

federal register

WEDNESDAY, DECEMBER 22, 1976



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	HEW/FDA			HEW/FDA

Documents normally scheduled on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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505	54003

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200	53982
520	55176
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1910	55696
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253	53325
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36 CFR

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PROPOSED RULES:

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PROPOSED RULES:

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PROPOSED RULES:

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3800	53428
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514	53969
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reminders

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

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Regulatory Information Data Base; policy statement on access; extension of comments to 12-30-76..... 48745; 11-5-76

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Diamthazole Dihydrochloride; revocation of provisions for topical preparations; comments by 12-28-76..... 47492; 10-29-76

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Next Week's Public Hearings

NOTE: There were no items eligible for inclusion in the list of hearings for next week.

List of Public Laws

NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of PUBLIC LAWS.

presidential documents

Title 3—The President

Executive Order 11948

December 20, 1976

Continuance of Certain Federal Advisory Committees

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

SECTION 1. Each advisory committee listed below is hereby continued until December 31, 1978:

(a) Citizens' Advisory Council on the Status of Women—Executive Order No. 11126, as amended (Department of Labor).

(b) Committee for the Preservation of the White House—Executive Order No. 11145, as amended (Department of the Interior).

(c) President's Commission on White House Fellowships—Executive Order No. 11183, as amended (United States Civil Service Commission).

(d) President's Committee on the National Medal of Science—Executive Order No. 11287, as amended (National Science Foundation).

(e) Quetico-Superior Committee—Executive Order No. 11342, as amended (Department of Agriculture).

(f) National Health Resources Advisory Committee—Executive Order No. 11415, as amended (General Services Administration).

(g) Citizens' Advisory Committee on Environmental Quality—Executive Order No. 11472, as amended (Council on Environmental Quality).

(h) President's Council on Physical Fitness and Sports—Executive Order No. 11562, as amended (Department of Health, Education, and Welfare).

(i) Consumer Advisory Council—Executive Order No. 11583, as amended (Department of Health, Education, and Welfare).

(j) Advisory Council for Minority Enterprise—Executive Order No. 11625 of October 13, 1971 (Department of Commerce).

(k) President's Export Council—Executive Order No. 11753 of December 20, 1973 (Department of Commerce).

(l) President's Committee on Mental Retardation—Executive Order No. 11776 of March 28, 1974 (Department of Health, Education, and Welfare).

(m) Federal Advisory Council on Occupational Safety and Health—Executive Order No. 11807 of September 28, 1974 (Department of Labor).

THE PRESIDENT

SEC. 2. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act which are applicable to the committees listed in Section 1 of this order, except that of reporting annually to Congress, shall be performed by the head of the department or agency designated after each committee in accordance with guidelines and procedures established by the Director of the Office of Management and Budget.

SEC. 3. Executive Order No. 11868, as amended, establishing the President's Commission on Olympic Sports, is revoked effective January 16, 1977.

SEC. 4. (a) The following Executive orders are revoked:

(1) Executive Order No. 11667 of April 19, 1972, establishing the President's Advisory Committee on the Environmental Awards Merit Program.

(2) Executive Order No. 11809 of September 30, 1974, establishing the President's Labor-Management Committee.

(3) Executive Order No. 11860 of May 19, 1975, establishing the President's Advisory Committee on Refugees.

(b) Executive Order No. 11827, as amended, is superseded.

SEC. 5. This order shall be effective December 31, 1976.

Gerald R. Ford

THE WHITE HOUSE,
December 20, 1976.

[FR Doc. 76-37802 Filed 12-21-76; 11:29 am]

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 18—Conservation of Power and Water Resources

CHAPTER 1—FEDERAL POWER COMMISSION

[Docket No. RM76-8; Order No. 539-B]

PART 2—GENERAL POLICY AND INTERPRETATIONS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Enforcement of Deliverability and Rendition of Natural Gas Service Under Certificated Arrangements

Correction in FEDERAL REGISTER Document 76-22744, Filed August 5, 1976; 8:45 a.m.; appearing on pages 32883-32885 in the issue of August 6, 1976.

In ordering paragraph (B) amending Title 18 of the CFR by adding a new § 157.41: Change the first line of new § 157.41 from: "On and after July ----, 1976, * * *" to read: "On and after July 30, 1976, * * *."

KENNETH F. PLUMB,
Secretary.

[FR Doc. 76-37508 Filed 12-21-76; 8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 76-340, 76-341, 76-342, 76-343]

PART 159—LIQUIDATION OF DUTIES

Footwear From Taiwan and Republic of Korea; Countervailing Duties; Amendments of Final Determination and Waiver; Correction

The documents listed below were previously published in the Notices section of the FEDERAL REGISTER. The documents should have been published in the rules section of the FEDERAL REGISTER as Treasury Decisions. On September 27, 1976, the Office of the Federal Register initiated an action to place these documents in the rules section of the FEDERAL REGISTER (41 FR 42184). Treasury Decision (T.D.) numbers are hereby assigned to the documents, as follows:

1. FR Doc. 76-323, appearing at page 1298 of the FEDERAL REGISTER for Wednesday, January 7, 1976, titled "Final Countervailing Duty Determination on Footwear from Taiwan," is hereby designated T.D. 76-340. This T.D. number should

also be noted in connection with the amendment made by this document to the table set forth in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)).

2. FR Doc. 76-323 was amended by FR Doc. 76-18386, appearing at page 26035 of the FEDERAL REGISTER for Thursday, June 24, 1976, titled "Amendment to Final Countervailing Duty Determination on Footwear from Taiwan." FR Doc. 76-18386 is hereby designated T.D. 76-343.

3. FR Doc. 76-18384, appearing at page 26035 of the FEDERAL REGISTER on Thursday, June 24, 1976, titled "Amendment to Final Countervailing Duty Determination on Footwear from Korea," is hereby designated T.D. 76-341.

4. FR Doc. 76-18385, appearing at page 26035 of the FEDERAL REGISTER for Thursday, June 24, 1976, titled "Amendment to Waiver of Countervailing Duty Determination on Footwear from Korea," is hereby designated T.D. 76-342.

VERNON D. ACREE,
Commissioner of Customs.

Approved: December 15, 1976.

JERRY THOMAS,
Under Secretary
of the Treasury.

[FR Doc. 76-37402 Filed 12-21-76; 8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-398]

PART 275—LOW RENT PUBLIC HOUSING Prototype Cost Limits; New Mexico Indian Housing—Region VI

In the FEDERAL REGISTER issued June 9, 1976, (41 FR 23302), prototype-per unit cost schedules were published pursuant to section 6(b) of the United States Housing Act of 1937. Consideration of subsequent factual cost data and other information was received from field staff relating to New Mexico prototype costs for Indian Reservations. The cost data and other information submitted indicates that the prototype per unit cost schedule for Jemez, New Mexico be deleted, Zuni, New Mexico prototype cost schedule be added and revised prototype

per unit cost schedules for six other Indian Reservations to be revised.

Written data, views or statements may be filed with the Director, Office of Technical Support, HUD Central Office, 451 7th Street, S.W., Room 6152, Washington, D.C. 20410, and a copy should be sent to the HUD Area Office, 1 Embarcadero Center, Suite 1600, San Francisco, California 94111, concerning recommended changes in the schedules.

Section 6(b) of the U.S. Housing Act of 1937, as amended, provides that prototype costs shall be effective on the date of publication. However, comments received will be considered in preparing future revisions.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C.

Accordingly, 24 CFR, Part 275 is amended as follows:

1. At 41 FR 23342, delete the prototype per unit cost schedule for Jemez, since the Jemez prototype cost area has been combined with the Isleta area.

2. At 41 FR 23342, add the prototype per unit cost schedule for Zuni, shown on the table set forth hereinafter entitled "Prototype Per Unit Cost Schedule—Region VI."

3. At 41 FR 23342, substitute the revised prototype per unit cost schedules for Dulce, Isleta, Laguna, Mescalero, Pecos and Pojoaque shown on the table set forth hereinafter, entitled "Prototype Per Unit Cost Schedule—Region VI."

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

It is hereby certified that the economic and inflationary impacts of the amendment to Part 275 have been carefully evaluated in accordance with OMB Circular A-107.

Effective date: This amendment is effective on December 16, 1976.

JOHN T. HOWLEY,
Acting Assistant Secretary for
Housing—Federal Housing
Commissioner.

RULES AND REGULATIONS

PROTOTYPE PER UNIT COST SCHEDULE

REGION VI

POJOAQUE	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,100	21,800	24,300	28,950	34,800	38,900	40,400
Row Dwellings	17,200	20,700	23,000	27,450	32,800	36,500	38,350
Walk-Up	15,000	18,500	21,050	24,900	28,900	31,700	33,200
Elevator-Structure	27,100	31,700	40,050	-	-	-	-
ZUNI	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	17,250	20,750	25,650	30,550	36,800	40,900	42,900
Row Dwellings	16,050	19,400	24,100	28,650	34,300	38,350	39,950
Walk-Up	14,250	17,800	22,500	26,700	30,750	33,900	35,700
Elevator-Structure	23,200	26,850	33,950	-	-	-	-
	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							
	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							
	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.							
Row Dwellings							
Walk-Up							
Elevator-Structure							

REGION VI

DULCE	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	19,400	23,250	25,900	30,900	37,150	41,550	43,300
Row Dwellings	18,450	22,100	24,650	29,350	35,100	39,100	40,900
Walk-Up	16,000	19,700	22,400	26,500	30,800	33,850	35,500
Elevator-Structure	29,000	33,800	42,650	-	-	-	-
ISLETA	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	17,450	20,900	23,350	27,800	33,600	37,500	39,050
Row Dwellings	14,450	17,300	19,250	23,050	27,450	30,700	32,050
Walk-Up	12,600	15,500	17,600	20,800	24,150	26,450	27,900
Elevator-Structure	22,700	26,450	33,450	-	-	-	-
LAGUNA	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	17,450	21,000	23,400	27,900	33,700	37,500	39,100
Row Dwellings	16,700	19,900	22,200	26,550	31,700	35,300	40,350
Walk-Up	14,350	17,800	20,250	24,000	27,800	30,550	32,050
Elevator-Structure	26,100	30,550	38,550	-	-	-	-
MESCALERO	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,250	22,000	24,500	29,200	35,200	39,250	40,800
Row Dwellings	17,400	20,950	23,300	27,750	33,150	36,900	38,800
Walk-Up	15,100	18,650	21,200	25,150	29,150	32,000	32,400
Elevator-Structure	27,350	32,000	40,400	-	-	-	-
PENASCO	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Det. & Semi-Det.	18,800	22,650	25,250	30,100	36,300	40,550	42,150
Row Dwellings	19,950	21,550	24,000	28,600	34,200	38,050	39,900
Walk-Up	15,550	19,300	21,850	25,900	29,900	33,000	34,600
Elevator-Structure	28,300	33,000	41,650	-	-	-	-

[FR Doc.76-37560 Filed 12-21-76; 8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[Income Tax Regulations (T.D. 74474)]

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

Tax Treatment Upon Demolition of Buildings On Leased Property

By a notice of proposed rule making appearing in the FEDERAL REGISTER for April 21, 1972 (37 FR 7891), an amendment to the Income Tax Regulations (26 CFR Part 1) under section 165 of the Internal Revenue Code of 1954 (relating to losses) was proposed. The purpose of the proposed amendment was to clarify the present regulations with respect to the proper income tax treatment of the remaining adjusted basis in a building which is demolished pursuant to a lease. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is adopted by this document with slight modification.

The amendment to the regulations provides that where a lease agreement requires the lessee or lessor, or gives the lessee the option, to demolish any building on the leased property the lessor's remaining adjusted basis in the demolished building cannot be deducted by him under section 165 as a demolition loss. Rather, it is to be adjusted to reflect the net cost of or proceeds from demolition and amortized over the remaining term of the lease. The modification to the amendment of the regulations as proposed makes clear that a loss deduction is not precluded by this regulation when the lessor at his sole option demolishes a building on leased property.

Adoption of amendments to the regulations. On April 21, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 FR 7891) to amend the Income Tax Regulations (26 CFR Part 1) under section 165 of the Internal Revenue Code of 1954 (relating to losses) to clarify the income tax treatment of the demolition of a building pursuant to a lease. After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, paragraph (b) (2) of § 1.165-3 is amended to read as follows:

§ 1.165-3 Demolition of buildings.

(b) *Intent to demolish formed subsequent to the time of acquisition.* * * *

(2) If a lessor or lessee of real property demolishes the buildings situated thereon pursuant to a lease or an agreement which resulted in a lease, under which either the lessor was required or the lessee was required or permitted to demolish such buildings, no deduction shall be allowed to the lessor under section 165 (a) on account of the demolition of the old buildings. However, the adjusted basis of the demolished buildings, increased by the net cost of demolition or decreased by the net proceeds from dem-

olition, shall be considered as a part of the cost of the lease to be amortized over the remaining term thereof.

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

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 14, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary
of the Treasury.

[FR Doc. 76-37491 Filed 12-21-76; 8:45 am]

Title 28—Judicial Administration

CHAPTER III—FEDERAL PRISON INDUSTRIES, DEPARTMENT OF JUSTICE

PART 301—INMATE ACCIDENT COMPENSATION

Hearing and Review Process

By virtue of the authority vested in the Attorney General by 18 U.S.C. 4126 and delegated by the Attorney General by 28 CFR 0.99 and by the Board of Directors of Federal Prison Industries, Inc., Part 301 of Chapter III of Title 28, Code of Federal Regulations, is hereby amended by adding nine new sections (§§ 301.12-301.20) and renumbering seven other sections (§§ 301.12-301.18 are renumbered §§ 301.21-301.27 respectively), as set forth below.

In that the material contained herein enlarges rather than restricts the hearing and review process afforded claimants of Inmate Accident Compensation, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

Under the new provisions, claims for inmate accident compensation are determined by a four member Inmate Accident Compensation Committee. Any claimant dissatisfied with the Committee's initial determination shall, upon the filing of a timely request, have the right to either an in-person hearing before the Committee or to a Committee reconsideration of the claim. In addition, if claimant exercises his right to either review procedure, he or she has the right to make a final appeal to the Associate Commissioner, Federal Prison Industries, Inc.

In accordance with the spirit of the public policy set forth in 5 U.S.C. 553, interested persons may submit written comments, suggestions, data or arguments to the Associate Commissioner, Federal Prison Industries, Inc., 320 First Street, N.W., Washington, D.C. 20534. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Until such time as further changes are made, however, as set forth 28 CFR 301.12-301.20 shall remain in effect, thus permitting the public business to proceed more expeditiously.

These regulations are effective December 22, 1976.

The Table of Contents for 28 CFR Part 301 is amended to read as follows:

Sec.	Purpose and scope.
301.1	Medical attention.
301.2	Record of injury and initial claim.
301.3	Report of injury.
301.4	Prerelease claim for compensation.
301.5	Report of death.
301.6	Report of repetitious accidents.
301.7	Inmate work assignments.
301.8	Noncompensable injuries.
301.9	Compensation for lost time.
301.10	Compensation awards.
301.11	Processing of claims.
301.12	Request for hearing or reconsideration, disclosure.
301.13	Committee reconsideration.
301.14	Notice, time, place of hearing and postponement.
301.15	Witnesses.
301.16	Conduct of hearing.
301.17	Expenses.
301.18	Representation of claimant.
301.19	Review by the Associate Commissioner of Federal Prison Industries, Inc.
301.20	Establishing the amount of the award.
301.21	Time and method of payment of compensation claim.
301.22	Compensation suspended by misconduct.
301.23	Medical treatment required following discharge.
301.24	Civilian Compensation laws distinguished.
301.25	Employment of attorneys.
301.26	Exclusive remedy.
301.27	

The following new §§ 301.12-301.20 are added to Part 301 of Title 28 of the Code of Federal Regulations:

§ 301.12 Processing of claims.

(a) A claim for inmate accident compensation shall be determined by an Inmate Accident Compensation Committee (hereinafter referred to as the "Committee") appointed by the Director of the Bureau of Prisons under authority delegated to him by the Board of Directors of Federal Prison Industries pursuant to § 0.99 of this title. The Committee shall consist of four members and four alternates, with any combination of three thereof required to form a quorum for decision making purposes.

(b) In determining the claim the Committee will consider all available evidence. Written notice of the decision, including the reasons therefore, together with information as to the right to a hearing before the Committee or Committee reconsideration of the decision and to an appeal to the Associate Commissioner of Federal Prison Industries, shall be mailed to the claimant at his or her last known address.

§ 301.13 Request for hearing or reconsideration, disclosure.

(a) Any claimant not satisfied with the decision of the Committee shall, upon written request made within 30 days after the date of issuance of such decision or thereafter, upon a showing of good cause, be afforded an opportunity for either a hearing before the Committee, or Committee reconsideration of the decision. A claimant may request a hearing or reconsideration by writing to the Inmate Accident Compensation Committee, Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534.

(b) Upon receipt of claimant's request, a copy of the information upon which the Committee's initial determination was based shall be mailed to the claimant at his or her last known address. Where the Committee determines the release of information to the claimant or to the claimant's beneficiary is not in the best interest of the claimant or his beneficiary, the Committee may release the information to the claimant's or beneficiary's representative or personal physician upon receipt of both a written authorization from the claimant or beneficiary and a written request from the representative or personal physician. If the individual concerned is mentally incompetent, insane or deceased, the next of kin or legal representative must authorize in writing the release of records to the representative or personal physician.

§ 301.14 Committee reconsideration.

If the claimant elects to have the Committee reconsider the initial determination, he or she may submit documentary evidence which the Committee shall consider in addition to the original record. The Committee shall fix the time in which it will receive evidence, and may request additional documented evidence from the claimant or other source. A copy of the Committee's reconsidered decision shall be mailed to the claimant at his or her last known address.

§ 301.15 Notice, time, place of hearing and postponement.

(a) The hearing or reconsideration shall be held within 60 days of the Committee's receipt of claimant's request, except as provided in paragraph (b) of this section. Notice of the date set for Committee action shall be mailed to the claimant at his or her last known address. When practical, the hearing shall be set at a time convenient for claimant, and all hearings shall be conducted at the Central Office of the Bureau of Prisons, 320 First Street, N.W., Washington, D.C.

(b) A hearing or reconsideration may be postponed at the option of the Committee, or, if good cause is shown, upon request of claimant. A claimant shall be considered to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for hearing and does not, within 10 days after the time set for the hearing, show good cause for his or her failure to appear. A claimant may change his or her request from either hearing to reconsideration or reconsideration to hearing, but must give the Committee notice of such change at least 10 days prior to the previously scheduled action.

§ 301.16 Witnesses.

(a) If a claimant plans to present witnesses at the hearing, he or she must provide the Committee with a list of the witnesses' names and addresses and an outline of their proposed testimony at least 10 days prior to the scheduled hearing date. The Bureau of Prisons has no authority to compel the attendance of witnesses.

(b) Any person incarcerated at the time of the hearing in a Federal, State or local penal or correctional institution may not appear as a witness, but his or her testimony may be received in the form of a written statement.

§ 301.17 Conduct of hearing.

(a) In conducting the hearing, the Committee is not bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, but may conduct the hearing in such manner as to best ascertain the rights of the claimant and the obligations of the government. At such hearing, the claimant shall be afforded an opportunity to present evidence in further support of his or her claim.

(b) The Committee shall receive such relevant evidence as may be adduced by the claimant and shall, in addition, receive such other evidence as the Committee may determine to be necessary and useful in evaluating the claim. Evidence may be presented orally or in the form of written statements and exhibits.

(c) In order to fully evaluate the claim, the Committee may question the claimant and any witnesses appearing before the Committee at the hearing on behalf of the claimant or government.

(d) A claimant, or his or her representative, may question the Committee or any witness appearing before the Committee on behalf of the government, but only on matters which the Committee determines are relevant to its evaluation of the claim.

(e) The hearing shall be recorded, and a copy of the recording, or, in the discretion of the Committee, a transcript thereof, shall be made available to the claimant upon request, provided such request is made not later than 90 days following the date of the hearing.

(f) The Committee shall mail a written notice of its determination to affirm or amend its original decision with the reasons therefore to the claimant at his or her last known address not later than 30 days after the date of the hearing, unless the Committee needs to make a further investigation as a result of information received at the hearing.

§ 301.18 Expenses.

The Bureau of Prisons may not assume any expenses incurred by the claimant, his or her representative, or any witnesses appearing on behalf of the claimant in connection with attendance at the hearing.

§ 301.19 Representation of claimant.

(a) A claimant may appoint any person to represent his or her interest in any proceeding for determination of a claim under this part so long as that person is not incarcerated in any Federal, State or local penal or correctional institution. Claimant's appointment of a representative must be in writing with a copy filed with the Committee or on the record at the hearing.

(b) A claimant shall be responsible for any costs related to the services of his or her representative.

(c) A representative appointed in accordance with paragraph (a) of this section may make or give, on behalf of the claimant he or she represents, any request or notice relative to any proceeding before the Committee or Associate Commissioner. A representative shall be entitled to present or elicit evidence or make allegations as to facts and law in any proceeding affecting the claimant he or she represents and to obtain information with respect to the claim of such claimant to the same extent as such party. Notice to any claimant of any administrative action, determination, or decision, may be sent to the representative of such claimant, and such notice or request shall have the same force and effect as if it has been sent to the claimant.

§ 301.20 Review by the Associate Commissioner of Federal Prison Industries, Inc.

Any claimant not satisfied with the Committee's reconsidered decision or decision after a hearing may appeal such decision to the Associate Commissioner of Federal Prison Industries, 320 First Street, N.W., Washington, D.C. 20534. Written notice of the appeal must be mailed within 90 days from the date of the reconsidered decision or the decision after a hearing. For good cause shown, the Associate Commissioner may waive the failure to appeal within this time limitation. The Associate Commissioner shall review the record and must act to affirm or amend the appealed decision not later than 90 days after receipt of claimant's notice of appeal. Written notice of the Associate Commissioner's decision shall be mailed to the claimant at his or her last known address.

§§ 301.12-301.18 [Redesignated]

Sections 301.12-301.18 of Title 28 CFR Part 301 are renumbered and now appear as §§ 301.21-301.27.

Dated: December 17, 1976.

NORMAN A. CARLSON,

Commissioner,

Federal Prison Industries, Inc.

[FR Doc.76-37586 Filed 12-21-76;8:45 am]

Title 32—National Defense

CHAPTER VI—DEPARTMENT OF THE NAVY

SUBCHAPTER D—PROCUREMENT, PROPERTY, PATENTS, AND CONTRACTS

PART 746—LICENSING OF GOVERNMENT INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE NAVY

Pursuant to the authority conferred in 5 U.S.C. 301, 10 U.S.C. 5031, and 41 CFR 101-4.1, the Secretary of the Navy, on October 21, 1976, adopted Secretary of the Navy Instruction 5870.2C (SECNAVINST 5870.2C) entitled "Licensing of the government inventions in the custody of the Navy." Accordingly, the Secretary of the Navy establishes a new Part 746, which codifies SECNAVINST 5870.2C. This new part prescribes the policies, administrative requirements, procedures,

terms, and conditions for licensing of rights in government-owned domestic patents and patent applications vested in the United States of America which are in the custody of the Department of the Navy. This part, promulgated in accordance with Department of Defense (DOD) Directive 5535.3 of November 2, 1973, merely implements within the Navy the policies, requirements, procedures, rules, and guidelines, contained in the General Services Administration's regulation on "Licensing of Government Owned Inventions" at 41 CFR 101-4.1.

Since Part 746 does not originate any rules, but merely implements Department of Defense and General Services Administration regulations, it has been determined that invitation of public comment on this part prior to adoption would be impracticable and unnecessary and is therefore not required under the public rule-making provisions in Parts 296 and 701 of 32 CFR.

Accordingly, title 32 CFR is hereby amended by adding a new Part 746, providing as follows:

Sec.

- 746.1 Purpose.
- 746.2 Policy.
- 746.3 Delegation of authority.
- 746.4 Definitions.
- 746.5 Government inventions available for licensing.
- 746.6 Nonexclusive license.
- 746.7 Limited exclusive license.
- 746.8 Additional licenses.
- 746.9 Royalties.
- 746.10 Reports.
- 746.11 Procedures.
- 746.12 Litigation.
- 746.13 Transfer of custody of government inventions.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 5031; 40 U.S.C. 486(c); and 41 CFR 101-4.1.

§ 746.1 Purpose.

This part implements Department of Defense Directive 5535.3 of November 2, 1973 and 41 CFR Subpart 101-4.1, and sets forth the policy, terms, conditions, and procedures for the licensing of rights in domestic patents and patent applications vested in the United States of America and in the custody of the Department of the Navy.

§ 746.2 Policy.

(a) A major premise of the Presidential Statement of Government Patent Policy, August 23, 1971 (36 FR 16887, August 26, 1971), is that government inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive licenses generally is preferable, since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of

the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it shall be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration shall be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a United States citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant shall be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) Subject to the following:

(1) Any existing or future treaty or agreement between the United States and any foreign government or inter-governmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Navy research and development contracts where such licenses or other rights to such inventions are provided for in the contract and retained by the party contracting with the Department of the Navy,

no license shall be granted or implied in a government invention, except as provided for in this part.

(e) No grant of a license under this part shall be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part shall not be immunized from the operation of state or federal law by reason of the source of the grant.

§ 746.3 Delegation of authority.

The Chief of Naval Research is delegated the authority to administer the patent licensing program, with the authority to redelegate such authority.

§ 746.4 Definitions.

(a) "Government invention" means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Navy, and is designated by the Chief of Naval Research as appropriate for the grant of an express non-exclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine, under such conditions as to establish that the inven-

tion is being worked and that its benefits are reasonably accessible to the public.

§ 746.5 Government inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 746.6 and 746.7, subject to the applicable procedures of § 746.11. The Chief of Naval Research may remove a prior designation of availability for licensing of any patent(s) or patent application(s), provided that no outstanding licenses to that invention are in effect.

§ 746.6 Nonexclusive license.

(a) *Availability of licenses.* Each government invention normally shall be made available for the granting of non-exclusive revocable licenses, subject to the provisions of any other licenses, including those under § 746.8.

(b) *Terms of grant.* (1) The duration of the license shall be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits of the invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(4) After termination of a period specified in the license agreement, the Chief of Naval Research may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government shall make no representation or warranty as to the validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.7 Limited exclusive license.

(a) *Availability of licenses.* Each government invention may be made available for the granting of a limited exclusive license, provided that:

(1) The invention has been published as available for licensing pursuant to

paragraph (a) of § 746.11 for a period of at least 6 months;

(2) The Chief of Naval Research has determined that:

(i) The invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing;

(ii) The desired practical application has not been achieved under any non-exclusive license granted on the invention; and

(iii) The desired practical application is not likely to be achieved expeditiously in the public interest under a non-exclusive license or as a result of further government-funded research or development;

(3) The notice of the prospective licensee has been published, pursuant to paragraph (d) of § 746.11 for at least 60 days; and

(4) After termination of the period set forth in paragraph (a) (3) of § 746.7 the Chief of Naval Research has determined that no applicant for a non-exclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application, as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 746.2 and in accordance with the procedures set forth in § 746.11

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the government invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in paragraphs (c) (6) and (c) (7) of § 746.7, the licensee shall be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license shall be negotiated but shall be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a non-exclusive license; and such period of exclusivity shall not exceed 5 years unless the Chief of Naval Research determines, on the basis of a written submission supported by a factual showing, that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license shall require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Chief of Naval Research, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license shall require the licensee to expend a specified minimum amount of money and/or take other spec-

ified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license shall be subject to the irrevocable, royalty-free right of the Government of the United States to practice and have practiced the invention throughout the world, by or on behalf of the Government of the United States, and by or on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States. If the Chief of Naval Research finds it to be in the public interest, this license may also be expressly subject to this same royalty-free right by or on behalf of state and municipal governments.

(7) The license shall reserve to the Chief of Naval Research the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances:

(i) To the extent that the invention is required for public use by government regulations, or

(ii) As may be necessary to fulfill health or safety needs, or

(iii) For other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but shall be nonassignable without approval of the Chief of Naval Research, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Chief of Naval Research. Each sublicense granted by an exclusive licensee shall make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense shall be furnished to the Chief of Naval Research.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government shall make no representation or warranty as to validity of any licensed application(s) or patent(s), or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent(s), nor shall the Government assume any liability whatsoever resulting from the exercise of the license.

§ 746.8 Additional licenses.

Subject to any outstanding licenses, nothing in this part shall preclude the Chief of Naval Research from granting additional nonexclusive or limited exclusive licenses for government inventions when he determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for, or as part of, the consideration for a license under adversely held patents.

§ 746.9 Royalties.

(a) *Nonexclusive license.* Normally, royalties shall not be charged under nonexclusive licenses granted to United States citizens and United States corporations on government inventions; however, the Chief of Naval Research may require other consideration.

(b) *Limited exclusive license.* A limited exclusive license on a government invention shall contain a royalty provision and/or other consideration flowing to the Government.

§ 746.10 Reports.

A license shall require the licensee to submit periodic reports on his efforts to achieve practical application of the invention. The reports shall contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention, and other information which the Chief of Naval Research may determine is pertinent to its licensing activities and is specified in the license.

§ 746.11 Procedures.

(a) *Publication requirements.* The Chief of Naval Research shall cause to be published in the FEDERAL REGISTER, the Official Gazette of the United States Patent and Trademark Office, and at least one other publication that the Chief of Naval Research deems would best serve the public interest, a list of the government inventions available for licensing under the conditions specified in this part. The list shall be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing are encouraged, and may include abstracts, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

(b) *Contents of a nonexclusive license application.* An application for a nonexclusive license under a government invention should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and shall include:

(1) Identification of the invention for which the license is desired, including the patent application serial number or patent number, title, and date, if known, and any other identification of the invention;

(2) Name and address of the person, company, or organization applying for the license, and whether the applicant is a United States citizen or a United States corporation;

(3) Name and address of the representative of applicant to whom correspondence should be sent;

(4) Nature and type of applicant's business;

(5) Source of information concerning the availability of a license on this invention;

(6) Purpose for which the license is desired and a brief description of applicant's plan to achieve that purpose;

(7) A statement of the fields of use for which applicant intends to practice the invention; and

(8) A statement as to the geographic areas in which the applicant would practice the invention.

(c) *Contents of an exclusive license application.* An application for an exclusive license should be addressed to the Chief of Naval Research (Code 300), Arlington, VA 22217, and, in addition to the information indicated in paragraph (b) of § 746.11, an application for an exclusive license shall include:

(1) Applicant's status, if any, in any one or more of the following categories:

- (i) Small business firm;
- (ii) Minority business enterprise;
- (iii) Location in a surplus labor area;
- (iv) Location in a low-income area; and

(v) Location in an economically depressed area;

(2) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(3) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest that sum to perform such acts if the license is granted;

(4) A statement that contains the applicant's best knowledge of the extent to which the government invention is being practiced by private industry and the Government;

(5) Identification of other exclusive licenses granted to applicant under inventions in the custody of other government agencies; and

(6) Any other facts which the applicant believes are evidence that it is in the public interest for the Chief of Naval Research to grant an exclusive license rather than a nonexclusive license, and that such exclusive license should be granted to the applicant.

(d) *Published notices.* (1) A notice that a prospective exclusive licensee has been selected shall be published in the FEDERAL REGISTER, and a copy of the notice shall be sent to the Attorney General. The notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the selected licensee;
- (iii) Duration and scope of the contemplated license; and

(iv) A statement to the effect that the license will be granted unless:

(A) An application for a nonexclusive license, submitted by a responsible applicant pursuant to paragraph (b) of § 746.11, is received by the Chief of Naval Research within 60 days from the publication of the notice in the FEDERAL REGISTER, and the Chief of Naval Research determines in accordance with his prescribed procedures, under which procedures the Chief of Naval Research shall record and make available for public inspection all decisions made pursuant thereto and the basis therefore, that the applicant has established that he has already achieved or is likely to bring the

invention to the point of practical application within a reasonable period under a nonexclusive license; or

(B) The Chief of Naval Research determines that a third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(2) If an exclusive license has been granted pursuant to this part, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Duration and scope of the license.

(3) If an exclusive license has been modified or revoked pursuant to paragraph (e) of § 746.11, notice thereof shall be published in the FEDERAL REGISTER. Such notice shall include:

- (i) Identification of the invention;
- (ii) Identification of the licensee; and
- (iii) Effective date of the modification or revocation.

(e) *Modification or revocation.* (1) Any license granted pursuant to this part may be modified or revoked by the Chief of Naval Research if the licensee at any time defaults in making any report required by the license or commits any breach of covenant or agreement therein contained.

(2) A license may also be revoked by the Chief of Naval Research if the licensee willfully makes a false statement of a material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(3) Before modifying or revoking any license granted pursuant to this part for any cause, the Chief of Naval Research shall furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in paragraph (e) (1) of § 746.11, or to show cause why the license should not be modified or revoked.

(f) *Appeals.* An applicant for a license, a licensee, or such other third party who has participated under paragraph (d) (1) (iv) (B) of § 746.11 shall have the right to appeal, in accordance with procedures prescribed by the Chief of Naval Research, any decision concerning the granting, denial, interpretation, modification, or revocation of a license.

§ 746.12 Litigation.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement shall be retained with respect to all licenses so issued by the Government.

§ 746.13 Transfer of custody of government inventions.

The Chief of Naval Research may enter into an agreement to transfer custody of a government invention to another government agency for purposes of adminis-

tration, including the granting of licenses pursuant to this part.

Dated: December 15, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, As-
sistant Judge Advocate Gen-
eral (Civil Law).

[FR Doc.76-37569 Filed 12-21-76; 8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 658-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to the New Jersey State Implementation Plan

The purpose of this notice is to announce the approval of a revision to the New Jersey State Implementation Plan affecting the sulfur content of fuel oil permitted for use at the Owens Illinois, Inc. facility in Bridgeton City, Cumberland County, New Jersey. Notice of receipt of this revision request and the establishment of a 30-day period for public comment were published in the October 28, 1976 FEDERAL REGISTER (41 FR 47283). This action will permit the use, until January 12, 1977, of fuel oil with a sulfur content of 1.5 percent, by weight, at the Owens Illinois facility. Currently, this facility is permitted to use fuel oil with a sulfur content of 1.0 percent.

On September 15, 1976, the Environmental Protection Agency (EPA) announced (41 FR 39329) its disapproval of an earlier proposal submitted by the State of New Jersey which would have allowed the use of 2.5 percent sulfur in fuel oil at the Owens Illinois facility.

The technical material submitted by the State in support of this earlier proposal consisted of a dispersion modeling analysis which used an uncalibrated modified version of an aerodynamic downwash model proposed in the literature in draft form. EPA determined that this analysis was inadequate to justify the use of 2.5 percent sulfur in fuel oil at the Owens Illinois facility and at the same time assure protection of ambient air quality standards in the vicinity of the facility. In the absence of model calibration there was considerable doubt whether the air quality predictions were based on sufficiently conservative assumptions to provide the necessary margin of safety for the protection of ambient air quality standards.

On September 17, 1976, the Region II Office of EPA received another proposed revision to the New Jersey State Implementation Plan which would allow the temporary use of 1.5 percent sulfur in fuel oil at the Owens Illinois, Bridgeton City facility. This revision request was submitted in accordance with all applicable EPA requirements as contained in 40 CFR Part 51 and consists, in part, of an administrative order signed by the Commissioner of the New Jersey Department of Environmental Protection

(DEP). The administrative order was issued pursuant to N.J.A.C. 7:27-9.5(a), Temporary Variances, and revises the allowable sulfur in fuel content contained in 7:27-9.2 of Subchapter 9, Sulfur in Fuels, of the New Jersey Administrative Code.

In response to the October 28, 1976 FEDERAL REGISTER notice EPA received only one comment. This was from the New Jersey DEP informing EPA that building and stack downwash problems persist in the vicinity of the Owens Illinois facility despite recent increases in stack height. In the technical review performed by EPA no credit was given to any stack height increases. The downwash problems were observed in the field by personnel of the New Jersey DEP and confirmed by a survey of local area residents. The problems might be more chronic and severe than provided for in the assumptions used in the aerodynamic downwash model.

Because of the continued concern about stack and building downwash, the State's administrative order requires that Owens Illinois install and operate, under State supervision, an air quality monitoring network consisting of sulfur dioxide and particulate matter monitors in the vicinity of the facility prior to and during the use of 1.5 percent sulfur in fuel oil. The implementation of this order is a condition of EPA's approval of this revision. The State's administrative order and EPA's approval of the use of 1.5 percent sulfur in fuel oil may be revoked at any time evidence is obtained indicating that ambient air quality standards are threatened. Ambient air quality monitoring for particulate matter is being required because of previously demonstrated adverse synergistic effects of sulfur oxides and particulate matter, and also in response to a June 24, 1976 EPA guidance memorandum which cautions against the increase in sulfur oxide emissions in areas affected by high particulate levels. This collection of data should also prove critical to the consideration of any future proposal of a permanent revision to the New Jersey State Implementation Plan.

After review of all relevant material, the Administrator has determined that the proposed revision is consistent with current EPA policies and goals set forth in the requirements of section 110(a)(2)(A)-(H) of the Clean Air Act and EPA regulations in 40 CFR Part 51 in that the proposed revision will not result in the contravention of any applicable ambient air quality standard. Therefore, the Administrator is approving this proposed New Jersey revision.

This revision will become effective immediately upon publication since it does not result in the imposition of additional substantive burdens on the affected source and can be implemented without delay if the source so desires.

(42 U.S.C. 1857c-5 and 1857g)

Dated: December 15, 1976.

JOHN QUARLES,
Acting Administrator,
Environmental Protection Agency.

Part 52 of Chapter I, Title 40, Code of Federal Regulations is amended as follows:

Subpart FF—New Jersey

1. Section 52.1570 is amended by adding a new paragraph (c) (15) as follows:

§ 52.1570 Identification of plan.

(c) Supplemental information was submitted on:

(15) Revision consisting of an administrative order issued on September 14, 1976 to Owens Illinois, Inc., Cumberland County, New Jersey pursuant to the New Jersey Administrative Code (N.J.A.C.) 7:27-9.5(a) and submitted on September 17, 1976 by the New Jersey Department of Environmental Protection.

[FR Doc.76-37600 Filed 12-21-76;8:45 am]

Title 46—Shipping

CHAPTER II—MARITIME ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER H—TRAINING

PART 310—MERCHANT MARINE TRAINING

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

Part 310 of Title 46 of the Code of Federal Regulations is hereby amended. This amendment increases the pay that midshipmen of the United States Merchant Marine Academy receive while assigned to merchant vessels for sea year training.

The purpose of this amendment is to implement the Maritime Administration policy that midshipmen shall receive the same rate of pay from their steamship company employers for the sea year training as cadets receive at the Federal academies.

Since the rate of pay received by midshipmen while assigned to subsidized merchant vessels is a matter of public contract with the owners of such vessels, this amendment to the Merchant Marine Training regulations is adopted without notice of proposed rulemaking.

Part 310 of Title 46 of the Code of Federal Regulations is amended by revising the first sentence of paragraph (c) of § 310.58 to read as follows:

§ 310.58 Training on subsidized vessels.

(c) Pay—Midshipmen shall receive pay, while attached to merchant vessels, at the rate of \$345.00 per month from their steamship company employers.

Effective date: This amendment shall become effective January 17, 1977.

(Section 204(b), Merchant Marine Act, 1936, as amended (49 Stat. 1987, 48 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 842) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Order 10-8 (38 F.R. 19707, July 23, 1973)

(Catalog of Federal Domestic Assistance Program No. 11-507 U.S. Merchant Marine Academy (Kings Point).)

Dated: DECEMBER 14, 1976.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

By Order of the Assistant Secretary of Commerce for Maritime Affairs.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.76-37557 Filed 12-21-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-1042]

PART 73—RADIO BROADCAST SERVICES

Alphabetical Index of Rule Titles

Correction

In FR Doc. 76-35192 appearing on page 52677 in the issue of Wednesday, December 1, 1976, in the middle column of page 52685, in the last line of the codified material designated "§ 73.-----" paragraph (a)(4), "(§§ 1.50 to 1.621)" should have read "(§§ 1.501 to 1.621)."

[Docket No. 20894]

PART 73—RADIO BROADCAST SERVICES

Report and Order; Proceeding Terminated

Adopted: December 14, 1976.

Released: December 16, 1976.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (San Manuel, Arizona).

1. The Commission has under consideration its Notice of Proposed Rule Making, adopted August 19, 1976, 41 Fed. Reg. 36219, in the above-captioned proceeding which was instituted on the Commission's own motion. The Notice proposed the substitution of Channel 288A for Channel 269A at San Manuel, Arizona, in order to correct a short-spacing situation.

2. San Manuel, an unincorporated community of 4,332 persons, is located in Pinal County (pop. 67,916). Channel 269A, the only FM assignment at San Manuel, is unoccupied and unapplied for.

3. Channel 269A is short-spaced 11 kilometers (7) miles to the first adjacent channel (268) on which Class C Station KHEP, Phoenix, Arizona, operates. Assignment of Channel 288A to San Manuel, Arizona, would conform to the minimum distance separation requirements of the Commission's rules. The Commission believes the substitution of Channel 288A for Channel 269A at that community, thereby ending the existing short-spacing, would be in the public interest.

4. Mexican concurrence has been obtained for the assignment of Channel 288A to San Manuel, Arizona.

5. Authority for the adoption of the amendment contained herein appears in Section 4(l), 5(d) (1), 303(g) and (r) and 307(b) of the Communications Act of

1934, as amended, and in Section 0.281 of the Commission's Rules and Regulations.

6. In view of the foregoing, it is ordered, That effective January 27, 1977, § 73.202 (b) of the Commission's Rules, the FM Table of Assignments, is amended to read as follows:

City: San Manuel, Ariz. Channel No. 288A

7. It is further ordered, That this proceeding is terminated.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303))

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 76-37572 Filed 12-21-76; 8:45 am]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

[Docket No. 35867]¹

PART 1307—FREIGHT RATE TARIFFS, SCHEDULES, ON CLASSIFICATIONS OF MOTOR CARRIERS

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATIONS OF MOTOR COMMON CARRIERS

Revision of Regulations for the Construction, Filing, and Posting of Tariffs of Common Carriers of Property by Motor Vehicle and Tariffs of Certain Common Carriers by Water

Correction

In FR Doc. 76-21147, appearing on page 30590 in the issue for Monday, July 26, 1976 make the following changes:

1. On page 30605, third column, in § 1310.9(a)(5), the notations should read:

"(Except as otherwise provided herein.)
(Except as otherwise provided herein.
See * * *)"

2. On page 30623, third column, the footnote,

"*(Richard Roe, doing business as Roe's trucking, series)"

should appear after the fourth line of the form in § 1310.25(g)(1).

3. On page 30632, the first column, in § 1310.28(h)(4), the example should read:

"Amendment to
Item 100
(Sup. 50)"

The effective date is
hereby postponed from
----- to -----

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 TREASURY

Comptroller of the Currency

[12 CFR Part 9]

FIDUCIARY POWERS OF NATIONAL BANKS AND COLLECTIVE INVESTMENT FUNDS

Authority to Invest Trust Funds in A Variable Amount Notes

The Comptroller of the Currency, pursuant to the authority contained in the Act of September 28, 1962, 12 U.S.C. 92a, is considering a revision of 12 CFR 9.18 (c) (2) (ii) which authorizes the investment of trust funds held by a bank in a variable amount note maintained by the bank. The proposed revision would (a) establish a limitation on the amount of the note in which investment is authorized and (b) authorize investment in the note of trust funds held by a bank affiliated with the bank maintaining the note.

The establishment of a limitation on the amount of the note to an amount not in excess of 10 percent of the capital and surplus of the bank would be in accord with the policy established by Congress with respect to loans made by the bank to a single borrower and with the principles of diversification of risk. Perhaps more important is the need to direct attention to the purpose for the establishment of variable amount notes which is to provide a completely flexible short-term investment for trust funds.

The authorization for the investment of trust funds held by a bank affiliated with the bank maintaining the note corresponds with the recent amendments to 12 CFR 9.1 and 9.18(a) (1) (41 FR 47937, Nov. 1, 1976) which permit affiliated banks to invest trust funds in a common trust fund operated by one or more of their number which in turn resulted from a recent similar amendment (Sec. 1, Pub. L. 94-414, Approved September 17, 1976) to section 584(a) of the Internal Revenue Code of 1954, (26 U.S.C. 584(a)).

12 CFR 9.18(c) (2) (ii) would be revised to read as follows:

§ 9.18 Collective investment.

- (c) * * *
- (2) * * *

(ii) On a short-term basis in a variable amount note of a borrower of prime credit in an amount not in excess of 10 percent of the capital and surplus of the bank: *Provided*, That such note is being maintained by the bank on its premises and may be utilized by it only for investment of moneys held in its trust department accounts or the trust department accounts of banks which are affiliated with the bank: *Provided further*, That

the bank or any bank affiliated with it owns no participation in the loans or obligations authorized under paragraph (c) (2) (i) or (ii) of this section and has no interest in any investment therein except in its capacity as fiduciary.

Persons desiring to comment on the proposed amendment should submit their comments to Dean E. Miller, Deputy Comptroller for Trusts, Office of the Comptroller of the Currency, Washington, D.C. 20219 to be received no later than February 17, 1977.

Such material will be made available for inspection and copying upon request pursuant to the Comptroller's rules regarding availability of information.

Dated: December 17, 1976.

ROBERT BLOOM,

Acting Comptroller of the Currency.

[FR Doc. 76-37533 Filed 12-21-76; 8:45 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 310]

PRIVACY ACT OF 1974

Safeguarding Personal Information

On October 6, 1975, the Federal Deposit Insurance Corporation ("FDIC"), in accordance with the requirements of section 3(f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), 88 Stat. 1896, 1900-01, published, on pages 46274-46276 in the FEDERAL REGISTER, notice of the final adoption of Part 310 to the FDIC's rules and regulations. 12 CFR 310. These regulations provided procedures permitting individuals to gain access to certain FDIC records pertaining to themselves. During the period in which the FDIC has operated under these regulations certain changes have been found to be necessary in order to facilitate public access to such personally identifiable records.

In accordance with these determinations, the Board of Directors of the FDIC is publishing for notice and comment, proposed amendments to Part 310 of its Rules and Regulations. These proposed changes would minimize the identification verification procedures required of individuals for a majority of the requests under the Privacy Act of 1974 and would provide an agency-level appellate process to individuals whose requests for access to individually identifiable records have been initially denied. Further, to more readily identify those systems of records which have been exempted from the disclosure provisions of the Privacy Act, the proposed changes would add a listing of the exempt systems to the regulations.

Interested persons may participate in this proposed rulemaking by submitting written data, views or arguments to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Each person submitting a comment should include his name and address, and give reasons for any recommendations. All comments received before January 31, 1977, will be considered before final action is taken on the proposal. The proposal may be changed in the light of the comments received.

These amendments are proposed under the authority of section 3(f) of the Privacy Act of 1974 (5 U.S.C. 552a(f)).

In consideration of the foregoing, it is proposed to amend Part 310 of 12 CFR Chapter III as follows:

1. Section 310.2 is amended by adding paragraph (i), to read as follows:

§ 310.2 Definitions.

(i) The term "system manager" means the agency official responsible for a designated system of records, as denominated in the FEDERAL REGISTER publication of "Systems of Records Maintained by the Federal Deposit Insurance Corporation."

§ 310.3 [Amended]

2. In § 310.3(b) the last sentence reading, "Except as provided in § 310.4, each such request should also include a notarized statement attesting to the identity of the individual making the request," is deleted.

3. Section 310.4 is amended by revising paragraph (c) to read as follows:

§ 310.4 Times, places, and requirements for identification of individuals making requests.

(c) Except for records that must be publicly disclosed pursuant to the Freedom of Information Act, 5 U.S.C. 552, where the Corporation determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored.

4. Section 310.5 is amended by revising paragraph (b) to read as follows:

§ 310.5 Disclosure of requested information to individuals.

(b) The Executive Secretary will notify, in writing, the individual making

a request, whenever practicable within ten business days following receipt of the request, whether any specified designated system of records maintained by the Corporation contains a record pertaining to the individual. Where such a record does exist, the Executive Secretary also will inform the individual of the system manager's decision whether to grant or deny the request for access. In the event existing records are determined not to be disclosable, the notification will inform the individual of the reasons for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 310.9. Where access is to be granted, the notification will specify the procedures for verifying the individual's identity, as set forth in § 310.4.

§ 310.8 [Amended]

5. In § 310.8 the first sentence of paragraph (a) is amended by inserting the word "system" between the words "the" and "manager" and by deleting the phrase "(or as designated in the Corporation's FEDERAL REGISTER 'Notice of Systems of Records').".

6. Section 310.9 is amended by retitling the heading and by revising paragraphs (a) and (c) as follows:

§ 310.9 Appeal of adverse initial agency determination on access or amendment.

(a) A system manager's denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Board of Directors of the Corporation within 30 business days following receipt of notification of the denial. Such an appeal should be forwarded to the Office of the Executive Secretary, Records Unit, and contain all the information specified for requests for access in § 310.3 or for initial requests to amend in § 310.7, as well as any other additional information the individual deems relevant for the Board of Directors' consideration of the appeal.

(c) If the Corporation's Board of Directors affirms the initial denial of a request for access or to amend, it will inform the individual affected of the decision, the reason therefor and the right of judicial review of the decision. In addition, as pertains to a request for amendment, the individual may at that point submit to the Corporation a concise statement setting forth his or her reasons for disagreeing with the Corporation's refusal to amend.

7. Section 310.13 is revised to read as follows:

§ 310.13 Exemptions.

(a) Investigatory material compiled for law enforcement purposes in the following systems of records is exempt from §§ 310.3-310.9 and § 310.10(d)(2) of these rules; provided, however, that if

any individual is denied any right, privilege or benefit to which he/she would otherwise be entitled under Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence:

FDIC/2—Bank and proposed bank irregularity record system.

FDIC/11—Legal compliance and enforcement records.

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Corporation employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Corporation under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, in the following system of records, is exempt from §§ 310.3-310.9 and § 310.10(d)(2) of these rules:

FDIC/1—Attorney-legal internal applicant system.

(c) Testing or examination material used solely to determine or assess individual qualifications for appointment or promotion in the Corporations' service, the disclosure of which would compromise the objectivity or fairness of the testing, evaluation, or examination process, in the following system of records, is exempt from §§ 310.3-310.9 and § 310.10(d)(2) of these rules:

FDIC/9—Examiner training and education records.

By order of the Board of Directors,
December 16, 1976.

FEDERAL DEPOSIT INSURANCE
CORPORATION,

ALAN R. MILLER,

Executive Secretary.

[FR Doc. 76-37490 Filed 12-21-76; 8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 239, 240 and 249]

[Release Nos. 33-5783; 34-13072; 35-19810;
IC-9570; File No. S7-658]

DISCLOSURE OF MANAGEMENT BACK- GROUND; UNIFORM REPORTING RE- QUIREMENTS

Extension of Comment Period

The Securities and Exchange Commission today announced extension of the period of comment on its proposals, published November 9, 1976 (41 CFR 49493), relating to disclosure of management

background in various corporate registration and reporting forms and proxy schedules.

The period for submitting comments on these proposals was due to expire December 15, 1976. However, the Commission has received requests for additional time within which to prepare and submit such comments. Accordingly, the comment period has been extended to January 31, 1977.

In the release announcing the proposals, the Commission indicated its intent to have the amended disclosure requirements effective by early 1977. It should be noted however, that extension of the comment period will necessarily lengthen the rulemaking proceeding and, therefore, delay the effective date of any proposals set forth in that release. Therefore, it is not contemplated that the proposals will be adopted in time to be applicable to the coming proxy season.

Comments should be in writing in triplicate, and addressed to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. All such communications will be placed in the public files of the Commission and should refer to File No. S7-658.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 15, 1976.

[FR Doc. 76-37544 Filed 12-21-76; 8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 405]

[Regs. No. 5]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Requirements of Contract Between the Secretary and a Health Maintenance Organization (HMO)

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 553), that the amendments to Subpart T of Regulations No. 5 set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposal, which has been in process for many months and does not have major program significance, implements, in part, section 1876 of the Social Security Act (42 U.S.C. 1395mm) by setting forth requirements related to the contract between the Secretary and a health maintenance organization (HMO) under Medicare, which are not specifically described elsewhere in Subpart T of Regulations No. 5. (That Subpart deals with HMO's which qualify under title XVIII of the Social Security Act.) Included in the proposal are requirements on eligibility to contract as a cost- or risk-basis HMO, effective dates and renewals of the contract and contract terminations, and change of ownership of the HMO. The proposed regulations are expected to benefit Medicare beneficiaries who are enrollees of HMO's since these regulations include

procedures providing for the return to such beneficiaries of monies which may have been incorrectly collected from them by the HMO or other amounts which the HMO may owe such enrollees. Additional beneficiary safeguards are contained in provisions assuring the Secretary's right to inspect and evaluate the quality, appropriateness, and timeliness of services rendered under the contract, as provided by the Act. At the same time, the proposed regulations are not expected to result in an increase in expense to HMO's or to their enrollees who are Medicare beneficiaries. Discussions have been held with organizations which are interested in contracting with the Secretary as HMO's and will be affected by the amendments. Two contracts have been negotiated and signed, and are to become effective October 1976. In keeping with the spirit and intent of the Secretary's policies regarding the development of regulations, announced July 25, 1976, the publication of this notice will provide ample and adequate notice to all interested individuals and organizations. Consideration will be given to any data, views, or arguments pertaining thereto which are properly submitted on or before February 7, 1977.

Section 1876 of the Social Security Act, which was added to title XVIII by section 226 of Pub. L. 92-603, provides that a HMO wishing to receive reimbursement on a per capita prepayment basis in return for providing covered items and services to its enrollees who are title XVIII beneficiaries must enter into a contract with the Secretary. These proposed regulations implement certain provisions of sections 1876 (a), (i), and (j) of the Act by describing requirements related to such contracts.

Sections 1876 (a) (3) and (i) of the Social Security Act enumerate provisions which are required to be included in the contract between the Secretary and an HMO wishing to participate in the Medicare program. Among these provisions are requirements on contract terminations; effective dates and renewals of the contracts; and the Secretary's right to audit and inspect the services and financial records of an HMO, and evaluate the quality, appropriateness, and timeliness of services performed under the contract. In addition, sections 1876 (i) (6) and (j) of the Act authorize the Secretary to include in the contract any other terms and conditions not inconsistent with section 1876 which he feels are necessary. Pursuant to this authority, and because they are necessary for the effective and efficient administration of section 1876, the following matters are also dealt with in the proposed regulations: contract application procedures, including the denial by the Secretary of an organization's application to contract; refund of over-collections and other amounts due enrollees; the HMO's Part A intermediary and Part B carrier responsibilities; and changes in HMO ownership with respect to the contract.

The proposed regulations provide that an organization will be eligible to contract with the Secretary as an HMO un-

der title XVIII if the Secretary is satisfied that the organization meets the qualifying conditions for such organizations as described in 20 CFR 405.2002-405.2012 (Regulations No. 5), and other applicable requirements in § 405.2028 of the proposed regulations, and that such a contract would be in the best interest of the health insurance program. It should be noted here that the recently-enacted HMO Amendments of 1976 (Pub. L. 94-460) provide for changes in the care's definition of an HMO and those changes will necessitate changes in the Medicare HMO qualifying conditions. In brief, Pub. L. 94-460 modifies section 1876(b) of the Social Security Act to require that, with certain exceptions, an entity wishing to become an HMO under Medicare must provide covered services to its enrollees who are also Medicare beneficiaries in the manner prescribed by section 1301(b) of the Public Health Service Act, and be organized and operated as provided in section 1301(c) of that act. The existing Medicare qualifying conditions are being revised to reflect the above-mentioned provisions of Pub. L. 94-460, and a revised version of such regulations will be published later under a separate Notice of Proposed Rule Making. Pub. L. 94-460 also provides for the Secretary to delegate to the Assistant Secretary for Health, the responsibility for making determinations as to whether an organization is an HMO within the meaning of section 1876(b) of the Social Security Act, as amended.

Under the regulations the effective period of an initial contract for a cost-basis or risk-basis HMO may be for a period of at least 12 months and no more than 23 months; thereafter, if it is renewed, it must be renewed for 12 months. Flexibility has been allowed in determining the initial contract period so that the succeeding contract periods may be made to coincide with the HMO's fiscal year.

The proposed regulations describe in § 405.2030 procedures providing for the returning to its enrollees who are Medicare beneficiaries any amounts which may be incorrectly collected from them by the HMO or other amounts which the HMO may owe such enrollees. These procedures are patterned closely after the requirements for Medicare providers of services specified in §§ 405.618-405.622 of Subpart F of Regulations No. 5; however, there are certain differences because of special requirements of the law and regulations applicable to HMO's, such as the requirement in section 1876(g) (1) of the Act that the HMO not charge its enrollees who are Medicare beneficiaries an amount in excess of the actuarial value of the deductible and coinsurance amounts which would otherwise be applicable to such enrollees under Medicare if they had not enrolled in a qualified HMO. Also, the period of time permitted an HMO under certain circumstances to make refund of an amount incorrectly collected from enrollees who are Medicare beneficiaries is longer than is allowed providers of services under the program because the proposed regulations permit the HMO, as one alterna-

tive, to repay such enrollees through an offset payment against future years' premiums. (The HMO must generally repay the enrollee within 60 days of the date on which the HMO is notified of the "other amount due" or an amount incorrectly collected other than that which was paid by the enrollee in the form of premiums or other charges which are not on the basis of frequency or extent of services furnished to any particular enrollee. This period of time allowed an HMO to make the refund is similar to the requirement applied to Medicare providers of services.) Section 405.2031 of the proposed regulations describes the medical, financial, and other information which the HMO must make available to the Secretary for evaluation, audit, and inspection. For example, § 405.2031 (b) (2) (viii) provides that the HMO must maintain and make available to the Secretary records on matters pertaining to the costs of its operation. The purpose of this requirement is to assure that there are sufficient financial records and statistical data on the HMO's cost of operation for proper determination to be made of costs payable by Medicare (see the "Principles of Reimbursement for Cost-Basis and Risk-Basis Health Maintenance Organizations" in §§ 405.2040-405.2054 of 20 CFR) to the HMO for the covered services furnished by the HMO to its enrollees who are title XVIII beneficiaries. Section 405.2044 of 20 CFR, published in the FEDERAL REGISTER of November 9, 1976 (41 FR 49600), should be consulted for more detailed information on reporting requirements pertaining to the costs of HMO operations.

Under the proposed regulations the Secretary may terminate a contract at any time during a contract period or choose not to renew a contract if he finds that the HMO is failing to carry out the terms of the contract or that it is carrying out the contract in a manner inconsistent with the efficient and effective administration of section 1876 of the Social Security Act, or no longer meets the applicable requirements in regulations to qualify as an HMO. The proposed regulations also set forth the HMO's right to terminate a contract, and provide for termination by mutual consent.

The proposed regulations described in § 405.2033 the procedures that must be followed when the HMO anticipates a change of ownership. They discuss what constitutes a change of ownership, the requirements that must be met if the Social Security Administration is to recognize a successor in interest to the contract, and the steps that must be taken if a change of ownership occurs and the new owner wishes to sign a new contract under section 1876. Although these procedures are modeled after the requirements for Medicare providers of services as provided in §§ 405.625-405.626 of Subpart F of Regulations No. 5, they differ in their definition of what constitutes a change of ownership in recognition of certain unique aspects of HMO's. Under the proposed regulations, a transfer of ownership of an HMO which has en-

tered into a contract with the Secretary under section 1876 will invalidate the contract with respect to the new owner unless the Secretary, the transferor (old owner), and the transferee (new owner) enter into a novation agreement whereby the Secretary recognizes the transferee as the successor in interest to the contract. Under such an agreement the transferee assumes all the obligations and liabilities under the contract of the transferor vis-a-vis the Secretary. Further, under such an agreement the transferor waives all rights as of the effective date of the agreement. For example, any underpayments or overpayments determined during the final settlement to have been made by the Social Security Administration during the contract period, which includes the period prior to the transfer of ownership, are charged, under the terms of the novation agreement to the account of the transferee; the transferor cannot claim reimbursement from the Social Security Administration for any underpayments made during such period nor can the transferee disclaim liability for any overpayments made by the Social Security Administration during such period. Such an arrangement provides flexibility where a change of ownership is involved in the HMO setting and permits the Social Security Administration to conduct only one settlement at the end of the complete contract period.

Regulations on the appeal procedures which will be available to organizations which have been denied a contract or have had their contract terminated by the Secretary were published separately in the FEDERAL REGISTER under Notice of Proposed Rulemaking on November 3, 1975, (40 FR 51055).

If there are any questions concerning these regulations, you may contact Mr. Marty Svolos, Branch Chief, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone—(301) 594-9315. Mr. Svolos will respond to questions but will not accept comments on these regulations.

Prior to the final adoption of the proposed regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Maryland 21203 on or before February 7, 1977.

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.

(Secs. 1102, 1871, and 1876 of the Social Security Act, 49 Stat. 647, as amended, 79 Stat. 331, and 86 Stat. 1395 (42 U.S.C. 1302, 1395hh and 1395mm))

(Catalogue of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance; No. 13.801, Health

Insurance for the Aged—Supplementary Medical Insurance.)

It is hereby certified that this proposal has been screened pursuant to Executive Order 11821, and does not require an Inflation Impact Evaluation.

Dated: August 25, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: December 1, 1976.

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

Part 405 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. The table of sections for Subpart T is amended by adding section numbers 405.2028–405.2034 and section headings reading as follows:

Subpart T—Health Maintenance Organizations

405.2028	Contracts; general.
405.2029	Approval and denial of contract application.
405.2030	Refund of monies incorrectly collected or other amounts due enrollees.
405.2031	Right to inspect, evaluate, and audit.
405.2032	HMO Part A intermediary and Part B carrier responsibilities.
405.2033	Transfer of HMO ownership.
405.2034	Terminations.

2. Subpart T is amended by adding §§ 405.2028–405.2034, reading as follows:

§ 405.2028 Contracts; general.

(a) *General.* The provisions of this section and § 405.2029 through § 405.2034 discuss the requirements of the contract which an organization must enter into with the Secretary to participate as a health maintenance organization (HMO) under the program of health insurance for the aged and disabled ("Medicare"). Under section 1876 of the Social Security Act the Secretary may enter into a contract with an organization which qualifies as either a risk-basis HMO or cost-basis HMO, as described in § 405.2001(b), and which agrees to comply with all other statutory and regulatory requirements of this Subpart T. The Secretary, however, may decline to enter into a contract with such an organization if, in his judgment, entering into such a contract would be inconsistent with the efficient and effective administration of section 1876 of the Act or would otherwise be inconsistent with the furtherance of the purposes of title XVIII. Examples of situations where the Secretary may decline to enter into (or renew) a contract with an otherwise qualified organization as an HMO under section 1876 of the Act include, but are not limited to cases:

(1) Where the Secretary finds that there is already a sufficient number of qualified HMO's under contract with the Secretary pursuant to this subpart in the organization's geographic area; or

(2) Where the organization or its principal officers are involved in civil or

criminal litigation which could potentially interfere with the organization's ability to participate in the Medicare program as an HMO; or

(3) Where the Secretary determines (see § 405.2032) that the organization does not have the capability to process its title XVIII provider bills for covered services, and the organization does not agree to have such bills processed through the Medicare intermediary system; or

(4) Where he determines that entering into a contract with the organization under section 1876 of the Act would result in a conflict of interest on the part of such organization as a result of another agreement between the organization and the Secretary, e.g., pursuant to sections 1816 or 1843 of the Social Security Act.

(b) *Eligibility requirements.* An organization which properly files an application for an HMO contract under section 1876 of the Act as described in § 405.2029(a) and submits a duly executed contract in such form and manner as the Secretary may prescribe will be eligible to enter into a contract with the Secretary and to receive reimbursement from the health insurance program pursuant to the requirements of this subpart if:

(1) The Secretary finds that the organization meets the qualifying conditions described in § 405.2002 through § 405.2012 of this Subpart T;

(2) The Secretary finds such organization to be in compliance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; Pub. L. 88-352);

(3) The Secretary finds that entering into such a contract would not be inconsistent with the efficient and effective administration of section 1876 of the Act; and

(4) The organization agrees to comply with all other requirements of this Subpart T.

(c) *Waivers.* (1) Each waiver of a standard, or part thereof, in this subpart (see §§ 405.2002–405.2012) which has been granted an HMO by the Secretary, shall be specifically enumerated in the contract. Such enumeration shall include the specific terms of the waiver, the expiration date of the waiver, and any other information which the Secretary considers pertinent.

(2) The Secretary, pursuant to section 1876(j) of the Social Security Act may contract with an HMO without regard to such provisions of law or of other regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of title XVIII of the Social Security Act. Pursuant to this authority, the provisions of the Federal Procurement Regulations and HEW Procurement Regulations (see 41 CFR) shall not apply to contracts entered into under this subpart except as the Secretary may otherwise specify in regulations or general instructions.

(d) *Term of contract.* Where the Secretary enters into a contract with an organization under section 1876 of the Social Security Act, the term of such contract (unless the contract is terminated as described in § 405.2034) shall be determined as follows:

(1) The initial term of the contract for an HMO under section 1876 shall be for a period of at least 12 months, but not more than 23 months, beginning with the effective date of the contract, which shall not be earlier than the date of the execution of the contract. Any subsequent term of the contract shall be for a period of 12 months.

(2) A contract between the HMO and the Secretary (see paragraph (b) of this section) shall be automatically renewable from contract period to contract period unless either party notifies the other of its intention to terminate (or not to renew) the contract and follows the procedures specified in § 405.2034.

(e) *Limitation on risk-basis HMO's eligibility to contract.* An organization which has entered into a contract with the Secretary as a risk-basis HMO (as described in § 405.2001(b)) and has voluntarily terminated such contract, may not again enter into a risk-basis contract as an HMO under title XVIII. Such an organization, however, may enter into a contract with the Secretary as a cost-basis HMO if it meets the qualifying conditions for such an organization as described in § 405.2002-§ 405.2012 and if the Secretary approves such contract as described in this section and § 405.2029. In addition, where there is a transfer of ownership from such an organization to a successor HMO as provided in § 405.2033(f), the successor HMO will not be precluded from entering into a risk-basis contract as an HMO under title XVIII if it otherwise qualifies for such a contract as described in this section and § 405.2029, and was not previously precluded from entering into such a contract by this paragraph.

(f) *Disclosure of official records and information.* Under the terms of the contract, the HMO agrees to adopt and abide by policies and procedures which will insure that information contained in its records and obtained from the Social Security Administration or from others in carrying out its functions and duties under the contract shall be used by it and disclosed solely as provided in section 1106 of the Social Security Act (42 U.S.C. 1306) and Regulation No. 1 of the Social Security Administration (Part 401 of this Chapter).

(g) *Advance approval of special title XVIII program costs.* Under the terms of the contract, costs incurred by an HMO which are solely for the benefit of the health insurance program and unique to the health insurance program's HMO provision and which are reimbursable in full as specified in § 405.2042 (i) shall be separated budgeted by the HMO and approved in advance of the contract period by the Secretary as may be specified in regulations and General Instructions. Such costs include, for

example, the total reasonable cost of special data required by the health insurance program solely for program evaluation and planning purposes and shall be reimbursed in full by the health insurance program pursuant to § 405.2042(i).

(h) *Data for administration and evaluation.* In addition to all other information and data that the HMO is required to provide the Secretary under this subpart, the HMO shall furnish any other information or data to the Secretary that he determines to be necessary for the administration or evaluation of the health insurance program.

§ 405.2029 Approval and denial of contract application.

(a) *Application procedures.* An organization which wishes to enter into a contract with the Secretary under section 1876 of the Act must submit an application and supporting information and documents in such form and detail as the Secretary may require. When an organization makes such an application, the Secretary shall:

(1) Review the application forms and supporting documents on the qualifications (see §§ 405.2002-405.2012) of the organization;

(2) Make a site inspection of the organization (including a review of appropriate medical, financial, and other records as described in § 405.2031) to assure that it meets the qualification requirements (see §§ 405.2002-405.2012);

(3) Take any other review action which he considers appropriate to determine whether the organization has the capability of entering into a contract under section 1876 of the Act and of carrying out such contract in an efficient and effective manner.

(b) *Approval of application.* If the Secretary determines that an organization, which has submitted an application in accordance with paragraph (a) of this section, meets the qualifying conditions described in §§ 405.2002-405.2012 and the other eligibility requirements specified in § 405.2028 the Secretary shall furnish the organization with a written notice of his determination (see § 405.2067), which shall inform the organization:

(1) That it is eligible to enter into a contract with the Secretary under section 1876 of the Act; and

(2) That, if dissatisfied with such initial determination, the organization may request a review of the initial determination by following the applicable procedures for reconsiderations and hearings of initial determinations pursuant to the requirements of this subpart.

(c) *Denial of application.* If the Secretary determines that an organization, which has submitted an application in accordance with paragraph (a) of this section, does not meet the qualifying conditions described in §§ 405.2002-405.2012 or the other eligibility requirements specified in § 405.2028 the Secretary shall furnish the organization with a written notice of his determination, (see § 405.2067), which shall inform the organization:

(1) That it is not eligible to enter into a contract with the Secretary under section 1876 of the Act;

(2) The reasons why the organization is ineligible to enter into such contract; and

(3) That, if dissatisfied with such initial determination, the organization may request a review of the initial determination by following the applicable procedures for reconsiderations and hearings of initial determinations pursuant to the requirements of this subpart.

§ 405.2030 Refund of monies incorrectly collected or other amounts due enrollees.

(a) *General.* (1) Under the terms of the contract between the HMO and the Secretary (see § 405.2028) the HMO must make adequate provision for the return (or other disposition) of any monies incorrectly collected from or other amounts due its enrollees who are title XVIII beneficiaries, or someone on behalf of such enrollees.

(2) The term "monies incorrectly collected" means, for purposes of this subpart, amounts collected (other than those amounts collected in one contract period to offset under-collections in a previous contract period) by the HMO from enrollees who are title XVIII beneficiaries in excess of the amounts for which they are liable pursuant to § 405.2022. For purposes of this subpart, a payment by an enrollee to an HMO which was proper when made is an "incorrect collection" for which refund or other disposition must be made where the individual is retroactively entitled to title XVIII benefits and such entitlement period begins during the term of an HMO's contract period as described in § 405.2028(d).

(3) The term "other amounts due" means, for purposes of this subpart, amounts due enrollees for items and services covered under title XVIII which they obtain from physicians, suppliers, or providers of services outside the HMO for which they are eligible to receive reasonable payment from the HMO as provided in § 405.2021(a)(2) and which are determined to be due enrollees as described in §§ 405.2058-405.2063.

(b) *Determination of monies incorrectly collected.* (1) Under the terms of the contract (see § 405.2028) the HMO agrees to submit to the Social Security Administration no later than 60 days after the end of the contract period (in such form and detail as may be specified by the Social Security Administration in General Instructions) a summary statement of premiums, membership fees, or other charges made without regard to frequency or extent of services furnished to any particular enrollee and collected by the organization from its enrollees who are title XVIII beneficiaries for the previous contract period. On the basis of this information, data obtained from the HMO's certified financial statement and supporting documents (see §§ 405.2047 and 405.2054), and other documented information recovered from title XVIII beneficiaries, the Social Security

Administration shall determine whether any monies have been incorrectly collected from enrollees who are title XVIII beneficiaries and shall notify the HMO, at the time of final settlement (see §§ 405.2047 and 405.2054) if such monies have been identified.

(2) Under the terms of the contract (see § 405.2028) the HMO agrees to identify situations which may arise in individual cases where other amounts are due enrollees who are Medicare beneficiaries (§ 405.2030(a)(3)) or where monies incorrectly collected are amounts other than those collected from such enrollees, without regard to frequency or extent of services furnished to any particular enrollee, as premiums or other charges and to make appropriate refund as specified in paragraphs (c) and (d) of this section.

(c) *Return or other disposition of monies incorrectly collected or other amounts due.* (1) *General.* An HMO in possession of monies incorrectly collected or other amounts due enrollees who are title XVIII beneficiaries (see paragraphs (a) and (b) of this section) is required to refund or set aside such monies. Until such time as the HMO returns or sets aside the incorrectly collected funds or other amounts due, the Social Security Administration may offset against any amount otherwise due the HMO an amount equal to such incorrect collections or other amounts due.

(2) *Method of refund.* Refund of monies incorrectly collected from or amounts due an enrollee of the HMO who is a title XVIII beneficiary is to be made by the HMO (i) through an offset payment against the enrollee's future years' premiums, membership fees, or other charges levied against such enrollee, (ii) by a lump sum payment to the enrollee, or (iii) through a combination of methods in paragraphs (c) (2) (i) and (c) (2) (ii) of this section. However, where an individual who is due a refund from an HMO is no longer an enrollee of such organization (see § 405.2025) and the amount of the refund is more than a nominal amount, as defined in General Instructions, the HMO must use the lump sum method of refund. If such an individual cannot be located, after a reasonable effort on the part of the HMO to do so, or is determined to have died, the HMO shall dispose of such refund in accordance with the applicable State law.

(3) *Monies set aside.* Where it appears that a refund as specified in paragraph (c) (2) of this section will be delayed indefinitely, the HMO will notify the Social Security Administration and will then set aside, in a separate account identified as to the individual to whom the payment is due, an amount equal to the amount incorrectly collected. This amount incorrectly collected will be carried on the organization's records in this manner until final disposition is made in accordance with the applicable State law.

(d) *Time limits within which refund must be made.* Refunds as specified in paragraph (c) (2) of this section shall be made in accordance with the following time limits:

(1) An amount incorrectly collected (see paragraph (a) (2) of this section) which was paid to the HMO, without regard to frequency or extent of services furnished to any particular enrollee, as premiums, membership fees, or other charges levied against such enrollee, shall be refunded no later than the end of the fiscal year following the fiscal year in which the HMO received notice of such amount due to enrollee as described in paragraph (b) of this section. If refund cannot be made in such manner, an amount of money equal to the amount incorrectly collected must be set aside as described in paragraph (c) (3) of this section.

(2) Other amounts due enrollees (see paragraph (a) (3) of this section) or "monies incorrectly collected" other than amounts paid without regard to frequency or extent of services furnished to any particular enrollee, as premiums, membership fees, or other charges levied against such enrollees, shall be refunded as promptly as possible. If refund cannot be made within 60 days after the date on which the title XVIII beneficiary notified the HMO of an other amount due, an amount of money equal to the other amount due must be set aside as described in paragraph (c) (3) of this section.

(e) *Payment of offset; amounts to enrollee or other person.* (1) In order to carry out the HMO's contractual commitment to refund amounts incorrectly collected or other amounts due (see paragraph (a) of this section) the Social Security Administration may determine that amounts offset in accordance with the provisions of paragraphs (c) and (d) of this section be paid directly by the Social Security Administration to the enrollee or other person from whom the organization received the amount incorrectly collected or to whom the amount is due, if:

(i) The Social Security Administration finds that such HMO has failed to respond to a written request (see paragraph (e) (2) of this section), to refund the amount incorrectly collected or other amount due the enrollee or other person from whom such HMO collected the monies or to whom the other amount is due; and

(ii) The contract between the HMO and the Social Security Administration has been terminated in accordance with the provisions of §§ 405.2034 and 405.2066 (b) or the HMO has undergone a transfer of ownership as described in § 405.2033.

(2) Before making a determination to make payment as described in this paragraph, the Social Security Administration shall give written notice to the HMO:

(i) Explaining that monies have been incorrectly collected or other amounts are due the enrollee and the amounts thereof;

(ii) Requesting that refund of the amounts incorrectly collected or other amounts due be made by the HMO to the appropriate individuals in the manner

described in paragraph (c) (2) of this section;

(iii) Advising the HMO that it intends to make a determination under paragraph (e) (1) of this section; and

(iv) Notifying the HMO that an authorized official of the HMO may, within 30 days from receipt of the notice, submit such written statement or evidence as the HMO may wish to make with respect to such amount incorrectly collected or other amount due. The Social Security Administration shall consider any such written statement or evidence in making a determination on the disposition of the amounts incorrectly collected or other amounts due.

(3) Payment to an enrollee, or other person as described in paragraph (e) (1) of this section, shall not exceed the amount incorrectly collected or other amounts due and, when made, shall be considered as having been made on behalf of the HMO.

§ 405.2031 Right to inspect, evaluate, and audit.

Under the terms of the contract (see § 405.2028) such organization agrees to make its premises, books, and medical and financial records which pertain to the HMO's contract with the Secretary available for evaluation, audit, and inspection. Any subcontracts pertaining to the contract with the Secretary which the HMO enters into are also subject to evaluation, inspection, and audit as explained in paragraph (c) of this section. In the case of a novation agreement (see § 405.2033(f)), the right to inspect, evaluate, and audit applies to both the transferee and the transferor.

(a) *Provision of care.* The Secretary shall have the right to inspect, or otherwise evaluate the quality, appropriateness, and timeliness of services (§§ 405.2004—405.2011) provided by an HMO under contract to furnish services to enrollees who are title XVIII beneficiaries. This shall include the right to inspect the medical records specified in § 405.2009(d) and all physical facilities and equipment used in providing covered services to such enrollees, and to require the HMO to furnish such information as may be required to evaluate the quality, appropriateness, and timeliness of such services.

(b) *Financial records.* (1) *Right to audit.* The Secretary and the Comptroller General of the United States (or any person or organization designated by either of them) shall have the right to audit, examine, or inspect any data, including pertinent books, records, papers, or documents (including pertinent medical records) of the HMO, which pertain to the amount of reimbursement and services provided (either directly or through arrangements) under the HMO's contract with the Secretary.

