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THURSDAY, JANUARY 13, 1977

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Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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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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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 7—Agriculture

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

[Navel Orange Regulation 396]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation fixes the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period January 14–20, 1977. It is issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907. The quantity of Navel oranges so fixed was arrived at after consideration of the total available supply of Navel oranges, the quantity currently available for market, the fresh market demand for Navel oranges, Navel orange prices, and the relationship of season average returns to the parity price for Navel oranges.

§ 907.696 Navel Orange Regulation 396.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for this regulation to limit the respective quantities of Navel oranges that may be marketed from District 1, District 2, and District 3 during the ensuing week stems from the production and marketing situation confronting the Navel orange industry.

(i) The committee has submitted its recommendation with respect to the quantities of Navel oranges that should be marketed during the next succeeding week. Such recommendation, designed to provide equity of marketing opportunity to handlers in all districts, resulted from consideration of the factors enumerated in the order. The committee further reports that the fresh market demand for Navel oranges appears to be turning for the better. Prices f.o.b. averaged $3.63 a carton on a reported sales volume of 685 carlots last week, compared with $3.68 per carton on sales of 651 carlots a week earlier. Track and rolling supplies at 329 cars were up 45 cars from last week.

(ii) Having considered the recommendation and information submitted by the committee, and other available information, the Secretary finds that the respective quantities of Navel oranges which may be handled should be fixed as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time this regulation must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period herein specified; and compliance with this regulation will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on January 11, 1977.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 14, 1977, through January 20, 1977, are hereby fixed as follows:

(i) District 1: 932,000 cartons;
(ii) District 2: 184,000 cartons;
(iii) District 3: 34,000 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in said amended marketing agreement and order.

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

Dated: January 12, 1977.

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

[FR Doc.77-1342 Filed 1-12-77;12:09 pm]

PART 928—PAPAYAS GROWN IN HAWAII

Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This document authorizes expenses of $310,000, for the maintenance and functioning of the Papaya Administrative Committee, under Marketing Order No. 928, for the fiscal year 1977, establishes an assessment rate of five mills ($0.005) per pound of papayas handled during such year by each first handler and provides for the transfer of unexpended assessment funds from the previous fiscal year to the program's reserve.

On December 8, 1976, notice of proposed rule making was published in the FEDERAL REGISTER (41 FR 53672) regarding proposed expenses and the related rate of assessment for the fiscal year ending December 31, 1977, and carryover of unexpended funds, pursuant to the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal until December 28, 1976. None were submitted.

After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Papaya Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 928.206 Expenses, rate of assessment, and carryover of unexpended funds.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Papaya Administrative Committee dur-

ing the period January 1, 1977, through December 31, 1977, will amount to $310,000.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 928.41, is fixed at $0.005 per pound of papayas.

(c) *Reserve.* Unexpended assessment funds in excess of expenses incurred during the fiscal year ended December 31, 1976, shall be carried over as a reserve in accordance with applicable provisions of § 928.42 of the marketing agreement and order.

Terms used in the marketing agreement and this part shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and this part.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of papayas are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable papayas from the beginning of such period; and (3) such period began on January 1, 1977, and the rate of assessment herein fixed will automatically apply to all assessable papayas beginning with such date.

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

Dated: January 10, 1977.

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

[FR Doc.77-1190 Filed 1-12-77;8:45 am]

[Amdt. 1]

PART 971—LETTUCE GROWN IN LOWER RIO GRANDE VALLEY IN SOUTH TEXAS

Increase in Rate of Assessment

Notice of rule making regarding a proposed increase in the rate of assessment recommended by the South Texas Lettuce Committee for its fiscal period ending July 31, 1977, was published in the FEDERAL REGISTER December 23, 1976 (41 FR 55880).

The committee is the administrative agency established under Marketing Agreement No. 144 and Order No. 971 (7 CFR Part 971), regulating the handling of lettuce grown in the Lower Rio Grande Valley in South Texas. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice afforded interested persons an opportunity to file written comments not later than January 7, 1977. None was filed.

On December 17, 1976, the committee voted to increase the rate of assessment to be paid by each handler to 2½ cents ($0.025) per carton of lettuce handled by him as the first handler thereof during said fiscal period, from the 1½ cents ($0.015) published November 10, 1976 (41 FR 49625). Unfavorable weather conditions in the Lower Rio Grande Valley have materially reduced planted lettuce acreage and yields. As a result, the committee will not be able to meet its budgeted expenses unless the assessment rate is increased.

After consideration of all relevant matters, including the proposal set forth in the notice, it is found that the increase in the rate of assessment should be approved.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because this part requires that the increased rate of assessment for the said fiscal period shall apply to all assessable lettuce from the beginning of such period.

The amendment is as follows:

Revise § 971.216(b) (41 FR 49625, November 10, 1976) as follows:

§ 971.216 Expenses and rate of assessment.

* * * * *

(b) The rate of assessment to be paid by each handler in accordance with this part shall be two and one-half cents ($0.025) per carton of assessable lettuce handled by him as the first handler during the fiscal period.

* * * * *

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

Dated: January 10, 1977.

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

[FR Doc.77-1175 Filed 1-12-77;8:45 am]

Title 12—Banks and Banking

CHAPTER VI—FARM CREDIT ADMINISTRATION

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Miscellaneous Amendments

The Farm Credit Administration, by its Federal Farm Credit Board, took final action on amendments to its regulations and authorized their issuance after clearance by the Civil Service Commission. Such clearance was given on December 8, 1976. These amendments apply to employees of the Farm Credit Administration and (1) require administrative approval to engage in outside employment, (2) clarify who is required to submit a statement of employment and financial interests, and (3) prohibit all employees of the Farm Credit Administration from purchasing security obligations of the Farm Credit banks.

Notice of proposed rulemaking provided for in 5 U.S.C. 553(b), and public procedure thereon, is found unnecessary and not in the public interest since the amendments apply only to agency personnel.

Chapter VI of Title 12 of the Code of Federal Regulations is amended by revising § 601.110(c), adding § 601.127, and revising § 601.170, as follows:

§ 601.110 Conflict of interest.

