Administrative Assistant, Office of Consumer Affairs, County of Onondaga, R. 5483–5594, 5676.

Oregon: Roger Rook, District Attorney, Oregon City, R. 5333–34.

Pennsylvania: Joel Weisberg, Director, Division of Consumer Affairs, Commonwealth of Pennsylvania, R. 5255–56.

Puerto Rico: Maximiliano Trujillo, Assistant Secretary, Department of Consumer Affairs, Consumer Services Administration, R. 5272–73.

South Dakota: John S. DeVany, Commissioner of Consumer Affairs, Office of Attorney General, State of South Dakota, R. 3505–3506.

Utah: W. S. Brimhall, Commissioner of Financial Institutions, State of Utah, R. 57.

Virginia: William T. Lehner, Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, Commonwealth of Virginia, R. 5262–63. Carl A. S. Coan, Jr., Chairman, Consumer Protection and Public Utility Commission, Fairfax County, R. 5605–07.

Wisconsin: Robert W. Warren, Attorney General, State of Wisconsin, R. 1755–1766, 5458–59. Hon. Harout O. Sanasarian, Wisconsin State Assemblyman, Tr. 510–526, R. 1224–1236. Daniel A. Milan, Director, Bureau of Consumer Protection, State of Wisconsin, Tr. 526–540. Richard Victor, Assistant Attorney General, Office of Consumer Protection, Department of Justice, State of Wisconsin, Tr. 2173–2181.

[6] Hon. Edward Thompson, J.S.C., Administrative Judge, Civil Court of the City of New York ("collective approval" of the proposed rule expressed "on behalf of the 120 judges" of the Civil Court), R. 560–561 and 1654–1655. Hon. Arthur Dunn, Associate Judge, Circuit Court of Cook County, Illinois, Tr. 757–775.

[7] Hon. Ron Basford, R. 1719.

[8] R. 137–325 and R. 3528–3580.

[9] *E.g.*, Local 320, Office and Professional Employees International Union, R. 14; North Carolina Consumers Council, Inc., R. 328; Rhode Island Consumers' Council, R. 945–969; NAACP Legal Defense and Education Fund, National Office for the Rights of the Indigent, R. 978–986; Center for Analysis of Public Issues, Princeton, N.J., R. 987–997; United Auto Workers, R. 1301–1307; Leland Blabee Broadcasting Company, Tucson, Arizona, R. 2526–2527; consumer Advisory Council, Office of Consumer Affairs, Executive Office of the President, R. 3386–3387; Arizona Consumers Council, R. 3515–3520; Minnehaha County Farmers Union, Sioux Falls, South Dakota, R. 2468.

[10] *E.g.*, Atlanta Legal Aid Society, Atlanta, Georgia, "Each year the Society's attorneys handle approximately 17,000 cases, of which about 35% are consumer problems . . . [M]any of these cases eventually involve litigation in which the holder in due course concept is an important factor." R. 20, plus two case histories, R. 21–23; "An analysis . . . makes one thing abundantly clear: the holder in due course concept is the very heart of these operations. For it is essential to the disreputable seller that he be able to realize payment and then flee (either by actually leaving the jurisdiction or by ceasing operation) before this deception becomes apparent." R. 23. "This office is prepared to deliver . . . . over one hundred case histories involving unfair consumer notes with which we have come in contact within the last six months." Memphis and Shelby County Legal Services Association, *Memphis*, Tennessee, R. 1626–1627. "We are confronted almost daily with the harsh and inequitable effects of the holder in due course doctrine." Legal Aid Society of Metropolitan *Denver*, Colorado, R. 3344–3447.

[11] *E.g.*, R. 15, 91, 390, 1365, 1366, 1678.

[12] *E.g.*, ". . . [T]hese will be additional steps to help clean up the inequities of the market place. There is no reason why the holder-in-due-course should assume no responsibility for performance." Stewart Lee, Chairman, Department of Economics and Business Administration, Geneva College, R. 17; John F. Disterhof, California Institute of Technology, R. 1595; Prof. William Seeman, University of Cincinnati, R. 1680; Prof. Phoebe Harris, Mississippi State University, R. 2528.

[13] Law professors Eovaldi (Tr. 784), Guttman (Tr. 1314), Kripke (Tr. 437), Leary (Tr. 967), Wagman (Tr. 600) and Willier (Tr. 1033).

[14] *E.g.*, "[Y]our proposed rule . . . is both excellent and long overdue. I have worked with a great many retailers and I speak from very intimate knowledge." Donald Von Rase, R. 7; "I have no personal axe to grind, but I have seen many of my employees and fellow workers gravely hurt by these contracts and feel that this protection is essential for the consumer." A. Kazanow, Treasurer, Long Transportation Co., R. 13; "As manager of a Credit Union I have seen many of our members 'taken in' . . ." Donn Ashcroft, R. 352; "[L]egal technicalities of this kind . . . are certainly doing a disservice to the free enterprise system." F. Kavli, President, Kavlico Electronics, Inc., R. 1683.

[15] Alvin F. Friedman, Vice President, Amalgamated Trust and Savings Bank, Chicago, R. 1357–1361; R. L. Mullins, Chairman, The Wolfe City National Bank, Wolfe City, Texas, R. 3398–3399.

[16] *E.g.*, R. 1521; "I feel the . . . regulation would be harmful to the consumer rather than help them." Diana M. Bird, R. 2547, R. 2565.

[17] Hon. John R. Rarick, United States House of Representatives, R. 2455–2456. Hon. Willard J. Moody, State Senator, Commonwealth of Virginia, R. 1645.

[18] *E.g.*, Hughes Motor Co., R. 51; Western Auto Associate Store, Farrant, Alabama, R. 61; O'Fallon Frozen Food Lockers, R. 389; Horace Terry Pontiac Co., R. 393; Lou Backrodt Chevrolet, R. 1380–1381; Bill Hull's Appliances, Inc., R. 1519; Sid's Appliance Centers, R. 1529; Carl's TV Sales and Service, R. 3423; Fiore Brothers, Inc., General Contractors, R. 3486.

[19] *E.g.*, First National Bank, Elkhart, Indiana, R. 52; First National Bank of McMinn County, Athens, Tennessee, R. 66–67; Farmers National Bank of Lititz, Pennsylvania, R. 69; Northwest Pennsylvania Bank & Trust Co., Oil City, Pennsylvania, R. 83; The Citizens Bank of South Hill, Virginia, R. 85; The Citizens Bank, Farmington, New Mexico, R. 96; First Bank of Immokalee, Florida, R. 1674; Citizens National Bank, Ennis, Texas, R. 2522; Webster Groves Trust Co., Webster Groves, Missouri, R. 3502, Marine National Exchange Bank, Milwaukee, R. 58–60; National Bank of Detroit, Michigan, R. 2496–2498.

[20] *E.g.*, Cessna Finance Corp., R. 81–82; Security Mutual Finance Corp., Decatur, Alabama, R. 95; Transamerica Financial Corp., R. 1648–1650; Household Finance Corp., R. 1728–1734; Budget Finance Plan, Los Angeles, R. 2026–2031.

[21] *E.g.*, General Electric Credit Corporation, R. 1989–1993; Ford Motor Credit Company, R. 2057–2070; General Motors Acceptance Corp., R. 2457.

[22] *E.g.*, Professional Remodelers Association of Greater Chicago, R. 1363–1364; National Institute of Locker and Freezer Provisioners, R. 1670–1671; National Association of Engine and Boat Manufacturers, R. 2296–2313; Georgia Tire Dealers and Retreaders Association, R. 3581–3582.

[23] *E.g.*, National Independent Automobile Dealers Association (R. 2189–2190) and Independent Automobile Dealers Associations of: Texas, R. 53–54; Pennsylvania, R. 55–56; Florida, R. 2544; Lubbock, Texas, R. 3478; Alabama, R. 3478; Alabama, R. 3526–3527. National Automobile Dealers Association (R. 2356–2366) and Automobile Dealers Associations of: Texas, R. 53–54; Pennsylvania, R. 55–56; Florida, R. 2544; Lubbock, Texas, R. 3478; Alabama, R. 3526–3527. National Automobile Dealers Associations of: Indiana, R. 1640–1644 and Dayton, Ohio, R. 2463–2464; Volkswagen American Dealers Association, R. 2350–2355.

[24] *E.g.*, Banking; American Industrial Bankers Association, R. 27–30; Illinois Bankers Association, R. 1690–1691; American Bankers Association, R. 1861–1862; Consumer Bankers Association, R. 1907–1924; District of Columbia Bankers Association, R. 2480–2485.

Finance: Independent Finance Association of Illinois, R. 1372–1379; National Consumer Finance Association (1,200 member finance companies), R. 1994–1997; Illinois Consumer Finance Association, R. 2021–2025.

Other; Connecticut Credit Union League, R. 1660–1661; United States Savings and Loan League, R. 1735–1736.

[25] *E.g.*, American Express Company, R. 1212–1215; Western States Bankcard Association, R. 1863–1906; Texaco, Inc., R. 2004–2005; Charge Card Association, R. 2476–2479; Carte Blanche Corp., R. 3404–3405.

[26] *E.g.*, "[W]hat you would be doing if you adopt this kind of regulation would be 'kill the goose that lays the golden egg'. . .", Tom Sealy, Esq., Stubbeman, McRae, Sealy, Laughlin & Browder, Midland, Texas, R. 87–90; Ugo F. Ippolito, Esq., Birmingham, Michigan, R. 97–98; Philip Dale Segrest, Esq., Montgomery, Alabama, R. 367–369; "I strongly urge you to curb and restrain this curious fascination for changing society by administrative ruling." Jon Oden, Esq., Amarillo, Texas, R. 1681.

[27] *E.g.*, Edward A. Dauer, Assistant Professor of Law, University of Toledo, Ohio, R. 3396–3397.

[FR Doc.75-30759 Filed 11-17-75;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 433]

PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Notice of Proceeding, Proposed Amendment to Trade Regulation Rule, Statement of Reason for Proposed Amendment, Invitation To Propose Issues of Fact for Consideration in Public Hearings, Invitation To Comment on Proposed Amendment

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. Section 41, *et seq.*, the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR § 1.11 *et seq.*, and Section 553 of Subchapter II, Chapter 5, Title 5 of the U.S. Code, (Administrative Procedure) has initiated a proceeding for the promulgation of an amendment to the above referenced Trade Regulation Rule.

In accordance with the above notice, the Commission proposes to revise § 433.2:

§ 433.2 Preservation of Consumers' Claims and Defenses, Unfair or Deceptive Acts or Practices.

In connection with any Purchase Money Loan (as that term is defined in § 433.1) or any sale or lease of goods or services, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it constitutes an unfair or deceptive act or practice within the meaning of Section 5 of that Act, for a seller or a creditor, directly or indirectly, to take or receive a consumer credit contract which fails to contain the following provision in at least ten point, boldface type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL BE LIMITED TO AMOUNTS PAID BY THE DEBTOR HEREUNDER.

(38 Stat. 717, as amended, 15 U.S.C. sec. 41 et seq.)

STATEMENT OF REASON FOR THE PROPOSED AMENDMENT

It is the Commission's purpose, in issuing this statement, to set forth its reason for the proposed amendment with sufficient particularity to allow and encourage informed comment. While this statement adverts to issues of fact, law, and policy, it should not be interpreted as designating disputed issues of fact. Such designations shall be made by the Commission or its duly authorized Presiding Official in accordance with the Commission's Procedures and Rules of Practice.