(2) *Maintenance of financial records.* The HMO is required to have an accounting system (see § 405.2012(a)) and maintain books, records, documents, and other evidence of accounting procedures and practices, sufficient to assure an audit trial and to reflect properly all direct and indirect costs claimed to have been incurred under the contract. Such records

and information shall be maintained by the HMO and made available to the Secretary for a period of 3 years or longer as specified in paragraph (d) of this section and shall include, but not be limited to:

(i) Matters of ownership, organization, and operation of the HMO's financial, medical, and other recordkeeping systems;

(ii) Financial statements for current and prior years;

(iii) Federal income tax or information returns for current and prior years;

(iv) Asset acquisition, lease, sale, or other action;

(v) Agreements, contracts, and subcontracts;

(vi) Franchise, marketing, and management arrangements;

(vii) Schedule of charges for the HMO's fee-for-service patients;

(viii) Matters pertaining to costs of operations;

(ix) Amounts of income received by source and purpose;

(x) Cash flow statement; and

(xi) Any financial reports filed with other Federal programs or State authorities.

(c) *Related organizations.* If an HMO is related to another organization by common ownership or control, and such organization furnishes services, facilities, or supplies to the HMO, the HMO shall submit to the Social Security Administration such information about the related organization as may be described in General Instructions. The related organization's records shall be subject to audit, evaluation, and inspection by the Social Security Administration to the extent necessary to permit verification of cost and statistical data submitted by the HMO pursuant to this subpart.

(d) *Limitation of authority.* The authority and rights of the Secretary described in paragraphs (b) and (c) of this section with respect to any contract period, shall cease 3 years from the date of the final settlement with the HMO for such contract period, except:

(1) Where the Secretary determines that a special need exists for a particular record or group of records, he may extend the 3-year retention period by notifying the HMO at least 30 days in advance of the normal disposition date;

(2) In the case of termination or disputes or of fraud (or similar fault) by the HMO, in which case the retention period may be extended to a period of 3 years from the date of any resulting final settlement; and

(3) Where the Secretary finds that State or Federal law requires a longer retention period, the longer retention period shall be applicable; or

(4) Where the Secretary determines that there is a possibility of fraud, he may reopen a final settlement at any time.

(e) *Subcontracts.* The HMO shall in all of its subcontracts for the purpose of furnishing covered items and services to enrollees who are title XVIII beneficiaries, including leases of real property, purchase orders, and the arrangements specified in § 405.2006 (including oral as

well as written agreements between the HMO and individual practice or group practice physicians) require that the subcontractor agree that the Secretary and the Comptroller General of the United States shall have access to, and the right to inspect, evaluate, and audit any pertinent books, documents, papers, and records of such subcontractors involving transactions related to the subcontract. Leases or purchase orders for amounts not exceeding \$2,500 are excluded from the provisions of this paragraph. Such right to information for any particular contract period shall exist until 3 years have elapsed after the date of the final cost settlement (see section 1876(a) of the Act) with the HMO for such contract period, or for a longer period as the Secretary may prescribe as specified in paragraph (d) of this section.

§ 405.2032 HMO Part A intermediary and Part B carrier responsibilities.

(a) Under the terms of the contract between the Secretary and the HMO (see § 405.2028) the HMO shall elect to reimburse qualified providers of services for covered Medicare services furnished its enrollees who are title XVIII beneficiaries under one of the two following approaches or a combination of these approaches approved by the Secretary: (1) the HMO may request that the Secretary pay qualified providers of services on behalf of the HMO for reimbursable services furnished such enrollees as specified in § 405.2041(d); or (2) the HMO may elect to pay qualified providers of services directly for reimbursable services furnished such enrollees.

(b) Under the terms of the contract between the Secretary and the HMO (see § 405.2028), an HMO which elects to pay qualified providers of services directly for reimbursable services as specified in paragraph (a) (2) of this section shall be responsible for:

(1) Determining eligibility of individuals to receive items and services through the HMO as title XVIII beneficiaries and making proper coverage decisions and appropriate payment, in accordance with the requirements of this part, for items and services for which enrollees who are entitled title XVIII beneficiaries are eligible under this subpart;

(2) Assuring that providers of services maintain and furnish appropriate documentation of physician certification (and recertification where appropriate) of services provided its Medicare enrollees to the extent that such certification and recertification are required under Subpart P of this part; and

(3) Performing other procedures that may be specified by the Secretary from time to time as described in Regulations and General Instructions.

(c) Where the HMO has elected under its contract with the Secretary to pay qualified providers of services as provided in paragraph (b) of this section, the Social Security Administration will review the HMO in order to determine whether it has the experience and capability necessary to carry out efficiently and effectively the responsibilities, de-

scribed in paragraph (b) of this section and to determine in the case of those HMO's which have already undertaken such responsibilities, whether they have, in fact, been carrying out such responsibilities in an efficient and effective manner. If the Social Security Administration determines that the HMO is not carrying out its bill processing operations properly, it may require the HMO to have its provider bills paid in accordance with § 405.2041(d) (i.e., elect to have the Secretary pay qualified providers of services on behalf of the HMO for reimbursable services furnished to title XVIII beneficiaries who are enrolled with such HMO).

(d) Under the terms of the contract between the Secretary and the HMO (see § 405.2028) an HMO which reimburses a physician, qualified suppliers of services, or other qualified individuals or organizations (other than a provider of services) directly for covered Medicare services furnished its enrollees who are title XVIII beneficiaries as specified elsewhere in this part shall be responsible for:

(1) Determining eligibility of individuals to receive such items and services through the HMO and making proper coverage decisions and appropriate payment, in accordance with the requirements of this part, for such items and services for which enrollees who are entitled title XVIII beneficiaries are eligible under this subpart; and

(2) Performing other procedures that may be specified by the Secretary from time to time as described in Regulations and General Instructions.

§ 405.2033 Transfer of HMO ownership.

(a) *General.* (1) A transfer of ownership of an HMO which is under a contract with the Secretary under title XVIII will, under the conditions discussed in paragraphs (b), (c), (d), and (e) of this section, render such contract invalid as between the Secretary and the transferee unless the Social Security Administration recognizes a third party as the successor in interest to the contract. A novation agreement, as described in paragraph (f) of this section, is the legal instrument executed by the previously qualified HMO (transferor), the proposed HMO successor (transferee), and the Social Security Administration by which the Social Security Administration recognizes the transferee as the successor in interest to the existing contract.

(2) An HMO which is contemplating or negotiating a change of ownership, must notify the Social Security Administration at least 60 days in advance of the anticipated date of the change of ownership. In addition, the HMO must notify the Social Security Administration of the names and positions (if appropriate) of the new owners, including all parties of a partnership and, at a minimum (but not by way of limitation) all stockholders of a corporation who own 25 percent or more of the corporate stock.

(3) Where there has been a transfer of ownership of an HMO and the new

ownership has not entered into a novation agreement in accordance with paragraph (f) of this section, the entity under new ownership, if it wishes to participate as an HMO under section 1876 of the Act, must promptly notify the Social Security Administration. In addition, the entity under new ownership will only be eligible to participate as an HMO under the health insurance program if it establishes that it meets the requirements described in § 405.2028 and enters into a contract which has been approved by the Secretary as described in § 405.2029.

(4) Where there has been a transfer of ownership as described in paragraph (a) (1) of this section and the HMO (transferor) has not notified the Social Security Administration as provided in paragraph (a) (2) of this section, the transferor shall be liable to the Social Security Administration for per capita payments made to it by the Social Security Administration on behalf of its title XVIII enrollees beginning with the effective date of the transfer of ownership.

(b) *Partnership.* In the case of a partnership which is a party to a contract with the Secretary, the removal, addition, or substitution of an individual for a partner in the association generally, in the absence of an express statement to the contrary, dissolves the old partnership and creates a new partnership which is not a party to the previously executed contract with the HMO. Thus, for the purposes of section 1876 of the Social Security Act, a change of ownership has occurred and the provisions of this section will apply.

(c) *Sole proprietorship.* Where an HMO is a sole proprietorship not incorporated under applicable State law, a transfer of title and property of the HMO to another party constitutes a change of ownership for the purpose of section 1876 of the Social Security Act.

(d) *Corporation.* If an HMO is a corporate body, a transfer of ship for the purpose of section 1876 of the Social Security Act, corporate stock, does not, in itself, constitute a change of ownership for the purpose of section 1876 of the Social Security Act. Similarly, a merger of one or more corporations, with the HMO corporation surviving, does not generally constitute a change of ownership. However, a merger where the HMO corporation which is a party to the contract with the Secretary is not the surviving corporation or a consolidation of two or more corporations resulting in the creation of a new corporate entity does constitute a change in ownership.

(e) *Leasing.* (1) When an HMO leases its facilities, in whole or in part, to another entity the lessee does not assume HMO status under section 1876 of the Social Security Act. If the participating HMO leases all of its facilities to another organization, the Secretary's contract with the lessor organization terminates unless he has approved the transaction in advance. If, however, the participating HMO leases only part of its facilities to another organization, such participating HMO's contract remains in

effect, but a survey must be conducted to determine whether the HMO continues to be in compliance with the qualifying conditions for such organizations, as described in § 405.2002 through § 405.2012.

(2) If the lessee of the facilities requests approval to participate as an HMO under the health insurance program, it may enter into a contract with the Secretary if it meets the requirements described in § 405.2028 and if such contract is approved by the Secretary in accordance with § 405.2029.

(f) *Novation agreement.* (1) In order for a proposed transferee to be recognized by the Social Security Administration as a successor in interest to the contract, (see paragraph (a) (1) of this section) the HMO (transferor) which is under a contract with the Secretary under title XVIII must notify the Social Security Administration at least 60 days in advance of the proposed change of ownership and submit at least 30 days in advance of the anticipated date of the change of ownership (see paragraph (a) (1) of this section) three signed copies of a proposed novation agreement to the Secretary together with one copy of such documents as may be specified by the Social Security Administration in General Instructions.

(2) The Social Security Administration may execute a novation agreement with the transferor and the transferee (see paragraph (a) (1) of this section) where it is determined that:

(i) The proposed transferee is, in fact, a successor in interest to the contract;

(ii) Recognition of the new party as a successor in interest to the contract with the HMO is in the best interest of the health insurance program; and

(iii) The successor organization will meet the requirements of this subpart in order to qualify as an HMO.

(3) The novation agreement executed in accordance with paragraph (f) (2) of this section shall provide, at a minimum, that:

(i) The transferee assumes all obligations under the contract;

(ii) The transferor waives its rights under the contract to obtain from the Secretary reimbursement for covered services furnished during the current contract period; and

(iii) The transferor guarantees performance of the contract by the transferee or the transferor posts a satisfactory performance bond in lieu of such guarantee which is approved by the Social Security Administration.

§ 405.2034 Terminations.

Under the terms of the contract (see § 405.2028) the HMO and the Secretary have certain specified rights and responsibilities regarding the termination of such contract.

(a) *Health maintenance organization.* An HMO may terminate its contract to provide services to its enrollees who are title XVIII beneficiaries by filing with the Social Security Administration at least 90 days before the end of the contract period, a written notice of its in-

tention not to renew such contract. The Secretary may, at his discretion, accept a delinquent Notice of Intention Not to Renew filed by an HMO (i.e., when such notice is filed less than 90 days before the end of the contract period) where such acceptance would not jeopardize the effective and efficient administration of the program. In addition to giving notice to the Social Security Administration, the HMO shall notify its enrollees who are title XVIII beneficiaries and the public of the proposed termination of such contract. Whether or not the Secretary has approved a delinquent notice, such enrollees shall be notified by mail at least 60 days prior to the end of the contract period and the public shall be notified by publishing at least 30 days before the date of termination a statement of the effective date for termination of the contract with the Secretary. Publication shall be in one or more newspapers of general circulation which serve each community (or county) located in the HMO's enrollment area.

(b) *Secretary.* The Secretary may terminate or choose to not renew the contract with an HMO in accordance with the procedures prescribed in §§ 405.2065-405.2086, provided it notifies the HMO's enrollees who are title XVIII beneficiaries and the public at least 30 days prior to the effective date of such action.

(c) *Mutual consent.* The contract between the Secretary and the HMO may be modified or terminated at any time by written mutual consent of the two parties. The HMO will notify its enrollees who are title XVIII beneficiaries of any modification of the contract between the HMO and the Secretary where the Secretary determines such notification to be appropriate. In the case of termination of the contract, the public and the HMO's enrollees who are title XVIII beneficiaries are notified in the following manner:

(1) The HMO shall notify its enrollees who are title XVIII beneficiaries and the public prior to the effective date of such action in the manner specified in paragraph (a) of this section; and

(2) The Social Security Administration shall notify the public at least 30 days prior to the effective date of such action.

[FR Doc.76-37543 Filed 12-21-76;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 242a]

BOARD OF REGENTS OF UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Public Meeting Procedures

The Board of Regents of the Uniformed Services University of the Health Sciences proposes to adopt procedures for its public meetings. The procedures are designed to implement section 3 (a) of the Government in the Sunshine Act, Public Law 94-409.

Interested persons are invited to submit written views on the proposed procedures to the Board of Regents, Uniformed Services University of the Health Sciences, 6917 Arlington Road, Bethesda, Md. 20014 on or before January 21, 1976. Copies of comments received will be available for public inspection at the Office of the President, Room 300 during regular business hours. The Board will consider all such written submittals before acting on the matters proposed herein. An original and 9 conformed copies should be filed with the Board.

The proposed procedures of Part 242a are as follows:

PART 242a—PUBLIC MEETING PROCEDURES OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

- Sec.
242a.1 Applicability.
242a.2 Definitions.
242a.3 Open meetings.
242a.4 Grounds on which meetings may be closed, or information may be withheld.
242a.5 Procedure for announcing meetings.
242a.6 Procedure for closing meetings.
242a.7 Transcripts, recordings and minutes of closed meetings.

AUTHORITY: 5 U.S.C. 552b(g); Pub. L. 94-409.

§ 242a.1 Applicability.

These procedures apply to meetings of the Board of Regents, Uniformed Services University of Health Sciences (USUHS), including committees of the Board of Regents.

§ 242a.2 Definitions.

(a) "Board" or "Board of Regents" means the collegial body that conducts the business of the Uniformed Services University of the Health Sciences as specified in Title 10, United States Code, Section 2113, consisting of:

(1) Nine persons outstanding in the fields of health and health education appointed from civilian life by the President, by and with the advice and consent of the Senate;

(2) The Secretary of Defense, or his designee, an ex officio member;

(3) The surgeons general of the uniformed services, ex officio members; and

(4) The Dean (President) of the University, an ex officio nonvoting member.

(b) "Board Representative" means the individual named as Executive Secretary by the Board, or any person officially designated by the Board.

(c) "Chairman" means the presiding officer of the Board, designated by the President, as specified in Title 10, United States Code, Section 2113.

(d) "Committee" means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including, the Board's standing committees (the Executive, Administrative Affairs, Educational Affairs, Fine Arts and Gifts, and Nominating Committees) and any ad hoc committees appointed by the Board for special purposes.

(e) "Meeting" means the deliberations of eight voting members of the Board, or for committees, the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include:

(1) Deliberations to open or close a meeting, or to release or withhold information, required or permitted by §§ 242a.5 or 242a.6;

(2) Notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone or telegram; and

(3) Instances where individual members, authorized to conduct business on behalf of the Board or to take action on behalf of the Board, meet with members of the public or staff. Conference, telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

(f) "Member" means a member of the Board of Regents.

(g) "Public Announcement" means posting notices on the Board's public notice bulletin board, and mailing announcements to persons on a mailing list maintained for those who desire to receive notices of Board meetings, and who pay such fee as may be determined by the Executive Secretary, not to exceed \$10.00 per year, to cover the costs involved in such distribution.

(h) "Staff" includes the employees of the USUHS, other than the members of the Board.

§ 242a.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board of Regents other than in accordance with these procedures. Every portion of every meeting of the Board of Regents or any committee of the Board shall be open to public observation subject to the exceptions provided in § 242a.4.

(b) Open meetings will be attended by members of the Board, certain staff, and any other individual or group desiring to observe the meeting. The public will be invited to observe and listen to the meeting but not to participate or to record any of the discussions by means of electronic or other devices or cameras.

(c) The Executive Secretary shall be responsible for making physical arrangements that provide ample space, sufficient visibility, and adequate acoustics for public observation of meetings.

§ 242a.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or a committee finds that the public interest requires otherwise, the open meeting requirement set forth in the second sentence of § 242a.3(a) shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 242a.5 and

242a.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) Properly classified pursuant to such executive order;

(b) Relate solely to the internal personnel rules and practices of the USUHS;

(c) Disclose matters specifically exempted from disclosure by statute (other than Title 5, United States Code, Section 552), provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would:

(1) In the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to:

(i) Lead to significant financial speculation in currencies, securities, or commodities, or

(1) Significantly endanger the stability of any financial institution; or

(2) In the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except that this subsection shall not apply in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(j) Specifically concern the issuance of a subpoena, or USUHS participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the USUHS of a particular case of formal adjudication pursuant to the procedures in Title 5, United States Code, Section 554, or otherwise involving a determination on the record after opportunity for a hearing.

§ 242a.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 242a.4, in the case of each Board or committee meeting, the Board representative, shall make public announcement, at least 7 days before the meeting, of the following:

- (1) Time of the meeting;
- (2) Place of the meeting;
- (3) Subject matter of the meeting;

(4) Whether the meeting or parts thereof are to be open or closed to the public; and

(5) The name and telephone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The 7 day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. The Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Board representative publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) only if:

(1) A majority of the entire voting membership of the Board or a majority

of the entire voting membership of a committee, determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible; and

(2) The Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) Items that have been announced for Board consideration may be deleted without notice.

(f) The "earliest practicable time" as used in this section, means as soon as possible, which should in few, if any, instances be no later than commencement of the meeting or portion in question.

(g) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and telephone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall also be submitted for publication in the FEDERAL REGISTER.

§ 242a.6 Procedure for closing meetings.

(a) Action to close a meeting or portion thereof, pursuant to the exemptions set forth in § 242a.4 shall be taken only when a majority of the entire voting membership of the Board or a majority of the entire voting membership of a committee, as applicable, vote to take such action.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting a portion or portions of which are proposed to be closed to the public pursuant to § 242a.4 or with respect to any information which is proposed to be withheld under § 242a.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) The vote of each member shall be recorded, and may be by notation voting, telephone polling or similar consideration.

(e) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to personal privacy, criminal accusation, or law enforcement information referred to in § 242a.4(e), (f), and (g), the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote whether to close such meeting. Where the Board receives such a request prior to a meeting, the Board's representative may ascertain by notation voting, or

similar consideration, the vote of each member of the Board, or committee, as applicable, as to the following:

(1) Whether the business of the Board or committee permits consideration of the request at the next meeting, and delay of the matter in issue until the meeting, or

(2) Whether the members wish to close such meeting.

(f) Within 1 day any vote taken pursuant to paragraphs (a), (b), (c), or (e), of this section, the Board or committee shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within 1 day of the vote taken pursuant to paragraphs (a), (b), (c), or (e) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 242a.4.

(g) For every meeting closed pursuant to paragraphs (a) through (j) of § 242a.4, the General Counsel or chief legal officer of the USUHS shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemption provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 242a.7.

§ 242a.7 Transcripts, recordings, & minutes of closed meetings.

(a) The Board of Regents shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, closed to the public pursuant to § 242a.4(j), the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any action taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete, verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of records shall be as follows:

(1) Within 10 days of receipt of a request for information (excluding Saturdays, Sundays, and legal public holidays), the Board shall make available to the public, in the offices of the Board of Regents, USUHS, Bethesda, Maryland, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Executive Secretary determines to contain information which may be withheld under § 242a.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the Executive Secretary to withhold information pursuant to subsection (1) of this paragraph, may be appealed to the Board. The appeal shall be circulated to individual Board members. The Board shall make a determination to withhold or release the requested information within 20 days from the date of receipt of a written request for review (excluding Saturdays, Sundays, and legal public holidays).

(4) A written request for review shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

MEREL P. GLAUBIGER,
Legal Counsel, Uniformed Services
University of the Health
Sciences.

MAURICE W. ROCHE,
Director, Correspondence and
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DECEMBER 16, 1976.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Parts 205 and 250]

QUALITY CONTROL—FINANCIAL AND MEDICAL ASSISTANCE PROGRAMS

Review of Negative Case Actions

Notice is hereby given that the Administrator, Social and Rehabilitation Service, with the approval of the Secretary of the Department of Health, Education, and Welfare, proposes to amend Quality Control (QC) regulations applicable to the administration of the Aid to Families with Dependent Children (AFDC) and Medicaid programs. The purpose of the proposed amendments set forth below is to require States to review the correctness of negative case actions, that is, actions taken to deny applications for financial or medical assistance, to otherwise dispose of such applications without a determination of eligibility, or to terminate financial or medical assistance.

Negative case action review would supplement currently required QC reviews of active AFDC cases and paid claims for medical assistance.

The basis of this proposed change, to be discussed in greater detail below, is the Service's belief that negative case action review under QC would promote proper administration by the States of their AFDC and Medicaid programs by helping to assure that each individual who meets the conditions of eligibility for AFDC or Medicaid benefits is provided with such assistance.

The AFDC and Medicaid programs are cooperative Federal-State programs. Under AFDC, the Federal and State governments share the costs of providing financial assistance to needy families with dependent children. Similarly, under Medicaid, the Federal government participates in the cost of providing medical care and services to eligible individuals.

In order to qualify for the Federal share of its AFDC or Medicaid expenditures, a State must operate each program in accordance with a State plan approved by the Secretary of HEW as meeting all applicable requirements set forth by Congress in the Act as well as those contained in implementing Federal regulations and policies. Among the State plan requirements imposed by the Act is the requirement to "provide such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan." This requirement is the basis for the QC system.

Prior to April 6, 1973, the Department used the QC system to monitor negative case actions as well as active AFDC cases and active Medicaid cases. As of that date, in order to facilitate a concerted effort by States to assure the completeness and validity of the AFDC active case review samples, States were relieved of responsibility for:

1. AFDC negative case action reviews; and
2. All Medicaid QC reviews.

Following the 1973 decision, the Department developed a new Medicaid QC system for review of paid claims, which went into effect on July 1, 1975.

In 1973 the Department chose to review AFDC negative case actions outside the QC system through a federally-conducted system of management reviews. Regional SRS staff, responsible for the monitoring and enforcement of a wide range of AFDC State plan requirements, were assigned to review negative case actions. The Department believed that the Federal reviews would accurately evaluate State performance in denying and terminating benefits and would be useful in identifying specific areas where corrective action might be needed.

However, SRS has recently studied the results of the management review system and found them unsatisfactory. There also has been litigation in connection with the review of State negative case actions and negotiations concerning the scope of an acceptable quality control system with representatives of both State

and local government and of public interest organizations who make up the New Coalition. The Department has concluded that federally-conducted management studies have not provided accurate and complete information on the number of improper State denials or terminations of AFDC and Medicaid benefits. In proposing the reinclusion of negative case action review in the QC system, the Department is seeking a more reliable, cost-effective mechanism for assessing the States' performance in the denial or termination of AFDC or Medicaid benefits.

The issuance of these proposed regulations at this time does not in any way alter the Department's commitment to continue good faith negotiations with the New Coalition. The Department, of course, would welcome comments on this specific proposal from the New Coalition, or from any other source, and will consider and respond to all such comments and suggestions before the issuance of final regulations.

Before making this proposal the Department considered (and ultimately rejected) alternatives to the present management review system which would not have required the direct use of State personnel. Under one such alternative Federal staff would have relied on an analysis of the results of the fair hearings States are required to provide to AFDC and Medicaid applicants or recipients who wish to contest a denial or termination of assistance. An examination of hearing decisions either sustaining or overturning negative case actions would, it was believed, give some indication of the agency's performance in denying or terminating assistance. However the number of individuals who appeal adverse agency eligibility determinations in any State, at any given time, may constitute only a small percentage of the total number of those whose benefits were denied or terminated by the agency. Furthermore, those cases may not represent a true cross-section of negative case actions. The conclusion was that hearing results would have only limited usefulness in monitoring State negative case actions.

A method involving federally conducted surveys (which would necessarily be done on a smaller scale than those conducted by the States) was considered and rejected because it would have imposed considerable burden on States (e.g., for collecting and making available to Federal reviewers the records of denials and terminations), and would still have been less effective than inclusion in the State QC system.

In view of the substantial advantages of State QC negative case action review over all the alternatives considered, the Department believes that the additional Federal and State costs are fully justified.

The current QC system, into which the proposed negative case action review component would be incorporated, requires:

A. For AFDC:

1. Selection of a statistically valid sample of the active caseload for each month.

2. Review of the sample cases to determine the eligibility of the recipient and the correctness of the amount of the assistance payment.

3. Projection of review results to the entire caseload to determine error rates for ineligibility, overpayment, and underpayment for each 6-month reporting period.

4. Submission of corrective action plans for reducing case error rates.

Current regulations also provide for denial of the Federal share of erroneous AFDC payments which are in excess of 3% for payments to ineligible; and 5% for overpayments. However, on May 14, 1976, in the case of *State of Maryland et al. v. Weinberger*, the United States District Court for the District of Columbia issued an order which now bars the Department from denying Federal funds, on the basis of the 3% and 5% tolerance levels, to the 14 plaintiff States in that action.

B. For Medicaid:

1. Selection of a sample of claims paid to providers of medical care or services.

2. Review of sample claims to determine whether the recipient was eligible for the medical care and services received.

3. Submission of the results of review, for each 6-month sampling period, along with a plan for analysis of, and corrective action on, the review findings.

The proposed requirements for negative case action reviews are very similar to those currently in effect for active cases with three exceptions:

1. Samples will be selected from the records of applicants for whom assistance was never initiated and former recipients whose assistance has been terminated;

2. Full field investigations will be conducted only when the reason given for the negative action has been determined to be incorrect; and

3. The Department has not chosen at this time to establish tolerance levels for negative case action errors in AFDC or Medicaid.

The Department intends to make the requirement for negative case action review effective on July 1, 1977 for AFDC-QC and on April 1, 1977 for MEQC.

The Department realizes that States may experience some difficulty in making necessary adjustment in their QC programs by the effective dates specified above and would welcome comments on this aspect. It is also interested in comments regarding the need for a tolerance level for errors in negative case actions.

Prior to the adoption of the proposed amendments, consideration will be given to those and any other written comments, suggestions, or objections received by the Administrator, Social and Rehabilitation Service, P.O. Box 2366, Washington, D.C. 20013, on or before February 7, 1977. Comments received will be available for public inspection in Room 5225 of the

Department's office at 330 C Street, S.W., Washington, D.C., beginning approximately two weeks after publication of this Notice in the FEDERAL REGISTER, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (area code 202-245-0950). It is hereby certified that the economic and inflationary effects of this regulation have been carefully evaluated in accordance with Executive Order No. 11821.

Date: September 16, 1976.

M. KEITH WEIKEL,
Acting Administrator, Social
and Rehabilitation Service.

Approved: December 10, 1976.

MARJORIE LYNCH,
Acting Secretary.

Chapter II, Title 45 of the Code of Federal Regulations is amended by revising §§ 205.40 and 250.25 to read as follows:

§ 205.40 Quality control system.

(a) *Definitions.* For purposes of this section and § 205.41, notwithstanding any other regulations in this chapter:

(1) "Assistance unit" means all individuals whose needs, income, and resources are to be considered in determining eligibility for the amount of an assistance payment for which Federal financial participation is claimed under this chapter.

(2) "Case error" means an overpayment, underpayment or payment for ineligibility, as defined in this section. However, where an overpayment, underpayment or payment for ineligibility is occasioned solely by the failure of the assistance payment to reflect changes in an assistance unit's circumstances which occurred in the review month or the month (calendar or fiscal) immediately preceding the review month, no case error will exist (unless the assistance payment was, in fact, adjusted inaccurately as a result of such a change). For purposes of this definition, a hearing decision which required adjustment or termination of the assistance payment is considered a change in circumstances. The determination as to whether an assistance payment constitutes a case error will be made in accordance with procedures specified in the Quality Control Manual. There is no case error where payment is required to be continued unadjusted because a hearing has been requested.

(3) "Ineligibility" refers to a financial assistance payment received by or for an assistance unit, for the review month, when no amount of such payment should have been paid to such assistance unit under permissible State practice (as defined herein) in effect on the first day of the review month, notwithstanding the State agency's failure to make a finding under § 206.10(a)(5) of this chapter.

(4) "Overpayment" means a financial assistance payment received by or for an assistance unit, for the review month, which is in excess by at least \$5.00 of the amount that should have been paid,

to such assistance unit under permissible State practice (as defined herein) in effect on the first day of the review month.

(5) "Underpayment" means a financial assistance payment received by or for an assistance unit for the review month which is at least \$5.00 less than the amount that should have been paid, to such assistance unit under permissible State practice (as defined herein) in effect on the first day of the review month.

(6) "Review month" means the specific period of time for which a particular financial assistance payment (or two successive payments where the State pays on a semi-monthly basis) under view is received, regardless of whether that period is a calendar month or a fiscal month.

(7) "Permissible State practice" means all written policy instructions issued by the State for administering the AFDC program so long as those written instructions are consistent with either the State plan or proposed amendments thereto which have been submitted to, but have not been acted upon by the Social and Rehabilitation Service. In all instances where such written instructions are not consistent with the State plan or such amendments thereto, permissible State practice means the provisions of the State plan.

(8) "Negative case action" means an action to deny an application for assistance, or to otherwise dispose of an application for assistance without a determination of eligibility, or to terminate assistance.

(b) *State plan requirements.*—A State plan under title IV-A or I, X, XIV or XVI of the Social Security Act must provide for a continuing system of quality control for assuring that assistance is furnished in accordance with permissible State practice (as defined herein). Under this requirement:

(1) The State agency's system of quality control shall:

(i) Apply the sampling methods and schedules in accordance with instructions prescribed by the Social and Rehabilitation Service;

(ii) Conduct field investigations, including a personal interview in all cases which fall within the sample of active cases; and, as necessary, for cases in the negative case action sample of active cases, and, as necessary, for cases in the negative case action sample;

(iii) Provide for the necessary resources, organizational structure and systems for the analysis of the findings of the system;

(iv) Take appropriate corrective action on improperly authorized assistance, improper negative case actions and system weakness; and

(v) Assure access by DHEW staff to State and local records relating to public assistance, to recipients, and to third parties.

(2) Notwithstanding the provisions of § 206.10(a)(9) of this Chapter, the State agency shall count as a case error in its Quality Control sample, any case in

which a change in circumstances which affects eligibility or the amount of the assistance payment is not correctly reflected in a terminated or adjusted payment by the second month following the month in which the change of circumstances occurred, unless assistance is continued unadjusted because a hearing has been requested; except that where the change in circumstances is improperly reflected in an assistance payment prior to the second month following the month in which the change of circumstances occurred, the State agency shall consider that a case error exists. Under this requirement, a hearing decision which affects eligibility or the amount of the assistance payment is a change in circumstances.

(3) The State agency shall submit to the Social and Rehabilitation Service, in such form and at such times as it prescribes:

(i) A description of the State's sampling plan;

(ii) On a monthly basis during the 6-month sampling period, for each active sample case in the State Quality Control review, the original finding on the amount of the assistance payment and, where a case error has been determined to exist in such payment, the amount by which the payment was in error, and the type of error, i.e. whether the error was an overpayment, underpayment, or payment to an ineligible;

(iii) Data required by Forms SRS QC 341.1, 341.1A and 343.1, within 60 days of the close of the 6-month sampling period to which such data apply;

(iv) A corrective action plan for reducing the case error rates of ineligibility, overpayments, and underpayments, and negative case actions, within 90 days of the close of the 6-month sampling period to which they apply;

(v) Data required by Forms SRS-QC 341.2, 341.3, 341.4, 343.2, and 343.3 are to be submitted at the same time the corrective action plan is submitted.

§ 250.25 Medicaid eligibility quality control.

State plan requirements. A State plan for medical assistance under title XIX of the Social Security Act must provide for a system of eligibility quality control, which meets Federal specifications, for assuring that medical assistance is furnished in accordance with State plan provisions. Under this requirement:

(a) The State agency, or at the option of the State, the agency responsible for determining eligibility for medical assistance, shall:

(1) Apply the sampling methods, schedules, and instructions prescribed by the Social and Rehabilitation Service (SRS);

(2) Conduct field investigations, including a personal interview with all recipients who fall within the sample of active cases and, as necessary, with individuals in the negative case action sample. "Negative case action" means an action to deny an application for medical assistance or to otherwise dispose of such application without a determina-

tion of eligibility, or to terminate medical assistance;

(3) Take appropriate corrective action on improperly authorized medical assistance, improper negative case actions,

(4) Report to the Federal Government as prescribed; and

(5) Assure access by Federal staff to State and local records, recipients, and third parties.

(b) The State agency (or agency responsible for eligibility) shall submit to SRS in accordance with Federal instructions:

(1) A description of the State's sampling plan for active cases and negative case actions;

(2) Data concerning all individuals who fall within the active case sample or the negative case action sample;

(3) Data concerning payments for medical assistance on behalf of recipients in the active case sample; and

(4) A comprehensive plan for analysis of and corrective action on the findings of each sampling period provided for in paragraph (c) of this section, no later than 135 days after the end of each sampling period.

(c) There shall be a sampling period from July 1, 1975 to September 30, 1975, and sampling periods of 6 months each thereafter commencing October 1, 1975, to collect the data referred to in paragraph (b) (2) and (3) of this section. Such data shall be submitted to SRS no later than 120 days after the end of each sampling period.

[FR Doc.76-37532 Filed 12-21-76; 8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE

Denial of Request for Public Hearing; Proposed Critical Habitat for Peregrine Falcon

Section 4(f) (2) (A) (ii) of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) states that if any person, who feels that he may be adversely affected by a regulation proposed pursuant to the Act, requests a public hearing thereon, the Secretary may grant such request, but shall, if he denies such request, publish his reasons therefor in the FEDERAL REGISTER.

On October 8, 1976, Mr. Kermit R. Kubitz, attorney for the Pacific Gas and Electric Company, requested that a public hearing be held on the Proposed Determination of Critical Habitat for the American Peregrine Falcon, published by the Fish and Wildlife Service in the FEDERAL REGISTER of August 30, 1976 (41 FR 36516-36517). As the reason for this request, Mr. Kubitz stated that the proposal could potentially adversely affect several hundred megawatts of geothermal generating capacity, equivalent to over 5,000,000 barrels of oil per year. No further explanation was provided.

A Critical Habitat designation does not in itself restrict any particular kinds of activity. Such designations merely notify Federal agencies that they are required to insure that any of their actions impacting a particular area do not adversely affect an Endangered or Threatened species. Questions of whether these conditions would apply to a certain action, and whether the action would be detrimental to a species, would best be considered after, rather than before designation of Critical Habitat. Such questions are not factors in actually delineating the Critical Habitat. Moreover, the allotted public comment period on this proposal provided sufficient time for interested parties to submit pertinent statements, especially considering the relatively limited areas involved. The Fish and Wildlife Service sees no meaningful purpose that would be served by holding a public hearing, and therefore, denies this request.

Dated: December 17, 1976.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

[FR Doc.76-37559 Filed 12-21-76; 8:45 am]

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for the Palila

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a Proposed Rulemaking which would determine Critical Habitat for the Palila (*Psittirostra baileyi*), an Endangered Hawaiian bird. This Proposal is issued pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

BACKGROUND

The Palila, a small bird of the Hawaiian Honeycreeper Family, is now restricted to a relatively small area on the Island of Hawaii, and has been officially listed as Endangered since 1967. Hope for the survival and recovery of this species centers on maintenance of its forest habitat on the slopes of Mauna Kea.

A notice of intent to determine Critical Habitat for the Palila was published by the Service in the FEDERAL REGISTER of May 16, 1975 (40 FR 21499-21500). Subsequently, the Director received several comments indicating that Critical Habitat for the Palila consisted of the Mamane-Naio Forests around Mauna Kea. On June 18, 1976, the Service's Region 1 in Portland submitted a precise delineation of a recommended Critical Habitat zone in this area. After evaluating this recommendation and supporting data, the Director determined to proceed with this Proposed Rulemaking.

The area delineated below consists primarily of Mamane (*Sophora chrysophylla*)-Naio (*Myoporum sandwicense*) forest, and extends from about

7,000 to 10,000 feet in elevation. The Palila depends on the Mamane and Naio trees for food, shelter, and nesting sites; it cannot survive without these tree species. Moreover, the delineated area apparently contains the world's entire known population of Palila, and supports most of the large and intermediate-sized Mamane and Naio trees on Mauna Kea. This area is large enough to allow space for the population to expand, and includes a full range of altitudinal and geographical sites needed by the Palila for normal life cycle movement. Such movement is the response of the species to shifting seasonal and annual patterns of flowering, seed set, and ensuing pod development of the Mamane vegetation.

EFFECTS OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which states:

"The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the *FEDERAL REGISTER* of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs or survival of that species; (2) Actions by a Federal agency affecting Critical Habitat of a species would not conform with section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) There may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to Section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under Section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat designations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat.

REORGANIZATION OF REGULATIONS

It is also proposed in this rulemaking to reorganize the location of the present list of Critical Habitat designations. Presently, each Critical Habitat final rulemaking is assigned a separate section number in Subpart F of Part 17. Starting with the Critical Habitat designation for the snail darter at § 17.61, sequential numbers have been assigned for the Critical Habitats of the American crocodile (§ 17.62), the California condor (§ 17.64), the Indiana bat (§ 17.65) and the Florida manatee (§ 17.66). This procedural method is inefficient because of the rapid consumption of available section numbers in Subpart F. It is therefore proposed that the present Subpart F, "Critical Habitat" be deleted, and a new Subpart I, "Interagency Cooperation," be added. Within the new Subpart I, it is proposed that all Critical Habitat designations for fish or wildlife be listed under § 17.95. It is anticipated that §§ 17.90 through 17.94 will eventually be used to set forth the procedural regulations implementing Section 7 of the Endangered Species Act of 1973. The following sequence would be utilized in § 17.95: § 17.95(a)—mammals; § 17.95(b)—birds; § 17.95(c)—reptiles; § 17.95(d)—amphibians (reserved); § 17.95(e)—fishes; § 17.95(f)—claims (reserved); § 17.95(g)—snails (reserved); § 17.95(h)—crustacea (reserved); § 17.95(i)—insects (reserved); § 17.95(j)—other (reserved). Critical Habitat designations for plants would be located at § 17.96.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as accurate as possible in delineating the Critical Habitat of the Palila. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned govern-

mental agencies, the scientific community, or any other interested party on these Proposed Rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this Proposal.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this Rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than April 18, 1977, will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street, NW., Washington, D.C.

Dated: December 12, 1976.

GEORGE W. MILIAS,
Acting Director, Fish and
Wildlife Service.

Accordingly, it is hereby proposed to amend 50 CFR Part 17:

1. By deleting Subpart F of Part 17; by adding a new Table of Sections for Subpart I and by adding a new Subpart I of Part 17 to read as follows:

Subpart I—Interagency Cooperation
Sec.
17.90—17.94 [Reserved]
17.95 Critical habitat—fish and wildlife.
17.96 Critical habitat—plants. [Reserved]

AUTHORITY: Sec. 7, Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

Subpart I—Interagency Cooperation
§ 17.90 [Reserved]
§ 17.91 [Reserved]
§ 17.92 [Reserved]
§ 17.93 [Reserved]
§ 17.94 [Reserved]
§ 17.95 Critical Habitat—Fish and Wildlife.

(a) Mammals—(1) *Florida Manatee*.
(i) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) in Florida are critical habitat for the Florida manatee (*Trichechus manatus*): Crystal River and its headwaters known as King's Bay, Citrus County; the Little Manatee River downstream from the U.S. Highway 301 bridge, Hillsborough County; the Manatee River downstream from the Lake Manatee Dam, Manatee County; the Myakka River downstream from Myakka River State Park, Sarasota and Charlotte Counties; the Peace River downstream from the Florida State Highway 760 bridge, De Soto and Charlotte Counties; Charlotte Harbor north of the Charlotte-Lee county line, Charlotte County; Caloosahatchee River downstream from the Florida State Highway 31 bridge,

Lee County; all U.S. territorial waters adjoining the coast and islands of Lee County; all U.S. territorial waters adjoining the coast and islands and all connected bays, estuaries, and rivers from Gordon's Pass, near Naples, Collier County, southward to and including White-water Bay, Monroe County; all waters of Card, Barnes, Blackwater, Little Blackwater, Manatee, and Buttonwood sounds between Key Largo, Monroe County, and the mainland of Dade County; Biscayne Bay, and all adjoining and connected lakes, rivers, canals, and waterways from the southern tip of Key Biscayne northward to and including Maule Lake, Dade County; all of Lake Worth, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway A1A southward to its southernmost point immediately north of the town of Boynton Beach, Palm Beach County; the Loxahatchee River and its headwaters, Martin and West Palm Beach Counties; that section of the intracoastal waterway from the town of Sewalls Point, Martin County to Jupiter Inlet, Palm Beach County; the entire inland section of water known as the Indian River, from its northernmost point immediately south of the intersection of U.S. Highway 1 and Florida State Highway 3, Volusia County, southward to its southernmost point near the town of Sewalls Point, Martin County, and the entire inland section of water known as the Banana River and all waterways between the Indian and Banana rivers, Brevard County; the St. Johns River, including Lake George, and including Blue Springs and Silver Glen Springs from their points of origin to their confluences with the St. Johns River; that section of the Intracoastal Waterway from its confluence with the St. Marys River on the Georgia-Florida border to the Florida State Highway A1A bridge south of Coastal City, Nassau and Duval Counties.

(i) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the critical habitat area.

(2) *Indiana Bat*. (i) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) are critical habitat for the Indiana bat (*Myotis sodalis*):

(A) *Illinois*. The Blackball Mine, La Salle County.

(B) *Indiana*. Big Wyandotte Cave, Crawford County; Ray's Cave, Greene County.

(C) *Kentucky*. Bat Cave, Carter County; Coach Cave, Edmonson County.

(D) *Missouri*. Cave 021, Crawford County; Cave 009, Franklin County; Cave 017, Franklin County; Pilot Knob Mine, Iron County; Bat Cave, Shannon County; Cave 029, Washington County (numbers assigned by Division of Ecological Services, U.S. Fish and Wildlife Service, Region 6).

(E) *Tennessee*. White Oak Blowhole Cave, Blount County.

(F) *West Virginia*. Hellrole Cave, Pendleton County.

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

(b) *Birds*—(1) *California Condor*. (i) The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) in California are critical habitat for the California condor (*Gymnogyps californianus*):

(A) *Sespe-Piru Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Los Angeles Counties, with the following components (San Bernardino Meridian): Sespe Condor Sanctuary, as delineated by Public Land Order 695 (January 1951); T4N R20W Sec. 2, 5-10, N $\frac{1}{2}$ Sec. 11; T4N R21W Sec. 1-3, 10-12, N $\frac{1}{4}$ Sec. 13, N $\frac{1}{4}$ Sec. 14, N $\frac{1}{4}$ Sec. 15; T5N R18W Sec. 4-9, 18, 19, 30, 31, N $\frac{1}{2}$ Sec. 3, N $\frac{1}{2}$ Sec. 17; T5N R21W Sec. 1-4, 9-16, 21-28, 33-36; T6N R18W Sec. 7-11, 14-23, 26-35; T6N R19W Sec. 7-36; T6N R20W Sec. 8-36; T6N R21W Sec. 13-36; T6N R22W Sec. 3-26, 35, 36; T6N R23W Sec. 1-3, 10-14, 24, N $\frac{1}{2}$ Sec. 23; T7N R22W Sec. 31; T7N R23W Sec. 34-36.

(B) *Matilija Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, in Ventura and Santa Barbara Counties, with the following components (San Bernardino Meridian): T5N, R24W W $\frac{1}{2}$ Sec. 3, Sec. 4-11, 14, 15, N $\frac{1}{2}$ Sec. 16, N $\frac{1}{4}$ Sec. 17; T5N R25W E $\frac{1}{2}$ Sec. 1, NE $\frac{1}{4}$ Sec. 12; T5 $\frac{1}{2}$ N R24W Sec. 31-34; T6N R24W S $\frac{1}{2}$ Sec. 32, S $\frac{1}{2}$ Sec. 3, S $\frac{1}{2}$ Sec. 34.

(C) *Sisquoc-San Rafael Condor Area*: an area of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain, Santa Barbara County, with the following components (San Bernardino Meridian): T6N R26W Sec. 5, 6; T6N R27W Sec. 1, 2; T7N R26W Sec. 5-8, 17-20, 29-32; T7N R26W Sec. 1-14, 23-26, 35, 36; T7N R28W Sec. 1, 2, 11, 12; T8N R26W Sec. 19-22, 27-34; T8N R27W Sec. 19-36.

(D) *Hi Mountain-Beartrap Condor Areas*: areas of land, water, and airspace to an elevation of not less than 3,000 feet above the terrain in San Luis Obispo County, with the following components (Mt. Diablo Meridian): T30S R16E Sec. 13, 14, 23-26, SE $\frac{1}{4}$ Sec. 11, S $\frac{1}{2}$ Sec. 12; T30S R17E Sec. 17-20, 29, 30; T31S R14E Sec. 1, 2, 11, 12, E $\frac{1}{2}$ Sec. 3, E $\frac{1}{2}$ Sec. 10, N $\frac{1}{2}$ Sec. 14, N $\frac{1}{2}$ Sec. 13; T31S R15E W $\frac{1}{2}$ Sec. 6, W $\frac{1}{2}$ Sec. 7, NW $\frac{1}{4}$ Sec. 18.

(E) *Mt. Pinos Condor Area*: An area of land, water, and airspace in Ventura and Kern Counties, with the following components (San Bernardino Meridian): T8N R21W $\frac{1}{2}$ Sec. 5, Sec. 6 N $\frac{1}{2}$ Sec. 7, NW $\frac{1}{4}$ Sec. 8; T8N R22W Sec. 1, 2, E $\frac{1}{2}$ Sec. 3, NE $\frac{1}{4}$ Sec. 10, N $\frac{1}{2}$ Sec. 11, N $\frac{1}{2}$ Sec. 12; T9N R21W Sec. 31, 32, W $\frac{1}{2}$ Sec. 33; T9N R22 W E $\frac{1}{2}$ Sec. 35, Sec. 36.

(F) *Blue Ridge Condor Area*: An area of land, water, and airspace in Tulare County, with the following components (Mt. Diablo Meridian): T19S R29E Sec. 5-9, 15-22, 27-30.

(G) *Tejon Ranch*: an area of land, water, and airspace in Kern County, with the following components (San Bernardino Meridian): R16W T10N, R17W T10N, R17W, T11N, R18W, T9N, R18W T10N, R19W, T10N.

(H) *Kern County rangelands*: an area of land, water, and airspace in Kern County between California State Highway 65 and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R29E T25S, R29E T26S, R30E T25S, R30E T26S.

(I) *Tulare County rangelands*: an area of land, water, and airspace in Tulare County between California State Highway 65, State Highway 198, and the western boundary of Sequoia National Forest, with the following components (Mt. Diablo Meridian): R28E T18S (all sections); R28E T19S (all sections); R28E T20S (all sections); R28E T21S Sec. 1-18; R29E T20S (all sections); R29E T21S Sec. 1-18.

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of these critical habitat areas.

(2) *Pilila*. The following areas (exclusive of those existing man-made structures or settlements which are not necessary to the survival or recovery of the species are Critical Habitat for the Pilila (*Psittirostra bailliei*)).

Hawaii. An area of land, water, and airspace on the Island of Hawaii, Hawaii County, with the following components: (1) the State of Hawaii Mauna Kea Forest Reserve, except (a) that portion south of the Saddle Road (State Highway 20), (b) lands owned by the United States in the Pohakuloa Training Area north of the Saddle Road (State Highway 20) established by Executive Order 1719 (Parcel 6, State of Hawaii Tax Map Key 4-4-16, Third Division), (c) that portion (Parcel 10, Kaohae IV, State of Hawaii Tax Map Key 4-4-16, Third Division) lying north of the Saddle Road (State Highway 20) and south of the Power Line Road; (2) that portion of the State of Hawaii Kaohae Game Management Area (Parcel 4, State of Hawaii Tax Map Key 4-4-15, Third Division) to the north and east of the Saddle Road (State Highway 20); (3) that portion of the Upper Waikii Paddock (Parcel 2, State of Hawaii Tax Map Key 4-4-15, Third Division) northeast of the Saddle Road (State Highway 20); (4) that portion of the lands of Humuula between Puu Kahinahina and Kole lying southeast of the Mauna Kea Forest Reserve fence (portions of Parcels 2, 3, and 7, State of Hawaii Tax Map 3-8-1, Third Division) which are included in the State conservation district; (b) Pursuant to section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions author-

ized, funded, or carried out by them do not result in the destruction or modification of this Critical Habitat area.

(c) *Reptiles* (1) *American Crocodile*. (i) The following area (exclusive of those existing man-made structures or settlements which are not necessary to the normal needs or survival of the species) is critical habitat for the American crocodile (*Crocodylus acutus*): All land and water within the following boundary in Florida; beginning at the easternmost tip of Turkey Point, Dade County, on the coast of Biscayne Bay; thence southeastward along a straight line to Christmas Point at the southernmost tip of Elliott Key; thence southwestward along a line following the shores of the Atlantic Ocean side of Old Rhodes Key, Palo Alto

Key, Angelfish Key, Key Largo, Plantation Key, Windley Key, Upper Matecumbe Key, Lower Matecumbe Key, and Long Key, to the westernmost tip of Long Key; thence northwestward along a straight line to the westernmost tip of Middle Cape; thence northward along the shore of the Gulf of Mexico to the north side of the mouth of Little Sable Creek; thence eastward along a straight line to the northernmost point of Nine-Mile Pond; thence northeastward along a straight line to the point of beginning.

(ii) Pursuant to section 7 of the act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area.

(d) [Reserved]

(e) *Fishes*—(1) *Snail Darter*. (i) The following area is critical habitat for the snail darter (*Percina (Imostoma) sp.*): From river mile 0.5 to river mile 17 of the Little Tennessee River, Loudon County, Tennessee, as shown on a map entitled "Tellico Project," prepared by Tennessee Valley Authority, Bureau of Water Control Planning, August 1965 (map 65-MS-453 K 501). (ii) Pursuant to section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of this critical habitat area.

[FR Doc.76-37558 Filed 12-21-76;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A411]

IDAHO

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected Owyhee County, Idaho, as a result of hailstorms July 20, 1976, and August 1, 1976, and heavy rains August 15 to September 15, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Cecil D. Andrus that such designation be made.

Applications for emergency loans must be received by this Department no later than February 7, 1977, for physical losses and September 8, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 15th day of December, 1976.

FRANK B. ELLIOTT,
Administrator,

Farmers Home Administration.

[FR Doc.76-37549 Filed 12-21-76;8:45 am]

[Designation Number A416]

LOUISIANA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Louisiana Parishes as a result of drought from June 1, 1976 through October 31, 1976, for Franklin Parish; and drought from July 4 through September 4, 1976, for Morehouse Parish.

FRANKLIN

MOREHOUSE

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b)

including the recommendation of Governor Edwin W. Edwards that such designation be made.

Applications for emergency loans must be received by this Department no later than February 7, 1977, for physical losses and September 9, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 15th day of December, 1976.

FRANK B. ELLIOTT,
Administrator,

Farmers Home Administration.

[FR Doc.76-37550 Filed 12-21-76;8:45 am]

[Designation Number A413]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Nelson County, North Dakota, as a result of drought during the 1976 crop year beginning May 1 and ending December 31, 1976, and hail June 12 and August 9, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Arthur A. Link that such designation be made.

Applications for emergency loans must be received by this Department no later than February 7, 1977, for physical losses and September 8, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 15th day of December, 1976.

FRANK B. ELLIOTT,
Administrator,

Farmers Home Administration.

[FR Doc.76-37551 Filed 12-21-76;8:45 am]

[Designation Number A417]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Texas Counties as a result of drought October 1, 1975 through August 31, 1976, hail August 27 and September 27, 1976, and early freeze October 8, 1976, in Cochran County; high winds and severe hail September 27, 1976, in Coleman County; and high winds and severe hail September 25, 1976, in Sherman County.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than February 7, 1977, for physical losses and September 9, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 15th day of December, 1976.

FRANK B. ELLIOTT,
Administrator,

Farmers Home Administration.

[FR Doc.76-37553 Filed 12-21-76;8:45 am]

[Designation Number A414]

WEST VIRGINIA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in certain West Virginia Counties as a result of various adverse weather conditions shown in the following chart:

WEST VIRGINIA

County	Disaster(s)	Incidence dates
Berkeley.....	Killing frosts.....	Apr. 1 through May 15, 1976.
	Drought.....	Jan. 1, 1976 through Nov. 19, 1976.
Grant.....	Killing frost.....	Apr. 15, 1976.
	Drought.....	Jan. 1, 1976 through Nov. 19, 1976.
Hampshire....	Killing frosts.....	Apr. 3, 1976 through May 5, 1976.
	Drought.....	Jan. 31, 1976 through Nov. 5, 1976.
Hardy.....	Freeze and frost.....	Apr. 12, 1976 through May 5, 1976.
	Drought.....	Jan. 31, 1976 through Nov. 19, 1976.
Jefferson.....	Hot weather.....	Feb. 17, 1976 through Feb. 29, 1976.
	Drought.....	Mar. 1, 1976 through Nov. 19, 1976.
Mineral.....	Freeze and frost.....	Apr. 12, 1976.
	Drought.....	Jan. 31, 1976 through Nov. 19, 1976.
Pendleton....	Killing frosts.....	May 5, 1976 through May 13, 1976.
	Drought.....	Jan. 1, 1976 through Nov. 19, 1976.
Morgan.....	Killing frost.....	Apr. 12, 1976.
	Drought.....	Jan. 31, 1976 through Nov. 19, 1976.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Arch A. Moore, Jr. that such designation be made.

Applications for emergency loans must be received by this Department no later than February 7, 1977, for physical losses and September 8, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 15th day of December, 1976.

FRANK B. ELLIOTT,
Administrator,
Farmers Home Administration.

[FR Doc.76-37552 Filed 12-21-76;8:45 am]

Soil Conservation Service

RICHLAND CREEK WATERSHED
PROJECT, TEX.Availability of Negative Declaration of
Environmental Impacts

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Richland Creek Watershed project, Navarro, Ellis, Hill, Limestone, and Freestone Counties, Texas.

The environmental assessment of this Federal action indicates that the project

will not create significant adverse local, regional, or national impacts on the environment and that no significant controversy is associated with the project. As a result of these findings, Mr. George C. Marks, State Conservationist, Soil Conservation Service, USDA, First National Bank Building, Temple, Texas 76501, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for watershed protection and flood prevention. The remaining planned works of improvement as described in the negative declaration include the installation of two single purpose floodwater retarding structures.

The environmental assessment file is available for inspection during regular working hours at the following location:

USDA, Soil Conservation Service, W. R. Poage, Federal Building, 101 South Main Street, Temple, Texas 76501.

Requests for the negative declaration should be sent to:

P.O. Box 648, Temple, Texas 76501.

No administrative action on implementation of the proposal will be taken until January 5, 1977.

(Catalog of Federal Domestic Assistance Program No. 10.904, Flood Control Act—Public Law 78-534, 58 Stat. 905.)

Dated: December 10, 1976.

JOSEPH W. HAAS,
Assistant Administrator for
Water Resources, Soil Conservation Service.

[FR Doc.76-37510 Filed 12-21-76;8:45 am]

ARMS CONTROL AND
DISARMAMENT AGENCY

PRIVACY ACT OF 1974

Proposed Additional Routine Uses

This notice describes five proposed additional routine uses for some or all of the systems of records maintained by the U.S. Arms Control and Disarmament Agency as published on August 28, 1975 (40 FR 39665-39669) and amended on May 26, 1976 (41 FR 21624-21626). These additional routine uses relate to disclosure of records in connection with (1) a grievance, complaint, or appeal filed by an employee; (2) exercise by the Civil Service Commission of its responsibility for evaluation and oversight of Federal personnel management; (3) audit by another Federal agency; (4) administrative services provided by the General Services Administration; and (5) release of information to state and local taxing jurisdictions. More detailed descriptions of these routine uses and identification of the systems of records to which they apply are set forth below.

Pursuant to 5 U.S.C. 552a(c)(11) the proposed additional routine uses of this notice are hereby set out for public comment. Interested persons are invited to submit written data, views, or arguments with respect to such routine uses, in

duplicate, to the General Counsel, United States Arms Control and Disarmament Agency, 320 21st St., N.W., Washington, D.C. 20451, on or before January 21, 1977.

Dated: December 1, 1976.

JOHN LEHMAN,
Acting Director.

1. In the descriptions of each of the systems of records designated ACDA-1 (Official Personnel Records—ACDA), ACDA-3 (Security Records—ACDA), ACDA-5 (Top Secret Document Control File—ACDA), ACDA-6 (Document Classifier Data Index—ACDA), ACDA-8 (External Contracts (Other Than Small Purchases)—ACDA), ACDA-13 (Travel Authorization File—ACDA), and ACDA-14 (Confidential Statement of Employment and Financial Interests Records—ACDA), add the following paragraph at the end of the section on routine uses as previously amended:

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

2. In the descriptions of each of the systems of records designated ACDA-1 (Official Personnel Records—ACDA), ACDA-2 (Pending Personnel Files—ACDA), ACDA-3 (Security Records—ACDA), ACDA-8 (External Contracts (Other Than Small Purchases)—ACDA), ACDA-13 (Travel Authorization File—ACDA), and ACDA-14 (Confidential Statement of Employment and Financial Interests Records—ACDA), add the following paragraph at the end of the section on routine uses as previously amended:

A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with that agency's responsibility for evaluation and oversight of Federal personnel management.

3. In the descriptions of each of the systems of records designated ACDA-1 through ACDA-14 inclusive, add the following paragraph at the end of the section on routine uses as previously amended:

A record from this system of records may be disclosed to officers and employees of a Federal agency for purposes of audit.

4. In the descriptions of each of the systems of records designated ACDA-1 through ACDA-14 inclusive, add the following paragraph at the end of the section on routine uses as previously amended:

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

5. In the description of the systems of records designated ACDA-1 (Official Personnel Records—ACDA),

and ACDA-13 (Travel Authorization—ACDA), add the following paragraph at the end of the section on routine uses as previously amended:

Routine uses of records maintained in this system shall include providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Executive Officer, U.S. Arms Control and Disarmament Agency, 320 21st St., N.W., Washington, D.C. 20451. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Executive Officer of the Agency. In the absence of a withholding agreement, the social security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with Section 7 of the Privacy Act, Public Law 93-579.

[FR Doc. 76-35798 Filed 12-21-76; 8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 30151; Order 76-102-102]

AMERICAN AIRLINES, INC.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3rd day of December, 1976.

By tariff revisions filed September 13, 1976, for effectiveness October 13, 1976, American Airlines, Inc. (American) proposes new "assembly" group inclusive tour (GIT) fares from numerous U.S. points to Mexico City and Acapulco. A complaint requesting suspension pending investigation has been submitted by Eastern Air Lines, Inc. (Eastern).

The fares include a 3/30-day minimum/maximum stay requirement, a minimum ground-arrangement purchase of \$45 (\$15 per night), 15-day advance reservations, and would be available all year except during the periods December 17-January 9 (southbound) and December 25-January 9 (northbound). While the fares are limited to groups of at least 40 passengers, each passenger may travel individually from his origin city to the "assembly point"

of Chicago or Dallas, whereafter all travel would be with the group.

In its justification submitted in support of the proposed fares, American alleges that while group fares to Mexico from nongateway cities have been available since February 1976, they have been utilized infrequently since travel agents have been unable to assemble groups of at least 40 passengers from "feeder" cities; and that by allowing individual travel from nongateway cities to the assembly points of Chicago or Dallas, significant new traffic will be generated even though the proposed assembly group fares are somewhat higher than the existing, regular GIT fares which require group travel for the entire itinerary. American has submitted a profit impact analysis which shows a net annual profit of \$420,000 on these fares based on a 40/60 percent generation/diversion ratio. Finally, the carrier states that in order to control the proliferation of group fares, it intends to replace its current GIT fares, except where competition otherwise requires that they be retained, with the new assembly group fares.

In its complaint, Eastern alleges that the proposed "group assembly" fares are in reality individual inclusive tour (IIT) fares, since the group requirement applies only to the Chicago and Dallas gateways; that an assembly fare of this nature would be difficult if not impossible to control since each group would have passengers originating at many different points, and there is no assurance that the group requirement has been fulfilled at either Chicago or Dallas; that the proposed fares represent reductions of 5 to 10 percent from existing IIT fares as well as a liberalization of the ticket validity from 5/21 days to 3/31 days; and that American's generation estimate of 40 percent, based on in-flight surveys of group passengers, is faulty due to the unreliable nature of the survey as well as the use of a discount factor of 21.25 percent, which represents the discount from normal economy and excursion fares rather than the discount from the next higher fare, the IIT.

American, in an answer to Eastern's complaint, alleges that the proposed fares are, in fact, group not individual fares, and that similar fares have been in effect in the mainland-Hawaii market since 1968; that the new fares will not be impossible to control since the carrier will receive, at least 15 days before departure, advance payment for all 40 passengers as well as certain control information;¹ that American's generation/diversion estimate is valid inasmuch as the question used in the survey has remained virtually unchanged for 10 years, and was recently found to give valid results in the initial decision in

¹ Briefly, the agent must submit the group control number assigned by the carrier, the name and ticket number of each passenger as well as his origin city, the fare applicable to each ticket and full payment, and the name of the agency issuing each ticket.

Docket 27671, "No Frills" Fares Investigation; and that a generation factor of 40 percent is entirely reasonable since individual and group travel appeal to different segments of the public and the sale of group travel is enhanced by the promotional efforts of travel agents.

Upon consideration of the tariff filing, the complaint and answer thereto, and all other relevant matters, the Board has concluded that the proposed fares may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the fares should be suspended pending investigation.

The Board does not doubt that there may be some difficulty in developing regular GIT travel to Mexico from relatively small, nongateway points, despite American's own citation of the developmental benefits for group sales by travel agents' promotional activities. On the other hand, we note that among the so-called "feeder" cities which are allegedly incapable of generating much group travel are the large metropolitan areas of Baltimore, Boston, Cincinnati, Cleveland, Detroit, Indianapolis, New York, Philadelphia, Pittsburgh, St. Louis, and Washington, D.C. Further, as Eastern notes in its complaint, there are already available in the U.S.-Mexico market IIT fares from numerous U.S. points. Except for the group travel requirements, the conditions on the IIT fare are quite similar to those on the GIT fare, and we see no reason why the existing IIT fares should not adequately accommodate individual travel requirements from those cities to Mexico.² Indeed, American has not even addressed this question, and in light of the fact that the proposed group assembly fares represent significant reductions from the existing IIT fares, and appear to increase equal or greater ticketing and reservations costs, American has failed to demonstrate that the proposed fares are economically justified.

American's generation/diversion estimate, which is based on a recent system-wide in-flight survey of domestic as well as international passengers traveling on a wide variety of group fares is particularly unimpressive.³ American has failed to make a *prima facie* showing of a positive profit impact, and it appears likely

² Of the 30 U.S. points where American has proposed introduction of assembly group fares, IIT fares are currently unavailable only at Buffalo.

³ This conclusion is supported by recent U.S.-Mexico traffic distribution data submitted to the Board, which showed 38.7 and 17.3 percent, respectively, of American's passengers traveling under the individual excursion and IIT fares, versus only 6.1 percent under the GIT fare.

⁴ The survey question, "If a 'special discount' fare were not available for your trip today, would you personally still have taken this trip by air?" implies a choice between the regular coach fare and the particular group fare, and ignores the existence of other discount fares such as the U.S.-Mexico excursion and IIT fares.

that the proposed fares would seriously dilute revenue from traffic already moving on existing, higher fares without offering a serious potential for generating new traffic.⁶ In addition, it is not unlikely that efficient administration and control of the Chicago and Dallas assembly groups consisting of passengers from several different origin cities would involve additional costs to the carrier.

The Board has long encouraged the carriers to reduce reliance on group travel as opposed to individually ticketed service. By Order 75-3-97, March 26, 1975, the Board approved portions of a U.S.-Mexico fare agreement among the members of the International Air Transport Association (IATA) which, in line with the Board's policies, essentially replaced then-existing GIT fares with IIT fares at levels approximately 10 percent higher. However, due to the Board's disapproval in concurrent Order 75-3-96 of general increases in other U.S.-Mexico fares, the agreement never became effective and U.S.-Mexico fares have been in an open-rate situation since that time. Thus, although IIT fares were introduced in most U.S.-Mexico markets, GIT fares remained in effect, and in many markets the contemplated increases in inclusive tour fare levels did not materialize. The "assembly group" inclusive tour fares now proposed by American represent, in effect, a reduction in the IIT fare levels approved by the Board over 18 months ago. American has submitted no data to show that the existing IIT fares have been incapable of accommodating the demand for inclusive tour travel in the relevant markets. Thus, there is no showing that the proposed assembly-group fares would generate enough new traffic to offset the diversion from the higher-rated IIT fare.⁶

⁶ The assembly group fares would not only divert passengers from the IIT fares; due to the liberalization of the ticket validity, a serious possibility also exists for diversion of excursion fare traffic. Most of the proposed fares would produce per-mile yields well below American's experienced cost of 7.50 cents per revenue passenger mile (RPM) in U.S.-Mexico passenger service during the year ended March 31, 1976, and range as low as 4.3 cents/RPM in the case of Chicago-Mexico.

⁷ The fact that "assembly" fares exist in the U.S. mainland-Hawaii market does not support American's proposal. Historically, mainland-Hawaii assembly group inclusive tour fares were introduced when virtually all service from interior U.S. points to Hawaii required a west coast connection, consistent with operational patterns and aircraft capabilities of the time. Even at the present time, there is an overwhelming concentration of mainland-Hawaii service at the west coast gateways. However, these particular circumstances do not obtain in the U.S.-Mexico markets where direct services are widely available and do not depend upon connections at Chicago or Dallas. Further, as set forth in the Board's recent Opinion and Order in the *Hawaii Fares Investigation* (Order 76-10-37, October 8, 1976), carriers have been granted relatively wide latitude in offering discount fares; however, the Board indicated that normal fares would be established as if discount fares were not part of

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a), 403, 801 and 1002(j) thereof,

It is ordered That: 1. An investigation be instituted to determine whether the fares and provisions set forth in the Appendix hereof, and rules, regulations or practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and, if found to be unlawful, to take appropriate action to prevent the use of such fares and provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, the fares and provisions specified in the Appendix hereof are suspended and their use deferred from December 17, 1976, to and including December 17, 1977, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. This order shall be submitted to the President⁷ and shall become effective on December 17, 1976;

4. The investigation ordered herein be assigned for hearing before an administrative law judge of the Board at a time and place hereafter to be designated;

5. Except to the extent granted herein, the complaint of Eastern Air Lines, Inc., in Docket 29803 be and hereby is dismissed; and

6. American Airlines, Inc., Eastern Air Lines, Inc., and Braniff Airways, Inc., be and hereby are exempted from section 403 of the Federal Aviation Act of 1958 and from Part 221 of the Board's Economic Regulations to the extent necessary to permit them to transport passengers holding confirmed reservations as of the effective date of this order, at the fares specified in ordering paragraph 1 above, at no additional collection;⁸ and

7. Copies of this order be filed in the aforesaid tariffs and be served upon American Airlines, Inc., Braniff Airways, Inc., and Eastern Air Lines, Inc.

This order will be published in the

FEDERAL REGISTER.

By the Civil Aeronautics Board.

JAMES R. DERSTINE,
Acting Secretary.

the fare structure in order to protect the normal fare passenger from the dilutionary impact of discount fares. There is no corresponding discount fare adjustment in international markets where the Board has no power to prescribe fares. In any event, regardless of the existence of assembly group fares in the Hawaii market, American has failed to make a showing that such fares would be economic in the U.S.-Mexico market.

⁸ This order was submitted to the President on December 6, 1976.

⁹ The Board is concerned about possible hardships and disruptions to the travel plans of passengers who have already purchased tickets under these fares, particularly at this season. In these circumstances, it is found that the enforcement of section 403 of the Act, and Part 221 of the Economic Regulations, would be an undue burden upon the carriers in this instance by reason of the limited extent of and unusual circumstances affecting operations and is not in the public interest.

APPENDIX

PASSENGER FARES TARIFF NO. P-NS-3, C.A.B. NO. 54 ISSUED BY AIR TARIFFS CORPORATION, AGENT

Rule 102 on 2nd Revised Pages 34-A and 34-B;

Table 22 on 2nd Revised Pages 102-A and 102-B.

INTERNATIONAL PASSENGER FARES TARIFF C.A.B. NO. 415 ISSUED BY EASTERN AIR LINES, INC.

Rule 130 on Original Pages 40-K and 40-L; The Fare Class "YWAGV40" and Application thereof on 20th Revised Page 51; The Fare Class "YXAGV40" and Application thereof on 18th Revised Page 53;

All "YWAGV40" and "YXAGV40" Round-Trip Fares and provisions and reference marks applicable thereto on the following pages:

21st Revised Pages 55 and 56, 19th Revised Pages 57 and 58, 3rd Revised Page 58-A, 25th Revised Pages 93 and 94, 23rd Revised Pages 95 and 96, 3rd Revised Page 96-A, 19th Revised Page 135, 18th Revised Page 138.

The suspension herein does not stay the cancellation of:

(a) Original and 1st Revised Pages 34-A, 34-B, 102-A and 102-B to Passenger Fares Tariff No. P-NS-3, C.A.B. No. 54 issued by Air Tariffs Corporation, Agent and

(b) 19th Revised Page 51, 17th Revised Page 53, 20th Revised Pages 55 and 56, 18th Revised Pages 57 and 58, 2nd Revised Page 58-A, 24th Revised Pages 93 and 94, 22nd Revised Pages 95 and 96, 2nd Revised Page 96-A and 18th Revised Page 135 to International Passenger Fares Tariff C.A.B. No. 415 issued by Eastern Air Lines, Inc.

[FR Doc.76-37598 Filed 12-20-76;8:45 am]

[Docket 28738]

EUGENE HORBACH AND GAC CORP./ MODERN AIR TRANSPORT PURCHASE AGREEMENT

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on January 5, 1977, at 10 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C.

Dated at Washington, D.C., December 15, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-37596 Filed 12-21-76;8:45 am]

[Docket 24847]

TRANSAVIA HOLLAND N. V.

Postponement of Prehearing Conference and Hearing

Upon consideration of the request of Transavia Holland, N.V., by letter dated December 10, 1976, which includes a statement that Bureau Counsel has no objection, the prehearing conference and hearing in this proceeding, heretofore set for January 13, 1977 (41 FR 50849, dated November 18, 1976), are postponed until further notice.

Dated at Washington, D.C., December 15, 1976.

RALPH L. WISER,
Administrative Law Judge.

[FR Doc.76-37597 Filed 12-21-76;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-529]

PRUDENTIAL LINES, INC.

Application

Notice is hereby given that Prudential Lines, Inc. has applied to amend its present Operating-Differential Subsidy Agreement, Contract No. FMB-49 to modify its Line A (Trade Route No. 2) Freight Service to include the carriage of outbound cargo from U.S. Atlantic ports (Maine to but not including Key West, Florida) to Puerto Cabello and La Guaira, Venezuela, on a privilege basis en route to other ports of call on the West Coast of South America.

Any person, firm, or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Merchant Marine Act of 1938, as amended (46 U.S.C. 1175), should, by the close of business on December 30, 1976 notify the Secretary, Maritime Subsidy Board in writing, in triplicate, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board.

In the event a section 605(c) hearing is ordered to be held, the purpose thereof will be to receive evidence relevant to (1) whether the application is one with respect to a vessel to be operated in an essential service served by citizens of the United States, which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of United States registry and such essential service is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petitions for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Maritime Subsidy Board will take such action as may be deemed appropriate.

(Catalog of Federal Domestic Assistant Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Date: December 16, 1976.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 76-37556 Filed 12-21-76; 8:45 am]

National Oceanic and Atmospheric
Administration

NANTUCKET CANDLE SHOP, INC.

Notice of Receipt of Application for
Certificate of Exemption

Notice is hereby given that the following applicant has applied in due form for a Certificate of Exemption under Pub. L.

94-359, and the regulations issued thereunder (50 CFR Part 222, Subpart B), to engage in certain commercial activities with respect to pre-Act endangered species parts or products.

Applicant: Nantucket Candle Shop, Inc., Old South Road, Nantucket, Massachusetts 02554.

Period of Exemption: The applicant requests that the period of time to be covered by the Certificate of Exemption begin on the date of the original issuance of the Certificate of Exemption and be effective for a 3-year period.

Commercial activities exempted: The prohibitions, as set forth in section 9(a) (1) (F) of the Act, to sell or offer for sale in interstate or foreign commerce any such species part.

Parts or products exempted: Approximately 66,000 candles to be made from approximately 8,500 pounds of spermaceti wax.

Written comments on this application may be submitted to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 on or before January 21, 1977.

Dated: December 15, 1976.

ROBERT J. AYERS,
Acting Assistant Director for
Fisheries Management, National
Marine Fisheries Service.

[FR Doc. 76-37513 Filed 12-21-76; 8:45 am]

COMMITTEE FOR IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN TEXTILE PRODUCTS FROM INDIA

Reduction of Import Level

DECEMBER 16, 1976.

On September 30, 1976, there was published in the FEDERAL REGISTER (41 FR 43235) a letter dated September 29, 1976 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, implementing those provisions of the Bilateral Cotton Textile Agreement of August 6, 1974, as amended, between the Governments of the United States and India, which establish specific export limitations on certain categories for the agreement year which began on October 1, 1976. As set forth in that letter, the levels of restraint are subject to adjustment.

Paragraph 7(b) of the bilateral agreement provides that carryforward up to 5 percent may be applied to current-year levels of categories subject to specific ceiling and charged against the applicable level of the category in the succeeding agreement year. Such an increase, amounting to 500,000 square yards equivalent, was applied to cotton textile products in Categories 28-38 and 64, as a group, during the agreement year which began on October 1, 1975 (see 41 FR 18705). The purpose of this notice is to advise that 500,000 square yards equivalent are being deducted from the level of restraint of 10,700,000 square yards equivalent established for Categories 28-38 and 64, as a group, for the agree-

ment year which began on October 1, 1976.

Accordingly, there is published below a letter of December 16, 1976 from the Chairman of the Committee for the Implementation of Textile Agreements, directing that entry into the United States for consumption in Categories 28-38 and 64, as a group, be limited to 10,200,000 square yards equivalent during the twelve-month period which began on October 1, 1976 and extends through September 30, 1977.

Effective date: December 20, 1976.

ROBERT E. SHEPHERD,
Acting Chairman, Committee
for the Implementation of
Textile Agreements, and Acting
Deputy Assistant Secretary
for Resources and Trade
Assistance.

UNITED STATES DEPARTMENT OF COMMERCE,
THE ASSISTANT SECRETARY FOR
DOMESTIC AND INTERNATIONAL BUSINESS,

Washington, D.C., December 16, 1976.

COMMITTEE FOR THE IMPLEMENTATION OF
TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on September 29, 1976 which directed you to prohibit entry during the twelve-month period beginning on October 1, 1976 and extending through September 30, 1977, of cotton textiles and cotton textile products in certain specified categories, produced or manufactured in India, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, pursuant to paragraph 7(b) of the Bilateral Cotton Textile Agreement of August 6, 1974, as amended, between the Governments of the United States and India, and in accordance with the provisions of Executive Order 119651 of March 3, 1972, you are directed to reduce, effective on December 20, 1976, the group level of restraint established for Categories 28-38 and 64 in the directive of September 29, 1976, to 10,200,000 square yards equivalent.²

The actions taken with respect to the Government of India and with respect to imports of cotton textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the direc-

¹ The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of August 6, 1974, as amended, between the Governments of the United States and India, which provide, in part, that: (1) within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) exports may be increased for carryover and carryforward up to 10 percent of the current-year's applicable limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

² The level of restraint has not been adjusted to reflect any entries made after September 30, 1976.

tions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the
Implementation of Textile Agree-
ments, and Acting Deputy Assistant
Secretary for Resources and
Trade Assistance.

[FR Doc.76-37564 Filed 12-21-76;8:45 am]

COMMISSION ON POSTAL SERVICE PUBLIC SERVICE COSTS OF POSTAL SERVICE

Hearings To Be Conducted in Washington,
D.C., and in Cities Throughout the
United States

Under section 7(c)(1) of the Postal Reorganization Act Amendments of 1976, Pub. L. 94-421, 90 Stat. 1309, the Commission on Postal Service gives notice of its intention to hold hearings in Washington, D.C., and several cities throughout the United States. Members of the public are invited to appear before the Commission to address the five issues of postal policy enumerated in the FEDERAL REGISTER notice of November 22, 1976 (41 FR 51435-51436). Generally, these issues concern the definition and quantification of the public service costs of postal service to the American public, postal rates and classifications, and the impact of new and developing electronic communication systems upon the Postal Service.

Persons wishing to testify should notify the Commission as soon as possible at the following address:

Commission on Postal Service, 1750 K Street,
N.W.—Suite 801, Washington, D.C. 20006.

Individuals testifying for themselves are to bring three copies of their testimony with them to the hearing. Organizations and businesses will be required to file 15 advance copies of their testimony at least 10 days before the hearing. Those copies should be mailed to the above address.