Except as specifically authorized by law or these regulations, no officer or employee of the Farm Credit Administration:

* * * * *

(c) Shall, directly or indirectly, purchase security obligations of the Farm Credit banks for personal investment;

* * * * *

§ 601.127 Administrative approval to engage in outside employment.

(a) The provisions of this paragraph will be observed with respect to all outside employment or other outside activity. Each employee must be alert to identify and to avoid any situation that would involve him or her in prohibited activity. Aside from avoiding outside employment prohibited by §§ 601.125 and 601.126, each employee must also obtain administrative approval before engaging in outside paid employment of the following types:

(1) Writing or editing, except activities which pertain to the private interest of employees regarding hobbies, sports or cultural activities which do not conflict actually or apparently with officially assigned duties;

(2) Speaking engagements, except where the subject matter is unrelated to the subject matter of the employee's official duties;

(3) Teaching and lecturing;

(4) Regular self-employment;

(5) Consulting services;

(6) Holding state or local public office;

(7) Outside employment or other outside activity involving an institution of the Farm Credit System or an employee of such institution.

(8) Outside employment which will require annual leave or which is in excess of 20 hours per week;

(9) Any other outside work concerning the propriety of which an employee is uncertain.

(b) A request for administrative approval of outside employment or other outside activity shall be in writing and show:

(1) Employee's name, occupational title and Federal salary;

(2) Nature of the activity—a full description of specific duties or services to be performed;

(3) Name and business of person or organization for which the work will be done. (In the case of self-employment in a professional capacity serving a large number of individuals, instead of listing each client, the type of services to be rendered and estimate of the total number of clients anticipated during the next year will be indicated.);

(4) Estimated total time that will be devoted to the activity (if on a continuing basis, the estimated time per year; if not, the anticipated ending date);

(5) Whether service can be performed entirely outside of usual duty hours; if

not, estimated number of hours of absence from work that will be required.

(c) The request for approval will be submitted to the supervisor who will make a written recommendation for approval or disapproval and forward the request through the appropriate Deputy Governor to the Director of Personnel. The Director of Personnel will notify employees in writing of the actions taken on their requests and the reasons for approval or disapproval. This notification will be coordinated and cleared with the employee's supervisor prior to issuance. All approved requests and a copy of the notification of the approval action will be maintained in the Personnel Division.

(d) If there is a change in the nature or scope of the duties or services performed or the nature of the employer's business, the employee will submit a revised request for approval promptly.

(e) Failure to request administrative approval for outside employment or other outside activity for which approval is required is ground for disciplinary action.

(f) All requests for approval will be treated as confidential and made available only to specifically authorized persons. Copies will be kept in a special file on outside employment and in the official personnel folder of the employee concerned.

§ 601.170 Statements of employment and financial interests.

(a) A statement of employment and financial interests in the form prescribed by the Farm Credit Administration shall be furnished by each officer or employee who is in grade GS–16 or above under section 5332 of Title 5, United States Code, or in comparable or higher positions not subject to that statute and by the following officers or employees:

(1) Employees classified at the GS–13 level and above, under 5 U.S.C. 5332 or at comparable pay levels under other authority, unless otherwise exempted pursuant to subparagraph (4) of this paragraph whose duties and responsibilities require the exercise of judgment in making government decisions or in taking government actions in regard to:

(i) Contracting or procurement, including the evaluation or selection of contractors; the negotiation, approval, or award of contracts; the supervision of activities performed by contractors, including the administration, monitoring, audit, and inspection of contractors and contract activities; and the initiation or approval of requests to procure supplies, equipment or services, other than those common items available from FCA or GSA inventories;

(ii) Auditing financial transactions;

(iii) Using or disposing of excess or surplus property.

(2) Employees classified at the GS–13 level and above under 5 U.S.C. 5332 or at comparable pay levels under other authority and who are identified by the Director of Personnel as holding positions requiring the incumbent thereof to exercise judgment in making government decisions or taking actions where such decisions or actions may have an economic impact on the interest of any non-Federal enterprise, including the institutions of the cooperative Farm Credit System.

(3) Employees classified below the GS–13 level under 5 U.S.C. 5332 or at a comparable pay level under other authority, and who are in positions which otherwise meet the criteria of subparagraphs (1) and (2) of this paragraph, providing the Civil Service Commission has approved the determination that the incumbents of such positions should be required to file statements of employment and financial interests in order to protect the integrity of the government and to avoid the employee's involvement in a possible conflict of interest situation.

(4) An employee described in subparagraphs (1) and (2) of this paragraph may be exempted from the requirement for filing a statement of employment and financial interests when the Director of Personnel determines that the employee's duties are of such a nature, or are at such a level of responsibility and are subject to such a degree of supervision and review, that the possibility of his or her becoming involved in a conflict of interest is remote.

The grievance procedure of the Farm Credit Administration shall be available for review of a complaint by any officer or employee that his or here position has been improperly included as one requiring a submission of a statement of employment and financial interests.

(Secs. 5.9, 5.18, 85 Stat. 619, 621)

C. K. CARDWELL,
Acting Governor,
Farm Credit Administration.

[FR Doc.77-1144 Filed 1-12-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-161, Amdt. 31]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Clarification of Rules Applicable to Applications for Emergency Exemptions

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 6, 1977.

Effective: February 14, 1977.

Adopted: January 6, 1977.

In Order 77–1–26, issued contemporaneously herewith, the Board reiterated its interpretation of section 410 of its Rules of Practice (14 CFR No. 302.410) as authorizing the submission of oral requests for emergency exemption authority. In doing so, the Board determined to amend § 302.410 as to remove any doubt as to this interpretation.

Since this amendment is merely interpretive of existing agency practice and procedure, notice and public procedure thereon are unnecessary and the amendment may be effective January 6, 1977.

Accordingly, the Board hereby revises paragraph (b) of section 302.410 (14 CFR § 302.410(b)) effective January 6, 1977, to read as follows:

§ 302.410 Emergency exemptions.