The Commission has conducted lengthy public proceedings on the "holder in due course" doctrine and related problems in consumer sales transactions. Extensive testimony, data, and information were elicited in the course of the proceedings. On the basis of information contained in those proceedings, the Commission promulgated a TRR relating to the Preservation of Consumer's Claims and Defenses, 16 CFR 433. In that proceeding the Commission determined that it constitutes an unfair or deceptive act or practice for a seller to separate, by means of a form consumer credit contract, a buyer's duty to pay from the seller's duty to perform as promised, and that this practice is injurious to consumers and to the market as a whole.

While the proceedings on 16 CFR 433 were primarily concerned with the commercial conduct of sellers, the record contains detailed information about related commercial practices of creditors which causes the Commission to have reason to believe that many creditors are participants in the aforesaid practice, that it is unfair and deceptive for them to engage in the practice and that the proscriptions of the rule can more effectively be enforced if creditors are subject to its provisions. Therefore, in the interest of (1) encompassing within the rule all participants in the aforesaid practice whose participation is unfair or deceptive and (2) facilitating enforcement of the rule, the Commission hereby proposes the aforesaid amendment.

At issue in the instant proceeding are simply the questions of whether creditors participate in the aforesaid practice, whether it is unfair or deceptive for them to do so, and whether the rule could be more readily enforced if creditors were made subject to it. The Commission is not, in this proceeding, reopening the question of the applicability of the rule to sellers.

INVITATION TO PROPOSE ISSUES OF FACT FOR CONSIDERATION IN PUBLIC HEARINGS

All interested parties are hereby given notice of opportunity to propose disputed issues of fact, in contrast to legislative fact, which are material and necessary to resolve. The Commission, or its duly authorized presiding official, shall, after reviewing submissions hereunder, identify any such issues in a Notice which will be published in the FEDERAL REGISTER. Such issues shall be considered in accordance with Section 18(c) of the Federal Trade Commission Act, as amended by Public Law 93-637, and in accordance with rules promulgated thereunder. Proposals shall be accepted until no later than January 15, 1976 by the Special Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580. A proposal should be identified as a "Proposal Identifying Issues of Fact-Holder in Due Course," and, when feasible and not burdensome, submitted in five copies. The time and place for public hearings will be set forth in a later Notice which will be published in the FEDERAL REGISTER.

INVITATION TO COMMENT OF THE PROPOSED AMENDMENT TO 16 CFR 433.2

All interested parties are hereby notified that they may also submit, to the Assistant Director for Rulemaking, Federal Trade Commission, Washington, D.C. 20580, such data, views, or arguments on any issues of fact, law, or policy, which may have some bearing on the proposed amendment. Written comments, other than proposals identifying issues of fact, will be accepted until forty-five days before commencement of public hearings, but at least until January 15, 1976. To assure prompt consideration of a comment, it should be identified as a "Holder in Due Course Comment" and, when feasible and not burdensome, submitted in five copies.

Issued: November 14, 1975.

By the Commission.

CHARLES A. TOBIN,
Secretary.

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federal register

TUESDAY, NOVEMBER 18, 1975



PART IV:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

HUMAN BLOOD AND BLOOD PRODUCTS

Collection, Processing and Storage

Title 21—Food and Drugs

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

[Docket No. 75N-0240]

PART 606—CURRENT GOOD MANUFACTURING PRACTICES FOR BLOOD AND BLOOD COMPONENTS

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

Final Regulations for Collection, Processing and Storage

The Commissioner of Food and Drugs is issuing final regulations concerning good manufacturing practices for blood and blood components, effective December 18, 1975.

Proposed good manufacturing practices (GMP) regulations for the collection, processing, and storage of blood and blood components, intended to minimize the dangers of hepatitis in blood-based therapy and to assure the production of blood and blood components of uniform high quality throughout the nation, were published in the FEDERAL REGISTER of May 28, 1974 (39 FR 18614). The proposed regulations applied to all blood banks, transfusion facilities, plasmapheresis centers, compatibility testing establishments and all other facilities that process blood or blood components regardless of whether they were intended for interstate or intrastate commerce use. Interested persons were given until August 26, 1974 to file written comments with the Hearing Clerk, Food and Drug Administration, regarding the proposal.

Ninety-five letters, some containing a number of comments, were received. Many general comments were addressed to statements in the preamble. Most of the substantive comments concerned various specific provisions of the proposed regulations and contained recommended changes. Many comments encouraged greater specificity. Others indicated that the scope and intent of the proposed regulations were misinterpreted. To promote clarity and specificity, numerous nonsubstantive changes have been made. One of these nonsubstantive changes is a redesignation of the proposal to conform to an agency-wide format for good manufacturing practice regulations. The section numbers as originally proposed and their corresponding redesignated numbers are as follows:

May 1974 Proposal:	*Redesignated as*
606.3	606.3
606.19	606.20
606.10	606.40
606.11	606.60
606.12	606.65
606.15	606.100
606.16	606.110
606.30	606.120
606.18	606.140
606.17	606.151
606.40	606.160
606.41	606.165
606.45	606.170

Throughout this preamble, the new section numbers have been used. The comments and recommendations received and the Commissioner's conclusions concerning them are set forth below.

GENERAL COMMENTS

1. Three comments strenuously objected to the phrase "good manufacturing practice" for the collection, processing, and storage of blood and blood components. It was argued that blood and blood components are not manufactured and are not subject to sales taxes or implied warranties as are "manufactured" products. Rather, blood is produced by the donor and made available to the recipient. It was suggested that more appropriate terminology be used in place of the phrase "current good manufacturing practice."

The Commissioner advises that the term "manufacture" is applicable to blood and blood components. Blood is manufactured by the human body and requires further processing before it can be safely transfused into a recipient.

Blood intended for use in the diagnosis, cure, mitigation, treatment, and prevention of diseases in man is a drug as defined in section 201(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)). Section 501(a)(2) of the act (21 U.S.C. 351) states, in part, that a drug shall be deemed to be adulterated if the methods used in, or the facilities or controls used for, its manufacture, procesing, packing and holding do not conform to, or are not operated or administered in conformity with, current good manufacturing practice to assure that such drug meets the requirements of the act.

In addition, blood is specifically identified as a biological product subject to regulation pursuant to the Public Health Service Act (42 U.S.C. 262). Section 351(a)(1) of this act uses the term "propagated or manufactured and prepared" for all biological products, including blood and blood components. The term "manufacture" is defined, in part, in § 600.3(u) (21 CFR 600.3(u)) to mean all steps in the propagation of manufacture and preparation of products. The biologics regulations prescribe requirements concerning all aspects of the manufacture of blood even before it is removed from the donor; e.g., §§ 640.3 and 640.63 (21 CFR 640.3 and 640.63) concern criteria for donor suitability.

Accordingly, the Commissioner rejects the comments, and the term "good manufacturing practices" remains in the regulation, consistent with existing terminology in applicable laws and regulations.

2. One comment objected to the classification of blood transfusion as a human tissue transplant on the basis that the science and technology of tissue and organ transplants differ fundamentally from blood transfusion. Three comments objected to the classification of blood as a drug.

The Commissioner rejects these comments. Blood is considered a tissue by the scientific community and is classified as such by most histology textbooks. As has been set forth at length in the preamble to the proposal for these regulations and in the final order concerning registration of intrastate blood banks, published in the FEDERAL REGISTER of January 31, 1973 (38 FR 2965), blood is unquestionably a drug within the meaning of the Federal Food, Drug, and Cosmetic Act. The comments provide no information or data as a basis for the Commissioner to reconsider the classification of blood as both a tissue and a drug. Accordingly, no changes are made in the classification of blood as identified in the preamble of the proposal.

3. Three comments implied that posttransfusion hepatitis cannot be controlled by promulgating the proposed regulation, but rather by developing consistently accurate methods to detect hepatitis B surface antigen (HB$_s$Ag) in blood, which is the cause of posttransfusion hepatitis in blood recipients.

The Commissioner recognizes that promulgation of good manufacturing practice regulations alone may not completely eliminate the incidence of posttransfusion hepatitis. The Commissioner has concluded that these regulations, together with the final order published in the FEDERAL REGISTER of July 15, 1975 (40 FR 29706) requiring hepatitis testing of a third generation sensitivity, will significantly reduce the incidence of posttransfusion hepatitis. Moreover, these regulations are also designed to assure the production of blood of uniform high quality, and it is well recognized that properly controlled processing procedures are a first and basic step to accomplishing this purpose.

4. Two comments suggested that Food and Drug Administration (FDA) inspections be waived whenever a blood establishment has been inspected by nongovernment organizations such as the American Association of Blood Banks (AABB), the College of American Pathologists, or the Joint Commission on Accreditation of Hospitals.

The Commissioner advises that section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) requires that the FDA inspect intrastate establishments that process drugs, including blood products. The biologics regulations require that interstate manufacturers of all biological products be inspected prior to the issuance of a license. Neither of these provisions authorizes delegation of inspection responsibilities to a nongovernment organization. Furthermore, the Commissioner concludes that independent inspection of establishments by both the FDA and nongovernment organizations will promote safety and will help to assure a high quality product. Accordingly, the Commissioner rejects these comments.

5. Two comments noted that the proposed regulations are more general in tone than the standards of the AABB. The comments suggested that the FDA accept the AABB standards in their entirety or that the FDA regulations and the AABB standards be combined, since the standards of the AABB already have achieved national, if not world wide, acceptance.

As indicated in the preamble of the proposal, the Commissioner intends that

the proposed regulations be applicable to blood banks, transfusion facilities, plasmapheresis centers, compatibility testing establishments and any facility that processes blood and blood components. To anticipate standards of operation for any facility that processes blood and blood components, the proposed GMP regulations must of necessity be broader in scope than the standards of the AABB, which are directed primarily to blood banks and transfusion services. Accordingly, the Commissioner rejects these comments. The Commissioner notes, however, that § 606.100(d) *Standard operating procedures* provides that AABB manuals may be utilized consistent with the standards and guidelines established by these regulations.

6. One comment suggested that the proposed regulations be divided into two sections, the first to apply to blood banks and the second to blood depositories.

The Commissioner concludes that the proposed division of the regulations would not enhance clarity or promote the intent to assure the manufacture of products that are safe, pure, potent, and effective. Accordingly, the comment is rejected.

7. One comment stated that FDA should give priority to updating existing outdated regulations for products currently subject to its regulatory control before promulgating these new regulations.

The Commissioner concludes that priority must be given to amendments on the basis of their potential impact on the protection of the public health. These final regulations are of primary importance since they implement the provisions of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act for the first time for all blood establishments to assure that all blood and blood components on the market are safe, pure, potent, and effective. Moreover, the quality of currently marketed licensed products is sufficiently high under existing regulations to protect the public. And while the Commissioner recognizes that certain existing regulations need updating, an ongoing review of these regulations has resulted in recently published final orders and/or proposals regarding hepatitis testing of third generation sensitivity, platelet concentrate, normal serum albumin, plasma protein fraction and other blood products.

8. One comment noted that the preamble of the proposal requires that products meet all applicable standards prescribed in the biologics regulations. As a result, it was pointed out that the 28-day storage of blood approved by the State of Massachusetts conflicts with the 21-day dating period prescribed in § 610.53 (21 CFR 610.53) for Whole Blood (Human) collected in anticoagulant citrate phosphate dextrose solution (CPD). The comment suggested that the satisfactory experience obtained by the State of Massachusetts from its use of the 28-day storage period should be used as a basis for changing the 21-day dating period prescribed in § 610.53.

The Commissioner believes that a maximum dating period of 21 days for Whole Blood (Human) is practical and necessary to assure that only fresh whole blood is available for therapeutic use. Extension of the dating period would encourage storage of blood for an additional 7 days. Furthermore, the Commissioner has been advised that an amendment to the Massachusetts regulation is currently pending to reduce the storage period to 21 days. Accordingly, the comment is rejected.