Following is the schedule for the hearings:

January 18, 1977: Atlanta, Ga.; Portland, Maine; and New York, N.Y.
January 19, 1977: Charleston, S.C.; Boston, Mass.; and New York, N.Y.
January 20, 1977: Chicago, Ill.; and Cleveland, Ohio.
January 21, 1977: Philadelphia, Pa.
January 24-28, 1977: Washington, D.C.
January 31, 1977: Charleston, W. Va.
February 1, 1977: Nashville, Tenn.; and Los Angeles, Calif.
February 2, 1977: Little Rock, Ark.; San Francisco, Calif.; and Oklahoma City, Okla.
February 3, 1977: Seattle, Wash.; Albuquerque, N. Mex.; and Dallas, Tex.

Each person notifying the Commission of his intent to testify will be informed by the Commission of the time and place of the hearing at which the person intends to testify.

The Commission was established by Congress this fall to study postal prob-

lems and report to Congress and the President with recommendations by March 15, 1977. The Commission has nine members, seven voting members appointed by the President and Congressional officials and two ex-officio.

The seven appointed members are: Gaylord Freeman, Chicago banker, the chairman; James H. Rademacher, president of the National Association of Letter Carriers; Kent Rhodes, Chairman of the Board of Reader's Digest; Hobart Taylor, Jr., Washington, D.C. attorney; Paul J. Krebs, former New Jersey Congressman; Rose Blakely, Washington businesswoman; and David Johnson, general executive vice-president of the American Postal Workers Union. Ex-officio members are Postmaster General Benjamin Bailar and Clyde S. DuPont, Chairman of the Postal Rate Commission.

By the Commission.

Dated: December 17, 1976.

DAVID MINTON,
Executive Director.

[FR Doc.76-37611 Filed 12-21-76;8:45 am]

DEPARTMENT OF THE ARMY COMMAND AND GENERAL STAFF COLLEGE ADVISORY COMMITTEE Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name: Command and General Staff College (CGSC) Advisory Committee.
Date: 12-14 January 1977.
Place: Command Conference Room, Bell Hall, Fort Leavenworth, Kansas 66027.
Time: 2000-2200, 12 January 1977; 0900-1630, 13 January 1977; 0900-1130, 14 January 1977.

PROPOSED AGENDA

2000-2200, 12 January 1977: Review of CGSC Educational Program, especially the Master of Military Art and Science (MMAS) Degree Program.
0900-1630, 13 January 1977: Continuation of review.
0900-1000, 14 January 1977: Continuation of review.
1000-1130, 14 January 1977: Executive Session.

The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting space permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary.

Dated: December 2, 1976.

By authority of the Secretary of the Army:

R. S. SEEBERG,
LTC, U.S. Army, Acting Director,
Administrative Management
Director, TAGCEN.

[FR Doc.76-36140 Filed 12-21-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21026, File No. 4607-CM-P-72;
Docket No. 21027, File No. 6966-CM-P-72]

EASTERN MICROWAVE, INC. AND WHP,
INC.

Notice of Applications; Correction

In Re Applications of Eastern Microwave, Inc., Docket No. 21026, File No. 4607-CM-P-72; and WHP, Inc., Docket No. 21027, File No. 6966-CM-P-72; for construction permits in the multipoint distribution service for a new station at Harrisburg, Pennsylvania.

Released: December 3, 1976. In FR Doc. 76-36065 (41 FR 53696, Dec. 8, 1976) the Docket Number for "WHP, INC., 21026" is corrected to read "WHP, INC., 21027".

FEDERAL COMMUNICATIONS COM-
MISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37577 Filed 12-21-76;8:45 am]

[Docket No. 20996, etc.]

FLORIDA GOSPEL NETWORK, ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: December 2, 1976; Released: December 10, 1976.

In re Applications of Robert A. Jones, Raymond A. Kassis & Paul J. Lewis, db/a Florida Gospel Network, Jensen Beach, Florida, Docket No. 20996, File No. BPH-9077, Req: 107.1 MHz, Ch. No. 296; 3kw (H&V); 300 feet (H&V);

Jensen Beach Broadcasting Company, Inc., Jensen Beach, Florida, Docket No. 20997, File No. BPH-9258, Req: 107.1 MHz, Ch. No. 296; 3kw (H&V); 268 feet (H&V);

Robert L. Lord & Marshall W. Rowland, db/a Lord & Rowland Radio, Jensen Beach, Florida, Docket No. 20998, File No. BPH-9350, Req: 107.1 MHz, Ch. No. 296; 3 kw (H&V); 293 feet (H&V); and

HLG, Inc., Jensen Beach, Florida, Docket No. 20999, File No. BPH-9561, Req: 107.1 MHz, Ch. No. 296; 3kw (H&V); 300 feet (H&V). For Construction Permit.

1. The Commission, by the Chief, Broadcast Bureau, has before it the above-captioned applications of Robert A. Jones, Raymond A. Kassis and Paul J. Lewis, db/a Florida Gospel Network (hereinafter "Gospel"); Jensen Beach Broadcasting Company ("Beach"); Robert L. Lord and Marshall W. Rowland, db/a Lord and Rowland Radio ("Lord"); and HLG, Inc. ("HLG"), all seeking a construction permit for a new FM broadcast station to serve Jensen Beach, Florida. Requesting the same channel, these applications are mutually exclusive.

2. Although the Commission has sent two letters to Gospel indicating defects in its random survey of the general public, there is still a question as to whether Gospel has complied with the Commission's *Primer on the Ascertainment of*

Community Problems by Broadcast Applicants, 27 FCC 2d 650 (1971), in this respect. As amended in July, Gospel's application gives no indication who conducted the general public survey, stating only that telephone calls were placed "by the applicant", which is a Florida partnership. Consequently, the Commission cannot tell whether Gospel's survey was conducted in accordance with answer 11(b) of the *Primer*, which specifies who should interview members of the general public. An appropriate issue will therefore be specified.

3. According to its application, Beach would require \$111,592 to construct its station and operate it without revenues for one year. To meet this requirement, Beach proposes to rely upon cash on hand or in banks totaling \$1,500 and five loans aggregating \$105,250. The total of the funds available to Beach is therefore \$106,750, an amount \$4,842 less than that required. A financial issue will therefore be specified.

4. Lord's description of the composition of Jensen Beach contained several indications that labor constitutes a significant community group. According to Lord, Jensen Beach has "some small construction companies and one operating industrial park consisting of a steel fabricating plant, warehouses and lumber yard". Lord also asserts that another industrial park is proposed, that many residents work at Grumman Aerospace Corp. and Ebasco, Inc., "now involved in constructing a nuclear power plant . . ."; that "most union memberships are held in West Palm Beach locals"; and, that "Jensen Beach is considered to operate on an open shop basis . . .". In letters dated July 10, 1975 and May 25, 1976, the Commission advised Lord, *inter alia*, of the necessity of interviewing labor leaders in connection with the community leader survey. In its amendment of August 9, 1976, Lord contended that Jensen Beach "does not have union officials", but its supplemental community leader survey included one person identified as "steel worker AFL-CIO", and another described as "pipe fitter, AFL-CIO". As identified, neither may be considered a labor leader, because neither appears to be a union official. The net result is that Lord apparently does regard labor as a significant group in the community of Jensen Beach, but has failed to consult any leaders of that group. Lord's ascertainment is therefore defective in accordance with question and answer 16 of the *Primer*. The same conclusion is impelled by Lord's failure to consult leaders of students, another significant community group. Included in the supplemental survey are two persons identified as students at Florida Institute of Technology. Neither is a community leader by virtue of his student status alone, and neither is described as holding any official position with a student organization.

5. By Commission letter, HLG was asked to furnish the dates when all its community ascertainment consultations were conducted. HLG replied in its amendment of July 19, 1976, by stating

that "the interviews took place in September of 1975 as well as June of 1976." HLG filed its application in June of 1975, three months before it alleges it conducted its original surveys. Because the original surveys were reported in the application filed in June, they could not have been conducted in September, and the Commission still does not know when HLG held its consultations. As a consequence, compliance with question and answer 15 of the *Primer* cannot be determined, and an appropriate ascertainment issue will be included.

6. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive primary service, together with the availability of other primary aural services (1 mV/m or greater in the case of FM) in such areas will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Moreover, it appears from the application that the boundaries of Jensen Beach are in dispute, and that Gospel, Beach and HLG would not provide city-grade coverage (3.16 mV/m) to the whole community. An issue will therefore be included to determine the boundaries of the proposed community of license, and to discern which of the applicants would serve that community with a city-grade signal.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Because they are mutually exclusive, they must be designated for hearing in a consolidated proceeding.

9. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine the efforts made by Gospel, Lord and HLG to ascertain the community needs and problems of the proposed service area, in the following respects:

(a) Whether Gospel's random survey of the general public was conducted in compliance with question and answer 11(b) of the *Primer*.

(b) Whether Lord's showing omits consultations with leaders of labor and students, two significant groups in the community.

(c) Whether HLG conducted its surveys in compliance with question and answer 15 of the *Primer*.

2. To determine with respect to Beach:

(a) The source and availability of funds in excess of \$105,250;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is financially qualified to construct and operate as proposed.

3. To determine:

(a) The boundaries of Jensen Beach; and

(b) Whether Gospel, Beach and HLG would provide city-grade coverage (3.16 mV/m) to the entire community as required by Section 73.315(a) of the Commission's Rules, and, if not, whether circumstances exist which warrant a waiver of said Section.

4. To determine which of the proposals would best serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and parties respondent herein, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 1.594 of the Commission's Rules, give notice of the hearing, (either individually or, if feasible and consistent with the Rules, jointly), within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 76-37578 Filed 12-21-76; 8:45 am]

FRAUDULENT BILLING

Licensee's Responsibility to Indicate On Cooperative Ad Invoices That "Bonus" or Rebate Has Been Given to Dealers

DECEMBER 17, 1976.

The Commission's fraudulent billing rule (Section 73.1205) has been in existence since 1965 (*Applicability of the Fraudulent Billing Rule*, 1 FCC 2d 1068), and since that time we have issued several Public Notices which offered interpretations of that rule based upon billing practices currently utilized by the industry. See 1 FCC 2d 1075 (1965); 23 FCC 2d 70 (1970); 56 FCC 2d 371 (1975); 59 FCC 2d 1268 (1976).

It has recently come to the Commission's attention that yet another commercial practice already somewhat established in the industry could, in certain circumstances, violate our fraudulent billing rule. The particular commercial practice involved concerns the sale of "packages" of a fixed number of commercial announcements to be broadcast over an established period of time for a set price which includes a bonus of an all-expense paid vacation. Such a sales "package" can apparently be an effective sales incentive since the entire

"package" is often offered at approximately rate card prices for the type and quantity of commercial announcements purchased. However, licensees utilizing such sales incentives violate the Commission's fraudulent billing rule if they issue invoices to local advertisers that involve cooperatively advertised products and which omit any reference to the bonus received by the local advertiser. In essence, the value of the bonus vacation trip is a form of rebate provided to local advertisers, and the existence of the bonus is often not reflected on invoices the licensee issues for cooperative advertising purposes. Such an invoice violates the fraudulent billing rule since the invoice, by not reflecting the fact that a bonus was provided to the local advertiser, contains false information concerning the amount actually charged by the licensee for the broadcast advertising involved, fails to represent the true nature of the local advertiser's contract with the licensee, and thus deceives or defrauds cooperative manufacturers, jobbers, distributors, or advertising agencies involved.

Since the Commission considers violation of the fraudulent billing rule to be particularly serious, future situations concerning such cooperative advertising contracts or "packages" in which the invoices fail to indicate the existence of the bonus or the nature of the contract between the local advertiser and the licensee, may raise questions as to the licensee's qualifications.

Action by the Commission December 15, 1976. Commissioners Wiley (Chairman), Hooks, Quello, Washburn, Fogarty and White.

Sent to all broadcast licensees.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37574 Filed 12-21-76;8:45 am]

RADIO ASTRONOMY SERVICE WORKING GROUP FOR 1979 ITU-WORLD ADMINISTRATIVE RADIO CONFERENCE

Notice of Meeting

DECEMBER 16, 1976.

A meeting of the Radio Astronomy Service Working Group for the 1979 General World Administrative Radio Conference is scheduled to be held on Monday, January 24, 1977, at 9:30 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 examine and discuss the Third Notice of Inquiry, Docket No. 20271 and formulate a final draft of comments of the Radio Astronomy Service Working Group.

The advisory committee meeting is open to the general public and any written comments will be accepted before or after the meeting.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37575 Filed 12-21-76;8:45 am]

WARC ADVISORY COMMITTEE FOR DOMESTIC LAND MOBILE

Notice of Meeting

The next meeting of the Common Carrier World Administrative Radio Conference Advisory Committee for Domestic Land Mobile will be held on Tuesday, January 11, 1977 at 9:30 a.m. in room 847, 1919 M Street, N.W., Washington, D.C.

The purpose of the meeting will be to discuss and prepare a response to the Commission's Third Notice of Inquiry regarding preparation for the 1979 World Administrative Radio Conference.

The meeting will be open to the public and any member of the public is invited to participate and present oral or written statements of relevance upon recognition by the Chairman.

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37576 Filed 12-21-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[RM-2570; FCC 76-1135]

OVER-THE-COUNTER DRUGS

Television Advertising; Memorandum Opinion and Order Denying Petition for Rulemaking

Adopted: December 8, 1976. Released: December 10, 1976.

By the Commission: Commissioners Hooks and Washburn concurring and issuing statements.

In the matters of petition to promulgate a rule restricting the advertising of over-the-counter drugs on television.

1. The Commission has before it a petition for rulemaking¹ filed on behalf of Francis X. Bellotti, Attorney General of the Commonwealth of Massachusetts (hereinafter "Bellotti"), and thirteen other state Attorneys General. This petition requests that the Commission promulgate the following rule:

There shall be no drug advertising broadcast on television between the hours of 6:00 A.M. and 9:00 P.M. The term "drug" as used in the rule means all substances so defined under the Food, Drug and Cosmetic Act, as amended.

The petition also requests that the Commission hold a hearing on the proposed rule.

2. Petitioners and respondents filing in support of the petition argue that repeated exposure to over-the-counter drug advertisements can be harmful to children. Specifically, they suggest that such exposure to commercials causes (1) the poisoning of children through accidental drug ingestion and (2) the development of a "pop-a-pill" society which often involves the misuse of licit drugs or the illicit use of restricted drugs. Opponents of the petition reject these allegations and argue that there is no

empirical evidence to support the claim of a causal connection between advertising and the misuse or abuse of drugs. These parties further argue that removal of over-the-counter drug advertising from television would be adverse to the public interest since this advertising serves a legitimate and valuable purpose by informing viewers of both the nature of various symptoms and the availability of products to treat those symptoms.

3. In an effort to gather information relevant to the issues raised in this petition, the Federal Communications Commission and the Federal Trade Commission jointly sponsored a series of panel discussions involving leading representatives of the research community as well as other interested parties. Representatives from a variety of disciplines and vocations participated and discussed research findings. The panel participants included specialists in early childhood education and developmental psychology as well as professors of education, social psychology, psychology, psychiatry, pediatric psychiatry, communications, marketing, advertising, and business administration. Also present were research personnel from two of the major networks, a representative from a large proprietary drug manufacturer, directors of two industry self-regulatory organizations, a representative from a research firm involved in a review of scientific literature on the causes of drug abuse, the director of a national consumers' organization, a research director associated with an educational children's television program, the principal officers of two citizens' groups seeking changes in the area of children's television and the petitioner, Francis X. Bellotti. Representatives from the Federal Trade Commission, the Food and Drug Administration, the National Institute of Mental Health, the Consumer Product Safety Commission, the National Science Foundation, and this agency also participated in the discussion.

4. The information and views provided through these panels have been of great value in acquainting the Commission with scientific research pertinent to this petition. Clearly, in the absence of such information, we would be in a poor position to assess the validity of Mr. Bellotti's allegations. We simply do not know, as a matter of intuition or "in-dwelling administrative expertise," whether the hypothesis of a causal connection between advertising and drug abuse or misuse should be accorded any degree of credence or credibility. It would be irresponsible in the extreme for an administrative agency to ban otherwise lawful advertising on the basis of sheer speculation.

5. From the information provided by our panelists and other interested parties, it appears that there is little scientific research which specifically addresses the question of a cause and effect relationship between over-the-counter drug advertising and the accidental ingestion or other misuse of drugs by young

¹ Public Notice of the filing of the petition was issued on July 26, 1975 (Rept. No. 948).

² A list of the participating panelists is found in Appendix A.

children. The National Center for Vital Statistics indicates that, with regard to children under the age of five, deaths resulting from the ingestion of drugs declined from 142 in 1972 to 81 in 1974.² This decline followed the adoption of safety packaging regulations by the Consumer Product Safety Commission. Figures for 1975 and 1976 are not yet available, and we are, therefore, not in a position to determine the minimum level to which these deaths may fall as a result of packaging regulations. In any event, there is no empirical evidence that television advertising has contributed to accidental ingestions, or that reduction in this advertising would result in a reduction in the number of cases involving the poisoning of young children.

6. In contrast to this almost total lack of research concerning advertising and poisonings, there are a number of serious studies which have examined the question of a possible relationship between television advertising and the illicit use of restricted drugs. The first of these studies, conducted by Dr. Richard Jessor of the Institute of Behavioral Science of the University of Colorado, concluded the available evidence indicates that, among adolescents, "involvement with the television is negatively related to involvement with marijuana."³ A year later, in 1974, Dr. James M. Hulbert of Columbia University released a survey of 990 college students which concluded that " * * * television and television advertising of proprietary drugs do not appear to be important influences on drug abuse."⁴ Similar results were reported this year in a study of illicit drug use among teenage boys.⁵ In discussing this report, Dr. J. Ronald Milavsky stated:

" * * * we found that there was no evidence to support the proposition that drug advertising led to illicit drug use; * * * no evidence of a direct link between exposure to proprietary drug advertising and use of illicit drugs. In fact, the relationship between the two was inverse: the greater the

cumulative exposure to drug ads over the three year data collection period, the less the use of illicit drugs."

Dr. Milavsky's conclusions are generally supported by a study of high school seniors conducted by Dr. Lloyd Johnston of the Institute for Social Research at the University of Michigan. Dr. Johnston found that:

" * * * the average number of hours of TV watched per day correlates negatively with the usage rates of each of ten illicit drugs or drug classes. * * * [In addition,] TV viewing and presumably advertising exposure correlates negatively with these young people's use of each of the four classes of over-the-counter drugs."

7. The general thrust of these findings is reinforced by studies filed in connection with our panel discussions. Professor Charles K. Atkin of Michigan State University reported on a survey of fifth, sixth and seventh grade students which found " * * * no evidence that proprietary drug commercials contribute to positive attitudes toward illicit drugs. * * * " A second paper, submitted by Dr. Ronald E. Ostman of Southern Illinois University concluded that " * * * there was no correlation between exposure to television drug ads and use of O-T-C drugs" and in, addition, that "exposure to television and drug commercial announcements has a negligible effect on drug use. * * * " ¹⁰

8. It appears that there is no relevant research supporting Mr. Bellotti's hypothesis that drug advertising is an identifiable and measurable cause of drugs abuse or misuse, or that repeated exposure of children to televised OTC advertisements creates a favorable attitude toward the inappropriate use of drugs by young people. Existing studies suggest that the correlation between exposure to advertising and drug abuse is neutral—or even negative. Some in the research community may choose to pursue this matter further and employ methods of data collection and analysis which differ from those found in the studies we now have. At present, however, there does not appear to be any basis for this agency to conclude that the result of such efforts would differ in any material respect from the results we already have.¹¹

¹ J. Ronald Milavsky, Transcript, pp. 137 and 138.

² Lloyd Johnston, Transcript, p. 129.

³ Letter dated April 15, 1976, from Dr. Charles K. Atkin to Dr. Karen S. Hartenberger, Director, Children's Television Task Force. For entire study see: Charles K. Atkin, "Effects of Television Advertising on Children," Vol. I-VIII, Department of Communication, Michigan State University (East Lansing, 1975), 195 pages plus Figures and Tables.

⁴ Ronald E. Ostman, et al., "Influences Upon Over-the-Counter Drug Use and Public Perception of Non-Prescription Drug Advertising Regulation," School of Journalism, Southern Illinois University (Carbondale: By the author, 1976), pp. 31 and 38.

⁵ For this reason, and because our agency has no particular claim to expertise in the field of behavioral research, we cannot agree with suggestions that we should sponsor further research. In addition, we believe that

9. In the absence of a truly compelling showing to the contrary, we must conclude that the public interest would be served by a free flow of information regarding proprietary drugs. This conclusion is strongly reinforced by the fact that any action we might take with regard to this petition would have to be measured against the standards of the First Amendment and against the prohibition on censorship which is contained in Section 326 of our Act. It is no longer possible to conclude that advertising is outside of the protection of the First Amendment simply because it is "commercial" speech. See *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 44 U.S.L.W. 4686 (U.S. May 24, 1976); *Bigelow v. Virginia*, 421 U.S. 809 (1975). As the Supreme Court has recently stated:

Advertising, however tasteless and excessive it sometimes may seem, is nonetheless dissemination of information as to who is producing and selling what product, for what reason, and at what price. So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, supra, p. 4691.

10. We do not reach the question of whether we would be empowered to adopt the proposed regulations if current research findings supported the hypothesis of a causal connection between advertising and drug abuse. It may well be that such restrictive regulations are beyond the power of this agency regardless of the evidence. The Supreme Court stated that "[i]t is precisely this kind of choice, between the dangers of suppressing information, and dangers of its misuse if it is freely available, that the First Amendment makes for us." Id. at 4692. While the Court has yet to apply this standard to special problems which may exist in the field of broadcasting, we need not resolve such matters in order to observe that, on the basis of the present record, we cannot find that the proposed regulation would serve the public interest.

11. We wish to make it clear, however, that we fully agree with petitioners' position that, in the United States today, drug abuse and misuse are very serious problems warranting a high degree of governmental attention. In this regard, we would like to express our appreciation to Attorney General Bellotti and others who supported his efforts for taking the time to bring about a complete public airing of the issues relating to advertising and the inappropriate use of

research focusing on emotionally and politically charged issues relating to the supposed effects of television on social attitudes and human behavior should best be left to independent organizations which are expert in such matters and which have no direct responsibility for the regulation of the broadcast industry.

² From a statistical point of view, it does not appear that drug ingestion is a major cause of death among children under five. In 1974, 5,335 of the children in this age group (i.e., 0.03% of all children under 5) suffered accidental death. Of these, the vast majority of the deaths were caused by automobile accidents, drowning, fire, suffocation or other factors unrelated to the ingestion of drugs. Only two percent of all accidental deaths among children under five were caused by drug ingestion. National Center for Health Statistics, *Vital Statistics of the U.S.*, Vol. II, Washington, D.C.: U.S. Government Printing Office, 1974.

³ Richard Jessor, "Panel on Televised Over-the-Counter Advertising," May 20-21, 1976, Vol. 1 (Arlington, Va.: National Reporting Co., Inc.) p. 124. [Hereinafter referred to as "Transcript."]

⁴ James Hulbert, "Applying Buyer Behavior Analysis to Social Problems: The Case of Drug Use," *Proceedings of the American Marketing Association*, 1974, p. 289.

⁵ J. Ronald Milavsky, et al., "TV Drug Advertising and Proprietary and Illicit Drug Use Among Teenage Boys," *Public Opinion Quarterly*, Vol. XXXIX, No. 4 (Winter 1975-1976), 457-481.

drugs. While we do not believe that a cause and effect relationship has been demonstrated, we are nevertheless convinced that a thorough debate and discussion of this matter has been informative and helpful. We are hopeful that state and local governmental officials will continue to bring to our attention matters which are of concern and which appear to them to warrant some regulatory action. We also wish to express our gratitude to the panelists, governmental participants, and other experts who took the time to share their views, studies, and information with us.

12. In the present case, of course, we believe that the problems of drug misuse and abuse should more properly be addressed through remedies which are demonstrably relevant to their solution, more likely to be effective, and less likely to infringe upon important values relating to the free flow of information and ideas. In this regard, it should be noted that the Food and Drug Administration is currently examining the safety and efficacy of all OTC drug products, 37 F.R. 85, January 5, 1972, and that the Federal Trade Commission is considering the incorporation of the FDA labeling standards in advertising claims for all OTC products, 40 F.R. 52631, November 11, 1975. At present, the problem of poisonings is being addressed through educational efforts and through regulations of the Consumer Product Safety Commission.¹² The serious problems relating to the use of illicit drugs are, of course, being addressed through comprehensive government programs involving education, rehabilitation, and the enforcement of the criminal laws. It is true that the problems of drug abuse and misuse persist in spite of the existence of these programs, but there is no evidence that the proposed restrictions on drug advertising would bring about any improvement in this situation and such regulations would clearly have negative impact on the availability of information concerning over-the-counter drugs.

13. Accordingly, it is ordered, That the petition is denied and that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION,¹³

VINCENT J. MULLINS,
Secretary.

APPENDIX A—TELEVISED OVER-THE-COUNTER DRUG ADVERTISING PANELS

MODERATORS

Dr. Eli A. Rubinstein, Medical School Health Sciences Center, State University of New York at Stony Brook.

¹² The Consumer Product Safety Commission has required the use of child-resistant packaging on specified medicines and other household products, 16 CFR § 1700 et seq. (1975). In addition to the "safety closures," the aspirin manufacturers voluntarily agreed to limit the quantity of baby aspirin per container to reduce ingestion dangers, 21 CFR § 201.314.

¹³ Joint concurring statement of Commissioners Hooks and Washburn filed as part of the original document.

Dr. Eric Josephson, Center for Sociocultural Research on Drug Use, New York.
Dr. Stephen A. Greyser, Professor, Harvard Business School.

PANELISTS

Dr. F. Earle Barcus,* Professor of Communications, School of Public Communications, Boston University.
Dr. Barbara R. Fowles, Acting Director of Research, The Electric Company, Children's Television Workshop.
Dr. Beatrix Hamburg, National Institute of Mental Health.
Mr. Philip A. Harding, CBS, Inc., Office of Social Research.
Dr. Gerald S. Lesser, Director, Center for Research in Children's Television, Harvard University.
Ms. Mary Ann Lewis, University of California—Los Angeles.
Dr. Chester M. Pierce, Harvard University, College of Education.
Dr. Helen Rodriguez,* Lincoln Medical Center, Department of Pediatrics.
Mr. Henry L. Verhulst, Consultant, Poison Control Program.
Dr. Scott Ward, Graduate School of Business Administration, Harvard University.
Dr. Mariann Pezzella Winick, Associate Professor of Education, Lehman College, CUNY, New York.
Dr. Ira Cisin, George Washington University, Department of Sociology.
Dr. Gerhard J. Hanneman, Director, Center for Communications Policy Research, Annenberg School of Communications, University of Southern California.
Dr. James Hulbert, Columbia University, Graduate School of Business.
Dr. Richard Jessor, Professor, Institute of Behavioral Science, University of Colorado.
Dr. Lloyd Johnston, Survey Research Center, Institute for Social Research, The University of Michigan.
Anthony Kales, M.D.,* Department of Psychiatry, Hershey Medical Center.
Dr. William McGuire, Department of Psychology, Yale University.
Dr. Glen Mellinger, Associate Director, Institute for Research in Social Behavior.
Dr. Ronald Milavsky, Director of Social Research, National Broadcasting Company, Inc., New York.
Dr. Jaime Salazar,* President, Health Research Services and Analysis, Inc., Los Angeles, California.
Dr. Robert H. Sharpley, The Solomon Fuller Institute, Cambridge, Massachusetts.
Honorable Francis X. Bellotti, Attorney General, Commonwealth of Massachusetts.
Mr. Warren Braren, Associate Director, Consumers Union.
Ms. Peggy Charren, President, Action for Children's Television.
Mr. Robert B. Choate, Council on Children, Media and Merchandising.
Mr. George E. Davy, President, Consumer Product Division, Miles Laboratories, Inc.
Ms. Emilie Griffin, Director of Children's Advertising Review, National Advertising Division, Council of Better Business Bureaus, Inc.
Mr. Stockton Helffrich, Director, The Code Authority, National Association of Broadcasters.
Dr. Donald L. Kanter, Professor and Chairman, School of Business Administration, University of Southern California.
Dr. Donald E. Payne, Vice President and Director of Research, Oxtoby-Smith, Inc.

*Unable to attend.

Dr. Ithiel de Sola Pool, Center for International Studies, Massachusetts Institute of Technology.

PARTICIPATING GOVERNMENT AGENCIES

Consumer Product Safety Commission
Federal Communications Commission
Federal Trade Commission
Food and Drug Administration
National Institute of Mental Health
National Science Foundation

[FR Doc. 76-37573 Filed 12-21-76; 8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Notice of Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on December 16, 1976. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FPC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before January 10, 1977, and should be addressed to Mr. John M. Lovelady, Acting Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5216, 425 I Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-376-5425.

FEDERAL POWER COMMISSION

FPC requests an extension no change clearance of Form 15. Total Gas Supply of Natural Gas Pipeline Companies—Annual Report, beyond its current OMB/GAO clearance expiration date of January 31, 1977. Form No. 15 is filed annually by 93 interstate natural gas pipeline companies. The data allows the Commission to determine reserves and deliverability estimates. There are approximately 93 respondents and it is estimated that an average of 1,219 hours will be required per response.

NORMAN F. HEYL,
Regulatory Reports
Review Officer.

[FR Doc. 76-37525 Filed 12-21-76; 8:45 am]

FEDERAL ENERGY ADMINISTRATION

CASES FILED WITH THE OFFICE OF EXCEPTIONS AND APPEALS

Week of December 3 through
December 10, 1976

Notice is hereby given that during the week of December 3 through December 10, 1976, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Federal Energy Administration's Office of Exceptions and Appeals.

Under the FEA's procedural regulations, 10 CFR, Part 205, any person who

will be aggrieved by the FEA action sought in such cases may file with the FEA written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of those regulations, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

MICHAEL F. BUTLER,
General Counsel.

DECEMBER 15, 1976.

APPENDIX.—List of cases received by the Office of Exceptions and Appeals, Dec. 3 to Dec. 10, 1976

Date	Name and location of applicant	Case No.	Type of submission
Dec. 3, 1976	TOSCO Corp. and Lion Oil Co. (If granted: TOSCO Corp. would be granted an exception which would permit it to recalculate the passthrough of increased non-product costs by its subsidiary, Lion Oil Co., on a proportional basis for 1975.)	FEE-3467	Exception to nonproduct cost passthrough.
Dec. 6, 1976	Consumers Power Co., Washington, D.C. (If granted: Consumers Power Co. would earn entitlements with respect to its runs of lease condensate at its SNG plant at Marysville.)	FEA-1063	Appeal of FEA's failure to act.
Do.....	Continental Oil Co., Houston, Tex. (If granted: Continental Oil Co. would receive an extension of the relief granted in FEA's Sept. 28, 1976, decision and order which would permit the firm to increase prices to reflect nonproduct cost increases in excess of \$0.005 per gallon for natural gas liquid products at its Elk City, Medford, and South Hampton processing plants.)	FXE-3472 through FXE-3474	Extension of exception relief in <i>Continental Oil Co.</i> , 4 FEA par. 83,120 (Sept. 28, 1976).
Do.....	Dasher-Harris Gas Co., Jesup, Ga. (If granted: Dasher-Harris Gas Co. would receive an extension of the exception relief which resulted in the assignment of a lower priced supplier of propane to replace the firm's base period supplier, Wanda Petroleum Co.)	FXE-3475	Extension of exception relief in <i>Dasher-Harris Gas Co.</i> , 4 FEA par. — (Oct. 15, 1976).
Do.....	Delta Refining Co., Memphis, Tenn. (If granted: The FEA's Nov. 5, 1976, decision and order would be rescinded and Delta Refining Co. would not be required to purchase entitlements during the period November 1976 through October 1977 to offset the excessive exception relief which it received in 1975.)	FXA-1052	Appeal of decision and order in <i>Beacon Oil Co.</i> , 4 FEA par. — (Nov. 5, 1976).
Do.....	Eagle Oil Co., Columbus, Ohio (If granted: Eagle Oil Co. would receive an extension of the exception relief which resulted in the assignment of a lower priced supplier to replace the firm's base period supplier, Tresler Oil Co.)	FXE-3469	Extension of exception relief in <i>Eagle Oil Co.</i> , 1 FEA par. 20,687 (Oct. 25, 1974).
Do.....	Haynes Oil Co., Russell, Kans. (If granted: Haynes Oil Co. would be permitted, retroactively, to sell crude oil produced from its Mai and Frolich leases at upper tier ceiling prices.)	FEE-3468	Price exception (sec. 212.74).
Do.....	Northwest Propane, Inc., Farmington, Mich. (If granted: Northwest Propane would receive an extension of the exception relief which resulted in the assignment of a lower priced supplier of propane to replace the firm's base period supplier, Petrolane Gas Co.)	FXE-3470	Extension of exception relief in <i>Northwest Propane, Inc.</i> , 4 FEA par. — (Oct. 15, 1976).
Do.....	Sabre Refining, Inc., Bakersfield, Calif. (If granted: Sabre Refining, Inc., would receive an extension of the exception relief from the purchase requirements of 10 CFR 211.67 (old oil entitlements program) granted in FEA's July 16, 1976, decision and order.)	FXE-3471	Extension of exception relief in <i>Sabre Refining, Inc.</i> , 4 FEA par. 83,010 (July 16, 1976).
Do.....	Texaco, Inc., Atlanta, Ga. (If granted: FEA's Nov. 9, 1976, remedial order would be revoked and Texaco, Inc., would not be required to make available to David Morgan d.b.a. Spring Hope Grocery, Spring Hope, N.C. a 4th quarter allocation of 63,188 gallons of propane.)	FRA-1054	Appeal of FEA's Nov. 9 1976 remedial order.
Do.....	Varibus Corp. and Gulf States Utilities Co., Beaumont, Tex. (If granted: FEA's Nov. 8, 1976, decision and order would be rescinded and Varibus would be retroactively relieved of the requirement that the prices which it charged Gulf States for fuel oil sold during the period October 1973 through November 1974 be established in accordance with the Mandatory Petroleum Price Regulations.)	FEX-0102	Supplemental order to <i>Varibus Corp.; Gulf States Utilities Co.</i> , 4 FEA par.—(Nov. 8, 1976).
Do.....	Fuller, James B., Liberty, Tex. (If granted: The FEA's Oct. 15, 1976, decision and order would be rescinded and James B. Fuller would be permitted to sell at upper tier ceiling prices the crude oil produced from the C.V. Collins Lease No. 2 well located in Hardin County, Tex., for the benefit of both the working interest owners and the royalty interest owners.)	FXA-1065	Appeal of decision and order in <i>James B. Fuller</i> , 4 FEA par.—(Oct. 15, 1976).

Date	Name and location of applicant	Case No.	Type of submission
Dec. 7, 1976	Standard Oil Co. (Indiana), Chicago, Ill. (If granted: The Standard Oil Co. (Indiana) would be granted an exception from 10 CFR 212.83 which would permit it to reduce the price of Amoco Super Premium motor gasoline to account for a proposed octane reduction.)	FEE-3476	Price exception (sec. 212.83).
Do.	Standard Oil Co. (Indiana) (Prentice and South Jennings). (If granted: The Standard Oil Co. (Indiana) would be permitted to increase its prices to reflect non-product cost increases in excess of \$0.005 per gallon for natural gas liquid products produced at its Prentice Gasoline Plant and South Jennings Recycling Plant.)	FXE-3477 and FXE-3478	Extension of relief granted in <i>Standard Oil Co. (Indiana)</i> , 4 FEA par. — (Nov. 12, 1976).
Do.	USA Petroleum Corp., Washington, D.C. (If granted: the FEA's Nov. 4, 1976, interpretation would be rescinded and the crude oil processing and product exchange agreement previously in effect between Trans World Oil Corp. and Macmillan Ring-Free Oil Co., Inc., would be reinstated.)	FIA-1064	Appeal of FEA interpretation dated Nov. 4, 1976 (secs. 211.63 and 212.82).
Dec. 8, 1976	Moncrief, W.A., et al., Houston, Tex. (If granted: Crude oil produced from the McElmo Creek Unit, San Juan County, Utah, would be sold at upper tier ceiling prices.)	FEE-5304	Price exception (sec. 212.74).
Do.	National Marine Engineer's Beneficial Association, Washington, D.C. (If granted: FEA's information request denial would be rescinded and the National Marine Engineer's Beneficial Association would receive access to certain documents containing cost and environmental information concerning the early storage reserve program.)	FFA-1069	Appeal of FEA's information request denial.
Do.	Pasco, Inc., Englewood, Colo. (If granted: FEA's Nov. 5, 1976, decision and order would be rescinded and Pasco, Inc., would not be required to purchase entitlements during the period November 1976 through October 1977 to offset the excessive exception relief which it received in 1975.)	FXA-1068	Appeal of FEA's decision and order in <i>Beacon Oil Co., et al.</i> , 4 FEA par. — (Nov. 5, 1976).
Do.	Phillips Petroleum Co., Bartlesville, Okla. (If granted: Phillips Petroleum Co. would be permitted to increase prices to reflect nonproduct cost increases in excess of \$0.005 per gallon for natural gas liquid products produced at the following plants: Andrews, Benedum, Bradley, Canadian, Cimarron, Crane, Douglas, Dumas, Edmond, Gray, Hansford, Henderson, Hobbs, Lee, Lovington, McDamie, North, Okla. Pantex, Puckett, Sooner No. 1, Spraberry, Tinstill, Vermillion, and Winkler.)	FEE-3479 through FEE-3503	Price exception (sec. 212.165).
Do.	Southland Oil Co./VGS Corp., Jackson, Miss. (If granted: FEA's Nov. 5, 1976, decision and order would be rescinded and Southland Oil Co. would not be required to purchase entitlements during the period November 1976 through October 1977 to offset the excessive exception relief which it received in 1975.)	FXA-1066	Appeal of FEA's decision and order in <i>Beacon Oil Co., et al.</i> , 4 FEA par. — (Nov. 5, 1976).
Do.	Warrior Asphalt Co. of Alabama, Inc., Tuscaloosa, Ala. (If granted: FEA's Nov. 5, 1976, decision and order would be rescinded and Warrior Asphalt Co. of Alabama would not be required to purchase entitlements during the period November 1976 through October 1977 to offset the excessive exception relief which it received in 1975.)	FXA-1067	Appeal of FEA's decision and order in <i>Beacon Oil Co., et al.</i> , 4 FEA par. — (Nov. 5, 1976).
Dec. 9, 1976	BTA Oil Producers, Midland, Tex. (If granted: Crude oil produced from the JV-D Teeters No. 1 well located at Hockley County, Tex., would be sold at upper tier ceiling prices.)	FEE-3508	Price exception (sec. 212.74).
Do.	Continental Oil Co., Houston, Tex. (If granted: Continental Oil Co. would be permitted to increase prices to reflect nonproduct cost increases in excess of \$0.005 per gallon for natural gas liquids produced at the firm's Chittum and Edmond processing plants.)	FEE-3505 and FEE-3506	Price exception (sec. 212.165).
Do.	Dorchester Gas Producing Co., Midland, Tex. (If granted: The FEA's Nov. 10, 1976, determination would be rescinded and Dorchester Gas Producing Co. would not be considered a crude oil refiner under the Mandatory Petroleum Price Regulations.)	FEA-1070	Appeal of FEA's Nov. 10, 1976 determination.
Do.	Fletcher Oil & Refining Co., Wilmington, Calif. (If granted: The FEA would review the entitlement exception relief granted to Fletcher Oil & Refining Co. during its 1976 fiscal year in order to determine whether the level of exception relief was appropriate.)	FEX-0104	Supplemental order in <i>Fletcher Oil & Refining Co.</i> , 4 FEA par. — (Nov. 12, 1976).
Do.	H. S. "Gus" Edwards, Abilene, Texas. (If granted: Condensate produced from the Providence Atoka Field would be sold at \$1.00 per barrel above the maximum allowable price established pursuant to the Mandatory Petroleum Price Regulations.)	FEE-3507	Price exception (sec. 212.74).
Do.	Linden's Propane, Inc., Elyria, Ohio. (If granted: Linden's Propane would receive a stay of the requirements of FEA's July 7, 1976 remedial order pending a final determination of its appeal.)	FES-0046	Stay request.
Do.	Maralo, Inc., Round Mountain, Tex. (If granted: The Edgar E. Jones "A" well and the Hays-Albritton Estate "A" wells would be classified as stripper well properties.)	FEE-3509	Price exception (sec. 212.72).
Do.	Minnesota Gas Co., Minneapolis, Minn. (If granted: The FEA's Nov. 24, 1976, remedial order issued to Minnesota Gas Co. would be rescinded.)	FRA-1071 FES-1071	Appeal of FEA's remedial order. Stay request.
Do.	Weir Oil Co., Huntington Beach, Calif. (If granted: Weir Oil Co.'s Fee No. 2 well would be classified as a stripper well property.)	FEE-3510	Price exception (sec. 212.72).

[FR Doc.76-37342 Filed 12-20-76;8:45 am]

STRATEGIC PETROLEUM RESERVE PROGRAM

Availability of Final Programmatic Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C) et seq., the Federal Energy Administration (FEA) has prepared a final programmatic environmental impact statement (EIS) concerning the creation of a system of Strategic Petroleum Reserve. The Reserve is mandated by Part B of Title I, Energy Policy and Conservation Act, 42 U.S.C., Sections 6231-6246. The Reserve will be created for the storage of approximately 500 million barrels of crude oil and/or petroleum products for use in the event of a Presidential finding of severe energy supply interruption or a finding that implementation is required by obligations of the United States under the international energy program.

The final programmatic EIS addresses program-wide environmental impacts; individual site-specific EIS's will be prepared for candidate sites prior to their selection as a part of the Reserve.

The final EIS includes comments received by FEA on the draft EIS for the Strategic Petroleum Reserve Program (DES-76-2) and FEA analyses and responses to these comments.

Single copies of the final EIS for the Strategic Petroleum Reserve Program including the comments received by FEA on the draft EIS may be obtained from the FEA Office of Communications and Public Affairs, Room 3138, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461. Copies of the final EIS and comments received will also be available for public review in the FEA Information Access Reading Room, Room 2107, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Issued in Washington, D.C., December 16, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

[FR Doc.76-37497 Filed 12-17-76;10:03 am]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels	Certificate No.	Owner/operator and vessels	Certificate No.	Owner/operator and vessels
01058---	States Steamship Co.: Nevada.	05607---	Hannah Inland Waterways Corp.: Mary Page Hannah.	11913---	Telfair Pioneer Ltd.: Telfair Pioneer.
01150---	Chevron Transport Corp.: Chevron South America.	05894---	Yutana Barge Lines, Inc.: OB 11.	11930---	Leitch Transport (A Division of Port Weller Dry Docks Ltd.): Canadian Transport, Cape Breton Highlander, St. Lawrence Navigator, St. Lawrence Prospector.
01267---	Agdesidens Rederi A/S Morlands Rederi A/S, Morland Shipping Co. A/S, Morlands Tankrederi A/S: Tromaa.	06877---	Societe Francaise de Transports Maritimes: Limousin.	11951---	I/S Rederiet Erik B. Kromann: Aage Andreassen.
01306---	Shaw Savill & Albion Co., Ltd.: Lindfield.	07580---	Chinese Maritime Transport, Ltd.: Oriental Amiga.	11953---	Viking Asia Inc.: Tropigas Far East.
01343---	Hamburg-Sudamerikanische Dampfschiffahrts-Gesellschaft Egert & Amsinck: Columbus Victoria.	07607---	Takebayashi Kisen Co., Ltd.: Kurushima Maru.	11954---	Deepsea Ventures, Inc.: Deepsea Miner II.
01351---	The Hadley Shipping Co., Ltd.: Cotinga.	08175---	Gunther Schulz Schulaue Schiffahrtskontor: Seeland.	11980---	Partrederiet for T/T Sea Saga: Sea Saga.
01423---	Charente Steamship Co., Ltd.: Astronomer.	08230---	Ed Broussard Marine Service, Inc.: REB 2502, Bridget B.	11984---	Vienna Woods Shipping, Inc.: Vienna Woods.
01466---	Common Bros. (Management) Ltd.: City of Pretoria.	08889---	Companhia Portuguesa De Transportes Maritimos E.P.: Rio Cuanza, Rio Zaire, Rio Zambeze.	11985---	Mobil Overseas Shipping Co.: Mobil Brilliant, Mobil Osprey, Mobil Radiant.
01857---	OHG, I. Fa Bernhard Schulte: Johanna Schulte, Helen Schulte.	09004---	Berman Enterprises Inc.: Peter Frank, Pat Kip.	11986---	Keydrill Co.: Aleutian Key.
01935---	Partnership Between Steamship Co. Svendborg Ltd., and Steamship Co. of 1912, Ltd.: Maersk Blazer, Maersk Beater, Maersk Battler.	09074---	Zuito Shipping Co. Ltd.: Ranko Maru.	11987---	Carigulf, Ltd.: Carigulf Venture.
02041---	Dalmor Przdzielstwo Polowow Dalekomorskich Uslug Rybackich: Regulus.	09137---	Arne Telgens Rederi A/S: Hai Hing.	11991---	Bark Transport Corp.: Svend Maersk.
02090---	Drummond Shipping Co.: World Kindness.	09206---	Societe Navale Chargeurs Delmas-Vieljeux: Emmanuel Delmas.	11993---	Illis Shipping Corp.: Iris.
02092---	Leander Tanker Corp.: Maria Isabella.	09440---	Barge Leasing Corp.: Deepwater.	11994---	Artemis Carriers, Ltd.: Agnes Venture.
02110---	Priam Shipping Co.: Northern Joy.	09478---	Compagnia Siciliana Transporti Mare Co. Si. Mar. S.P.A.: Beta-cruz.	11995---	Athenio Shipping Corp. Ltd.: Aegis Athenio.
02153---	Vale Do Rio Doce Navegacao S.A.: Docecoral.	09902---	Tacamar Panamena S.A.: Tacamar III.	11996---	Kalkata Fisheries Productive Association: Nijuhachi Kalkata Maru.
02198---	Peninsular & Oriental Steam Navigation Co.: Strathduns, Strathdyce.	10577---	Tokai Shipping Co., Ltd.: Fresh Ocean.	11997---	Neobulk Carriers Ltd.: Hemlock, Holly.
02603---	Empresa Hondurena de Vapores, S.A.: Orica.	10684---	Northern Star Shipping Co. Ltd.: Carnellian I.	11998---	Pearl Maritime Ltd.: North Sea.
02676---	Lauter Elbe Reederei GMBH: Sevetal.	10931---	Hansung Shipping Co., Ltd.: Blue Kobe, Blue Shimonoseki.	11999---	Companhia Maritima Nacional: Rosa Maria, Rica, Heysa, Edith, Regina Cell, Semiramis.
02836---	The Scindia Steam Navigation Co., Ltd.: Jalavihar.	11005---	Reederei E. Jacob K.G.: Vigrassford.	12001---	Compania Sydenam S.A.: Dapo Wave.
02864---	Empresa Nacional Del Petroleo S.A.: Calatrava.	11065---	D & M Shipping Co. S.A.: Glory Pioneer, Glory Reliance.	12002---	Irina Shipping Corp.: Tulip B.
02956---	Ashland Oil, Inc.: City of Memphis, City of Pittsburgh, City of Louisville, E-2121, LRL-111, RV-53, Tenneco 160, Tenneco 161.	11094---	Compagnie de Navigation Mixte: Pagnol, Raimu.	12003---	Anangel Honour Com. Nav. S.A.: Anangel Honour.
03055---	Upper Lakes Shipping Ltd.: Canadian Olympic.	11095---	Dong-A General Industrial Co., Ltd.: No. 501 Haeng Bok, No. 506 Haeng Bok.	12005---	Cleveland Compania Maritima S.A.: Panama: Sao Paulo.
03216---	Salenrederierna AB: Celtic Wasa.	11272---	Corriente Navegacion Panama, S.A.: Pacific Reefer.	12008---	Noronha Shipping S.A. Panama: Star Supreme.
03321---	Marunouchi Kisen Kabushiki Kaisha: Florida Maru.	11277---	Caribe Tugboat Corp.: St. Kitts.	12012---	Kumai: Jyuhachi Kaikata Maru, Hachi Kaikata Maru, Hachifuyu Kaikata Maru.
03436---	Iino Kaifu K.K.: Shoho Maru No. 2.	11614---	Chung Kai Ship Management Co., Ltd.: Vesta, Valeria.	12013---	Cyulchi Kanazawa: Shoun Maru No. 11.
03458---	Matsuoka Kisen Kabushiki Kaisha: Takagisan Maru.	11663---	United Transporter, Inc.: Eagle Transporter.	12014---	K/S A/S Scorpio & Co.: Morgedal.
03492---	Sawayama Kisen K.K.: Fuohsan Maru.	11667---	Ingram Transportation Co.: IB 2007 L, IB 2008 T, IB 2304 B, IB 1104 B, IB 2009 L, IB 2010 T, IB 2305 B, IB 1105 B.	12015---	Wistaria Shipping Co. Pte., Ltd.: Wistaria Coral.
03727---	Continental Oil Co.: UM-901.	11697---	Continental Capital Corp., Ltd.: Wild Catter.	12016---	Titan Shipping Co., Ltd.: Titan.
04037---	C. F. Bean Corp.: Barge No. 617.	11714---	Global Transport Organisation: 420, Barge Cordova, Barge PS 204.	12017---	Silver Navigation S.A.: Silver Peak.
04081---	Jugoslavenska Oceanska Plovidba Kotor: Sutjeska.	11716---	Nueva Sevilla Compania Naviera, S.A.: Lamyra.	12019---	Partrederiet Atlantic Coast: Atlantic Coast.
04114---	Italcargo Societa di Navigazione S.P.A.: Oscar Sinigaglia.	11751---	Tanjong Shipping Inc.: Belem.	12020---	Ever Mercy Line, S.A.: Ever Mercy.
04170---	Dillingham Corp.: Cee Bec 24.	11772---	Atlas Marine Co.: American Heritage.	12022---	Fidelity Ocean Navigation, Ltd.: Ocean Victory.
04356---	Pacific Far East Line, Inc.: Gulf Bear.	11787---	Inlet Marine, Inc.: S.T. 21.	12023---	Kokusai Shipping K.K.: Sanko Maru.
04623---	Seaspan International, Ltd.: Seaspan 250.	11792---	Prometheus Maritime Corp.: Rea, Antaios, Dias, Hydrohos, Leon, Krios, Tauros, Toxotis, Triton, Venthiaikimi, Didymi, Zygos, Scorpios, Ithitis.	12024---	Venezolana De Buques-Venebues, C.A.: Thais, Chiqui.
04793---	Snam S.P.A.: Agip Marche.	11804---	Beker Industries Corp.: Beker 101, Beker 102, Beker 103, Beker 104.	12031---	Navisud S.P.A.: Ninfia.
04834---	Tidewater Barge Lines, Inc.: 2.	11805---	Atlantic-Rhederei F. & W. Joch: Dakota, Mandan.	12032---	Golden City Maritime Corp., S.A.: Nantao.
05180---	Navigazione Arenella: Punta Verde.	11825---	Lineas Maritimas De Guatemala, S.A.: Lago Isabel.	12033---	Brilliance Steamship Corp., S.A.: Nankuo.
05549---	Polska Zegluga Morska: Belchatow, Huta Katowice, Huta Lenina, Pieniny 2, Zaglebie Starkowe.	11859---	Aegean Sunbeam Inc.: Rio De Janeiro.	12034---	Interessentskapet Bantry: Bantry.
05579---	Black Sea Shipping Co.: Grusya, Belorussiya, Azerbaydzan.	11868---	Olympia Maritime Enterprises S.A.: Adeljotis.	12035---	Valcos Shipping and Investment Co., S.A.: Panama: Kriti.
		11885---	I/S Foldstar: Foldstar.	12037---	Nantucket Shipping Co. Ltd., Liberia: Venus.
		11890---	Levant Clippers Navigation, Inc.: Levant Clipper.	12038---	Pancaribe, Inc.: Pancaribe.
				12042---	Incandesce Carriers, Inc.: First Venture.
				12043---	Elegance Carriers, Inc.: Ocean Venture.

Certificate No.	Owner/operator and vessels
12045---	Guardian Tankers Corp.: <i>Andros Georgios</i> .
12046---	Efmar Compania Naviera S.A.: <i>Marigoula</i> .
12049---	Meteor Reederei & Schiffahrts GMBH KG: <i>Meteor I</i> .
12050---	Rederij Spray M.S. Frisian: <i>Frisian</i> .
12051---	Asahi Gyogyo Kabushiki Kaisha: <i>Asahi Maru No. 11</i> .
12052---	Divine Valley Tankers Inc.: <i>Divine Valley</i> .
12053---	Zenuemon Watanabe: <i>Kyowa Maru No. 23</i> .
12054---	Grandview Bulk Carriers, Corp.: <i>S.A.: Mentina Alice</i> .
12057---	Sea Pearl Navigation Enterprises Corp.: <i>Pelopidas</i> .

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-37594 Filed 12-21-76;8:45 am]

FINANCIAL RESPONSIBILITY TO MEET LIABILITY INCURRED FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS ON VOYAGES

Issuance of Casualty Certificate

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Monarch Cruise Lines, Inc., 1428 Brickell Avenue, Miami, Florida 33131.

Date: December 17, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-37595 Filed 12-21-76;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 2565]

AMERICAN THREAD CO.

Notice of Application for Withdrawal of Application for Minor License

DECEMBER 15, 1976.

Public notice is hereby given that an application was filed on April 13, 1972, under the Federal Power Act, 16 U.S.C. §§ 791a-825r, by the American Thread Company (Correspondence to: Mr. Harold E. Williams, Vice President, The American Thread Company, 90 Park Avenue, New York, New York 10016) for Commission approval to withdraw its application for minor license for the American Thread Project FPC No. 2565. The constructed project is located on the Willimantic River in the City of Willimantic, Windham County, Connecticut.

Project No. 2565 consists of four developments: Projects No. 1, 2, and 3, and Dam No. 1;

Project No. 1 development consists of:

(1) a quarry stone dam (Spool Shop) about 13 feet high and 275 feet long with a spillway about 188.5 feet long and a section 86.5 feet long containing flood and control gates;

(2) a reservoir at elevation 207.4 feet having a surface area of about 2.6 acres;

(3) a canal whose entry section converges from 48 feet wide to 24 feet wide in a length of 92 feet, thence continues 24 feet wide for 440 feet;

(4) a steel penstock about 299 feet long whose diameter varies from 14 to 12.5 feet; and

(5) a corner of No. 1 mill basement which houses a double 48-inch runner turbine connected to a 630 kw generator.

No. 1 dam development consists of:

(1) a quarry stone dam 11 feet high and about 125 feet long with a spillway 114.5 feet long and flood gate section 10.5 feet long; and

(2) a reservoir at elevation 194.1 feet having a surface area of about 2.22 acres;

Project No. 2 development consists of:

(1) a quarry stone dam about 22 feet high and 318 feet long with a spillway 250.25 feet long and a control gate section 68 feet long;

(2) a reservoir at elevation 182.5 feet having a surface area of about 3.4 acres; and

(3) No. 2 mill which houses two horizontal turbines driving a 500 kw generator.

Project No. 3 consists of:

(1) a stone, oak-timbered and concrete-faced overflow dam 5.67 feet high and about 236.7 feet long;

(2) a reservoir at elevation 158.2 feet having a surface area of about 3.87 acres;

(3) a canal 25 feet wide and 525 feet long leading to trash racks, thence into a circular steel flume 12 feet in diameter and about 43.8 feet long;

(4) a concrete and brick powerhouse one story high and 33.5 x 22.75 feet housing a vertical turbine direct-connected to a 400 kw generator; and

(5) a transmission line about 1,154 feet long to No. 4 Mill.

Approval of the application would allow American Thread (Applicant) to withdraw its application for minor license. Applicant states that the dams were built between 1820 and 1850 and two water wheels were installed in 1870. The third waterwheel was installed in 1925. In 1969 the Applicant ceased operation of the project waterwheels, concluding that it could more economically obtain power through purchase from a public utility in addition to power derived from its own steam turbine generator. If the application is granted, Applicant states that the project generators may be sold but the water wheels will remain in place. The dams will be maintained by the Applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 29, 1977, file with the Federal Power Commission, 825 North Capitol St. NE., Washington, D.C. 20426, a petition to intervene or a protest in accordance with requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or § 1.10 (1975). 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 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.76-37524 Filed 12-21-76;8:45 am]

[Power No. 2452]

CONSUMERS POWER CO.

Notice of Filing of Application for Approval of Easement Over Project Lands

DECEMBER 15, 1976.

Public notice is hereby given that Consumers Power Company (Licensee) on September 7, 1976, filed an application for approval of an easement over lands included in Project No. 2452, Hardy Plant. Licensee states that the purpose of the easement is to enable the Board of County Road Commissioners of Mecosta County, Michigan, to reconstruct the Davis Bridge over the Muskegon River and to widen the highway approaches at either end of the bridge. (Correspondence to: Mr. A. H. Aymond, Chairman of the Board, Consumers Power Company, 212 West Michigan Ave., Jackson, Michigan 49201). The project is located in Mecosta and Newaygo Counties, Michigan and on the Muskegon River.

Licensee states that the increased traffic has rendered the existing single-lane two-ton limitation, Davis Bridge obsolete. Licensee seeks to grant a 38-foot easement to the Mecosta County Road Commission, so that it may widen the bridge to two lanes and upgrade it for present traffic conditions. The Road Commission would widen the approaches to both ends of the bridge, and would grade the slopes on either side of the road. The proposed reconstruction would allow all lawful vehicle loads to use the Davis Bridge.

Licensee has requested the shortened procedure provided for under Section 1.32 (b) of the Commission's Rules of Practice and Procedure, 18 CFR § 1.32(b) (1976).

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before January 22, 1977. 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.

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 CFR § 1.32(b)), as amended by Order No. 518, a hearing may be held without further notice 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. If an issue of substance is so raised, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it

will not be necessary for Applicant to appear or be represented at the hearing before the Commission.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37523 Filed 12-21-76;8:45 am]

[Docket No. CS77-131, et al.]

"SMALL PRODUCER" CERTIFICATES

Notice of Applications

DECEMBER 15, 1976.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before January 10, 1977, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS77-131..	Dec. 1, 1976	Roger C. Chapman, 2406 Niels Esperson Bldg., Houston, Tex. 77002.
CS77-132.....	do.....	Eugene R. Maple, 107 North Stout St., Harrisville, W. Va. 26362.
CS77-133..	Nov. 30, 1976	Terra Aux Boeuf program, Box 1341, Corpus Christi, Tex. 78403.
CS77-134..	Dec. 1, 1976	Yost & Yost, Inc., Route 2, Fairview, W. Va. 26570.
CS77-135..	Dec. 2, 1976	John C. Loper, 1710 Ordway Bldg., 2150 Valdez St., Oakland, Calif. 94612.
CS77-136.....	do.....	Charles B. Sullivan, One Main St., Wilton, N.H. 03086.
CS77-137.....	do.....	Marela Lee Schneider, 301 Cameron Bldg., Oklahoma City, Okla. 73106.
CS77-138.....	do.....	George Hix, Route No. 5, Box 21, Cameroon, W. Va. 26033.
CS77-139.....	do.....	Cedar Creek Oil & Gas Co., 7A Third St. NE., Fairbault, Minn. 55021.
CS77-140..	Dec. 3, 1976	Western Avenue Properties, 8100 Electric Ave., Stanton, Calif. 90680.
CS77-141.....	do.....	Harry Haddox, Route 1, Box 55, Harrisville, W. Va. 26362.
CS77-142.....	do.....	Sierra Exploration Co., 900 Northeast Loop 410, San Antonio, Tex. 78209.
CS77-143..	Dec. 6, 1976	Robert C. Becherer, 750 Sheridan Rd., Winnetka, Ill. 60093.
CS77-144.....	do.....	J. Marcus Hardin, 2150 Valdez St., suite 1710, Oakland, Calif. 94612.
CS77-145.....	do.....	Ward L. Quail, suite 370 O'Hara Plaza, 5725 East River Rd., Chicago, Ill. 60631.
CS77-146.....	do.....	E. M. Buttner, Scott-Buttner Corp., 896 Isabella St., Oakland, Calif. 94607.
CS77-147.....	do.....	Reeves Lewenthal, et al., 2100 South Ocean Lane, Fort Lauderdale, Fla. 33316.
CS77-148.....	do.....	Coffman and Morris Oil & Gas Co., P.O. Box 4, Glenville, W. Va. 26351.
CS77-149.....	do.....	Thomas E. Collins, Box 116, West Union, W. Va. 26456.
CS77-150.....	do.....	Reeves Lewenthal, et al., 2100 South Ocean Lane, Fort Lauderdale, Fla. 33316.
CS77-151.....	do.....	Stonestreet Lands Co., P.O. Box 350, Spencer, W. Va. 26276.
CS77-152.....	do.....	Frank M. Brooks, 125 North Market St., suite 1735, Wichita, Kans. 67202.
CS77-153.....	do.....	Morris and Perrill, P.O. Box 4, Glenville, W. Va. 26351.
CS77-154.....	do.....	I. L. Morris, P.O. Box 4, Glenville, W. Va. 26351.
CS77-155.....	do.....	Waco Oil & Gas Co., Inc., P.O. Box 4, Glenville, W. Va. 26351.
CS77-156.....	do.....	Edward J. Dunnean, P.O. Box 2840, Midland, Tex. 79701.
CS77-157.....	do.....	W. Mason Isminger, Rural Delivery No. 1, Orchard Dr., Moundsville, W. Va. 26041.
CS77-158.....	do.....	Sparco Producing, Inc., 507 North Marienfeld, suite 208, Midland, Tex. 79701.
CS77-159.....	do.....	Knapp Oil & Gas, 147 Fairview Dr., New Martinsville, W. Va. 26155.
CS77-160.....	do.....	R. & S. Gas Co., Route 4, Box 36-13, Weston, W. Va. 26452.
CS77-161..	Dec. 2, 1976	George Davis, 717 Union Trust Bldg., Parkersburg, W. Va. 26101.
CS77-162..	Dec. 7, 1976	Zinn Petroleum Co. (Operator), et al., 1100 Milam Bldg., suite 2950, Houston, Tex. 77002.
CS77-163..	Dec. 8, 1976	D. L. Dorland, Inc., P.O. Box 2127, Andrews, Tex. 79714.

¹ Zinn Petroleum Co. is the operating name for Robert L. Zinn, acting as trustee for the beneficiaries.

[FR Doc.76-37522 Filed 12-21-76;8:45 am]

[Docket No. CI64-26]

GULF OIL CORP.

Filing of Computation of Refunds

DECEMBER 17, 1976.

Take notice that on December 15, 1976, Gulf Oil Corporation (Gulf), P.O. Box 3725, Houston, Texas filed a computation of refunds required by Ordering Paragraph (B) of Opinion No. 780 in the above-captioned docket.

Schedule (A) of their computation reflects calculations of refunds and interest pursuant to the Commission's formula stated in Opinion No. 780, mimeo at 10 for the period August 1, 1971 through October 31, 1976. Although Ordering Paragraph (B) of Opinion No. 780 requested the data from November 1, 1964 to December 1, 1976, the applicable area rate did not exceed the contract rate until August 1, 1971 and the data necessary to calculate refunds for November, 1976, is not yet available.

Gulf submitted two additional schedules (B and C) computing refunds based upon adjusted deliveries that they claim would have been made had the Department of Interior held regular offshore Louisiana lease sales from 1962 to 1972, which Gulf maintains is force majeure under the terms of its 1964 contract. Gulf claims that had the lease sales been resumed prior to 1972 and if Gulf had been able to purchase the same tracts that it acquired between 1972 and 1976, there would be no contract deficiency. Schedules (B) and (C) respectively reflect adjusted volumes that Gulf submits would have been delivered to Texas Eastern if Federal Offshore Louisiana sales had resumed one year and four years earlier. Deliveries to Texas Eastern Transmission Corporation (TETCO) and the resultant computation of refunds, Gulf avers, would be as shown on those schedules. Both schedule (B) and schedule (C) are also predicated upon the 13 month moratorium upon offshore lease sales imposed by the United States Geological Survey due to the oil spill in the Santa Barbara, California Channel. This moratorium, Gulf believes, delayed the offshore Louisiana November 19, 1968 lease sale until December 16, 1969 thereby delaying for one year the commencement of general offshore lease sales. Gulf holds that the absence of such sales is a major factor affecting Gulf's efforts to maintain deliverability to Texas Eastern.

Any interested party who wishes to comment on Gulf's report should file with the Federal Power Commission, Washington, D.C. 20426, written comments on or before December 29, 1976 pursuant to § 1.14 of the Commission Rules of Practice and Procedure (18 CFR 1.14) in order that the Commission may consider this matter as expeditiously as possible.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37625 Filed 12-20-76;10:41 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health
Administration

MINORITY ADVISORY COMMITTEE, ADAMHA

Notice of Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of January 1977:

MINORITY ADVISORY COMMITTEE, ADAMHA

January 12-14—Open Meeting.

January 12, 1:00 p.m., Conference Room 14-105, Parklawn Building; January 13, 9:00 a.m., Conference Room 17-09B, Parklawn Building; January 14, 9:00 a.m., Conference Room 14-105, Parklawn Building; 5600 Fishers Lane, Rockville, Maryland 20857

Contact Ernest F. Hurst, Room 13C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3838

Purpose: The Minority Advisory Committee, ADAMHA, advises the Secretary, Department of Health, Education, and Welfare, and the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, on needs, programs, and activities regarding minority alcohol, drug abuse, and mental health matters, and makes recommendations for possible solutions which meet the needs and concerns of minority groups throughout the United States. The Committee functions in an advisory capacity to the Administrator, ADAMHA, on these matters which relate to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health.

Agenda: This meeting will be open to the public. Agenda items include reports by committee members on follow-up to prior regional meetings and agency visits, reports by members on liaison activities with ADAMHA Institutes and with national organizations, a discussion of accreditation/certification issues, and a planning session. Agenda items are subject to change as priorities dictate.

Substantive program information may be obtained from the contact person listed above.

Mr. James C. Helsing, Deputy Director, Office of Public Affairs, ADAMHA, will furnish, on request, summaries of the meeting and a roster of the committee members. Mr. Helsing is located in Room 16-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, 301-443-3783.

Dated: December 16, 1976.

CAROLYN T. EVANS,
Committee Management Officer,
Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc.76-37498 Filed 12-21-76;8:45 am]

Office of Education COLLEGE LIBRARY RESOURCES PROGRAM

Notice of Closing Date for Receipt of Applications for Fiscal Year 1977

Notice is hereby given that according to the authority contained in Part A of Title II of the Higher Education Act of 1965 (20 U.S.C. 1021-1028) to assist institutions of higher education in the acquisition of library materials, applications for Basic grants are being accepted from institutions of higher education, combinations of such institutions, and other public and private nonprofit library agencies whose primary function is to provide library and information services to institutions of higher education on a formal cooperative basis. Processing of these applications will be subject to the availability of funds. Applications must be received by the U.S. Office of Education Application Control Center on or before February 28, 1976.

A. Applications sent by mail. An application sent by mail should be addressed as follows: U.S. Office of Education, Application Control Center, Grants and Procurement Management Division, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Attention: 13.406. An application sent by mail will be considered to be received on time by the Application Control Center if:

(1) The application was sent by registered or certified mail not later than February 23, 1976 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or
(2) The application is received on or before the closing date by either the Department of Health, Education, and Welfare, or the U.S. Office of Education mail rooms in Washington, D.C. In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail rooms or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare, or the U.S. Office of Education.

B. Hand delivered applications. An application to be hand delivered must be taken to the U.S. Office of Education Application Control Center, Room 5673, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. Hand delivered applications will be accepted daily between the hours of 8:00 a.m. and 4:00 p.m. Washington, D.C. time except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after 4:00 p.m. on the closing date.

C. Application instructions and forms. Instructions and application forms will be sent to all institutions which have participated in the program in the last fiscal year. Other institutions desiring to participate may obtain instructions and application forms from the Division of Library Programs, Office of Libraries and Learning Resources, Bureau of Elementary and Secondary Education, U.S. Office of Education, Regional Office Building Three, 7th and D Streets, S.W., Washington, D.C. 20202, Attention: 13.406.

D. Program information. Basic grants, equal to the amount expended by each applicant during the fiscal year the grant is awarded, not to exceed \$5,000, are made to eligible applicants under the College Library Resources Program. There are no funding criteria as such. It is anticipated that the total amount of the awards for the Basic grant category specified in 45 CFR 131 will be \$9,975,000. It is also expected that approximately 2,500 awards will be made in this category and that the average amount per award will be approximately \$3,900. All of these will be new awards; no funds are reserved for continuation awards. Grant funds must be expended within the fiscal year (October 1, 1977-September 30, 1978) following the fiscal year of the grant award (October 1, 1976-September 30, 1977). In light of the number of Basic grant applications expected, it is anticipated that grant funds will not be available in Fiscal Year 1977 for supplemental and Special Purpose grants which are also specified in 45 CFR 131.

E. Applicable regulations. The regulations applicable to the College Library Resources Program are:

(1) The Office of Education's General Provisions Regulations which were published in the FEDERAL REGISTER on November 6, 1973, as amended (45 CFR Parts 100, 100a, and appendices).

(2) The regulation for the College Library Resources Program which was published in the FEDERAL REGISTER on November 18, 1974 (45 CFR 131).

(20 U.S.C. 1021-1028.)

(Catalog of Federal Domestic Assistance Number 13.406; College Library Resources Program.)

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-37581 Filed 12-21-76;8:45 am]

NATIONAL ADVISORY COMMITTEE ON THE HANDICAPPED

Public Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the next meeting of the National Advisory Committee on the Handicapped will be held on January 17-19, 1977, 8:15 a.m.-4:30 p.m. at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia.

The National Advisory Committee on the Handicapped is established under (20 U.S.C. 1233g) Section 448(b) of the General Education Provisions Act. The Committee is established to review the administration and operation of programs for the handicapped in the Office of Education, and make recommendations for their improvement.

The meeting of the Committee will be open to the public. The proposed agenda includes a tour of the Model Secondary School for the Deaf on the morning of January 17, discussions of the Committee's 1977 annual report, discussions of the Committee's functions and

purposes, and a report by the Director of the Bureau of Education for the Handicapped on the status of the Committee's recommendations for 1976. Records will be kept of all Committee proceedings and will be available for public inspection at the Office of the Deputy Commissioner, Bureau of Education for the Handicapped located in Room 2100, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. 20202.

Signed at Washington, D.C. on December 17, 1976.

LEROY V. GOODMAN,
Executive Secretary, National
Advisory Committee on the
Handicapped.

[FR Doc. 76-37555 Filed 12-21-76; 8:45 am]

NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Notice of Meeting

Notice is hereby given, pursuant to P.L. 92-463, that the National Advisory Council on Vocational Education will hold a meeting open to the public on January 13, 1976, from 9:00 a.m. to 12:00 noon, local time, on January 14, 1976, from 9:00 a.m. to 12:00 noon, local time, at the Hyatt Regency Hotel, Washington, D.C.

On January 13, 1976 from 1:30 p.m. to 5:00 p.m., local time, the National Advisory Council on Vocational Education meeting will be closed to the public. This portion of the meeting will be closed to the public in accordance with the provisions of Section 10(d), Federal Advisory Committee Act, P.L. 463 and Title V, U.S. Code, Section 552(d)(2). The purpose of the closed meeting is to discuss internal personnel, rules and procedures, and documents may be presented which, if open to the public would constitute a clearly unwarranted invasion of personal privacy.

The National Advisory Council on Vocational Education is established under Section 104 of the Vocational Education Amendments of 1968 (20 U.S.C. 1244). The Council is directed to advise the Commissioner of Education concerning the administration of, preparation of general regulations for, and operation of vocational education programs, supported with assistance under the act; review the administration and operation of vocational education programs under the act, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations to the Secretary of HEW for transmittal to the Congress, and conduct independent evaluation of programs carried out under the act and publish and distribute the results thereof.

The agenda shall include:

JANUARY 13, 1976

AM: Report of the Chairperson and Executive Director; Report from the U.S. Office of Education; Task Force Reports.

PM: Closed Session.

JANUARY 14, 1976

Budget Report; Discussion of Council Procedures.

Records of the meeting proceedings shall be kept and made available for public inspection at the Office of the Council's Executive Director, located in Suite 412, 425-13th Street, NW., Washington, D.C. 20004.

Signed at Washington, D.C., on December 14, 1976.

REGINALD PETTY,
Executive Director.

[FR Doc. 76-37495 Filed 12-21-76; 8:45 am]

POSTSECONDARY EDUCATION AMENDMENTS OF 1976

Intent to Issue Regulations: Corrections

The Notice of Intent to Issue Regulations for Postsecondary Education programs was published in the FEDERAL REGISTER, Vol. 41, No. 230 on page 52410, Monday, November 29, 1976. The following corrections are being made in the Notice of Intent.

1. On page 52410 in the chart, "Provisions in the Education Amendments of 1976 covered by this notice include," the following should be inserted after "Section 162(i)—Reconstruction and Renovation—Division of Training and Facilities":

171 (a) and (b) Graduate Programs—Division of Training and Facilities

2. On page 52410, in the Instructions for Comments, the following should be added to the list of programs and program contact persons:

Special Services for Disadvantaged Students:
Mr. David D. Johnson, Room 4662, Regional, Office Building 3, Telephone 202-245-9423.
Graduate Programs: Mr. Richard J. Rowe, Room 3053, Regional, Office Building 3, Telephone 202-245-2715.

3. On page 52412 under "A. Administrative Procedures and Technical Changes for the Basic Grants Program," paragraphs (6), (7), and (8) are corrected to read as follows:

(6) How may procedures governing the calculation and payment of awards for students enrolled in programs of study by correspondence be improved?

(7) How may procedures designed to verify institutional certification of student enrollment, enrollment status, etc., be strengthened for institutions which do not act as disbursement agents for Basic Grant funds?

(8) How can funding and reporting procedures for institutions who lose eligibility for program participation or who change ownership be strengthened to protect Federal and student interests? In this context, what liabilities and responsibilities should be assumed by the institution and current or previous owners for Federal funds advanced to the institution?

4. On page 52413 under "C. Family Contribution Schedules," the first sentence of the fourth paragraph is corrected to read as follows:

In addition, the Commissioner proposed a provision to exclude any funds or property received by Indians or Native

American students as a result of judgment claims in the determination of the Family Contribution for those students.

5. On page 52415, the heading "D. Personal Training Authority (Section 124 (c))" is revised to read as follows:

D. Personnel Training Authority (Section 124(c)).

6. On page 52417 under "Criteria for Recognition of National Accrediting Agencies and State Approval Agencies (Section 133(a))" paragraph (B) in the second column should be revised to read as follows:

(B) Criteria for Recognition of State Agencies for the Approval of Public Postsecondary Vocational Education:

7. On page 52417 under the heading "Eligibility and Agency Evaluation," the first sentence in the second paragraph should be revised to read as follows:

A. Fiscal Audit of Eligible Institutions; Standards of Financial Responsibility and Institutional Capability. * * *

8. On page 52418, immediately before the heading, "Community Colleges (Section 176-178)," the following section should be inserted:

GRADUATE PROGRAMS

(Section 171 (a) and (b))

Title IX, Part A, of the Higher Education Act of 1965, as amended, provides for grants to institutions of higher education to strengthen, improve and expand graduate and professional programs. Part B provides for graduate fellowships for careers in postsecondary education. Fellowships are awarded to qualified students nominated by institutions which have approved programs. The fellowships provide a stipend for the student and an educational allowance for the institution.

The Education Amendments of 1976 make several changes in these programs. Applications for grants under Part A must provide assurances that the appropriate State Commission has been given the opportunity to make recommendations on the application. The scope of the authorized activities is expanded to include grants for the development of proposed graduate and professional programs and for needed innovation in existing programs.

Under Part B, the program is expanded to provide fellowships for graduate and professional study in career fields of importance to the national interest, as determined by the Commissioner. The Commissioner may award fellowships only for studies leading to a doctor of philosophy, doctor of arts, or equivalent degree. In making awards the Commissioner must take into account several factors, including the need for highly trained individuals in career fields of high national priority and the need to prepare a larger number of individuals from minority groups.

Before developing regulations to implement these changes the Commissioner seeks public comment on the issues listed below and on any other issues that may be raised by the amendments relative to implementation of these programs. (Written comments on these issues

should be submitted by January 1977 in order to receive full consideration.)

(1) How shall the Commissioner implement Sec. 902(b)(2) of the Higher Education Act of 1965, as amended, which requires assurances that the State Commission will have an opportunity to comment on an application for a grant?

(2) How shall the Commissioner assure that an application gives consideration to the degree to which a program will be consistent with State, regional, or national priorities, as required by Sec. 902(c)?

(3) How shall the Commissioner implement Sec. 903(b)(6) and (7), which authorize grants for development of proposed graduate and professional programs and for innovation in existing programs?

(4) Sec. 923 requires that fellowships be awarded to individuals who are enrolled in a course of study leading to a degree of doctor of philosophy, doctor of arts, or equivalent degree. How should the Commissioner define such "equivalent degree" programs in professional fields of study?

(5) Sec. 923(a) authorizes the Commissioner to award fellowships "on such basis as he may determine," provided the recipients are enrolled in degree programs approved by him. In awarding such fellowships, should the Commissioner:

(a) Allocate fellowships to institutions with approved programs, which will nominate qualified candidates to the Commissioner;

(b) Conduct a national competition for students who may use their fellowships to study at an institution having approved programs; or

(c) Use some other approach?

(6) Sec. 923(b)(1) requires the Commissioner to take into account present and projected needs for highly trained individuals in all areas of education beyond the high school. How may the Commissioner best determine these present and projected personnel needs?