* * * * *

(b) *Applications.* (1) Applications for emergency exemption need not conform to the requirements of Subparts A and D of this part except that they must be in writing and must set forth, with detailed facts and evidence in support thereof, the grounds on which the exemption is requested. In addition, any applicant requesting such action shall state the reasons it deems adequate to justify departure from the normal procedures and shall state which air carriers have been notified in accordance with paragraph (c) of this section. The Board, moreover, may require additional information from any applicant before acting on the application.

(2) The Board shall consider oral requests, including telephonic requests, for emergency exemption authority under this section in circumstances where time does not permit the immediate filing of a written application. All oral requests, however, must provide the information required by subsection (b)(1) except that evidence in support thereof need not be tendered at the time such request is made. All oral requests must be confirmed by written application within three (3) days.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply secs. 101(3), 416(b) and 1001, 72 Stat. 737, 771 and 788; 49 U.S.C. 1301, 1386 and 1481.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1171 Filed 1-12-77;8:45 am]

[Reg. OR-107, Amdt 53]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION: NONHEARING MATTERS

Clarification of Delegation of Authority to the Director Bureau of Operating Rights

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 6, 1977.

Effective: February 14, 1977.

Adopted: January 6, 1977.

In Order 77–1–26, issued contemporaneously herewith, the Board affirmed the determination of the Director, Bureau of Operating Rights, in Docket 29383 that section 385.13 of the Organization Regulations authorizes the Director to grant or deny exemptions from section 403 of the Federal Aviation Act in conjunction with his authority to grant or deny requests for authority to conduct specific charter operations. However, the Board stated that it was persuaded to amend section 385.13 in order to remove any possible ambiguity on this issue. The

Board also stated that the proceeding in Docket 29383 had caused it to focus on the desirability of amending section 385.13 in order to broaden the authority delegated to the Director thereunder to grant or deny air carrier authority to conduct specific charter operations in interstate air transportation, in addition to his existing authority to take such action with respect to overseas and foreign air transportation. The amendments herein implement those determinations.

Since these amendments merely affect internal agency organization and procedure, notice and public procedure thereon are unnecessary and the amendments may be made effective January 6, 1977.

Accordingly, the Board hereby revises paragraph (s) of section 385.13 (14 CFR § 385.13(s)), effective January 6, 1977, to read as follows:

§ 385.13 Delegation to the Director, Bureau of Operating Rights.

* * * * *

(s) With respect to air carrier authority to conduct specific charter operation, other than a MAC operation:

(1) Grant or deny an air carrier such authority in interstate, overseas or foreign air transportation, imposing such conditions as exclusion of one-way passengers or limitations on payments for labor in arranging the charter; and approve or disapprove minor changes prior to flight date in charters previously authorized by order (e.g., changes regarding flight dates, departures or landing points, aircraft, persons authorized for one-way passage, intermingling of passengers, or substituting another carrier in cases of emergency).

(2) Grant or deny requests for exemption from section 403 of the Act, where grant or denial of the request is in conjunction with and incident to requests for authority under subsection (s)(1) of this section.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989, 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1170 Filed 1-12-77;8:45 am]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-108, Amdt. 54]

PART 385—DELEGATION AND REVIEW OF ACTION UNDER DELEGATION: NONHEARING MATTERS

Effective Date of Delegations of Authority

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., January 6, 1977.

Effective: January 6, 1977.

Adopted: January 6, 1977.

Part 385 of the Board's Organization Regulations sets forth, *inter alia*, certain delegations of authority from the Board to staff members. Presently, § 385.9 provides that the delegations of authority set forth in Part 385 shall become effective upon publication in the FEDERAL REGISTER. It has come to the attention of the Board that it is often desirable for amendments to Part 385 to become effective before publication in the FEDERAL REGISTER can be accomplished.[1] Accordingly, the Board is amending § 385.9 to provide that delegations of authority set forth in Part 385 shall become effective "upon publication."

Since this amendment affects a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may be effective immediately.

Accordingly, the Board hereby amends Part 385 of its Organization Regulations (14 CFR Part 385) effective January 6, 1977, as follows:

Amend § 385.9 to read as follows:

§ 385.9 Effective date of delegations and procedures.

The delegations and procedures set forth in this part shall be effective upon publication.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324. Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; 49 U.S.C. 1324 (note).)

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1167 Filed 1-12-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER II—TENNESSEE VALLEY AUTHORITY

PART 300—ETHICAL AND OTHER CONDUCT STANDARDS AND RESPONSIBILITIES OF EMPLOYEES AND SPECIAL GOVERNMENT EMPLOYEES

Subpart B—Ethical and Other Conduct Standards and Responsibilities of Employees

APPENDIX

The Appendix to § 300.735-41(b) is revised to read as follows:

§ 300.735-41 Employees required to submit statements.

* * * * *

(b) * * *

APPENDIX

As provided in § 300.735-41(b), employees in the following positions, which are described in § 300.735-41(a)(2) and (3) and which are in addition to the positions described in § 300.735-41(a)(1), must submit statements of employment and financial interests:

OFFICE OF THE GENERAL MANAGER

Assistant Director of Equal Employment Opportunity, Grade M-6

DIVISION OF PERSONNEL

Chief, Employee Relations Branch, Grade M-7
Assistant Chief, Employee Relations Branch, Grade M-6
Associate Chief, Employment Branch, Grade M-6
Assistant Chief, Employment Branch, Grade M-5

DIVISION OF FINANCE

Chief, Auditing Branch, Grade M-7
Assistant Chief, Auditing Branch, Grade M-6
Accounting Staff Officer, Grade M-5
Supervisor, Section, Audit Section, Grade M-5
Supervisor, Section, Voucher Audit Section, Grade M-5