DEFINITIONS

9. Two comments stated that a number of the requirements prescribed in proposed §§ 606.65, 606.100, 606.120 and 606.151 are not applicable to the manufacture of in vitro diagnostic products. For this reason, the comments suggested that the definition of "blood" in proposed § 606.3(a) be amended to exclude products intended as in vitro diagnostic reagents and that separate regulations be promulgated for them.

The regulations are generally applicable to all blood products, including in vitro diagnostic products. Significantly, proposed §§ 606.65, 606.100, 606.120, and 606.151 provide exemptions for requirements not applicable to in vitro diagnostic and other nontransfusion blood products. Accordingly, the Commissioner finds that separate regulations for in vitro diagnostic products are not necessary and no change is made in § 606.3(a) as proposed.

10. One comment concerning proposed § 606.3(b) stated that the definition of "unit" could be 5 to 10 milliliters. The comment gave no indication of an objection to the definition.

The Commissioner confirms that a unit would include volumes of 5 to 10 milliliters. Such small volumes are occasionally obtained from donors and infused into infants, often without antecedent testing for HB_sAg or a serological test for syphilis. Additionally, small volumes of blood are used for the hyperimmunization of antiserum donors. The Commissioner concludes that infants and antiserum donors should receive the high standard of protection offered by the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. Accordingly, the definition of a unit includes any volume of blood used for transfusion, and such blood is subject to the applicable requirements of the regulations.

11. Two comments requested that the regulations be amended to permit plateletpheresis and leukopheresis procedures. These comments are discussed in item 49 of this preamble. Concomitant with the Commissioner's response to these comments, § 606.3 of the final regulations has been amended to include definitions for plateletpheresis and leukopheresis in paragraphs (f) and (g), respectively; proposed paragraphs (f), (g), and (h) are redesignated (h), (i), and (j) in the final order. Additionally, § 606.100(b)(17) has been added in the final regulation to require that the Standard Operations Procedure Manual describe the plateletpheresis and leukopheresis procedures used.

12. One comment stated that the definition of processing in proposed § 606.3(g) (redesignated § 606.3(i)) is not consistent with the customary use of the term in blood banking, i.e., the term does not ordinarily include procedures prior to the collection of blood, the collection of blood itself, or compatibility testing.

The Commissioner recognizes that the term has vernacular connotations in blood banking. Accordingly, the definition of processing has been modified in the final regulation to be consistent with the customary use of the term in blood banking.

13. One comment indicated that proposed § 606.3(h) (redesignated § 606.3(j)) inferred that compatibility tests are synonymous with cross-matching. The comment stated that compatibility tests include, but are not limited to, crossmatching.

The Commissioner does not intend to infer that compatibility tests are synonymous with crossmatching. The term "crossmatching" was added for clarity, since some blood banks use the term "crossmatching" while others use the term "compatibility test" when referring to the same serological test. However, since there appears to be confusion in the interpretation of the paragraph, the Commissioner has deleted reference to the term "crossmatching" in the final regulation.

PERSONNEL

14. Six comments concerning the introductory paragraph of proposed § 606.20 suggested that the entire operation of a blood facility be under the direction of a qualified licensed physician and not a designated qualified person as prescribed in the proposed regulation. The comments stated that since blood banking is the practice of medicine, only a physician is qualified to direct a blood establishment.

The Commissioner intended that the qualified person be required to exercise control of the blood establishment consistent with the responsibility prescribed in § 600.10 (21 CFR 600.10) for a "responsible head". While the regulations do not exclude a physician from exercising these responsibilities, the Commissioner believes that nonphysicians with adequate training and experience are capable of performing such responsibilities. Past records of licensed establishments indicate that blood establishments having a nonphysician as the responsible head perform as well as those establishments having a physician as the responsible head. The Commissioner recognizes that certain responsibilities must be performed or supervised by a qualified licensed physician. Concomitantly, the regulations reflect such requirements in §§ 640.3, 640.61 and 640.62 (21 CFR 640.3, 640.61 and 640.62). Accordingly, the Commissioner rejects the comments. However, the Commissioner has revised the paragraph to clearly reflect the responsibilities of the person designated as director of the establishment. Additionally, the intro-

ductory paragraph has been designated paragraph (a). The proposed paragraphs (a) and (b) have been redesignated paragraphs (b) and (c) respectively.

15. Four comments concerning proposed § 606.20(a) (redesignated as § 606.20(b)) requested that the personnel qualification requirements be specified in the regulation.

The Commissioner intends to conduct a review of qualification requirements imposed by blood establishments for their medical and technical staff. Upon completion of the review, the Commissioner will be in a position to make practical, specific recommendations concerning personnel qualifications requirements. In the interim, each blood establishment must continue to establish its own standards and training requirement consistent with the basic requirements of skills and knowledge of assignments set forth in these regulations. Accordingly, the comment is rejected.

16. Eight comments concerning proposed § 606.20(b) (redesignated § 606.20 (c)) requested clarification concerning persons whose presence can adversely affect the safety and purity of the products. The comments especially indicated concern that the regulation might exclude hepatitis B surface antigen carriers from working in a blood establishment.

The Commissioner is not aware of any data that would implicate transmission of hepatitis B surface antigen to donors or blood products by personnel who are carriers of the antigen under the customary conditions of performance of their duties. Consequently, such personnel are not expected to adversely affect the safety and purity of the products, and it is not intended that they be excluded from areas of blood processing. Rather, the regulation is intended to exclude from the processing area, persons who may distract the attention of clinicians or technicians from the performance of their duties and persons who, by their very presence in the processing area, are capable of affecting the safety and purity of the product. Examples of the latter include personnel moving from the HB$_s$Ag testing area to the processing area without taking necessary precautions and persons known to have contagious respiratory ailments. The Commissioner believes that the regulation is clear and precise. Accordingly, the comments are rejected and no change is made in the final order.

FACILITIES

17. One comment concerning proposed § 606.40(a)(2) requested further clarification of the phrases "adequate space", "minimal exposure" and "unrelated activities."

The Commissioner utilized these phrases to indicate that the facility's space must be conducive to the safety of the donor and the manufacture of a product that is safe, pure, potent and effective. More specific phrases were not used because the regulations are applicable to any facility that processes blood and blood components, and it is impossible to specify the exact size, location, arrangement, lighting and equipment requirements without information concerning the specific process, number of donors, etc. For clarity, however, the Commissioner has changed the phrase "unrelated activities and equipment" to "activities and equipment unrelated to blood collection."

18. Two comments requested that proposed § 606.40(a)(3) be amended to require space for quarantine storage only for blood or blood components that give questionable serological test results. The comments suggested that there is no need to hold products in quarantine storage pending completion of all tests, as proposed.

The intent of quarantine storage is to isolate those units of blood and blood components that have been identified as potentially hazardous. Isolation assures that such products will not be used accidentally. The Commissioner agrees that untested blood should not be categorized as having the same safety risks as tested blood yielding questionable test results. The Commissioner concludes that untested blood and blood components need not be held in quarantine storage. Accordingly, § 606.40(a)(3) has been revised and a new paragraph (a)(4) has been added in the final regulation to differentiate storage space requirements for tested and untested blood. The proposed paragraphs (a)(4) through (a)(8) have been redesignated (a)(5) through (a)(9), respectively.

19. The Commissioner has also amended proposed § 606.40 by adding the word "quarantine" to the beginning of proposed paragraph (a)(5) (redesignated as paragraph (a)(6)) to be consistent with the discussion of the comment in item 18 of this preamble concerning the storage of products that may be potentially hazardous. Similarly, proposed paragraph (a)(6) (redesignated paragraph (a)(7)) has been amended consistent with the discussion in item 12 of this preamble concerning the definition of processing.

20. One comment suggested that proposed § 606.40(b) be clarified to indicate whether the word "screening" in the phrase "screening of open windows and doors" is intended to mean visual screening.

The Commissioner has used the word in its common or usual sense in association with doors or windows; namely, a partition, usually of wire or plastic mesh, to protect the facility from insect or rodent infestations. The Commissioner concludes that paragraph (b) adequately conveys this meaning. Accordingly, the comment is rejected and no changes are made in the final regulation.

21. Two comments concerning proposed § 606.40(c) suggested that the requirement to provide handwashing facilities in work areas could be interpreted to require that each work area, whether large or small, must have its own handwashing facility.

The Commissioner intends that handwashing facilities be convenient for personnel. However, the Commissioner recognizes that the paragraph may be misinterpreted as suggested in the comment. Accordingly, § 606.40(c) of the final regulation more clearly conveys the Commissioner's intent.

22. One comment interpreted proposed § 606.40(d), concerning the safe and sanitary disposal of trash and items used during processing of blood and blood components, as not contemplating anything more than proper disposal through the local refuse disposal system. The comment suggested that if anything further is required, the proposed rule should be republished in specific terms for further opportunity for comment.

The Commissioner advises that trash and other items used during the collection, processing, and compatibility testing of blood and blood components must be disposed of in a safe and sanitary manner. To ensure safe and sanitary disposal, all potentially infectious material must be autoclaved, incinerated, or otherwise sterilized to preclude contamination of the environment. These procedures do not require special or extraordinary disposal systems and no further publication with an opportunity for comment is warranted. Additionally, the Commissioner notes that the proposal did not specifically require the safe and sanitary disposal of blood and blood components found to be unsuitable for use. However, it is consistent with the obvious intent of the regulation, that such blood and blood components, likewise, should be discarded in a safe and sanitary manner to protect the public from the potential hazard that could be caused by introducing infectious material into the public waste disposal systems. Accordingly, § 606.40(d) of the final regulation more specifically identifies those items requiring safe and sanitary disposal.

EQUIPMENT

23. Five comments concerned the requirement in proposed § 606.60 that equipment be calibrated or tested on a regularly scheduled basis. Three comments requested, for clarity, examples of equipment requiring calibration or testing and the frequency at which they must be calibrated or tested. Two comments objected to the requirement on the basis that certain equipment cannot be calibrated because the design characteristics are not made available by the manufacturer of the equipment.

The Commissioner accepts the comments requesting clarification of the requirement. Accordingly, § 606.60 in the final regulation provides a list of examples of equipment to be calibrated, including the characteristics of the equipment to be calibrated, such as weight, temperature, speed, etc., and the frequency of calibration. The objection that certain equipment cannot be calibrated or tested on a regularly scheduled basis because the design characteristics are not made available by the manufacturer is rejected by the Commissioner. The use of accurate and reliable equipment is essential to ensure compliance with the requirements for the manufacture of products that are safe, pure, potent and

effective. For this reason, the Commissioner concludes that all equipment used in a blood establishment must meet the specifications for producing the intended effect in the manufacture of blood and blood components. To assure that any piece of equipment is operating properly, it must be tested on a regular basis and adjusted when necessary. If the equipment is faulty and cannot be repaired by the blood establishment, it must not be used by the blood establishment until repaired by other sources, or the piece of equipment may be replaced with one found to operate as required.

24. One comment suggested that proposed § 606.60 be amended to delete the phrase "official requirements" because official requirements for equipment have not been established.

The Commissioner intended that the phrase "official requirements" relate not to equipment, but rather to requirements such as weight, temperature, etc., prescribed for products in the regulations for blood and blood products. Accordingly, § 606.60 in the final regulation clarifies the intent of the phrase "official requirements."

25. Three comments concerning proposed § 606.60 suggested exempting from the sterilization requirement, disposable material that is already sterile when purchased by the blood establishment.

The Commissioner agrees that there is no need to resterilize disposable material that is sterile when purchased, and the regulations do not require that such material be resterilized. Furthermore, the subject regulation concerns equipment rather than material. Accordingly, no change is made in the regulation.

SUPPLIES AND REAGENTS

26. The title of proposed § 606.65 has been changed in the final regulation from "Materials" to "Supplies and reagents" for clarity and specificity.