(7) Sec. 923(b)(2) requires the Commissioner to take into account present and projected needs for highly trained individuals in other than academic career fields of high national priority. How may the Commissioner best determine these present and projected needs?

(8) Sec. 923(b)(3) requires the Commissioner to consider the need to prepare a larger number of individuals from minority groups, especially from among groups who have been traditionally underrepresented in colleges and universities, with the provision that no institution shall be required to grant them preference or disparate treatment in the award of fellowships. This raises several issues:

(a) How are these minority groups to be defined?

(b) How may the Commissioner best administer this requirement?

(9) Sec. 924(a) requires the Commissioner to pay to fellowship recipients stipends (including such allowances for subsistence and other expenses for such

persons and their dependents) that he determines to be consistent with prevailing practices under comparable Federally-supported programs. Which other Federal programs should be examined to determine comparable rates?

(10) Sec. 924(b) requires the Commissioner to pay to the institution of higher education at which a fellowship recipient is studying an educational allowance consistent with prevailing practices under comparable Federally-supported programs. The Federal payment is to be reduced by any tuition or other required fees charged to the fellowship recipient. What other Federal programs should be examined to determine comparable rates?

9. On page 52425 (Appendix A) immediately before the heading, "Part—I Community Colleges and State Postsecondary Planning," the following should be inserted:

PART H. GRADUATE PROGRAMS

EXTENSION AND REVISION OF GRADUATE FELLOWSHIPS AND ASSISTANCE

Sec. 171. (a)(1). Section 901(a)(3) is amended by striking out "clauses (2), (3), and (4)" and inserting in lieu thereof "clauses (1) and (2)".

(2) Section 901(c) of the Act is amended to read as follows:

"(c) There are authorized to be appropriated \$50,000,000 for each of the fiscal years ending prior to October 1, 1979, for the purpose of this part."

(3)(A) Section 902(b) of the Act is amended by inserting "(1)" before "sets forth", and by inserting before the period a comma and the following: "and (2) provides assurances that the institution has notified the appropriate State commission (established or designated under section 1202 of this Act) and that the State commission has been given the opportunity to offer recommendations on the application to the institution and to the Commissioner".

(B) Section 902 of the Act is amended by adding at the end thereof the following new subsection:

"(c) In considering an application under this part for a program of activities from an institution of higher education within a State, the Commissioner shall assure that consideration is given to the degree to which such program will be consistent with State, regional, or national priorities."

(4) Section 903(b) of the Act is amended by striking out the word "and" at the end of clause (4), by striking out the period at the end of clause (5) and inserting in lieu thereof a semicolon and the word "and" and by adding at the end thereof the following new clauses:

"(6) the development of proposed graduate and professional programs; and

"(7) needed innovation in graduate and professional programs."

(b) Part B of title IX of the Act is amended to read as follows:

PART B—FELLOWSHIPS FOR GRADUATE AND PROFESSIONAL STUDY

"APPROPRIATIONS AUTHORIZED

"Sec. 921. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this part.

"NUMBER OF FELLOWSHIPS

"Sec. 922. (a) During the fiscal year ending June 30, 1973, and each of the succeed-

ing fiscal years ending prior to October 1, 1979, the Commissioner is authorized to award not to exceed seven thousand five hundred fellowships to be used for study in graduate programs at institutions of higher education. Such fellowships may be awarded for such period of study as the Commissioner may determine but not in excess of thirty-six months except that the Commissioner may provide by regulation for the granting of such fellowships for a period of study not to exceed one twelve-month period in addition to the thirty-six month period set forth in this section under special circumstances which the Commissioner determines would most effectively serve the purposes of this part. The Commissioner shall make a determination to provide such twelve-month extension of an award to an individual fellowship recipient upon review of an application for such extension by the recipient.

"(b) In addition to the number of fellowships authorized to be awarded by subsection (a) of this section, the Commissioner is authorized to award fellowships equal to the number previously awarded during any fiscal year under this section but vacated prior to the end of the period for which they were awarded; except that each fellowship awarded under this subsection shall be for such period of study, not in excess of the remainder of the period for which the fellowship which it replaces was awarded, as the Commissioner may determine.

"(c) The Commissioner may allow a fellowship recipient to interrupt his studies for a period not to exceed twelve months for the purpose of work, travel, or independent study away from the campus, if such independent study is supportive of the fellowship recipient's academic program, except that the Commissioner shall make no payments to the fellowship recipient for such period for stipends, travel expenses, or allowances for dependents or payments to institutions pursuant to the recipient's fellowship award.

"AWARDS OF FELLOWSHIPS AND APPROVAL OF GRADUATE PROGRAMS

"Sec. 923. (a) The total number of fellowships authorized by section 922(a) to be awarded during a fiscal year shall be awarded by the Commissioner on such bases as he may determine, except that recipients of such fellowships shall be individuals who have been admitted or who are enrolled in graduate or professional programs approved by the Commissioner and who are pursuing a course of study leading to a degree of doctor of philosophy, doctor of arts, or an equivalent degree. The Commissioner shall approve a graduate program of an institution of higher education only upon his finding that the application contains satisfactory assurance that the institution will provide special orientations and practical experiences designed to prepare its fellowship recipients (1) for academic careers at some level of education beyond the high school, or (2) for other than academic careers in professional career fields of importance to the national interest, as determined by the Commissioner.

"(b) In determining priorities and procedures for the award of fellowships under this section the Commissioner shall—

"(1) take into account present and projected needs for highly trained individuals in all areas of education beyond highschool,

"(2) take into account present and projected needs for highly trained individuals in other than academic career fields of high national priority.

"(3) consider the need to prepare a larger number of individuals from minority groups, especially from among such groups who have been traditionally underrepresented in colleges and universities, but nothing contained in this clause shall be interpreted to require any educational institution to grant preference or disparate treatment to the members of one minority group on account of an imbalance which may exist with respect to the total number or percentage of individuals of that group participating in or receiving the benefits of this program, in comparison with the total number of percentage of individuals of that group in any community, State, section, or other area.

"(4) assure that consideration in awarding fellowships under this part is given (A) to individuals who have demonstrated their competence outside of a higher education setting for at least two years subsequent to the completion of their undergraduate studies, or (B) to individuals with varied backgrounds and experiences who have acquired such backgrounds and experiences in other than academic settings.

"(5) seek to achieve a reasonable geographical distribution of graduate programs approved under this section, based upon such factors as student enrollments in institutions of higher education and population.

"(c) No fellowship shall be awarded under this part for study at a school or departure of divinity.

"FELLOWSHIP STIPENDS

"Sec. 924. (a) The Commissioner shall pay to individuals awarded fellowships under this part such stipends (including such allowances for subsistence and other expenses for such persons and their dependents) as he may determine to be consistent with prevailing practices under comparable federally supported programs.

"(b) The Commissioner shall (in addition to the stipends paid to individuals under subsection (a)) pay to the institution of higher education at which such person is pursuing his course of study such amounts as the Commissioner may determine to be consistent with prevailing practices under comparable federally supported programs, except that such amount charged to a fellowship recipient and collected from such recipient by the institution for tuition and other expenses required by the institution as part of the recipient's instructional program shall be deducted from the payments to the institution under this subsection.

"FELLOWSHIP CONDITIONS

"Sec. 925. (a) An individual awarded a fellowship under the provisions of this part shall continue to receive payments provided in section 924 only during such periods as the Commissioner finds that he is maintaining satisfactory proficiency in, and devoting essentially full time to, study or research in the field in which such fellowship was awarded, in an institution of higher education, and is not engaging in gainful employment other than part-time employment by such institution in teaching, research, or similar activities, approved by the Commissioner.

"(b) The Commissioner is authorized to require reports containing such information in such form and to file at such times as he determines necessary from any person awarded a fellowship under the provisions of this part. Such reports shall be accompanied by a certificate from an appropriate official at the institution of higher education, library, archive, or other research center ap-

proved by the Commissioner, stating that such person is making satisfactory progress in, and is devoting essentially full time to the program for which the fellowship was awarded."

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-37592 Filed 12-21-76; 8:45 am]

TASK FORCE ON NATIVE AMERICAN VOCATIONAL EDUCATION OF THE NATIONAL ADVISORY COUNCIL ON VOCATIONAL EDUCATION

Notice of Public Hearing

Notice is hereby given, pursuant to P.L. 92-463, that the Task Force on Native American Vocational Education of the National Advisory Council on Vocational Education will hold a hearing open to the public on January 12, 1976, from 9:00 a.m. to 5:00 p.m., local time, in Room 2010, New Executive Office Bldg., 17th & Penna. Ave., N.W., Wash., D.C. The purpose of the hearing is to receive the testimony of invited witnesses regarding the effectiveness and status of Indian vocational education in the Eastern half of the United States. This hearing is being held in preparation for developing recommendations regarding the administration of the Education Amendments of 1976, P.L. 94-482.

The National Advisory Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968 (20 U.S.C. 1244). The Council is directed to advise the Commissioner of Education concerning the administration of preparation of general regulations for, and operation of vocational education programs, supported with assistance under the act, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations to the Secretary of HEW for transmittal to the Congress, and conduct independent evaluation of programs carried out under the act and publish and distribute the results thereof.

The meeting of the Task Force shall be open to the public. Records shall be kept of all Task Force proceedings and shall be available for public inspection at the office of the Council's Executive Director, located in Suite 412, 425-13th Street, N.W., Washington, D.C. 20004.

Signed at Washington, D.C. on December 14, 1976.

REGINALD E. PETTY,
Executive Director.

[FR Doc.76-37496 Filed 12-21-76; 8:45 am]

TITLE I AUDIT APPEAL

Notice of Acceptance of Application for Appeal

Notice is hereby given that, pursuant to the Notice establishing the Title I Audit Hearing Board (37 FR 23002,

October 27, 1972, as amended by 41 FR 28568, July 12, 1976), an application for an appeal before the Board has been received from the State of Idaho and it has met the jurisdictional requirements of Section 5 of the Notice establishing the Board.

The appeal involves the allowability of specified expenditures of funds for programs under Title I of the ESEA during the period July 1, 1973, through June 30, 1974. The U.S. Office of Education seeks recovery of \$159,431 based on audit exceptions taken to expenditures in the Boise, Pocatello and Blackfoot local education agencies. A basic issue is whether certain Title I funds were expended on properly targeted school populations. The Audit Control Number is 50000-10, Docket 2-(17)-76.

The prehearing conference will be held at 10:30 a.m. on February 17, 1977, in Room 4173, 400 Maryland Avenue, S.W., Washington, D.C.

Section 7 (c) of the Notice setting up the board provides:

(c) Intervention by third parties. (1) Interested third parties may, upon application to the Board Chairman, intervene in proceedings conducted under this notice. Such application must indicate to the satisfaction of the Board Chairman that the intervenor has information relative to the specific issues raised by the final audit determination and that such information will be useful to the Hearing Panel in resolving those issues.

(2) When third parties are given leave to intervene in accordance with subparagraph (1) above, such parties shall be afforded the same opportunities as other parties to present written materials, to participate in informal conferences, to call witnesses, to cross-examine other witnesses, and to be represented by counsel.

All such applications for intervention will be considered if received on or before February 2, 1977.

(20 U.S.C. 241a, 1232c)

(Catalog of Federal Domestic Assistance Number 13.428, Educationally Deprived Children—Local Educational Agencies).

Dated: December 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-37582 Filed 12-21-76; 8:45 am]

Office of the Secretary

SUPPLEMENTARY MEDICAL INSURANCE FOR THE AGED AND DISABLED

Monthly Actuarial Rates and Monthly Premium Rate

Pursuant to authority contained in sections 1839(c) (1) and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1) and (4)), the Secretary of Health, Education, and Welfare is required to promulgate two monthly adequate actuarial rates for the Medicare Supplementary Medical Insurance (SMI) program for the period July 1977 through June 1978. One rate is

equivalent to one-half of the estimated incurred cost of the program per aged enrollee, and the other is equivalent to one-half of the estimated incurred cost for each disabled enrollee. Pursuant to authority contained in section 1839(c) (3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), the Secretary is also required to promulgate a single monthly premium rate for both aged and disabled enrollees which is derived from the monthly adequate actuarial rate for the aged enrollees. The difference between the premium paid by enrollees and total incurred per capita costs is met from the general revenues of the Federal government. The notices of these promulgations for the period July 1977 through June 1978 are as follows:

NOTICE OF MONTHLY ADEQUATE ACTUARIAL RATES

On the basis of the accompanying statement of actuarial assumptions and bases pursuant to section 1839(c) (1) and (4) of the Social Security Act (42 U.S.C. 1395r(c) (1) and (4)), I hereby determine that the monthly adequate actuarial rates which shall be applicable for the 12-month period commencing July 1, 1977, are \$12.30 for enrollees age 65 and over and \$25.00 for disabled enrollees under age 65.

NOTICE OF MONTHLY PREMIUM RATE

Pursuant to authority contained in section 1839(c) (3) of the Social Security Act (42 U.S.C. 1395r(c)(3)), I hereby determine and announce that the dollar amount which shall be applicable for premiums for purposes of section 1839(c) (3) of the Act shall be \$7.70 monthly in the 12-month period beginning July 1977 and ending June 1978.

STATEMENT OF ACTUARIAL ASSUMPTIONS AND BASES EMPLOYED IN DETERMINING THE MONTHLY ADEQUATE ACTUARIAL RATES AND THE STANDARD MONTHLY PREMIUM RATE FOR THE SUPPLEMENTARY MEDICAL INSURANCE PROGRAM BEGINNING JULY 1977

This is a statement of actuarial assumptions and bases employed in determining the adequate actuarial rates and the standard monthly premium rate for the Supplementary Medical Insurance Program (SMI) for the period July 1977 through June 1978. The monthly adequate actuarial rate for enrollees age 65 and over is \$12.30. The monthly adequate actuarial rate for disabled enrollees is \$25.00. The standard monthly premium rate for both types of enrollees is \$7.70.

I. *Actuarial status of the supplementary medical insurance trust fund.* The law requires that the SMI program be financed on an incurred basis. That is, the income to the program during the 12-month period for which adequate rates are effective must be sufficient to pay for services (including associated administrative costs) rendered during that period even though payment for some of these services will not be made until after the close of the period. The portion of income required to cover those benefits not paid until after the close of the year is added to the trust fund until needed. Thus, the trust fund at any time should be equal to the cost of the benefits and administration incurred but not yet paid. Because the adequate rates are established prospectively, they are subject to projection error. As a re-

sult, the income to the program may not be equal to incurred costs and therefore the trust fund may not be equal to the value of incurred but unpaid expenses. Modest deficiencies in the trust fund balance do not interfere with the operation of the program if the fund is large relative to outlays and if future financing is established to correct the deficiencies. Table I summarizes the estimated actuarial status of the trust fund as of June 30, 1975, 1976, and 1977.

TABLE I

Year ending June 30	Assets at end of period (in millions)	Liability for incurred but unpaid services (in millions)	Assets and liabilities (in millions)
1975	\$1,484	\$1,399	\$85
1976	1,308	1,732	-424
1977	1,945	2,055	-110

The sizeable deficit shown at the end of fiscal year 1976 results from program cost increases substantially in excess of those anticipated in setting the adequate rates for 1976. The adequate rates for the year ending June 30, 1977 contain a margin which is expected to decrease the program deficit by about \$300 million at the end of that year. This remaining deficiency must be considered in establishing the financing for subsequent years.

II. *Monthly adequate actuarial rates for enrollees age 65 and older.* The monthly adequate actuarial rate is one-half the monthly projected per capita cost for benefits and administrative expenses adjusted to allow for interest earnings on the fund, to allow for a contingency margin, and to allow for amortization of the program surplus or deficit.

The monthly adequate actuarial rate for enrollees age 65 and older for the year ending June 30, 1978, was determined by projecting the fiscal year 1975 per capita cost by type of service. The projected costs for the years ending June 30, 1975, 1976, 1977, and 1978 are shown in Table II. The 1975 values were established from program data. Subsequent years were projected using a combination of program data and data from external sources. The projection factors used are shown in Table III.

TABLE II.—Derivation of SMI aged monthly rate required for years ending June 30, 1975-78

	1975	1976	1977	1978
Covered services (at level recognized):				
Physicians' reasonable charges	\$8.20	\$9.34	\$10.41	\$12.25
Radiology and pathology	.36	.43	.49	.57
Group practice plan	.17	.21	.25	.28
Independent lab	.07	.07	.08	.09
Home health agencies	.14	.18	.24	.31
Outpatient hospital and other institutions	.98	1.28	1.66	2.16
Total services	9.92	11.51	13.13	15.66
Cost sharing:				
Deductible	-1.67	-1.70	-1.72	-1.73
Coinurance	-1.55	-1.85	-2.14	-2.62
Total benefits	6.70	7.96	9.27	11.31
Administrative expenses	.72	.90	.90	.97
Incurred expenditures	7.42	8.86	10.17	12.28
Value of interest on fund	-.19	-.18	-.16	-.27
Margin for contingencies and to amortize unfunded liabilities	-.53	-1.18	.69	.29
Promulgated rate	6.70	7.50	10.70	12.30

TABLE III

	Year ending June 30		
	1976	1977	1978
Physicians' services:			
Fees ¹	8.5	10.8	9.5
Number and mix ²	5.0	4.0	4.0
Outpatient hospital and home health agencies	30.0	30.0	30.0
Group practice plans	25.0	15.0	15.0
Other	20.0	15.0	15.0

¹ As paid by the program.

² Increase in the number of services received per capita and greater relative use of more expensive services.

³ Reasonable charges were updated later than July 1, 1976, in most areas so the average cost increase shown in table II is less than 10.8 pct.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for the year ending June 30, 1978, net of interest is \$12.01. The monthly actuarially adequate rate of \$12.30 will eliminate the remaining deficit if the assumptions used in this projection are realized.

III. *Adequate actuarial rate for the disabled.* The monthly adequate actuarial rate for disabled enrollees applies to persons eligible because they have been entitled to disability insurance benefits for not less than 24 consecutive months or because they are suffering from end stage renal disease. Projections for disabled beneficiaries (other than those suffering from end stage renal disease) are prepared in an exactly parallel fashion as projections for the aged using the same actuarial assumptions. Costs for the end stage renal disease program are projected using a computer model because of the complex demographic problems involved. The combined results for all disabled beneficiaries are shown in table IV. The monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled beneficiaries for the year ending June 30, 1978, net of interest earnings is projected to be \$24.41. The monthly actuarially adequate rate of \$25.00 provides a small margin for contingencies.

TABLE IV.—Derivation of SMI disabled monthly rate required for year ending June 30, 1975-78

	1975	1976	1977	1978
Total benefits	\$12.15	\$15.53	\$18.88	\$22.97
Administrative expenses	1.30	1.76	1.83	1.98
Incurred expenditures	13.45	17.29	20.71	24.95
Value of interest on fund	-.34	-.35	-.32	-.54
Margin for contingencies and to amortize unfunded liabilities	4.89	1.56	-1.39	.59
Promulgated monthly rate	18.00	18.50	19.00	25.00

IV. *Sensitivity testing.* Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy under alternate assumptions of the rates promulgated here. The most unpredictable factors which contribute significantly to future costs are outpatient hospital costs, physician utilization, and the increase in physician fees as constrained by the reasonable charge screens and the newly implemented economic index. (Utilization here, is measured indirectly and refers to increased costs per capita due to added visits, the use of more expensive services, and other factors not explained by simple price per service increases). Two alternative sets of assumptions and the results of those assumptions are shown in Table V. All assumptions not shown in Table V are the same as in Table III.

Table V indicates that under fairly optimistic assumptions the monthly rates promulgated will result in a surplus of \$523 million by the end of June 1978. Under fairly

pessimistic assumptions the deficit increases to \$994 million but the trust fund remains positive allowing the program to continue paying claims as presented.

TABLE V.—Actuarial status of the SMI trust fund under 3 sets of assumptions

	This projection		Low assumption		High assumption	
	1977	1978	1977	1978	1977	1978
Per enrollee increases in:						
Physician fees	10.8	9.5	10.0	9.0	12.0	10.5
Physician utilization ¹	4.0	4.0	3.0	3.0	6.0	6.0
Outpatient hospital and home health agencies	30.0	30.0	25.0	25.0	50.0	50.0
Assets as of June 30 (in millions)	\$1,945	\$2,645	\$2,029	\$2,970	\$1,741	\$1,773
Liabilities as of June 30 (in millions)	2,055	2,533	2,021	2,447	2,140	2,767
Trust fund—liabilities	-110	112	8	523	-399	-994

¹ Increase in the number of services received per capita and greater relative use of more expensive services.

V. Standard premium rate. The law provides that the standard monthly premium rate, promulgated in December to apply for both aged and disabled enrollees under the supplementary medical insurance program, shall be the lesser of:

(i) The actuarial rate for enrollees age 65 and older; or

(ii) The standard monthly premium currently being charged, increased by the same percentage that old-age, survivors, and disability insurance benefits were increased since the May preceding the promulgation (and rounded to the nearer dime).

The standard monthly premium currently being charged is \$7.20. The OASDI benefit table was increased 6.4 percent in June 1976. The \$7.20 rate increased by 6.4 percent is \$7.70 rounded to the nearer ten cent multiple. Since this is less than the \$12.30 actuarial rate, the standard premium rate is \$7.70 for the twelve months ending with June 1978.

Dated: December 13, 1976.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc. 76-37106 Filed 12-21-76; 8:45 am]

FAMILY MEDIAN INCOME BY STATE

Eligibility for Social Services Under Title XX of the Social Security Act, as Amended

Promulgation is made of the median income of a family of four for each State and for the States as a whole, applicable to the period October 1, 1977 through September 30, 1978, for the purpose of determining the extent of Federal financial participation (FFP) in State expenditures under Title XX of the Social Security Act, under the provision of sections 2002(a)(5)(B), 2002(a)(6)(A) and (B), and 2002(a)(14)(A) of that Act. These sections impose certain limitations with respect to the availability of FFP based upon the relationship of the income of the family of a service recipient to the median income of a family of four in the State, adjusted in accordance with regulations prescribed by the Secretary to take into account the size of the family.

Estimates of the median incomes of families of four persons for each State and the District of Columbia were developed by the Bureau of the Census. In developing the median income scale, the Bureau of the Census used three sources of data: (1) The 1976 Current Population Survey, (2) the 1970 Census of Pop-

ulation, and (3) per capita personal income estimates from the Bureau of Economic Analysis.

The methodology for adjusting median income for families of different size is specified in 45 CFR 228.60.

The median income for a family of four, by State, for fiscal year 1978—with calculations at the 80 percent, 90 percent, and 115 percent levels—are set forth below for use by States in establishing income ceilings and fee schedules under Title XX of the Social Security Act:

Median income for families of 4

State	Median income	80 pct of median income	90 pct of median income	115 pct of median income
Alabama	\$14,018	\$11,214	\$12,616	\$16,121
Alaska	25,638	20,510	23,074	29,484
Arizona	15,829	12,663	14,246	18,203
Arkansas	12,969	10,375	11,672	14,914
California	17,393	13,914	15,654	20,002
Colorado	16,928	13,542	15,235	19,467
Connecticut	17,781	14,225	16,003	20,448
Delaware	16,243	12,994	14,619	18,679
District of Columbia	16,554	13,243	14,899	19,037
Florida	15,303	12,242	13,773	17,598
Georgia	14,538	11,630	13,084	16,719
Hawaii	18,825	15,060	16,943	21,649
Idaho	14,664	11,731	13,198	16,864
Illinois	17,793	14,234	16,014	20,462
Indiana	15,731	12,585	14,158	18,091
Iowa	16,536	13,229	14,882	19,016
Kansas	15,709	12,567	14,138	18,065
Kentucky	13,625	10,900	12,263	15,669
Louisiana	13,992	11,194	12,593	16,091
Maine	12,948	10,358	11,653	14,899
Maryland	18,132	14,506	16,319	20,852
Massachusetts	16,546	13,237	14,891	19,028
Michigan	16,919	13,535	15,227	19,457
Minnesota	16,871	13,497	15,184	19,402
Mississippi	12,174	9,739	10,957	14,000
Missouri	14,996	11,997	13,496	17,245
Montana	14,900	11,920	13,410	17,135
Nebraska	15,381	12,305	13,843	17,885
Nevada	16,945	13,556	15,251	19,487
New Hampshire	14,954	11,963	13,459	17,197
New Jersey	17,984	14,387	16,186	20,682
New Mexico	13,954	11,163	12,559	16,047
New York	16,105	12,884	14,495	18,621
North Carolina	13,883	11,106	12,495	15,965
North Dakota	15,321	12,257	13,789	17,619
Ohio	15,848	12,678	14,263	18,225
Oklahoma	14,436	11,549	12,992	16,601
Oregon	16,349	13,079	14,714	18,801
Pennsylvania	15,753	12,602	14,178	18,116
Rhode Island	15,691	12,553	14,122	18,045
South Carolina	13,879	11,102	12,491	15,961
South Dakota	13,351	10,681	12,016	15,354
Tennessee	13,646	10,917	12,281	15,693
Texas	15,802	12,642	14,222	18,172
Utah	15,352	12,282	13,817	17,655
Vermont	14,294	11,435	12,865	16,438
Virginia	16,348	13,078	14,713	18,800
Washington	16,818	13,454	15,136	19,341
West Virginia	14,064	11,251	12,658	16,174
Wisconsin	16,593	13,274	14,934	19,082
Wyoming	16,818	13,454	15,136	19,341

NOTE: The median income for a family of 4 in the 50 States and the District of Columbia, applicable to the period Oct. 1, 1977, through Sept. 30, 1978, is \$15,848.

Dated: December 16, 1976.

ROBERT FULTON,
Administrator,
Social and Rehabilitation Service.

[FR Doc. 76-37464 Filed 12-21-76; 8:45 am]

WORK INCENTIVE PROGRAM; SOCIAL AND SUPPORTIVE SERVICES

Distribution of Funds

On September 30, 1976, the Social and Rehabilitation Service published in the FEDERAL REGISTER (41 FR 43221) and transmitted by SRS-AT-76-150, dated September 30, 1976, a proposed formula for distribution of funds under Section 403(d) of the Social Security Act for States' social and supportive service program costs in the Work Incentive (WIN) program under Section 402(a)(19)(G) of the Act during Fiscal Year 1977. This action was necessary to assure that States operate their programs within the amount available under this Department's appropriation.

Two comments, both from State agencies, pertaining to the proposed Fiscal Year 1977 allocation formula were received during the prescribed comment period. One State agency objected to the proposed formula because no consideration was given to constantly increasing AFDC and AFDC-UF caseloads. The number of WIN registrants is a direct factor in the computation of the WIN manpower agency allocations and therefore a factor in the computation of the WIN limits of entitlement. As the AFDC and AFDC-UF caseloads affect the number of WIN registrants the change is reflected in the State's limit of entitlement through the formula. However, it is entirely possible for the AFDC and AFDC-UF caseloads to change without a corresponding change in the number of WIN registrants. Another State agency expressed the belief that the assumed consistent ratio between Separate Administrative Unit (SAU) expenditures and Labor Department allocations could not be supported by facts. While a statistical validation of the linkage of SAU expenditures to manpower agencies allocation cannot be made, it is believed that there is a valid direct relationship between the activity of the manpower agencies in job placement and training and the necessity for child care and other support services. It should be noted that the ratio of available resources for employment and training activities and for child care and supportive services was established by the Congress in the annual appropriation.

The Service feels the proposed formula is the most equitable that can be developed under the circumstances. Therefore, after consideration of the comments received, no changes are being made in the proposed formula. Annual limits of entitlement for Fiscal Year 1977 of State expenditures for social and support services under the Work Incentive (WIN) program under Sections 402(a)(19)(G) and 403(d) of the Social Security Act will be calculated on the basis of the following formula:

1. Twenty-five percent of the total funds available for all the States will be distributed on the basis of the ratio of each State's total program costs claimed and allowed for Federal financial participation under Sections 402(a) (19) (G) and 403(d) of the Social Security Act, 42 U.S.C. 602(a) (19) (G) and 603(d), for Fiscal Year 1976 to the total of such program costs for all States during Fiscal Year 1976.

2. Seventy-five percent of the total funds available for all the States will be distributed on the basis of the ratio of the amount of funds allocated by the Secretary of Labor in support of the WIN sponsor for employment and training for all States for Fiscal Year 1977. The limits of entitlement shall be based upon the most recent information available at the time of promulgation.

Requests for Federal financial participation in expenditures incurred pursuant to section 402(a) (19) (G) during Fiscal Year 1977 will not be honored to the extent they exceed limits promulgated on this basis.

On September 1, 1977, the Service will reallocate any funds which a survey of all States indicates will not be expended during Fiscal Year 1977. This reallocation will be computed using the same methodology as that described in the notice which established the revised limits of entitlement for Fiscal Year 1975 for Social and Supportive Service under the Work Incentives (WIN) Program which was published on October 16, 1975 (45 FR 48544).

Dated: December 14, 1976.

M. KEITH WEIKEL,
Acting Administrator, Social and
Rehabilitation Service.

[FR Doc.76-37545 Filed 12-21-76;8:45 am]

WORK INCENTIVE PROGRAM—SOCIAL AND SUPPORTIVE SERVICES

Limits of Entitlement

Notice is hereby given of annual limits of entitlement for States for Federal financial participation in expenditures for child care and supportive services under the Work Incentive (WIN) Program pursuant to sections 402(a) (19) (G) and 403(d) of the Social Security Act, 42 U.S.C. 602(a) (19) (G) and 603(d), for Fiscal Year 1977, October 1, 1976 through September 30, 1977. Pub. L. 94-439, the joint resolution making continuing appropriations for the Fiscal Year 1977, and for other purposes, makes available such amounts as are necessary to continue activities under Title IV, part C of the Social Security Act, including child care and supportive services pursuant to § 402(a) (19) (G), at a rate of \$127,000,000 per year.

Accordingly, limits of entitlement have been calculated on the basis of the allocation formula published as FR Doc. 76-37545 in this issue of the FEDERAL REGISTER, and the amount made available under Pub. L. 94-439, except that the limit of entitlement for Guam is \$90,000 and the limit of entitlement for the Virgin Islands is \$65,000, in compliance with the limitation imposed by Section 1108 of the Social Security Act. The limits of entitlement for States for child care, other supportive services and administration under section 402(a) (19) (G) for the period from October 1, 1976 through September 30, 1977, are as follows:

Alabama	\$1,365,566
Alaska	452,820
Arizona	1,406,294
Arkansas	955,900
California	16,412,649
Colorado	2,153,383
Connecticut	1,385,848
Delaware	381,575
District of Columbia	1,716,865
Florida	2,160,946
Georgia	2,933,786
Hawaii	688,185
Idaho	606,715
Illinois	6,435,222
Indiana	1,556,056
Iowa	1,325,134
Kansas	1,116,417
Kentucky	1,258,384
Louisiana	1,110,819
Maine	624,992
Maryland	2,663,915
Massachusetts	3,711,049
Michigan	8,249,142
Minnesota	2,744,392
Mississippi	1,212,736
Missouri	2,707,803
Montana	637,610
Nebraska	521,658
Nevada	322,250
New Hampshire	288,854
New Jersey	4,524,796
New Mexico	647,345
New York	12,726,430
North Carolina	1,500,500
North Dakota	377,117
Ohio	5,759,228
Oklahoma	917,662
Oregon	3,029,806
Pennsylvania	5,338,359
Rhode Island	873,014
South Carolina	987,418
South Dakota	633,252
Tennessee	1,336,013
Texas	3,215,666
Utah	1,867,840
Vermont	840,107
Virginia	1,624,010
Washington	3,571,768
West Virginia	2,394,995
Wisconsin	4,149,330
Wyoming	227,223
Guam	90,000
Puerto Rico	1,196,156
Virgin Islands	65,000
Total	\$127,000,000

Dated: December 2, 1976.

ROBERT FULTON,
Administrator, Social and
Rehabilitation Service.

[FR Doc.76-37546 Filed 12-21-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Notice of Approval

DECEMBER 7, 1976.

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams approved on the date indicated, are available, for information only, in the Pacific Outer Continental Shelf Office, Bureau of Land Management, Los Angeles, CA. 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:	Approval date
NK 9-9 Escanaba Ridge	Nov. 2, 1976.
NK 10-1 Coos Bay	Do.
NK 10-10 Cape Mendocino	Do.
NL 10-1 Copalis Beach	Do.
NL 10-4 Cape Disappointment	Do.
NL 10-7 Tillamook Bay	Do.
NK 10-7 Crescent City	Nov. 5, 1976.
NL 10-10 Cape Foulweather	Do.

2. Copies of these diagrams are for sale at two dollars (\$2.00) per sheet by the Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, 300 N. Los Angeles St., Rm. 7127, Los Angeles, CA. 90012. Checks or Money Orders should be made payable to the Bureau of Land Management.

HAROLD R. MARTIN,
Acting Manager, Pacific Outer
Continental Shelf Office.

[FR Doc.76-37570 Filed 12-21-76;8:45 am]

[NM 29135]

NEW MEXICO

Notice of Application

DECEMBER 13, 1976.

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), Tuco, Inc. has applied for a compressor plant site right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 13 S., R. 30 E.,
Sec. 34, NW 1/4 SW 1/4.

The compressor plant site will be used in connection with natural gas operations and will occupy .44 acres of national resource land in Chaves 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, New Mexico 88201.

RAUL E. MARTINEZ,
Acting Chief, Branch
of Lands and Minerals Operations.

[FR Doc.76-37516 Filed 12-21-76; 8:45 am]

[NM 29134]

NEW MEXICO Notice of Application

DECEMBER 13, 1976.

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), Tuco, Inc. has applied for a two 6&8-inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 13 S., R. 30 E.,
Sec. 24, $W\frac{1}{2}SW\frac{1}{4}$.
T. 14 S., R. 30 E.,
Sec. 3, lot 4;
Sec. 4, lot 1, $SE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$;
Sec. 9, $W\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$,
 $NW\frac{1}{4}SE\frac{1}{4}$;
Sec. 16, $W\frac{1}{2}W\frac{1}{2}$;
Sec. 21, $W\frac{1}{2}W\frac{1}{2}$;
Sec. 28, $W\frac{1}{2}W\frac{1}{2}$;
Sec. 33, $W\frac{1}{2}W\frac{1}{2}$.
T. 15 W., R. 30 E.,
Sec. 4, lot 4, $SW\frac{1}{4}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$.
T. 12 S., R. 31 E.,
Sec. 17, $SW\frac{1}{4}NE\frac{1}{4}$, $SE\frac{1}{4}NW\frac{1}{4}$, $E\frac{1}{2}SW\frac{1}{4}$,
 $SW\frac{1}{4}SW\frac{1}{4}$;
Sec. 20, $W\frac{1}{2}NW\frac{1}{4}$, $NE\frac{1}{4}NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$;
Sec. 30, $W\frac{1}{2}NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, $NW\frac{1}{4}SE\frac{1}{4}$;
Sec. 31, lots 1, 2, $NE\frac{1}{4}NW\frac{1}{4}$.

These pipelines will convey natural gas across 10.114 miles of national resource lands in Chaves County, New Mexico.

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, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc.76-37517 Filed 12-21-76; 8:45 am]

[NM 29305]

NEW MEXICO Notice of Application

DECEMBER 14, 1976.

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), Transwestern Pipeline Company has applied for six 4, 6&8-inch natural gas pipelines rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN,
NEW MEXICO

T. 18 S., R. 24 E.,
Sec. 1, lots 2, 3, $S\frac{1}{2}NE\frac{1}{4}$;
Sec. 12, $S\frac{1}{2}SE\frac{1}{4}$;
Sec. 14, $NE\frac{1}{4}NE\frac{1}{4}$.
T. 17 S., R. 25 E.,
Sec. 21, $SE\frac{1}{4}SW\frac{1}{4}$;
Sec. 32, $NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$.
T. 18 S., R. 25 E.,
Sec. 2, $NW\frac{1}{4}SW\frac{1}{4}$;
Sec. 3, $S\frac{1}{2}S\frac{1}{2}$;
Sec. 5, lot 4, $SW\frac{1}{4}NW\frac{1}{4}$;
Sec. 7, lot 3, $N\frac{1}{2}NE\frac{1}{4}$, $SW\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$;
Sec. 8, $N\frac{1}{2}NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}NW\frac{1}{4}$.

These pipelines will convey natural gas across 5.474 miles 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 applications 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, New Mexico 88201.

FRED E. PADILLA,
Chief, Branch of Lands and
Minerals Operations.

[FR Doc.76-37518 Filed 12-21-76; 8:45 am]

[Oregon 016990 (Wash.)]

WASHINGTON

Termination of Proposed Withdrawal and Reservation of Lands

DECEMBER 15, 1976.

Notice of an application filed by the Corps of Engineers, U.S. Department of the Army, Oregon 016990, for withdrawal and reservation of lands for use in connection with project planning and the construction of the Asotin Dam and Reservoir Project was published in the FEDERAL REGISTER Document No. 65-13160 on page 15238 of the issue of December 9, 1965. The Asotin Dam and Reservoir Project was deauthorized by Public Law 94-199 of December 31, 1975 (89 Stat. 1117) and the applicant agency has canceled its application involving the lands described in the FEDERAL REGISTER publication referred to above. Therefore, pursuant to the regulations contained in 43 CFR 2091.2-5(b)(1) such lands will be at 10:00 a.m. on January 20, 1977, relieved of the segregative effect of the above-mentioned application.

LELAND D. MORRISON,
Acting Chief, Branch of
Lands and Mineral Operations.

[FR Doc.76-37515 Filed 12-21-76; 8:45 am]

[Wyoming 55677]

WYOMING

Notice of Application

DECEMBER 14, 1976.

Notice is hereby given that pursuant to the Act of May 24, 1928, 49 U.S.C.

211-214, Trans Mountain Air, Ltd., has applied for an airport lease for the following national resource land:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 27 N., R. 78 W.,
A tract of land 60 feet wide, the center-line of which is described as follows:
Beginning at the northwest corner of sec. 29, T. 27 N., R. 78 W.; thence on a southerly direction along the west boundary of said sec. 29 for a distance of 558.0 feet to a point; thence on a bearing of N. 61°E. for a distance of 16.8 feet to the true point of beginning of the above said survey center line; thence on a bearing of N. 61°E. more or less for a distance of 3,080 feet more or less to the end of said center line at the east boundary of the $SE\frac{1}{4}SW\frac{1}{4}$ sec. 20, T. 27 N., R. 78 W. The tract described contains 4.2 acres.

The purpose of this notice is to inform the public that the filing of this application segregates the described land from all other forms of use or disposal under the public land laws.

Interested persons desiring to express their views should promptly send their comments together with their name and address to the District Manager, Bureau of Land Management, 1300—Third Street, P.O. Box 670, Rawlins, Wyoming 82301.

DELMAR D. VAIL,
Acting State Director.

[FR Doc.76-37519 Filed 12-21-76; 8:45 am]

Office of the Secretary ADVISORY COMMITTEES Renewal

This notice is published in accordance with the provisions of Section 7(a) of the Office of Management and Budget Circular A-63 (Revised). Pursuant to the authority contained in Section 14(a) of the Federal Advisory Committee Act (Public Law 92-463), I have determined that renewal of the advisory committees listed below is necessary and in the public interest.

Advisory Committee on Water Data for Public Use
Committee on Minority Participation in Earth Science and Mineral Engineering
Earthquake Studies Advisory Panel

The Office of Management and Budget has concurred in the renewal of these committees.

Further information regarding these renewals may be obtained from the Department Committee Management Officer, Office of the Secretary, U.S. Department of the Interior, Washington, D.C. 20240, telephone 202-343-8401.

Dated: December 14, 1976.

THOMAS S. KLEPPE,
Secretary of the Interior.

[FR Doc.76-37520 Filed 12-21-76; 8:45 am]

NATIONAL SCIENCE FOUNDATION SUBPANEL ON OPTICAL AND INFRARED ASTRONOMY

Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel on Optical and Infrared Astronomy of the Advisory Panel for Astronomy.

Date: January 10-11, 1977.

Time: 9 a.m.

Place: Steward Observatory, Room 108, University of Arizona, Tucson, Arizona 85721.

Type of meeting: Open—January 10 (9 a.m. to 5 p.m.) January 11 (9 a.m. to 3 p.m.)

Contact: Dr. Peter A. Strittmatter, Steward Observatory, University of Arizona, Tucson, Arizona 85721, 602/884-1784 or, Dr. Peter B. Boyce, National Science Foundation, Division of Astronomical Sciences, Washington, D.C. 20550, 202/632-4187.

Summary minutes: May be obtained from the Committee Management Coordination Staff, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose: To review NSF programs in optical and infrared astronomy.

Agenda: Will include the following discussion and presentations:

JANUARY 10, 1977

9 a.m. Discussion of scientific opportunities.

11 a.m. Discussion of instrumental or technique problems.

12 m. Lunch.

1 p.m. Continuation of discussion on instrumental or technique problems.

3:30 p.m. Discussion of draft report.

5:00 p.m. Adjourn.

JANUARY 11, 1977

9 a.m. Discussion of priorities within O/IR program and assignment of writing tasks for final report.

11 a.m. Review of further questions for Working Group discussion.

3 p.m. Adjourn.

M. R. WINKLER,
Acting Committee
Management Officer.

DECEMBER 17, 1976.

[FR Doc.76-37526 Filed 12-21-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of request for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 9, 1976 (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 UMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

ENVIRONMENT PROTECTION AGENCY
Questionnaire to Farmers, ASCS Personnel, single-time, 6-8 farmers from 2 counties in 17 regions of corn belt, Ellett, C. A., 395-5867.

U.S. CIVIL SERVICE COMMISSION

Application for Federal Employment, 1200, 1201, 1202, 1203, 1281, on occasion, applicant for Federal employment, Caywood, D. P., 395-3443.

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Questionnaire for National Endowment for the Humanities, Journalism fellows, annually, fellows, Tracey Cole, 395-5870.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institute of Education, A Study of the Use of Education and Training Funds in the Private Sector, NIE-171, single-time, universe of company/union contracts having tuition air provision, Strasser, A., 395-5867.

Office of Human Development, Day Care Stability and Rural Supply Study, single-time, family day care providers, Sunderhauf, M. B., 395-6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Administration (Office of Assistant Secretary), Depository Bank Acceptance and Confirmation Statement, HUD-4304, on occasion, borrower, Housing, Veterans and Labor Division, 395-3532.

DEPARTMENT OF LABOR

Bureau of International Labor Affairs, Recordkeeping Requirements for Employers With Less Than Eleven Employees, other (see SF-83), employers with less than eleven employees, Strasser, A., 395-5867.

REVISIONS

FEDERAL RESERVE SYSTEM

Receipt and Shipment of United States and Mexican Currency Between U.S. Banks and Foreigners, FR465, monthly, banks in Federal Reserve Districts 11 and 12 dealing in Mexican currency, Hulett, D. T., 395-4730.

VETERANS ADMINISTRATION

State Approving Agency Check Sheet (Correspondence Courses), 22-8670, on occasion, State approving agencies, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Bureau of Census:

Privacy and Confidentiality Opinion Survey, Privacy and Confidentiality Objective Survey, PCS-100, PCS-200, single-time, households previously contacted in census and University of Michigan, Maria Gonzalez, 395-6132.

Iron and Steel Foundries, M33A, monthly, manufacturers of iron and steel castings, Cynthia Wiggins, 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration, Military Service Questionnaire, SSA 2512, on occasion, veterans, Caywood, D. P., 395-3443.

EXTENSIONS

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Request for Guest Speaker, NASA/201, weekly, civic, professional, and educational organizations, Tracey Cole, 395-5870.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis, Plant and Equipment Expenditures Survey Annual Supplement, BE 456A, annually, nonmanufacturing, Laverne V. Collins, 395-5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development, Longitudinal Evaluation of the Nutrition Program, annually, elderly persons not participating in nutrition program, Marsha Traynham, 395-4529.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit Survey Instructions and Certificate (Land Survey), FHA-2457, on occasion, registered surveyor, Housing, Veterans and Labor Division, 395-3532.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc. 76-37642 Filed 12-21-76;8:45 am]

POSTAL RATE COMMISSION

MAIL CLASSIFICATION SCHEDULE, 1976

[Docket Nos. MC76-1-4]

Resumption of Hearings and Revised Procedural Schedule

DECEMBER 16, 1976.

Notice is hereby given that the Administrative Law Judge has established January 18, 1977, as the date to resume hearings in Docket No. MC76-2, at 9:30 a.m., in the Commission's Hearing Room, Suite 500, 2000 L Street, N.W., Washington, D.C.

Pursuant to Commission Order No. 146, a revised procedural schedule has been adopted in Docket Nos. MC76-1, 2, 3, and 4, and is available to all interested parties in the Commission's Docket Room at the above-listed address or by calling the Docket Room, at Area Code 202-254-3804.

JAMES R. LINDSAY,
Secretary of the Commission.

[FR Doc.76-37571 Filed 12-21-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13063; File No. SR-CBOE-1976-23]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 6, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

(Brackets indicate deletions; italics, new material.)

CBOE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

MATTERS SUBJECT TO ARBITRATION

Rule 18.1. (a) Any controversy between parties who are members,¹ or [Approved Persons] persons associated with a member which arises out of the Exchange business of such parties shall, at the request of any such party, be submitted for arbitration in accordance with these rules.

(b) Any controversy between a non-member and a member or [an Approved Person] persons associated with a member which arises out of the Exchange business of such member, or [Approved Person] a person associated with a member shall, at the request of such non-member, be submitted for arbitration in accordance with these rules.

(c) Any controversy between a member and an employee of such member which is related to such employment shall, at the request of any such party, be submitted for arbitration in accordance with these rules.

[(c)](d) The arbitration provisions of this Chapter shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

* * * Interpretations and Policies:

.01 For purposes of this Chapter, the terms member, a person associated with a member and an employee of a member shall be deemed to encompass those persons who were former Exchange members, persons associated with a member or employees of members.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a person associated with a member or employee of a member to fail to submit a dispute for arbitration under the provisions of this Chapter or to fail to appear or to provide any document in his possession or control as directed pursuant to the provisions of this Chapter or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Chapter where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

INITIATION OF ARBITRATION PROCEEDINGS

Rule 18.2 A member, [Approved Person], a person associated with a member [or] a non-member, or employee of a member who wishes to initiate arbitration proceedings in accordance with Rule 18.1 shall, within a

¹The term "member" as defined in the Constitution and used in the Rules includes a nominee of a member organization unless the context otherwise requires.

reasonable time after the event giving rise to the controversy, file with the Secretary of the Exchange a written statement requesting arbitration. Such statement shall include (a) a concise description of the controversy; (b) the matters to be arbitrated, and if possible, the amount in dispute; (c) the names of the parties involved; (d) the names and addresses of counsel, if any, for the person requesting arbitration. The Secretary shall promptly furnish a copy of this statement to the responding party for reply.

* * * Interpretations and Policies:

.01 For purposes of this Chapter an arbitration proceeding will be deemed to be initiated within a "reasonable time," if it is filed no later than one year from the date of the event giving rise to the controversy; provided however, that the Committee may in the exercise of its discretion hear cases filed after the one-year period.

REPLY

Rule 18.3 [No Change]

SUBMISSION FOR ARBITRATION

Rule 18.4. Copies of the statement requesting arbitration, the reply, and any counterclaim and reply to the counterclaim shall be attached to a form of Submission prescribed by the Exchange, which shall be sent to the parties who shall execute their respective copies of the Submission. The copies of said Submission shall be returned within [ten] 10 business days of their receipt to the Secretary who shall, forthwith upon their receipt, submit the copies to the Arbitration Committee. The Arbitration Committee may decline in any case to accept a Submission for arbitration. If jurisdiction is not so declined, upon receipt of the executed Submission(s) for arbitration, the Arbitration Committee shall assign the matter to [an arbitrator or] a panel of arbitrators selected in accordance with Rule 18.5.

SELECTION OF ARBITRATORS

Rule 18.5 (a) Member Controversies. Any controversy between parties who are members, persons associated with a member, or employees of members shall be submitted for arbitration to a panel consisting of three members of the Arbitration Committee chosen by lot. [The parties] Any party to the controversy may petition the Arbitration Committee for permission to arbitrate the controversy [in] at an alternate [agreed upon forum] situs for arbitration. Upon agreement of the other parties and Committee approval the parties may proceed with arbitration [in] at such alternative [forum] situs.

(b) Non-Member Controversies. If one of the parties to a controversy is a non-member, unless the parties elect to have the panel of arbitrators selected in accordance with paragraph (a) of this Rule, [the panel shall be selected in the following manner:

(i) where the amount involved in a controversy (exclusive of interest and costs) is more than \$500 or where the non-member does not make the election provided for by section (ii) of this subparagraph,] the controversy shall be submitted for arbitration to a panel consisting of three arbitrators, one member of the Arbitration Committee and two non-members selected by lot from the non-member panel provided for by Rule 2.8. [(ii) where the amount involved in the controversy (exclusive of interest and costs) is more than \$500, the non-member may elect to submit the dispute to a single arbitrator selected by lot from the non-member panel provided for by Rule 2.8.] Any party to the controversy may petition the

Arbitration Committee for permission to arbitrate the controversy at an alternate situs for arbitration. Upon agreement by the other parties and Committee approval the parties may proceed with arbitration at such alternate situs.

(c) Optional Procedure. An initiating non-member party may at the discretion of the Arbitration Committee have any dispute of \$1,000 or less determined solely upon documentary evidence submitted by the parties; provided however, that any explanations or arguments accompanying the documents submitted by any party under this procedure must be notarized.

* * * Interpretations and Policies:

.01 The Arbitration Committee may either establish Exchange arbitration facilities outside the Chicago area or refer arbitration cases to other securities industry arbitration organizations where the parties have requested an alternate situs. In the event a panel chosen in accordance with the provisions of this Chapter conducts the arbitration, such panel shall follow the procedures contained in this Chapter.

AMENDMENTS

Rule 18.6 [No Change]

TIME AND PLACE OF HEARING

Rule 18.7. (a) The [arbitrator] Chairman of the panel assigned to a particular matter shall appoint a time and place for the hearing and shall cause notice thereof to be given to each of the parties as provided in Rule 18.12. Notice of the initial hearing shall be given at least 10 business days prior to the date fixed for the hearing, and notice shall be given of each subsequent hearing as determined by the arbitrator[s]. Attendance at a hearing waives notice thereof.

(b) The arbitration panel may require the parties to post in advance with the Secretary of the Exchange a bond or other security in such amount as it deems necessary to defray expenses of the arbitration proceeding. Such bond or security shall promptly be returned to the parties upon the payment of fees or other costs assessed in compliance with Rule 18.11.

REPRESENTATION BY COUNSEL

Rule 18.8. Any party may elect to be represented by counsel at any stage of the arbitration proceedings. A party who is represented by counsel shall provide the Arbitration Committee with the name and address of his counsel, and thereafter, papers in the proceeding to be served upon such [parties] party shall be served upon his counsel.

ATTENDANCE AT HEARINGS

Rule 18.9. [No Change]

CONDUCT OF HEARINGS

Rule 18.10. [No Change]

AWARD OF ARBITRATORS

Rule 18.11 (a) Within 30 business days from the date that an arbitration hearing shall have been declared closed (unless the hearings are re-opened by the arbitrators upon a showing of good cause as permitted by law), the arbitrators shall file with the Secretary of the Exchange a written award signed by a majority of the arbitrators, and such award shall be served upon the parties by the Secretary of the Exchange in accordance with Rule 18.12. The arbitrators shall be empowered to assess any costs or fees in connection with the arbitration upon the parties in such manner as they deem to be appropriate. Except as otherwise directed by law, all awards rendered under this Chapter shall

be deemed final and not subject to review or appeal.

(b) The arbitrators may fix in the award the amount of costs chargeable to the parties to cover the expense of the hearing(s) and shall determine the manner in which and by whom such costs shall be borne.

NOTICE

Rule 18.12. [No Change]

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

RULE 18.1

A new provision has been added which allows controversies between members and their employees relating to employment matters to be submitted to arbitration pursuant to the rules of the Exchange. It is felt that this is a necessary adjunct to the types of matters which are properly subject to Exchange arbitration.

Interpretation and Policy .01 has been added to Rule 18.1 to provide that the jurisdiction under this Chapter extend to resolve controversies involving former Exchange members, persons associated with a member, or employees of members provided that such controversies arose while the parties were members of the Exchange. The Exchange desires to preclude former Exchange members from ignoring petitions to arbitrate thereby enabling the existing Exchange member to utilize the Exchange arbitration procedures and forego resorting to the costly and time consuming process of litigating his claim in the courts. This revision reflects the holding in *MUH v. Newberger, Loeb & Co., Inc.* 540 F.2d 970 (9th Cir. 1976) wherein the circuit stated that it "would seem strange indeed that with such a significant integrated method of dispute settlement one party could frustrate the purpose of the Exchange rules and the federal policy favoring arbitration by the mere expediency of resignation from the Exchange." (at 973.)

Interpretation .02 to Rule 18.1 proposes that failure to abide by the provisions of this Chapter can be deemed conduct inconsistent with just and equitable principles of trade. This is in accordance with other securities industry arbitration codes and consistent with the Securities and Exchange Commission's opinion in *Matter of the Application of Stix & Co.*, Exchange Act Release No. 34-12760 (September 2, 1976). The Exchange believes that this provision will dissuade Exchange members from defaulting in the payment of arbitration awards.

RULE 18.2

Interpretation .01 has been added to Rule 18.2 which interprets the term "reasonable time" in the rule. Under this interpretation, an arbitration proceeding will be deemed to be initiated within a reasonable time if it is filed no later than one year from the date of the event giving rise to the controversy. This provision is a "statute of limitations" and is necessary to assure that the Arbitration Committee will not be required to

hear aged claims where witnesses will be difficult to locate and the recollection of events hazy. Also, it is believed that in fairness to the responding party he should not be subject to arbitration on a matter for time immemorial.

RULE 18.5

A new provision is proposed to be added to Rule 18.5 (a) and (b) which recognizes a party's right to petition the Arbitration Committee for permission to arbitrate the controversy at an alternate situs. This provision recognizes the establishment of arbitration facilities in Los Angeles, California and New York, New York by the Exchange. We believe that in order for the Exchange to be responsive to the public investor and to the Exchange member community, such alternate locations for arbitrating controversies are necessary.

A proposed short form arbitration procedure has also been added wherein, in subparagraph (c) of the rule, any dispute under \$1,000 may, at the request of the initiating non-member party, and upon approval of the Arbitration Committee be determined solely upon documentary evidence. This is believed to be a necessary procedure since the Exchange's experience reflects that many prior non-member claims are for comparatively small amounts of money and the cost involved in obtaining counsel, preparing for a hearing, etc. may in some instances exceed the amount of the claim.

New Interpretation .01 to Rule 18.5 proposes to give the Arbitration Committee the authority to establish arbitration facilities outside of Chicago and to refer cases to other securities industry arbitration organizations. This interpretation will enable the Committee to continue to cooperate with the National Association of Securities Dealers ("NASD") in establishing additional locations for arbitration facilities to resolve options related disputes.

RULE 18.11

Subparagraph (b) is proposed to be added to Rule 18.11 to make it clear that arbitrators may allocate the cost and expenses involved in a particular hearing among the parties thereto. This is a common provision in federal and state arbitration law and it is believed that an explicit statement on this point will eliminate additional questions.

Section 6(b) (5) of the Securities Exchange Act of 1934, as amended provides the basis for the above described proposed rule changes insofar as arbitration procedures and facilities promote the efficient resolution of disputes among members and among public customers of members in furtherance of the public interest and the protection of investors.

Comments were not received or solicited from Exchange members.

The Exchange does not believe that the proposed rules changes will impose any burden upon competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER (1-26-77), or within such longer pe-

riod (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submission will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 12, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 13, 1976.

[FR Doc.76-37542 Filed 12-21-76; 8:45 am]

[Release No. 34-13071; File No. SR-PHLX 76-18]

PHILADELPHIA STOCK EXCHANGE, INC.

Proposed Rule Change

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b) (1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on November 29, 1976, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

Pursuant to Rule 19b-4A, the Philadelphia Stock Exchange (PHLX) proposes to expand its Option Program by increasing the number of listed option classes traded on underlying stocks from forty (40) option classes to seventy (70) option classes.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to increase competition with other options exchanges and to accommodate the business needs of firms who have committed or desire to commit capital in the options specialist area.

On May 15, 1975, the SEC declared effective the Exchange's Plan and Rules for regulating transactions in options. The addition of options trading in 30

underlying securities will not materially alter the original Plan as approved by the SEC or significantly increase the PHLX's capacity to carry out the purposes of the Act and to enforce compliance by our members and persons associated with our members.

Comments were not solicited nor were comments received.

The Exchange does not believe that the proposed rule will impose any burden on competition.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submission should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before January 21, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 14, 1976.

[FR Doc.76-37543 Filed 12-21-76; 8:45 am]

[811-2293; Release No. 9573]

ADVANCE INVESTORS CORP.

Filing of Application

DECEMBER 15, 1976.

In the matter of Advance Investors Corporation, 626 Lexington Avenue, New York, New York 10022.

Notice is hereby given that an application has been filed on October 20, 1976 on behalf of Advance Investors Corporation ("Applicant"), a Delaware corporation registered under the Investment Company Act of 1940 ("Act") as a closed-end, diversified management company, for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that, pursuant to Articles of Merger ("Articles") approved by shareholders on July 26, 1976, between Applicant and Advance Investors Corporation ("Advance Maryland"), a Maryland corporation registered under the Act as an open-end, diversified management company, Applicant was merged with and into Advance Maryland. Applicant represents that the merger occurred in accordance with the laws of the states of Delaware and Maryland; that the merger became effective on August 30, 1976; that on

such date the former shareholders of Applicant became shareholders of Advance Maryland by operation of law, each share of common stock of Applicant having been converted into one share of common stock of Advance Maryland; that Advance Maryland succeeded to all of the assets and liabilities of Applicant; that the corporate existence of Applicant ceased by operation of law; and that Applicant now has no assets and no shareholders.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 10, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37535 Filed 12-21-76; 8:45 am]

[SR-Amex-76-25; Release No. 13075]

AMERICAN STOCK EXCHANGE, INC. Order Approving Proposed Rule Change

DECEMBER 15, 1976.

In the matter of American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006.

On October 21, 1976, the American Stock Exchange, Inc. filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The rule change requires specialists to disclose in certain situa-

tions the names of buying and selling member organizations in completed Exchange transactions in their specialist securities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 12936, (October 29, 1976)) and by publication in the FEDERAL REGISTER (41 Fed. Reg. 48822 (November 5, 1976)).

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change filed with the Commission on October 21, 1976, be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37475 Filed 12-21-76; 8:45 am]

[Release No. 13070]

BANK OF NORTH DAKOTA Notice of Application

DECEMBER 14, 1976.

In the matter of State of North Dakota, doing business as the Bank of North Dakota, 700 East Main, Bismark, North Dakota 58505.

Notice is hereby given that the State of North Dakota, doing business as the Bank of North Dakota (the "Bank") has applied, pursuant to Section 15B(a)(4) of the Securities Exchange Act of 1934 (the "Act"), for an exemption from Section 15B and the rules and regulations thereunder.

Section 15B(a)(4) of the Act provides that the Commission may exempt conditionally or unconditionally any broker, dealer, or municipal securities dealer from any provision of Section 15B or the rules or regulations thereunder if it finds that such exemption is consistent with the public interest, the protection of investors and the purposes of the section.

The Bank engages in the business of buying and selling municipal securities for its own account, other than in a fiduciary capacity, and is, therefore, a municipal securities dealer within the meaning of Section 3(a)(30) of the Act. The Bank is, however, entirely state-owned and purchases small issues of North Dakota municipal securities, which it then resells substantially without profit.

Notice is further given that any interested person may submit to the Commission not later than January 30, 1977 in writing any views or substantial facts bearing on this application. Any such communication should be addressed to the Secretary, Securities and Exchange Commission, 500 North Capitol Street,

N.W., Washington, D.C. 20549 and should refer to File No. S7-664. Copies of the application and of all written submissions will be available for inspection and copying in the Public Reference Room of the Securities and Exchange Commission, 1100 L Street N.W., Washington, D.C. An order granting the application may be issued any time after January 30, 1977.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37541 Filed 12-21-76;8:45 am]

[70-5948; Release No. 19811]

CENTRAL AND SOUTH WEST CORP.

Proposed Issue and Sale of Common Stock and Request for Exception From Competitive Bidding

DECEMBER 15, 1976.

In the matter of Central and South West Corporation, P.O. Box 1631, Wilmington, Delaware 19899.

Notice is hereby given that Central and South West Corporation ("CSW"), a registered holding company, has filed an application-declaration, and an amendment thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(a) and 7 of the Act and Rules 50 and 100(a) as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transaction.

CSW proposes to issue and sell not to exceed 282,108 shares of its authorized and unissued common stock, par value \$3.50 per share (the "additional shares") pursuant to an automatic dividend reinvestment and stock purchase plan ("plan"). CSW intends to establish the plan to be effective on or before February 28, 1977. CSW requests authority to sell the additional shares pursuant to the plan through April 30, 1978.

The plan provides that holders of CSW's common stock may automatically reinvest their cash dividends on their stock in the additional shares and, at their option, may make cash payments of not less than \$10 nor more than \$3,000 per quarter for the same purpose. The additional shares will be purchased from CSW each quarter by the First National Bank of Chicago (the "plan administrator"), which will administer the plan and act as agent for the participants in the plan. The price per share of the additional shares will be equal to the average of the high and low prices of CSW's common stock reported as New York Stock Exchange Composite Transactions on the cash dividend payment date or on the next preceding trading day if the dividend payment date is not a trading day or no trades in CSW's common stock occurred on the dividend payment date.

Any holder of CSW's common stock may join the plan at any time. Participation in the plan will be effective as of the

first dividend payment date following receipt by the plan administrator of an authorization from the stockholder, subject to the requirement that such authorization must be received by the plan administrator on or before the 15th day of the month in which a cash dividend is paid. Participants may make optional cash payments in any quarter. Participants will be permitted to withdraw from the plan at any time, but if the plan administrator receives the request to withdraw on or after the cash dividend payment date, the amount of the cash dividend and any optional cash payments scheduled to be invested on such date will be so invested, but all subsequent dividends will be paid to the shareholder unless he re-enrolls in the plan. Upon withdrawing from the plan, a participant may have the whole shares credited to his account under the plan delivered to him, along with cash payments for fractional shares, or he may elect to have all his shares sold by the plan administrator.

It is stated that the additional shares constitute all of the remaining authorized but unissued shares of CSW's common stock excluding 6,250,000 shares scheduled for public offering on December 23, 1976 and 304,790 shares reserved for issuance under CSW's employee stock ownership plan (previously authorized by this Commission). Proceeds derived by CSW from the sale of the additional shares will be applied toward construction programs of CSW's subsidiary companies through loans or equity contributions. Such loans or equity contributions are now or will be the subject of further filings with this Commission.

CSW requests an exception from the competitive bidding requirements of Rule 50 under the Act for the sale of the additional shares pursuant to paragraph (a) (5) of that Rule.

It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than January 11, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, and reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended, or as it may be further amended, may be granted and permitted

to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37536 Filed 12-21-76;8:45 am]

[812-4039; Release No. 9572]

CONNECTICUT MUTUAL LIFE INSURANCE CO.

Application for Exemption

DECEMBER 15, 1976.

In the matter of Connecticut Mutual Life Insurance Company, CML Variable Annuity Account A, and CML Accumulation Annuity Account E, 140 Garden Street, Hartford, Connecticut 06115.

Notice is hereby given that Connecticut Mutual Life Insurance Company ("CML"), a Connecticut mutual life insurance company, CML Variable Annuity A ("Account A") and CML Accumulation Annuity Account E ("Account E"), separate accounts of CML registered under the Investment Company Act of 1940 ("Act") as diversified open-end management investment companies (hereinafter collectively referred to as "Applicants"), filed an application on October 4, 1976 and an amendment thereto on November 19, 1976, pursuant to Section 6(c) of the Act for an order exempting Applicants from the provisions of Sections 22(e), 27(c) (1) and 27(d) of the Act to the extent necessary to permit compliance by Applicants with certain provisions of the Education Code of the State of Texas. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

CML established Account A on July 30, 1968 and Account E on July 20, 1975 pursuant to authorization by the Board of Directors of CML. Both separate accounts are facilities through which CML sets aside and invests assets attributable to certain variable annuity contracts issued in conjunction with plans qualified under Sections 401(a) or 403(a) of the Internal Revenue Code of 1954, as amended, ("Code") including plans established by persons entitled to the benefits of the Self-Employed Individuals Tax Retirement Act of 1962, as amended, and for annuity purchase plans adopted pursuant to Sections 403(b) or 408 of the Code.

In 1967, the State of Texas directed the governing boards of all Texas institutions of higher education to make available

to certain employees an Optional Retirement Program ("Program"), codified as Subchapter G of Chapter 51 of the Texas Education Code. The statute provides as the funding media for the program fixed or variable annuity contracts purchased from any insurance or annuity company qualified to do business in Texas. In 1973, the Texas legislature made two amendments in the Program legislation, which amendments became effective on June 14, 1973. The statutory definition of the Program was amended to provide that the benefits or such annuities are to be available only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participant. The other amendment added a new Section 51.358 to Subchapter G which also provides that the benefits of such annuities will be available only if the participant dies, terminates his employment due to total disability, accepts retirement, or terminates employment in the Texas public institutions of higher education.

Sections 27(c) (1), 22(e) and 27(d)

Section 27(c) (1) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless such certificate is a redeemable security. Section 2(a) (32) of the Act defines "redeemable security" to mean any security under the terms of which the holder upon its presentation to the issuer or to a person designated by the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Section 22(e) of the Act provides that no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except in certain prescribed circumstances.

Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder.

Applicants request exemptions from the provisions of Sections 22(e), 27(e) (1) and 27(d) of the Act to the extent necessary to permit redemption values

under variable annuity contracts issued after the effective date of the order of exemption requested herein to participants in the Texas Program to be made available in accordance with the above-mentioned Texas Attorney General's opinion only upon termination of employment in the Texas public institutions of higher education, retirement, death or total disability of the participant.

Applicants assert that if such exemptions are not granted, persons participating in the Texas Program effectively will be denied an opportunity to select as a funding medium for their retirement benefits one of two funding media (the other being fixed annuity contracts) specifically provided in the Texas statute for such purpose. Participants will be unable to obtain the state's matching contributions for the purchase of an equity-based retirement vehicle. The purpose of the State of Texas is to provide such retirement benefits with its matching contributions, and unrestricted withdrawals prior to retirement apparently were deemed detrimental to such purpose. In view of the foregoing, Applicants assert that the Commission should grant the requested exemptions because: (1) the limited restriction on redemption would be voluntarily assumed by participants, i.e., eligible employees are not required to participate in the Program; (2) the restrictions were not formulated nor suggested by Applicants; and (3) participants' relinquishment of the full right of redemption is a reasonable requirement in exchange for the benefits bestowed by the matching contributions of the State of Texas.

Applicants will ensure that appropriate disclosure is made to persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under Contracts to be issued to them. This disclosure will take the form of an appropriate reference in each Prospectus to the restrictions on redemption of these Contracts, as well as requiring each participant, as a part of the determination that the sale of these Contracts is suitable for that participant, to sign a statement indicating that he/she is aware that these restrictions will be placed on his/her Contract when it is issued. In addition, CML will review all sales literature that is to be used in conjunction with the sales of these contracts for the existence of material representations that are inconsistent with the restrictions to be placed on these contracts and will instruct the salespeople involved in soliciting in this market to specifically bring this restriction to the attention of the potential participants.

Section 6(c) authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and Rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors

and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 10, 1976, at 5:30 p.m. submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following January 10, 1976, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37537 Filed 12-21-76; 8:45 am]

[76-5937; Release No. 19804]

NEW ENGLAND POWER CO.

Proposed Execution and Delivery of General and Refunding Mortgage Indenture, Proposed Issue and Sale of General and Refunding Bonds at Competitive Bidding and Pledge of First Mortgage Bonds to General and Refunding Mortgage Trustee

DECEMBER 10, 1976.

In the matter of New England Power Company, 20 Turnpike Road, Westborough, Massachusetts 01581.

Notice is hereby given that New England Power Company ("NEPCO"), an electric utility subsidiary company of New England Electric System, a registered holding company, has filed an application-declaration, and an amendment thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating Sections 6(b), 9(a), 10 and 12 of the Act and Rules 42 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

NEPCO proposes to execute and deliver to New England Merchants National Bank, as Trustee ("Trustee"), a General and Refunding Mortgage Indenture and Deed of Trust to be dated as of January 1,

1977 ("G&R Indenture") and to issue and sell \$50,000,000 principal amount of general and refunding bonds, Series A ("Series A bonds") under the G&R Indenture. The Series A bonds will bear interest at such rate and will be sold at such price as will be determined by competitive bidding. Bids will specify the interest rate (which shall be a multiple of $\frac{1}{8}$ of 1%) and the price (which shall be not less than 100% nor more than 102 $\frac{3}{4}$ % of the principal amount of the Series A bonds). It is stated that if the winning bid's interest rate specified exceeds 10 $\frac{1}{4}$ % per annum, further orders of state commissions having jurisdiction will be necessary for NEPCO to accept the bid. NEPCO will notify prospective bidders not later than two business days prior to the time designated for submission of bids (i) the date the Series A bonds shall mature and (ii) whether or not the Series A bonds will be redeemable during the first five years of their term, or some lesser portion thereof, in connection with a refunding at a lesser effective interest cost to NEPCO.

The Series A Bonds will be secured, together with all other G&R bonds hereafter issued, by a lien on the assets of NEPCO. This lien will be subordinate to the lien of the Indenture of Trust and First Mortgage dated as of November 15, 1936 ("first mortgage indenture"), (ii) liens permitted by the G&R Indenture and (iii) property excepted by the G&R Indenture. G&R bonds will be further secured by first mortgage bonds which NEPCO is obligated to issue and pledge with the G&R Trustee. First mortgage bonds will no longer be issued and sold to the public.

G&R Indenture provisions relating to issuance of additional G&R bonds provide, among other things, that when issuing G&R bonds against property additions or deposit of money, NEPCO must demonstrate that its net earnings for any 12 consecutive calendar months within the preceding 15 calendar months are at least twice the annual interest charges on all G&R bonds outstanding and applied for and on all equal or prior lien indebtedness. Except in certain instances, no earnings test is required in connection with the refunding of a like amount of bonds.

In connection with issue and sale of the Series A Bonds, NEPCO proposes to issue up to \$50,000,000 principal amount of additional first mortgage bonds, Series V. The Series V bonds will be issued under the first mortgage indenture, will be pledged to the G&R Indenture Trustee and will have the same interest rate and maturity as the Series A Bonds. The exact principal amount of the Series V bonds to be issued and pledged cannot be determined until the time the Series A Bonds are issued. This is because the G&R Indenture requires that Series V Bonds be issued and pledged to the maximum amount permissible under the first mortgage indenture which has more restrictive requirements on the issuance of bonds than the G&R Indenture.

NEPCO states that it proposes to execute the G&R Indenture because it wishes to eliminate certain outmoded provisions in its present first mortgage indenture. One such provision restricts bondable property to property which has obtained all licenses and permits necessary for the operation of the property, thereby preventing the bonding of most new facilities during construction. NEPCO states that this restriction restricts the construction of new facilities and increases the cost of their financing. To change this provision would require the approval of 80% of the present holders of NEPCO's first mortgage bonds, and NEPCO states that it does not believe there is sufficient chance of success to incur the cost and time involved in seeking such approval. NEPCO further states that it wished to make other revisions to its old first mortgage indenture, such as modernizing the definition of additional property, net earnings and other provisions and making changes to reduce paperwork.

In computing net earnings for purpose of interest coverage, the G&R Indenture (i) permits inclusion of equity in earnings of subsidiaries, (ii) excludes interest on other than bonded indebtedness and (iii) permits inclusion of non-operating income up to 10% of operating income. It is estimated that pro forma interest coverage computed under the first mortgage indenture for the 12 months ended December 31, 1976, would have been 3.55 and under the G&R Indenture calculation the coverage would have been 4.03.

Based on property additions through September 30, 1976, the approximate net amount of additional property against which first mortgage bonds could be issued would be \$9,300,000. As of the same date, the approximate amount of available net additional property against which G&R Bonds might be issued was \$117,000,000.

Proceeds from the sale of the Series A Bonds will be used to reduce outstanding short-term notes to NEPCO issued to pay for capitalizable expenditures and the refunding of NEPCO Series Q first mortgage bonds maturing on December 1, 1976, or to reimburse its treasury therefore. It is expected that NEPCO will have approximately \$86,000,000 in short-term notes outstanding at the time of the sale of the Series A Bonds.

It is stated that the Massachusetts Department of Public Utilities, the New Hampshire Public Utilities Commission, the Vermont Public Service Board and the Connecticut Public Utilities Control Authority have jurisdiction over various aspects of the proposed transactions and that no other state or federal commission, other than this Commission, has jurisdiction over the proposed transactions. Fees and expenses to be incurred in connection with the proposed transactions are estimated at \$165,000, including services provided at cost by New England Power Service Company of \$45,000, printing costs of \$48,000 and accountants' fees of \$10,000.

Notice is further given that any interested person may, not later than Janu-

ary 5, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, and reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37538 Filed 12-21-76; 8:45 am]

[812-4041; Release No. 9576]

**PARAMOUNT MUTUAL FUND, INC.
AND UNIFUND, INC.**

Application for Exemption

DECEMBER 16, 1976.

In the matter of Paramount Mutual Fund, Inc., and Unifund, Inc., 2441 Honolulu Avenue, Montrose, California 91020.

Notice is hereby given that Paramount Mutual Fund, Inc. ("Paramount"), a Delaware corporation, and Unifund, Inc. ("Unifund"), a California corporation, (hereinafter referred to collectively as "Applicants"), both registered as diversified, open-end management investment companies under the Investment Company Act of 1940 ("Act"), filed an application on October 14, 1976, and amendments thereto on December 6, 1976, and December 13, 1976, for an order pursuant to Section 17(b) of the Act exempting from the provisions of Section 17(a) of the Act a proposed merger of Unifund into Paramount. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Unifund was incorporated on October 13, 1964, and, as of September 30, 1976, had 220,974 shares outstanding and net assets of \$1,931,250; Paramount was incorporated on September 8, 1958, and, as of September 30, 1976, had 838,523 shares outstanding and net

assets of \$6,845,857. Applicants further state that TCA Management Corporation ("TCA Management") currently acts as investment adviser to both of the Funds and that the Applicants currently have common officers and a common Board of Directors, with the exception that Joseph Lowitz, a Director of Paramount, is not a Director of Unifund, and Grant Brimhall, a Director of Unifund, is not a Director of Paramount.

Applicants represent that they propose to enter into an Agreement and Plan of Merger ("Agreement"), pursuant to which Unifund will be merged into Paramount and the separate existence of Unifund will cease. Applicants further state that Paramount shall be the surviving corporation and shall possess all the rights, privileges, and powers, and be subject to all of the restrictions, disabilities and duties of Paramount and Unifund; that all assets of Unifund shall be vested in Paramount; and that all debts, liabilities and duties of Unifund shall attach to Paramount as the surviving corporation. Applicants also submit that, in order for the merger to become effective, the Agreement requires (1) the affirmative vote of at least a majority of the outstanding shares of each of the Applicants; (2) an opinion of Applicants' legal counsel to the effect that the merger will constitute a tax free reorganization; and (3) the issuance of the order requested herein and of any other orders of federal and state regulatory authorities as may be necessary. According to the application, the Agreement also contains customary representations and warranties by each of the Funds, the truth and correctness of which are to be conditions precedent to the consummation of the merger.

Applicants state that the Agreement was submitted to the Boards of Directors of each of the Funds and approved by a majority of the Directors of each such Board on November 24, 1976. According to the application, the proposed merger plan will be submitted to the shareholders of each of the Funds at their annual meetings to be held January 12, 1977.

Applicants state that the proposed effective date of the merger shall be January 31, 1977, and that, shortly before the effective date of the merger, each of the Applicants shall distribute to its shareholders substantially all of its net taxable income for the fiscal year through the effective date of the merger.

If the merger is consummated, it is proposed that the outstanding shares of Unifund held of record by each shareholder of Unifund will be converted into and become that number of full and/or fractional shares of Paramount which, when multiplied by the net asset value per share of such shares of Paramount, shall have an aggregate net asset value equal to the aggregate net asset value of such shareholder's interest in Unifund. The net asset value of the shares of common stock of Unifund and Paramount at the effective date of the merger shall be the net asset values of each of the Applicants determined in the manner

described in their current prospectuses as of the close of the New York Exchange on the day of the effective time of the merger.

Applicants represent that their respective tax positions, as of September 30, 1976, are as follows: Paramount had a capital loss carryover of \$352,344, of which \$80,802 and \$271,542 may be used to offset capital gains realized during the five year periods ending September 30, 1982 and 1983, respectively; Unifund had a capital loss carryover of \$202, which expires on September 30, 1982. On September 30, 1976, Paramount had net unrealized gains of \$711,135 and Unifund has no net unrealized gains.

The Applicants have agreed that no adjustment need be made in the computation of the Applicants' respective net asset values to reflect any potential income tax impact on their shareholders which might result from differences in amounts of the realized and unrealized capital gains or losses. Applicants are of the opinion that the actual impact of capital loss carryovers and current net unrealized gains or losses is not readily determinable and would be largely a matter of speculation, and that any such impact would depend on many different factors, including each individual shareholder's personal tax status.