DIVISION OF PURCHASING

Chief, Equipment Procurement Branch, Grade M-7
Chief, Fuels Procurement Branch, Grade M-7
Chief, Materials Procurement Branch, Grade M-7
Chief, Nuclear Procurement Branch, Grade M-7
Chief, Traffic Branch, Grade M-7
Assistant Chief, Equipment Procurement Branch, Grade M-6
Assistant Chief, Fuels Procurement Branch, Grade M-6
Assistant Chief, Materials Procurement Branch, Grade M-6
Assistant Chief, Nuclear Procurement Branch, Grade M-6
Assistant Chief, Traffic Branch, Grade M-6
Chief, Management Services Staff, Grade M-6
Chief, Procurement Planning Staff, Grade M-6
Procurement Systems Analyst, Grade M-5
Purchasing Agent, Grade M-5
Supervisor, Section, Construction and Building Materials Section, Grade M-5
Supervisor, Section, Eastern Section, Grade M-5
Supervisor, Section, Electrical Section, Grade M-5
Supervisor, Section, Equipment Open Market Section, Grade M-5
Supervisor, Section, Fuels Traffic Section, Grade M-5
Supervisor, Section, General Traffic Section, Grade M-5
Supervisor, Section, Materials Open Market Section, Grade M-5
Supervisor, Section, Mechanical Section, Grade M-5
Supervisor, Section, Nuclear Equipment Section, Grade M-5
Supervisor, Section, Procurement Studies and Reports Section, Grade M-5
Supervisor, Section, Structural and General Supply Section, Grade M-5
Supervisor, Section, Systems and Procedures Section, Grade M-5
Supervisor, Section, Western Section, Grade M-5

DIVISION OF PROPERTY AND SERVICES

Chief, Computing Services Branch, Grade M-7
Chief, Land Branch, Grade M-7
Chief, Office Service Branch, Grade M-7
Chief, Public Safety Service Branch, Grade M-7
Chief, Transportation Branch, Grade M-7
Manager of Properties, Grade M-7
Assistant Chief, Computing Services Branch, Grade M-6
Assistant Chief, Land Branch, Grade M-6
Assistant Chief, Office Service Branch, Grade M-6
Assistant Chief, Transportation Branch, Grade M-6
Chief, Property Administration Branch, Grade M-6
Manager, Operations, Office Service Operations, Grade M-6

[1] Publication in the Federal Register goes beyond what is required by Reorganization Plan No. 3 of 1961, which provides in pertinent part only that the Board may delegate its functions "by published order or rule."

Manager, Development, Systems and Applications Development, Grade M-6
Personnel Officer, Grade M-6
Supervisor, Appraisals, Grade M-6
Supervisor, Section, Duck River Section, Grade M-6
Supervisor, Land Buying, Grade M-6
Supervisor, Titles, Grade M-6
Administrative Officer, Grade M-5
Airplane Pilot, Grade M-5
Assistant Supervisor, Land Buying, Grade M-5
Assistant to Director of Property and Services, Grade M-5
Building Management Specialist, Grade M-5
Coordinator, Information Resources Management, Grade M-5
Specialist in Property Management, Grade M-5
Supervisor, Services, Appraisal Section, Grade M-5
Supervisor, Services, Bear Creek Section, Grade M-5
Supervisor, Staff, Facilities Evaluation and Acquisition, Grade M-5
Supervisor, Section, Land Management Section, Grade M-5
Supervisor, Section, Land Use Section, Grade M-5
Supervisor, Section, Office Service Operations, Grade M-5
Supervisor, Services, Office Systems Section, Grade M-5
Supervisor, Section, Operating Services Section, Grade M-5
Supervisor, Section, Operation and Maintenance Section, Grade M-5
Supervisor, Section, Public Safety Section, Grade M-5
Supervisor, Unit, Records Administration, Grade M-5
Supervisor, Services, Reproduction and Word Processing Section, Grade M-5
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Supervisor, Section, Systems and Applications Development, Grade M-5
Supervisor, Services, Systems and Applications Development, Grade M-5
Supervisor, Services, Title Section, Grade M-5
Supervisor, Section, Tributary Area Section, Grade M-5
Supervisor, Services, Uranium Properties Unit, Grade M-5

DIVISION OF WATER MANAGEMENT

Chief, Data Services Branch, Grade M-7
Chief, Mapping Services Branch, Grade M-7
Chief, Water Systems Development Branch, Grade M-7

OFFICE OF ENGINEERING DESIGN AND CONSTRUCTION

OFFICE OF THE MANAGER OF ENGINEERING DESIGN AND CONSTRUCTION

Assistant to Manager of Engineering Design and Construction (relationships with outside vendors), Grade M-7
Quality Assurance Manager, Grade M-7

DIVISION OF ENGINEERING DESIGN

Assistant Chief, Architectural Design Branch, Grade M-7
Assistant Design Project Manager, Grade M-7
Assistant to Director of Engineering Design, Grade M-7
Chief, Inspection and Testing Branch, Grade M-7
Civil Design Project Engineer, Grade M-7
Civil Engineer, Grade M-7
Design Project Manager, Grade M-7
Electrical Design Project Engineer, Grade M-7
Electrical Engineer, Grade M-7
Mechanical Design Project Engineer, Grade M-7
Mechanical Engineer, Grade M-7
Assistant to Chief, Civil Engineering and Design Branch, Grade M-6
Assistant to Chief, Electrical Engineering and Design Branch, Grade M-6
Assistant Chief, Inspection and Testing Branch, Grade M-6
Assistant to Chief, Electrical Engineering Branch, Grade M-6
Civil Design Project Engineer, Grade M-6
Electrical Design Project Engineer, Grade M-6
Mechanical Design Project Engineer, Grade M-6
Mechanical Engineer (contract administration), Grade M-5

DIVISION OF CONSTRUCTION

Construction Engineer, Grade M-7
General Construction Superintendent, Grade M-7
Project Manager, Grade M-7
Chief, Project Controls Staff, Grade M-6
Chief, Project Services Staff, Grade M-6
Chief, Quality Assurance Staff, Grade M-6
General Construction Superintendent, Grade M-6
Assistant to Director of Construction (Safety), Grade M-5
Supervisor, Warehouse Services Unit, Grade M-5
Welding Engineer, Grade M-5