One comment concerning § 606.65(a) suggested that an appropriate method be recommended for confirming pyrogenicity of supplies, such as blood container and donor sets, which the manufacturer claims are pyrogen free.

The Commissioner believes that ultimate responsibility for the claim that supplies are pyrogen-free should rest with the manufacturer of the supplies and not with the blood establishment. Accordingly, the comment is rejected and no special reference is made in § 606.65 (a) to a method for determining pyrogenicity.

27. One comment concerning proposed § 606.65 expressed concern regarding the requirement that all final containers for blood and blood components not intended for transfusion be made of material that will not interact with their contents to affect adversely the safety, purity, potency and effectiveness of the product. It was suggested that FDA inspectors might demand proof that the final container does not interact with its contents.

The Commissioner advises that with respect to containers for blood and blood products intended for transfusion or for further manufacture into injectable products, substantial evidence establishing the safety and effectiveness must be submitted to the FDA by the manufacturer of the container for premarketing clearance. However, final containers for blood and blood components not intended for transfusion or for further manufacture of injectable products only need to be clean and free of surface solids and other contaminants and are not subject to premarketing clearance and approval by FDA. These exemptions do not apply when there is any possibility of the collected blood, or any part thereof, being returned to the donor.

28. One comment concerning proposed § 606.65(b) suggested that, in addition to the required inspection of containers prior to use, the container also be visually inspected for damage or evidence of contamination immediately after filling.

The Commissioner recognizes that a small puncture and certain types of contamination will be more evident after the container is filled. Accordingly, he accepts the suggestion and has added a provision to § 606.65(b) concerning visual inspection of containers immediately after filling.

29. Three comments concerning proposed § 606.65(b) noted that discoloration of certain collection and satellite containers is normal after sterilization The comments suggested that the requirement concerning discoloration of the container either be deleted or revised to reference abnormal discoloration.

The Commissioner agrees that a certain amount of discoloration in plastic containers is normal and does not indicate a substandard container. Accordingly, the Commissioner accepts the suggestion and has amended § 606.65(b) by qualifying the word "discoloration" with the word "abnormal."

30. Ten comments concerning proposed § 606.65(c) objected to the requirement that representative samples of solutions or reagents susceptible to contamination be tested on a regularly scheduled basis to determine freedom from bacteria. It was argued that, generally, sterility of such unopened products is guaranteed by the manufacturer and therefore should not require further testing by the blood establishment. Additionally, it was noted that a vial of solution or reagent is normally used more than once. Consequently, some contamination of an opened vial is inevitable.

The Commissioner agrees that the manufacturer of the solution or reagent should be responsible for the sterility of an unopened product. Furthermore, the Commissioner recognizes that the usual contamination of an opened vial of solution or reagent will not seriously affect its potency or effectiveness. The purpose of the regulation is to ensure potency and effectiveness of solutions and reagents. Such assurance is obtained by the additional requirement in the same paragraph that samples of solutions or reagents liable to changes in concentration be tested on a regularly scheduled basis to determine their strength. In view of the testing for reagent reactive qualities provided by the regulations, the Commissioner has concluded, on balance, that the requirement concerning sterility testing may be deleted from § 606.65(c).

31. Two comments concerning proposed § 606.65(c) expressed dissatisfaction with the need to assay solutions or reagents periodically for changes in concentration. One comment suggested that examples be given of solutions and reagents to be tested.

The Commissioner concludes that regularly scheduled testing of solutions and reagents for concentration is necessary to ensure adequate effectiveness of these products. Such testing is particularly important after storage or intermittent periods of use when the product can be expected to lose some of its reactive qualities. Quantitative tests need not be employed to demonstrate the capacity of the reagent to perform as required. Rather, suitably chosen control procedures may be used, provided such procedures are adequately described in the blood establishment's Standard Operating Procedures Manual. Accordingly, the final regulation retains the requirement to test regularly solutions and reagents to determine their concentration. However, to promote clarity and specificity, § 606.65(c) has been amended to provide a list containing reagents and solutions that shall be tested on a regularly scheduled basis and the required frequency of testing.

32. One comment interpreted proposed § 606.65(d) (now incorporated into § 606.160) to include the requirement that results of visual inspection of blood containers be recorded. The comment stated that it is unnecessarily burdensome to maintain such records and that only defects of containers need be recorded.

The Commissioner finds that the interpretation of the paragraph is incorrect. The intent of the proposed regulation is not to record the condition of each blood container, but rather to record the identity and disposition of containers that are not suitable for use. To clarify the requirements concerning records, the Commissioner has provided in § 606.160 a comprehensive list of records that must be maintained by the blood establishment.

33. Four comments concerning proposed § 606.65(d)(1) (redesignated § 606.160(b)(7)(v)) objected to the requirement for maintaining records of the lot number, expiration date, and date of receipt of each type of supply or reagent received from each manufacturer.

The Commissioner concludes that such records are necessary, together with processing records and compatibility records, to investigate and resolve problems that may arise from the use of faulty reagents or supplies employed in the manufacture of blood and blood components. Accordingly, the Commissioner rejects the comments and no change is made in § 606.160(b)(7)(v).

34. Four comments concerning proposed § 606.65(d)(2) (redesignated § 606.160(a)(2)) indicated that the requirement to keep specific records relating the lot numbers of reagents and sup-

plies to the final product requires an unnecessary amount of documentation.

The Commissioner advises that records must be kept to identify the reagent and other material employed in the production of each lot or unit of final blood product. However, the commentor apparently interpreted § 606.65(d)(2) as requiring that the lot numbers of reagents and supplies employed in the production of a final product be recorded in a specific manner such as a log book. No one format for these records is specified. Rather, as prescribed in § 606.160(a)(2), appropriate records must be available from which to determine the lot number of reagents and supplies used for specific lots or units of final blood product.

35. One comment concerning proposed § 606.65(d)(3) (now incorporated into § 606.160(b)(5)(ii) and (b)(7)vi)) interpreted the proposed paragraph as requiring that blood establishments repeat the tests performed by the manufacturer of the material. The comment indicated that most blood establishments do not have the equipment or expertise to retest purchased materials.

The Commissioner advises that the comment incorrectly interpreted the requirement. The regulation does not require that the blood establishment repeat the test performed by the manufacturer of the material. Rather, the intent of the regulation is to require a record of performance checks of equipment and reagents as prescribed in § 606.160(b)(5)(ii) of the final regulations.

36. The requirements in proposed § 606.65(e) concerning testing of reagents for potency and the maintenance of records have been transferred to §§ 606.65(c) and 606.160(b)(7)(i), respectively. The paragraphs in § 606.65 have been renumbered accordingly.

37. Eight comments concerning proposed § 606.65(f) (redesignated § 606.65(d)) generally agreed with the principle of storing the material in such a manner that the oldest is used first. However, four comments suggested that the requirement should not apply to reagents or supplies bearing an expiration date, as long as these materials are used within the dating period. Additionally, four comments questioned the need to promulgate such a requirement.

The Commissioner agrees that there is no need to require that products bearing a dating period be used on an "oldest-first" basis, in that these products have been tested and shown to maintain adequate potency and effectiveness during the entire length of the dating period. Consequently, there is no objection to using such products any time within the dating period. However, labels do not generally indicate the rate of loss of potency and effectiveness of products not bearing a dating period. To assure no loss of potency or effectiveness, these materials should be used on a first-in-first-out basis. Accordingly, § 606.65(d) has been amended to apply to products that do not bear an expiration date.

38. One comment concerning proposed § 606.65(h) (redesignated § 606.65(f)) requested that the word "possible" be changed to "practical."

The Commissioner believes that disposability is an effective means of reducing the spread of infectious disease, especially the spread of hepatitis B virus. The accrued benefits of using disposables override all other considerations of practicality. Accordingly, the comment is rejected and no change is made in the regulations.

STANDARD OPERATING PROCEDURES

39. It has come to the attention of the Commissioner that § 606.100(a), as proposed, could be misinterpreted as requiring that establishments not subject to licensure must comply with those specific provisions in Part 640 (21 CFR Part 640) which, by their terms, apply only to licensed establishments. Accordingly, proposed § 606.100(a) is amended in the final regulation to provide that the references in Part 640 relating to licenses, licensed establishments and submission to and approval by the Director, Bureau of Biologics, are not applicable to nonlicensed establisments.

Of course, the standard operating procedures that unlicensed establishments are required by these regulations to follow must comply with the substantive procedures for specific blood products set forth in Part 640.

40. One comment concerning proposed § 606.100(b) objected to the requirement that blood establishments maintain written standard operating procedures. The comment suggested that the art of blood banking may be downgraded if all steps were required to be written.

The Commissioner disagrees with this comment. The manual is intended to describe the best techniques, procedures and policies developed by blood banking practitioners. The Commissioner believes that the guidance provided to personnel from use of the manual, together with personnel development concerning attentiveness to detail, experience, training, common sense, etc., can only upgrade the art of blood banking.

41. Another comment concerning proposed § 606.100(b) requested guidance for the collection of blood intended for autologous transfusion, a transfusion in which the patient is infused with his own blood that was withdrawn on a previous occasion.

The Commissioner will issue at another time proposed additional standards governing products intended for autologous transfusion. In the meantime, any facility that collects blood for autologous transfusion must describe in the Standard Operating Procedures Manual, the steps followed from collection to distribution of such units. The manual of each licensed blood establishment is reviewed by the Bureau of Biologics at the time of licensure to assure that all procedures described therein are safe and result in a product that is safe, pure, potent and effective. Manuals of unlicensed establishments are subject to review during inspection by the FDA, but need not be submitted to the Bureau of Biologics for approval. To promote specificity and clarity of the regulation, the Commissioner has amended § 606.100(b) by identifying homologous transfusion, autologous transfusion, and further manufacture of blood and blood components as procedures that must be described in the written Standard Operating Procedures Manual.

42. Three comments concerned proposed § 606.100(b)(5). Two of these comments objected to weighing each unit of blood on the basis that it is costly and unnecessary. The comments suggested that quality control of equipment will assure collection of blood within an acceptable range. The third comment suggested that the regulation be amended to provide a recommendation concerning the equipment to be used for weighing.

The Commissioner believes that the comments misinterpreted the regulation. The intent of the regulation is to ensure that the quantity of blood taken from the donor does not exceed the volume permitted by regulation. This is normally accomplished by the use of an in-process device which, based upon weight, mass or volume, signals the completion of the donation. Indeed, the regulation does not anticipate the weighing of each unit of blood when the in-process device has been demonstrated to be accurate and reliable. Rather, the regulation anticipates written procedures concerning use and maintenance of the device to assure its accuracy and reliability. Finally, the Commissioner concludes that there is no need to recommend specific equipment to be used for measuring the quantity of blood removed from the donor. The specific equipment used by the blood establishment should be described in the written Standard Operating Procedures Manual and will be reviewed during inspection by the FDA. Accordingly, no change is made in § 606.100(b)(5).

43. Two comments concerning proposed § 606.100(b)(7) noted that after publication of this proposal, a notice was published in tthe FEDERAL REGISTER of July 9, 1974 (39 FR 25233) proposing to amend § 610.40 *Tests for hepatitis B surface antigen* (21 CFR 610.40) to require testing of blood for hepatitis B surface antigen by a method of third generation sensitivity. The comments recommended that the requirement to use a method of third generation sensitivity be reflected in § 606.100(b)(7).

The Commissioner accepts the comments and § 606.100(b)(7) has been amended accordingly.

44. The Commissioner has added a new paragraph (b)(9) to proposed § 606.100 concerning procedures for investigating adverse reactions. The proposed paragraph (b)(9) and those following are renumbered accordingly. The reason for adding the new paragraph is that proposed § 606.170 *Adverse reaction file* requires that a thorough investigation be made for each reported adverse reaction. The Commissioner concludes that the procedures for carrying out the investigation should be described in the Standard Operating Procedures Manual to provide guidance to personnel involved in the investigation.