Applicants represent that the primary investment objective of each of them is growth of capital; that each of the Applicants normally invest in equity securities with a major portion of their investments in common stocks; and that their investment restrictions are substantially similar in content. Applicants state, however, that Unifund may not borrow except for temporary or emergency purposes from banks, in an amount up to 5% of the value of its assets, but that it may not borrow money to purchase investment securities. Applicants further state that Paramount, whose investment restrictions will be those of the surviving company, has no such restriction on borrowing, but that Paramount is not presently in debt for any sums borrowed for the purchase of securities.

Applicants state that the portfolio of Unifund will continually be reviewed to ascertain that all securities held by Unifund are compatible with Paramount's investment objective, and that, should any security held by Unifund be deemed to be incompatible with that objective, it will be sold prior to the merger.

The application also states that in addition to voting on the merger agreement at the annual meeting of January 12, 1977, the shareholders of each of the Applicants will be asked to approve proposed investment advisory agreements with Paramount Mutual Fund Management Corporation ("Paramount Management"), to replace the existing advisory agreements between each of the Applicants and TCA Management, said proposed agreements to become effective as of February 1, 1977. As described in the application, the nature of the services provided by the adviser and the terms of the advisory fee schedule are identical

in both the existing and proposed advisory agreements.

Section 17(a) of the Act provides, in part, that it shall be unlawful for any affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, knowingly to sell or purchase from such registered investment company any security or other property. Section 17(b) of the Act provides that the Commission, upon application, shall exempt a proposed transaction from the provisions of Section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

Section 2(a)(3) of the Act, in part, defines "affiliated person" of another person to include any person directly or indirectly under common control with such other person. Applicants recognize that, on the basis of the foregoing facts, they might be deemed to be "affiliated persons" of each other and state that they have filed this application to avoid any question being raised under Section 17(a) of the Act with respect to the transaction described herein.

Applicants represent that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, in that shares of Paramount are proposed to be issued for shares of Unifund on the basis of their respective net asset values. Applicants represent further that the transaction is consistent with the policies of each of them. Applicants are of the opinion that their shareholders will benefit from the spreading over their combined assets of certain relatively fixed expenses, which currently constitute a potential duplication of expense in (1) auditing, accounting, and legal areas; (2) the qualification of shares for sale in the various jurisdictions where shares are sold; (3) preparation and printing of shareholder reports, prospectuses and proxy material; and (4) possible further savings in custodial fees and other expenses. It is estimated by Applicants that their combined expenses in the twelve months ended September 30, 1976, assuming that the Applicants' current investment advisory agreements had been in effect throughout the period, would have been reduced by more than \$17,400 had the Funds been combined during that period. Applicants further assert that the increased size of the combined fund also would provide it with certain other strengths and flexibilities including somewhat greater investment flexibility with respect to portfolio transactions.

According to the Application, each of the Applicants will bear its own expenses in connection with the merger. Such expenses are estimated by Applicants to be \$15,000 in the aggregate, of which Uni-

fund will bear \$5,000 and the remainder of approximately \$10,000 will be borne by Paramount.

Notice is further given that any interested person may, not later than January 10, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule O-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37539 Filed 12-21-76; 8:45 am]

[812-4029; Release No. 9568]

PUTNAM TAX EXEMPT INCOME FUND

Application for Exemption

DECEMBER 13, 1976.

In the matter of Putnam Tax Exempt Income Fund (formerly Putnam Municipal Bond Fund), 265 Franklin Street, Boston, Massachusetts 02110.

On November 10, 1976, a notice was issued (Investment Company Act Release No. 9519) ("Notice") of an application filed on September 17, 1976, by Putnam Municipal Bond Fund ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end investment company, for an order, pursuant to Section 6(c) of the Act, declaring that Mr. Avery Rockefeller, Jr. ("Rockefeller"), Mr. Donald J. Hurley ("Hurley"), and Mr. Hans H. Estlin ("Estlin"), proposed trustees of Applicant, each shall not be deemed to be an "interested person" of the Applicant, or The Putnam Management Company, Inc. ("Adviser"), the investment adviser to the Applicant, or Putnam Fund Distributors, Inc. ("PFD"), principal underwriter of the Applicant, within the meaning of Section 2(a)(19) of the Act, by reason of their being directors of, with respect to Rockefeller, The Home Insur-

ance Company and, with respect to Hurley and Estlin, The Boston Company, Inc. and/or Boston Safe Deposit and Trust Company. On December 6, 1976, Applicant filed an amendment to the application. All interested persons are referred to amendment No. 1 to the application on file with the Commission for a statement of the additional representations contained therein, which are summarized below.

Notice is hereby given that the following changes should be made in the Notice:

1. Applicant's name has been changed from Putnam Municipal Bond Fund to Putnam Tax Exempt Income Fund, effective October 29, 1976.

2. It is stated that Applicant's initial public offering of its shares will be underwritten by Merrill Lynch, Pierce, Fenner & Smith, Incorporated, Bache Halsey Stuart, Inc., and Reynolds Securities, Inc. ("Underwriters") instead of by PFD, which will act as principal underwriter in the continuous offering of Applicant's shares to commence not less than 30 days following the closing of the initial public offering (expected to be December 22, 1976). Applicant states that the Underwriters are not expected to act as principal underwriters of shares of Applicant following the initial offering.

3. It is represented that, if Rockefeller, Hurley, and Estlin are each deemed not to be an "interested person" of Applicant, the Adviser, and PFD within the meaning of Section 2(a)(19) of the Act, they may be proposed for election to Applicant's Board of Trustees at a meeting of Applicant's shareholders in 1977. Applicant anticipates that they will not be proposed for election until after the commencement of the continuous offering of Applicant's shares. The Notice stated that Applicant anticipated adding Rockefeller, Hurley, and Estlin to the Board of Trustees prior to the initial public offering.

4. Applicant states that the reference to Estlin serving as Chairman of the Board of Trustees of Boston University should be deleted; Estlin is, however, a member of the Board of Trustees of the Boston University Medical Center.

The Notice erroneously stated that the file number of the original application was 812-4026. The correct file number is 812-4029.

Notice is further given that the notice period during which any interested person may submit to the Commission a request for a hearing on this matter, in accordance with the procedures set forth in Investment Company Act Release No. 9519, is hereby extended until January 7, 1977 at 5:30 p.m.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37540 Filed 12-21-76; 8:45 am]

DEPARTMENT OF STATE

[Public Notice CM-7/4]

ADVISORY PANEL ON ACADEMIC MUSIC

Notice of Meeting

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that the Advisory Panel on Academic Music has scheduled a meeting to be held on Monday, January 17, in Room 507 at State Annex 2, Department of State, 515 22nd Street, N.W., Washington, D.C. The meeting hours will be from 9:45 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:30 p.m.

The sessions will be open to the public. The agenda is:

(1) Review of program policies and guidelines;

(2) Review of recent overseas tours in the music field sponsored by the Department of State;

(3) Evaluation of tapes and records of College/University performing arts groups planning tours abroad, and academic groups which wish to be considered as candidates for grants, sponsorship or other assistance in connection with overseas tours.

Members of the public in attendance who wish to comment on the agenda items may do so, subject to restrictions of time and direction of the Chair.

For the purpose of fulfilling building security requirements, it is requested that persons wishing to attend this open session advise the Executive Secretary, Beverly Gerstein, by telephone before January 13; the telephone number is (area code 202) 632-2846.

The meeting room has a seating capacity of 30, so the public will be admitted on a first-come, first-served basis.

Dated: December 14, 1976.

PAUL E. WHEELER,
Director, Office of
International Arts Affairs.

[FR Doc.76-37521 Filed 12-21-76; 8:45 am]

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 77-1; Customs Delegation Order No. 1 (Revision 1) amended]

DIRECTOR, CLASSIFICATION AND VALUES DIVISION, ET AL.

Delegation of Authority

DECEMBER 16, 1976.

1. By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 FR 7241), as amended, Customs Delegation Order No. 1 (Revision 1) (T.D. 69-126, 34 FR 8208) is hereby amended as follows:

Paragraph A. is amended to read as follows:

A. Assistant Commissioner of Customs, Office of Regulations and Rulings:

Decisions with respect to any claim (including claim for liquidated damages), fine, or penalty (including forfeiture) now delegated to the Commissioner of Customs by paragraph (h) of Treasury Department Or-

der No. 165, Revised, as amended, (supra), decisions denying or approving requests for information under 5 U.S.C. 552, decisions denying or approving requests for extension of the time for the submission of comments on proposed amendments to the Customs Regulations, and decisions and functions relating to all matters in which authority also is delegated by this Order to the Director, Classification and Value Division, the Director, Entry Procedures and Penalties Division, and the Director, Carriers, Drawback and Bonds Division.

2. This order shall take effect on December 22, 1976.

VERNON D. ACREE,
Commissioner of Customs.

[FR Doc.76-37563 Filed 12-21-76;8:45 am]

Fiscal Service

[Dept. Circ. 570, 1976 Rev., Supp. No. 7]

HALLMARK INSURANCE CO., INC.

Surety Companies Acceptable on Federal Bonds: Termination of Authority

Notice is hereby given that the Certificate of Authority issued by the Treasury to Hallmark Insurance Company, Inc., Madison, Wisconsin, under Sections 6 to 13 of Title 6 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 41 FR 28243 July 8, 1976.

Bond-approving officers of the Government should, in instances where such action is necessary, secure new bonds in lieu of bonds executed by Hallmark Insurance Company, Inc.

Dated: December 17, 1976.

D. A. PAGLIAI,
*Commissioner, Bureau of
Government Financial Operations.*

[FR Doc.76-37583 Filed 12-21-76;8:45 am]

[Administrative Ruling 76-5]

Office of Revenue Sharing

ANTIRECESSION FISCAL ASSISTANCE

Modification of Waiver Procedures

Section 52.26(a) of the interim regulations (31 CFR 52.26(a); 41 F.R. 44842) promulgated pursuant to Title II of the Public Works Employment Act of 1976 (Pub. L. 94-369), provides that any recipient government may waive antirecession fiscal assistance payments provided the chief executive officer of that government notifies the Director of the Office of Revenue Sharing in writing of its intention to waive such payment and returns the waived payment to the Director. Section 52.26(a) of the regulations also provides, in pertinent part, that the waiver shall be accompanied by a resolution of the governing body of the government requesting the waiver.

The Director of the Office of Revenue Sharing has determined that the resolution requirement of Section 52.26(a) has resulted in unnecessary confusion among

recipient governments because it is unlike the Revenue Sharing regulation (31 CFR 51.25(a)) which does not require a resolution in order to waive general revenue sharing funds. Accordingly, the Office of Revenue Sharing will hereafter give effect to requests for a waiver of antirecession fiscal assistance payments made by the chief executive officer of a recipient government, with the consent of the governing body of that government, whenever such request is accompanied by the return to the Director of the Office of Revenue Sharing of any waived payments. Requests for waivers which comply with these requirements need not be accompanied by a resolution of the governing body of the recipient government waiving the antirecession fiscal assistance payments.

Dated: December 17, 1976.

JEANNA D. TULLY,
*Director,
Office of Revenue Sharing.*

[FR Doc.76-37529 Filed 12-17-76;10:03 am]

Office of the Secretary

DEBT MANAGEMENT ADVISORY COMMITTEES

Notice of Meetings and Determination Under Public Law 92-463

Notice is hereby given, pursuant to Section 10 of Public Law 92-463, that meetings will be held in Washington on January 25 and 26, 1977, of the following debt management advisory committees:

American Bankers Association, Government Borrowing Committee
Securities Industry Association, Government Securities and Federal Agencies Committee

The agenda for the meetings provides for working sessions by two committees on January 25, a report to the Secretary of the Treasury and Treasury staff by the American Bankers Association Government Borrowing Committee on January 25 and a report to the Secretary of the Treasury and Treasury staff by the Securities Industry Association Government Securities and Federal Agencies Committee on January 26.

Pursuant to the authority placed in Heads of Departments by Section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 190, revised, I hereby determine that these meetings are concerned with information exempt from disclosure under Section 552(b)(4) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees are utilized by this Department at meetings called by representatives of this

office. When so utilized they are recognized to be advisory committees under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence in order to avoid adverse effects of premature disclosure on the financial markets and the economy. As such these debt management advisory committee activities concern matters which fall within the exemption covered by Section 552(b)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential".

The Assistant Secretary (Capital Markets and Debt Management) shall be responsible for maintaining records of the meetings of these committees and for providing annual reports setting forth a summary of their activities and such other matters as may be informative to the public consistent with the provisions of 5 U.S.C. 552(b)(4).

Dated: December 17, 1976.

EDWIN H. YEO, III,
*Under Secretary
for Monetary Affairs.*

[FR Doc.76-37509 Filed 12-21-76;8:45 am]

UNWROUGHT ZINC FROM SPAIN

Preliminary Countervailing Duty Determination

On August 2, 1976, a "Notice of Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the FEDERAL REGISTER (41 FR 32249). The notice stated that a petition had been received alleging that payments or bestowals conferred by the Government of Spain upon the manufacture, production, or exportation of unwrought zinc constitute the payment or bestowal of a bounty or grant, directly or indirectly, within the meaning of section 303 of the Tariff Act, as amended (19 U.S.C. 1303) (referred to in this notice as "the Act").

On the basis of an investigation conducted pursuant to § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)), it has been determined preliminarily that benefits have been paid or bestowed, directly or indirectly, under the Spanish Government tax remission system known as the *desgravacion fiscal*.

Benefits derived from the *desgravacion fiscal*, in some instances, constitute bounties or grants within the meaning of the Act. Accordingly, it has been determined preliminarily that imports of unwrought zinc from Spain benefit from payments of bounties or grants, directly or indirectly, within the meaning of the Act by reason of this program.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be re-

ceived by his office not later than on or before January 21, 1977.

This preliminary determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

DECEMBER 17, 1976.

VERNON D. ACREE,
Commissioner of Customs.

Approved.

PETER O. SUCHMAN,
Acting Assistant Secretary
of the Treasury.

[FR Doc.76-37591 Filed 12-21-76;8:45 am]

URBAN REINVESTMENT TASK FORCE

NEIGHBORHOOD PRESERVATION PROJECTS

Application Procedures

The Urban Reinvestment Task Force is a joint effort of the heads of the Federal financial regulatory agencies and the Secretary of the U.S. Department of Housing and Urban Development to stimulate the development of local partnerships committed to a coordinated neighborhood reinvestment strategy. The members of the Urban Reinvestment Task Force are:

The Secretary, U.S. Department of Housing and Urban Development; the Chairman, Federal Home Loan Bank Board; a member, Board of Governors, Federal Reserve System; the Chairman, Federal Deposit Insurance Corporation; and the Comptroller of the Currency.

The Task Force is involved in two separate programs, Neighborhood Housing Services (NHS) and Neighborhood Preservation Projects (NPP). Both programs involve the creation of a local partnership bringing together neighborhood residents, the private sector and local government. Task Force staff plays an active role in seeking out resources for neighborhoods from a broad range of public and private entities.

NEIGHBORHOOD PRESERVATION PROJECTS

The Urban Reinvestment Task Force is participating in the developmental funding of a limited number of selected demonstrations involving a partnership of neighborhood residents, the private sector, and local government, called Neighborhood Preservation Projects. The Task Force is identifying, monitoring, and evaluating locally developed neighborhood preservation programs which show promise of potential replicability in other cities. Those programs selected receive modest demonstration grants and technical assistance from Task Force staff.

Projects may be supportive of the Neighborhood Housing Services programs or they may offer other innovative approaches to stabilizing and improving the neighborhood environment. Those preservation programs that are successful will be offered to other cities as

models which they can use to treat specific problems in their neighborhoods.

PROGRAM AREAS FOR NEIGHBORHOOD PRESERVATION PROJECTS

In addition to programs which affect the physical environment, the Task Force is seeking innovative preservation strategies that deal with broader issues related to the social and economic fabric of urban neighborhoods. The Task Force will consider for selection as a Neighborhood Preservation Project applications which include (but are not limited to) one or more of the following areas:

1. Innovative financing or economic incentives to rehabilitate and stabilize apartment buildings;
2. Innovative education strategies;
3. Innovative crime prevention strategies; and
4. Mechanisms which provide for equitable treatment for current residents of neighborhoods experiencing rapidly increasing housing costs.

SELECTION CRITERIA FOR NEIGHBORHOOD PRESERVATION PROJECTS

1. The project should involve a partnership of neighborhood residents, the private sector, and local government.
2. Preference will be given to projects that are operational or at the point of starting operations.
3. The project should be specific to a neighborhood or neighborhoods, and should either have demonstrated success or show a strong probability of success in upgrading that/those neighborhood(s).
4. Local government should be willing to allocate financial resources and technical assistance to the project.
5. Those responsible for the implementation of the project should have a demonstrated capability to perform successfully in the area of neighborhood preservation.
6. The project sponsors should be willing to provide information which can be analyzed by the Task Force or its participating agencies to judge the effectiveness of the project. Sponsors should also be willing to cooperate with the Task Force in assisting others who may wish to replicate their project.

APPLICATION PROCEDURE

Application forms are available upon request. Cities or other governmental jurisdictions or non-public entities wishing to be considered for selection as a Neighborhood Preservation Project should submit a formal application to the Urban Reinvestment Task Force by March 1, 1977.

The Task Force will review materials submitted and select promising submissions for field review. Following the field review, applications will be ranked according to their promise as demonstrations, and agreements will be entered into with the top ranking applicants, subject to the availability of Task Force resources.

Inquiries should be addressed to:

Associate Director for Neighborhood Preservation Programs, 1120 19th Street, N.W., Suite 600, Washington, D.C. 20036.

WM. A. WHITESIDE,
Staff Director.

[FR Doc.76-37530 Filed 12-21-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 218]

ASSIGNMENT OF HEARINGS

DECEMBER 17, 1976.

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 135732 Sub 25, Aubrey Freight Lines, Inc., MC 123048 Sub 343, Diamond Transportation System, Inc., MC 118989 Sub 141, Container Transit, Inc., MC 116763 Sub 348, Carl Subler Trucking, Inc., MC 115331 Sub 413, Truck Transport, Inc., and MC 113678 Sub 631, Curtis, Inc. now being assigned March 28, 1977 (2 weeks), at Milwaukee, Wisconsin in a hearing room to be later designated.

MC 67866 (Sub-No. 31), Film Transit, Inc., now assigned January 18, 1977, at Memphis, Tenn. will be held in Room 396, Federal Building, 167 North Main Street.

MC 13250 (Sub-133), J. H. Rose Truck Line, Inc.; MC 100666 (Sub-335), Melton Truck Lines, Inc.; MC 107678 (Sub-60), Hill & Hill Truck Line, Inc.; MC 107743 (Sub-40), System Transport, Inc. and MC 114211 (Sub-283), Warren Transport, Inc., now being assigned February 22, 1977 (9 days), at Houston, Texas, in White Hall Hotel, 1700 Smith and continued to March 7, 1977 (1 week), at Portland, Oregon, in the Benson Hotel, 309 S. W. Broadway.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37610 Filed 12-21-76;8:45 am]

[Rule 19; Ex Parte No. 241; Second Revised Exemption No. 129]

ATCHISON, TOPEKA AND SANTA FE RAILROAD CO., ET AL.

Exemption Under Mandatory Car Service Rules

It appearing, That the railroads named herein own numerous 40-ft. plain box-cars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote

from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401 issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", with inside length 44-ft. 6 in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Atchison, Topeka and Santa Fe Railway Company.

Reporting marks: ATSF.¹

The Baltimore and Ohio Railroad Company.

Reporting marks: BO.

Burlington Northern Inc.

Reporting marks: BN-CBQ-GN-NP-SPS.

The Chesapeake and Ohio Railway Company.

Reporting marks: CO-PM.

Chicago Rock Island and Pacific Railroad Company.

Reporting marks: RI-ROCK.

Chicago, West Pullman & Southern Railroad Company.

Reporting marks: CWP.

The Denver and Rio Grande Western Railroad Company.

Reporting marks: DRGW.

Detroit and Mackinac Railway Company.

Reporting marks: D&M-DM.

Elgin, Joliet and Eastern Railway Company.

Reporting marks: EJE.

Illinois Terminal Railroad Company.

Reporting marks: ITC.

Louisville and Nashville Railroad Company.

Reporting marks: CIL-L&N-MON-NC.

Louisville, New Albany & Corydon Railroad Company.

Reporting marks: LNAC.

Missouri-Kansas-Texas Railroad Company.

Reporting marks: MKT.

Missouri Pacific Railroad Company.

Reporting marks: CEI-MI-MP-TP.

Southern Railway Company.

Reporting marks: CG-NS-SA-SOU.

St. Louis-San Francisco Railway Company.

Reporting marks: SLSF.

Soo Line Railroad Company.²

Reporting marks: SOO.

Reporting marks: UP.

Western Maryland Railway Company.

Reporting marks: WM.

Effective 12:01 a.m., December 15, 1976, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., December 8, 1976.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76-37605 Filed 12-21-76;8:45 am]

¹ Delete: Atlanta & Saint Andrews Bay Railway Company.

² Addition: Soo Line Railroad Company. Union Pacific Railroad Company.

[Rule 19; Ex Parte No. 241; Twenty-First Revised Exemption No. 90]

BALTIMORE AND OHIO RAILROAD CO., ET AL.

Exemption Under Mandatory Car Service Rules

To all railroads: It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1, 2(a), and 2(b).

The Baltimore and Ohio Railroad Company.¹

Reporting marks: BO.

The Chesapeake and Ohio Railway Company.

Reporting marks: CO-PM.

Elgin, Joliet and Eastern Railway Company.

Reporting marks: EJE.

Green Mountain Railroad Corporation.

Reporting marks: GMRC.

Greenville and Northern Railway Company.

Reporting marks: GRN.

Louisville and Wadley Railway Company.

Reporting marks: LW.

Louisville, New Albany & Corydon Railroad Company.

Reporting marks: LNAC.

Missouri-Kansas-Texas Railroad Company.

Reporting marks: BKTY-MKT.

New Jersey, Indiana & Illinois Railroad Company.

Reporting marks: NJII.

Norfolk and Western Railway Company.

Reporting marks: N&W-ACY-NKP-P&WV-WAB.

Ogdensburg Bridge and Port Authority.

Reporting marks: NSL.

Pearl River Valley Railroad Company.

Reporting marks: PRV.

The Pittsburgh and Lake Erie Railroad Company.

Reporting marks: P&LE.

Raritan River Rail Road Company.

Reporting marks: RR.

Sacramento Northern Railway.

Reporting marks: SN.

St. Johnsbury & Lamolille County Railroad.

Reporting marks: SJL.

Sierra Railroad Company.

Reporting marks: SERA.

Tidewater Southern Railway Company.

Reporting marks: TS.

Toledo, Peoria & Western Railroad Company.

Reporting marks: TPW.

Vermont Railway, Inc.

Reporting marks: VTR.

WCTU Railway Company.

Reporting marks: WCTR.

Western Maryland Railway Company.

Reporting marks: WM.

Yreka Western Railroad Company.

Reporting marks: YW.

Effective December 15, 1976, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., December 8, 1976.

INTERSTATE COMMERCE
COMMISSION
JOEL E. BURNS,
Agent.

¹ Deleted: Atlanta & Saint Andrews Bay Railway Company.

[FR Doc.76-37060 Filed 12-21-76;8:45 am]

[Notice No. AB 7 (Sub-No. 27); Finance Docket No. 28218]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Trackage Rights—Over Chicago and North Western Transportation Co. in Fond du Lac, County of Fond du Lac, Wisconsin

DECEMBER 10, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company of a 2.5 mile segment of its line and related track in Fond du Lac, County of Fond du Lac, Wisc., and the proposed trackage rights acquisition by the applicant over a 2.7 mile segment of Chicago and North Western Transportation Company line in Fond du Lac, 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 service would continue to the only shipper on the subject line via acquisition of trackage rights over the nearby C&NW line. The rerouting of traffic over the new route is not anticipated to cause any additional significant impacts due to the low volume of traffic and short distances involved. An environmental benefit would be accrued by the elimination of 19 grade crossings on the subject line. The city of Fond du Lac has also expressed interest in acquiring the right-of-way for public use should the abandonment be approved.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

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 January 14, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37609 Filed 12-21-76;8:45 am]

[Rule 19; Ex Parte No. 241; Exemption No. 111]

DETROIT, TOLEDO AND IRONTON RAILROAD CO. AND NORFOLK AND WESTERN RAILWAY CO.

Exemption Under Mandatory Car Service Rules

It appearing, That The Detroit, Toledo and Ironton Railroad Company (DTI) and the Norfolk and Western Railway Company (N&W) have each agreed to the unrestricted use by the other of its plain gondola cars less than 61 ft. in length; and that such mutual use of gondola cars will increase car utilization by reductions in switching and movements of empty gondola cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, plain gondola cars described in the Official Railway Equipment Register, I.C.C. R.E.R. No. 401, issued by W. J. Trezise, or successive issues thereof, as having mechanical designations "GA", "GB", "GD", "GH", "GS", and "GW", which are less than 61 ft. 0 in. long, and which bear the reporting marks listed herein, may be used by the DTI and the N&W without regard to the requirements of Car Service Rules 1 and 2.

REPORTING MARKS

DTI	DTI	N&W
DT&I	ACY	
	NKP	
	N&W	
	P&WV	
	VGN	
	WAB	

¹ Addition.

Effective December 15, 1976.

Expires March 15, 1977.

Issued at Washington, D.C., December 9, 1976.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.76-37608 Filed 12-21-76;8:45 am]

[Notice No. 93]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 22, 1976.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 76863. By application filed December 9, 1976, Zellmer Truck Lines, P.O. Box 996, Granville, IL 61326, seeks temporary authority to transfer the operating rights of Henry Zellmer, an individual, doing business as Zellmer Truck Lines, P.O. Box 996, Granville, IL 61326, under Section 210a(b). The transfer to Zellman Truck Lines, of the operating rights of Henry Zellmer, an individual, doing business as Zellmer Truck Lines, is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37604 Filed 12-21-76;8:45 am]

[Notice No. 94]

MOTOR CARRIER TRANSFER PROCEEDINGS

DECEMBER 22, 1976.

Application filed for temporary authority under Section 210a(b) in connection with transfer application under section 212a(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 76875. By application filed December 14, 1976, Mustang Transportation Incorporated, 3804 Jensen Drive, P.O. Box 21201, Houston, TX 77028, seeks temporary authority to transfer the operating rights of Ramsey Truck Lines, Inc., P.O. Box 1031, Houston, TX 77001, under Section 210a(b). The transfer to Mustang Transportation Incorporated, of the operating rights of Ramsey Truck Lines, Inc., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37603 Filed 12-21-76;8:45 am]

[Notice No. AB 12 (Sub-No. 42)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment of Portion of Railroad Services

DECEMBER 9, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of

Energy and Environment has concluded that the proposed abandonment by the Southern Pacific Transportation Company of a portion of its Clovis Branch Line between Copper Ave. and Rockfield, a distance of 2.62 miles, all in Fresno County, Ca., 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 absence of commercial rail traffic over the line would result in no increase in motor carrier use over the highways of the affected area if the abandonment were approved. Accordingly, there should be no changes in ambient environmental conditions, safety, or traffic patterns. Approval of the abandonment would not affect any endangered or threatened species, historic structures, or archeological sites. Due to the lack of definitive industrial plans for the area, authorization of the abandonment would not seriously affect rural and community development.

This conclusion is contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011.

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 January 13, 1977.

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the environmental issues in the proceeding and does not purport to resolve the issue of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37607 Filed 12-21-76;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

DECEMBER 17, 1976.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before January 6, 1977.

FSA No. 43286—*Rice and Rice Products from Arkansas, Louisiana and Texas*. Filed by Southwestern Freight Bureau, Agent, (No. B-648), for interested rail carriers. Rates on rice, clean, whole or broken, in carloads, as described in the

application, from Bayport, Baytown, and Houston, Texas, to Boston, Mass., Carlstadt and Elizabeth, N.J., and Hanover, Pa.

Grounds for relief—Water competition.

Tariff—Supplement 63 to Southwestern Freight Bureau, Agent, tariff 326-C, ICC 5155. Rates are published to become effective on January 12, 1977.

FSA No. 43287—*Annual Volume Rates-Chemicals-Between Points in the United States*. Filed by Southwestern Freight Bureau, Agent, (No. B-649), for interested rail carriers. Rates on chlorine, liquid caustic soda, and specified solvents, in tank-car loads, as described in the application, from Plaquemine, Louisiana, and Freeport, Texas, to Doctortown, Rosser, and Savannah, Georgia.

Grounds for relief—Market competition.

Tariff—Supplement 6 to Southwestern Freight Bureau, Agent, tariff 11-H, ICC

5242. Rates are published to become effective on January 15, 1977.

FSA No. 43288—*Beet or Cane Sugar from Montana and Washington*. Filed by Trans-Continental Freight Bureau, Agent, (No. 512), for interested rail carriers. Rates on sugar, beet or cane, in carloads, as described in the application, from points in Montana and Washington to points in Illinois, Indiana, Iowa, Kentucky, Missouri, and Wisconsin.

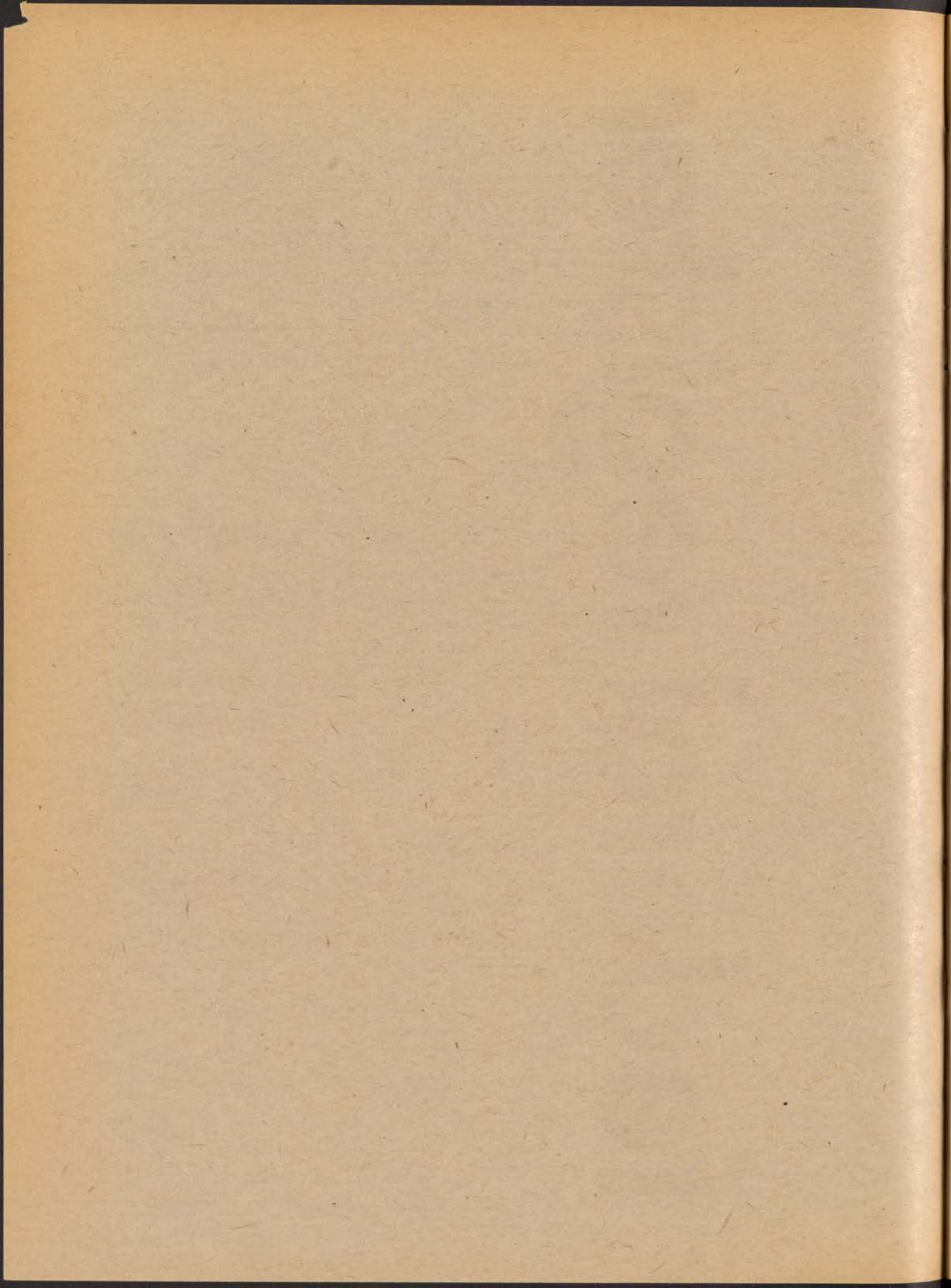
Grounds for relief—Returned shipments and rate relationship.

Tariffs—Supplements 423 and 29 to Trans-Continental Freight Bureau, Agent, tariffs 14-P and 2-N, ICC 1785 and 1935, respectively. Rates are published to become effective on January 15, 1977.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37602 Filed 12-21-76; 8:45 am]



federal register

WEDNESDAY, DECEMBER 22, 1976



PART II:

DEPARTMENT OF COMMERCE

**National Oceanic and
Atmospheric Administration**

■

COASTAL ZONE MANAGEMENT

Interstate Grants

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[15 CFR Part 932]

COASTAL ZONE MANAGEMENT

Interstate Grants

The National Oceanic and Atmospheric Administration (NOAA) hereby proposes to adopt regulations pursuant to section 309 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), hereinafter referred to as the "Act," for the purpose of defining procedures by which interstate entities can apply for and receive grants for interstate coordination of coastal management issues affecting two or more States in a region.

Section 309 of the Act provides that:

(a) The coastal states are encouraged to give high priority—

(1) To coordinating state coastal zone planning, policies, and programs with respect to contiguous areas of such states; and

(2) To studying, planning, and implementing unified coastal zone policies with respect to such areas. Such coordination, study, planning, and implementation may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 per centum of the cost of such coordination, study, or implementation, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 305 and 306.

(b) The consent of the Congress is hereby given to two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for—

(1) Developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 305 and 306; and

(2) Establishing executive instrumentalities or agencies which such states deem desirable for the effective implementation of such agreements or compacts. Such agreements or compacts shall be binding and obligatory upon any state or party thereto without further approval by the Congress.

(c) Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to adopt a Federal-State consultation procedure for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone. The Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Administrator of the Federal Energy Administration, or their designated representatives, shall participate ex officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

(d) If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal states to create coordinating entity to—

(1) Coordinate state coastal zone planning, policies, and programs with respect to contiguous areas of the states involved;

(2) Study, plan, and implement unified coastal zone policies with respect to such areas; and

(3) Establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone. The amount of such grants shall not exceed 90 per centum of the cost of creating and maintaining such an entity. The Federal officials specified in subsection (c), or their designated representatives, shall participate on behalf of the Federal Government, upon the request of any such temporary planning and coordinating entity.

To implement this new section 309, contained in Pub. L. 94-370, NOAA proposes a new Part 932.

Part 932 will implement the authority which enables coastal States to address in a cooperative manner issues of coastal management which are interstate in nature. By awarding grants for such purposes, it is felt that States will be better able to anticipate, study and resolve such interstate coastal management matters.

The basic purposes for which interstate grants may be used include the continuation of interstate and regional cooperative efforts on the part of coastal States begun during the program development phase pursuant to section 305 of the Act, and the extension of cooperative efforts into the program administration phase pursuant to section 306 of the Act. These cooperative efforts may consist of studies, planning, coordination and/or implementation of unified coastal zone policies. These cooperative efforts may also consist of establishment of effective mechanisms, including especially State-Federal consultation procedures, for resolving mutual problems with respect to marine and coastal areas affecting the applicable coastal zone.

In order to insure that activities funded by section 309 interstate grants support State coastal management needs, the designated State development or management agencies shall play the primary role in determining the appropriate interstate entity to receive such grants.

Subpart A of Part 932, entitled General, discusses the basic intent of providing interstate grants, defines the terms "Secretary," "contiguous areas," "marine areas," and "temporary," and discusses the appropriate uses of section 309 grants. Eligible items for funding pursuant to this section include:

(1) The coordination of State coastal planning, policies and programs with respect to contiguous areas of coastal States;

(2) The study, planning and/or implementation of unified coastal policies with respect to such areas; and/or

(3) The establishment of effective mechanisms for the identification, examination and/or cooperative resolution of mutual problems with respect to marine and coastal areas, including the establishment of permanent interstate coastal management compacts or agreements.

Subpart B, entitled Eligible Entities, contains a discussion of entities eligible for funding pursuant to section 309 of the Act, and a discussion of priorities to be assigned eligible entities with respect

to funding. Any of the following will be considered eligible entities:

(1) An executive instrumentality or agency established by interstate compact or agreement pursuant to subsection 309 (b) of the Act;

(2) A temporary planning or coordinating entity created by two or more States, pursuant to subsection 309(d) of the Act, in a region as defined in section 932.2;

(3) An existing regional, interstate entity designated by the affected States.

Among these entities, higher priority for funding will be given to an instrumentality or agency established by interstate compact or agreement, where such are created pursuant to subsection 309(b) of the Act. However, creation of such instrumentalities or agencies is not necessary in order to be eligible for interstate grants.

Applications may be funded from more than one interstate or bistate entity in a particular region.

Subpart C, entitled Review/Approval Procedures, contains a discussion of pre-submission consultation, and formal submission and review. The primary purpose of pre-submission consultation with the Office of Coastal Zone Management (OCZM) will be to determine whether the proposed interstate cooperative effort is consistent with the purposes of sections 305 and 306 of the Act and to determine the degree of support for the proposed effort on the part of affected coastal States. Review of a formal submission will involve evaluation of the application in terms of both programmatic and budgetary considerations. Where an application calls for the involvement of one or more Federal agencies, said application will be forwarded to the affected agencies for their review and comment.

Subpart D, entitled permanent Interstate Coastal Management Compacts or Agreements, contains a discussion of the procedure NOAA will follow to review interstate compacts or agreements, established pursuant to subsection 309(b) of the Act, to determine that these compacts or agreements do not conflict with any law or treaty of the United States. This subpart also contains a discussion of funding priorities assigned to entities created pursuant to subsection 309(b). Where applications are received from such entities, higher funding priority will be given where a procedure for State-Federal consultation is a part of the entity's function. This subpart also contains a discussion of the Federal agencies that must and should be included where a State-Federal consultation procedure is established in entities created by compact or agreement.

Subpart E, entitled Application for Interstate Grants, contains a discussion of a grantee's administrative and fiscal responsibilities, application procedures including the content of the program narrative, procedures for approving applications, and procedures for amending approved applications.

Prior to issuance of these proposed regulations, NOAA distributed widely a draft paper on implementing section 309 of the Act. Comments were received ques-

tioning the need to comply with provisions of OMB Circular A-95 (revised), as now proposed in § 932.42; questioning the rationale in the funding priorities proposed for permanent interstate entities established by compact or agreement, as now proposed in § 932.32; and questioning the procedure (in the draft paper) for insuring newly created compacts or agreements do not conflict with existing United States laws and treaties.

While grants under section 309 of the Act are not presently listed in OMB Circular A-95 (revised), they are sufficiently similar to other grants listed in the circular as being subject to its provisions that it seems appropriate to require review by State A-95 Clearinghouses of those States involved in or affected by an interstate grant application.

The reason for assigning higher funding priority to interstate entities (established pursuant to subsection 309(b) of the Act) that contain a State-Federal consultation mechanism is the emphasis in the language of the Act and legislative history on the establishment of such consultation procedure as a function of such entities.

The draft paper on section 309 proposed that determination of conflict with existing laws and treaties of the United States for entities created pursuant to subsection 309(b) would be made at the time such entities applied for a section 309 grant.

In response to comments that few States would want to go through the effort of ratifying an interstate compact or agreement only to discover a conflict afterwards, the present proposed § 932.31 provides for NOAA review for conflict with existing laws and treaties of the United States prior to ratification by States of a compact or agreement pursuant to subsection 309(b) of the Act.

NOAA has reviewed these proposed regulations pursuant to the National Environmental Policy Act of 1969 and has determined that promulgation of these regulations will have no significant impact on the environment.

Compliance with Executive Order 11821. The economic and inflationary impact of these proposed regulations has been evaluated in accordance with OMB Circular A-107, and it has been determined that no major inflationary impact will result.

NOAA invites public comment on these proposed regulations so that they may be modified, where necessary and legally permissible, to reflect fully the needs of the public and parties affected by the provisions. Written comments should be submitted to the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Page Building 1, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, on or before January 24, 1977. Following the close of the comment period, and after review of comments, the Associate Administrator for Coastal Zone Management, NOAA, may amend these proposed regulations to reflect necessary and permissible changes. The

Associate Administrator shall then have final regulations published in the FEDERAL REGISTER.

Dated December 16, 1976.

ROBERT L. CARNAHAN,
Deputy, Assistant Administrator
for Administration.

In consideration of the foregoing, Part 932 is proposed as follows:

PART 932—INTERSTATE GRANTS

Subpart A—General

- Sec. 932.1 Basic purposes.
- 932.2 Definitions.
- 932.3 Use of grants.

Subpart B—Eligible Entities

- 932.10 General.
- 932.11 Eligible entities.
- 932.12 Funding priorities among entities.

Subpart C—Review/Approval Procedures

- 932.20 General.
- 932.21 Presubmission consultation.
- 932.22 Formal submission and review.

Subpart D—Permanent Interstate Coastal Management Compacts or Agreements

- 932.30 General.
- 932.31 Review by NOAA for non-conflict with laws and treaties of the United States.
- 932.32 Funding priorities among permanent compacts or agreements.
- 932.33 Federal consultation procedures.

Subpart E—Application for Interstate Grants

- 932.40 General.
- 932.41 Applicant responsibility.
- 932.42 Application procedures.
- 932.43 Approval of applications.
- 932.44 Amendments.

AUTHORITY: Sec. 309, Coastal Zone Management Act of 1972. (Pub. L. 92-583, 86 Stat. 1280, as amended by Pub. L. 94-370, 90 Stat. 1013).

Subpart A—General

§ 932.1 Basic purposes.

(a) This section establishes the basic purposes for which interstate grants pursuant to subsections 309(a) and 309(d) of the Act may be awarded. The basic intent of interstate grants under these subsections is to provide for the continuation of interstate and regional efforts on the part of coastal States begun during the program development phase pursuant to section 305 of the Act, and the extension of cooperative efforts into the program administration phase pursuant to section 306 of the Act. Cooperative efforts may consist of studies, planning, coordination and/or implementation of unified coastal policies, plans or programs. These cooperative efforts may also consist of establishment of effective mechanisms, including especially State-Federal consultation procedures for the identification, examination and cooperative resolution of mutual problems with respect to marine and coastal areas affecting the applicable coastal zone.

(b) *Comment.* Statutory Citation, subsection 309(a):

The Coastal States are encouraged to give high priority—

(1) To coordinating state coastal zone planning, policies, and programs with respect to contiguous areas of such states and

(2) To studying, planning, and implementing unified coastal zone policies with respect to such areas * * *

(c) *Comment.* Statutory Citation, subsection 309(b):

The consent of the Congress is hereby given two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for—

(1) Developing and administering coordinated coastal zone planning, policies and programs pursuant to sections 305 and 306; and

(2) Establishing executive instrumentalities or agencies which such states deem desirable for the effective implementation of such agreements or compacts * * *

(d) *Comment.* Statutory Citation, subsection 309(d):

If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal states to create and maintain a temporary planning and coordinating entity to—

(1) Coordinate state coastal zone planning, policies, and programs with respect to contiguous areas of the states involved;

(2) Study, plan, and implement unified coastal zone policies with respect to such areas; and

(3) Establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone * * *

§ 932.2 Definitions.

(a) The term "Act" means the Coastal Zone Management Act of 1972, as amended.

(b) The term "Secretary" means the Secretary of Commerce or his/her designee. Delegations of authority from the Secretary to the Administrator, National Oceanic and Atmospheric Administration, have been duly executed by Amendment 5 of Department of Commerce Organization Order 25-5A, dated October 13, 1976; and from the Administrator to the Associate Administrator for Coastal Zone Management, by NOAA Circular 76-82, effective October 13, 1976.

(c) The term "Associate Administrator" means the Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

(d) The term "contiguous areas" means those land or water areas in or affecting the coastal zone of two or more States which collectively constitute an interrelated ecological, economic, social or administrative unit for the purposes for which an interstate grant is sought. Areas will be considered contiguous if they involve or affect the coastal zones of any of the following groups of States, or any subgroups thereof:

(1) Pacific States including California, Oregon, Washington, Alaska, Hawaii, Guam and/or American Samoa;

(2) Great Lakes States including Michigan, Minnesota, Wisconsin, Ohio, Illinois, Indiana, New York and/or Pennsylvania;

(3) New England States including Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and/or New York;

(4) Mid-Atlantic States including New York, New Jersey, Pennsylvania, Delaware, Maryland and/or Virginia;

(5) South Atlantic States including Virginia, North Carolina, South Carolina, Georgia, and/or Florida; and

(6) Gulf States including Florida, Alabama, Mississippi, Louisiana, Texas, Puerto Rico and/or the U.S. Virgin Islands.

(e) The term "marine and coastal areas" means the State's defined coastal zone including waters (and lands thereunder) within a State's territorial limits as well as waters (and lands thereunder) beyond this territorial limit but within the extended lateral seaward boundaries of States as determined pursuant to subsection 308(b) (3) (B) of the Act.

(f) The term "temporary" means either the duration of a particular project in which case "temporary" means one year, or the life of a particular entity which may be created for purposes of receiving grants under section 309 of the Act, in which case "temporary" means no longer than September 30, 1980, which is the expiration date for authorizations under this section, pursuant to subsection 318(a) (4) of the Act.

§ 932.3 Use of grants.

(a) Pursuant to subsections 309(a) and 309(d) of the Act, the Associate Administrator will consider for funding any cooperative effort involving contiguous areas of two or more States if the purposes of such cooperative effort are consistent with sections 305 or 306 of the Act and are designed specifically to:

(1) Coordinate State coastal zone planning, policies and programs with respect to contiguous areas of such States; and/or

(2) Study, plan and/or implement unified coastal zone policies with respect to such contiguous areas; and/or

(3) Establish effective mechanisms for the identification, examination and/or cooperative resolution of mutual problems with respect to marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

(b) The Associate Administrator will deem an interstate cooperative effort to be consistent with sections 305 or 306 of the Act if the activities proposed are related to or derived from goals, objectives, mutual issues, problems and/or needs identified by two or more States in their approved section 306 management programs or their program development or program implementation work programs funded pursuant to section 305 or section 306 respectively.

(c) Specific work activities in any interstate cooperative effort funded pursuant to section 309 of the Act may include:

(1) Collection and analysis of data;

(2) Preparation and dissemination of reports and position papers;

(3) Development of agreements with individual Federal agencies, including regional offices of these agencies;

(4) Establishment of interstate agreements or compacts pursuant to subsection 309(b) of the Act; and

(5) Holding of workshops and similar, necessary meetings or conferences.

(d) The Associate Administrator will not consider funding activities which entail only technical research and studies which will not have a definite relationship to or will not result in development of specific, unified coastal zone policies and/or consultation mechanisms for the States involved, or which could be funded more appropriately under section 308 or section 310 of the Act.

(e) The Associate Administrator will not consider funding under section 309 of the Act any work activity which will be performed by an interstate entity on behalf of only a single coastal State. This prohibition on the use of section 309 grants does not preclude a State from exercising its option pursuant to subsections 305(g) and 306(f) of the Act to allocate, with the approval of the Associate Administrator, portions of their grant to any interstate agency for carrying out approved work program activities.

Subpart B—Eligible Entities

§ 932.10 General.

(a) The Associate Administrator will consider an applicant eligible for a grant under section 309 of the Act if the applicant meets the criteria listed in § 932.11 and if the applicant and the proposed grant activities have the explicit, written support of the designated state management agencies (pursuant to 15 CFR 920.52 or 15 CFR 923.23). The content of what must be in this written support is contained in § 932.42.

(b) Applications will be considered from more than a single interstate or bistate entity in a particular region (as listed in § 932.2(d)), depending on the nature of the issues to be addressed, the qualifications of entities to address those issues, and the nature and number of States affected by the applications.

§ 932.11 Eligible entities.

(a) The Associate Administrator will consider any of the following to be eligible entities for the purpose of applying for grants pursuant to subsections 309(a) or 309(d) of the Act:

(1) An executive instrumentality or agency established by an interstate agreement or compact pursuant to subsection 309(b);

(2) A temporary planning and coordinating entity created by two or more States with contiguous areas, with the concurrence of the Associate Administrator, to serve the purposes of subsection 309(d); or

(3) An existing regional, interstate entity designated by the States involved, and with the concurrence of the Associate Administrator, to address issues identified in § 932.3.

(b) For the purpose of creating and maintaining temporary entities pursuant to subsection 309(d) of the Act, the Associate Administrator does not encourage the formation of entities consisting of new regional groupings of States that are duplicative of existing regional entities where such existing entities can be demonstrated to have the capability or working experience necessary to accomplish the proposed purpose(s) for which the temporary entity would be created.

§ 932.12 Funding priorities among entities.

(a) For any grouping of States, the Associate Administrator will give higher funding priority to an entity established pursuant to subsection 309(b) of the Act. However, the establishment of such a permanent executive instrumentality or agency will not automatically terminate funding eligibility of a pre-existing permanent or temporary interstate entity (supported by the same States involved in the compact or agreement) if it can be demonstrated by the applicant that the entity created pursuant to subsection 309(b) of the Act is not capable of accomplishing the particular task for which the interstate grant is sought and if the applicant is better qualified to handle such task.

(b) States are not required to establish interstate entities pursuant to subsection 309(b) of the Act to be eligible for interstate grants. However, where such entities, at the option of States are created, the priority contained in § 932.12(a) will be applied.

Subpart C—Review/Approval Procedures

§ 932.20 General.

(a) This section establishes the procedures by which the Associate Administrator will accept and review grant applications pursuant to subsections 309(a) or 309(d) of the Act. These procedures will include presubmission consultation on the part of the applicant with the Associate Administrator followed by a formal submission by the applicant and a formal review by the Associate Administrator.

§ 932.21 Presubmission consultation.

(a) States or interstate entities which have identified problems or needs requiring interstate coordination are expected to consult with the Associate Administrator prior to the formulation of a formal application for a section 309 grant. The purpose of such consultation will be to determine whether the proposed interstate effort will be consistent with the purposes of sections 305 or 306 of the Act, and with the affected States' developing or approved coastal management programs. Such consultation also will facilitate the early determination of the eligibility of the proposed entity and proposed work items. Further, if Federal agencies are to be involved, such consultation also will enable the Associate Administrator to assist States in securing early participation by these Federal agencies in defining mutual problems to

be resolved and in determining the procedure to be used for State-Federal consultation.

(1) Where presubmission consultation is initiated by an entity other than the States, that entity should demonstrate evidence of support by the designated coastal management agencies of those States which may be expected to be involved in or affected by the proposed application. At the presubmission consultation stage, evidence of support need not consist of the written documentation, pursuant to § 932.42, required for a formal application.

§ 932.22 Formal submission and review.

(a) After presubmission consultation, a formal application may be submitted by any entity which has been deemed by the Associate Administrator to be an eligible applicant.

(1) A formal submission will contain the information required pursuant to § 932.42. In no case will the Associate Administrator consider an application unless it contains the documentation specified in § 932.42 with respect to States' review and concurrence.

(b) Upon receipt of a formal grant application, the Associate Administrator will initiate an evaluation of the proposal in terms of both programmatic and budgetary considerations.

(1) If the proposal requires the involvement of one or a number of Federal agencies, that proposal will be forwarded to the referenced agency (agencies) for their review and comment within thirty days from receipt of the proposal from the Associate Administrator.

(c) The Associate Administrator will award a grant pursuant to section 309 of the Act assuming availability of funds if he/she finds the application:

(1) is consistent with the purposes and uses of section 309 grants contained in §§ 932.1 and 932.3;

(2) Meets the financial and budgetary requirements contained in § 932.42; and

(3) If appropriate, is concurred with by affected Federal agencies.

Subpart D—Permanent Interstate Coastal Management Compacts or Agreements

§ 932.30 General.

(a) Subsection 309(b) of the Act establishes prior Congressional consent for two or more coastal states to negotiate and enter into agreements or compacts for certain purposes related to coastal management, provided these compacts or agreements do not conflict with any law or treaty of the United States. This subpart establishes the procedure by which the Associate Administrator will review such compacts or agreements, prior to their ratification, to insure that there is no conflict with U.S. laws or treaties.

(b) This subpart also establishes funding priorities for section 309 grants to entities created pursuant to the interstate compacts or agreements allowed under subsection 309(b).

§ 932.31 Review by NOAA for non-conflict with laws or treaties of the United States.

(a) Pursuant to subsection 309(b) of the Act, two or more coastal States may enter into agreements or compacts for the following two broad purposes:

(1) development and administration of coordinated coastal zone planning, policies and programs pursuant to sections 305 and 306 of the Act (i.e., supportive of State coastal management program development or implementation); and

(2) establishment of executive instrumentalities or agencies which two or more States deem desirable for effective implementation of such agreements or compacts.

(b) Prior Congressional approval is given for such compacts or agreements provided they do not conflict with laws and treaties of the United States. To insure that States do not expend time and money unnecessarily in negotiating and entering into compacts or agreements that may conflict with existing United States laws or treaties, it is recommended that, prior to final ratification of a subject compact or agreement, the States that will be party to such compact or agreement submit the relevant documents to the Associate Administrator. The Associate Administrator will undertake a review of the proposed agreement or compact, in consultation with the Department of Justice and with other Federal agencies as appropriate. In order to expedite this review, States are advised to submit relevant documents to the Associate Administrator as early in the negotiation process as is reasonably possible.

(c) *Comment.* Statutory Citation, subsection 309(b):

The consent of Congress is hereby given to two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States * * *. Such agreements or compacts shall be binding and obligatory upon any state or party thereto without further approval by Congress.

§ 932.32 Funding priorities among permanent compacts or agreements.

(a) In light of the encouragement given to the adoption of a State-Federal consultation procedure by any executive instrumentality or agency established by interstate agreement or compact pursuant to subsection 309(b) of the Act, higher funding priority will be given to such entities which contain a State-Federal consultation procedure for the identification, examination and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

(b) *Comment.* Statutory Citation, subsection 309(c):

Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to adopt a Federal-State consultation procedure for the identification, exam-

ination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

§ 932.33 Federal consultation procedures.

(a) Where a State-Federal consultation procedure is adopted pursuant to subsection 309(c) of the Act, the participation of the following, ex officio, shall be included:

- (1) The Secretary of the Interior;
- (2) The Chairman of the Council on Environmental Quality;
- (3) The Administrator of the Environmental Protection Agency;
- (4) The Secretary of the department in which the Coast Guard is operating;
- (5) The Administrator of the Federal Agency Administration; or
- (6) Their designated representatives.

(b) The associate Administrator encourages the inclusion and participation of other Federal agencies, as appropriate, in this consultation procedure.

(c) *Comment.* Statutory Citation, subsection 309(c):

* * * (T)he Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Administrator of the Federal Energy Administration or their designated representatives shall participate ex officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

Subpart E—Application for Interstate Grants

§ 932.40 General.

(a) The purpose of this section is to define the procedures by which grantees apply for and administer grants under section 309 of the Act and to provide guidelines regarding the content of applications for interstate grants. These procedures shall be used and interpreted in conjunction with the Grants Management Manual for Grants under the Coastal Zone Management Act, hereinafter referred to as the "Manual." The Manual incorporates a wide range of Federal requirements, including those established by the Office of Management and Budget, the General Services Administration, the Department of the Treasury, the General Accounting Office, and the Department of Commerce.

(b) Grants shall not exceed ninety per cent of the total cost of the interstate project proposed in the grant request. Federal funds received from other sources cannot be used to match section 309 grants. Match provided by the applicant may consist of cash or in-kind services as provided in the Manual.

(c) Cost claimed as charges to the grant project must be beneficial and necessary to the objectives of the grant project. As used herein the terms costs and grant project pertain to both the Federal grant and the matching share. The allowability of costs will be determined in accordance with the provision of the

General Services Administration Federal Management Circular 74-4; Cost Principles Applicable to Grants and Contracts with State and Local Governments.

§ 932.41 Applicant responsibility.

(a) The application will designate the entity to receive and administer grants pursuant to section 309 of the Act. The applicant must be legally and administratively capable of receiving and administering such grants.

(b) The grantee will be administratively and fiscally responsible for all aspects of the grant, including any subcontracts made by the grantee.

§ 932.42 Application procedure.

(a) All applications are subject to the provisions of OMB Circular A-95 (revised), with respect to notification of State Clearinghouses of the States involved in or affected by the grant application. A statement to the effect that the application is determined to be statewide or broader in nature shall be attached to an application submitted to the Associate Administrator. Such a determination does not preclude State clearinghouses from involving areawide clearinghouses in the review.

(b) All applications shall contain documentation signed by the head of the designated State agencies for coastal management program development or program administration (designated pursuant to 15 CFR 920.52 and 15 CFR 923.23, respectively) of the affected States and, where required by State law or interstate agreement, by the Governors of those States, that the designated State agency:

(1) has reviewed the application and finds the purposes for which the grant will be used are consistent with developing or approved coastal management programs;

(2) has reviewed the application and supports the proposed work program; and

(3) has reviewed the capabilities and functions of the applicant entity and supports that entity for purposes of carrying out the activities described in the application.

(4) Where the applicant is an entity established pursuant to subsection 309 (b) of the Act, the application will contain a copy of the compact or agreement pursuant to which the entity was created, and documentation that the compact

or agreement does not conflict with any law or treaty of the United States. The copy of the compact or agreement and the documentation shall be required only upon initial application for a section 309 grant and will not be required for subsequent applications from the same entity.

(c) The form SF-424, Application for Federal Assistance (Non-Construction Programs), constitutes the formal application and must be submitted 60 days prior to the desired grant beginning date. The application must be accompanied by evidence of compliance with requirements of OMB Circular A-95, including the resolution of any problems raised about the proposed project. The Associate Administrator will not accept applications that are substantially deficient in adherence to either A-95 requirements or the documentation required pursuant to § 932.41 (b).

(d) In Part IV, the Program Narrative, the applicant shall respond to the following requirements:

(1) A clear description of the contiguous areas on which the cooperative effort, will focus, including a listing of the State involved in and/or affected by the cooperative effort;

(2) A general discussion of the purposes for which the interstate grant will be used, including the relationship of grant activities to the developing or approved coastal management programs of affected States;

(3) A discussion of the anticipated results of the proposed cooperative effort, including how these results may be expected to affect or be integrated into the coastal management program of affected States;

(4) A description of the work program to be undertaken during the grant period. This work program will include:

(i) A precise description of each major task to be undertaken, how it will be accomplished, and by whom it will be accomplished;

(ii) For each task, identify any "Other Entities," as defined in the Manual, that will be allocated responsibility for carrying out all or portions of the task, and indicate the estimated cost of any sub-contract for each allocation. Identify, if any, that portion of the task that will be carried out under contract with consultants and indicate the estimated cost of such contract(s); and

(iii) For each task indicate the estimated total cost. Also indicate the estimated total months of effort, if any, allocated to the task from the applicant's task.

(e) The sum of all task in subparagraph (4) above should equal the total estimated grant project cost.

(f) Using two categories, Professional and Clerical, indicate the total number of personnel in each category on the applicant's staff that will be assigned to the grant project. Also, indicate the number assigned full-time and the number assigned less than full-time in the two categories. Additionally, indicate the number of new positions created in the two categories as a result of the grant project. Indicate total personnel costs.

§ 932.43 Approval of applications.

(a) An application for an interstate grant which complies with the policies and requirements of the Act and the guidance contained in this subpart shall be subject to approval by the Associate Administrator, assuming available funding.

(b) Should an application be found deficient, the Associate Administrator will notify the applicant in writing as to the manner in which the application fails to conform to the requirements of the Act or this subpart. Corrections may be held on these matters. Corrections or adjustments to the application will provide the basis for resubmission of the application for further consideration and review.

(c) The Associate Administrator may, upon finding extenuating circumstances relating to applications for interstate grants, waive appropriate administrative requirements contained herein.

§ 932.44 Amendments.

(a) Amendments to an approved application must be submitted to and approved by the Associate Administrator prior to initiation of the contemplated change. Requests for substantial changes should be discussed with the Associate Administrator well in advance. While all amendments must be approved in writing by the Associate Administrator, approval may be presumed for minor amendments if the grantee has not been notified of objections within 30 working days of date of postmark of the request.

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federal register

WEDNESDAY, DECEMBER 22, 1976



PART III:

ENVIRONMENTAL PROTECTION AGENCY



STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Lignite-Fired Steam Generators

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 850-8]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Lignite-Fired Steam Generators

The Environmental Protection Agency (EPA) is considering amendments to Subpart D of 40 CFR Part 60 (Fossil Fuel-Fired Steam Generators) to establish standards of performance for emissions of nitrogen oxides from new lignite-fired steam generators of greater than 73 megawatts heat input (250 million Btu per hour) and to incorporate the International System of Units (modernized metric system), as applicable.

On December 23, 1971 (36 FR 24877), EPA promulgated standards of performance for fossil fuel-fired steam generators. Included were standards for particulate matter, sulfur dioxide, and nitrogen oxides applicable to gaseous, liquid, and solid fossil fuel-fired facilities. However, because of a lack of information on nitrogen oxides emissions, lignite-fired facilities were exempted from the nitrogen oxides standard for solid fossil fuels, although they are subject to the standards for particulate matter and sulfur dioxide.

EPA has gathered additional information on lignite-fired facilities and the background materials on the proposed amendment to Subpart D have been published in a report entitled "Standards Support and Environmental Impact Statement, Volume 1: Proposed Standards of Performance for Lignite-Fired Steam Generators", hereafter referred to as SSEIS. Copies are available on request from the EPA Public Information Center (PM-215), Environmental Protection Agency, Washington, D.C. 20460 (specify: Standards Support and Environmental Impact Statement, Volume 1: Proposed Standards of Performance for Lignite-Fired Steam Generators). The information contained in the SSEIS is briefly discussed in this preamble to the proposed standard of performance.

INTERNATIONAL SYSTEM OF UNITS

In accordance with the objective to implement national use of the metric system, EPA presents numerical values in both metric units and English units in its regulations and technical publications. In an effort to simplify use of the metric units of measurement, EPA now uses the International System of Units (SI) as set forth in a publication by the American Society for Testing and Materials entitled "Standard for Metric Practice" (Designation: E 380-76). Therefore, EPA is proposing to revise the appropriate sections of Subpart D to reflect use of SI units.

PROPOSED STANDARD

The proposed standard of performance limits emissions of nitrogen oxides to 260 nanograms per joule of heat input (0.6 pound per million Btu) from lignite-fired steam generators having a capacity

greater than 73 megawatts heat input rate (250 million Btu per hour). The proposed standard reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction) has been adequately demonstrated. The best system is considered to be a combination of staged combustion and low excess air.

ECONOMIC AND ENVIRONMENTAL IMPACTS

Based on historical growth rates, it is estimated that 25 new lignite-fired steam generators would be subject to the proposed standard by 1985. The proposed standard would reduce NO_x emissions by 128,000 Mg/yr (141,000 T/yr). Controlling NO_x emissions to the level of the proposed standard would result in insignificant increases in capital and annualized costs for the utility.

Since approximately 90 percent of lignite-fired steam generators of rated capacity greater than 73 MW heat input are owned by electric utilities, the cost of complying with the proposed standard was analyzed for the lignite utility industry. The cost to the utilities appears to be negligible relative to the capital investment costs. Available information indicates that, at most, nitrogen oxides control would increase capital investment costs by only 0.5 percent for a new lignite-fired utility boiler and ancillary equipment. This cost increase for NO_x control represents an estimated increase of two dollars per installed kilowatt relative to an estimated typical cost of about 400 dollars per installed kilowatt capacity based on costs for a bituminous coal-fired boiler island. The costs for NO_x control would have negligible effect on power costs to consumers. The review of the economic impact has shown that the proposal is not a major action under the Inflationary Impact Statement (IIS) program, and no IIS is needed.

The environmental impact of the proposed standard is beneficial since the increase in emissions due to growth of lignite-fired steam generators would be minimized. The proposed standard should result in a 20 percent reduction in the mass of nitrogen oxide emissions from new lignite-fired boilers. It would reduce the atmospheric burden of nitrogen oxides and would help prevent increased ambient oxidant concentrations in areas where lignite-fired steam generators will be located (primarily North Dakota and Texas). There are no adverse environmental impacts associated with the proposed standard. Control techniques required to comply with the proposed standard do not cause boiler efficiency losses, and thus there are no incremental energy demands associated with the proposed standard. A complete analysis of the economic and environmental impacts may be found in Chapters VI and VIII of the SSEIS.

CONTROL SYSTEMS

Nitrogen oxides from fossil-fuel combustion are formed via two mechanisms: (1) Thermal fixation (oxidation) of at-

mospheric nitrogen (N₂) in the combustion air, and (2) oxidation of organic nitrogen in the fuel. Oxidation of N₂ can be prevented by reducing the level of thermal excitation in the flame by means of (a) flue gas recirculation, (b) staged combustion, (c) water injection, (d) reduced air preheat, or (e) combinations of these techniques. Nitrogen oxides emissions due to the oxidation of organic nitrogen in the fuel can be controlled by using fuels with small amounts of organic nitrogen and by removing oxygen from the volatilization zone by means of (a) low excess air, (b) staged combustion, and/or (c) fuel/air mixing pattern adjustment (burner design). Fuels such as coal, residual oil, and lignite contain 0.2 to 1.5 percent organic nitrogen, and oxidation of this fuel-nitrogen may be responsible for as much as 80-90 percent of the total nitrogen oxides emissions from pulverized coal combustion. Therefore, the organic nitrogen content of fuel may be a limiting factor in controlling nitrogen oxides emissions. The fact that the organic nitrogen content of the U.S. lignites does not vary appreciably precludes nitrogen oxides control by switching to lignite with a lower organic nitrogen content.

Water injection and reduced air preheat significantly reduce the efficiency of a steam generator, and consequently are not practical nitrogen oxides control methods. Flue gas recirculation does not reduce nitrogen oxides emissions caused by the oxidation of the organic nitrogen in the lignite and it adversely affects the efficiency of a steam generator. Therefore, low excess air (LEA), staged combustion (SC), low emission burners, and combined LEA and SC are considered the most feasible control systems.

In addition to the control systems just discussed, the fuel burning equipment design parameters can affect the amount of nitrogen oxides emitted and the degree to which the control systems are effective. Lignite-firing has been demonstrated in pulverized-fired, cyclone-fired, and stoker-fired steam generating units. Stoker-fired units have the lowest heat release rate and thus have lower nitrogen oxides emissions than the other type units but are limited in physical size and are not expected to be of importance in future lignite-fired steam generating units. Cyclone-fired units have the highest heat release rate and the highest nitrogen oxides emissions. Pulverized-fired units have a lower heat release rate than cyclone-fired units, but a higher release rate than stoker-fired units.

EPA TEST PROGRAM

Of the 15 lignite-fired units in domestic operation in 1974, four utility sized units were chosen for EPA's test program. Included were three pulverized-fired units (two tangentially-fired and one horizontally opposed-fired), and one cyclone-fired unit.

Operating with low excess air and/or staged combustion, all types of fuel burning equipment exhibited reduced nitrogen oxides emissions over baseline con-

ditions. The horizontally opposed- and cyclone-fired units are more responsive to nitrogen oxides control techniques on a percentage basis, but the tangentially-fired units using staged combustion yielded the lowest nitrogen oxides emissions. Cyclone-fired units cannot be dependably operated with low excess air firing or staged combustion because of flame instability problems; however, staged combustion of cyclone-fired units can be achieved by firing auxiliary fuel.

On the basis of the test data, it appears that the cyclone-fired units cannot consistently meet a nitrogen oxides standard more stringent than 340 nanograms per joule (0.8 pound per million Btu). The test data also indicate that horizontally opposed-fired units would have difficulty consistently achieving a nitrogen oxides standard of 260 nanograms per joule (0.6 pound per million Btu) over a long time period. However, development of low emission burners appears promising for application to horizontally opposed-fired units, and such units should be able to attain a standard of 260 nanograms per joule. Tangentially-fired units should have no difficulty meeting a standard of 260 nanograms per joule.

RATIONALE FOR PROPOSED STANDARDS

In deciding the nitrogen oxides limit for the proposed standard, EPA considered proposing the same standard for lignite-fired steam generators as the present standard for coal-fired steam generators, 300 nanograms per joule (0.7 pound per million Btu). In the study on control of nitrogen oxides emissions from lignite-fired steam generators, staged combustion and low excess air were found to reduce emissions significantly below 300 nanograms per joule input (0.7 pound per million Btu). The measured emission levels of 172 to 220 nanograms per joule heat input (0.4 to 0.5 pound per million Btu) indicated that the present standard for coal-fired units would not require use of best demonstrated control technology, considering costs, for lignite-fired units. Studies on control of nitrogen oxides emissions by combustion modification techniques have shown emission levels for modern bituminous and subbituminous coal-fired utility sized units to be similar to those observed for lignite-fired units. The lower emission levels observed for the lignite and bituminous fired units reflect an improvement in combustion modification techniques and in the design of the burners and of boilers between 1970 and 1974.

Tangentially-fired units could most likely meet a standard of 220 nanograms per joule (0.5 pound per million Btu). This standard, however may not be consistently achievable by the horizontally opposed fired boilers. Since the manufacturers of those units do not make tangentially-fired boilers, a standard of 220 nanograms per joule could leave only one manufacturer of complying boilers, which would remove the option of power companies to obtain competitive bids. EPA requests comments on the following issues: (1) Whether horizontally-op-

posed fired boilers could meet a standard of 220 nanograms per joule; (2) if not, what would be the effect on the competitive balance of the equipment manufacturing industry; (3) what would be the effects on the power industry; and (4) whether EPA can consider these factors in setting standards based on the best system of emission reduction which has been adequately demonstrated.

The proposed standard of 260 nanograms per joule for lignite-fired steam generators is based on emission and cost data currently available to the Administrator. The proposed standard, while numerically more stringent than the present standard for coal-fired units, will require lignite-fired units to apply the same type of combustion modifications as coal-fired units. EPA recognizes that lignite-fired cyclone units cannot achieve the proposed standard of 260 nanograms per joule (0.6 pound per million Btu); therefore, EPA has considered the impact such a standard would have on boiler manufacturers and on the lignite-fired steam generating industry. EPA determined that the impact on boiler manufacturers of indirectly prohibiting cyclone-fired units would be negligible. Only one boiler manufacturer markets cyclone-fired units and that manufacturer also markets pulverized-fired units. Effective prohibition of cyclone-fired units is expected to have little effect on this manufacturer because these units represent a minor percentage of the total annual sales for the manufacturer.

The impact of the proposed standard on the lignite-fired steam generating industry is not well defined. EPA has attempted to determine whether units other than cyclone-fired units are available that will meet the proposed standard and if any cost or operating reliability advantages exist between these units and the cyclone-fired units. For large lignite-fired steam generators an alternative to cyclone-fired units is pulverized-fired units. From consultations with the major boiler manufacturers EPA concluded that cyclone-fired units do not have any significant investment cost advantages over an equivalent pulverized-fired unit. Thus, the impact of the prohibition of cyclone-fired units is dependent on the relative operational advantages of cyclone-fired units over pulverized-fired units.

Almost all of the large lignite-fired units in North Dakota have experienced severe operational difficulties as a result of ash fouling of the boiler tube surfaces. Utility boilers firing Texas lignites have not experienced ash fouling problems to the same degree. Research conducted by the Energy Research and Development Administration (ERDA) in Grand Forks, North Dakota, has shown that the sodium content of the lignite is highly correlated with the degree of ash fouling. Lignite ash with three to five percent sodium is considered to have a moderate to high fouling potential, and a sodium content greater than five percent has a severe fouling potential. In EPA's judgment, the ash fouling problem can be minimized by designing the boiler with more soot blowers in the convective

passes than normal, with larger spacing between boiler tubes, and with design of the furnace temperature profile to control tube metal temperatures.

Some of the lignite utilities have claimed that cyclone-fired units can burn lignites with the higher sodium content more reliably than pulverized-fired units because a smaller proportion of the ash enters the boiler. The utilities cited the Minnkota Power Cooperative's cyclone-fired unit at Young-Center station as a successful example. This cyclone-fired, 235 MW boiler was selected and designed based on a cooperative study to develop a better method for firing high sodium lignite. The unit has an excellent record of operating availability since its startup in 1970. However, the unit has not fired the high sodium lignites for which it was designed. In addition, the operating reliability of this unit may be attributed to furnace design features other than the cyclone burner. Since startup of the Minnkota cyclone-fired unit, two additional cyclone-fired units have been placed in commercial operation by power companies and cooperatives in the area. Each of these units has been in operation for less than a year. Both units have been firing lignites of approximately 4 to 6 percent sodium and have been experiencing problems with ash fouling of the boiler tubes and with furnace slagging to different degrees. Since numerous operating problems typically occur in the first year of operation of a steam generator, more operating experience is needed before the performance and reliability of these units on high sodium lignite is evaluated.

Experience with pulverized-fired units is presently limited to two units designed in the early 1960's. At that time problems with plugging in the convective passages because of ash fouling associated with firing high sodium lignite were not fully appreciated. Consequently, these two units were retrofitted with an increased number of sootblowers and the tube spacings were increased in order to obtain reliable operation of the units. Redesign of this nature was implemented to different degrees on the units. The more extensively retrofitted unit has operated reliably for six years on lignite with four to six percent sodium in the ash and on eight to nine percent sodium lignite for the past year. The less extensively retrofitted unit can be reliably operated by maintaining the sodium content of the fuel below five percent. Based on this experience, new cyclone or pulverized lignite-fired units are designed with greater furnace surface area, increased superheater tube spacing, and increased number of sootblowers. This early experience with pulverized firing apparently has not convinced the utilities that pulverized firing of high sodium lignite is impractical. In the early 1970's, the United Power Association (UPA) purchased two pulverized-fired units, after evaluating bids on both cyclone and pulverized-fired units. These tangentially-fired 500 MW boilers were guaranteed to reliably fire a lignite with a design range of 0.1 to 4.8 percent sodium.

This selection of a pulverized-fired unit for a North Dakota lignite with high fouling potential indicates that pulverized-fired units are price competitive with cyclone-fired units and that at least one utility believes that cyclone-fired units are not required for use of a lignite with high fouling potential.

In addition to this limited experience with firing high sodium lignite, preliminary results from a study conducted by ERDA showed that cyclone-fired units have a statistically significant lower ash deposition rate than pulverized-fired units. The test was conducted while the units were firing 3.5 to 4.5 percent sodium lignite and insufficient information is available to allow comparison at higher sodium levels. One possible interpretation of these data is that cyclone-fired units can operate on high sodium lignite (greater than six percent) more reliably than pulverized-fired units. However, the study's results are not consistent with the experience of operating commercial units and the data may not warrant drawing this conclusion.

EPA has concluded from evaluation of the available information that (1) while there are differences in operational characteristics of pulverized and cyclone-fired units, both types can reliably operate on high sodium lignite and (2) cyclone-fired units do not have significant operation maintenance, or cost advantages over pulverized-fired units. The manufacturers of pulverized-fired units believe that these units can be as effective as cyclone-fired units for burning lignites, including those with high sodium. Combustion Engineering, which is installing the units for UPA, is confident that pulverized-fired units can be properly designed to handle the ash fouling and slagging problems of high sodium lignite. Babcock and Wilcox, the other major supplier of lignite-fired units, also believes that a pulverized-fired unit can be designed to reliably burn high sodium lignite. Due to the limited information available at this time and different possible interpretations of the information, EPA realizes that the assessment of relative reliability of pulverized and cyclone-fired units for firing high sodium lignite is debatable. Therefore, EPA is requesting that all interested persons submit factual information on this issue during the comment period. Factual information is specifically requested on the following areas of interest:

1. Investment costs and operation and maintenance costs for either pulverized-fired or cyclone-fired large steam generators designed for moderate or high sodium lignite.

2. The differences, if any, in the design of the convection section or the gas temperature profile between cyclone and pulverized-fuel fired steam generators. The comparison should discuss any differences in the number, type or location of sootblowers installed, frequency of operation of soot blowers, comparison of tube spacings or depth of tube banks and other relevant factors.

3. Relative importance of factors considered in selecting a cyclone- or pulverized-fired unit.

It is expected that the above information will allow EPA an opportunity to assess the relative costs of cyclone and pulverized fuel fired lignite steam generators as well as to assess the need for cyclone-fired units for use of high sodium lignite. The final standard will reflect the conclusions drawn from evaluation of all available factual information. EPA will limit the scope of coverage of the final standard if the data submitted during the comment period justify such a change. The scope of coverage could be limited by applying the standard to lignites having a specified sodium content, by establishing a separate standard for cyclone-fired units, or exempting cyclone-fired units.

It should be noted that standards of performance for new sources established under section 111 of the Clean Air Act reflect emission limits achievable with the best adequately demonstrated systems of emission reduction considering the cost of such systems. State implementation plans (SIP's) approved or promulgated under section 110 of the Act, on the other hand, must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For that purpose SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources. In addition, States are free under section 116 of the Act to establish more stringent emission limits than those established under section 111 or those necessary to attain or maintain the NAAQS under section 110. Thus, new and existing sources may in some cases be subject to limitations more stringent than EPA's standards of performance under section 111.

PUBLIC PARTICIPATION

In accordance with section 117(f) of the Act, publication of these proposed amendments to 40 CFR Part 60 was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. Interested persons may participate in this rulemaking by submitting written comments (in triplicate) to the Emission Standards and Engineering Division, Environmental Protection Agency (MD-13), Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin. All comments received not later than 60 days from (date of proposal) will be considered. Copies of comments received will be available for inspection and copying during normal business hours at the Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C.