OFFICE OF POWER

OFFICE OF THE MANAGER OF POWER

Chief, Financial Planning and Budget Staff, Grade M-7
Chief, Management Services Staff, Grade M-7
Quality Assurance Manager, Grade M-7
Assistant Quality Assurance Manager, Grade M-6
Chief, Systems Planning and Development Staff, Grade M-6
Economist, Grade M-6
Supervisor, Power Stores Section, Grade M-6
Assistant Supervisor, Power Stores Section, Grade M-5
Assistant to Chief, Power Research Staff, Grade M-5
Chemical Engineer (responsible for projects involving contractors outside TVA), Grade M-5
Environmental Engineer, Grade M-5
Supervisor, Electrical Engineering Research Section, Grade M-5
Supervisor, Energy Research Section, Grade M-5
Supervisor, Environmental Evaluation Section, Grade M-5
Supervisor, Environmental Research Section, Grade M-5
Supervisor, LMFBR Project Section, Grade M-5

DIVISION OF POWER CONSTRUCTION

Area Construction Manager, Grade M-7
Assistant Area Construction Manager, Grade M-6
Construction Engineer, Grade M-5
General Construction Superintendent, Grade M-5
Supervisor, Technical Services, Grade M-5

DIVISION OF POWER PRODUCTION

Assistant Chief, Steam-Electric Generation Branch, Grade M-7
Chief, Hydroelectric Generation Branch, Grade M-7
Chief, Plant Engineering Branch, Grade M-7
Chief, Power Plant Maintenance Branch, Grade M-7
Power Plant Superintendent, Grade M-7
Assistant Chief, Hydroelectric Generation Branch, Grade M-6
Assistant to Chief, Nuclear Generation Branch, Grade M-6
Coordinator, Training Center, Grade M-6
Electrical Engineer, Grade M-6
Mechanical Engineer, Grade M-6
Nuclear Engineer, Grade M-6
Power Plant Superintendent, Grade M-6
Superintendent, Power Service Shops, Grade M-6
Supervisor, Services, Administrative Services, Grade M-5

DIVISION OF POWER SYSTEM OPERATIONS

Chief, Transmission Maintenance and Test Branch, Grade M-7

DIVISION OF POWER RESOURCE PLANNING

(Acting) Assistant Director of Power Resource Planning, Grade M-7
Chief, Fossil Fuels Planning Branch, Grade M-7
Chief, Nuclear Fuels Planning Branch, Grade M-7
Chief Nuclear Raw Materials Branch, Grade M-7
Chief, Regulatory Branch, Grade M-7
(Acting) Chief, Power Supply Planning Branch, Grade M-6
Manager, Field Operations, Grade M-6
Nuclear Engineer, Grade M-6
Project Engineer, Grade M-6
Fuels Engineer, Grade M-5
Nuclear Engineer, Grade M-5
Power Supply Engineer, Grade M-5
Project Manager, Grade M-5
Supervisor, Services, Administrative Services, Grade M-5
Supervisor, Section, BWR Projects Section, Grade M-5
Supervisor, Section, Environmental Assessment Section, Grade M-5
Supervisor, Section, Environmental Planning Section, Grade M-5
Supervisor, Section, Exploration Section, Grade M-5
Supervisor, Section, Fuel Cycle Services Section, Grade M-5
Supervisor, Section, Fuels Economics Section, Grade M-5
Supervisor, Section, Fuels Engineering Section, Grade M-5
Supervisor, Section, Fuel Technology Section, Grade M-5
Supervisor, Section, Methods Development Section, Grade M-5
Supervisor, Section, Planning Section, Grade M-5
Supervisor, Section, Project Siting Section, Grade M-5
Supervisor, Section, Special Projects Section, Grade M-5
Supervisor, Section, System Planning Section, Grade M-5
Supervisor, Staff, Systems Development Staff, Grade M-5

DIVISION OF POWER UTILIZATION

Assistant to Director of Power Utilization, Grade M-7
Chief, Direct Service Branch, Grade M-7
Chief, Distributor Branch, Grade M-7
Chief, Rate Branch, Grade M-7
District Manager, Grade M-7
Assistant District Manager, Grade M-5

DIVISION OF TRANSMISSION PLANNING AND ENGINEERING

Chief, Civil Engineering and Design Branch, Grade M-7
Chief, Communication Engineering and Design Branch, Grade M-7
Chief, Electrical Engineering and Design Branch, Grade M-7
Chief, Transmission System Planning Branch, Grade M-7

Chief, Transmission System Siting and Clearance Staff, Grade M-7
Assistant Chief, Civil Engineering and Design Branch, Grade M-6
Assistant Chief, Communication Engineering and Design Branch, Grade M-6
Assistant Chief, Electrical Engineering and Design Branch, Grade M-6
Civil Engineer, Grade M-5
Supervisor, Section, Materials, Specifications, and Procurement Section, Grade M-5
Supervisor, Section, Substation Projects Section, Grade M-5

OFFICE OF AGRICULTURAL AND CHEMICAL DEVELOPMENT

OFFICE OF THE MANAGER OF AGRICULTURAL AND CHEMICAL DEVELOPMENT

Administrator, International Fertilizer Program, Grade M-7
Assistant to Manager of Agricultural and Chemical Development, Grade M-7
Administrative Officer, Grade M-6
Personnel Officer, Grade M-6
Personnel Officer, Grade M-5
Supervisor, Services, Safety Engineering Services, Grade M-5

DIVISION OF AGRICULTURAL DEVELOPMENT

Chief, Agricultural Resource Development Branch, Grade M-7
Chief, Soils and Fertilizer Research Branch, Grade M-7
Chief, Test and Demonstration Branch, Grade M-7
Agricultural Economist (contract administration), Grade M-6
Assistant Chief, Test and Demonstration Branch, Grade M-6
Supervisor, Section, Distribution Economics Section, Grade M-6
Supervisor, Section, Field Section, Grade M-6
Supervisor, Section, Process and Product Improvement Section, Grade M-6
Agricultural Economist (contract administration), Grade M-5
Supervisor, Services, Administrative Services, Grade M-5

DIVISION OF CHEMICAL DEVELOPMENT

Chief, Applied Research Branch, Grade M-7
Chief, Design Branch, Grade M-7
Chief, Fundamental Research Branch, Grade M-7
Chief, Process Engineering Branch, Grade M-7
Chief, Services, Administrative Services, Grade M-6
Electrical Engineer, Grade M-6
Mechanical Engineer, Grade M-6