45. Two comments concerning proposed § 606.100(b)(10) (redesignated § 606.100(b)(11)) indicated that the requirement to identify the length of expiration dates assigned for all final products may cause confusion since some products such as Source Plasma (Human) and Recovered Plasma (Human), do not have expiration dates.

The Commissioner accepts the comments. Accordingly, to clarify the regulation, the phrase "if any" is added after the phrase "Length of expiration date" in § 606.100(b)(11).

46. The Commissioner has added a new paragraph (b)(18) to proposed § 606.100 concerning procedures for preparing recovered (salvaged) plasma. The paragraph is added in response to a number of general comments requesting greater specificity in the regulations.

47. Six comments objected to proposed § 606.100(c), which they interpreted as requiring a single comprehensive review of all applicable records at the time of distribution of blood or blood components. Another comment indicated that the paragraph seemed to be directed toward blood products rather than fresh blood or fresh blood components.

The Commissioner concludes that the comments have misinterpreted the intent of the regulation. The regulation requires that the records pertaining to a product be reviewed prior to distributing the product, not necessarily immediately prior to distribution. The review, or portions of the review, may be conducted at appropriate periods during or after blood collecting, processing, compatibility testing and storing. Additionally, the regulation is intended to apply to establishments preparing any blood product, including fresh blood and fresh blood components. Accordingly, the Commissioner has amended § 606.100(c) to clarify the intent.

PLATELETPHERESIS, LEUKAPHERESIS AND PLASMAPHERESIS

48. Twenty-five comments concerned proposed § 606.110 *Plasmapheresis*. Most of the comments were substantively the same as, or similar to, comments received in response to a notice published in the FEDERAL REGISTER of July 17, 1974 (39 FR 26161) proposing to expand the definition of Source Plasma (Human) in Part 640 to include all products collected by plasmapheresis, except Single Donor Plasma (Human) intended for intravenous use. The final regulations responsive to the July 17, 1974 proposal will prescrdibe requirements for Source Plasma (Human) intended for preparation of components for injection or for further manufacture into noninjectable products.

The Commissioner has determined that these good manufacturing practice regulations no longer need to prescribe specific requirements for plasmapheresis since proposed § 606.100 requires that the standard operating procedures must comply with the regulations for Source Plasma (Human) as presently drafted and as they may be amended. For continuity in the discussion relating to plasmapheresis, the Commissioner will respond to the comments concerning plasmapheresis and proposed § 606.110 in the preamble to the final regulations concerning Source Plasma (Human) which will be published in the near future.

The Commissioner recognizes that in the meantime, provision should be made to permit the plasmapheresis of a donor who does not meet the requirements of §§ 640.63, 640.64 and 640.65 for the collection of plasma containing rare antibodies. Accordingly, the Commissioner has added a new paragraph (b) to § 606.110 to permit such plasmapheresis of a donor only with approval of the Director, Bureau of Biologics.

49. Two comments concerning proposed § 606.110 noted that neither the proposed regulation nor any of the existing biologic regulations prescribe the use of leukapheresis and plateletpheresis procedures for obtaining leukocytes or platelets, respectively, from a donor. The comments expressed concern that these procedures would no longer be permitted when needed for specific patients requiring repeated leukocyte or platelet transfusions.

The Commissioner advises that use of plateletpheresis as a source of Platelet Concentrate (Human) was provided for in the Additional Standards for Platelet Concentrate (Human), §§ 640.20 through 640.26 published in the FEDERAL REGISTER of January 29, 1975 (40 FR 4300). The use of the leukapheresis procedure, as indicated by the comment, is not presently prescribed by the existing biologic regulations.

The provisions prescribed in §§ 640.21(c) and 640.22(c) (21 CFR 640.21(c) and 640.22(c)) of the Additional Standards for Platelet Concentrate (Human) require that when plateletpheresis is used, the criteria of donor suitability and collection procedure must have written approval of the Director, Bureau of Biologics. Such approval is granted only after the blood establishment has demonstrated that the criteria and procedures will assure safety of the donors. These provisions, however, may preclude the use of plateletpheresis by a hospital in emergency situations when a physician has determined that the recipient must be transfused with the platelets from a specific donor, but the donor does not meet the criteria of weight, blood pressure, etc., approved by the Bureau of Biologics in accordance with § 640.21(c).

The Commissioner recognizes that leukapheresis and plateletpheresis are important to a hospital for collecting large volumes of leukocytes and platelets, especially from a small number of donors who are selected because of the compatibility of their blood with that of the recipient. Indeed, the most medically desirable donors are often relatives of the recipient.

Leukapheresis and plateletpheresis involve the return of nearly all the plasma, plus the formed elements, minus the leukocytes or platelets, respectively. These procedures do not significantly reduce the oxygen-carrying, oncotic or volumetric capacities of the donor's circulating system. Therefore, use of these procedures presents no long-term risks that could not be assessed by a physician at the time of donation. The Commissioner believes that provision must be made in the regulations to permit use of these life-saving procedures.

Accordingly, proposed § 606.110 has been amended to permit the use of the leukapheresis and plateletpheresis procedures when (a) the physician has determined that the recipient must be transfused with the leukocytes or platelets from a specific donor; (b) the procedure is performed under the supervision of a physician who is aware of the health status of the donor; and (c) the physician has certified in writing that the donor's health permits leukapheresis or plateletpheresis. Under such circumstances, the requirements prescribed in §§ 640.21(c) and 640.22(c) concerning prior approval of the criteria of donor suitability and the collection procedure of plateletpheresis by the Director, Bureau of Biologics, are waived. The Commissioner believes that such emergency provisions for plateletpheresis also should be reflected in the regulations governing the manufacture of Platelet Concentrate (Human). Accordingly, a new § 640.27 *Emergency provisions* is added to Platelet Concentrate (Human) regulations.

LABELING

50. One comment concerning proposed § 606.120(a)(1) suggested that the regulation be amended to permit a multilocation establishment to proof all labeling at one location. The comment interpreted the regulation as requiring that each location must proof the label against an approved final copy.

The Commissioner advises that the regulation was misinterpreted. The regulation does not prohibit a multilocation establishment from reviewing and proofing all labels at one location. Accordingly, no change is made in the regulation.

51. Two comments concerned proposed § 606.120(b). One comment recommended that the regulation be revised to require that labels applied by one blood service not be altered in any way by another blood service. The other comment recommended that the regulation be revised to permit a hospital to replace the original label, since the original label may be confusing to a physician who administers the product.

The Commissioner advises that the label information provided by the collection facility and the initial processing facility are necessary to identify and confirm that the product is safe, pure, potent and effective, and to facilitate the tracing of a product back to its original source. Indeed, the Commissioner did not anticipate that the regulation might be interpreted to imply that the original label may be removed, altered or obscured. Accordingly, to prevent any misinterpretation of the regulation, a sentence has been added to § 606.120(b) to prohibit any alteration of the original label. However, this does not preclude a hospital from adding further informa-

tion to a product container, provided the original label is not removed, altered or obscured. Accordingly, the Commissioner rejects the comment concerning replacement of the original label.

The Commissioner recognizes that under certain circumstances in the manufacture of blood components, the original label of the source material must be altered to provide accurate identification of the proper name of the product. For example, after plasma is removed from Whole Blood (Human), the remaining product is Red Blood Cells (Human). Accordingly, § 606.120(b) is amended in the final regulation to permit altering of labels, as necessary, to reflect the proper name of the product and other required labeling information for the contents remaining in a container after blood components have been removed.

52. One comment concerning proposed § 606.120(b)(5) suggested that the necessary instructions and precautions for use be required for the directions circular only and not on the product label.

The Commissioner concludes that the requirement as proposed is consistent with §§ 610.60 and 610.61 (21 CFR 610.60 and 610.61) prescribing the information that must appear on the container and package labels of all biological products. Accordingly, the comment is rejected. However, the Commissioner recognizes that certain information, such as the formula of the anticoagulant solution in the container, need be contained only in an instruction circular. For this reason, the Commissioner is reviewing the present labeling requirement for all blood products with the intent of publishing a proposal in the near future concerning a revised uniform labeling requirement.

53. Two comments concerning proposed § 606.120(b)(7) recommended that distribution of instruction circulars for whole blood and blood components not be required. Another comment suggested that the instruction circular not necessarily accompany each unit of blood.

The Commissioner recognizes that those experienced in performing transfusions may not need to refer to the instruction circular each time a transfusion is given. However, the circular provides a valuable synopsis of the best available information on the uses, precautions and contraindications associated with the use of blood and blood components. This information may be utilized by interns and residents, as well as recently transfused patients. Moreover, labeling for these drug products must, pursuant to section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(f)(1)) bear adequate directions for lay use. Accordingly, the Commissioner rejects the comments recommending that distribution of the instruction circular not be required. The Commissioner did not intend, nor does the regulation imply, that the circular accompany each unit of whole blood. Rather, the regulation requires that circulars must be available in the collecting and transfusing facilities for reference, as needed, by transfusionists, interns, residents and patients.

54. Two comments concerning proposed § 606.120(b)(8) requested that a provision be added to permit the volume of a product in a container to vary by ±10 percent from the volume stated on the label. Another comment noted that the quantity of product is normally not specified for certain products, e.g., Cryoprecipitated Antihemophilic Factor (Human).

The Commissioner acknowledges that certain measurement devices presently used by blood banks are accurate only within a 10 percent range. Consequently a unit of whole blood is recognized as being within ±10 percent of the volume stated on the label. Since a discrepancy of ±10 percent of the volume stated on the label does not affect the safety purity, potency and effectiveness of the product, the Commissioner has amended the regulation to permit the quantity of product stated on the label to be accurate to within ±10 percent. However, it should be emphasized that the amendment does not affect, in any manner, the maximum amount of whole blood, which by regulation is permitted to be removed from a doner, i.e., § 640.65(b)(4), (5) and (6) (21 CFR 640.65(b)(4), (5) and (6)). The Commissioner recognizes that it is impractical to determine the volume of Cryoprecipitated Anthempophilic Factor (Human) in a container, and proposed § 606.120(b)(8) is not intended to apply to this product. Rather, proposed paragraph (b)(9) is applicable and consistent with § 640.51(c)(6) (21 CFR 640.51(c)(6)) concerning Cryoprecipitated Antihemophilic Factor (Human), requiring that the quantity of source plasma, and kind and quantity of anticoagulant appear on the labeling. Accordingly, to ensure that there is no misinterpretation concerning the intent of proposed paragraph (b)(8), the Commissioner has added a phrase exempting this product from the requirement that the labeling indicate the quantity of product in the container and further providing that the ±10 percent variance does not apply to Source Plasma (Human) for which precise weight measurement is regularly attained.

Laboratory Controls

55. Two comments concerning proposed § 606.140 requested that the regulation be revised to specifically define requirements such as "adequate" monitoring, "appropriate" specifications, and the like.

The Commissioner believes that each blood establishment should select its own specific laboratory control procedures applicable to the processes it performs, its equipment, personnel and other variable factors. The regulations are intended as a general guideline for use by a blood establishment in developing specific laboratory control procedures. There are available recognized laboratory control guides, such as Quality Control in Blood Banking, American Association of Blood Banks, 1973, or Myhre, B.A. and Quality Control in Blood Banking, Wiley and Sons Inc., NY 1974, which provide procedures for implementing the standards set forth in these regulations. Accordingly, the comments are rejected.

Compatibility Testing

56. Two comments concerning proposed § 606.151 argued that crossmatching is not, and should not, be within the province of the FDA, inasmuch as it is a procedure performed entirely within the hospital laboratory.