(Secs. 111, 114 and 301(a) of the Clean Air Act, as amended by sec. 4(a) of Pub. L. 91-604, 84 Stat. 1678 and by sec. 15(c) (2) of Pub. L. 91-604, 84 Stat. 1713 (42 U.S.C. 1857c-6, 1857c-9, and 1857g(a)))

The Environmental Protection Agency has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact

Statement under Executive Order 11821 and OMB Circular A-107.

Dated: December 15, 1976.

RUSSELL E. TRAIN,
Administrator.

It is proposed to amend Part 60 of Chapter I, Title 40 of the Code of Federal Regulations by revising Subparts A and D as follows:

Subpart A—General Provisions

1. Section 60.2 is amended by substituting the International System of Units (SI) in paragraph (1) as follows:

§ 60.2 Definitions.

(1) "Standard conditions" means a temperature of 293 K (68°F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Subpart D—Standards of Performance for Fossil Fuel-Fired Steam Generators

2. Section 60.41 is amended by adding paragraph (f) as follows:

§ 60.41 Definitions.

(f) "Coal" means all solid fossil fuels classified as anthracite, bituminous, sub-bituminous, or lignite by A.S.T.M. Designation D 388-66.

3. Section 60.44 is amended by adding paragraph (a) (4) and by revising paragraph (b) as follows:

§ 60.44 Standard for nitrogen oxides.

(a) (4) 260 nanograms per joule heat input (0.60 pound per million Btu) derived from lignite.

(b) When different fossil fuels are burned simultaneously in any combination, the applicable standards (in ng/J) shall be determined by proration. Compliance shall be determined by using the following formula:

$$PS_{NO} = \frac{w(260) + x(86) + y(130) + z(300)}{w + x + y + z}$$

where:
 PS_{NO} is the prorated standard for nitrogen oxides when burning different fuels simultaneously, in nanograms per joule heat input derived from all fossil fuels fired or from all fossil fuel and wood residue fired;
 w is the percentage of total heat input derived from lignite;
 x is the percentage of total heat input derived from gaseous fossil fuel;
 y is the percentage of total heat input derived from liquid fossil fuel;
 z is the percentage of total heat input derived from solid fossil fuel (except lignite or a solid fossil fuel containing 25 pct, by weight, or more of coal refuse).

When a solid fossil fuel containing 25 percent, by weight, or more of coal refuse is burned in combination with gaseous, liquid or other solid fossil fuel, or wood residue, the standard for nitrogen oxides does not apply.

4. Section 60.45 is amended by adding paragraph (f) (4) (vi) as follows:

§ 60.45 Emission and fuel monitoring.

(f) (4) (vi) For lignite coal as classified according to A.S.T.M. D 388-66, $F = 2.659 \times 10^{-7}$ dscm/J (9900 dscf/million Btu) and $F_c = 0.516 \times 10^{-7}$ scm CO_2 /J (1920 scf CO_2 /million Btu).

[FR Doc. 76-37484 Filed 12-21-76; 8:45 am]

federal register

WEDNESDAY, DECEMBER 22, 1976



PART IV:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■

PROCUREMENT REGULATIONS

Revision

Title 41—Public Contracts and Property Management

CHAPTER 24—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-76-368]

HUD PROCUREMENT REGULATIONS

Revision

On January 21, 1976, the Department published at 41 FR 3220, a proposed rule which revised existing provisions of Chapter 24, deleting various outdated parts, subparts and sections, revising other various parts, subparts and sections and adding still other parts, subparts and sections.

These regulations supplement the Federal Procurement Regulations (FPR) in those areas intended to be implemented by individual agencies by elaborating in detail, the general requirements of the FPR and by including provisions with respect to matters on which the FPR is silent.

Although no public comments were received, comments from personnel within the Department suggested the necessity for certain refinements. Therefore, the proposed rule is published in final with the following changes:

Section 24-1.5002 has been revised to reflect that the criteria set forth in this section will generally be applied when determining the type of instrument to be used to accomplish the Department's research efforts.

Section 24-2.205-3(d) has been amended by adding language that will allow Procuring Activities to determine the appropriate format for reinstating potential contractors to the mailing list.

Section 24-3.101-51(b) has been revised to reflect the Department's position toward the acceptance of unsolicited proposals.

Section 24-4.101 has been revised to reflect the correct regulations where the procedures are contained relative to the obtaining of GSA approval for ADP procurement.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 10141, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C.

It is hereby certified that the economic and inflationary impacts of this proposed rule have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, Chapter 24 of Title 41 Code of Federal Regulations is revised to read as follows:

Part	
24-1	General.
24-2	Procurement by formal advertising.
24-3	Procurement by negotiation.
24-4	Special types and methods of procurement.
24-7	Contract clauses.
24-11	Federal, State and local taxes.
24-13	Government property.
24-16	Procurement forms.
24-30	Contract financing.
24-50	Contract administration.

PART 24-1—GENERAL

Sec.	Scope of part.
24-1.000	Scope of part.

Subpart 24-1.1—Regulation System

24-1.101	Scope of subpart.
24-1.102	Purpose.
24-1.103	Authority.
24-1.104	Applicability.
24-1.105	Exclusions.
24-1.106	Arrangement.
24-1.106-1	General plan.
24-1.106-2	Numbering.
24-1.106-3	Citation.
24-1.107	Implementation.
24-1.108	Deviation.
24-1.108-1	Description.
24-1.108-2	Procedure.

Subpart 24-1.2—Definition of Terms

24-1.201	Scope of subpart.
24-1.202	Definitions.
24-1.202-1	Department.
24-1.202-2	Secretary.
24-1.202-3	Chief officer responsible for procurement.
24-1.202-4	Procuring activity.
24-1.202-5	Head of procuring activity.
24-1.202-6	Contractor.
24-1.202-7	Subcontractor.
24-1.202-8	Supplies and property.
24-1.202-9	Personal services.
24-1.202-10	Nonpersonal services.
24-1.202-11	Ratification.
24-1.202-12	Primary organization heads.

Subpart 24-1.3—General Policies

24-1.301	Scope of subpart.
24-1.302	Procurement sources.
24-1.302-1	General.
24-1.302-2	Contracts between the Department and Government Employees.
24-1.302-3	Records of contract actions.
24-1.313	Disputes.
24-1.318	Disputes clause.
24-1.318-1	Contracting officer's decision under a disputes clause.
24-1.318-2	HUD Board of Contract appeals.
24-1.318-3	

Subpart 24-1.4—Procurement Responsibility and Authority

24-1.400	Scope of subpart.
24-1.402	Responsibility of the Chief Officer responsible for procurement.
24-1.404	Selection, designation and termination of designation of contracting officers.
24-1.404-1	Selection.
24-1.404-2	Designation.
24-1.404-3	Termination of designation.
24-1.405	Ratification of unauthorized contract awards.
24-1.450	Contracting officers representatives.
24-1.451	HUD procuring activities.
24-1.451-1	Office of Procurement and Contracts.
24-1.451-2	Office of Housing.
24-1.451-3	General services Divisions.
24-1.451-4	Disaster field Offices.
24-1.452	Unauthorized actions in the administration of contracts.
24-1.453	Contracting officers responsibilities to examine validity of procurement request.

Subpart 24-1.5—Debarred, Ineligible and Suspended Bidders

24-1.600	Scope of subpart.
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Subpart 24-1.7—Small Business and Minority Business Concerns

24-1.700	General.
24-1.702	Small business policies.
24-1.705	Small business advisor.
24-1.706	Small business specialist.
24-1.707	Procedures for initiating set-asides by the small business specialist(s).
24-1.708	Review of set-aside recommendations by the small business specialist(s).
24-1.709	Withdrawal or modification of set-asides.
24-1.709-50	Small business class set-aside for construction, including repair and reconditioning.
24-1.709-51	Review of class set-aside program for construction, including repair and reconditioning.
24-1.713	HUD contracts with the small business administration.
24-1.714	HUD responsibilities and functions pursuant to section 8(a) of the Small Business Act.
24-1.715	HUD contracts with minority business firms.
24-1.715-1	Applicability and scope.
24-1.715-2	Authority.
24-1.715-3	Policy.
24-1.715-4	Certification of status as a minority business.

Subpart 24-1.50—Criteria for Establishing the Use of Grants or Contracts for Research

Sec.	Scope of subpart.
24-1.5000	Policy.
24-1.5001	Criteria of use of grants and contracts.
24-1.5002	

AUTHORITY: Sec. 7(d), Dept. of HUD Act, (42 U.S.C. 3535(d)).

§ 24-1.000 Scope of part.

This part describes the method by which the Department of Housing and Urban Development (HUD) implements, supplements and deviates from the Federal Procurement Regulations (FPR) through the establishment of the HUD Procurement Regulations (HUDPR), which prescribes the Department's procurement policies and procedures under the FPR System, in terms of authority, applicability, issuance and arrangement.

Subpart 24-1.1—Regulation System

§ 24-1.101 Scope of subpart.

This subpart describes the Department of Housing and Urban Development Procurement Regulations (HUDPR) and states their relationship to the FPR System. It also provides the explanation of their purpose and the authorities under which they are issued.

§ 24-1.102 Purpose.

The Department of Housing and Urban Development Procurement Regulations (HUDPR) are hereby established as Chapter 24 of the Federal Procurement Regulations System (41 CFR Chapter 24) and are issued to provide uniform Departmental policies and procedures for the procurement of supplies, personal property and non-personal services as defined in HUDPR 24-1.202 by the Department's procuring activities and to make these policies and procedures readily available to Departmental personnel and to the public.

§ 24-1.103 Authority.

The HUDPR are prescribed by the Assistant Secretary for Administration under section 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)), section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)) and under the Secretary's delegation effective January 19, 1976, 41 FR 2665.

§ 24-1.104 Applicability.

All procurement of personal property and non-personal services (including construction) on behalf of the Secretary, except as may be otherwise authorized by law, must be accomplished in accordance with the HUDPR and the FPR:

(a) HUDPR implement, supplement, and in some instances may deviate from the FPR. Except as necessary to assure continuity or understanding, FPR material will not be repeated, paraphrased, or otherwise restated in HUDPR.

(b) Where HUDPR contain no material implementing the FPR, the FPR will govern.

(c) Except as specifically provided for herein, the HUDPR does not apply to the placement and administration of grants.

§ 24-1.105 Exclusions.

Certain HUD policies and procedures which come within the scope of this chapter nevertheless may be excluded from HUD Procurement Regulations. The exclusions are categorized as follows:

(a) Policy or procedure which is expected to be effective for a period of less than six (6) months.

(b) Policy or procedure of an internal nature which shall be issued as either a HUD Notice or a HUD Handbook.

§ 24-1.106 Arrangement.

§ 24-1.106-1 General plan.

Chapter 24 is divided in Parts, Subparts, Sections, Paragraphs and further subdivisions as necessary.

§ 24-1.106-2 Numbering.

Generally, the numbering system and part, subpart, and section titles used in HUDPR conform with those used in FPR or as follows:

(a) When HUDPR implement or deviate from a part, subpart, section, or paragraph of the FPR, that implementation or deviation will be numbered and captioned where possible to correspond to the FPR part, subpart, section or paragraph.

(b) Supplementary material published in the HUDPR will be assigned numbers from the number 50 onward which shall be used to denote the new appropriate part, subpart, section or paragraph of the HUDPR.

(c) Where material in the FPR required no implementation or deviation, there is no corresponding numbering in the HUDPR. Therefore, there may be gaps in the HUDPR sequence of numbers where the FPR, as written, are applicable to HUDPR and require no further implementation.

§ 24-1.106-3 Citation.

HUDPR will be cited in accordance with FEDERAL REGISTER standards approved for the FPR. Thus, this section when referred to in HUDPR should be cited as "Sec. 24-1.106-3 of this Chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 24-1.106-3." Any section of the HUDPR may be informally identified by the section number, e.g., "HUDPR 24-1.106-3."

§ 24-1.107 Implementation.

HUDPR implement and supplement the FPR. Implementing material is that which expands upon related FPR material. Supplementing material is that for which there is no counterpart in the FPR.

§ 24-1.108 Deviation.

§ 24-1.108-1 Description.

The term deviation, which includes deviations from FPR as well as HUDPR, means:

(a) When a prescribed contract clause is set forth verbatim, use of a contract clause covering the same subject matter which varies from that set forth;

(b) When a standard or other form is prescribed, use of any other form for the same purpose;

(c) Alteration of a prescribed standard or other form, except as may be authorized in the Regulations;

(d) The imposition of lesser or, where the regulation expressly prohibits, greater limitations than are imposed upon the use of a contract clause, form, procedure, type of contract, or upon any other procurement action, including but not limited to, the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration, or settlement of contracts; and

(e) When a policy or procedure is prescribed, use of any inconsistent policy or procedure.

§ 24-1.108-2 Procedure.

In the interests of establishing and maintaining uniformity to the greatest extent feasible, deviations from the FPR or HUDPR shall be kept to a minimum and controlled as follows:

(a) In individual cases, deviations from the FPR or HUDPR may be submitted to the Assistant Secretary for Administration or the Director, Office of Procurement and Contracts for approval or other necessary or appropriate action. A supporting statement shall be submitted with the proposed deviation indicating briefly the nature of the deviation and the reason the deviation is necessary and in the best interest of the Government. The contract file shall include a copy of the request submitted and the approval. In emergency situations involving individual cases, deviation approvals may be processed by telephone and later confirmed in writing.

(b) In classes of cases, deviations from the FPR or HUDPR shall be submitted to the Assistant Secretary for Administration for his approval or other necessary or appropriate action. Requests for deviations shall be supporting by statements adequate to disclose fully the nature of the deviation and the need therefor. The Assistant Secretary for Administration will consider on an expedited basis jointly with GSA requests involving the FPR unless he determines, after due consideration of the objective of uniformity and the proper responsibilities of HUD, circumstances preclude such joint effort. In such cases, the Assistant Secretary for Administration will approve such class deviations as he determines necessary and GSA will be notified. Authorized class deviations will be reflected in HUDPR.

Subpart 24-1.2—Definition of Terms

§ 24-1.201 Scope of subpart.

This subpart contains definitions of terms used generally throughout HUDPR, in addition to those set forth in 41 CFR Subpart 1-1.2. Additional definitions will be found in individual subparts of the FPR and HUDPR covering terms used in these subparts only.

§ 24-1.202 Definitions.

§ 24-1.202-1 Department.

"Department" means the Department of Housing and Urban Development, which may also be designated as "HUD."

§ 24-1.202-2 Secretary.

"Secretary" means the Secretary of Housing and Urban Development.

§ 24-1.203-3 Chief officer responsible for procurement.

The Director, Office of Procurement and Contracts is the Chief Officer responsible for procurement within the Department.

§ 24-1.202-4 Procuring activity.

"Procuring Activity" means those offices identified under § 24-1.451 which have authority delegated by the Secretary and redelegated by the cognizant official to purchase or contract for supplies, services and/or construction.

§ 24-1.202-5 Head of procuring activity.

"Head of Procuring Activity" as used in the HUDPR has the following meaning:

(a) Director, Office of Procurement and Contracts for HUD headquarters procurement;

(b) The Assistant Regional Administrators for Administration for regional office procurement;

(c) The Director, Office of Property Disposition for national contracts on acquired properties;

(d) The Directors, Area and Insuring Offices for decentralized procurement on acquired properties;

(e) The Directors, Strategic Storage Centers for procurement in support of the requirements for disaster temporary housing, storage, maintenance, repair and transport;

(f) The Directors, Disaster Field Offices for procurement of supplies and services in support of temporary housing for Presidentially-declared disaster areas; and

(g) The Director, Office of Housing Programs for contracts for the Consolidated Supply Program.

§ 24-1.202-6 Contractor.

"Contractor" means any person, firm, association, or corporation entering into a contract with the Government.

§ 24-1.202-7 Subcontractor.

"Subcontractor" means any person, firm, association, or corporation entering into a subcontract with a contractor or higher-tier subcontractor.

§ 24-1.202-8 Supplies and property.

"Supplies and Property" means materials and goods to be delivered to the Department under contracts or purchase orders.

§ 24-1.202-9 Personal services.

"Personal services" means the services of an officially appointed or employed individual engaged in the performance of authorized Federal func-

tions under the supervision and direction of a Federal officer and paid for on a time or contract price basis. Personal services are acquired by HUD through consulting agreements which may only be executed by the HUD Headquarters Office of Personnel.

§ 24-1.202-10 Nonpersonal services.

"Nonpersonal services" means those services rendered by non-Government firms, institutions or persons through contract or agreement with the Department of Housing and Urban Development wherein no employee-employer relationship exists.

§ 24-1.202-11 Ratification.

"Ratification" means a subsequent confirmation in writing by an authorized HUD official of the placement of the type of order referred to in HUDPR 24-1.405 by a HUD official not authorized to do so.

§ 24-1.202-12 Primary organization heads.

"Primary Organization Heads" are those officials of the Department who are responsible for the major organizational components of HUD and who report directly to the Secretary or Under Secretary. The Primary Organization Heads of HUD are: Assistant Secretary(ies), the General Counsel, the Deputy Under Secretary(ies), Federal Insurance Administrator, New Communities Administrator, Federal Disaster Assistance Administrator, Inspector General and Regional Administrator(s).

Subpart 24-1.3—General Policies

§ 24-1.301 Scope of subpart.

This subpart sets forth Departmental policies which are applicable to all procurements and provides general guidance on matters which include but are not limited to public information and disputes procedures.

§ 24-1.302 Procurement sources.

§ 24-1.302-1 General.

The procurement of supplies and services may be obtained from the following:

(a) *Government sources.* Procurement of certain supplies and services may be effected by orders on Government sources referred to in 41 CFR 1-1.302-1. It is the policy of the Department that the following methods of procurement be utilized to the maximum extent practicable, in accordance with applicable laws and regulations:

- (1) Excess and surplus stocks in the hands of any Government agency;
- (2) Federal Supply Schedules;
- (3) General Services Administration Stores Stock;
- (4) Federal Supply Service Consolidated Purchase Programs;
- (5) Federal Prison Industries, Inc.; and
- (6) National Industries for the Blind.

(b) *Sources outside the Government.* Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by

formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary by the Contracting Officer to assure such full and free competition as is consistent with the procurement of the types of supplies and services necessary to meet the Department's requirements.

(c) *Other Federal Agencies as sources.* The Department may enter into agreements (called Interagency Agreements) with other Departments or Agencies of the Federal Government to acquire supplies or services that are available from such other Agencies.

§ 24-1.302-3 Contracts between the department and government employees.

Both prime contracts between the Government and its employees or business organizations substantially owned or controlled by Government employees, as well as any and all subcontracts thereunder, will not knowingly be entered into, except in those cases in which the needs of the Government cannot reasonably be otherwise supplied. The specific approval of the Assistant Secretary for Administration must be obtained for any such contract or subcontract.

§ 24-1.313 Records of contract actions.

Each procuring activity within HUD shall maintain an official record for each contract and purchase order issued. Each official procurement record shall constitute an independent history, documented to provide a complete chronology of all actions taken and shall contain all preaward and postaward actions in sufficient detail to explain and support the judgments of the Contracting Officer. In addition, official procurement records shall contain written documentation of all understandings, oral agreements and any other information pertinent to the transaction in the manner prescribed by each procuring activity.

§ 24-1.318 Disputes.

§ 24-1.318-1 Disputes clause.

Every contract awarded by the Department shall contain a Disputes Clause, as set forth in 41 CFR 1-7.102-12.

§ 24-1.318-2 Contracting officer's decision under a disputes clause.

When a disagreement of fact arising under the contract cannot be settled by agreement between the contractor and the Contracting Officer, the Contracting Officer shall then review all pertinent facts and issue a written final decision under the Disputes Clause. Such final decision must represent the independent judgment of the Contracting Officer and shall contain language substantially in accord with that set forth in 41 CFR 1-1.318-1. A copy of each Contracting Officer's decision under the disputes Clause shall be furnished to the contractor by certified mail, return receipt requested, or in person, obtaining a receipt therefor.

§ 24-1.318-3 HUD Board of Contract Appeals.

The HUD Board of Contract Appeals has been established to hear, consider, and determine appeals from decisions of Contracting Officers pursuant to the clause entitled, "Disputes" of the contract. The HUD contract appeal procedure is set forth in 24 CFR Part 20.

Subpart 24-1.4—Procurement Responsibility and Authority

§ 24-1.400 Scope of subpart.

This subpart deals with the placement of procurement authorities and responsibilities within the Department, the selection and designation of Contracting Officers and the authorization of procuring activities.

§ 24-1.402 Responsibility of the Chief Officer Responsible for Procurement.

The chief officer responsible for procurement shall establish procurement policy throughout the Department and monitor the overall effectiveness and efficiency of the Department's procuring activities. The person exercising this authority shall establish adequate controls to assure compliance with applicable laws, regulations and procedures.

§ 24-1.404 Selection, designation and termination of designation of contracting officers.

§ 24-1.404-1 Selection.

In addition to the requirements set forth in 41 CFR 1-1.404-1, the appropriate delegating or redelegating authority shall assure that the delegation of Contracting Officer's authority includes clear statements of such authority, responsibilities and limitations.

§ 24-1.404-2 Designation.

Except for disaster-related activities and unusual circumstances as determined by the appropriate delegating and redelegating authority, it is the Department's policy to delegate Contracting Officer authority by position rather than on an individual basis. For those delegations of Contracting Officer authority issued by name under the unusual circumstances mentioned in the exception above, a time limitation of one year shall be made a part of the delegation of authority. All designations of Contracting Officers shall be made in writing and published in the FEDERAL REGISTER. Except in those instances where the re-delegation of authority specifically includes the authority for further re-delegation to subordinate positions, no other delegations or re-delegations may be made.

§ 24-1.404-3 Termination of designation.

The established Contracting Officer authority exists as follows:

(a) *Automatic termination.* Unless the delegation of authority of a Contracting Officer contains provision for automatic termination, the delegation shall remain effective, unless revoked by the appropriate delegating authority. The authority of individuals designated as Contracting

Officers by virtue of their position will be terminated upon their reassignment to another position in the Department or upon termination of their employment.

(b) *Revocation.* The delegation of authority for a Contracting Officer may be revoked in writing at any time by the delegating authority but no such revocation shall operate retroactively. Revocation of the delegation shall be published in the FEDERAL REGISTER.

(c) *Succession of authority.* Persons who succeed to a position designated as a Contracting Officer shall assume responsibility for the administration of all contracts entered into by their predecessors.

§ 24-1.405 Ratification of unauthorized contract awards.

Except as provided for under 41 CFR 1-1.405, no liability shall be incurred by the Government as a result of the actions of Departmental employees (other than Contracting Officers) which lead to unauthorized arrangements for the reimbursement of a contractor's pre-contract costs. Contracting Officers shall not ratify contractual commitments made by other personnel of HUD without the prior approval of the Head of the Procuring Activity.

§ 24-1.450 Contracting officer's representatives.

Contracting Officers may designate other Government employees to act as their authorized representatives for certain specific purposes of contract administration. Such designation shall be in writing and shall contain specific instructions as to the extent to which the representative has been given authority to take action for the Contracting Officer. A designation to act as a Contracting Officer may contain authority to sign contractual documents and approve invoices or vouchers. It may not include functions related to the procurement which are of a technical nature including review and approval of work or research plans, techniques, and reports and which would normally be performed by the Government Technical Representative. Designations shall be effective only on a contract-by-contract basis. Designations which may be construed to apply to more than one contract must be approved by the Head of the Procuring Activity.

§ 24-1.451 HUD procuring activities.

HUD procures supplies and services (including construction) through the organizational elements specified in §§ 24-1.451-1-24-1.451-4.

§ 24-1.451-1 Office of procurement and contracts.

The Office of Procurement and Contracts, Assistant Secretary for Administration, is responsible for all Departmental procurement except as specified below.

§ 24-1.451-2 Housing.

The Assistant Secretary for Housing—Federal Housing Commissioner has overall responsibility for the following procuring activities:

(a) *Property disposition program.* Through the Property Disposition program, the Assistant Secretary for Housing—Federal Housing Commissioner is responsible for entering into and administering all procurement contracts with respect to all procurements of goods and services for the management, repair, improvement, alteration, demolition, maintenance, operation, rental, and sale or other disposition of all real and related property conveyed to or otherwise in the custody of the Secretary, including properties held by HUD as mortgagee-in-possession, and the publication of notices and advertisements in newspapers, magazines, and periodicals. This procurement operation is decentralized to specific positions at the Area and Insuring Office level. In addition, the Office of Property Disposition performs contracting functions through its Central Office Staff on all requirements having national applicability such as the acquisition of lock boxes and "for sale" signs.

(b) *Emergency preparedness—disaster relief program.* Through the Disaster Relief Program and mission assignment through the Administrator, Federal Disaster Assistance Administration, the Assistant Secretary for Housing—Federal Housing Commissioner is responsible for entering into and administering contracts within disaster areas relating to disaster temporary housing including the sale of emergency housing acquired pursuant thereto to occupants.

(c) *Emergency preparedness—strategic storage centers.* The procurement of supplies and services in support of the requirements to store, maintain, repair and transport disaster temporary housing (mobile homes and travel trailers) is conducted through the Strategic Storage Centers.

(d) *Consolidated supply program.* Through its consolidated supply program, the Assistant Secretary for Housing—Federal Housing Commissioner is responsible for entering into and administering contracts for voluntary use by public housing agencies in their purchase of certain supplies and equipment necessary in the operation and maintenance of low-income housing.

§ 24-1.451-3 General services divisions.

Procurement of supplies and services not exceeding \$10,000 for HUD Regional requirements including support of the Federal Disaster Assistance Administrator, Regional Office, is accomplished at each Regional Office in the Administrative Services Division, Assistant Regional Administrator for Administration. In addition, the Regional Administrator may delegate authority to the Administrative Officers of the Area and Insuring Offices to execute FEDSTRIP and Imprest Fund transactions.

§ 24-1.451-4 Disaster field offices.

Each Disaster Field Office is responsible for the procurement of supplies and services to assist disaster areas through mission assignments by the Administrator, Federal Disaster Assistance Administration.

§ 24-1.452 Unauthorized actions in the administration of contracts.

Only Contracting Officers or duly authorized Contracting Officers representatives acting within the scope of their authority may impose on a contractor any requirement which will affect price, period of performance or any other provisions of the contract. All contract changes must be directed in writing by a Contracting Officer or such Contracting Officer's representative.

§ 24-1.453 Contracting officers responsibilities to examine validity of procurement request.

Contracting Officers are charged with the responsibility of ascertaining that procurement actions do not violate any statutes, regulations or Department policies.

Subpart 24-1.6—Debarred, Ineligible and Suspended Bidders

§ 24-1.600 Scope of subpart.

Contractors and Grantees who have been debarred, suspended or made ineligible pursuant to 24 CFR Part 24 shall not be eligible for HUD contracts and will not receive solicitations therefor, subject to the requirements of 41 CFR 1-1.605-5.

Subpart 24-1.7—Small Business and Minority Business Concerns

§ 24-1.700 General.

This subpart implements and supplements general policies and procedures set forth in 41 CFR Subpart 1-1.7.

§ 24-1.702 Small business policies.

In addition to the policies prescribed in 41 CFR 1-1.702, HUD procuring activities shall cooperate with the Small Business Administration through the Department's small business advisor in the implementation of policies and procedures in 41 CFR Subpart 1-1.7 and this subpart.

§ 24-1.705 Small business advisor.

The Director, Office of Procurement and Contracts is hereby designated as the Department's Small Business Advisor for all procurement matters. The Small Business Advisor is responsible for the establishment, implementation, and execution of the Small Business program. He is the central point of contact for inquiries concerning the Small Business program from industry, the Small Business Administration (SBA), the Congress, the Office of the Secretary, and others. His duties include developing a plan of operation to increase the share of contracts awarded to small business by the Department.

§ 24-1.706 Small business specialist.

The Director, Office of Procurement and Contracts, Director, Office of Property Disposition, Director, Office of Assisted Housing Management, Director, Strategic Storage Centers and each Assistant Regional Administrator for Administration for regional General Services Procurement shall each designate by name and in writing a Supervisory

Small Business Specialist who shall either perform and/or supervise, and coordinate the duties of the Small Business Specialist(s) and act as the focal point for contact with the Small Business Advisor within their appropriate areas of assignment. Each head of a procuring activity shall designate by name or title and in writing a Small Business Specialist or Specialists for each procuring activity over which he exercises control to perform the duties set forth in this section. The Small Business Specialist appointed pursuant to HUDPR 24-1.706 shall perform such of the following duties as are appropriate for his procuring activity:

(a) Maintain a program designed to locate capable small business sources for current and future procurements;

(b) Coordinate inquiries and requests for advice from small business concerns on procurement matters;

(c) Review proposed solicitations for supplies and services, assure that small business concerns will be afforded an equitable opportunity to compete, and, as appropriate, initiate recommendations for small business set-asides;

(d) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in a procurement;

(e) Review proposed procurements for possible breakout of items suitable for procurement from small business concerns;

(f) Advise small business concerns with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(g) Participate in determinations concerning the responsibility of a prospective small business contractor;

(h) Participate in the evaluation of a prime contractor's small business subcontracting programs;

(i) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in the procurement program;

(j) Make available to SBA copies of solicitations, when so requested; and

(k) Act as liaison between the Contracting Officer and the appropriate SBA office in connection with set-asides, certificates of competency, size classification, and any other matter in which the small business program may be involved.

§ 24-1.707 Procedures for initiating set-asides by the small business specialist(s).

All proposed procurements estimated to exceed \$2,500 shall be reviewed by a Small Business Specialist for purposes of identifying those procurements which should be set aside in part or in total to small business, unless the Head of the Procuring Activity determines in accordance with 41 CFR 1-1.705-3(a) that such review would unduly delay the procurement process. The Small Business Specialist shall initiate recommendations to the Contracting Officer for small business set-asides with respect to identifying individual procurements or

classes of procurements or portions thereof.

§ 24-1.708 Review of set-aside recommendations initiated by small business specialist(s).

The Small Business Specialist may recommend that all, or a portion, of an individual procurement or class of procurements be set aside for small business and the Contracting Officer shall promptly either (a) Concur in the recommendation, or (b) Disapprove the recommendation, stating in writing his reasons for disapproval. If the Contracting Officer disapproves the recommendation of a Small Business Specialist, the Small Business Specialist may appeal to the Head of The Procuring Activity whose decision shall be final.

§ 24-1.709 Withdrawal or modification of set-asides.

A withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the Small Business Specialist may be proposed by the Contracting Officer by giving notice, containing the reason for the proposed withdrawal or modification, to the Small Business Specialist. If the Small Business Specialist does not agree to a withdrawal or modification, he may appeal to the Head of the Procuring Activity whose decision shall be final.

§ 24-1.709-50 Small business class set-aside for construction, including repair and reconditioning.

A class set-aside is hereby made for each proposed procurement for construction in an amount ranging from estimates of \$10,000 to \$500,000. Accordingly, Contracting Officers shall set aside for small business each such proposed procurement. If a Contracting Officer determines that any individual procurement falling within the class set-aside requirements of this Section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn as modified in accordance with HUDPR 24-1.709. Proposed procurements for construction which exceed an estimate of \$500,000 shall be considered for set-aside on a case-by-case basis.

§ 24-1.709-51 Review of class set-aside program for construction, including repair and reconditioning.

The head of each procuring activity shall forward a semi-annual report on class set-aside withdrawals to the Director, Office of Procurement and Contracts (OPC) as a part of the required Standard Form 37, Report on Procurement by Civilian Executive Agencies. The Director, OPC, acting as the Small Business Advisor, through the Supervisory Small Business Specialist, shall direct actions to be taken to improve small business participation under the class set-aside in 24-1.709-50.

§ 24-1.713 HUD contracts with the Small Business Administration.

It is the policy of the Department to increase small business participation in

its procurement program by awarding procurement contracts, whenever feasible, to the Small Business Administration (SBA) as authorized by section 8(a) of the Small Business Act (15 U.S.C. 637 (a)).

§ 24-1.714 HUD responsibilities and functions pursuant to section 8(a) of the Small Business Act.

The HUD responsibilities and functions pursuant to section 8(a) of the Small Business Act are as follows:

(a) *8(a) program responsibility.* The HUD Assistant Secretary for Fair Housing and Equal Opportunity is responsible for development and review of goals to be achieved under the 8(a) program and shall coordinate with each Primary Organization Head in establishing the level of HUD's participation in the 8(a) program and coordination with the Small Business Advisor to definitize HUD's plan for implementation of the 8(a) established goal(s). In conjunction with this responsibility for establishing 8(a) goals, the Assistant Secretary for Fair Housing and Equal Opportunity shall make available to the Small Business Advisor 8(a) program guides for use by the Small Business Specialist and Contracting Officers in making determinations on individual procurements that should be processed as an 8(a) contract to be awarded to SBA.

(b) *8(a) procurement responsibility.* The procurement and contracting aspects of this program shall be the responsibility of the Small Business Advisor who shall assure that 8(a) procurement requirements are implemented through the Supervisory Small Business Specialist in each of their appropriate area of assignment.

(c) *8(a) functions of the small business specialist.* The Small Business Specialist and/or Supervisory Small Business Specialists, acting on behalf of the Small Business Advisor, shall screen proposed solicitations to determine the feasibility of placement under the 8(a) program as part of the performance of those duties set forth under HUDPR 24-1.706. The Small Business Specialist, after consideration of the goals and guidance established pursuant to paragraph (a) of this section, shall make recommendations for 8(a) procurement to the Contracting Officer, who may, in his discretion, contract with the Small Business Administration in accordance with 41 CFR 1-1.705-7 and 1-1.713.

(d) *8(a) reporting requirements.* The Small Business Advisor shall report to the Assistant Secretary for Fair Housing and Equal Opportunity on a semiannual basis covering the activities of the 8(a) program which shall include the following:

(1) A narrative statement regarding the operation of the program during the 6-month period; and

(2) The number and dollar amount of awards made to small business under the 8(a) program.

In addition to the semiannual report to the Assistant Secretary for Fair Housing and Equal Opportunity, the Small Business Advisor shall also report an-

nually to the General Services Administration on the current Standard Form 37 (SF-37), the number and dollar amount of awards made to small business under the 8(a) program. The SF-37 may be obtained from the Government Printing Office, Washington, D.C. or local Government supply outlets.

§ 24-1.715 HUD contracts with minority business firms.

§ 24-1.715-1 Applicability and scope.

This section sets forth the policy and procedures for contracting with minority business enterprises. A "minority business enterprise" is defined under 41 CFR 1-1.1310-2(b) as "a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Indians, American Eskimos, and American Aleuts."

§ 24-1.715-2 Authority.

Executive Order 11625 dated October 13, 1971, clarifies the authority of the Secretary of Commerce with respect to the development and coordination of a national program for minority business enterprise. In addition, the Executive Order requires each Federal department or agency to cooperate with the Secretary of Commerce in achieving the goals of the minority business program including the collection and furnishing of data and reports as required.

§ 24-1.715-3 Policy.

It is the policy of HUD to foster and promote the participation of minority business firms in the Department's procurement program and to offer guidance to such firms to the maximum extent practicable in order to enhance their ability to compete for the placement of HUD procurement contracts.

§ 24-1.715-4 Certification of status as a minority business enterprise.

All procuring activities shall request all interested Contractors, bidders or offerors and sources utilized through small purchase procedures to complete on a voluntary basis a certification as to whether they are a minority business enterprise as defined under HUDPR 24-1.715-1. Completion of this certification is not a condition of eligibility for contract award.

RFQ/IFB/RFP No. _____
Purchase Order/Contract No. _____

U.S. Department of Housing and Urban Development additional certification of Status as a Minority Business Enterprise.

Offerors, bidders or suppliers are requested to complete, sign and attach this page, in single copy, to any bid, proposal or quote submitted under the Solicitation identified above. Completion of this certification is not a condition of eligibility for contract award.

The Bidder/Offeror/Supplier certifies that he (is) is not a minority business enterprise which is defined as a business, at least 50

percent of which is owned by minority group members or, in the case of publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Indians, American Eskimos, and American Aleuts.

(Name and title of person signing.)

Signature _____

Date _____

Subpart 24-1.50—Criteria for the Use of Grants or Contracts for Research

§ 24-1.5000 Scope of subpart.

This subpart establishes policies relating to the basic difference for using either a grant or contract in Departmental research efforts.

§ 24-1.5001 Policy.

Research grants may be made to support research at non-profit organizations and educational institutions, State and local governments, and selected other organizations and persons when it is advantageous to the Government. FPR and HUDPR provisions relating to contract award are not applicable to awards of grants.

§ 24-1.5002 Criteria for use of grants and contracts.

The criteria set forth below provide guidelines to determine the appropriate type of instrument for use with grants and contracts.

(a) *Use of grants.* The factors that indicate the use of grants rather than contracts are:

(1) The primary purpose is to aid or support the acquisition of knowledge or understanding of the subject under study;

(2) The exact course of the work and its outcome are not precisely definable and specific points in time for achievement of significant results are not precisely specifiable; and

(3) The nature of the proposed investigation is such that the grantee will bear prime responsibility for the conduct of the research, and exercise judgment and original thought toward attaining the goals within broad parameters of the research areas proposed and the related resources provided.

(b) *Use of contracts.* The factors that indicate the use of contracts rather than grants are:

(1) The primary purpose is to buy or procure well-defined research or development in direct support of a HUD program;

(2) The end product is a specific service, piece of hardware or improved performance of a specific service or piece of hardware;

(3) HUD considers it necessary to exercise a more stringent control over the objectives, direction, specifications, costs or methods of the research, and such control is desirable and feasible; and

(4) The end result is clearly defined and "specifications" are prepared in advance of the work.

PART 24-2—PROCUREMENT BY FORMAL ADVERTISING

Sec.	Scope of part.
24-2.000	Scope of part.
Subpart 24-2.1—Use of Formal Advertising	
24-2.150	Specification requirements.
24-2.150-1	General.
Subpart 24-2.2—Solicitation of Bids	
24-2.2-1	Preparation of invitation for bids.
24-2.202	Miscellaneous rules for solicitation of bids.
24-2.202-1	Bidding time.
24-2.202-2	Telegraphic bids.
24-2.202-3	Place and method of delivery of supplies.
24-2.202-4	Bid samples.
24-2.202-50	Extension of time for bid opening.
24-2.202-51	Incorporation by reference.
24-2.202-52	Pre-bid conference.
24-2.202-53	Bid envelopes.
24-2.202-54	Alternate bids.
24-2.203-3	Publicity in newspapers and trade journals.
24-2.205	Bidders mailing list.
24-2.205-1	General.
24-2.205-2	Establishment of lists.
24-2.205-3	Removal and reinstatement of names on bidders lists.
Subpart 24-2.3—Submission of Bids	
24-2.301	Responsiveness of bids.
24-2.303	Late bids.
24-2.303-1	General.
24-2.303-6	Notification to late bidders.
24-2.303-7	Disposition of late bids.
Subpart 24-2.4—Opening of Bids and Award of Contract	
24-2.401	Receipt and safeguarding of bids.
24-2.402	Opening of bids.
24-2.402-50	Marking of bids.
24-2.402-51	Timing of acceptance and withdrawal.
24-2.404	Rejection of bids.
24-2.404-50	Rejection of bids in multiple bidding situations.
24-2.406	Mistakes in bids.
24-2.406-3	Other mistakes disclosed before award.
24-2.406-4	Disclosure of mistakes after award.
24-2.407	Award.
24-2.407-1	General.
24-2.407-7	Statement and certificate of award.
24-2.407-8	Protest against award.
24-2.407-50	Award when only one bid is received.
24-2.408	Information to bidders.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 24-2.000 Scope of part.

This part implements and supplements the basic requirements for procurement of personal property and non-personal services (including construction) by formal advertising, and establishes policies with respect to solicitation of bids, submission of bids and opening and evaluation of bids and, the awarding of contracts as set forth in 41 CFR Part 1-2.

Subpart 24-2.1—Use of Formal Advertising

§ 24-2.150 Specification requirements.

§ 24-2.150-1 General.

In addition to the requirements stipulated in 41 CFR 1-1.305, the specification

shall be specific as to the objectives and the tasks to be performed, time of performance, Government-furnished materials and information, reporting requirements, measurements of progress, publications, and time periods for Government review. Generally the specifications shall be stated in detail and contain the following elements but shall always be written to meet the minimum that will also be acceptable:

- (a) Objective.
- (b) Scope of work.
- (c) Specific tasks.
- (d) Performance.
- (e) Products/deliverables and schedules.
- (f) Reports.
- (g) Government obligations.

The adequacy of specifications is a critical factor in the use of formal advertising procedures. They must be defined well enough to permit all bidders to bid on the same basis. The Contracting Officer is responsible for determining when formal advertising is impractical or otherwise unsuitable and for documenting the file accordingly in the form of a determination and finding.

Subpart 24-2.2—Solicitation of Bids

§ 24-2.201 Preparation of invitations for bids.

Forms used in the preparation of invitations for bids are prescribed in 41 CFR Subpart 1-16.1 and 1-16.4 and in 24-16 of this Chapter.

§ 24-2.202 Miscellaneous rules for solicitation of bids.

§ 24-2.202-1 Bidding time.

In the procurement of supplies and services, the following shall be observed:

(a) Procurement action which does not provide for the minimum bidding time required by 41 CFR 1-2.202-1(c) shall be justified by the Contracting Officer prior to releasing the invitation for bids. This justification shall take the form of a finding of fact which establishes the Contracting Officer's basis for the exception to the minimum bidding time.

(b) The minimum bidding time stipulated in 41 CFR 1-2.202-1(c) shall not be construed as a maximum. Each prospective procurement shall be examined on its own merits to determine the bidding time that will facilitate competition on reasonable and equal terms. As a general rule, procurement of a less complicated nature for which no extensive bid preparation by the prospective bidder is required in development of his bid may contain a bidding time of 20 calendar days. Where the specification may require prospective bidders to develop drawings or samples, or to do extensive preparation in developing a meaningful bid, 30 calendar days or more of bidding time may be required. When similar types of requirements necessitate a quick turnaround time, the appropriate Procuring Activity may request a class exception to the minimum bidding time relating to the urgency for the supplies or services. If this situation exists, the Contracting Officer will make a request to the Head of the Procuring Activity for

approval of the class exception or where internal Departmental regulations exist regarding exceptions to the minimum bidding time these regulations are construed as an exception under this Section.

§ 24-2.202-2 Telegraphic bids.

Telegraphic bids will be authorized only by the Contracting Officer who shall document the official procurement file as to the necessity of telegraphic bids. Conditions under which telegraphic bids may be authorized are set forth in 41 CFR 1-2.202-2. When telegraphic bids are authorized by the Contracting Officer, the following clause shall be incorporated in the Invitation for Bids:

Telegraphic bids may be submitted in response to this Invitation for Bids (IFB). Telegraphic bids must be received in this Office prior to the time specified for opening of bids. Such bids must specifically refer to this IFB; must include the items or sub-items, quantities and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the IFB together with a statement that the bidder agrees to all the terms, conditions and provisions of the invitation. Failure to furnish, in the telegraphic bid, the representations and information required by the IFBs may necessitate rejection of the bid. Signed copies of the IFBs must be furnished in confirmation of the telegraphic bids. The bidder shall confirm the telegraphic bid on the required forms contained in the IFB and shall submit it to the Contracting Officer within five (5) calendar days after the time and date set forth in the IFB for receipt of all bid responses.

§ 24-2.202-3 Place and method of delivery of supplies.

To the maximum extent practical, invitations for bids issued by HUD shall stipulate "f.o.b. destination." Only where the Contracting Officer determines it to be in the Government's best interest may he deviate from this policy.

§ 24-2.202-4 Bid samples.

Bid samples submitted by bidders as required by an invitation for bids or as unsolicited samples, if not returned in accordance with 41 CFR 1-2.202-4(h), shall be disposed of by the Contracting Officer who shall document the contract file as to the method of disposition.

§ 24-2.202-50 Extension of time for bid opening.

Whenever such action is determined by the Contracting Officer to be in the best interest of the Government, bid openings may be rescheduled for a later date by issuance and distribution of an amendment (see 41 CFR 1-2.207) to the invitation for bids. Notices of change in bid opening date shall specify the exact time and date for the new opening and will be issued by mail or telegram as soon as possible, but in any event prior to the time specified for the opening of bids.

§ 24-2.202-51 Incorporation by reference.

There shall be shown on the face of the invitation for bids or, if that sheet is not the primary one provided for the

bidder's signature, on the primary sheet that is so provided, a listing of attachments which are to form a part of the bid invitation and resulting contract, as follows:

"The following attachments hereto form a part of this Invitation for Bids and any resulting contract:"

§ 24-2.202-52 Prebid conference.

Whenever a prebid conference is proposed for a procurement the following will be applicable:

(a) *General.* One of the essential elements of formal advertising is that all bidders are afforded an equal opportunity to compete. For this reason, discussions with prospective bidders will only be conducted by or with the knowledge and approval of the Contracting Officer. It is incumbent upon the Contracting Officer to afford to all prospective bidders the same information so as not to give one advantage over the others, if issued to only one potential bidder. The need for prebid conferences in advertised procurements should be infrequent and such conferences shall not be used as a substitute for formally amending defective or ambiguous solicitation or to disseminate additional specification requirements. The prebid conference is a procedure generally reserved for complex procurements to provide for discussion of unusual aspects. A prebid conference is only authorized when it is deemed by the Contracting Officer to be in the best interest of the Government and approved by the Head of the Procuring Activity or when written internal program policy requires it under certain specified circumstances.

(b) *Format.* The typical format of a prebid conference is a formal presentation by the Contracting Officer or his representative followed by a question and answer period. All prospective bidders and their subcontractors shall be invited to the meeting in a manner deemed appropriate by the Contracting Officer. When held, a prebid conference shall be scheduled sufficiently in advance of the date set for bid opening to permit prospective bidders to use the information. A written record of the prebid conference shall be made and maintained in the procurement file as the official record of what was presented at the conference.

(c) *Purpose.* A prebid conference is held to accomplish two primary objectives:

(1) To impart information that removes areas of performance uncertainties which, unless removed, result in higher price to the Government, i.e., inclusion in the bid of an amount for the uncertainty or contingency.

(2) To avoid post-award performance problems which firms could have been made aware of at the time of bid preparation.

(d) *Conclusion.* As a result of the prebid conference, it may become necessary to change or substantially clarify the solicitation. This action shall be transmitted to all those receiving IFB in the form of an official amendment to the solicitation, taking into consideration any

extension of the closing date for the receipt of bids.

§ 24-2.202-53 Bid envelopes.

Mailing labels, tags, or envelopes, bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, the Optional Form 17, "Sealed Bid Label" may be furnished with each bid set to inform the bidder as to what will be required on the bid envelope. 41 CFR 1-16.902-OF17 illustrates the referenced form and copies of same can be obtained from the General Services Administration.

§ 24-2.202-54 Alternate bids.

An alternate bid is one that offers a suitable substitute for the requirements set forth in the invitation or which goes to the substance of the bid which affects price, quality, quantity or delivery. Where alternate bids are not provided for in the invitation, the Government shall consider any alternate bid to be non-responsive. The alternate bid method shall only be used in selected cases where flexibility may be desirable in selection of a product. The Contracting Officer shall weigh the advantage of the flexibility against the difficulties in the evaluation of bids that results from the alternate bid technique in determining to utilize this method.

§ 24-2.203-3 Publicity in newspapers and trade journals.

When it is deemed necessary by the procuring activity to use paid advertising the following must be observed:

(a) When it is deemed necessary to use paid advertisements in newspapers and trade journals and similar advertising media in conjunction with competitive solicitation, where HUD would not otherwise obtain the full benefit of available competition, written authority for such publication shall be obtained from the Head of the Procuring Activity.

(b) The prices paid for advertising shall not exceed commercial rates charged to private individuals. In placing advertising orders, the Standard Form 1143 "Public Voucher for Advertising Order" shall be utilized. The only considerations required in placing an advertising order are (1) Has the use of such medium been authorized and (2) Is the medium able to achieve the objective of the advertising.

§ 24-2.205 Bidders mailing list.

§ 24-2.205-1 General.

Each procuring activity within the Department will establish in accordance with 41 CFR 1-2.205 bidders mailing lists to assure adequate sources of supplies and services. The Head of the Procuring Activity shall have the responsibility for establishing such mailing lists to enable all sources interested in contracting with the Department for specific types of programs to be utilized to the fullest extent possible.

§ 24-2.205-2 Establishment of lists.

All eligible Contractors who have submitted the Bidders Mailing List Application (Standard Form 129) or other forms as may be approved by the Department for this express purpose, shall be placed on the appropriate bidders mailing list unless a contrary determination is made in accordance with 41 CFR 2.205-1. The following procuring activities maintain mailing lists to support their particular procurement function:

(a) The Office of Procurement and Contracts maintains a list of all sources interested in contracting with all Departmental programs except as set forth in Items (b) and (c) of this section.

(b) To assist the Property Disposition Acquired-Property Program, the Department's Area and Insuring Offices each maintains a mailing list of interested sources appropriate for the jurisdiction over which it has authority.

(c) The General Services Division of each HUD Regional Office maintains, appropriate for the jurisdiction over which it has authority, a mailing list of sources interested in contracting with the Department for general service types of procurement.

§ 24-2.205-3 Removal and reinstatement of names on bidders mailing lists.

Each procuring activity shall observe the following requirements for the removal and reinstatement of names on a mailing list.

(a) Contractors who have been suspended, debarred or otherwise determined to be ineligible in accordance with 24 CFR Part 24 to receive an award of a Government contract shall immediately be removed from the bidders mailing lists.

(b) Potential Contractors who have failed to respond to a solicitation, shall be removed unless retention is considered in the best interest of the Government.

(c) At least once every twelve (12) months potential Contractors on inactive bidders mailing lists shall be contacted to determine their continuing interest, and all who fail to respond to this inquiry may be removed from the mailing list.

(d) Potential Contractors, except for those who have been debarred or found ineligible, who have been removed from the mailing list, may be reinstated upon request or by filing a new mailing list application.

Subpart 24-2.3—Submission of Bids

§ 24-2.301 Responsiveness of bids.

Any bid which is not signed by the bidder or his authorized representative shall be disregarded, except when it is accompanied by other evidence which demonstrates the bidder's intention to be bound by the unsigned bid document. Examples of such evidence are a bid guarantee or a letter (which does not qualify or otherwise render the bid non-responsive) signed by the bidder referring to and clearly identifying the bid

itself. In such a case, the Contracting Officer may waive the deficiency as a minor informality or irregularity (see 41 CFR 1-2.405) and shall document the file to so indicate.

§ 24-2.303 Late bids.

§ 24-2.303-1 General.

The late bid regulations and procedures of 41 CFR 1-2.303 shall not be waived, even if a bid is only slightly late (e.g., several minutes) or none of the other bidders will be prejudiced by consideration of the late bid.

§ 24-2.303-6 Notification to late bidders.

In setting the date to be inserted in the notice to late bidders contained in 41 CFR 1-2.303-6, consideration should be given to the time required by the bidder to develop and prepare the required evidence in relation to the acceptance period specified by the otherwise apparent low bidder, avoidance of undue delay in the procurement cycle, and other pertinent factors. As a general rule, the bidder should be allowed a minimum of three (3) working days in addition to a time allowance for transmitting the notice to, and receipt of the evidence by, the Contracting Officer. The bidder shall be notified immediately in writing if his bid cannot be considered for award because of lateness.

§ 24-2.303-7 Disposition of late bids.

A late bid which is not for consideration shall be held unopened until after award and then returned to the bidder (unless other disposition is requested or agreed to by the bidder). The return of a late bid which cannot be considered for award shall be accompanied by a statement from the Contracting Officer that the bid was not considered because of its late receipt. If the late bid had to be opened for identification purposes or was opened by mistake, this fact shall be included in the statement from the Contracting Officer accompanying the returned bid. In all cases where a late bid is not considered and returned to the bidder, the file shall be documented with all information relating to the determination of late receipt which shall include a copy of the late bid envelope.

Subpart 24-2.4—Opening of Bids and Award of Contract

§ 24-2.401 Receipt and safeguarding of bids.

Envelopes, or other outer coverings, containing identified bids, shall be stamped to show the Office of receipt, time and date. The bids shall immediately be turned over to the Contracting Officer who will be responsible for their safe keeping until the official opening. Each procuring activity shall be responsible for establishing procedures for the safeguarding of bids. Unidentified bids and bids that are opened by mistake shall be handled in accordance with 41 CFR 1-2.401(b). The Contracting Officer shall retain in the file a copy of the envelope, wrapper, or other container (bearing the

required documentation) of a bid which was opened by mistake or which was opened for purpose of identification.

§ 24-2.402 Opening of bids.

The bid opening will be conducted by the Contracting Officer or his duly authorized representative designated as the bid opening officer. At the bid opening, the relative merits of any bids shall not be discussed by the person opening the bids, or the Contracting Officer, with the bidders, their representatives, casual observers, or Department personnel. No statement shall be made by the person opening the bid or the Contracting Officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, the responsiveness or responsibility of any bidder, etc. Oral instructions shall not be given to bidders at any time during the opening. Protests of bidders and inquiries regarding the award of the contract shall be referred to the Contracting Officer after the completion of the bid opening. Bidders are cautioned that information obtained at bid opening from other than the Contracting Officer may only be relied upon by the bidder at the bidder's own risk. After all bids have been opened, read aloud and recorded, the bid opening officer shall state that opening of bids has been completed.

§ 24-2.402-50 Marking of bids.

Under no circumstances will any individual make any marks or notations on the bid or its accompanying documents. Erasures and any other changes to the bid must be initialed by the individual executing the bid document. If such erasures or changes are not initiated, it shall be handled in accordance with 41 CFR 1-2.405. If through error or for some other reason marks are made on a bid or its accompanying documents by a Government employee, the markings should not be erased or eradicated; instead, the individual so marking the bid shall prepare a signed explanation of the marking for insertion in the file for future reference, showing when, how, and why the notations or markings were made. If the marked bid is accepted, explanation with regard thereto should be made on the statement of award.

§ 24-2.402-51 Timing of acceptance and withdrawal.

Bidders may not withdraw their bids after bid opening unless the notice of withdrawal was mailed prior to the time set for bid opening and handled in accordance with 41 CFR 1-2.305. The Contracting Officer's letter accepting the bid, when written acceptance is required, is effective when mailed. Therefore, a binding contract is effected where acceptance has been mailed by the Contracting Officer before the letter from the bidder advising of withdrawal of bid is received.

§ 24-2.404 Rejection of bids.

§ 24-2.404-50 Rejection of bids in multiple bidding situations.

When more than one bid is received from a person or firm, or affiliates there-

of, in response to an invitation for bids, such bids shall be considered for award if responsive and otherwise acceptable. If the Contracting Officer determines that these bids would give a bidder an unfair advantage over other bidders or would otherwise be prejudicial to the best interest of the Government, these bids will be rejected. When a tie situation occurs in which the requirement stipulated in 41 CFR 1-2.407-6 has to be applied, only one of the multiple bids shall be considered.

§ 24-2.406 Mistakes in bids.

§ 24-2.406-3 Other mistakes disclosed before award.

Mistakes in bid discovered prior to award (other than obvious clerical errors) shall be submitted to the following authorities for determinations in accordance with 41 CFR 1-2.406-3:

(a) Director, Office of Procurement and Contracts for all Departmental Programs, except as set forth in Item (b) below.

(b) Director of the appropriate Departmental Area or Insuring Office for the Property Disposition Acquired-Property Program.

Each determination made hereunder will be coordinated with the Office of General Counsel prior to notification to the bidder. The Contracting Officer shall be notified promptly of the course of action to be taken.

§ 24-2.406-4 Disclosure of mistakes after award.

Pursuant to 41 CFR 1-2.406-4(d), the Director, Office of Procurement and Contracts is delegated authority to make determinations under 41 CFR 1-2.406-4. Mistakes in bids discovered after award shall be submitted to the Director, Office of Procurement and Contracts accompanied by the data set forth in 41 CFR 1-2.406-4(f). Each determination made hereunder will be coordinated with the Office of General Counsel prior to notification to bidder.

§ 24-2.407 Award.

§ 24-2.407-1 General.

Pursuant to 41 CFR 1-2.407-1, awards shall be made by mailing or otherwise furnishing to the successful bidder a properly executed award document or notice of award. A notice of award may be approved by the Contracting Officer for administrative reasons when the urgency for the contractor's immediate effort is required, e.g., the reproduction and distribution of the contract document may be delayed.

§ 24-2.407-7 Statement and certificate of award.

For each contract made by formal advertising, Standard Form 1036, Statement and Certificate of Award, or other appropriate document, shall be prepared and executed by the Contracting Officer and a copy retained in the contract file.

§ 24-2.407-8 Protest against award.

The following identifies the responsible agents and sets forth procedural requirements for handling protests, except for

protests against awards under National Housing Act contracts. For the purpose of definition, as used in this section "working days" means the working days of the Agencies of the Federal Government, excluding Saturdays, Sundays and Federal holidays, as specified in 5 U.S.C. 6103.

(a) Protest before award:

(1) *Resolution by procuring office.* Interested parties are urged to seek resolution of their complaints initially with the procuring activity. The Contracting Officer shall act on any protest filed with the procuring activity (see 41 CFR 1-2.407-8(a)) unless it is known that a protest has been filed concurrently with the General Accounting Office (GAO). Where a written protest is filed directly with the procuring activity, full consideration shall be given to the protest with the protestant notified in writing of the final decision on the protest within thirty (30) working days from the date of receipt by the Agency except where GAO views are required, in which case the time for rendering a decision shall be ten (10) working days from receipt of GAO views: Where the Contracting Officer makes a determination to award a contract notwithstanding a protest as authorized by 41 CFR 1-2.407-8(b)(4), the Head of the Procuring Activity shall approve such a determination prior to award. The appropriate official mentioned above shall notify the Office of General Counsel of intent to make award. Pursuant to 41 CFR 1-2.407-8(b)(3), the Office of General Counsel shall notify the GAO of such proposed action. Parties interested in protesting directly to GAO, shall do so in accordance with the General Accounting Office Regulations 4 CFR Part 20.

(2) *Responsibility.* The Office of General Counsel has the responsibility for handling matters relating to protests against award of contracts within the Department of Housing and Urban Development and for liaison with the GAO. All communications concerning a protest written or otherwise directed to GAO shall be coordinated with the Office of General Counsel. All written communications from the Department to GAO shall be by the Office of General Counsel. The Contracting Officer has the responsibility for furnishing the Office of General Counsel with all information relating to the protest.

(3) *Times for filing.* The times for filing are as follows:

(i) Protests based on alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for the receipt of proposals shall be filed prior to the dates established in paragraph (a)(1) of this section. In other cases, protests shall be filed to be received in the Department of HUD or GAO not later than five (5) working days after the basis for protest is known or should have been known, whichever is earlier. Where such protest has been filed initially with the HUD's procuring activity any subsequent protest to the GAO must be delivered to the GAO within five (5) working days after notification of adverse action by HUD's

procuring activity. GAO will consider the protest only if the initial protest was timely filed with the procuring activity.

(i) Any additional statements by the protester in support of the protest to the GAO shall be mailed or otherwise furnished to the GAO, and two (2) copies sent to the procuring activity, no later than five (5) working days after filing of the initial protest.

(4) *Notice of protest and submission of report.*

(i) Upon being advised by GAO of the receipt of a protest, the Office of General Counsel will inform the procuring activity immediately. The Contracting Officer shall promptly notify in writing the Contractor or all bidders or offerors who, in the opinion of the Contracting Officer, appear to have a reasonable prospect of receiving an award if the protest is denied. Upon receipt by the Department of a written request for a formal report from the GAO relating to a protest, the Office of General Counsel shall make the complete formal report, or a written statement setting forth the reasons for any delay and the expected date of submission to GAO within twenty-five (25) working days, unless a different time is stipulated by GAO, after receipt of the GAO request. Except to the extent that withholding of information is permitted or required by law or regulations, copies of the protest and any supplemental information later filed by the protester may be furnished to the parties previously notified of the protest. These parties shall be advised to communicate directly with GAO if they desire to comment on the protest.

(ii) The report shall include the documents and statements required by 41 CFR 1-2.407-8(a)(2), identify the GAO file number assigned to the protest and shall be concurred in by the Contracting Officer. If appropriate, the report shall state the urgency of the procurement and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. Where the statement of urgency is not appropriate, the report shall state the length of time an award may be delayed without significant expense or difficulty in performance. The report shall be transmitted by a covering letter addressed to the individual in GAO who signed the request and shall state that copies thereof have been sent to the protestant and any other named parties who have been given notice of the protest. The external distribution shall be shown on the original of the letter to GAO. In addition, letters shall be sent to the protestant and other interested parties enclosing a copy of the completed report and shall advise recipients that any comments shall be filed with the Office of General Counsel, General Accounting Office within ten (10) working days after receipt with copies to the procuring activity and Office of General Counsel, Department of HUD.

(iii) If GAO requests additional information, a supplementary report shall be transmitted to GAO within five (5) working days after the Department receives the request and shall follow the proce-

dures set forth in 24 CFR 2.407-8(a)(4).

(b) *Protest after award.* Protests initially received after contract award are subject to the procedure in this 24 CFR 2.407-8 and 41 CFR 1-2.407-8(c).

(c) *Responsibility for data.* The Office of General Counsel shall maintain records relating to all protests received. The records shall contain adequate data to show the number and nature of formal protests received (whether filed directly with the Department or with GAO), their disposition and the time for resolution. These records will be reviewed annually in order to update protest procedures.

§ 24-2.407-50 Award when only one bid is received.

When only one bid is received in response to an invitation for bids, such bid may be considered and accepted if the Contracting Officer makes a written determination that (a) The specifications were clear and not unduly restrictive, (b) Adequate competition was solicited and it could have been reasonably assumed that more than one bid would have been submitted, (c) The price is reasonable, and (d) The bid is otherwise in accordance with the invitation for bids. Such a determination shall be placed in the file.

§ 24-2.408 Information to bidders.

On all procurements in excess of \$5,000, except for the conditions stipulated in 41 CFR 1-2.408(a)(1) & (2), the unsuccessful bidders shall be given a notification of rejection by one of the methods set forth in 41 CFR 1-2.408(b).

PART 24-3—PROCUREMENT BY NEGOTIATION

Subpart 24-3.101—Exceptions to Normal Negotiation Procedures

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Subpart 24-3.51—Protests Against Award

24-3.5101	Negotiated procurement protests.
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AUTHORITY: Sec. 7(d), Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 24-3.101—Exceptions to Normal Negotiation Procedures

§ 24-3.101-50 Noncompetitive procurements.

(a) *General.* All departmental procurement shall be accomplished on a competitive basis to the maximum practical extent. Procurement without competition shall be limited to those circumstances where only one firm, organization or individual can provide the required supplies or services within the time required and at a reasonable price. Program offices recommending procurement on a noncompetitive basis shall submit a detailed summary of the factual circumstances supporting sole source procurement to the Contracting Officer. The Contracting Officer shall review the summary in accordance with the criteria outlined in paragraph (c) of this section. If, in the judgment of the Contracting Officer, the noncompetitive procurement is adequately supported, he shall prepare a document entitled "Justification for Noncompetitive Procurement." The document shall comply in all respects with the requirements of paragraph (c) of this section and be signed and inserted in the procurement file by the Contracting Officer.

(b) *Exclusions.* The provisions of this § 3.101-50 do not apply to: (1) Procurements of architect-engineer services; (2) Procurement of utility services where the services are available from only one source; (3) 8(a) procurements with the Small Business Administration; or (4) Purchases from mandatory Federal Supply Schedule contracts which list only one source.

(c) *Justification for noncompetitive procurement.* The document entitled "Justification for Noncompetitive Procurement" shall completely discuss the circumstances which render competitive negotiation impractical or not feasible and identify the exclusive capabilities which the proposed contractor possesses and which meet the requirements of the procurement.

(1) Factors which shall be considered in preparing the "Justification" include, but are not limited to, the following:

(i) The unique capability, highly specialized experience or facilities the proposed contractor possesses which is essential to provide the required supplies or services.

(ii) If time is of the essence, the experience, capabilities, or facilities the proposed contractor possesses which would enable him to complete the requirement within the time frame while all others would fail.

(iii) Whether the proposed contractor is the only one which can fulfill a requirement that the desired item be compatible with existing equipment or systems.

(iv) Whether the proposed contractor has a substantial investment of some nature which would have to be duplicated at excessive Government expense by another source entering the field.

(2) The Contracting Officer shall make the final determination as to the adequacy of the proposed sole source based upon consideration of all appropriate factors including any or all of those listed in § 24-3.101-50(c) (1).

§ 24-3.101-51 Unsolicited proposals.

(a) *Definition.* An unsolicited proposal is a written offer to perform work which is made to the Department by a prospective contractor without prior formal or informal solicitation. Such proposals are considered to be a means whereby sources outside the Government may propose pertinent and creative activities to the Department.

(b) *Policy.* It is the policy of the Department to accept the submission of unsolicited proposals.

(c) *Submission.* All unsolicited proposals for research shall be submitted in an original and five (5) copies to the Assistant Secretary for Policy Development and Research, Office of Program Planning and Administration, 451-7th Street, S.W., Washington, D.C. 20410. Unsolicited proposals for other than research shall be submitted in an original and five (5) copies to the Director, Office of Procurement and Contracts, 451-7th Street, S.W., Washington, D.C. 20410. Each proposal should contain a cover page with a one paragraph abstract and a statement as to where else in HUD or any other Federal Government agency the proposal has been sent. If the proposal contains technical data which the offeror wishes to restrict for evaluation purposes only, he shall mark the title page of the proposal with a legend stating substantially the following:

"Technical data contained in pages of this proposal shall not be used or disclosed, except for evaluation purposes, provided that if a contract or grant is awarded to this offeror as a result of or in connection with the submission of this proposal, the Government shall have the right to use or disclose this technical data to the extent provided in the contract or grant. This restriction does not limit the Government's right to use or disclose any data obtained from another source without restrictions."

The unsolicited proposal must include the following minimum information:

(1) A statement of the problem the proposal addresses including the need for the research.

(2) A brief outline of the work to be done in carrying out the project including a statement of objectives.

(3) An explanation of why, in terms of the proposed products, it is both important and urgent that the problem be addressed.

(4) A description of the approach selected and rationale for selection over other possible approaches.

(5) A brief itemization of relevant work known to have been undertaken in this area; either in process or completed, including references to any existing experience and data that could be used.

(6) A description of how the program results are anticipated to be translated into practice in terms of (i) The organization(s) involved and/or responsible and (ii) The steps remaining between program completion and implementation.

(7) The proposed starting and completion date and significant milestone dates.

(8) A proposed budget, including separate cost estimates for labor, materials, overhead, travel, subcontracts and other direct or indirect costs as appropriate.

(9) A commitment to provide cost-sharing and a statement as to the share to be borne by the contractor.

(10) Background descriptions of the persons expected to assume professional and administrative responsibility respectively for the project throughout its duration. Identification, to the extent possible, of the principal persons who would supervise and perform the project work; and explanation of how their experience and competence are related to the proposed activities.

(11) Current financial statement (certified through independent audit).

(12) Signature of a responsible official authorized to obligate the organization; and the time limit of the offer.

(d) *Evaluation.* The appropriate office designated in § 24-3.101-51(c) shall acknowledge receipt of the proposal and forward all but one (1) Copy to the appropriate program office for evaluation. If the offeror did not mark the proposal with the legend specified in paragraph (b) of this section, the appropriate receiving office shall place a cover sheet on the proposal and mark it as shown below, unless the offeror gives a clear written indication that he does not wish to impose any restrictions on the disclosure or use of the data contained in the proposal.

All Government personnel handling this proposal shall exercise extreme care to insure that the information contained herein is not disclosed outside the Government and is not duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the proposal, without the written permission of the offeror. However, if a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use.

The appropriate program office shall conduct a thorough evaluation of the unsolicited proposal and furnish its comments and recommendations to the appropriate office designated in paragraph (c) of this section.

(e) *Procurement procedure.* The modes of procurement are identified as follows:

(1) *Competitive procurement.* A favorable technical evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiations on a non-competitive basis with the offeror. If the substance of the proposal is available without restriction from another source, or its substance closely resembles that

of a pending competitive solicitation or otherwise is not sufficiently unique to justify acceptance, HUD's policy of obtaining competition applies. When procurement is intended and competition is feasible, the unsolicited proposal shall be rejected by a letter from the appropriate office specified in § 24-3.101-51(c). A copy of such letter and associated unsolicited proposal shall be retained in the files of the appropriate receiving office. All other copies of the proposal shall be returned to the Contractor.

(2) *Noncompetitive procurement.* When an unsolicited proposal has received a favorable technical evaluation and it is determined that the substance thereof is not available to HUD without restriction from another source, contains an original concept or idea, or competition is otherwise precluded, the subject matter of such unsolicited proposal may be procured from the offeror on a noncompetitive basis. The program office sponsoring the procurement shall support its recommendation with a summary of the circumstances warranting procurement on a noncompetitive basis. If, in the judgment of the Office of Procurement and Contracts, acceptance of the unsolicited proposal is adequately supported, the appropriate Contracting Officer shall prepare a document entitled: "Justification for Acceptance of an Unsolicited Proposal." The "Justification" shall include the findings set forth in paragraphs (c) (2) (i) or (ii) of this section.

(i) The procurement is for basic scientific or engineering research; and the unsolicited proposal was selected on the basis of its overall merit, cost and contribution to HUD's program objective, after a thorough evaluation and comparison with other proposals, solicited or unsolicited, in the same or related fields; or

(ii) The procurement is for services other than basic research (e.g., development, feasibility studies, etc.); the unsolicited proposal contains technical data or offers unique capabilities that are not available from another source or contains an original concept or idea; and it is not feasible or practical to define the Government's requirement in such a way as to avoid the necessity of using the technical data contained in the unsolicited proposal.

In addition, the "Justification" shall include the facts and circumstances that support the recommendation and operate to preclude competitive procurement. The "Justification" shall be signed by the Contracting Officer and inserted in the procurement file.

(f) An unsolicited proposal shall be returned to the offeror if, for any reason, the Government decides not to enter into a contract based on such proposal with the offeror. Return of the proposal shall be done in the same manner provided for return set forth in paragraph (e) of this section.

(g) Program offices receiving unsolicited proposals directly from offerors shall forward them to the appropriate office designated in paragraph (c) of this section for initial processing.

Subpart 24-3.103—Dissemination of Procurement Information

§ 24-3.103-1 Publicizing procurement actions.

The Department shall continually search for and develop information on sources (including minority and small business concerns) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be given for this purpose. The search should include (a) a review of relevant data or brochures furnished by sources seeking to do business with the Department and (b) a cooperative effort by program personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirement. It is the responsibility of each procuring activity to use to the maximum extent practical its bidders' mailing list for soliciting competition. Applications for inclusion on the bidders mailing list may be obtained from the appropriate procurement activity identified in HUDPR 24-1.451.

§ 24-3.103-2 Release of information during the solicitation phase.

No information shall be released during the solicitation phase of a procurement unless through the following methods:

(a) Each solicitation for a negotiated procurement shall specify an individual within the procuring activity who shall be responsible for responding to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions concerning the solicitation, whether of a procedural or substantive nature, shall be directed to the above individual. All other personnel will avoid exchange of comments with all offerors or potential offerors. Answers to questions requiring clarification of the substantive portion of the solicitation shall be provided by amendment to the solicitation, a copy of which shall be furnished to each recipient of the solicitation.

(b) Each procuring activity shall, in accordance with 41 CFR 1-1.1003-4, publish in the Commerce Business Daily the names and addresses of firms to whom solicitations will be issued when substantial subcontracting opportunities exist and it is not contrary to the Government's interest to publish them. The furnishing of this information in any other manner shall be at the discretion of the Contracting Officer.

§ 24-3.103-3 Release of information during the evaluation phase.

No information shall be released during the evaluation phase of a procurement unless through the following methods:

(a) During the course of evaluating proposals, personnel involved in this activity shall not reveal any information concerning the evaluation of proposals

to anyone who is not also participating in the same evaluation proceedings, except as may be required for internal clearances.

(b) *Preaward notice of unacceptable offers.* In any procurement in which it appears that the period of evaluation of proposals is likely to exceed sixty (60) days, the Contracting Officer, upon determination that a proposal is unacceptable, shall provide prompt notice of the fact to the offeror submitting the proposal. In addition to stating that the proposal has been determined to be unacceptable, the notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered. Such notice need not be given if (1) In the judgment of the Contracting Officer, the disclosure will prejudice the Government's interest; (the possibility of protest shall not be considered prejudicial) or (2) if the proposed contract is to be awarded within a few days and notice pursuant to 41 CFR 1-3.103 would suffice.

(c) *Preaward notice—small business set-asides.* In any procurement involving a small business set-aside to be placed through conventional negotiation, upon final completion of negotiations and determinations of responsibility but prior to award, the Contracting Officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated, and further pre-award contact with the Contracting Officer shall not be made with regard to the instant procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s). This notification procedure shall not apply to procurements negotiated pursuant to 41 USC 252(c) (4), (5) or (6); negotiated with a foreign supplier when only foreign sources or supplies or services have been solicited; or urgent procurement actions which the Contracting Officer determines in writing must be awarded without delay to protect the public interest. The Contracting Officer's determination shall be placed in the contract file.

§ 24-3.103-4 Postaward release of procurement information.

Promptly after making award of any procurement in excess of \$10,000, the Contracting Officer shall, if he has not done so pursuant to § 24-3.103-3(c) of this Chapter, give written notice to the unsuccessful offerors that their proposals were not accepted. The notice should name the successful contractor and state the amount of the award and the number of proposals received. Where additional information is requested by the offeror, debriefing will be conducted as follows:

(a) It is the policy of the Department to provide a debriefing to any unsuccessful

offeror who makes a written request to the Contracting Officer within two (2) months after contract award.

(b) A debriefing is intended to:

- (1) Tell an unsuccessful offeror which areas of his proposal were judged to be weak and deficient and whether the weaknesses or deficiencies were factors in his not having been selected.

- (2) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed and given a general comparison of significant areas, but not a point by point comparison of all the elements considered in the evaluation criteria.

(c) A debriefing should not reveal:

- (1) Confidential business information, trade secrets, techniques, or processes of the other offerors; and

- (2) The relative merits or technical standing of the unsuccessful offerors or the scoring by the Source Evaluation Board or Technical Evaluation Panel.

(d) Any HUD official who receives from an unsuccessful offeror a request, written or oral, for a debriefing shall immediately refer the request to the appropriate procuring activity which shall make the necessary arrangements for the debriefing.

(e) It is essential that the debriefing be conducted in a scrupulously fair, objective and impartial manner, and that the information given be factual and consistent with the findings of the evaluation and the basis on which the source selection official made his decision.

(f) It is most important that all HUD personnel engaged in the evaluation and selection process be aware of the foregoing policies and procedures. Detailed and complete records will be maintained by key technical and business participants in a manner which will facilitate either a written or oral debriefing of any unsuccessful offeror's proposal.

§ 24-3.106 Preproposal conferences.

In cases of complex procurement, preproposal conferences may be used to explain complicated specifications and requirements to prospective offerors so as to permit them to submit proposals without undue expenditure of effort, time and money. The preproposal conference shall not be used as a method for prequalification of offerors, and may only be used when approved by the head of the procuring activity. The preproposal conference shall be arranged and conducted by the Contracting Officer or his representative, with participation by technical and legal personnel as appropriate. All prospective offerors shall be furnished identical information in connection with the proposed procurement. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgment and receipt of solicitation amendments shall be applied. A

complete record shall be made of the conference.

Subpart 24-3.150—Treatment of Proposal Information

§ 24-3.150-1 General.

It is the general policy of HUD to use information contained in proposals only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government or the Government already has unrestricted use rights, or it is or has been made available to the Government from other sources, including the offeror, without restriction.

§ 24-3.150-2 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) *By the procuring activity.* Unsuccessful cost and technical proposals shall be retained in the procuring activity for a period of two (2) months subsequent to contract award as reference material for debriefings in accordance with HUDPR 24-3.103. Upon expiration of the two (2) month period, the procurement office shall destroy each unsuccessful proposal unless (1) a debriefing has been requested but not held or (2) a protest is pending concerning the procurement.

(b) *By the program office.* Unsuccessful proposals shall be retained on file in the program office which conducted the technical evaluation for a period of two (2) months subsequent to contract award. Upon expiration of the two (2) month period, the program office shall return all copies of each unsuccessful proposal not required for Departmental use to the procuring activity for destruction.

(c) Unsuccessful proposals shall not be used for other than internal reference unless (1) Written permission has been obtained from the offeror or (2) The proposal expressly states that unrestricted use of the proposal is given to the Government regardless of its success in the competition or (3) Any of the conditions described in HUDPR 24-3.150-1 exist.

§ 24-3.150-3 Use of successful proposals.

Successful proposals will be accorded unrestricted use by the Government unless the offeror places restrictions on the use of the proposal and the proposal is not incorporated in the resulting contract.

Subpart 24-3.4—Type of Contracts

§ 24-3.405-3 Cost-sharing contract.

(a) *Purpose.* This section implements Federal Management Circular No. 73-3 with respect to HUD contracts and sets forth basic guidelines governing cost sharing on research contracts with non-Federal organizations.

(b) *Basic guidelines.* (1) Cost sharing with non-Federal organizations shall be required or encouraged as provided below for the following contracts for basic or applied research:

(i) Cost-sharing shall be required for any contract which results from an unsolicited proposal.