DIVISION OF CHEMICAL OPERATIONS

Chief, Ammonia Branch, Grade M-7
Chief, Maintenance Branch, Grade M-7
Chief, Nitrogen Fertilizer Branch, Grade M-7
Supervisor, Section, Central Services Section, Grade M-5

DIVISION OF ENVIRONMENTAL PLANNING

Chief, Air Quality Branch, Grade M-7
Chief, Staff, Applied Research and Education Staff, Grade M-7
Chief, Radiological Hygiene Branch, Grade M-7
Chief, Water Quality and Ecology Branch, Grade M-7
Assistant Chief, Industrial Hygiene Branch, Grade M-6
Assistant Chief, Water Quality and Ecology Branch, Grade M-6
Assistant to Chief, Water Quality and Ecology Branch, Grade M-6
Chief, Staff, Environmental Assessment and Compliance Staff, Grade M-6
Chief, Laboratory Branch, Grade M-6
Supervisor, Section, Industrial Hygiene Engineering Section, Grade M-6
Budget Officer, Grade M-5
Chief, Staff, Central Services Staff, Grade M-5
Chief, Staff, Hazard Control Compliance Staff, Grade M-5
Personnel Officer, Grade M-5
Safety Engineer, Grade M-5

DIVISION OF MEDICAL SERVICES

Medical Administrator, Grade M-7
Chief, Area Medical Service, Grade P-2
Chief, Staff, Health Projects Staff, Grade P-2
Chief, Staff, Special Health Services Staff, Grade P-2

OFFICE OF TRIBUTARY AREA DEVELOPMENT

Chief, Staff, Program Implementation Staff, Grade M-7
Chief, Staff, Administrative Services Staff, Grade M-6
Chief, Staff, Program Planning Staff, Grade M-6

DIVISION OF FORESTRY, FISHERIES, AND WILDLIFE DEVELOPMENT

Chief, Forest and Wildlife Resources Branch, Grade M-7
Assistant Chief, Forest and Wildlife Resources Branch, Grade M-6
Chief, Services, Administrative and Protective Services, Grade M-6
Facilities Manager, Grade M-6
Projects Manager, Reclamation, Revegetation, and Tree Improvement, Grade M-6
Projects Manager, Resource Projects Management, Grade M-6
Personnel Officer, Grade M-5
Staff Forester (reclamation compliance), Grade M-5

Dated: January 5, 1977.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
General Manager.

[FR Doc.77-1126 Filed 1-12-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER D—MISCELLANEOUS EXCISE TAXES

[T.D. 7461]

HIGHWAY MOTOR VEHICLE USE TAX REGULATIONS, MANUFACTURERS AND RETAILERS EXCISE TAX REGULATIONS, AND TEMPORARY EXCISE TAX REGULATIONS

Highway Vehicles

By a notice of proposed rule making appearing in the FEDERAL REGISTER for January 5, 1976 (41 F.R. 768), amendments to the Highway Motor Vehicle Use Tax Regulations (26 CFR Part 41) and the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) were proposed in order to clarify the definition of "highway vehicle" and to apply such definition uniformly for purposes of various sections of the Internal Revenue Code of 1954. Amendments to the Manufacturers and Retailers Excise Tax Regulations were also proposed to conform them to changes made in section 4061(a) by section 401 (a) (1) and (h) (1) of the Revenue Act of 1971 (85 Stat. 530, 534), relating to repeal of manufacturers excise tax on passenger automobiles, light-duty trucks, etc., and to the amendment of section 6241(a) by section 205 (b) (1) (A) of the Airport and Airway Revenue Act of 1970 (84 Stat. 241). In addition, it was proposed to delete § 142.1-1(d) of the Temporary Excise Tax Regulations under the Revenue Act of 1971 (26 CFR 142.1-1(d)), relating to light-duty trucks, buses, and related articles.

Comments were received in response to the notice of proposed rule making and a public hearing was held on May 20, 1976. After consideration of all relevant matter presented by interested persons regarding the proposed rules, those rules are adopted as revised in certain respects by this document.

The principal revisions to those rules, as adopted by this document, may be summarized as follows:

1. Paragraph (d) (2) (i) of § 48.4061 (a)-1, relating to the exception to the definition of highway vehicle for certain specially designed mobile machinery for nontransportation functions, has been clarified in several particulars. Notably, machinery or equipment will be considered to be permanently mounted if attached to a chassis by welding, bolting, or riveting. The special design of the chassis need not have been authored by the manufacturer. The chassis may serve as a carriage or mount for the particular machinery or equipment involved when not in operation. Finally, the list of nontransportation functions has been expanded to include processing and drilling; a similar change was made to subdivisions (ii) and (iii) of § 48.4061 (a)-1(d) (2).

2. Paragraph (d) (2) (ii) of § 48.4061 (a)-1 relating to the exception to the definition of highway vehicle for certain vehicles specially designed for offhighway transportation, has been clarified. The various functions, performed by equipment affixed to a vehicle, of caring for a load transported by the vehicle over the public highways are considered to be related to public highway transportation. Finally, a series of criteria are described for determining whether the use of a vehicle to transport a load over the public highways is substantially limited or substantially impaired.

3. Paragraph (e) (2) (ii) and (iii) of § 48.4061 (a)-1, relating to tax-free sales of chassis and bodies for use as a component of a vehicle other than a highway vehicle, has been modified. Pursuant to such provision, a manufacturer or reseller may sell a chassis or body tax free if he is furnished an appropriate form of statement by the purchaser and if he retains such statement for at least 3 years and discloses on the sales invoice the tax-free nature of the sale. However, in appropriate cases, the Internal Revenue Service may directly notify a manufacturer or reseller that sales of a specified type of chassis or body may not be made tax free under this provision.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

On January 5, 1976, a notice of proposed rule making was published in the

FEDERAL REGISTER (41 FR 768) with respect to amending the Highway Motor Vehicle Use Tax Regulations (26 CFR Part 41), the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48), and the Temporary Excise Tax Regulations under the Revenue Act of 1971 (26 CFR Part 142). After consideration of all relevant matter presented by interested persons regarding the proposed rules, such regulations are hereby amended as follows:

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

PARAGRAPH 1. Section 41.4482(a)–1 is revised to read as follows:

§ 41.4482(a)–1 Definition of highway motor vehicle.