The Commissioner advises that in some instances community blood banks perform crossmatching procedures in place of the hospital laboratory. In addition, the Commissioner believes that his authority under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to regulate all aspects of blood and blood components processing and testing has been adequately documented in the preamble of the proposal. The Commissioner considers the crossmatching, as well as other compatibility tests to be as significant to blood as the general safety test described in § 610.11 (21 CFR 610.11) is to other biological products. Indeed, it is impossible for the Commissioner to assure the safety, purity, potency and effectiveness of blood and blood products without the authority to assure that all compatibility tests are accurate and reliable.

57. Two comments concerning the introductory paragraph of proposed § 606.151 requested that the first sentence be deleted. The comments indicated that it is unreasonable for a small institution to require an entirely separate area for compatibility testing.

The Commissioner accepts the comments. It is not essential that an area be set aside for compatibility tests only. Rather, it is essential that compatibility testing be conducted in a work area that is arranged in an orderly manner so as to avoid mixups or contamination of the product. This requirement is already addressed in proposed § 606.40(a)(7). Accordingly, the Commissioner has deleted the first sentence from the Introductory paragraph of § 606.151.

58. Three comments concerning proposed § 606.151(b) objected to the requirement that serum be less than 48 hours old for all compatibility testing. The comments suggested that there is adequate data in the literature to support use of serum older than 48 hours for such testing. Also, one comment suggested that the serum for compatibility testing should be less than 6 hours old.

The Commissioner prescribed the 48-hour limit on the basis of data demonstrating that antibodies in a blood recipient's serum 48 hours old can adequately be detected by compatibility testing. Accordingly, the Commissioner rejects the comment suggesting that serum be less than 6 hours old. Serum samples stored at refrigerator temperatures beyond 48 hours may become contaminated with airborne microorganisms. Some microorganisms produce substances capable of agglutinating red cells and may, therefore, predispose serum to false positive agglutination reactions. Accordingly,

the Commissioner rejects the comment and no change is made in the regulations. However, the FDA is conducting a review of available data concerning compatibility testing with serum that is 72 hours old. Interested persons are encouraged to send such data, or references to such data, to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20014. The Commissioner will propose to extend the 48-hour limit to 72 hours or longer if available data support such extension.

59. Five comments concerning paragraph (c) and (d) of proposed § 606.151 suggested that the major crossmatch test include testing for hemolytic antibodies, as well as the already required agglutinating and coating antibodies.

The Commissioner intends that the major crossmatch test include testing for all antibodies of major concern. Hemolytic antibodies are of major concern but were inadvertently omitted in the proposed regulation. Accordingly, the Commissioner accepts the comments and paragraphs (c) and (d) have been amended as suggested by the comments.

60. One comment concerning proposed § 606.151(d) requested that provision be made to permit screening of the donor's blood by any method that has been demonstrated to be at least equivalent to the antiglobulin method for determining the presence of agglutinating, coating and hemolytic antibodies. Included with the comment was data supporting use of an enzyme method proposed for use in place of the antiglobulin method.

The Commissioner believes that the regulation should anticipate the use of other methods that are equivalent to, or better than, the antiglobulin method for demonstrating antibodies in the donor's blood. Additionally, the Commissioner concludes that the data submitted with the comment demonstrate that the enzyme method is at least equivalent to the antiglobulin method. Accordingly, § 606.151(d) has been revised in the final regulation to permit screening of a donor's blood by any method that will demonstrate agglutinating, coating and hemolytic antibodies.

61. Two comments concerning proposed § 606.151(d) suggested that the minor crossmatch test be required whether or not donor screening is performed. The comments indicated that the test is important as an additional check to assure that the patient is given the proper blood. Another comment suggested that reference to the minor crossmatch be deleted and replaced with a requirement that all donor sera be tested by methods adequate to detect clinically significant antibodies. The comment stated that there are good reasons for the undesirability of performing the minor crossmatch and also inter se crossmatches. However, the specific reasons were not given.

As evidenced by the comments, there is disagreement within the scientific community concerning the advantages of the screening test versus the minor crossmatch test and the practical need to perform one of these tests if the other already has been performed. In light of this disagreement, and since the available data equally support advantages of either test procedure, the Commissioner, in the proposed regulation, has permitted use of the screening test or the minor crossmatch test as alternative testing procedures. No new data demonstrating that one testing procedure is superior to the other has been made available to the Commissioner. For these reasons, the Commissioner rejects the comment requesting that reference to the minor crossmatch test be deleted. The Commissioner believes that the major crossmatch test required by paragraph (c), together with a test designed either to screen the donor's serum or to reflect compatibility of the donor's serum with the recipient's red blood cells (minor crossmatch), are practical, necessary and adequate to protect the recipient from a transfusion with incompatible blood. Accordingly, the Commissioner also rejects the comment requesting that both screening and minor crossmatch tests be required prior to transfusion, and no change is made in the regulation.

62. Seven comments concerning proposed § 606.151(e) objected to the words "modified" and "safe" to describe the procedures for expedited transfusions in emergencies. The comments noted that in an emergency situation there is normally not enough time to conduct all required testing of the blood. Consequently, the blood cannot be determined to be as safe as blood processed under normal conditions.

The Commissioner recognizes the limited assurances provided by any emergency procedure and therefore accepts the comments, and the words "modified" and "safe" have been deleted from § 606.151(e) of the final regulation. The Commissioner notes that the comments interpreted the word "procedures" as strictly applying to the method of performing the crossmatch. However, it should be emphasized that the term "procedure" includes administrative procedures relating to emergency transfusions as well as the technical procedures.

Records

63. Three comments concerning proposed § 606.160(a) (redesignated as § 606.160(a)(1)) requested clarification of the significant steps for which records must be maintained and questioned the need for maintaining certain records, especially those that identify the person performing the work.

The Commissioner has used the term "significant step" to mean any step that may affect the safety of the donor and recipient, or the safety, purity, potency and effectiveness of the product. For example, with respect to blood collection, the amenities provided the donor prior to the interview or following blood donation are not significant steps requiring the maintenance of records. However, any aspect of the donor interview concerning his suitability and the phlebotomy is a significant step requiring the maintenance of records, signed or initialed by person(s) who actually performed the work. The Commissioner recognizes that supervisors may have ultimate responsibility for the performance of their staff. Nevertheless, employees having direct responsibility for any significant step may need to be identified if deficiencies and substandard practices are to be expeditiously corrected. Accordingly, the Commissioner accepts the comments requesting clarification of significant steps and a new proposed § 606.160(b) has been added to the regulation to specifically identify the records that must be maintained.

64. Several comments requested guidance concerning recordkeeping methods and requirements generally. In conjunction with this section of the regulation, the Commissioner will publish a proposal concerning the tabulation of recorded data in order to promote meaningful review and monitoring by the blood establishment and to facilitate a scheduled annual survey of all blood establishments by FDA.

65. Five comments concerning proposed § 606.160(c) (redesignated as § 606.160(d)) indicated that it is unrealistic to require that records of processing Source Plasma (Human) be retained for 6 months after the expiration date of the final product manufactured from the Source Plasma (Human). The comments noted that Source Plasma (Human) is normally sold to another establishment for further manufacture. Consequently, the Source Plasma (Human) supplier has no way of knowing the latest expiration date of the final product. One comment suggested it would be more practical to require that the supplier retain the records indefinitely, while two other comments suggested 5 years.

The Commissioner recognizes that it may be impractical, or perhaps impossible, for the supplier of Source Plasma (Human) to know the latest expiration date of a final product processed by another establishment. Consequently, it is also impractical to require that the supplier retain records of processing for 6 months after the latest expiration date for the final product that was manufactured from the source plasma. For this reason, the Commissioner intends to publish, at another time, a notice of proposed rule making to prescribe an expiration date for Source Plasma (Human). Interested persons will be given an opportunity for comment. The Commissioner has determined that in the interim, records of products having no expiration dates shall be retained indefinitely to facilitate the reporting of any unfavorable clinical reactions. Accordingly, § 606.160 has been amended in paragraph (e) to require that records be retained indefinitely when the product has no expiration date.

66. Three comments concerning proposed § 606.160(d) (redesignated § 606.160(e)) asked whether the regulation required that establishments maintain a separate list of unsuitable donors or permitted the flagging of individual donor records. One comment further asked whether the record of unsuitable donors must include the names of donors who are only temporarily unsuitable. Another

comment indicated that it is impractical to carry a complete list of unsuitable donors on mobile operations.

The Commissioner intended that the major impact of the regulation was to preclude from the marketplace, blood or blood products obtained from an unsuitable donor. The Commissioner advises that each blood establishment may develop its own system of recordkeeping to effectively identify unsuitable donors. Accordingly, the regulation does not prescribe a special system of recordkeeping. Rather, any record system used by a blood establishment must facilitate the identification of an unsuitable donor. The Commissioner agrees that it may be impractical, on a mobile operation, to carry a complete list of unsuitable donors. Therefore, upon return of the mobile unit to the blood establishment, donor records must be reviewed and action taken to assure that blood collected from an unsuitable donor will not be distributed. Accordingly, the Commissioner has amended the regulation to emphasize that records must be available so that products from unsuitable donors will not be distributed.

DISTRIBUTION AND RECEIPT; PROCEDURES AND RECORDS

67. One comment concerning proposed § 606.165 argued that unnecessary paperwork would be required if every unit of blood issued by a central blood bank must contain the name and address of the hospital. Another comment suggested that there is little need to specify on each distribution record the address of a consignee who is frequently supplied with the product. The comment suggested that the addresses of such consignees are always easily available at the blood establishment.

The Commissioner advises that the regulation does not require each unit of blood to have on its container the name and address of the hospital to which the unit is being sent. Rather, it requires that such information be in the distribution record of the blood establishment shipping the blood. The Commissioner agrees with the comment that the address of a consignee on each distribution record may not be needed if such information is easily available elsewhere in the blood establishment records in a form that will readily facilitate recall of a product. Accordingly, the regulation has been amended to require that distribution records contain information to facilitate the rapid identification of the name and address of the consignee.

68. In the original notice, the Commissioner proposed to require the maintenance of records for "each significant step" in the manufacture of blood products. It was the Commissioner's intent that records of receipt of blood and blood components be included since a system of recordkeeping of such data is essential to assure the identity and permit recall, if necessary, of each unit of blood. Indeed, almost all establishments receiving blood products recognize the importance of maintaining such records and currently do so. The Commissioner has concluded that to promote specificity, the regulation should explicitly require such a system of recordkeeping and that such requirement be set forth in the new § 606.165 along with similar requirements applicable to distribution. Accordingly, that section has been amended to include requirements for receipt of blood and blood components in order to facilitate recall of blood products. In order to clarify any possible misapprehension that may have occurred concerning the scope of the proposal regarding records for receipt, the Commissioner will consider additional comments concerning this aspect of the regulation within the next 30 days, and such comments may justify further modification of this provision.

ADVERSE REACTION FILE

69. Twenty-three comments concerned proposed § 606.170 dealing with adverse reaction files. The comments posed general questions concerning the intended objectives of the proposed regulation. Almost all comments requested that the term "severe adverse reaction" be defined.