(ii) A contract which does not result from an unsolicited proposal but in which the parties have nevertheless considerable mutual interest in the research (e.g., when it is probable that the performing organization or institution will receive significant future benefits from the research such as: increased technical knowledge useful in future operations; additional technical or scientific expertise or training for its personnel; opportunity to benefit through patent rights; and the use of background knowledge in future production contracts).

(2) Cost sharing ordinarily shall not be applied to the following contracts:

(i) When the Contracting Officer has determined that:

(a) The research effort has only minor relevance to the non-Federal activities of the performing organization, which is proposing to undertake the research primarily as a service to the Government; or

(b) The performing organization has little or no non-Federal sources of funds from which to make a cost contribution; or

(c) The performing organization is predominately engaged in research and development and has little or no production or other service activities and is, therefore, not in a favorable position to make a cost contribution; or

(d) Payment of the full cost of the project is necessary in order to obtain the services of the particular organization.

(ii) The Contracting Officer shall include the substance of his determination in the negotiation summary. Contracts, except when cost-sharing is specifically directed by the Director, Office of Procurement and Contracts or voluntarily offered by the performing organization, for projects:

(a) Where a particular research objective or scope of effort is specified by HUD rather than proposed by the performing organization. This will usually include any formal solicitation for a specific contractual requirement.

(b) The principal purpose of which is the production of, or design, testing or improving of products, materials, devices, systems or methods.

(3) Guidelines for determining the amount of cost sharing:

(i) For educational institutions and other not-for-profit or non-profit organizations, cost sharing normally may vary from 1 percent to as much as 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(ii) The amount of cost participation by commercial or industrial organizations may vary from as little as 1 per-

cent or less of the total project cost to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise or competitive position and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominately engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from the research under Federal agreements.

(iii) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit on the research. However, if the research is expected to be of only minor value to the performing organization and if cost sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit, rather than sharing the costs of the project.

(iv) Each cost-sharing contract negotiated by the Department shall contain the clause included in HUDPR 24-7.5011.

§ 24-3.408 Letter contract.

A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of performance. Where this action is determined to be necessary, the following will be observed:

(a) *Application.* A letter contract may be entered into when (1) The interests of the Department demand that the contractor be given a binding commitment so that work can commence immediately, and (2) Negotiation of a definitive contract in sufficient time to meet the procurement need is not possible as, for example, when the nature of the work involved prevents the timely preparation of definitive requirements, specifications, or cost data.

(b) *Limitations.* (1) A letter contract shall be used only after a written determination is made by the head of the procuring activity that the factors described in paragraph (a) of this section exist and that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable. Where a letter contract award is based on price competition, an overall price ceiling representing the maximum amount of the definitized contract shall be included in the letter contract.

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date, but in no event beyond 90 calendar days after the date of the letter contract, unless the head of the procuring activity authorizes extension of the date for definitization.

(4) The maximum liability of the Government stated in the letter contract shall be limited to an amount determined

to be essential to cover the contractor's requirements for funds up to the time the contract is definitized, but in no event shall exceed 50 percent of the estimated cost of the definitive contract.

(c) *Content.* Letter contracts shall be specifically negotiated and, as a minimum, shall include agreement as to the following:

(1) The immediate commencement of performance of the contract by the contractor, including procurement of necessary materials;

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default;

(3) That the contractor is not authorized to expend monies or incur obligations in excess of the maximum liability of the Government as stated in the letter contract;

(4) The type of definitive contract anticipated;

(5) As many definitive contract provisions as possible;

(6) The contractor's obligation to provide such price and cost information as may reasonably be required by the Contracting Officer; and

(7) The prompt entry into good faith negotiations by the contractor and the Government to reach agreement upon and execute a definitive contract.

Subpart 24-3.6—Small Purchases

§ 24-3.601 Non-construction contracts.

The Department may use small purchase procedures in non-construction contracts when the aggregate amount involved in any one transaction does not exceed \$10,000. Procedures used shall be in accordance with 41 CFR Subpart 1-3.6.

Subpart 24-3.7—Negotiated Overhead Rates

§ 24-3.702 General.

(a) When a contractor performs work in the same period under several contracts for one or more procurement activities or agencies, it may be desirable and appropriate, when mutually agreed to by the Department and the contractor, to negotiate uniform overhead rates for application to all such contracts in order to: (1) Effect uniformity of approach, (2) Effect economy in administrative effort, and (3) Promote timely settlement of reimbursement claims.

(b) When the Contracting Officer determines that the above conditions exist, he shall include the negotiated overhead rate clause set forth in HUDPR 24-7.5008.

(c) If the prospective cost reimbursement contract is the only contract to be performed by the contractor for the Government during the same period or if the Contracting Officer determines that it is not appropriate to include the clause specified in HUDPR 24-3.702(b), determination of the reimbursable amount of the overhead under the contract shall be based upon final audit of the actual costs incurred during the period of performance and the clause set

forth in HUDPR 24-7.5009 shall be included.

§ 24-3.707 Overhead ceilings.

When the Contracting Officer determines in accordance with 41 CFR 1-3.707 that it is appropriate to place an overhead ceiling in the contract, he shall include the clause set forth in HUDPR 24-7.5010.

Subpart 24-3.8—Price Negotiation Policy and Techniques

§ 24-3.801-2 Responsibility of contracting officer.

In the event a contractor insists on a price or demands a profit or fee which the Contracting Officer considers unreasonable and, if the Contracting Officer is unable to obtain a satisfactory solution after exhausting the courses of action set forth in 41 CFR 1-3.801-2(c), the matter shall be referred for resolution to the head of the procuring activity with a statement of facts and the Contracting Officer's recommendations.

§ 24-3.802 Preparation for negotiation.

(a) *Requests for proposals.* This section is not applicable to solicitations issued on Standard Form 33.

(1) Careful drafting of the Request for Proposals (RFP) is essential to the success of the competitive process. The program and procurement offices shall coordinate their efforts to develop a solicitation package which is free of ambiguities and which will allow all offerors to propose on an equal basis.

(2) The RFP shall require that a proposal be submitted in two parts: A "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of and concurrently with evaluation of the other. The RFP shall provide that the technical proposal shall not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., shall be included in the technical proposal so that the offeror's understanding of the scope of work may be evaluated.

(3) The instructions to the offerors concerning the business proposal shall require cost information in sufficient detail to allow a complete cost analysis. Categories and amounts of labor, materials, travel, computer time, as well as information with regard to contractor past performance, financial capacity, certifications and representations, and other pertinent administrative and business information should also be requested.

(4) The RFP shall contain factors for award which are tailored to the requirements of the particular procurement. Each technical factor and subfactor shall be assigned a numerical weight which shall appear in the RFP. These factors will serve as the standard against which all proposals will be evaluated.

(b) *Selection of prospective sources.* Proposals shall be invited from a sufficient number of competent potential sources to insure adequate competition. Sources solicited should include those individuals and organizations (1) On the source list provided by the program office; (2) On the procurement office's bidders' mailing list; and (3) requesting RFPs as a result of publication of the requirement in the Commerce Business Daily. Each RFP shall be made available to all prospective offerors at the same time and no offeror shall be given the advantage of advance detailed information concerning the proposed procurement.

(c) *Proposal preparation time.* HUDPR 24-2.202-1 Bidding Time is applicable to negotiated procurement under this subpart.

§ 24-3.805 Selection of offerors for negotiation and award.

§ 24-3.805-1 Policy.

Those competitively negotiated procurements not expected to exceed \$250,000 or those procurements over \$250,000 which the head of the procuring activity approves for less formal negotiation procedures, shall be processed in accordance with HUDPR 24-3.805-2. All other competitively negotiated procurements expected to exceed \$250,000 shall be processed in accordance with HUDPR 24-3.805-3. This section is not applicable to procurement of Architect-Engineer Services.

§ 24-3.805-2 Procurements not expected to exceed \$250,000.

On procurements where the expected dollar amount will not exceed \$250,000 the following will be observed:

(a) *Forwarding proposals.* After the deadline for receipt of offers, the Contracting Officer will forward five (5) copies of the technical portion of each proposal to the Technical Evaluation Panel (TEP) for evaluation. The TEP will be composed of one or more technical personnel designated by the program or initiating office prior to issuance of the solicitation. The business portions of each proposal will be retained by the Contracting Officer for subsequent evaluation. The Contracting Officer shall inform the TEP of proposals which contain major business deficiencies, including out-of-line cost proposals, which discussion with the offeror could not reasonably be expected to cure.

(b) *Evaluation.* The TEP will evaluate each proposal in strict conformity with the factors for award set forth in the RFP, and will assign each proposal a score on the basis of the factors for award. The TEP shall identify each proposal as being either acceptable or unacceptable. A proposal shall be considered unacceptable if it is so clearly deficient that it cannot be corrected through written or oral discussions. Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(c) *Report.* A TEP report shall be prepared and signed by the technical evaluator(s), furnished to the Contracting Officer, and maintained as a permanent record in the official procurement file. The report shall reflect the scoring of each proposal and the rankings of the proposals, and shall identify each proposal as acceptable or unacceptable. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that may bear upon the selection of sources for negotiation and award. Specific technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. Score sheets of all panel members shall be appended to the report.

(d) *Review of report.* After submission of the TEP report, the Contracting Officer and the TEP will evaluate the business portion of each proposal.

(e) *Competitive range.* Unless it is determined pursuant to 41 CFR 1-3.805-1 (a) (5) that award shall be made on the basis of the most favorable initial proposal, the Contracting Officer will determine which offers are within the competitive range. A determination of the limits of the competitive range requires a comparison of the evaluation of each proposal against the evaluations of other proposals and therefore cannot be predetermined on the basis of a given number of or percentage of proposals. The competitive range shall include all proposals which have a reasonable chance of being selected for award.

(f) *Conduct of discussions.* The Contracting Officer, with the Technical Evaluation Panel, will conduct written or oral discussions of the work to be performed, the cost/price of the work, and other relevant points, with all those offerors within the competitive range. Discussions are not required if the conditions of 41 CFR 1-3.805-1(a)(5) are applicable. The Contracting Officer shall point out to each offeror the ambiguities, uncertainties, and deficiencies, if any, in his proposal which can be corrected without major changes to the proposal. He shall give each offeror a reasonable opportunity (with a common cutoff date for all) to support, clarify, correct, improve, or revise his proposal. Discussions with an offeror should disclose deficiencies in the proposal but should not identify approaches or ideas through which another offeror has achieved a higher evaluation. No information will be revealed by the Government which could give one offeror an unfair competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(g) *Extent of discussions.* Careful judgment will be exercised in determining the extent of discussions. In some cases, good business practice may require more than one round of discussions with proposers within the competitive range depending upon the time constraints, the expense, administrative limitations, and the overall significance of the procurement.

(h) *Selection of contractor.* (1) After the close of discussions and receipt of any

revisions to proposals, the TEP shall perform a final evaluation and prepare its selection recommendation(s). The TEP shall then forward the recommendation(s) through the appropriate officials having a need to know, as designated by the Funding Assistant Secretary, to the Contracting Officer who shall select for final contract negotiation the offer containing the proposal which promises the greatest value to the Government in terms of cost or price, technical and other factors, including equal opportunity compliance.

(2) Cost and price shall be considered in the selection of a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer shall be supported by a specific determination by the Contracting Officer that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror. Offers exceeding the Government's needs are not a basis for technical superiority.

(i) *Final negotiation and award.* Under a negotiated procurement, selection of the source or sources marks only the first phase of negotiating a definitive contract. Final contract negotiation entails: (1) Reaching agreement with the selected source on the costing/pricing, technical, equal opportunity and other provisions that will condition his performance under the contract; (2) Setting forth these terms in a mutually acceptable contractual document; and (3) Having sound rationale and basis for results negotiated.

(1) *Pre-negotiation conference.* Prior to negotiations with the selected offeror, the Contracting Officer shall conduct a meeting with those members of the Government's team who will participate. The purpose of this meeting is to present the objectives to be sought and to establish negotiating positions.

(2) *Negotiation and award.* The Contracting Officer will make arrangements for negotiations with the successful offeror. Negotiations may be held at the contractor's site, at a HUD facility, or by telephone, depending upon the complexity and magnitude of the proposed contract, economic and time considerations and past experience. The Contracting Officer in coordination with assisted and supported by technical, audit, and other personnel as needed, making up the Government's negotiation team. It is the responsibility of the Contracting Officer in coordination with the Office of General Counsel to ensure the integrity of the negotiation process and to see to it that suitable mutual understandings between the parties have been reached. After negotiation is completed, the Contracting Officer will effect appropriate coordinations and execute the contract with a negotiation memorandum prepared in conformance with 41 CFR 1-3.811 and Office requirements.

§ 24-3.805-3 Procurements expected to exceed \$250,000.

On those procurements where the expected dollar amount will exceed \$250,000 the following will apply:

(a) Selection of the source or sources for final contract negotiations shall be made by the Contracting Officer, pursuant to his responsibilities under HUDPR 24-1.453, based upon the findings and recommendations of the Source Selection Official (SSO) who is the head of the funding office or his designee. To assist the SSO in evaluating proposals and making recommendations for selection, the SSO shall designate a Source Evaluation Board (SEB) composed of a chairman, voting members, and advisors.

(b) After the deadline for receipt of offers, the Contracting Officer will forward five (5) copies of the technical portion of each proposal to the SEB chairman or his designee, who shall be responsible for their custody throughout the evaluation process. The business portions of each proposal will be retained by the Contracting Officer pending initial technical evaluation by the SEB. The Contracting Officer shall inform the SEB of proposals which contain major business deficiencies, including out of line cost proposals, which discussion with the offeror could not reasonably be expected to cure.

(c) The SEB will evaluate each proposal in strict conformance with the factors for award of the RFP, and will assign each proposal a score on the basis of the factors for award. The SEB shall identify each proposal as being either acceptable or unacceptable. A proposal should be considered unacceptable if its deficiencies cannot be corrected through written and oral discussions to the point of having a reasonable chance of being selected for award. Predetermined cutoff scores designed for determining the threshold level of acceptability of proposals shall not be employed.

(d) After the initial technical evaluation, the Contracting Officer and the SEB will evaluate the business portion of each proposal.

(e) Unless the SEB is prepared to recommend pursuant to 41 CFR 1-3.805-1 (a) (5) that award be made on basis of the most favorable initial proposal, the SEB shall establish a competitive range based upon the evaluation of all the factors for award including cost or price.

(f) The SEB shall conduct written or oral discussions with all proposers within the competitive range as outlined in HUDPR 24-3.805-2(f).

(g) After the close of discussions, receipt of any revisions to proposals and any final adjustments to proposal scores, the SEB shall prepare a written report of its findings and recommendations and submit it to the SSO for action. The report shall summarize all significant SEB actions in the solicitation and evaluation phases and include:

(1) *Statement of findings.* Each acceptable proposal shall be discussed in descending order of scores/rankings. The statement shall identify the strengths and weaknesses of each pro-

posal and any appropriate information for the consideration of the SSO.

(2) **Recommendations.** The SEB shall provide recommendations to the SSO as to selection in terms of: (i) A single source; (ii) A number of equal sources; (iii) A number of sources in descending order; or (iv) Options to be considered in arriving at the final decision. In making its recommendation the SEB shall consider the requirements set forth in HUDPR 24-3.805-2(h).

(h) Based upon the SEB report and his review of the matter, the SSO will recommend a source or sources and document the basis for his recommendation. The SSO will communicate his findings and recommendation in a memorandum to the Contracting Officer. The memorandum will request the Contracting Officer to negotiate with the recommended source(s), and may include specific instructions and an alternate source or sources in the event the conduct of final negotiations so warrant.

(i) After receipt of the SSO's recommendation, the Contracting Officer shall select a source, based upon the findings and recommendations of the SSO for final negotiations in accordance with HUDPR 24-3.805(2)(h). Final negotiations and award will be effected in accordance with HUDPR 24-3.805-2(i).

Subpart 24-3.51—Protests Against Award

§ 24-3.5101 Negotiated procurement protests.

Protests against awards of negotiated procurement shall be processed in accordance with HUDPR 24-2.407-8.

PART 24-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 24-4.1—Automatic Data Processing Equipment and Services

Sec.

24-4.101 Clearance procedures.

Subpart 24-4.10—Architect-Engineer Services

- 24-4.1000 Scope of subpart.
- 24-4.1004-1 Establishment of architect-engineer evaluation boards.
- 24-4.1004-2 Conflict of interest.
- 24-4.1004-3 Privy of information.
- 24-4.1004-4 Maintenance and furnishing of source lists.
- 24-4.1004-5 Selection policy.
- 24-4.1005-6 Selection procedures.

AUTHORITY: Sec. 7(d), Dept. of HUD Act, (42 U.S.C. 3535(d)).

Subpart 24-4.1—Automatic Data Processing Equipment and Services

§ 24-4.101 Clearance procedures.

No IFB, RFP, RFQ or amendment to an existing contract, when related in whole or in part to the procurement of ADP equipment or services, shall be issued until GSA approval is obtained pursuant to the FPMR.

Subpart 24-4.10—Architect-Engineer Services

§ 24-4.1000 Scope of subpart.

This subpart sets forth the policy and procedures to be followed for the establishment of architect-engineer evalua-

tion boards and sets forth policy and procedures for the deliberations of the Board.

§ 24-4.1004-1 Establishment of Architect-Engineer evaluation boards.

Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least five (5) voting members who are Federal employees from the appropriate program area or from Federal offices outside the program area as appropriate. One member of each board shall be appointed Chairman. Five (5) alternate members who are Federal employees shall also be appointed, but at any given time the majority of voting members shall be from the program area concerned. The members of a permanent board shall be appointed for a period of two (2) years. Appointment shall be made by the following authorities with copies of appointment memoranda furnished to the appropriate procuring activity:

(a) Primary Organizational Heads for Boards appointed at the Headquarters level;

(b) Head of the Procuring Activity for Boards appointed at the Field Office level.

§ 24-4.1004-2 Conflict of interest.

Each board member, whether voting or nonvoting, shall familiarize himself with those provisions of Title 24, Housing and Housing Credit, Subtitle A, Part O, of the Code of Federal Regulations regarding conflicts of interest. If at any time during the selection process a Board member encounters a situation with one or more of the firms being considered that might be or might appear to be a conflict of interest, he will disqualify himself and call it to the attention of the Chairman for resolution and proper action. The Chairman will refer the matter to the Office of General Counsel.

§ 24-4.1004-3 Privy of information.

The Evaluation Board is to be insulated from outside pressures to the extent practical. No person having knowledge of the activities of the Board shall divulge information concerning the deliberations of the Board to any other persons not having a need to know such information.

§ 24-4.1004-4 Maintenance and furnishing of source lists.

The appropriate office utilizing architect-engineer services shall maintain a source list consisting of the current "U.S. Government Architect-Engineer Questionnaire," Standard Form 254 (SF-254), submitted by firms as defined in 41 CFR 1-4.1002 interested in performing work in the program area. For each procurement or group of related procurements the Board shall prepare from its source list a preselection list of ten (10) firms considered likely to be capable of meeting the requirements of the procurement. Every SF-254 shall be read and evaluated by at least two (2) Board members to determine which of the firms on the source list should be included on the preselection list. When a list of ten (10) firms is not

available, fewer firms may be considered. SF-254's may be obtained from the General Services Administration.

§ 24-4.1004-5 Selection policy.

The selection of architect-engineering firms for professional service contracts shall be accomplished in accordance with the procedures set forth in this section. Such selection shall be based upon competitive evaluation procedures to determine which firm(s) is/are the most qualified. Qualification considerations include but are not limited to:

(a) Demonstrated specialized experience of the firm and key personnel in the area of expertise needed for the procurement.

(b) Capability and capacity of the firm to accomplish the work in the required period of time.

(c) Past experience of the firm with respect to performance of Federal contracts.

(d) Geographical location of the firm having working offices, capacity, and personnel to respond to the requirements of the procurement if geographical location is an important factor to the procurement.

§ 24-4.1005-6 Selection procedures.

The following procedures shall be used in the selection of architect-engineering firms for all engineering contracts:

(a) For each requirement or group of requirements intended to result in a single contract, the Board shall review the qualifications and performance data for each of the firms on the preselection list, in accordance with the selection policy, including input from the program staff and shall select a minimum of three firms determined to have the highest qualifications. The procuring activity shall then mail letters of inquiry to those highest qualified firms regarding capability to perform the work, anticipated concepts, and the relative utility of alternate methods of approach.

(b) The replies to these letters shall be evaluated by the Board with each response being evaluated by at least three Board members. The SF-254's from the responding firms may also be reevaluated as necessary by three or more Board members. The firms queried will be re-ranked as necessary in accordance with the Board's evaluation.

(c) After the reranking, a Request for Contract Services shall be forwarded to the procuring activity. The authorities identified in HUDPR 24-4.1004-1 or his designee shall be the Source Selection Official. The SSO shall indicate the order of qualification, including capability, of the selected firms.

(d) The procuring activity shall send a Request for Proposal to the firm ranked highest on the list and if the proposal is acceptable shall initiate negotiations with that firm. If such negotiations are unsuccessful, contract negotiations shall then be commenced with the second most qualified firm. Failing accord with the second firm, contract negotiations shall be commenced with the third firm.

(e) All selection and negotiation proceedings shall be documented. All screening and evaluation sheets and meeting records are a part of the official record of the Board.

PART 24-7—CONTRACT CLAUSES

Sec.

24-7.000 Scope of part.

Subpart 24-7.5—Special Clauses

- 24-7.5007 Letter of credit.
- 24-7.5008 Negotiated overhead rates.
- 24-7.5009 Indirect costs (actual).
- 24-7.5010 Indirect costs (ceiling).
- 24-7.5011 Consideration and payment (cost-sharing).
- 24-7.5012 Reproduction of reports.
- 24-7.5013 Warranty.
- 24-7.5014 Coordination of Federal reporting requirements.
- 24-7.5015 U.S.-flag vessel provision.
- 24-7.5016 Lead based paint proscription.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 24-7.000 Scope of part.

This part sets forth special contract clauses which are in addition to clauses set forth in 41 CFR Part 1-7 for use in connection with the procurement of personal property and nonpersonal services (including construction).

Subpart 24-7.5—Special Clauses

§ 24-7.5007 Letter of credit.

When advance payments are authorized and a letter of credit is to be used, insert the following clause:

LETTER OF CREDIT

a. The advance funds will be provided in accordance with the letter of credit procedure set forth in HUD Handbook 1900.4B or Handbook 1900.23 as appropriate. The Contractor shall use these procedures to obtain advance funds for allowable costs under this contract.

b. In accordance with those procedures, a Letter of Credit will be issued in an amount determined by the Contracting Officer based on the needs of the Contractor. Subsequent amendments to the Letter of Credit will be on the basis of an amendment to the contract. In no instance will advance funds provided by the letter of credit procedure exceed the amount of the contract as from time to time amended, less the amount of withholding provided therein.

c. The funds provided by the letter of credit procedure shall be solely for the purposes of making payments for items of allowable cost as defined in this contract, or to reimburse the Contractor for such items of allowable cost and for making payments for such other costs as the Contracting Officer otherwise has authority to approve, and does approve in writing.

d. The Contractor may draw on the Letter of Credit using payment vouchers as follows:

1. Payment vouchers may be executed only for the purpose of obtaining funds in the minimum amount necessary for the following purposes:

(a) Making payments for items of allowable costs as defined in this contract; (b) reimbursing the Contractor for such items of allowable costs; and (c) for making payments for such other costs as the Contracting Officer otherwise has authority to approve, and does approve in writing; and the funds so obtained may be used only for such purposes.

2. Payment vouchers drawn shall be timed to be in accordance with the actual cash re-

quirements of the Contractor in carrying out the purpose of the contract.

e. The Contractor may at any time repay all or any part of the funds or credit obtained under the Letter of Credit. When so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the balance of advance payments as shall, in the opinion of the Contracting Officer, be in excess of the Contractor's current needs.

f. If upon completion or termination of this contract all amounts obtained by the Letter of Credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due or which may be due to the Contractor from the Government, and any excess funds shall be repaid by the Contractor to the Government upon demand.

g. Notwithstanding any other provisions of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

h. Any and all advance payments made under this contract shall be secured by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

§ 24-7.5008 Negotiated overhead rates.

When it has been determined pursuant to HUDPR 24-3.702(a) that negotiated

overhead rates should be used, insert the following clause:

NEGOTIATED OVERHEAD RATES

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with applicable Part 1-15 of Federal Procurement Regulations (41 CFR Part 1-15) as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a modification to this contract, which shall specify (1) the agreed final rates, (2) the bases to which the rates apply, and (3) the periods for which rates apply.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision of negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

§ 24-7.5009 Indirect costs (actual).

When it has been determined pursuant to HUDPR 24-3.702(c) that it is not appropriate to include the Negotiated Overhead Rates Clause, insert the following:

INDIRECT COSTS (ACTUAL)

In accordance with the "Allowable Cost, Fixed Fee, and Payment" clause of the contract, the Contractor shall be paid his actual overhead cost. Allowable overhead cost will be determined by the Contracting Officer in accordance with the principles set forth in 41 CFR Part 1-15. Any failure of the parties hereto to agree as to what constitutes actual overhead costs shall be considered a dispute covering a question of fact within the meaning of the clause of this contract entitled "Disputes."

§ 24-7.5010 Indirect costs (ceiling).

When it has been determined in accordance with 41 CFR 1-3-707 that it is appropriate to place an overhead ceiling in the contracts, insert the following clause:

INDIRECT COSTS (WITH CEILING)

(a) Pursuant to the provisions of the clause of this contract entitled, "Indirect Costs (Actual)", the following rates are established:

Period	Cost Center	Type	Rate	Base
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(b) In addition to the principles for determination of costs set forth in the clause of this contract entitled "Indirect Costs (Actual)", the following special provision shall be applicable to this contract.

Final overhead rates shall not exceed _____% of the allowable direct labor dollars; provided, however, that in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling overhead rate agreed to herein then the rates based upon those established by such cognizant auditor shall apply. The Government will not be obligated to pay any additional amounts on account of overhead above the ceiling overhead rate set forth above.

§ 24-7.5011 Consideration and payment (cost-sharing).

The following clause shall be inserted in each cost-sharing contract:

CONSIDERATION AND PAYMENTS
(COST-SHARING)

(a) The estimated cost for the performance of this contract is \$_____. The Contractor agrees to bear without reimbursement by the Government _____% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in Paragraph (b) below.

(b) Public vouchers or invoices shall be submitted to the Contracting Officer in an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the Contractor in excess of _____% of such amount. The Government shall not be obligated to reimburse the Contractor for the Government's share of the costs in excess of \$_____ nor is the Contractor obligated by this contract to expend his own funds in excess of \$_____.

§ 24-7.5012 Reproduction of reports.

Insert the following clause when the product of the contract is a report, data or other written material.

REPRODUCTION OF REPORTS

Reproduction of reports, data or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8 by 10½ inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters and plates which are to be used on single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10½ by 14½ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducible (camera ready copies of reproduction by photo offset methods) shall become the

property of the Government and shall be delivered to the Government with the report, data or other written material.

§ 24-7.5013 Warranty.

When it has been determined that it is appropriate to place a warranty on equipment or services furnished under a contract, insert the following clause set forth below. Each construction contract shall incorporate an appropriate clause.

WARRANTY

The Contractor agrees that the supplies or services furnished by the Contractor under this contract shall be covered by warranties which are either standard or customary in the trade or are substantially similar to, and not in excess of, a standard or customary trade warranty. The Contractor shall furnish any warranty description at time of delivery. Supply packages shall be simply marked to show existence of the warranty, its expiration date and the company official to be notified.

§ 24-7.5014 Coordination of Federal reporting requirements.

The following clause shall be used when appropriate:

COORDINATION OF FEDERAL REPORTING REQUIREMENTS

In the event that it is a contractual requirement to collect information from ten or more public respondents the provisions of (44 U.S.C. Ch. 35, Coordination of Federal Reporting Requirements) shall apply to this contract. The Contractor shall obtain through the Government Technical Representative (GTR) the required Office of Management and Budget clearance before making public contact for the collection of data from public respondents or expending any funds for such collection. The authority to proceed with the collection of data and expenditure of funds therefore shall be in writing signed by the Contracting Officer.

§ 24-7.5015 Ocean freight shipments—use of American-flag vessels—reports.

The following clause shall be used when appropriate with the required report filed as set forth in paragraph (b) of this section.

(a) It is the policy of HUD to encourage and foster the American Merchant Marine. Pursuant to the provisions of section 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. 1241) invitations for bids and requests for proposals shall in appropriate cases contain the following clause:

U.S.-FLAG VESSEL PROVISION

The Contractor agrees to ship on privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of any equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels. Pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. sec. 1241(b)), the Secretary or his duly authorized representative may permit shipment in a manner other than that required by this provision upon the basis of evidence furnished by the contractor that U.S.-flag commercial vessels are not available at fair and reasonable rates for U.S.-flag commercial vessels. The Contractor will be required to certify compliance with this requirement prior to final payment. For purposes of this section,

the term "privately owned U.S.-flag commercial vessels" shall not be deemed to include any vessels which, subsequent to September 21, 1961, shall have been either: (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of 3 years.

(b) Each affected office shall submit to the Chief, Office of Market Development, Cargo Preference Control Center, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20235, a report as follows: Within 20 working days of the date of loading for each shipment originating in the United States, or within 30 working days for each shipment originating outside the United States, a report consisting, where obtainable, of a properly notated and legible copy in English of the ocean bill of lading. If a copy of the bill of lading is unobtainable or not in English, the report shall be made in the following format.

U.S. Department of Housing and Urban Development:

Office _____
Date _____
Cargo preference shipment report:
Vessel name _____
Vessel flag _____
Date of loading _____
Port of loading _____
Port of final discharge _____
Commodity description _____
Gross weight in pounds _____
Total ocean freight revenue in U.S. dollars _____

§ 24-7.5016 Lead based paint prescription.

In accordance with the requirements of the Lead Based Paint Poisoning Prevention Act of July 1, 1973, and 24 CFR, Part 35, every construction or rehabilitation contract and subcontract which includes painting shall contain the following provisions for the restricted use of lead based paints:

The Contractor agrees that exterior and/or interior paints, enamels, and/or primers used on any surface in residential structures constructed or rehabilitated under this contract shall not contain more than 1/2 of one (1) percent lead by weight (calculated as lead metal) in the total nonvolatile content of liquid paints.

PART 24-11—FEDERAL, STATE, AND LOCAL TAXES

Subpart 24-11.1—State and Local Taxes

Sec. 24-11.105 Resolution of tax problems.

Subpart 24-11.4—Contract Clauses

24-11.401-4 Matters requiring special consideration.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Subpart 24-11.1 State and Local Taxes

§ 24-11.105 Resolution of tax problems.

In order to have uniformity in HUD's treatment of the tax aspects of a contract and to insure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility

within HUD for handling all tax problems. Therefore, the procuring activity will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the Contracting Officer shall request in writing the Office of General Counsel's assistance. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the Contracting Officer as to the necessary disposition of the tax problem. The Contracting Officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

Subpart 24-11.4 Contract Clauses

§ 24-11.401-4 Matters requiring special consideration.

When Government-furnished property is involved in a proposed contract, it is the Department's policy to follow the requirements set forth in 41 CFR 1-11.401-4 (a), (b), (e) and (f) and insert the clause set forth in 41 CFR 1-11.401-4 (c) in all proposed contracts.

PART 24-13—GOVERNMENT PROPERTY

Sec.	
24-13.000	Scope of part.
Subpart 24-13.1—General	
24-13.100	Scope of subpart.
24-13.101	Relationship of Federal Property Management Regulations (FPMR) to HUDPR.
24-13.102	Definitions.
24-13.103	Responsibility and liability for Government property.
24-13.103-1	Prime contractors.
24-13.103-2	Subcontractors.
24-13.104	Profits and fees.
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Subpart 24-13.2—Material	
24-13.200	Scope of subpart.
24-13.201	Policy.
24-13.202	Procedure.
24-13.203	Disposal.
Subpart 24-13.3—Providing Government Property to Contractors	
24-13.300	Scope of subpart.
24-13.301	Providing property.
24-13.301-1	Special and general purpose property.
24-13.301-2	Providing property when disposal is limited.
24-13.301-3	Changing Government property to be provided.
Subpart 24-13.4—Use and Charges	
24-13.400	Scope of subpart.
24-13.401	General.
24-13.402	Use without charge.
24-13.403	Charges.
Subpart 24-13.5—Competition	
24-13.500	Scope of subpart.
24-13.501	General.
24-13.502	Solicitation documents.
24-13.503	Evaluation of bids and proposals.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

§ 24-13.000 Scope of part.

This part sets forth policies and procedures with respect to providing Government property for use by HUD contractors in connection with the procurement of personal property and nonpersonal services (including construction), and prescribes applicable contract clauses.

Subpart 24-13.1—General

§ 24-13.100 Scope of subpart.

This subpart sets forth material concerning the definitions of HUD property, its use under prime and subcontracts, and its relationship to Federal Property Management Regulations (FPMR).

§ 24-13.101 Relationship of Federal Property Management Regulations (FPMR) to HUDPR.

This Part 24-13 of the HUDPR establishes policy for the control, use and maintenance of Government property under prime and subcontracts and is intended to implement and supplement the FPMR 41-CFR Part 101, to the extent that is necessary to carry out the requirements of public policy relating to Government property. This part does not apply to the repair, rehabilitation, management or sale of Secretary-acquired property.

§ 24-13.102 Definitions.

For the purpose of this part, the following terms have the meanings set forth in this section.

(a) *Property*. Property includes all property except Secretary-acquired property, both real and personal, severable and nonseverable, and expendable material and nonexpendable equipment. Secretary-acquired property means all real and personal property under legal custody of the Secretary whether or not title to the property vests in the Secretary.

(b) *Government property*. Government property includes all property as to which title is vested in the Government.

(c) *Government-furnished property*. Government-furnished property is Government owned or leased property in the possession of the contractor.

(d) *Contractor-acquired property*. Contractor-acquired property is property procured or otherwise obtained by the contractor through sources other than the Government for performance of a HUD contract.

(e) *Contractor inventory*. Contractor inventory is (1) Any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government; and (2) Any property which the Government by contract clause is obligated or has the option to take over under any type of contract.

(f) *Provide*. "Provide" means to furnish Government-owned property or to allow a contractor to acquire property at Government expense.

(g) *Nonseverable*. "Nonseverable" means that such property cannot be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

(h) *Dollar value*. "Dollar value" is the amount determined by the Government and recorded by the Department in its inventory records as the acquisition cost of an item of Government-owned property.

(i) *Material*. "Material" means property which may be consumed or expended in the performance of a contract or which may be incorporated into or attached to an end item to be delivered under a contract. It includes, but is not limited to raw and processed material, parts, components, assemblies, small tools and supplies which may be consumed in normal use during performance of a contract.

(j) *Nonprofit organization*. "Nonprofit organization" means any firm organized not-for-profit which represents that no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(k) *Equipment*. The term "equipment" means any item of mechanical, electronic, medical, technical, or scientific property as well as office furniture and machines having a useful life expectancy of 1 year or more.

(l) *Facilities contract*. "Facilities contract" means a contract for the use of Government real and/or personal property which is provided to a contractor or subcontractor for use in connection with a separate contract or contracts for supplies, research, training, or other articles or services.

§ 24-13.103 Responsibility and liability for Government property.

§ 24-13.103-1 Prime contractors.

It is the policy of the Government, with the exception of advertised fixed price contracts, not to hold a contractor responsible for loss of property except for loss, destruction, or damage resulting from willful misconduct or lack of good faith of any of the contractor's personnel to maintain and administer the program for maintenance, repair, protection and preservation of the property.

§ 24-13.103-2 Subcontractors.

If Government property is provided to a subcontractor directly by the Government or by the prime contractor, the policy set forth in HUDPR 24-13.103-1 shall apply. Prior to the Contracting Officer approving the inclusion of the provisions allowing the prime contractor to provide Government property to a subcontractor, he shall balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of his contract.

§ 24-13.104 Profits and fees.

No fee is to be provided or allowed a contractor under a facilities contract. Where Government property is provided under a facilities contract, profit or fee terms shall be considered in the negotiation of the related procurement contract or contracts for products or services consistent with the profit guidelines set forth in 41 CFR 1-3.806.

§ 24-13.105 Use for or by contractors of property owned and operated by the Government.

The on-site use for or by contractors of existing Government-owned property (such as test and other facilities) located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

- (a) There is no commercial capability adequate for the needs; or
- (b) Substantial cost savings will result from use of the Government-owned property.

Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under any affected contract.

Subpart 24-13.2—Material

§ 24-13.200 Scope of subpart.

This subpart sets forth policy and procedure for furnishing material (see HUDPR 24-13.102(i) to contractors for performance of HUD formally advertised and negotiated contracts.

§ 24-13.201 Policy.

Contractors normally are expected to furnish all material for performance of HUD contracts. However, it may be in the Government's interest to furnish such material when justified by reason of economy, to expedite contract performance, to achieve standardization, or under other appropriate conditions.

§ 24-13.202 Procedure.

Solicitation documents shall describe material to be furnished by the Government in detail sufficient for evaluation by prospective contractors. Further, whenever material is to be furnished by the Government, the contract shall specify whether the contracting activity or the contractor is to prepare requisitioning documents. If the contractor is to be responsible for preparing requisitioning documents, the contractor shall prepare such documents in accordance with the Federal Standard Requisitioning and Issue Procedure (FEDSTRIP) system, prescribed by 41 CFR Subpart 101-26.2. (See 41 CFR Subpart 1-5.9, *Use of GSA Supply Services by Contractors Performing Cost-Reimbursement Type Contracts*.) The appropriate clause for Cost-Reimbursement and Fixed Price contracts shall be incorporated.

§ 24-13.203 Disposal.

Residual Government material (including scrap and salvage) shall be disposed of in accordance with instructions of the Contracting Officer.

Subpart 24-13.3—Providing Government Property to Contractors

§ 24-13.300 Scope of subpart.

This subpart sets forth policy to guide the decision-making process when property (other than material) is to be provided a contractor for performance of a HUD contract and to insure that such decisions are properly documented.

§ 24-13.301—Providing property.

§ 24-13.301-1 Special and general purpose property.

Generally, only special purpose property (i.e., equipment and facilities items whose usefulness, without need for substantial modification, is limited to a particular operation or project) may be provided to a contractor. Standard or general purpose items of administrative equipment (e.g., office furniture and equipment, cafeteria equipment, lockers, shelving, etc.), and technical equipment (e.g., laboratory furniture and fixtures, microscopes, oscilloscopes, gauges, etc.), shall be provided only when justified under the most exceptional circumstances. Items of property having a unit cost of less than \$1,000 shall not be provided contractors except as authorized under contracts with:

- (a) Nonprofit institutions of higher education or other nonprofit organizations whose primary purpose is the conduct of scientific research;
- (b) State and local Government agencies; or
- (c) Contractors operating a Government-owned plant or performing on-site at Government installations.

§ 24-13.301-2 Providing property when disposal is limited.

Whenever nonseverable property is to be provided, the following will be applicable:

- (a) *Nonseverable property.* Nonseverable property, other than foundations and similar improvements necessary for the installation of equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless approved by the Head of the Procuring Activity. The determination to locate such nonseverable property on land not owned by the Government shall be made only when all of the conditions in paragraph (a) (1) through (4) of this section have been met:

- (1) Consideration has been given to any nonrecoverable costs involved, including transportation and installation.
- (2) Consideration has been given to (i) locating the Government property where it can be segregated from existing contractor-owned and Government-owned property and where it is readily accessible from public thoroughfares and (ii) obtaining a written agreement by the contractor on whose land the property is to be placed that either the Government or another Government contractor will have a right to use and operate the property upon termination or completion of the work for which it was provided. (In cases where such an agree-

ment is not obtained, the negotiation effort shall be documented accordingly.)

- (3) The contractor agrees that the Government (i) will have the right to abandon in place all nonseverable Government property provided and (ii) will not have any obligation to disassemble or remove the property or to restore or rehabilitate the premises on which the property is located, unless otherwise provided in the contract and approved by the Head of the Procuring Activity.

(4) One of the circumstances in paragraphs (a) (4) (i)-(v) of this section has been met—

- (i) The Government obtains an option to acquire the underlying land;
- (ii) The property is disposable, after the Government's need therefore has ceased, to parties other than the contractor and the Government acquires from the owner a right to retain title and to dispose of all facilities it has constructed, without regard to the laws of real property in the jurisdiction in which the facility is located. Such right of disposition must be unencumbered, and will be evidenced by written agreement or other legal instrument signed by the contractor or other owner of the real property;
- (iii) The contractor agrees in writing that he will purchase the property upon the termination or completion of the contract under which the property is provided, or within a specified reasonable time thereafter, at a price to be determined by appraisal, or at a price equal to the acquisition cost of the property less depreciation at the rate or rates specified in the contract (which rate or rates shall take into account the estimated useful life of the property) or for the scrap and salvage value of the property if it is determined that the estimated useful life of the property will not extend beyond the completion of the work for which the property was provided. Any such purchase agreement must permit the Government to credit any amounts due the contractor under the contract against the purchase price; or
- (iv) The Head of the Procuring Activity specifically approves other provisions which he considers adequate to protect the interests of the Government in regard to the property.

(b) *Property subject to patent or other proprietary rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government property, the condition in either paragraph (a) (4) (ii) or (iii) of this section shall be satisfied before such property is provided.

(v) The Head of the Procuring Activity specifically approves other provisions which he considers adequate to protect the interests of the Government in regard to the property.

(b) *Property subject to patent or other proprietary rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government property, the condition in either paragraph (a) (4) (ii) or (iii) of this section shall be satisfied before such property is provided.

§ 24-13.301-3 Changing Government property to be provided.

Increases in the amount of Government property specified in a contract shall be made under the contract "Changes" clause by issuance of an appropriate Change Order or Supplemental Agreement. Such increases shall be made only when approved in accordance with the policies prescribed in this Subpart 24-13.3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitutions for the Government property specified in a

contract to be provided by the Government may be ordered by the Contracting Officer.

Subpart 24-13.4—Use and charges

§ 24-13.400 Scope of subpart.

This subpart deals with the authority for a contractor or subcontractor to use Government property and the method for determining the charge, if any, for such use.

§ 24-13.401 General.

Authority for a contractor to use Government property must be granted by the Contracting Officer responsible for the contract under which the property is accountable and the contract file must be documented accordingly. If use without charge is granted, the contract file must be documented with a description of the consideration to the Government for such "no-charge" use.

§ 24-13.402 Use without charge.

(a) A contractor may use Government property without charge in the concurrent performance of contracts for more than one Government agency.

(b) A prime contractor may authorize subcontractors to use Government property which is in the possession of a subcontractor on a no-charge basis, when the price or fee of the prime contract is negotiated with the specific understanding that the use of property by subcontractors on a no-charge basis will be permitted in the performance of specific subcontracts with specific subcontractors.

§ 24-13.403 Charges.

The following charges shall be made or used as an evaluation factor:

(a) For land and land preparation, buildings, building installations, and land installations, a fair and reasonable rental based on sound commercial practice.

(b) For personal property (equipment and facilities) not covered in (a) of this section not less than the prevailing commercial rate for like property.

(c) For concurrent commercial usage of property an amount equal to at least 10% of the fair market value of such usage.

Subpart 24-13.5—Competition

§ 24-13.500 Scope of subpart.

This subpart sets forth guidance designed to preclude one prospective contractor from receiving an unfair competitive advantage over others when Government property is provided.

§ 24-13.501 General.

It is incumbent upon the Contracting Officer to insure that genuine competition prevails and that adequate consideration flows to the Government whenever and however Government property is to be provided a contractor for contract performance. It is also incumbent upon the Contracting Officer to insure that no unfair advantage inures to a contractor in possession of Government property.

§ 24-13.502 Solicitation documents.

Contracting Officers shall make certain that solicitation documents:

(a) Require each prospective contractor to state whether the use of Government property, additional facilities and equipment which must be acquired for contract performance, the estimated cost of individual items, and whether acquisition of such property will be financed by the prospective contractor or whether the Government will be requested to provide the required items.

(b) Explain whether it is the Government's intention to provide property, when it is known prior to solicitation that contract performance will require additional facilities or equipment.

(c) Require prospective contractors to:

(1) List items (including dollar value) of Government-owned property in their possession which they propose to use in performance of the prospective contract;

(2) Identify the contract or other instrument under which the property is accountable; and

(3) Present written permission to use such property in the performance of the prospective HUD contract from the Government Contracting Officer having cognizance of the property.

(d) Include a statement that the user will assume all costs related to making the property available for use (e.g., transportation, installation, rehabilitation, modification, etc.), unless the Government is to assume such costs.

(e) Include a statement which explains the Government property during evaluation of bids and proposals. This is to insure that all prospective bidders and offerors understand that Government property will be an important consideration in evaluating their bids and proposals.

§ 24-13.503 Evaluation of bids and proposals.

The following policy shall be considered during evaluation of bids and proposals:

(a) In a competitive procurement, a prospective contractor provided Government property or authorized to use Government-owned property in his possession receives some degree of competitive advantage. When the degree of competitive advantage is so substantial as to be viewed as unfair by the Contracting Officer, then the Contracting Officer shall utilize an equitable equalizing factor, such as increasing the bid price by an evaluation factor equivalent to:

(1) The cost to be reimbursed by the Government for property acquired at Government expense.

(2) The current dollar value (cost less depreciation) of Government-furnished property.

PART 24-16—PROCUREMENT FORMS

Subpart 24-16.2—Forms for Negotiated Supply Contracts

Sec.

24-16.201 Form for fixed price contracts.

24-16.201-1 Fixed price supply contracts—general provisions.

Sec.

24-16.201-2 Fixed price contracts—general provisions other than supply.

Subpart 24-16.3—Purchase and Delivery Order Forms

24-16.350 Form for purchase orders.

Subpart 24-16.8—Miscellaneous Forms

24-16.807 Cost-reimbursement forms—general provisions.

24-16.808 Additional general provisions—small business subcontracting.

24-16.853 Contractor's request for progress payments.

24-16.854 Report of inventions.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart 24-16.2—Forms for Negotiated Supply Contracts

§ 24-16.201 Forms for fixed price contracts.

§ 24-16.201-1 Fixed price supply contracts—general provisions.

Standard Form 32 and HUD Form 752 shall be used for all fixed price supply contracts in excess of \$10,000. In lieu of HUD Form 752, another appropriate form designed for this specific purpose and approved through the Departmental clearance procedures may be utilized.

§ 24-16.201-2 Fixed price contracts—general provisions (other than supply).

HUD Form 736 shall be used for all fixed price contracts over \$10,000 other than supply, construction or property management contracts. In lieu of HUD-736, another appropriate form designed for this specific purpose and approved through the Departmental clearance procedures may be utilized.

Subpart 24-16.3—Purchase and Delivery Order Forms

§ 24-16.350 Form for purchase orders.

All HUD purchase orders shall be executed on HUD Form 35 or on any other appropriate form designed for this specific purpose and approved through the Departmental clearance procedures.

Subpart 24-16.8—Miscellaneous Forms

§ 24-16.807 Cost-reimbursement forms—general provisions.

HUD Form 747 shall be used for all cost-reimbursement contracts over \$10,000.

§ 24-16.808 Additional general provisions—small business subcontracting.

HUD Form 751 shall be used for all contracts over \$500,000.

§ 24-16.853 Contractor's request for progress payment.

HUD Form 771, entitled "Contractor's Request for Progress Payment" shall be used as prescribed in HUDPR 24-30.519.

§ 24-16.854 Reports of inventions.

Contractors shall provide interim and final reports pursuant to the Patents clause on HUD Form 770.

PART 24-30—CONTRACT FINANCING

Subpart 24-30.1—Forms of Financing

- Sec.
24-30.103 Advance payments—authority.
24-30.104-1 Letters of credit.
Subpart 24-30.4—Advance Payments
24-30.406 Responsibility—delegation of authority.
24-30.410 Findings, determinations and authorizations.
24-30.414 Contract provisions for advance payments.
Subpart 24-30.5—Progress Payments Based On Cost
24-30.519 Contractor's request.
Authority: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

Subpart 24-30.1—Forms of Financing

- § 24-30.103 Advance payments—authority.

This section sets forth policy relating to advance payments:

(a) In considering whether cash advances are appropriate in a particular situation, and to determine the requirements for implementing advances, the Contracting Officer shall be guided by this section, the 41 CFR subparts 1-30.1 and 1-30.4, Department of the Treasury Circular 1075 and part VI of the Department of the Treasury Fiscal Requirements Manual.

(b) Cash advances by HUD shall be limited to the minimum amounts needed by the contractor for the performance of the contract. The advance shall be timed in accord with the contractor's actual cash requirements.

(c) Department of the Treasury Circular 1075 (revised April 6, 1969) authorizes two methods for making cash advances: the letter of credit and the Treasury check. Normally, the method to be used will be chosen as follows:

(1) If HUD does not expect to have a continuing relationship with the contractor for at least one (1) year, advances will be made by Treasury check.

(2) If HUD expects to have a continuing relationship with the contractor for at least one (1) year involving total annual advances of less than \$250,000, advances will be made by Treasury check.

(3) If HUD expects to have a continuing relationship with the contractor for at least one (1) year involving total annual advances of \$250,000 or more and disbursements will not be made on a reimbursable basis, advances will be made by use of a letter of credit.

- § 24-30.104-1 Letters of credit.

No letter of credit will be issued unless the statutory requirements specified in 41 CFR 1-30.405 are fulfilled. If the Contracting Officer determines that advance payment by letter of credit is appropriate, he shall insert the clause provided in HUDPR 24-7.5007.

Subpart 24-30.4—Advance Payments

- § 24-30.406 Responsibility—Delegation authority.

The determinations and findings required by 41 CFR 1-30.405 shall be made

by the Head of the Procuring Activity only in those instances where specific delegation of authority has been issued in writing giving the HPA such authority to approve advances.

- § 24-30.410 Findings, determinations and authorizations.

Section 305 of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 255), should be cited in the determinations and findings as authority for making advance payments.

- § 24-30.414-2 Contract provision for advance payments.

When the Contracting Officer determines that advance payments are appropriate, he shall insert the clause provided in 41 CFR 1-30.414-2.

Subpart 24-30.5—Progress Payments Based On Cost

- § 24-30.519 Contractor's request.

Each contract containing a Progress Payments clause shall provide that all invoices for progress payments be supported by HUD Form 771 entitled "Contractor's Request for Progress Payments," with any other information that may be reasonably required.

PART 24-50—CONTRACT ADMINISTRATION

- Sec.
24-50.000 Scope of part.
Subpart 24-50.1—Processing Payments Under Cost-Reimbursement Contracts
24-50.100 Scope of Subpart.
24-50.101 Definitions.
24-50.102 Submission of vouchers.
24-50.103 Processing vouchers.
Subpart 24-50.2—Processing Payment Under Fixed Price Contracts
24-50.200 Scope of subpart.
24-50.201 Definitions.
24-50.202 Submission of invoices.
24-50.203 Processing invoices.
Subpart 24-50.3—Closing Completed Contracts and Grants
24-50.300 Scope of subpart.
24-50.301 General.
24-50.302 Definitions.
24-50.303 Retention of contract and grant files.
Subpart 24-50.4—Administration of Government Property While Under Government Contract
24-50.400 Scope of subpart.
24-50.401 General.
24-50.402 Property administration.
Subpart 24-50.5—Guaranty and Subordination Agreement
24-50.500 Scope of subpart.
24-50.501 Policy.
24-50.502 Definitions.
24-50.503 Processing.
24-50.504 Format for guaranty agreement.
24-50.505 Format for subordination agreement.

AUTHORITY: Sec. 7(d), Housing and Urban Development Act, (42 U.S.C. 3535(d)).

- § 24-50.000 Scope of part.

This part sets forth policies concerning management and administration of contracts.

Subpart 24-50.1—Processing Payments Under Cost-Reimbursement Contracts

- § 24-50.100 Scope of subpart.

This subpart prescribes policy pertaining to the processing of vouchers under cost-reimbursement type contracts.

- § 24-50.101 Definitions.

As used in this subpart, the following terms have the meaning as stated:

(a) "Cost-reimbursement type contracts" includes cost-plus-a-fixed-fee, cost-plus-an-incentive-fee, cost-sharing, labor hour, and time and material contracts.

(b) "Voucher" is used to identify claims by the contractor for reimbursement of costs incurred or for fee earned and relate to either interim request or final cost or fee remaining under the contract.

- § 24-50.102 Submission of vouchers.

Submission of vouchers shall be in accordance with the following:

(a) Interim vouchers shall be submitted directly to the HUD Official and at the location stipulated in the contract for approval and payment processing. The frequency for submission will be specified in the contract. In the absence of a contract provision to the contrary, the contractor may submit a voucher once each month. The Contracting Officer will request the contractor to consolidate vouchers under one contract as much as possible to reduce the number of vouchers. Vouchers shall not contain claims pertaining to more than one contract.

(b) The Contracting Officer shall require the contractor to provide, as a part of each voucher submission, an analysis of the total voucher charges. Where data is readily available from the contractor's records, a limited analysis may be placed on the face of Public Voucher for Purchases and Services Other Than Personal (Standard Form 1034), provided the reliability of the contractor has otherwise been established. As a minimum, the analysis shall include cumulative and current costs broken down by cost elements. When a more detailed analysis is required, the Continuation Sheet (Standard Form 1035) or an attachment may be used.

(c) Contractors shall be required to submit separate invoices for fee and, where the amount of fee claimed depends on a computation based on physical progress or rate of delivery of the completed item, the Contracting Officer shall require the contractor to show the basis for computing the fee installment on the voucher (face or reverse of Standard Form 1034) or on an attachment.

- § 24-50.103 Processing vouchers.

Processing vouchers shall be in accordance with the following:

(a) Prior to approving vouchers for payment, the Contracting Officer may, as appropriate, verify the status of the contract by consulting with other Government personnel (i.e., technical, audit,

and financial personnel) concerned with administration of the contract.

(b) *Provisional vouchers.* (1) The eligibility for reimbursement of claims submitted by a contractor for costs or payment of fee shall be determined pursuant to the terms of the contract. Authority for payment must be established before any reimbursements under the contract are approved. In no event will a reimbursement claim be processed by the Contracting Officer for payment which would result in cumulative payment in excess of the maximum amount payable as limited by the contract.

(2) The contractor shall submit reimbursement vouchers under cost-type contracts directly to the HUD official and at the location stipulated in the contract for approval prior to payment. All vouchers, with the exception of the final voucher, shall be marked "Approved for provisional payment in the amount of \$_____ subject to audit prior to final payment," signed by the appropriate HUD official, and processed for payment. Questionable costs, determined through periodic audit, lack of adequate documentation, or otherwise, shall be suspended or disapproved prior to approval of the voucher. In those situations where (i) there is reason to question the reliability or accuracy of the contractor's claim, (ii) there is an indication of cost overrun, or (iii) the submission is the contractor's initial claim, the recommendations of the cognizant auditor should be requested prior to approval.

(3) If the contractor has not deducted from his claims amounts required to be withheld pursuant to the provisions of the contract, the Contracting Officer shall make the deduction. Such deductions shall be treated as suspensions. Amounts deducted may be resubmitted by the contractor at such time as the contractor has evidenced compliance with the requirements necessary to permit payment and may, in any event, be claimed on the final voucher.

(4) Vouchers which have not been properly prepared by the contractor shall be returned for revision. No erasures are permitted on a voucher or a continuation sheet. A voucher and/or continuation sheet or its equivalent, which requires alteration, may be changed by striking out the incorrect item and inserting the correct item. An alteration made by the contractor must be initialed by the contractor. An alteration made by the Contracting Officer must be initialed by the Contracting Officer and may be made only in accordance with 36 Comp. Gen. 769 (1957) which provides that when errors in computations or extensions are detected, where the payee has clearly made claim for the full quantity of materials or services and at the proper unit price, the claim may be altered upward or downward prior to approval provided the adjustment does not exceed \$10.

Vouchers may be adjusted by the Contracting Officer, provided that costs have not been suspended or disapproved and the errors are not too numerous to cor-

rect. The incorrect computation or extension may be altered by drawing a line through the incorrect amount and inserting the corrected amount on the original and all copies of the voucher. Each alteration must be initialed. The amount of the error will be deducted from or added to the total of the voucher. If Standard Form 1034 is used, the amount of the error will also be deducted from or added to the total by use of the "Difference" block on Standard Form 1034. Contractors will be notified, in writing, of mathematical errors which overstate the total amount claimed in excess of \$10. If an underclaim is in excess of \$10, the actual amount claimed, if otherwise proper, may be processed for payment. Contractors should be notified of any errors detected or of any adjustments made according to this policy.

(c) *Final voucher.* Upon receipt of a final voucher for contracts in excess of \$50,000, the Contracting Officer shall furnish a copy to the cognizant auditor for final audit prior to payment. The final voucher shall be supported by contractor's (or assignee's) release and assignment forms, and the final schedule of cumulative cost under the contract. Final vouchers shall not be approved until the results of the final audit have been received by the Contracting Officer and all deliverable products have been received and accepted by the Government.

Subpart 24-50.2—Processing Payment Under Fixed-Price Contracts

§ 24-50.200 Scope of subpart.

This subpart prescribes policy pertaining to the processing of invoices under fixed-price type contracts.

§ 24-50.201 Definitions.

As used in this subpart, the following terms have the meaning as stated:

(a) "Fixed-price type contracts" include firm fixed-price, fixed-price with escalation, fixed-price incentive, indefinite delivery and small purchases.

(b) "Invoice" is used to request payment under an established payment schedule specifically identified in the contract.

§ 24-50.202 Submission of invoices.

Invoices shall be submitted to the HUD Official and at the location stipulated in the contract for approval and payment processing.

§ 24-50.203 Processing invoices.

The processing of invoices shall be accomplished in accordance with the following:

(a) Prior to approving invoices for payment, the appropriate HUD official may, as appropriate, verify the status of the contract by consulting with cognizant Government personnel (i.e., technical, audit and financial personnel) concerned with administration of the contract.

(b) Withholdings pursuant to the contract will be handled in accordance with HUDPR 24-50.103(b)(3).

(c) Invoices which have not been properly prepared by the contractor shall be

returned for revision. No erasures are permitted on an invoice or a continuation sheet. However, alterations may be made by a contractor by striking out the incorrect item and writing in the correct item. Any alteration made by the contractor must be initialed by the contractor.

(d) *Final invoice.* The final invoice shall be supported by contractor's release and assignment forms, as appropriate. Final invoice shall not be approved until final acceptance of the contractor's performance is received by the Contracting Officer or his duly authorized representative.

Subpart 24-50.3—Closing Completed Contracts and Research Grants

§ 24-50.300 Scope of subpart.

This subpart establishes policy governing the closing of completed contracts and is applicable to all contracts and research grants.

§ 24-50.301 General.

The procedures for closing completed contracts are a primary tool of contract management and contract administration. Each procuring activity shall establish adequate procedure to insure proper closing of files and conduct contract/grant closing reviews in order that the file is completely documented. The comprehensive closing review serves the following purposes:

(a) Facilitates orderly segregation and disposition of records, and ensures efficient use of filing equipment and space;

(b) Identifies all uncompleted actions;

(c) Ensures that all contractual obligations have been fulfilled, that the interests of the Government have been protected; and, that sound business practices have been followed.

§ 24-50.302 Definition — completed contract or grant.

A completed contract or grant is one which is both physically and administratively complete and in which all aspects of performance by the contractor have been either accomplished or formally waived. A contract is physically complete only after articles and services called for under the contract have been delivered to and formally accepted by the Government. A contract is administratively complete when all administrative actions are accomplished and all payments made.

§ 24-50.303 Retention of contract and grant files.

Each procuring activity shall ensure that contract and grant files are properly forwarded to the appropriate Federal Records Center for retention of a minimum of six (6) years from the date of closing completed files. In connection with contracts where 41 CFR Part 1-3 requires a finding and determinations, these files shall be maintained in accordance with 41 CFR 1-3.308.

The procuring activity shall maintain a listing of all contracts and grants closed and forwarded to the retention center.

Subpart 24-50.4—Administration of Government Property While Under Government Contract

§ 24-50.400 Scope of subpart.

This subpart sets forth policy and procedures governing administration of Government-furnished property and property acquired by contractors at Government expense for performance of HUD contracts.

§ 24-50.401 General.

Responsibility within HUD for administering Government property rests with the Contracting Officer.

§ 24-50.402 Property administration.

The duties of the responsible officer are identified below:

(a) The Contracting Officer is the HUD "Accountable Officer" for Government property and maintains the official records of such property.

(b) The Contracting Officer performs all transactions and handles all matters concerning Government property, including use charges as prescribed in HUDPR 24-13.4, determinations of liability for lost, damage, or destroyed Government property, and resolving disputes with contractors with regard to property.

(c) The Contracting Officer will review and determine the adequacy of contractor's property policy and procedures concerning: (1) Receiving and inspection; (2) accounting, control, and reports; (3) utilization, including reporting excess property; (4) maintenance; i.e., protection, preservation, service, repair, warranties and guarantees, etc.; (5) scrap and salvage of material, parts, etc.; and (6) disposal, including preparation for shipment and shipping procedures.

Subpart 24-50.5—Guaranty and Subordination Agreements

§ 24-50.500 Scope of subpart.

This subpart sets forth policy and procedures for processing guaranty and subordination agreements.

§ 24-50.501 Policy.

Guaranty and subordination agreements may be used when it is determined as the result of a pre-award survey that the financial condition of a proposed contractor warrants such protection for the Government or when, during the course of the work, the Government determines that such protection is necessary to its interest.

§ 24-50.502 Definitions.

As used in this subpart, the following terms have the meaning as stated:

(a) *Guaranty agreement.* An agreement wherein the guarantor guarantees the performance of a bidder (contractor).

(b) *Subordination agreement.* An agreement wherein a creditor agrees to subordinate debts due it from the bidder

(contractor) to the rights of Government.

§ 24-50.503 Processing.

The requirements for processing a guaranty or subordination agreement are stated below:

(a) When, in the judgment of the Contracting Officer, the financial condition of the prospective contractor warrants, he shall obtain a guaranty or subordination agreement, as appropriate. Formats for guaranty and subordination agreements are provided in HUDPR 24-50.504 and 24-50.505, respectively. The Contracting Officer shall obtain the review of the Office of General Counsel before executing an agreement in any other format.

(b) All corporate guarantors will be required to obtain a statement from the corporate counsel indicating whether the corporate guarantor has the authority under the laws of the State in which the company is incorporated and pursuant to its charter, to enter into such an agreement. This statement will be attached to the agreement, in addition to the current financial statement.

(c) If a contract results from the proposal, the Contracting Officer shall acknowledge receipt of the agreement provided for under the form illustrated in HUDPR 24-50.504 and 24-50.505. If no contract award results from the proposal, all copies of the agreement shall be destroyed.

§ 24-50.504 Guaranty agreement.

Whenever a Guaranty Agreement is required as set forth in HUDPR 24-50.5, it shall be developed substantially as shown below:

GUARANTY AGREEMENT FOR CORPORATE GUARANTOR

(Applicable to One Government Contract)

_____, a corporation organized under the laws of the State of _____, having its principal place of business at _____ in the City and State of _____, hereinafter called the Offeror is under consideration by the United States of America (_____) hereinafter called the (Insert Department) Government, for the award of a certain contract, _____ (IFB, RFP or RFQ) hereinafter referred to as such contract. Such contract will call for the furnishing of approximately for the contract price of approximately \$_____. The Government is willing to award (Insert Quantity and General Description of Supplies or Services to be Procured) for the contract price of approximately _____ such contract to _____

(Insert Offeror's Name) only upon condition that _____ (Insert Guarantor's Name, Description and Address)

for itself, its successors and assigns, hereinafter referred to as the Guarantor, will, in the event such contract is awarded by the Government to the Offeror, guarantee absolutely to the Government the full, complete and faithful performance of the Offeror of

such contract according to the terms and conditions thereof and at the time and in the manner provided therein.

In consideration of the award of such contract to the Offeror the undersigned Guarantor agrees as follows:

1. *Guaranty.* The Guarantor absolutely guarantees the full, complete and faithful performance by the Offeror of such contract, as such contract may be from time to time amended as authorized by its terms, according to the terms and conditions of such contract as so amended, and at the time and in the manner provided therein. The Guarantor agrees to provide the Offeror all necessary and required resources including financing, which are necessary to assure the full, complete and satisfactory performance of such contract.

2. *Extension of Time of Performance.* Any extension of the time of performance of such contract as so amended shall not release the undersigned Guarantor from liability hereon.

3. *Assignment.* This instrument shall bind the undersigned Guarantor, its successor and assigns. If any person, firm, corporation or entity other than _____

(Insert Offeror's Name) becomes obligated to perform the contract or any part thereof, whether by operation or law or otherwise, any and all rights of the Government against the Guarantor shall remain in full force.

4. *Default.* In the event of termination for default under the terms of such contract, or in the event of failure, insolvency, default, bankruptcy, arrangement, appointment of receiver for _____ or

(Insert Offeror's Name) other liquidation of the Offeror, the Guaranty herein shall become absolute.

5. *Waiver of Notice.* The Guarantor waives notice of default on the part of the Offeror and agrees that its Guaranty shall become absolute without necessity for the giving of such notice.

6. *Continuation of Guaranty.* The Guaranty herein shall continue until full, complete and faithful performance of such contract as it may be from time to time amended as authorized by its terms.

7. *Default Liability.* In addition to all other guarantees contained in this agreement, in the event that the Government terminates such contract for default and awards the uncompleted portion of such contract to another source at a fair and reasonable price, the Guarantor shall be liable for any excess costs incurred by the Government as a result of such procurement and for the repayment of any unrecouped Partial Payments, Progress Payments or Advanced Payments paid to the Offeror by the Government. In addition, the Guarantor shall be liable for all costs and expenses paid or incurred by the Government in enforcing this Guaranty. The Contracting Officer representing the Government in connection with such contract shall determine the total costs and expenses, if any, incurred by the Government.

8. *Enforcement.* This Guaranty Agreement shall inure to the benefit of and may be enforced by the Government.

9. *Construction.* Nothing in this Guaranty Agreement shall be construed to obligate the Government to award any contract to _____ Executed the _____

(Insert Offeror's Name) day of _____ 197____ Two Witnesses:

(Guarantor) By _____ (Title) _____ (Business Address)

I, _____, certify that I am the Secretary of the Corporation named as Guarantor herein; that _____ who signed this Agreement on behalf of the Guarantor, was then _____ of said Corporation; that said Agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

(Secretary)

Receipt of a copy of the above Guaranty Agreement is acknowledged.
Contracting Officer Address:

THE UNITED STATES
OF AMERICA

By _____
(Contracting Officer)

§ 24-50.505 Subordination agreement.

Whenever a Subordination Agreement is required as set forth in HUDPR 24-50.5, it shall be developed substantially as shown below:

SUBORDINATION AGREEMENT

(Applicable to One Government Contract)

_____, a corporation *organized (Insert Debtor's Name) under the laws of _____, having its principal place of business at _____ in the City and State of _____, a partnership *doing business as _____ at _____ County of _____ City of _____ State of _____ an individual, *having its principal place of business at _____ in the City and State of _____, hereinafter called the Debtor, is under consideration by the United States of America (_____), (Insert Department)

hereinafter called the Government, for the award of a certain contract. Such contract will call for the furnishing of approximately _____

(Insert Quantity and General Description of Items or Services to be Procured)

for the contract price of approximately _____ dollars (\$_____). The Government is willing to award such contract to the Debtor only upon condition that _____

(Insert Creditor's Name, Description, Address, etc.)

hereinafter referred to as the Creditor, will agree to subordinate any and all present and future rights with respect to payments due or to become due from the Debtor to the undersigned Creditor to the rights of the Government under or arising out of the contract. As of the date of execution of this agreement recited at the end thereof, _____ is owing or is due and

(Insert the Amount) owing from the Debtor to the Creditor.

In consideration of the award of the contract to the Debtor the undersigned agrees as follows:

1. *Payments and Debts.* Any and all present and future rights of the undersigned Creditor with respect to payments due or to become due by reason of the above cited indebtedness and including any additional future indebtedness incurred as advances by the Creditor for working capital purposes and/or acquisition of capital assets owed by the Debtor to the Creditor, are fully subordinated to the rights of the Government under or arising out of the contract. The undersigned Creditor will make no demand for payment from the Debtor and will forbear to sue on said indebtedness, or to attempt to collect the same by legal process until the

contract is fully performed. (Purchases of raw materials, fabricated subassemblies, component parts and/or subcontractor services supplied by the Creditor to the Debtor under usual trade terms in the normal course of the Creditor's business will not be construed as being advances for working capital purposes.)

2. *Property of the Debtor.* Any and all present and future rights of the undersigned Creditor against the Debtor or any property of the Debtor are fully subordinated to the prior performance of the contract and the liquidation of all obligations of the Debtor under or arising out of the contract.

3. *Collateral.* So long as the rights of the Government under or arising out of the contract remain unsatisfied, any and all sums obtained by the Creditor from the Debtor or from any property of the Debtor received by the Creditor whether or not incident to any assignment, mortgage, pledge or other hypothecation of property of the Debtor shall be held for the use and benefit of the Government, and no such sums or property shall belong to or be retained by the Creditor.

4. *Assignment of Contract.* If any person, firm, corporation or entity other than the Debtor becomes obligated to perform the contract or any part thereof, whether by operation by law or otherwise, any and all present and future rights of the Creditor shall remain fully subordinated to the rights of the Government.

5. *Default.* In the event of failure, insolvency, default, bankruptcy, arrangement, appointment of receiver for the Debtor or other liquidation of the Debtor, any claim due from the Debtor, its successors and assigns, to the undersigned Creditor shall be subordinated to any claim of the Government against the Debtor under or arising out of the contract; and in such event the undersigned Creditor hereby assigns to the Government (and this agreement shall constitute the assignment to it) all claims of any kind or sort the Creditor may now or hereafter have against the Debtor and all dividends and other distributions which the Creditor may receive or to which it may be entitled by reason of any claim filed, claimed or asserted against the Debtor. The undersigned Creditor consents to and waives notice of all extensions or renewals of said indebtedness, release of security and any arrangements that may be made in the event control of the business of the Debtor is assumed by a court or by creditors. The undersigned Creditor irrevocably authorizes and empowers the Government to demand, sue for, collect and receive every such dividend or distribution and give acquittance and to file claims and take such other proceedings in the Government's own name or in the name of the undersigned Creditor or otherwise, as the Government may deem necessary or advisable for the enforcement of this agreement and the undersigned Creditor agrees to execute and deliver to the Government such powers of attorney, assignments or other instruments as may be requested by the Government in order to enable the Government to enforce any and all claims upon or with respect to any or all indebtedness of the Debtor to the undersigned Creditor, and to collect and receive any and all dividends or distributions which may be payable or deliverable at any time upon or with respect to any such indebtedness of the Debtor to the undersigned Creditor.

6. *Modification.* This Subordination Agreement shall not be affected by any action extending the time of performance of the con-

*Strike out inapplicable language.

tract or by the making of any amendment or modification authorized by the terms of the contract.

7. *Certification.* The Creditor hereby certifies that he has not given or executed any prior Subordination Agreement with respect to its claims against the Debtor except as follows:

(Insert to Whom, or if None, so state)

8. *Records.* The Creditor hereby agrees to direct the Debtor(s) to mark its records in accordance with this Subordination Agreement and (b) to confirm receipt of notice by signing in the place indicated below. The Creditor also agrees to permit audits by the Government and to furnish reports to the Government at its request, to aid it in determining the Creditor's conformity with this agreement.

9. *Enforcement.* This agreement shall inure to the benefit of and may be enforced by the United States. It is recognized and agreed by the Creditor that any breach or failure to perform or comply with the terms of this Agreement will be considered as a performance default in the contract awarded the Debtor and the Government may proceed as provided for in these cases in such contract. In the event that the Government terminates the contract with the Debtor for such default and awards the uncompleted portion of such contract to another source at a fair and reasonable price, the Creditor shall be liable for any excess costs incurred by the Government as a result of such re-procurement. In addition, the Creditor shall be liable for all costs and expenses incurred by the Government in enforcing this provision. The rights and remedies of the Government provided herein shall not be exclusive and are in addition to the other rights and remedies provided by law.

10. *Construction.* Nothing in this Agreement shall be construed to obligate the Government to award any contract to the Debtor.

Executed the _____ day of _____ 196__
Two Witnesses:

(Creditor)

By _____

(Title)

(Business Address)

I, _____, certify that I am the Secretary of the Corporation named as Creditor herein; that _____ who signed this agreement on behalf of the Creditor, was then _____ of said Corporation; and said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate Seal

Receipt of a copy of the above agreement is acknowledged. The Debtor agrees to comply with all terms and provisions of this agreement affecting it and to withhold payment or distribution to the subordinating Creditor and to the Debtor's stockholders, officers, and directors in conformity with this agreement. It is further agreed that its failure to carry out any of the terms of this agreement constitutes a default in performance of the contract awarded it and the Government may proceed in accordance with the terms of said contract making provisions for default.

By _____

(Title)

Receipt of a copy of the above Subordination Agreement is acknowledged.

THE UNITED STATES
OF AMERICA

By _____

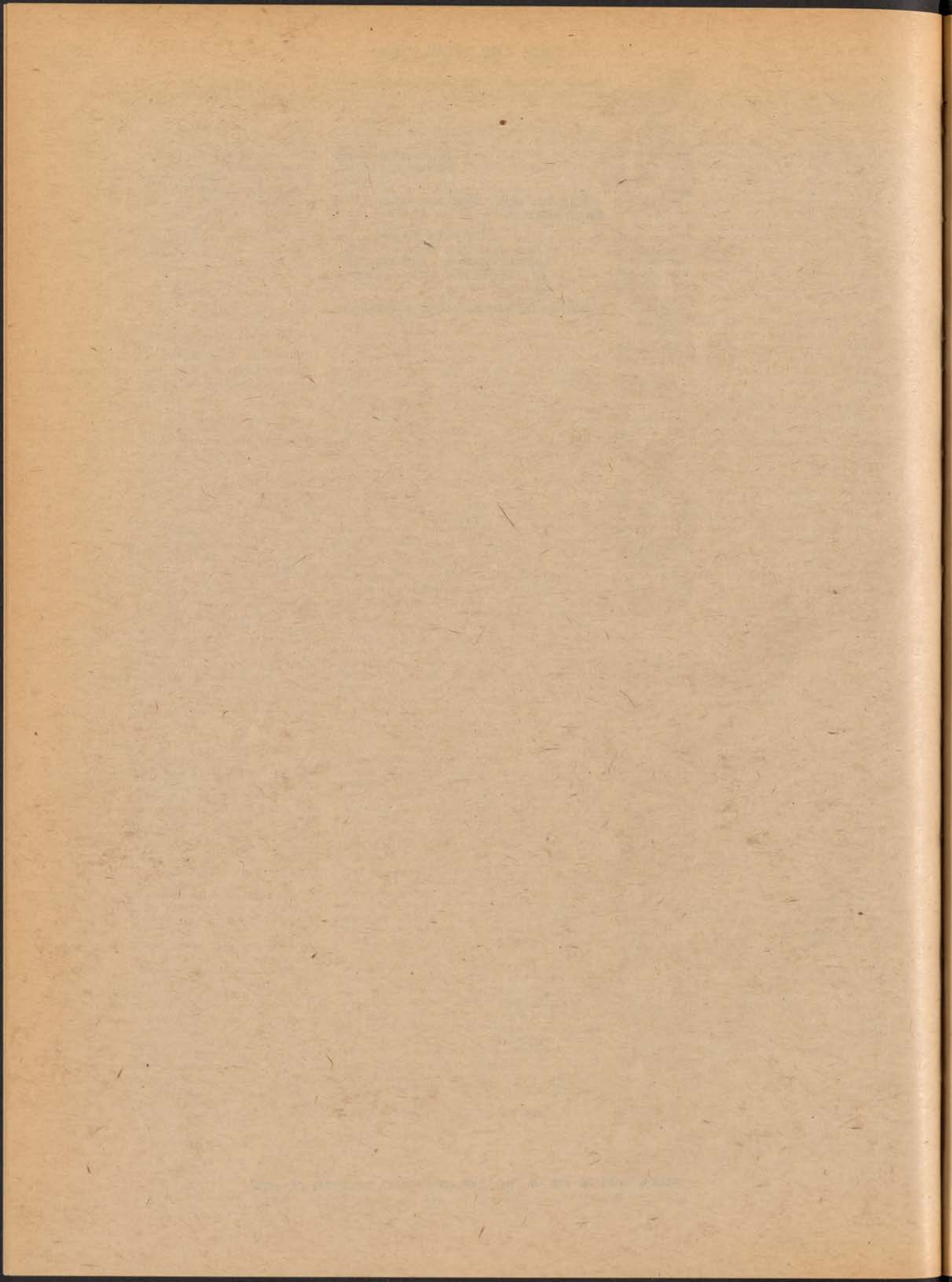
(Contracting Officer)

Address: _____

Effective date. This regulation shall be effective on December 22, 1976.

VINCENT J. HEARING,
*Acting Assistant Secretary for
Administration, Department
of Housing and Urban Development.*

[FR Doc. 76-37554 Filed 12-21-76; 8:45 am]



federal register

WEDNESDAY, DECEMBER 22, 1976



PART V:

FEDERAL ELECTION COMMISSION

■

**ADVISORY OPINION
REQUESTS**

FEDERAL
ELECTION
COMMISSION

AMERICAN
COUNCIL ON
EDUCATION

FEDERAL ELECTION COMMISSION

[Notice 1976-70 AOR 1976-107 through AOR 1976-109]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Notice of Proposed Rule-making, published on May 26, 1976 (41 FR 21590), advisory opinion requests 1976-107 through 1976-109 have been made public at the Commission. Copies of AOR 1976-107, AOR 1976-108, and AOR 1976-109 were made available on December 7, December 8, and December 13, 1976, respectively. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, N.W., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-107: Whether proposed use of excess campaign funds to finance produc-

tion costs and purchase of television time for a Member of Congress to make periodic reports to his constituency during the next two years constitutes use for a "lawful purpose" under 2 U.S.C. § 439a.—Requested by John W. Kerr, Jr., Treasurer, Whitehurst for Congress Committee, Norfolk, Virginia.