(a) *Highway motor vehicle.* The term "highway motor vehicle" means any vehicle that is both—

(1) A vehicle propelled by means of its own motor, whether such motor is powered by gasoline, diesel fuel, special motor fuels, electricity, or otherwise, and

(2) A "highway vehicle" as defined in paragraph (c) of this section.

(b) *Treatment of certain excluded vehicles.* Although trailers and semitrailers used in combination with highway trucks or truck-tractors are not vehicles the use of which is subject to the tax imposed by section 4481 (a), trailers and semitrailers customarily used in combination with highway trucks or truck-tractors are taken into account in determining the taxable gross weight of the highway motor vehicle under § 41.4482(b)–1, which is the base of the tax.

(c) *Highway vehicle.* For the definition of the term "highway vehicle" as used in this subchapter, see § 48.4061(a)–1 (d).

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

PAR. 2. Section 48.4041 is amended by revising subsections (b) through (e) of section 4041, by adding new subsections (f), (g), and (h) to section 4041, and by revising the historical note, as follows:

§ 48.4041 Statutory provisions; imposition of tax.

Sec. 4041. *Imposition of tax.* * * *

(b) *Special motor fuels.* There is hereby imposed a tax of 4 cents a gallon upon benzol, benzene, naphtha, liquified petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or subsection (a) of this section)—

(1) Sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat; or

(2) Used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such liquid under paragraph (1).

In the case of a liquid taxable under this subsection sold for use or used otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which in the case of a highway vehicle owned, by the United States, is used on the highway, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway, a tax of 2 cents a gallon shall be imposed under paragraph (2).

(c) *Noncommercial aviation*—(1) *In general.* There is hereby imposed a tax of 7 cents a gallon upon any liquid (other than any product taxable under section 4081)—

(A) Sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) Used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such liquid under this section.

(2) *Gasoline.* There is hereby imposed a tax (at the rate specified in paragraph (3)) upon any product taxable under section 4081—

(A) Sold by any person to an owner, lessee, or other operator of an aircraft, for use as a fuel in such aircraft in noncommercial aviation; or

(B) Used by any person as a fuel in an aircraft in noncommercial aviation, unless there was a taxable sale of such product under subparagraph (A).

The tax imposed by this paragraph shall be in addition to any tax imposed under section 4081.

(3) *Rate of tax.* The rate of tax imposed by paragraph (2) is as follows: 3 cents a gallon for the period ending September 30, 1979; and 5½ cents a gallon for the period after September 30, 1979.

(4) *Definition of noncommercial aviation.* For purposes of this chapter, the term "noncommercial aviation" means any use of an aircraft, other than use in a business of transporting persons or property for compensation or hire by air. The term also includes any use of an aircraft, in a business described in the preceding sentence, which is properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282.

(5) *Termination.* On and after July 1, 1980, the taxes imposed by paragraphs (1) and (2) shall not apply.

(d) *Additional tax.* If a liquid on which tax was imposed on the sale thereof is taxable at a higher rate under subsection (c) (1) of this section on the use thereof, there is hereby imposed a tax equal to the difference between the tax so imposed and the tax payable at such higher rate.

(e) *Rate reduction.* On and after October 1, 1979.

(1) The taxes imposed by subsections (a) and (b) shall be 1½ cents a gallon, and

(2) The second and third sentences of subsections (a) and (b) shall not apply.

(f) *Exemption for farm use*—(1) *Exemption.* Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used on a farm for farming purposes.

(2) *Use on a farm for farming purposes.* For purposes of paragraph (1) of this subsection, use on a farm for farming purposes shall be determined in accordance with paragraphs (1), (2), and (3) of section 6420(c).

(g) *Exemption for use as supplies for vessels.* Under regulations prescribed by the Secretary or his delegate, no tax shall be imposed under this section on any liquid sold for use or used as supplies for vessels or aircraft (within the meaning of section 4221(d)(3)).

(h) *Registration.* If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnishes such information in respect of the use of the liquid) as the Secretary or his delegate shall by regulations provide.

[Sec. 4041 as amended and in effect Jan. 1, 1959, and as amended by sec. 201(b), Federal-Aid Highway Act 1959 (73 Stat. 613); sec. 201 (a), (c), and (d), Federal-Aid Highway Act 1961 (75 Stat. 123, 124); Sec. 802(a)(2), Excise Tax Reduction Act 1965 (79 Stat. 159); sec. 202 (a) and (b), Airport and Airway Rev. Act 1970 (84 Stat. 237, 238); sec. 301(a) (1) and (2), Act of Dec. 31, 1970 (Pub. L. 91–605, 84 Stat. 1743); sec. 303(a) (1) and (2), Act of May 5, 1976 (Pub. L. 90–280, 90 Stat. 456)]

PAR. 3. Section 48.4041–6 is revised to read as follows:

§ 48.4041–6 Dual use of taxable liquid.

Tax applies to all taxable liquid sold for use or used as a fuel in the motor which is used to propel a diesel-powered highway vehicle or in the motor used to propel a motor vehicle, motorboat, or airplane, even though the motor is also used for a purpose other than the propulsion of the vehicle. Thus, where the motor of a diesel-powered highway vehicle or of a motor vehicle, motorboat, or airplane operates special equipment by means of a power take-off or power transfer, tax applies to all taxable liquid sold for such use or so used, whether or not the special equipment is mounted on the vehicle. For example, tax applies to diesel fuel sold to operate the mixing unit on a concrete mixer truck if the mixing unit is operated by means of a power take-off from the motor of the vehicle. Similarly, tax applies to all taxable liquid sold for use or used in a motor propelling a fuel oil truck even though the same motor is used to operate the pump (whether or not mounted on the truck) for discharging the fuel into customers' storage tanks. However, tax does not apply to liquid sold for use or used in a separate motor to operate special equipment (whether or not the equipment is mounted on the vehicle). If the taxable liquid used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of taxable liquid used in such separate motor will be acceptable for purposes of application of the tax. Such determination must be based, however, on the operating experience of the person using the taxable liquid and the taxpayer must maintain records which will support the allocation used. Devices to measure the number of miles the vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of fuel used to propel the vehicle. In order to make a final deter-

mination of the number of gallons of fuel used to propel the vehicle, there must be added to this preliminary determination the amount of fuel consumed while idling or warming up the motor preparatory to propelling the vehicle.