The Commissioner advises that the objective of the regulation is to reduce the possibility of adverse reactions by (a) determining the cause of the reaction; and (b) providing safeguards that eliminate, where possible, the causes leading to an adverse reaction. To achieve this objective, the technical staff of each transfusion facility must be informed of all transfusion reactions so that data may be made available to a physician to confirm suspected causes, including sequelae, such as antibody development that might require further blood usage demanding special technical handling, and to review and evaluate the adequacy of laboratory methods. For these reasons, transfusion reactions must be reported to the laboratory and records maintained there, in addition to any notes that may be inserted in the patient's chart. Additionally, the collecting facility must be informed of all transfusion reactions when the reaction is attributed to a defect in the product obtained from the collecting facility. Accordingly, the regulation has been revised in § 606.170 to require clearly that (a) records be kept concerning any adverse reaction to the donor or recipient, (b) reports of each reaction be investigated, (c) transfusion reaction reports be communicated to and retained by the collecting facility when the reaction is attributed to a defect in the product, and (d) the Director, Bureau of Biologics, be informed of any deaths implicating a blood donation or transfusion as the cause.

The Commissioner uses the term "severe adverse reaction" to mean a fatal reaction. The Director, Bureau of Biologics, must be notified by telephone or telegraph as soon as possible when a blood donation or transfusion has been found to cause death, and a written report of the investigation must be submitted to the Director, Bureau of Biologics, within 7 days after the fatality.

Under the Administrative Procedure Act (5 U.S.C. 533(b) and (d)), the Commissioner concludes that notice, public procedure and delayed effective date are unnecessary for the promulgation of § 640.27 as it does not impose an additional duty or burden on any person but rather relieves a restriction concerning plateletpheresis consistent with these good manufacturing practice regulations. Comments are nevertheless requested within the next 30 days and may justify further modification of this provision.

Therefore, under provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1050 as amended by 76 Stat. 780, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4 and 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)) and under authority delegated to the Commissioner (21 CFR 2.120), Chapter I of Title 21 of the Code of Federal Regulations is amended in Subchapter F as follows:

1. By adding a new Part 606 to read as follows:

Subpart A—General Provisions

Sec.
606.3 Definitions.

Subpart B—Organization and Personnel

606.20 Personnel.

Subpart C—Plant and Facilities

606.40 Facilities.

Subpart D—Equipment

606.60 Equipment.
606.65 Supplies and reagents.

Subpart E—[Reserved]

Subpart F—Production and Process Controls

606.100 Standard operating procedures.
606.110 Plateletpheresis, leukapheresis and plasmapheresis.

Subpart G—Finished Product Control

606.120 Labeling.

Subpart H—Laboratory Controls

606.140 Laboratory controls.
606.151 Compatibility testing.

Subpart I—Records and Reports

606.160 Records.
606.165 Distribution and receipt; procedures and records.
606.170 Adverse reaction file.

AUTHORITY: Secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4 and 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)).

Subpart A—General Provisions

§ 606.3 Definitions.

As used in this part:

(a) "Blood" means whole blood collected from a single donor and processed

either for transfusion or further manufacturing.

(b) "Unit" means the volume of blood or one of its components in a suitable volume of anticoagulant obtained from a single collection of blood from one donor.

(c) "Component" means that part of a single-donor unit of blood separated by physical or mechanical means.

(d) "Plasma for further manufacturing" means that liquid portion of blood separated and used as material to prepare another product.

(e) "Plasmapheresis" means the procedure in which blood is removed from the donor, the plasma is separated from the formed elements and at least the red blood cells are returned to the donor. This process may be immediately repeated, once.

(f) "Plateletpheresis" means the procedure in which blood is removed from the donor, a platelet concentrate is separated, and the remaining formed elements and residual plasma are returned to the donor.

(g) "Leukapheresis" means the procedure in which blood is removed from the donor, a leukocyte concentrate is separated, and the remaining formed elements and residual plasma are returned to the donor.

(h) "Facilities" means any area used for the collection, processing, compatibility testing, storage or distribution of blood and blood components.

(i) "Processing" means any procedure employed after collection and before compatibility testing of blood and includes the identification of a unit of donor blood, the preparation of components from such unit of donor blood, serological testing, labeling and associated recordkeeping.

(j) "Compatibility testing" means the in vitro serological tests performed on donor and recipient blood samples to establish the serological matching of a donor's blood or blood components with that of a potential recipient.

Subpart B—Organization and Personnel

§ 606.20 Personnel.

(a) A blood establishment shall be under the direction of a designated, qualified person who shall exercise control of the establishment in all matters relating to compliance with the provisions of this subchapter. This person shall also have the authority to represent the establishment in all pertinent matters with the Bureau of Biologics and to enforce, or direct the enforcement of, discipline and the performance of assigned functions by employees engaged in the collection, processing, compatibility testing, storage and distribution of blood and blood components. The designated director shall have an understanding of the scientific principles and techniques involved in the manufacture of blood products and shall have the responsibility for ensuring that employees are adequately trained in standard operating procedures and that they are aware of the application of the pertinent provisions of this chapter to their respective functions.

(b) The personnel responsible for the collection, processing, compatibility testing, storage or distribution of blood or blood components shall be adequate in number, educational background, training and experience, including professional training as necessary, or combination thereof, to assure competent performance of their assigned functions, and to ensure that the final product has the safety, purity, potency, identity and effectiveness it purports or is represented to possess. All personnel shall have capabilities commensurate with their assigned functions, a thorough understanding of the procedures or control operations they perform, the necessary training or experience, and adequate information concerning the application of pertinent provisions of this part to their respective functions.

(c) Persons whose presence can adversely affect the safety and purity of the products shall be excluded from areas where the collection, processing, compatibility testing, storage or distribution of blood or blood components is conducted.

Subpart C—Plant and Facilities

§ 606.40 Facilities.

Facilities shall be maintained in a clean and orderly manner, and shall be of suitable size, construction and location to facilitate adequate cleaning, maintenance and proper operations. The facilities shall:

(a) Provide adequate space for the following when applicable:

(1) Private and accurate examinations of individuals to determine their suitability as blood donors.

(2) The withdrawal of blood from donors with minimal risk of contamination, or exposure to activities and equipment unrelated to blood collection.

(3) The storage of blood or blood components pending completion of tests.

(4) The quarantine storage of blood or blood components in a designated location pending repetition of those tests that initially gave questionable serological results.

(5) The storage of finished products prior to distribution.

(6) The quarantine storage, handling and disposition of products and reagents not suitable for use.

(7) The orderly collection, processing, compatibility testing, storage and distribution of blood and blood components to prevent contamination.

(8) The adequate and proper performance of all steps in plasma-pheresis, plateletpheresis and leukapheresis procedures.

(9) The orderly conduction of all packaging, labeling and other finishing operations.

(b) Provide adequate lighting, ventilation and screening of open windows and doors.

(c) Provide adequate, clean, and convenient handwashing facilities for personnel, and adequate, clean, and convenient toilet facilities for donors and personnel. Drains shall be of adequate size and, where connected directly to a sewer, shall be equipped with traps to prevent back-siphonage.

(d) Provide for safe and sanitary disposal for the following:

(1) Trash and items used during the collection, processing and compatibility testing of blood and blood components.

(2) Blood and blood components not suitable for use or distribution.

Subpart D—Equipment

§ 606.60 Equipment.

(a) Equipment used in the collection, processing, compatibility testing, storage and distribution of blood and blood components shall be maintained in a clean and orderly manner and located so as to facilitate cleaning and maintenance. The equipment shall be observed, standardized and calibrated on a regularly scheduled basis as prescribed in the Standard Operating Procedures Manual and shall perform in the manner for which it was designed so as to assure compliance with the official requirements prescribed in this chapter for blood and blood products.

(b) Equipment that shall be observed, standardized and calibrated with at least the following frequency, include but are not limited to:

Equipment	Performance check	Frequency	Frequency of calibration
Temperature recorder	Compare against thermometer	Daily	As necessary.
Refrigerated centrifuge	Observe speed and temperature	Each day of use	Do.
Hematocrit centrifuge	Standardize with control preparation	do	Do.
General lab centrifuge			Tachometer every 6 mo.
Automated blood-typing machine.	Observe controls for correct results	Each day of use	
Hemoglobinometer	Standardize against cyanmethemoglobin standard.	do	
Refractometer	Standardize against distilled water	do	
Blood container scale	Standardize against container of known weight.	do	As necessary.
Water bath	Observe temperature	do	Do.
Rh view box	do	do	Do.
Autoclave	do	do	Do.
Serologic rotators	Observe controls for correct results	do	Speed as necessary.
Laboratory thermometers			Before initial use.
Electronic thermometers			Monthly.
Vacuum blood agitator	Standardize against container of known mass or volume.	Each day of use	As necessary.

(c) Equipment employed in the sterilization of materials used in blood collection or for disposition of contaminated products shall be designed, maintained and utilized to ensure the destruction of contaminating microorganisms. The effectiveness of the sterilization procedure shall be no less than that achieved by an attained temperature of 121.5° C (251° F) maintained for 20 minutes by saturated steam at a pressure of 15 atmospheres or by an attained temperature of 170° C (338° F) maintained for 2 hours with dry heat.

§ 606.65 Supplies and reagents.

All supplies and reagents used in the collection, processing, compatibility testing, storage and distribution of blood and blood components shall be stored in a safe, sanitary and orderly manner.

(a) All surfaces coming in contact with blood and blood components intended for transfusion shall be sterile, pyrogen-free, and shall not interact with the product in such a manner as to have an adverse effect upon the safety, purity, potency or effectiveness of the product. All final containers and closures for blood and blood components not intended for transfusion shall be clean and free of surface solids and other contaminants.

(b) Each blood collecting container and its satellite container(s), if any, shall be examined visually for damage or evidence of contamination prior to its use and immediately after filling. Such examination shall include inspection for breakage of seals, when indicated, and abnormal discoloration. Where any defect is observed, the container shall not be used, or, if detected after filling, shall be properly discarded.

(c) Representative samples of each lot of the following reagents or solutions shall be tested on a regularly scheduled basis by methods described in the Standard Operating Procedures Manual to determine their capacity to perform as required:

Reagent or solution	*Frequency of testing*
Anti-human serum	Each day of use.
Blood grouping serums	Do.
Lectins	Do.
Antibody screening and reverse grouping cells	Do.
Hepatitis test reagents	Each run.
Syphilis serology reagents	Do.
Enzymes	Each day of use.

(d) Supplies and reagents that do not bear an expiration date shall be stored in such a manner that the oldest is used first.

(e) Supplies and reagents shall be used in a manner consistent with instructions provided by the manufacturer.

(f) Items that are required to be sterile and come into contact with blood should be disposable whenever possible.

Subpart E—[Reserved]

Subpart F—Production and Process Controls

§ 606.100 Standard operating procedures.

(a) In all instances, except clinical investigations, standard operating procedures shall comply with published additional standards in Part 640 of this chapter for the products being processed; except that, references in Part 640 relating to licenses, licensed establishments and submission of material or data to or approval by the Director, Bureau of Biologics, are not applicable to establishments not subject to licensure under section 351 of the Public Health Service Act.

(b) Written standard operating procedures shall be maintained and shall include all steps to be followed in the collection, processing, compatibility testing, storage and distribution of blood and blood components for homologous transfusion, autologous transfusion and further manufacturing purpses. Such procedures shall be available to the personnel for use in the areas where the procedures are performed, unless this is impractical. The written standard operating procedures shall include, but are not limited to, descriptions of the following, when applicable:

(1) Criteria used to determine donor suitability, including acceptable medical history criteria.

(2) Methods of performing donor qualifying tests and measurements, including minimum and maximum values for a test or procedure when a factor in determining acceptability.

(3) Solutions and methods used to prepare the site of phlebotomy to give maximum assurance of a sterile container of blood.

(4) Method of accurately relating the product(s) to the donor.

(5) Blood collection procedure, including in-process precautions taken to measure accurately the quantity of blood removed from the donor.

(6) Methods of component preparation, including any time restrictions for specific steps in processing.

(7) All tests and repeat tests performed on blood and blood components during processing, including testing for hepatitis B surface antigen as prescribed in § 610.40 of this chapter.