AOR 1976-108: Whether expenditures by National Republican Congressional Committee on behalf of congressional candidate in general election may be regarded as expenditures by national committee of political party under 2 U.S.C. § 441a(d)(3).—Requested by James C. Cleveland, House of Representatives.

AOR 1976-109: Whether political committee operated as separate segregated fund of a national bank, its holding corporation, and subsidiary State and national banks is organized pursuant to the requirements of the Federal Election Campaign Act of 1971, as amended, and may be supported by the sponsoring corporation under 2 U.S.C. 441b.—Requested by Richard L. Reppert of Thompson, Hine and Flory on behalf of the Society Political Action Committee, Cleveland, Ohio.

Dated: December 15, 1976.

VERNON W. THOMSON,
*Chairman for the
Federal Election Commission.*

[FR Doc.76-37547 Filed 12-21-76; 8:45 am]

[Notice 1976-71, AOR 1976-110 and
AOR 1976-111]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. 437f(c) and the procedures reflected in Part 112 of the Commission's Notice of Proposed Rule-making, published on May 26, 1976 (41 FR 21590), advisory opinion requests 1976-110 and 1976-111 have been made public at the Commission. Copies of AOR 1976-110 and AOR 1976-111 were made available on December 15, 1976. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, N.W., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request with ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

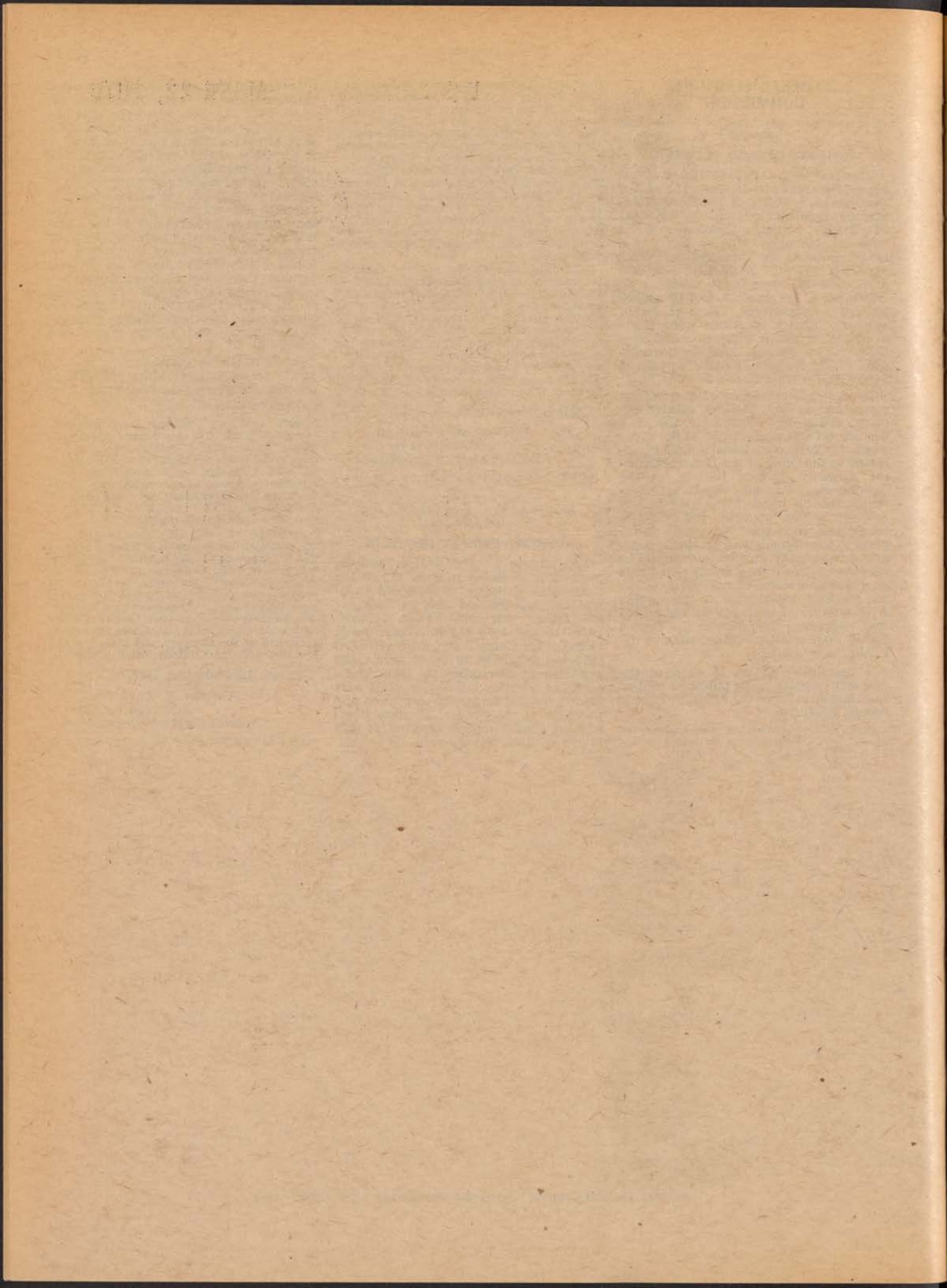
AOR 1976-110: Whether the principal campaign committee of a congressional candidate may retain a contribution received from a candidate for local office who utilized his own campaign funds containing commingled corporate and noncorporate funds to make the contribution.—Requested by Ariene Sumimoto for the Akaka for Congress Committee, Kaneohe, Hawaii.

AOR 1976-111: Whether disbursements by the political committee of a labor organization for expenses which, under 2 U.S.C. § 441b, could have been defrayed initially by the sponsoring labor organization may be reimbursed to the committee by the sponsoring labor organization.—Requested by E. L. Abercrombie, Secretary-Treasurer, League of Voter Education (a political committee formed by Local 218 of the Laundry, Dry Cleaning and Dye House Workers Union), Atlanta, Georgia.

Dated: December 16, 1976.

VERNON W. THOMSON,
*Chairman for the
Federal Election Commission.*

[FR Doc.76-37548 Filed 12-21-76; 8:45 am]



federal register

WEDNESDAY, DECEMBER 22, 1976



PART VI:

DEPARTMENT OF AGRICULTURE

**Packers and Stockyards
Administration**



LIVESTOCK AND LIVE POULTRY

Proposed Policy and Procedures

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

[9 CFR Parts 201 and 203]

INVENTORY AND FUNDS TO BE HELD IN TRUST BY MEAT PACKERS FOR UNPAID SELLERS OF LIVESTOCK

Proposed Rulemaking

Notice is hereby given in accordance with the administrative procedure provisions of 5 U.S.C. 553, that pursuant to the authority conferred by sections 407 (a) and 409(b) of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 228(a) and 228b(b)), Pub. L. 94-410, the Administrator of the Packers and Stockyards Administration is considering the amendment of the regulations under the Act (9 CFR Part 201) by adding a new § 201.200 to prescribe terms and conditions under which parties to the purchase and sale of livestock may expressly agree in writing to effect payment in a manner other than as required in the prompt payment provisions of the Act, and to clarify the responsibilities of the industry with respect to the requirement that packers whose average annual livestock purchases exceed \$500,000, hold certain inventory and funds in trust for the benefit of unpaid cash sellers of livestock. It is also proposed to issue a Statement of General Policy (9 CFR Part 203) with respect to the trust provisions of the Act.

Statement of consideration. On September 13, 1976, the Packers and Stockyards Act, 1921, as amended, was further amended. A new section 206 was added which requires that packers whose average annual livestock purchases exceed \$500,000, hold certain inventory and funds in trust for unpaid cash sellers of livestock. That section is as follows:

Sec. 206(a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables or proceeds from meat, meat food product, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

(b) All livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived therefrom, shall be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers: *Provided*, That any packer whose average annual purchases do not exceed \$500,000 will be exempt from the provisions of this section. Payment shall not be considered to have been made if the seller receives a payment instrument which is

dishonored: *Provided*, That the unpaid seller shall lose the benefit of such trust if, in the event that a payment instrument has not been received, within thirty days of the final date for making a payment under section 409, or within fifteen business days after the seller has received notice that the payment instrument promptly presented for payment has been dishonored, the seller has not preserved his trust under this subsection. The trust shall be preserved by giving written notice to the packer and by filing such notice with the Secretary.

(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

At the same time a new section 409 was also added which requires prompt payment for livestock purchased and requires that any extension of credit in such a purchase be in writing. That section is as follows:

Sec. 409(a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered and "unfair practice" in violation of this Act. Nothing in this section shall be

deemed to limit the meaning of the term "unfair practice" as used in this Act. (Emphasis supplied.)

For purposes of clarification as to the need for this amendment to the Act and to further justify the Administrator's proposal to add § 201.200 to the regulations, excerpts from pages 4, 5, 6, 7, 8 and 13 of Report No. 94-932, of the Committee on Agriculture and Forestry, Senate on H.R. 8410, as issued on June 4 (legislative day June 3), 1976, are made a part of this statement of consideration, as follows:

BACKGROUND AND NEED FOR LEGISLATION

I.

The Packers and Stockyards Act, 1921, was enacted at a time when well over 80 percent of all livestock was sold through large terminal markets. The Act provided for close supervision by the Secretary of Agriculture of transactions involving the purchase and sale of livestock at such markets.

The Act served its purpose well, and, in 1935, was amended to bring the purchase and sale of poultry at major markets within the Secretary's regulatory jurisdiction.

The failure by Congress to include in the Act a provision requiring bonds of market agencies and dealers was early recognized, and discretionary authority to require such bonds was granted to the Secretary in the annual Department of Agriculture Appropriation Act from 1924 until 1942. This authority was made permanent by the Act of July 12, 1943 (57 Stat. 422, 7 U.S.C. 204).

II.

However, in the decades following enactment of the basic statute in 1921, and especially in the decade following World War II, the pattern of livestock marketing in the United States changed drastically. Fewer and fewer livestock moved to slaughter through the great terminal markets. By the mid-1950's, it had become clear that packers were purchasing a large percentage of their slaughter livestock through country auction markets. In 1958, Congress amended the Act to subject such markets to supervision by the Secretary.

National livestock marketing patterns continued to change as packers continued to push to acquire slaughter livestock at its source. In 1973, the 10 major meat packers (including American Beef Packers) purchased more than 75 percent of their slaughter cattle, hogs, sheep and lambs from country sources (direct). Today the Department of Agriculture estimates that well over 80 percent of all slaughter livestock is purchased by packers directly from producers and custom feedlots.

The consequences of these changes in livestock marketing patterns are perhaps best reflected in statistics of the Packers and Stockyards Administration, which picture the results of the increased exposure of livestock producers to the risks created by certain business practices engaged in by members of the packing industry. Between 1958 and early 1975, 167 packers failed, leaving livestock producers unpaid for over \$43 million worth of livestock.

Year	Packers	Original amount owed for livestock	Amount paid ¹	Amount still owed ¹
1958	7	\$568,679	\$95,726	\$472,953
1959	10	1,370,328	153,206	1,217,122
1960	7	508,853	235,235	273,618
1961	7	494,032	173,637	320,395
1962	17	1,612,163	6,733	1,605,430
1963	6	826,423	90,000	736,423
1964	3	115,098	33,007	82,091
1965	13	1,992,351	73,000	1,919,351
1966	9	2,189,099	363,582	1,825,517
1967	9	1,997,748	18,907	1,978,841
1968	10	1,041,871		1,041,871
1969	12	870,064	5,300	864,764
1970	14	2,021,342	450,000	1,571,342
1971	12	1,666,505	525,394	1,141,111
1972	11	843,544	110,251	733,293
1973	8	704,860	5,900	698,960
1974	9	2,857,744	20,000	2,837,744
1975 (1st 3 mo.)	3	24,814,127		24,814,127
Total	167	45,893,831	2,365,128	43,528,703

¹ Additional payments could have been made without the knowledge of the USDA.

Source: Packers and Stockyards Administration, USDA.

III.

By far the largest of the failures was that of American Beef Packers (ABP), which went bankrupt in January 1975, leaving producers in 13 States unpaid for a total of over \$20 million in livestock sales. Of particular concern to the livestock producers in this instance was the fact that ABP's principal source of financing, General Electric Acceptance Corporation, stood ahead of them among the bankrupt's creditors by virtue of its duly protected security interest in ABP's inventory, i.e., livestock and derivative products which the producers had sold on a cash basis and for which they had not been paid.

Under present law, a packer is able to offer as security for a loan the livestock, meat, meat food products, or receivables or proceeds therefrom, which he has not paid for. The producer, who was responsible for raising, feeding, and caring for the livestock is left unpaid, while secured creditors reap the reward of his labors.

As of July 1, 1975, 23 States had responded to the ominous trend of packer failures by enacting laws requiring bonds of packers. In the wake of the ABP bankruptcy, several States, including Kansas, Oklahoma, and Texas, have enacted laws subjecting packers to strict prompt payment requirements. At the present time, 26 States have enacted bonding requirements for packers. These requirements vary widely from \$1,000 to two full days' average purchases. Nineteen States currently have prompt payment statutes of some kind, which affect packer payment practices.

IV.

USDA figures show that in 1973 some \$31 billion worth of livestock and \$4 billion worth of poultry were marketed in the United States, representing approximately one-third of all farm income. Livestock is probably the single most important source of protein in the American diet. Thus, livestock producers occupy a position of unique national importance. No individual is engaged in a riskier endeavor or one more vital to the national interest than the producer. And no entrepreneur is so completely at the mercy of the marketplace. The livestock producer, if he successfully combats the vicissitudes of weather, financing and skyrocketing costs, must sell when his cattle are ready irrespective of the market. His livestock may represent his entire year's output. If he is not paid, he faces ruin.

The meat packing industry is, of course, an integral part of our Nation's agricultural marketing system. What is needed to prevent future producer tragedies, as occurred following the ABP bankruptcy, is legislation

that will afford a measure of protection to the livestock producer and feeder and yet not be so restrictive as to reduce competition in the livestock slaughtering business. H.R. 8410 accomplishes this dual objective.

STATUTORY TRUST

Section 8 of H.R. 8410 creates a statutory trust for unpaid sellers of livestock to packers.

Under this provision, no specific identification of the livestock or the carcasses, meats, proceeds or receivables derived therefrom is required. Instead, they are held in a pool in trust for the benefit of all unpaid cash sellers. Each cash seller would be entitled to a pro rata share in settlement of his account.

It is the Committee's belief that the trust provision offers producers the best protection against packer bankruptcies. They would now receive their money, the money they expected to receive when they sold their livestock, before secured creditors. This provision, together with the bill's provisions on packer prompt payment practices and packer bonding, should avoid the recurrence of the effects of the American Beef Packers' bankruptcy.

The Committee further believes that it would be most beneficial if the Secretary, through the Packers and Stockyards Administration, would formulate some means of notifying producers of a packer bankruptcy. This notification would not affect the time periods established in section 8 for an unpaid seller to notify the packer and the Secretary to order to preserve his right to the trust. Such notification should spur unpaid cash sellers to file their notices and thereby preserve their right to the trust, while also allowing more rapid determination of the scope of the bankrupt packer's estate.

The Committee increased the time limits on the period during which an unpaid producer can preserve his rights under the trust. The extension should help avoid an exceptional situation of long delays due to the actions of the Postal Service or individual banks while still allowing for prompt determination of the producers who would share in the corpus of the trust.

Excerpts from page 7 of Report No. 94-1043, of the Committee on Agriculture, House, on H.R. 8410, as issued on April 14, 1976, are also made a part of this statement of consideration, as follows:

Section 8. This section adds to title II of the Act a new section 206 which applies to

any packer whose average annual purchases exceed \$500,000. The new section requires that all livestock purchased by a packer in cash sales, and all inventories of, or receivables or proceeds from meat, meat food products or livestock products derived therefrom be held by such packer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid sellers. Payment shall not be considered to have been made if the seller receives a payment instrument which is dishonored. However, an unpaid seller loses the benefit of the trust unless he gives written notice to the packer and to the Secretary (1) within 15 days of the final date for making payment under section 409, or (2) within five days after he has received notice that the payment instrument, promptly presented for payment, has been dishonored.¹ A cash sale is defined as a sale in which the seller does not expressly extend credit to the buyer.

No specific identification of the livestock from which carcasses, meats, proceeds or receivables were derived is required. Instead they are held in a pool in trust for the benefit of all unpaid cash sellers. Each seller would be entitled to a pro rata share in settlement of his account. The trust does not extend to livestock, meats, etc., which have been purchased from the packer in good faith transactions. The provisions of this section would prevail over State law.

Both committee reports, the Senate Committee Report of June 4, 1976, at page 8, and House Committee Report of April 14, 1976, at page 7, state that the delivery of a draft would not satisfy the requirements of new section 409 for prompt payment to the seller of livestock.

In the debates on the amendment, Mr. Hightower made the following statement which appears in the Congressional Record of May 6, 1976, on page H 4018.

Mr. Chairman, if the gentleman will yield so I may respond, as I interpret the Jones amendment that has nothing to do with the situation if both are at the scene. My amendment provides that from the seller the producer can demand payment right then and there. My amendment provides if the seller is not at the scene, then the buyer or purchaser may drop a check in the mail. The Jones amendment makes no reference to a check and even would imply and I believe would provide or make it possible for the purchaser to pay by draft, which is one of the abuses that we seek to do away with in this legislation. (Emphasis added.)

Also in those debates Mr. Thome made the following statement which appears on page H 4008 of the May 6, 1976 Congressional Record:

At this point I wish to insert in the Record for purposes of legislative history a letter I received in response to my inquiry from Marvin L. McLain, administrator of the Packers and Stockyards Administration * * *

Questions and answers contained in that letter, which relate to the trust fund provisions of the amendment to the Act, follow:

1. Section 8 of the bill impresses a trust on all livestock purchased by a packer in cash sales and all inventories of or receivables or proceeds from meat, meat food products, or

¹ Note. The amendment was enacted with 30 days and 15 business days as a time limit.

livestock derived therefrom" for the benefit of all unpaid cash sellers until full payment has been made. It was not intended by the Committee that any on-going segregation of funds (custodial account) would be required by this provision. Do you see any necessity for segregation of such current assets?

Answer: No. There would be no need for any special segregation of such current assets, since under the bill the trust attaches on such livestock, inventories, receivables and proceeds to the extent of the amount owed the unpaid cash sellers and there would be no necessity for a determination of the amount of that trust except in situations, such as bankruptcy, where the interests of various claimants must be specifically determined. The amount of the trust could be determined from the packer's records at any time by an audit. Although the livestock, inventories, receivables and proceeds derived from the livestock purchased by the packer in cash sales would be commingled with all other assets in the normal operations of the business, such an audit would reveal the extent of the interest of the unpaid cash sellers in such commingled assets and therefore subject to the trust.

2. The Committee did not intend that the trust provisions, section 8, extend to the meats or meat food products purchased (and held) by retailers from the packer in good faith transactions; but rather, that the trust would attach to the accounts receivable, cash (or equivalent) or proceeds received by the packer in payment for such products. For purposes of conveying the practical effects of such a procedure to the Membership on the Floor, could you explain how this would work and whether or not you believe this would work a hardship on the packers or the retail purchasers?

Answer: The Committee Report 94-1043 states at page 7 that: "The trust does not extend to livestock, meats, etc., which have been purchased from the packer in good faith transactions". Upon the purchase by a retailer in the ordinary course of his business, the packer would then have an account receivable from the retailer for the purchase price of the product and that account receivable would be subject to the trust. When the retailer pays the purchase price, the trust would then attach to that payment. In the event of bankruptcy of the packer after the purchase in the ordinary course of business and prior to payment by the retailer to the packer, the relationship of the retailer and the packer would not change in any respect by virtue of the trust. The retailer would still owe the packer the purchase price of the product and when he pays for the product, the payment would be subject to the trust to the extent of the amounts owed to the unpaid cash sellers of the livestock. The packer or the livestock seller would not be adversely affected by the fact that the trust would be applicable only with respect to the meat, meat food products, and livestock products in the possession of the packer, and then to the packer's account receivable for the sale of the products, and then to the proceeds paid by the retailer to the packer to satisfy the account receivable.

3. The Committee intended that the trust established by section 8 to be a constructive statutory trust arising by operation of law and that it need not specifically identify the livestock, accounts receivable, meat or meat products to which it attaches until the event (insolvency or bankruptcy) occurs which, as a result of its occurrence (marshaling of assets, etc.), results in the identification of certain assets to which it is attached.

As a practical matter, based on the experience of the Packers and Stockyards Administration, should such identification of assets to which the trust would attach, in the event

of bankruptcy, cause any difficulty in the administration of this program as outlined above?

Answer: No. There should be no problem encountered in identifying the livestock, accounts receivable, and proceeds from the meat, meat food products, or livestock products subject to the trust for the unpaid cash sellers of the livestock. Under section 401 of the Packers and Stockyards Act, every packer is required to keep such accounts, records and memoranda as fully and correctly disclose all transactions involved in his business. Insofar as we are aware, every packer keeps books and records from which the amount of the inventories, receivables and proceeds and the amount owed to each unpaid cash seller of the livestock to the packer can be determined by an audit of those books and records. Upon bankruptcy, for example, an audit would reveal the amount of the commingled inventories, accounts receivable and proceeds, the amount owed to the unpaid cash sellers of livestock to the packer, and thus the extent of the application of the trust. The audit would reveal the amount which must be paid to the unpaid cash sellers before the commingled inventories, accounts receivable, and proceeds are freed from the trust. Accordingly, we foresee no problem in the administration of this program as contemplated by the Committee.

4. The Committee intended that existing secured credit transactions entered into between packers and their banks or other financing agents become subject to the trust provisions of this bill upon the date of enactment. Could the Packers and Stockyards Administration generally give publicity to the prospective enactment of this legislation so that packers would be on notice of its provisions? Further, do you believe such an effective date provision would work a hardship on the industry?

Answer: Yes. The Packers and Stockyards Administration would be glad to cooperate with the Committee in advising affected packers of action by the Congress with respect to this provision. It is our understanding that the various packer associations have been keeping currently abreast of developments in connection with the bill and they are no doubt keeping their membership currently advised. Also, various financial organizations have been following the developments in connection with the trust provisions. Accordingly, we would anticipate that all affected packers will receive timely notice of action by the Congress with respect to the trust provision and we would not anticipate any hardship on the industry in this regard.

5. Based on your experience with packers and their credit arrangements, need a "floating lien creditor" arrangement between a packer and his banker or other financing entity be in any way adversely affected by a trust provision such as that contained in Section 8? Explain.

Answer: The Section 8 trust provision would have an effect upon the credit arrangements between a packer and his banker or other financial entity since the lender would no longer have the livestock of the unpaid cash sellers and the products therefrom available as a source of additional security for his loan to the packer, until the livestock sellers have been paid. However, we would not anticipate that this result will have any adverse long term impact upon the credit arrangements of the packing industry.

6. Based on information you provided me, the states of Texas, Oklahoma and Oregon have laws relating to liens on livestock and products therefrom. A suggestion has been made that the Congress pass a bill containing a provision establishing a lien on behalf of the sellers of livestock. Based on your experience, would the cost of a trust provision such as we have in H.R. 8410 cost any more than a federal lien provision?

Answer: Currently three states—Texas, Oklahoma and Oregon—have laws relating to liens on livestock and products therefrom. There is also legislation pending in the states of Florida and California which would provide for liens on livestock sold to packers until payment is received by the seller.

There would not appear to be any material difference in the cost between the trust provision contained in this bill and a federal lien provision. The trust provision is largely self enforcing and would only become effective in the event of bankruptcy or inability of the packer to pay.

In any sale of livestock to a packer, any extension of credit by the seller results in excluding the seller from participating in the benefits of a trust created by Section 206. Thus, it would be a serious injustice if a packer, or a dealer or market agency buying for a packer, purchased livestock on credit without the seller being fully informed of any rights he may be waiving when credit is extended. Misunderstandings about this on the part of livestock sellers agreeing to extend credit, could result in undue financial burdens on livestock sellers and lead to lengthy litigation. Further, effective administration of the Act by the Secretary and the Courts requires that it be possible to determine from a packer's records who is entitled to the benefits of such a trust and who is not, in the event such a trust is created, and whether appropriate information is possessed by those who sell on credit and thus will not be entitled to the benefits of such a trust.

Accordingly, it is proposed that a new regulation, violation of which would constitute an unfair or unjust practice within the meaning of the Act, be issued as follows:

§ 201.200 Sale of livestock to a packer on credit.

(a) No packer whose average annual purchases of livestock exceed \$500,000 shall purchase livestock on credit, and no dealer or market agency acting as an agent for such a packer shall purchase livestock on credit, unless:

(1) before purchasing such livestock the packer obtains from the seller a written acknowledgment as follows:

On this date, shown below, I am selling livestock on credit to a packer, and I understand that in doing so I will have no rights under the trust provision of section 206 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 196, Pub. L. 94-410), with respect to this transaction.

Date _____
Signature _____

(2) such packer retains such acknowledgment, and such dealer or market agency retains a copy thereof, in his records for two years; and

(3) such seller receives a copy of such acknowledgment.

(b) Purchasing livestock for which payment is to be made by a draft which is not a check, shall constitute purchasing such livestock on credit within the meaning of paragraph (a) of this section.

(c) The provisions of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to

financing by market agencies selling on a commission basis, or by § 201.68 relating to financing packers by dealers or vice versa.

It is also proposed that a new Statement of General Policy be issued as follows:

§ 203.15 Trust benefits under section 206.

Within the times specified under section 206(b), the seller, to preserve his interest in the statutory trust, must give written notice to the packer and file such notice with the Secretary. One of the ways to satisfy the notification requirement under this provision, is to make certain that notice is given to the packer within the prescribed time by letter, mailgram, or telegram stating:

- (1) Notification to preserve trust benefits;
- (2) Identification of packer;
- (3) Identification of seller;
- (4) Date of the transaction;
- (5) Date of seller's receipt of notice that payment instrument has been dishonored (if applicable); and
- (6) Amount of money due.

and to make certain that a copy of such letter, mailgram, or telegram is filed with a P&SA area office or with P&SA, USDA, Washington, D.C. 20250, within the prescribed time.

While the above information is desirable, any written notice which informs the packer and the Secretary that the packer has failed to pay for livestock, is sufficient to meet the above-mentioned statutory requirement if it is given within the prescribed time.

Any interested person who wishes to submit written data, views or arguments concerning the proposed amendments may do so by filing them in duplicate, and any interested person who desires an oral hearing on the proposed amendments may file a written request stating the reasons therefor, in duplicate, with the Hearing Clerk, Department of Agriculture, Washington, D.C. 20250, on or before February 22, 1977.

All written submissions made, and a transcript of any hearing which may be held, pursuant to this notice, will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Done at Washington, D.C. this 17th day of December, 1976.

MARVIN L. McLAIN,
Administrator, Packers
and Stockyards Administration.

[FR Doc. 76-37587 Filed 12-21-76; 8:45 am]

[9 CFR Parts 201 and 203]

PAYMENT AND ACCOUNTING FOR LIVESTOCK AND LIVE POULTRY

Proposed Rulemaking

Notice is hereby given in accordance with the administrative procedure provisions of 5 U.S.C. 553, that pursuant to the authority conferred by sections 407 (a) and 409(b) of the Packers and Stockyards Act, 1921, as amended (7

U.S.C. 228(a) and 228(b), Pub. L. 94-410), the Administrator of the Packers and Stockyards Administration is considering the amendment of the regulations under the Act (9 CFR Part 201) to prescribe terms and conditions under which drafts may be used in payment for livestock, to clarify the responsibilities of the industry when checks are mailed to the seller in payment for livestock, and to require packers, market agencies, and dealers who purchase livestock through agents to promptly reimburse such agents in accordance with the prompt payment provisions of the 1976 amendment to the Packers and Stockyards Act. The Administrator is also considering a new Statement of General Policy regarding agreements for the mailing of checks in payment for livestock.

Statement of consideration. The current § 201.43 was promulgated before the 1976 amendment of the Act. It was intended to establish a uniform rule regarding payment for livestock purchased by packers, market agencies, and dealers consistent with the established custom of the industry that sales of livestock are on a cash basis. On September 13, 1976, the Packers and Stockyards Act, 1921, as amended, was further amended. A new section 409 was added which reads as follows:

Sec. 409(a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

(b) Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other accounts issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein

provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of this Act. Nothing in this section shall be deemed to limit the meaning of the term "unfair practice" as used in this Act.

For purposes of clarification as to the need for the amendment to the regulations, excerpts from pages 7, 8, 11 and 12 of Report No. 94-932, of the Committee on Agriculture and Forestry, Senate 94th Congress, Second Session, on H.R. 8410, as issued on June 4 (legislative day June 3), 1976, are made a part of this statement of consideration as follows:

SECTION 7. PROMPT PAYMENT

Section 7 of the bill adds to title IV of the Packers and Stockyards Act a new section 409 which, absent an express prior agreement in writing between the buyer and seller, requires each packer, market agency, or dealer purchasing livestock, before the close of the next business day following the purchase of livestock and transfer of possession thereof, to wire transfer funds to the seller's account or to deliver to the seller or his duly authorized agent, at the point of transfer of possession of the livestock, a check for the full amount of the purchase price. The delivery of a draft would not satisfy this requirement. In the case of a purchase on a carcass or "grade and yield" basis, the check or wire transfer of funds would be due not later than the close of the first business day following determination of purchase price. If the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, the packer, market agency or dealer, is required to wire transfer or mail the full amount of the purchase price to the seller within the time limits of this section. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the appropriate or prompt collection of funds shall be considered an "unfair practice" in violation of the Act.

PROMPT PAYMENT

Section 7 of H.R. 8410, as reported by the Committee, would basically require each packer, market agency, and dealer purchasing livestock to pay for the livestock by the close of the next business day, following transfer of possession of the livestock, or in the case of purchases on a carcass or "grade and yield" basis, to pay for such livestock before the close of the next business day following the determination of the purchase price, as now required in the regulations.

This section superimposes on this basic requirement a slaughter proviso which gives the buyer two alternatives: (1) To wire transfer funds, or (2) to deliver payment at the point of transfer. If the buyer does not wire transfer funds, he is required to deliver payment to the seller at the point of transfer of possession of the livestock. If the seller or his authorized representative is not present at the point of transfer of the livestock to accept payment, the buyer must wire transfer or place payment in the mail within the prescribed time limits.

In practice, with respect to a packer, this provision would operate in the following manner. In areas where small feedlots predominate, the points of transfer of possession are usually the packing plants in cases of direct sales, and the public markets. This means that the packer in those instances would be obligated to make payment available at the packing plant or at the market where the transfer of possession took place. Since this is currently the manner in which payment is being made, there would

be no appreciable change in practice. If the producer did not pick up payment at the packing plant or if the selling agency at the market is not available to receive the payment at the market within the prescribed time, the packer then would wire transfer the funds or place the check in the mail by the close of the next business day.

In the Southwest and West where larger lots with scales predominate, the point of transfer is usually at the feedlot where the livestock is weighed. In this instance the packer would be obligated to wire transfer funds or to deliver payment to feedlot. Under the latter alternative, if the seller or his representative is not present to receive payment, the packer would then wire transfer funds or place the check in the mail by the close of the next business day.

Nothing in section 7 would preclude a packer and a producer from agreeing in writing that the packer may transmit through the mails, by the close of the next business day, payment for livestock purchased. Such action would not result in the producer being considered a credit seller. If, however, the agreement is for payment beyond the close of the next business day, the producer would be considered a credit seller and as such would forfeit his rights under the trust.

In the case of sales at public markets, the market would make payment available to the sellers at the market since that would be the point of transfer of possession of the livestock. If the seller is not present at the market to receive payment, the market would wire transfer payment or place payment in the mail before the close of the business day following the sale.

Excerpts from page 7, 11, and 12 of Report No. 94-1043 of the Committee on Agriculture, House, 94th Congress, Second Session, on H.R. 8410, as issued on April 14, 1976, are also made a part of the statement of consideration, as follows:

Section 7.—This section adds to title IV of the Packers and Stockyards Act a new section 409 which, absent an express prior agreement in writing between the buyer and seller, requires each packer, market agency, or dealer purchasing livestock before the close of the next business day following the purchase of livestock and transfer of possession thereof to wire transfer funds to the seller's account or to deliver to the seller or his duly authorized agent, at the point of transfer of possession of the livestock, a check for the full amount of the purchase price. The delivery of a draft would not satisfy this requirement. In the case of a purchase on a carcass or "grade and yield" basis, the check or wire transfer of funds would be due not later than the close of the first business day following determination of purchase price. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as provided pursuant to subsection (a) or (b) or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of the Act.

Considerable discussion ensued on an amendment to section 7 (prompt pay) proposed by Mr. Hightower. The amendment restructures the prompt payment provision to require payment solely by delivery of a check or wire transfer of funds to the seller's account eliminating payment by mail. It also provides that in the case of a purchase on a carcass or "grade and yield" basis, payment is required not later than the close of the first business day following determination

of the purchase price. It was pointed out that, if a producer made a sale to a packer and contracted for the hauling of the cattle to the packer, the transfer of possession would occur at the packing plant, and that the packer would have the obligation to make payment to the seller or his agent at that point. If the buyer stands ready, willing, and able to tender a check at the point of transfer of possession at the time transfer takes place and for 24 hours thereafter, but no representative of the seller appeared to accept the check, the buyer would have satisfied his obligation under this provision. The buyer would, however, still have an obligation to make payment within a reasonable period of time.

The seller could pick up the check himself or constitute a commission agent or trucker as his agent to pick up the check. He could also agree in writing to other payment arrangements. The Committee agreed to an amendment to provide that such other arrangements would be subject to such terms and conditions as the Secretary might prescribe to protect either party from being forced into an arrangement to which he otherwise might not wish to agree or to cover other unforeseen circumstances. The Committee deleted from the amendment any reference to "transmittal" of payment to make clear that, absent a prior written agreement between seller and buyer, the payment requirement could not be satisfied by transmitting it by mail. The Committee then agreed to the Hightower amendment by voice vote.

Both committee reports, the Senate Committee Report of June 4, 1976, on page 8, and the House Committee Report of April 14, 1976, on page 7, state that delivery of a draft would not satisfy the requirements of new Section 409 for prompt payment to the seller of livestock.

The House report on page 12 also states that absent a prior written agreement between buyer and seller, the payment requirement could not be satisfied by transmitting it by mail. The Senate report on page 12 also states, "Nothing in [the prompt payment requirement] would preclude a packer and a producer from agreeing in writing that the packer may transmit through the mails, by the close of the next business day, payment for livestock purchased. Such action would not result in the producer being considered a credit seller."

The proposed change in paragraph (c) of regulation 201.43 covers purchases through agents who use their own funds to pay for livestock purchased on order. It requires the person who places the order for livestock, to pay such an agent in the same manner as required of buyers in Section 409 of the Act.

Accordingly, it is proposed that § 201.43 of the regulations under the Packers and Stockyards Act be amended by revising paragraphs (b) and (c) thereof and adding a new paragraph (d) to read as follows:

§ 201.43 Payment and accounting for livestock and live poultry.

(b) *Prompt payment for livestock—terms and conditions.*

(1) No packer, market agency, or dealer shall purchase livestock for which payment is made by a draft which is not a check, unless the seller expressly agrees

in writing before the transaction that payment may be made by such a draft.

(2) No packer, market agency, or dealer shall mail a check in payment for livestock purchased for cash unless:

(i) (a) the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession of such livestock, on or before the close of the next business day, following the purchase of livestock and transfer of possession thereof, or in the case of a purchase on a "carcass" or "grade and yield" basis, the close of the first business day following determination of the purchase price; or

(b) the seller expressly agrees in writing before the transaction that payment may be made by such mailing of a check; and

(ii) such check is placed with proper postage prepaid and properly addressed to the seller in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which the mail is scheduled to be collected before the close of the next business day following the purchase of livestock and transfer of possession thereof, or in the case of a purchase on a "carcass" or "grade and yield" basis, the close of the first business day following determination of the purchase price.

(3) Any agreement referred to in this paragraph (b) of this section shall be disclosed in the records of any market agency or dealer selling such livestock, and in the records of the packer, market agency or dealer purchasing such livestock, and retained by such persons for two calendar years.

(4) No packer, market agency, or dealer shall, as a condition of purchase by him of livestock, impose, demand, compel or dictate the terms or manner of payment.

(c) *Purchasers to promptly reimburse agents.*

(1) Each packer, market agency, or dealer who utilizes or employs an agent to purchase livestock for him, shall, in transactions where such agent advances his own funds to pay for such livestock purchased on order, deliver a check or wire transfer funds to such agent in the full amount advanced, before the close of the next business day following purchase and transfer of possession thereof unless otherwise expressly agreed in writing between the principal and agent before the purchase of the livestock. Any such agreement shall be disclosed in the records of the principal and in the records of any market agency or dealer acting as such agent, and retained by the principal for two calendar years.

(2) Any agent using his own funds to pay for livestock purchased for a packer, market agency, or dealer on order, shall, for the purpose of obtaining reimbursement, be deemed to be a seller to such packer, market agency, or dealer within the meaning of paragraph (b) of this section, above.

(d) The provisions of paragraphs (b) (1) and (c) of this section shall not be construed to permit any transaction prohibited by § 201.61(a) relating to finance

ing by market agencies selling on a commission basis, or by § 201.68 relating to financing packers by dealers or vice versa.

It is further proposed that violation of § 201.43(b) or (c), as set forth above, would constitute an unfair or unjust practice within the meaning of the Act, excluding a violation of § 201.43(b) (3) not accompanied by any other violation of these provisions. A violation of § 201.43(b) (3), whether or not accompanied by any other violation of these provisions, would constitute a violation of Section 401 of the Act.

It is also proposed that a new Statement of General Policy under the Act be issued with respect to the manner in which sellers may authorize purchasers to mail checks in payment for livestock purchases.

Section 206 of the Act (7 U.S.C. 196), added by Pub. L. 94-410 provides for the holding of certain livestock, inventories, proceeds and receivables by a packer in trust for the benefit of unpaid cash sellers. Subsection (c) thereof provides, "For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer." (Emphasis added)

Section 409 of the Act (7 U.S.C. 228b), also added by Pub. L. 94-410, requires each packer, market agency, or dealer purchasing livestock to deliver to the seller or his duly authorized representative the full amount of the purchase price within time limits specified therein. This requirement is subject to a proviso that if livestock is purchased for slaughter and if payment is made by check rather than wire transfer, such check must, within time limits specified therein, be actually delivered at the point of transfer of possession to the seller or his duly authorized representative. There is a second proviso that if the seller or his duly authorized representative is not present at the point of transfer of possession to receive such check, then such check must, within the same time limits, be mailed to the seller.

The Packers and Stockyards Administration believes that if a seller or his duly authorized representative is not present at the point of transfer of possession to receive such a check, whether or not he so informs the purchaser in advance, that fact alone would not constitute an express extension of credit within the meaning of section 206(c) because it would not give the purchaser any more time to issue such check, than is provided in section 409(a).

The Packers and Stockyards Administration further believes that if a seller of livestock agrees that payment may be made by mailing a check within the time limit as provided in section 409(a), whether or not such seller is present at the point of transfer of possession to receive such check, that fact alone likewise would not constitute an express extension of credit within the meaning of section

206(c), because it would not give the purchaser any more time to issue such check, than is provided in section 409(a).

Such an agreement would constitute an agreement "to effect payment in a manner other than that required in subsection (a)," (emphasis added) within the meaning of section 409(b) of the Act, and would also be subject to § 201.43 (b) and (c), of the regulations issued under the Act.

The Packers and Stockyards Administration believes that it is an unfair or unjust practice in violation of the Act, for packers, market agencies, or dealers to buy livestock and issue worthless checks in purported payment therefor. The fact that it is possible for such a purchaser so to violate the Act, should not give rise to a presumption that an agreement for payment by mailing a check within the time limit as provided in section 409(a), is an extension of credit by the seller to the purchaser. It would be absurd to presume that a seller consents to the issuance to him of a worthless check.

The Packers and Stockyards Administration believes to be pertinent to this matter, that section 206 and section 409 were both added to the Act by the same amendment, Pub. L. 94-410, and that Report No. 94-932 of the Committee on Agriculture and Forestry, Senate, on the Bill which later became Pub. L. 94-410, recited at page 12, "Nothing in (section 409 of the Act) would preclude a packer and a producer from agreeing in writing that the packer may transmit through the mails, by the close of the next business day, payment for livestock purchased. Such action would not result in the producer being considered a credit seller."

The Packers and Stockyards Administration also believes to be pertinent to this matter, that § 201.43(b) of the regulations issued under the Act, for more than ten years prior to the enactment of Pub. L. 94-410, required "Each packer, market agency or dealer purchasing livestock * * * before the close of the next business day following the purchase of livestock and the determination of the amount of the purchase price, [to] transmit or deliver to the seller or his duly authorized agent the full amount of the purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock." As recited when that provision was first issued, 29 FR 1796, its purpose was to establish, a uniform rule regarding payment for livestock purchased by packers, market agencies, and dealers "consistent with (1) the established custom that sales of livestock are on a cash basis. * * *

It is a well-established custom of the industry that a sale of livestock in which payment is to be made by a check mailed the next business day following purchase and determination of the amount of the price, is a cash transaction involving no extension of credit by the seller to the purchaser.

Therefore, the following Statement of General Policy is proposed:

§ 203.16 Mailing of checks in payment for livestock purchased for cash and not on credit.

The Packers and Stockyards Administration recognizes that one who sells livestock to a packer, market agency, or dealer, may not intend to be present at the point of transfer of possession of the livestock, to receive payment, at the time a check in payment for such livestock may be delivered by the purchaser, and may not wish to authorize a representative to receive such a check; or for other reasons such a seller may prefer that such a purchaser make payment by mailing a check within the time limit as prescribed in section 409(a). In cases when the seller does not intend to be present, he may use the following form of notification to the purchaser:

I do not intend to be present at the point of transfer of possession of livestock sold by me to (name of packer, market agency, or dealer) for the purpose of receiving a check in payment for such livestock. I hereby direct (name of packer, market agency, or dealer) to make payment for livestock purchased from me, by mailing a check for the full amount of the purchase price within the time limit as provided in Section 409(a) of the Packers and Stockyards Act, 1921, as amended, and in accordance with the provisions of Section 201.43(b) of the regulations thereunder.

This does not constitute an extension of credit to (name of packer, market agency, or dealer). This is subject to cancellation by me at any time, and if not cancelled by (date), it shall terminate on that date.

If the seller for reasons other than not being present to receive payment prefers to have the packer, market agency, or dealer make payment by mailing a check within the time limit as provided in section 409(a), he may use the above form but should not include the statement in the first sentence that he does not intend to be present.

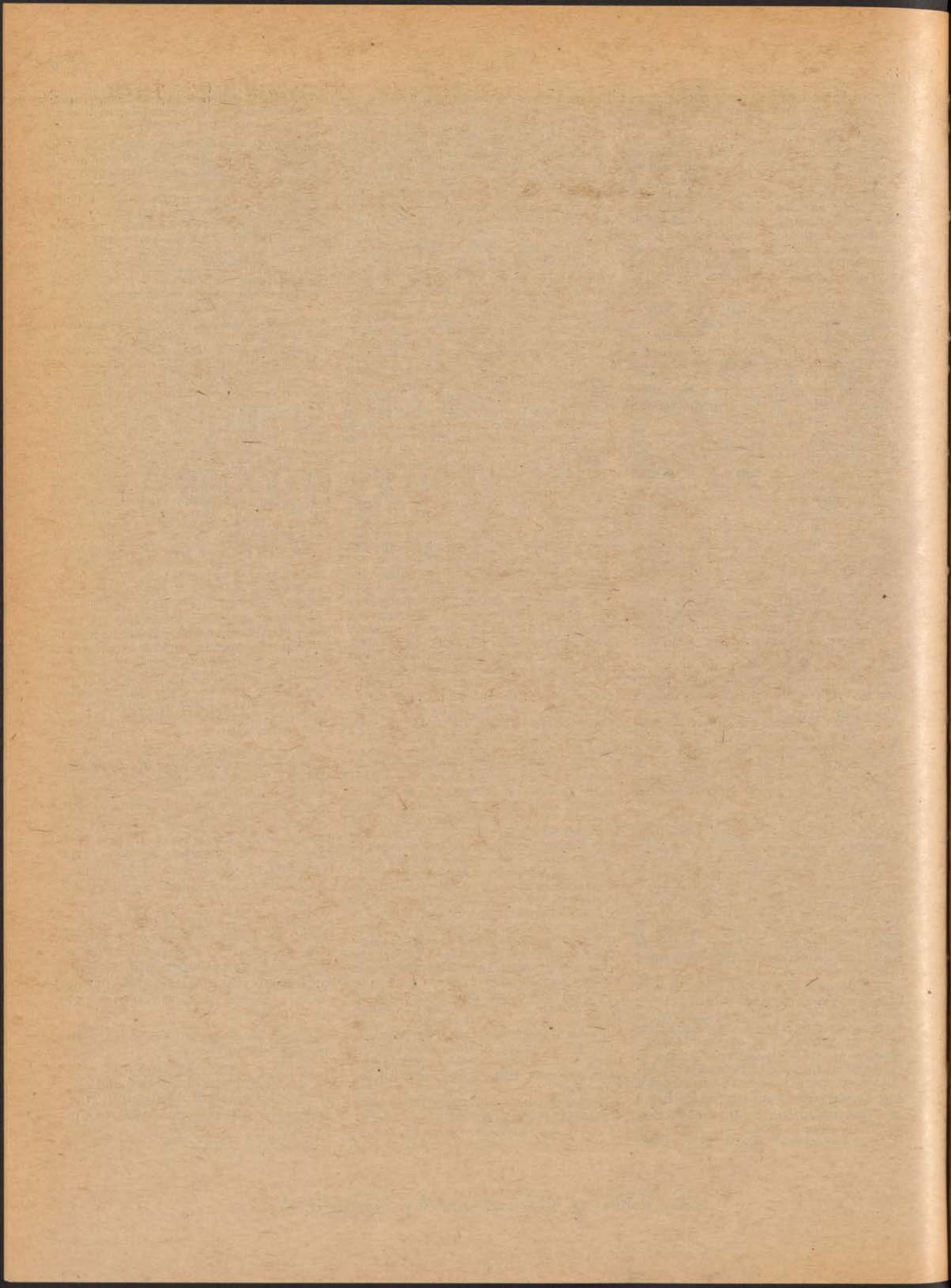
Any interested person who wishes to submit written data, views or arguments concerning the proposed amendment and Statement may do so by filing them, and any interested person who desires an oral hearing thereon may file a written request stating the reasons therefor, in duplicate, with the Hearing Clerk, Department of Agriculture, Washington, D.C. 20250, on or before February 22, 1977.

All written submissions made, and a transcript of any hearing which may be held, pursuant to this notice, will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR § 1.27 (b)).

Done at Washington, D.C. on this 17th day of December 1976.

MARVIN L. McLAIN,
Administrator, Packers and
Stockyards Administration.

[FR Doc. 76-37589 Filed 12-21-76; 8:45 am]



federal register

WEDNESDAY, DECEMBER 22, 1976



PART VII:

FEDERAL ENERGY ADMINISTRATION

■

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for October 1976

FEDERAL ENERGY ADMINISTRATION

DOMESTIC CRUDE OIL ALLOCATION PROGRAM

Entitlement Notice for October 1976

In accordance with the provisions of 10 CFR 211.67 relating to FEA's domestic crude oil allocation program the monthly notice specified in § 211.67(i) is hereby published.

Based on reports submitted to FEA by refiners and other firms as to crude oil receipts, crude oil runs to stills and eligible product imports for October 1976, imported naphtha utilized as a petrochemical feedstock in Puerto Rico, application of the entitlement adjustment for residual fuel oil production for sale in the East Coast market provided in § 211.67(d)(4), and application of the entitlement adjustment for small refiners provided in § 211.67(e), the national domestic crude oil supply ratio for October 1976 is calculated to be .292905.

In accordance with § 211.67(b)(2), to calculate the number of barrels of deemed old oil included in a refiner's adjusted crude oil receipts for the month of October 1976, each barrel of old oil is equal to one barrel of deemed old oil and each barrel of upper tier crude oil is equal to .167604 of a barrel of deemed old oil.

The issuance of entitlements for the month of October 1976 to refiners and other firms is set forth in the Appendix to this notice. The Appendix lists the name of each refiner and other firm to which entitlements have been issued, the number of barrels of deemed old oil included in each such refiner's adjusted crude oil receipts, the number of entitlements issued to each such refiner or other firm, and the number of entitlements required to be purchased or sold by each such refiner or other firm.

Pursuant to 10 CFR § 211.61(i)(4), FEA hereby fixes the price at which entitlements shall be sold and purchased for the month of October 1976 at \$7.84, which is the exact differential as reported for the month of October between the weighted average per barrel costs to refiners of old oil and of imported crude oil, less the sum of 21 cents.

In accordance with 10 CFR § 211.67(b), each refiner that has been issued fewer entitlements for the month of October 1976 than the number of barrels of deemed old oil included in its adjusted crude oil receipts is required to purchase a number of entitlements for the month

of October 1976 equal to the difference between the number of barrels of deemed old oil included in those receipts and the number of entitlements issued to and retained by that refiner. Refiners which have been issued a number of entitlements for the month of October 1976 in excess of the number of barrels of deemed old oil included in their adjusted crude oil receipts for that month and other firms issued entitlements shall sell such entitlements to refiners required to purchase entitlements. In addition, certain refiners are required to purchase or sell entitlements to effect corrections for reporting errors for the months September 1975 through September 1976 pursuant to 10 CFR § 211.67(j)(1).

Pursuant to § 211.67(j)(2), the October 1976 installments of the amounts representing corrections for reporting errors for months prior to September 1975 are shown in a separate column in the listing and these installments will continue to be shown in entitlement notices through the notice for February 1977. As set forth in the revised special correction notice issued on September 21, 1976, the total dollar amounts of the special corrections have been divided into eight substantially equal installments for reflection in each firm's entitlement position for each of the months July 1976 through February 1977, based on the particular month's entitlement price.

The listing of refiners' old oil receipts contained in the Appendix reflects any adjustments made by FEA pursuant to § 211.67(h).

The listing contained in the Appendix identifies in a separate column additional entitlements issued to refiners pursuant to relief granted by FEA's Office of Exceptions and Appeals. Also set forth in this column are the adjustments for relief granted by the Office of Exceptions and Appeals for 1975, which adjustments are being reflected in monthly installments commencing with the September 1976 entitlement notice. The number of installments is dependent on the magnitude of the adjustment to be made. For a full discussion of the issues involved, see *Beacon Oil Company, et al*, 4 FEA par. — (November 5, 1976).

The listing in the Appendix does not reflect an entitlement obligation of \$379,965.42 (or 48,465 entitlements) of Delta Refining Company for the month October 1976 that is attributable to adjustments for exception relief received by Delta in 1975. This obligation has been temporarily stayed by the United States

District Court for the District of Columbia. If this lawsuit is ultimately resolved in FEA's favor, FEA will reflect this entitlement obligation in the calculation of Delta's entitlement position in the entitlement notice to be published in the first month following such resolution, and the amount so reflected will, in accordance with the Court's order, include interest at the rate prescribed by the Court.

For purposes of the adjustments to refiners' crude run volumes under § 211.67(d)(4), total production of residual fuel oil for sale in the East Coast market (in excess of the first 5,000 barrels per day thereof for each refiner reporting such production) was 12,960,362 barrels for October 1976. For that month, imports of residual fuel oil eligible for entitlement issuances totaled 29,191,825 barrels.

The total number of entitlements required to be purchased and sold under this notice is 22,424,862.

Payment for entitlements required to be purchased under 10 CFR § 211.67(b) for October 1976 must be made by December 31, 1976.

On or prior to January 10, 1977, each firm which is required to purchase or sell entitlements for the month of October 1976 shall file with FEA the monthly transaction report specified in 10 CFR § 211.66(i) certifying its purchases and sales of entitlements for the month of October. FEA has mailed the monthly transaction report forms for the month of October to reporting firms. FEA requests that firms which have been unable to locate other firms for required entitlement transactions by December 31, 1976 contact FEA at 202-254-6296 to expedite consummation of these transactions. For firms that have failed to consummate required entitlement transactions on or prior to December 31, 1976, FEA may direct sales and purchases of entitlements pursuant to the provisions of 10 CFR § 211.67(k).

This notice is issued pursuant to Subpart G of FEA's regulations governing its administrative procedures and sanctions, 10 CFR Part 205. Any person aggrieved hereby may file an appeal with FEA's Office of Exceptions and Appeals in accordance with Subpart H of 10 CFR Part 205. Any such appeal shall be filed on or before January 21, 1977.

Issued in Washington, D.C. on December 17, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-37621 Filed 12-20-76; 8:45 am]

ENTITLEMENTS FOR DOMESTIC CRUDE OIL

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT	***** 10 MONTH CLEAN-UP	***** REQUIRED TO BUY	***** REQUIRED TO SELL
A-JOHNSON	0	166,808	0	16,249	-6,034	0	166,808
AGWAY	0	-23	0	0	-23	23	0
ALLIED	48,090	130,080	0	0	-67	0	81,990
AMER-PETROFINA	1,326,315	1,035,307	0	0	61,749	291,008	0
AMERADA-HESS	1,908,761	4,412,784	0	62,543	-29,969	0	2,504,023
AMOCO	12,030,193	8,945,394	0	10,495	-16,901	3,084,799	0
APCO	420,852	509,049	0	0	-1,366	0	88,197
APEX	0	-9	0	0	-9	9	0
ARCO	6,407,787	5,971,501	4,821*	0	-142,259	436,286	0
ARIZONA	62,942	45,004	11,883	0	346	17,938	0
ASAMERA	104,628	155,713	0	0	264	0	51,085
ASHLAND	1,629,606	3,203,862	0	0	-23,553	0	1,574,256
ASIATIC	0	193,972	0	196,866	-2,894	0	193,972
ATLANTIC-CEMENT	0	197	0	0	197	0	197
AUGSBURY	0	-4	0	0	-4	4	0
BAYOU	49,235	55,050	0	0	58	0	5,815
BEACON	223,349	180,534	6,673	0	-5,216	42,815	0
BELCHER	0	208,345	0	208,821	-476	0	208,345
BLUE-RIDGE	0	-309	0	0	-309	309	0
C&H	115	377	0	0	-13	0	262
CALUMET	31,412	35,936	0	0	-212	0	4,524
CANAL	60,532	54,100	0	0	-1,352	6,432	0
CARIBOU	91,333	103,758	0	0	104	0	12,425
CASTLE	0	2,979	0	3,243	-264	0	2,979
CENTRAL	0	-189	0	0	-189	189	0
CF-PETROLEUM	0	548,672	0	0	0	0	548,672
CHAMPLIN	2,016,956	1,490,534	0	0	12,789	526,422	0
CHARTER	542,234	656,080	28,778	0	12,357	0	113,846
CIRILLO	0	32,053	0	33,083	-1,030	0	32,053
CITGO	3,380,256	2,389,265	0	0	-4,201	990,991	0
CLAIBORNE	26,690	40,327	0	0	17,717	0	13,637
CLARK	289,878	674,375	0	0	-2,407	0	384,497
COASTAL	433,830	1,181,123	0	0	26,769	0	747,293
COLONIAL	0	-379	0	0	-379	379	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	***** ENTITLEMENTS PRODUCT	***** 10 MONTH CLEAN-UP	***** POSITION REQUIRED TO BUY	***** REQUIRED TO SELL
COLONIAL-OIL	0	29,073	0	29,073	0	0	29,073
CON-ED	0	-2,200	0	0	-2,200	2,200	0
CON-REF	0	55	0	0	55	0	55
CONOCO	3,606,015	3,154,397	0	49,159	8,582	451,618	0
CONSUMERS-POWER	0	-449	0	0	-449	449	0
CORCO	0	1,308,665	0	154,516	-3,885	0	1,308,665
CRA-FARMLAND	439,060	663,923	0	0	-2,405	0	224,863
CROSS	12,661	61,552	0	0	2,953	0	48,891
CROWN	385,475	531,107	0	0	-2,136	0	145,632
CRYSTAL-OIL	130,832	161,296	0	0	-12,379	0	30,464
CRYSTAL-REF	604	49,267	0	0	-540	0	48,663
DEEPWATER	0	-91	0	0	-91	91	0
DELTA	225,940	345,499	0	0	806	0	119,559
DETROIT-ED	0	739	0	0	739	0	739
DIAMOND	658,612	424,562	0	0	4,125	234,050	0
DORCHESTER	9,906	12,409	0	0	-56	0	2,503
DOW	45,735	179,919	0	0	135	0	134,184
E-SEABOARD	0	119,669	0	120,654	-985	0	119,669
EDDY	35,231	43,281	0	0	68	0	8,050
EDGINGTON-OIL	0	-10,411	-10,941	0	530	10,411	0
EDGINGTON-OXN	0	-5	0	0	-5	5	0
ELM	0	-324	0	0	-324	324	0
ENTERPRISE	0	-38	0	0	-38	38	0
EVANGELINE	69,671	34,785	0	0	51	34,886	0
EXXON	13,346,486	11,660,833	0	523,946	-4,037	1,685,653	0
F-FLETCHER	0	1	0	0	1	0	1
FAMARISS	231,993	379,784	476	0	-41	0	147,791
FARMERS-UN	179,316	419,730	0	0	-226	0	240,414
FLETCHER	7,383	177,230	-9,918	0	13,413	0	169,847
FLINT	10,259	13,524	0	0	-8	0	3,265
FLORIDA-POWER	0	675	0	0	675	0	675
GARY	37,540	94,621	0	0	-71	0	57,081
GEN-PORTLAND	0	-16	0	0	-16	16	0
GETTY	988,900	899,308	0	0	-4,330	89,592	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	***** ENTITLEMENTS PRODUCT	***** 10 MONTH CLEAN-UP	***** POSITION REQUIRED TO BUY	***** REQUIRED TO SELL
GIANT	9,544	152,094	0	0	-185	0	142,550
GIBBS	0	-373	0	0	-373	373	0
GIBSON	26	0	0	0	0	26	0
GLACIER-PARK	62,627	51,737	0	0	0	10,890	0
GLADIEUX	39,963	167,698	0	0	254	0	127,735
GOLDEN-EAGLE	-404**	174,272***	0	0	-2,610	0	174,676
GOLDEN-EAGLE-NY	0	18,820	0	0	2,171	0	18,820
GODD-HOPE	113,696	413,580	-579	16,649	-443	0	299,884
GREAT-NORTHERN	0	-126	0	0	-126	126	0
GUAM	0	403,595	0	0	-2,247	0	403,595
GULF	10,465,995	7,791,156	0	48,254	-12,417	2,674,839	0
GULF-STs	101,399	141,616	0	0	72	0	40,217
HIRI	0	536,225	0	0	2,026	0	536,225
HOWARD	0	88,723	0	90,185	-1,462	0	88,723
HOWELL	769,311	417,293	0	0	1,156	352,018	0
HUNT	304,366	348,167	0	0	-504	0	43,801
MUSKY	561,072	561,519	111,139	0	447	0	447
INDEPENDENT-REF	114,044	118,166	0	0	0	0	4,122
INDIANA-FARM	48,133	265,834	0	0	-467	0	217,701
INTL-PAPER	0	74	0	0	74	0	74
IRVING	0	4,962	0	5,024	-62	0	4,962
J&W	182,668	181,348	71,952	0	-1,320	1,320	0
K-H-WHITE	0	-35	0	0	-35	35	0
KENTUCKY	2,060	4,702	0	0	-29	0	2,642
KERN	355,811	355,811	160,556	0	0	0	0
KERR-MCGEE	1,077,930	1,234,993	0	0	27,657	0	157,063
KUCH	298,194	922,052	0	0	-2,184	0	523,858
LA-WATER	0	7,344	0	0	7,344	0	7,344
LAGLORIA	475,715	201,592	0	0	-73,800	274,123	0
LAKESIDE	27,010	17,277	0	0	-241	9,733	0
LAKE TON	125,287	133,536	2,188	0	-6,403	0	8,249
LITTLE-AMER	1,286,684	1,066,133	473,980	0	325	222,551	0
LOUISIANA-LAND	173,922	403,807	0	0	0	0	229,885
MACMILLAN	46,614	187,519	0	0	-3,515	0	140,905

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	***** ENTITLEMENTS PRODUCT	***** 10 MONTH CLEAN-UP	***** POSITION REQUIRED TO BUY	***** REQUIRED TO SELL
MARATHON	3,681,600	3,452,031	0	0	-5,680	229,569	0
MARION	122,871	271,248	0	0	-798	0	148,377
MID-AMER	3,449	46,263	0	0	-324	0	42,814
MID-TEX	1,411	137,118	0	0	176	0	135,707
MIDLAND	24,763	236,172	-11,244	0	-116	0	211,409
MOBIL	8,338,689	6,537,851	0	70,887	-200,999	1,800,838	0
MOHAWK	478,863	474,242	144,272	0	852	4,621	0
MONSANTO	482,732	371,093	0	0	-632	111,639	0
MORRISON	6,330	127,880	0	0	2	0	121,550
MOUNTAINEER	4,862	4,881	0	0	4	0	19
MURPHY	877,806	905,431	0	0	211	0	27,625
N-AMER-PETRO	161,285	171,791	13,391	0	-2,123	0	10,506
NARRAGANSETT	0	-116	0	0	-116	116	0
NATL-COOP	310,285	467,625	0	0	371	0	157,340
NAVAJO	392,540	419,089	57,343*	0	-1,831	0	26,549
NEW-EDGINGTON	432,548	438,086	158,194	0	0	0	5,538
NEW-ENGL-PETRO	0	284,445	0	288,149	-3,704	0	284,445
NEW-ENGL-POWER	0	-72	0	0	-72	72	0
NEWHALL	153,849	153,104	-6,684	0	95	745	0
NEWMAN	0	-64	0	0	-64	64	0
NORCO	0	62	0	0	62	0	62
NORTHEAST-PETRO	0	51,519	0	52,435	-916	0	51,519
NORTHLAND	44,475	158,921	0	0	-51	0	114,446
NORTHVILLE	0	3,612	0	4,395	-783	0	3,612
OIL-SHALE	2,629,272	1,426,615	1,019	0	-2,556	1,202,657	0
OKC	71,838	165,186	22,980	0	2,009	0	93,348
ORANGE&ROCKLAND	0	65	0	0	65	0	65
OXNARD	22,665	106,315	0	0	0	0	83,650
PASCO	0	-44,044	-48,765	0	4,721	44,044	0
PATCHOGUE	0	3,614	0	3,908	-294	0	3,614
PENNZOIL	606,498	502,464	0	0	-453	104,034	0
PEPCO	0	-969	0	0	-969	969	0
PETRO-HEAT-CT	0	12,596	0	13,181	-585	0	12,596
PETRO-HEAT-PA	0	16,275	0	16,604	-329	0	16,275

REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	E N T I T L E M E N T PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	P O S I T I O N REQUIRED TO BUY	***** REQUIRED TO SELL
PG&E	0	-475	0	0	-475	475	0
PHILLIPS	2,783,635	2,418,030	0	0	101,178	365,605	0
PHILLIPS-PR	0	289,569	0	289,569	0	0	289,569
PIONEER	40,591	160,203	0	0	-5	0	119,612
PITTSTON	0	81,422	0	82,539	-1,117	0	81,422
PLACID	257,912	412,481	0	0	-1,306	0	154,569
PLATEAU	111,820	173,191	0	0	-484	0	61,371
POWERINE	338,072	441,421	0	0	274	0	103,349
PRIDE	87,682	305,405	0	0	-336	0	217,723
PRINCETON	0	28,694	0	0	0	0	28,694
PRULEASE	0	-879	0	0	-879	879	0
QUAKER-ST	28,820	261,714	0	0	-1,831	0	232,894
REMINGTON	0	-90	0	0	-90	90	0
RICO	0	-48	0	0	-48	48	0
ROAD-OIL	963	44,406	0	0	-7	0	43,443
ROCK-ISLAND	386,632	347,189	-28,083	0	546	39,443	0
ROYAL	0	-139	0	0	-139	139	0
SABER-TEX	-77,669 **	163,816 ***	0	0	-7,674	0	241,485
SABRE-CAL	47,633	47,510	24,604	0	-123	123	0
SAGE-CREEK	2,265	3,606	0	0	-7	0	1,341
SAN-JOAGUIN	273,924	234,447	66,200	0	-1,539	39,477	0
SEARS	0	29,736	0	29,767	-31	0	29,736
SEMINOLE	0	155,434	0	0	-3,006	0	155,434
SHELL	11,541,880	9,567,728	0	3,244	345,368	1,974,152	0
SIGMOR	49,740	157,315	0	0	1,812	0	107,575
SKELLY	1,248,634	582,875	0	0	800	665,759	0
SO-HAMPTON	96,469	246,173	0	0	975	0	149,704
SOCAL	7,931,509	9,542,423	0	17,713	-5,805	0	1,610,914
SOCAL EDISON	0	-87	0	0	-87	87	0
SOHIO	1,402,706	3,302,398	0	0	19,842	0	1,899,692
SUMERSET	45,475	70,879	0	0	-310	0	25,404
SOUND	160,885	138,028	1,020	0	-152	22,857	0
SOUTHLAND	443,870	341,392	90,040	0	200	102,478	0
SOUTHWESTERN	4,835	3,622	0	0	0	1,213	0

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REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	***** ENTITLEMENTS PRODUCT	***** 10 MONTH CLEAN-UP	***** P U S I T I O N REQUIRED TO BUY	***** REQUIRED TO SELL
SPRAGUE	0	65,628	0	65,628	0	0	65,628
STEUART	0	41,768	0	42,661	-893	0	41,768
SUNLAND	387,545	287,668	101,809	0	6,278	99,877	0
SUNOCO	5,429,663	4,423,127	0	0	-74,649	1,006,536	0
SWANN	0	75,861	0	76,330	-469	0	75,861
TARRICONE	0	-120	0	0	-120	120	0
TAUBER	0	-83	0	0	-83	83	0
TENNECO	804,904	696,571	0	0	-51,541	108,333	0
TESORO	1,217,492	828,879	0	0	3,465	388,613	0
TEXACO	10,066,363	8,331,711	0	320,117	40,670	1,734,652	0
TEXAS-AMERICAN	24,314	149,442	0	0	0	0	125,128
TEXAS-ASPH	42,497	179,784	21,356*	0	-7,120	0	137,287
TEXAS-CITY	500,284	650,895	0	0	-29,104	0	150,611
THAGARD	177,995	173,285	80,229	0	-4	4,710	0
THE-REFINERY	0	-2,628	0	0	-2,628	2,628	0
THRIFTWAY	23,760	40,955	0	0	-107	0	17,195
THUNDERBIRD	84,537	157,580	0	0	-295	0	73,043
TONKAWA	36,417	80,810	0	0	-193	0	44,393
TOTAL-LEONARD	186,692	384,659	0	0	-1,906	0	197,967
TRANS-OCEAN	0	14,622	0	0	0	0	14,622
UCC-CARIBE	0	133,593	0	133,593	0	0	133,593
UNION-OIL	5,156,851	4,267,320	0	0	79,624	889,531	0
UNION-TEXAS	1,744	227	0	0	227	1,517	0
UNTD-IND	10,480	117,476	0	0	54	0	106,996
UNTD-REF	181,662	388,807	0	0	-14,553	0	207,145
US-OIL	20,768	183,096	0	0	-487	0	162,328
USA-PETROCHEM	34,301	166,003	0	0	0	0	131,702
VEN-FUEL	0	-89	0	0	-89	89	0
VICKERS	233,094	545,934	0	0	673	0	312,840
VULCAN	39,592	153,691	0	0	-124	0	114,099
WALLACE	0	12,904	0	12,904	0	0	12,904
WALLER	0	8,648	0	8,799	-151	0	8,648
WARRIOR	51,956	29,099	993	0	-5,081	22,857	0
WEBBER	0	178	0	0	178	0	178

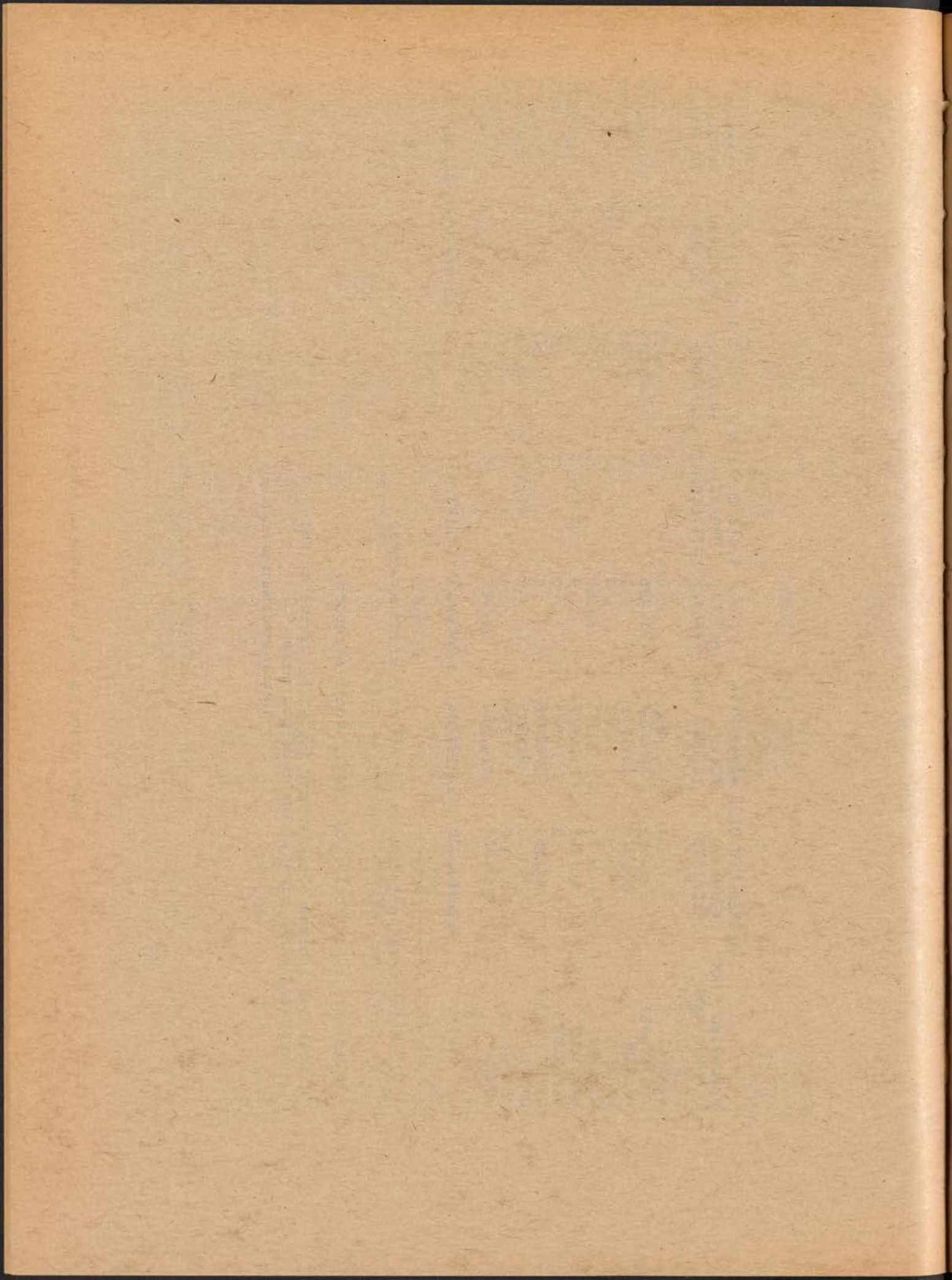
REPORTING FIRM SHORT NAME	DEEMED OLD OIL ADJUSTED RECEIPTS	***** TOTAL ISSUED	***** EXCEPTIONS AND APPEALS	ENTITLEMENTS PRODUCT ENTITLEMENTS	10 MONTH CLEAN-UP	POSITION REQUIRED TO BUY	***** REQUIRED TO SELL
WELLEN	0	-115	0	0	-115	115	0
WEST-COAST	31,506	45,934	-1,256	0	-2,519	0	14,428
WESTERN	53,529	131,150	0	0	7,096	0	77,621
WHALECO	0	-37	0	0	-37	37	0
WICKETT	0	3,345	3,350	0	-5	0	3,345
WINSTON	80,265	212,612	0	0	-10	0	132,347
WIREBACK	0	879	0	0	32	0	879
WITCO	114,045	178,498	0	0	-247	0	64,453
WYATT	0	40,915	0	41,624	-709	0	40,915
YETTER	0	729	0	0	-7	0	729
YOUNG	113,278	116,052	51,727	0	-5	0	2,774
TOTAL	139,312,728	139,312,728	1,593,503	3,142,807	0	22,424,862	22,424,862

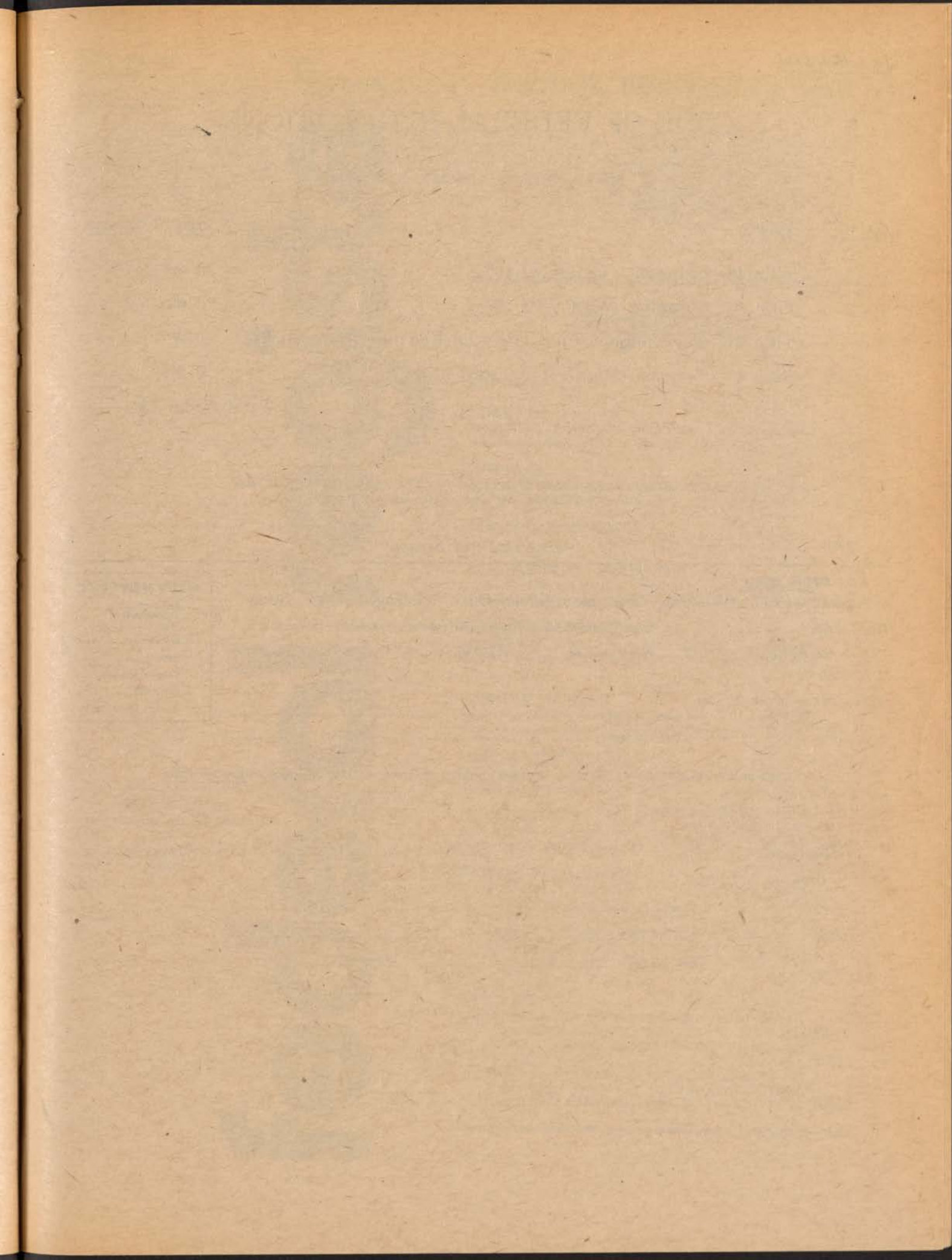
*Also includes entitlements issued to correct an error in this firm's special correction amount.

**Reflects a correction to a prior month's report.

***Does not include entitlements issued by virtue of the negative volume of adjusted receipts shown.

[FR Doc. 76-37621 Filed 12-20-76; 9:16 am]





CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1976)

<u>Quantity</u>	<u>Volume</u>	<u>Price</u>	<u>Amount</u>
_____	Title 46—Shipping (Parts 140–165)	\$4. 00	\$ _____
_____	Title 46—Shipping (Parts 166–199)	2. 65	_____
_____	Title 47—Telecommunication (Part 80–End) 48 [Reserved]	6. 20	_____
_____	Title 49—Transportation (Parts 1000–1199)	3. 95	_____
		Total Order	\$ _____

[A Cumulative checklist of CFR issuances for 1976 appears in the first issue of the Federal Register each month under Title 1]

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