(8) Pretransfusion testing, where applicable, including precautions to be taken to identify accurately the recipient blood samples and cross-matched donor units.

(9) Procedures for investigating adverse donor and recipient reactions.

(10) Storage temperatures and methods of controlling storage temperatures for all blood products and reagents as prescribed in §§ 600.15 and 610.53 of this chapter.

(11) Length of expiration dates, if any, assigned for all final products as prescribed in § 610.53 of this chapter.

(12) Criteria for determining whether returned blood is suitable for reissue.

(13) Procedures used for relating a unit of blood or blood component from the donor to its final disposition.

(14) Quality control procedures for supplies and reagents employed in blood collection, processing and pretransfusion testing.

(15) Schedules and procedures for equipment maintenance and calibration.

(16) Labeling procedures, including safeguards to avoid labeling mixups.

(17) Procedures of plasmapheresis, plateletpheresis, and leukapheresis, if performed, including precautions to be taken to ensure reinfusion of a donor's own cells.

(18) Procedure for preparing recovered (salvaged) plasma, if performed, including details of separation, pooling, labeling, storage and distribution.

(c) All records pertinent to the lot or unit maintained pursuant to these regulations shall be reviewed before the release or distribution of a lot or unit of final product. The review or portions of the review may be performed at appropriate periods during or after blood collecting, processing, compatibility testing and storing. A thorough investigation, including the conclusions and followup, of any unexplained discrepancy or the failure of a lot or unit to meet any of its specifications shall be made and recorded.

(d) In addition to the requirements of this subpart and in conformity with this section, any facility may utilize current standard operating procedures such as the manuals of the following organizations, as long as such specific procedures are consistent with, and at least as stringent as, the requirements contained in this part.

(1) American Association of Blood Banks.

(2) American National Red Cross.

(3) Other organizations or individual blood banks, subject to approval by the Director, Bureau of Biologics.

§ 606.110 Plateletpheresis, leukapheresis, and plasmapheresis.

(a) The use of plateletpheresis and leukapheresis procedures to obtain a product for a specific recipient may be at variance with the additional standards for specific products prescribed in this part provided that: (1) A physician has determined that the recipient must be transfused with the leukocytes or platelets from a specific donor, and (2) the procedure is performed under the supervision of a qualified licensed physician who is aware of the health status of the donor, and the physician has certified in writing that the donor's health permits plateletphersis of leukapheresis.

(b) Plasmapheresis of donors who do not meet the donor requirements of §§ 640.63, 640.64 and 640.65 of this chapter for the colletcion of plasma containing rare antibodies shall be permitted only with the prior approval of the Director, Bureau of Biologics.

Subpart G—Finished Product Control

§ 606.120 Labeling.

Labeling operations shall be separated physically or spatially from other operations in a manner adequate to prevent mixups.

(a) The labeling operation shall include the following labeling controls:

(1) Labels shall be held upon receipt, pending review and proofing against an approved final copy, to assure accuracy regarding identity, content and conformity with the approved copy.

(2) Each type of label representing different products shall be stored and main-

tained in a manner to prevent mixups and stocks of obsolete labels shall be destroyed.

(3) All necessary checks in labeling procedures shall be utilized to prevent errors in translating test results to container labels.

(b) All labeling shall be clear and legible. The label provided by the collecting facility and the initial processing facility shall not be removed, altered or obscured, except that, the label may be altered to indicate the proper name and other required labeling information for the contents remaining in a container after blood components have been removed. The container label shall include the following information as well as other specialized information, as required in this part or in Part 640 of this chapter for specific products:

(1) The proper name of the product placed in a prominent position.

(2) The name and address of the manufacturer, and if licensed, the license number.

(3) The donor or lot number relating the unit to the donor.

(4) The expiration date, including the day and year, and if it is a factor, the hour, or in the case of plasma for further manufacture, the date of collection.

(5) Essential instructions or precautions for use, including a warning that the product may transmit the agent of hepatitis.

(6) Recommended storage temperature.

(7) Reference to an instruction circular that shall be available for distribution containing dosage information, adequate directions for use, route of administration, contraindications and other directions if product is not intended for further manufacturing.

(8) Quantity of product in container, which shall be accurate within ±10 percent, except that the quantity of Cryoprecipitated Antihemophilic Factor (Human) need not be stated on the label and except that this provision shall not apply to Source Plasma (Human).

(9) Quantity of source material, and the kind and quantity of anticoagulant.

(10) Additives and cryoprotective agents added to the product that may still be present.

(11) Results of all tests performed when necessary for safe and effective use.

(12) The statement: "Caution: For Manufacturing Use Only", where applicable.

(13) The immunizing antigen used or the antibody present for products for further manufacturing, when applicable.

Subpart H—Laboratory Controls

§ 606.140 Laboratory controls.

Laboratory control procedures shall include:

(a) The establishment of scientifically sound and appropriate specifications, standards and test procedures to assure that blood and blood components are safe, pure, potent and effective.

(b) Adequate provisions for monitoring the reliability, accuracy, precision and performance of laboratory test procedures and instruments.

(c) Adequate identification and handling of all test samples so that they are accurately related to the specific unit of product being tested, or to its donor, or to the specific recipient, where applicable.

§ 606.151 Compatibility testing.

Standard operating procedures for compatibility testing shall include the following:

(a) A method of collecting and identifying the blood samples of recipients to ensure positive identification.

(b) The use of fresh recipient serum samples less than 48 hours old for all pretransfusion testing.

(c) The testing of the donor's cells with the recipient's serum (major crossmatch) by a method that will demonstrate agglutinating, coating and hemolytic antibodies, which shall include the antiglobulin method.

(d) A provision that, if the unit of donor's blood has not been screened by a method that will demonstrate agglutinating, coating and hemolytic antibodies, the recipient's cells shall be tested with the donor's serum (minor crossmatch) by a method that will so demonstrate.

(e) Procedures to expedite transfusions in life-threatening emergencies. Records of all such incidents shall be maintained, including complete documentation justifying the emergency action, which shall be signed by the physician requesting the procedure.

Subpart I—Records and Reports

§ 606.160 Records.

(a) (1) Records shall be maintained concurrently with the performance of each significant step in the collection, processing, compatibility testing, storage and distribution of each unit of blood and blood components so that all steps can be clearly traced. All records shall be legible and indelible, and shall identify the person performing the work, include dates of the various entries, show test results as well as the interpretation of the results, show the expiration date assigned to specific products, and be as detailed as necessary to provide a complete history of the work performed.

(2) Appropriate records shall be available from which to determine lot numbers of supplies and reagents used for specific lots or units of the final product.

(b) Records shall be maintained that include, but are not limited to, the following when applicable:

(1) Donor records:

(i) Donor selection, including medical interview and examination and where applicable, informed consent.

(ii) Permanent and temporary deferrals for health reasons including reason(s) for deferral.

(iii) Donor adverse reaction complaints and reports, including results of all investigations and followup.

(iv) Therapeutic bleedings, including signed requests from attending physicians, the donor's disease and disposition of units.

(v) Immunization, including informed consent, identification of the antigen, dosage and route of administration.

(vi) Blood collection, including identification of the phlebotomist.

(2) Processing records:

(i) Blood processing, including results and interpretation of all tests and retests.

(ii) Component preparation, including all relevant dates and times.

(iii) Separation and pooling of recovered plasma.

(iv) Centrifugation and pooling of source plasma.

(v) Labeling, including initials of person(s) responsible.

(3) Storage and distribution records:

(i) Distribution and disposition, as appropriate, of blood and blood products.

(ii) Visual inspection of whole blood and red blood cells during storage and immediately before distribution.

(iii) Storage temperature, including initialed temperature recorder charts.

(iv) Reissue, including records of proper temperature maintenance.

(v) Emergency release of blood, including signature of requesting physician obtained before or after release.

(4) Compatibility test records:

(i) Results of all compatibility tests, including crossmatching, testing of patient samples, antibody screening and identification.

(ii) Results of confirmatory testing.

(5) Quality control records:

(i) Calibration and standardization of equipment.

(ii) Performance checks of equipment and reagents.

(iii) Periodic check on sterile technique.

(iv) Periodic tests of capacity of shipping containers to maintain proper temperature in transit.

(v) Proficiency test results.

(6) Transfusion reaction reports and complaints, including records of investigations and followup.

(7) General records:

(i) Sterilization of supplies and reagents prepared within the facility, including date, time interval, temperature and mode.

(ii) Responsible personnel.

(iii) Errors and accidents.

(iv) Maintenance records for equipment and general physical plant.

(v) Supplies and reagents, including name of manufacturer or supplier, lot numbers, expiration date and date of receipt.

(vi) Disposition of rejected supplies and reagents used in the collection, processing and compatibility testing of blood and blood components.

(c) A donor number shall be assigned to each accepted donor, which relates the unit of blood collected to that donor, to his medical record, to any component or blood product from that donor's unit of blood, and to all records describing the history and ultimate disposition of these products.

(d) Records shall be retained for such interval beyond the expiration date for

the blood or blood component as necessary to facilitate the reporting of any unfavorable clinical reactions. The retention period shall be no less than 5 years after the records of processing have been completed or 6 months after the latest expiration date for the individual product, whichever is a later date. When there is no expiration date, records shall be retained indefinitely.

(e) A record shall be available from which unsuitable donors may be identified so that products from such individuals will not be distributed.

§ 606.165 Distribution and receipt; procedures and records.

(a) Distribution and receipt procedures shall include a system by which the distribution or receipt of each unit can be readily determined to facilitate its recall, if necessary.

(b) Distribution records shall contain information to readily facilitate the identification of the name and address of the consignee, the date and quantity delivered, the lot number of the unit(s), the date of expiration or the date of collection, whichever is applicable, or for crossmatched blood and blood components, the name of the recipient.

(c) Receipt records shall contain the name and address of the collecting facility, date received, donor or lot number assigned by the collecting facility and the date of expiration or the date of collection, whichever is applicable.

§ 606.170 Adverse reaction file.

(a) Records shall be maintained of any reports of complaints of adverse reactions regarding each unit of blood or blood product arising as a result of blood collection or transfusion. A thorough investigation of each reported adverse reaction shall be made. A written report of the investigation of adverse reactions, including conclusions and followup, shall be prepared and maintained as part of the record for that lot or unit of final product by the collecting or transfusing facility. When it is determined that the product was at fault in causing a transfusion reaction, copies of all such written reports shall be forwarded to and maintained by the manufacturer or collecting facility.

(b) When a complication of blood collection or transfusion is confirmed to be fatal, the Director, Bureau of Biologics, shall be notified by telephone or telegraph as soon as possible; a written report of the investigation shall be submitted to the Director, Bureau of Biologics, within 7 days after the fatality by the collecting facility in the event of a donor reaction, or by the facility that performed the compatibility tests in the event of a transfusion reaction.

2. In Part 640 by adding a new § 640.27 to Subpart C to read as follows:

§ 640.27 Emergency provisions.

The use of the plateletpheresis procedure to obtain a product for a specific recipient may be at variance with §§ 640.21(c) and 640.22(c): *Provided*, That: (a) A licensed physician has determined that the recipient must be transfused with the platelets from a specific donor, and (b) the plateletpheresis procedure is performed under the supervision of a qualified licensed physician who is aware of the health status of the donor and the physician has certified in writing that the donor's health permits plateletpheresis.

Effective date. This regulation shall be effective December 18, 1975.

(Secs. 201, 501, 502, 510, 701, 52 Stat. 1040–1042 as amended, 1049–1051 as amended by 76 Stat. 780, 1055–1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87–781 (21 U.S.C. 321, 351, 352, 360 and note, 371)), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4 and 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)).)

Dated: November 11, 1975.

SAM D. FINE,
Associate Commissioner for Compliance.

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