PAR. 4. Section 48.4041–7 is amended by revising paragraphs (b) and (c) to read as follows:

§ 48.4041–7 Definitions.

* * * * *

(b) *Diesel-powered highway vehicle*—(1) *In general.* The term "diesel-powered highway vehicle" means any highway vehicle (within the meaning of paragraph (b)(2) of this section) which is also a motor vehicle (as defined in paragraph (c) of this section) and which uses diesel fuel (as defined by paragraph (e) of this section) for propulsion purposes.

(2) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to such term under § 48.4061(a)–1(d).

(c) *Motor vehicles.* The term "motor vehicle" includes all types of vehicles propelled by motor which are designed for carrying or towing loads from one place to another, regardless of the type of load or material carried or towed and whether or not the vehicle is registered or required to be registered for highway use, such as fork lift trucks used to carry loads at railroad stations, industrial plants, warehouses, etc. The term does not include farm tractors; nor does it include trench diggers, power shovels, bulldozers, road graders or rollers, and similar equipment which does not carry or tow a load; nor does it include any vehicle which moves exclusively on rails.

* * * * *

PAR. 5. Section 48.4061(a) is revised to read as follows:

§ 48.4061(a) Statutory provisions; imposition of tax.

SEC. 4061. *Imposition of tax*—(a) *Trucks, buses, tractors, etc.*—(1) *Tax imposed.* There is hereby imposed upon the following articles (including in each case parts and accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax of 10 percent of the price for which so sold, except that on and after October 1, 1979, the rate shall be 5 percent—

Automobile truck chassis.
Automobile truck bodies.
Automobile bus chassis.
Automobile bus bodies.
Truck and bus trailer and semitrailer chassis.
Truck and bus trailer and semitrailer bodies.
Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

A sale of an automobile truck, bus, truck or bus trailer or semitrailer shall, for the purposes of this subsection, be considered to be a sale of a chassis and of a body enumerated in this subsection.

(2) *Exclusion for light-duty trucks, etc.* The tax imposed by paragraph (1) shall not apply to a sale by the manufacturer, producer, or importer of the following articles suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less (as determined under regulations prescribed by the Secretary or his delegate)—

Automobile truck chassis.
Automobile truck bodies.
Automobile bus chassis.
Automobile bus bodies.
Truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less (as so determined).

[Sec. 4061(a) as amended and in effect January 1, 1959, and as amended by sec. 3(a)(1), Tax Rate Extension Act 1959 (73 Stat. 157); sec. 202(a)(1), Public Debt and Tax Rate Extension Act 1960 (74 Stat. 290); sec. 204, Federal-Aid Highway Act 1961 (75 Stat. 126); sec. 3(a)(1), Tax Rate Extension Act 1961 (75 Stat. 193); sec. 3(a)(1), Tax Rate Extension Act 1962 (76 Stat. 114); sec. 3(a)(1), Tax Rate Extension Act 1963 (77 Stat. 72); sec. 2(a)(1), Excise-Tax Rate Extension Act 1964 (78 Stat. 237); sec. 201(a), Excise Tax Reduction Act 1965 (79 Stat. 136); sec. 201(a), Tax Adjustment Act 1966 (80 Stat. 65); Joint Resolution of April 12, 1968 (Pub. L. 90-285, 82 Stat. 92); sec. 105(a)(1), Revenue and Expenditure Control Act 1968 (82 Stat. 265); sec. 702(a)(1), Tax Reform Act 1969 (83 Stat. 660); sec. 201(a)(1), Excise, Estate, and Gift Tax Adjustment Act 1970 (84 Stat. 1843); sec. 303(a)(3), Act of Dec. 31, 1970 (Pub. L. 91-605, 84 Stat. 1743); sec. 401(a)(1), Rev. Act 1071 (85 Stat. 530); sec. 303(a)(3), Act of May 5, 1976 (Pub. L. 94-280, 90 Stat. 456)]

PAR. 6. Section 48.4061(a)–1 is revised to read as follows:

§ 48.4061(a)–1 Imposition of tax; exclusion for light-duty trucks, etc.

(a) *Imposition of tax*—(1) *In general.* Section 4061(a)(1) imposes a tax on the sale by the manufacturer, producer, or importer of the following articles (including in each case parts and accessories therefor sold on or in connection therewith or with the sale thereof):

(i) Automobile truck and bus chassis and bodies;

(ii) Truck and bus trailer and semitrailer chassis and bodies; and

(iii) Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

For purposes of this section, a sale of an automobile truck or bus, or a truck or bus trailer or semitrailer, shall be considered to be a sale of a chassis and of a body enumerated in this paragraph (a)(1).

(2) *Special rule applicable to chassis and bodies.* A chassis or body enumerated in paragraph (a)(1) of this section is taxable under section 4061(a)(1) only if such chassis or body is, within the meaning of paragraph (e) of this section, sold for use as a component part of a highway vehicle (as defined in paragraph (d) of this section), which is an automobile truck or bus, a truck or bus trailer or semitrailer, or a tractor of the kind chiefly used for highway transportation in combination with a trailer or semitrailer. Furthermore, a chassis or body which is not enumerated in paragraph (a)(1) of this section is not taxable under section 4061(a)(1) even though such chassis or body is used as a component part of a highway vehicle (e.g., a chassis or body of a passenger automobile).

(3) *Equipment installed on chassis or bodies.* (i) For purposes of the tax imposed by section 4061(a)(1), equipment or machinery installed on a taxable chassis or body is considered to be an integral part of the taxable chassis or body if the machinery or equipment contributes toward the highway transportation function of the chassis or body, regardless of whether separate sales of the machinery or equipment would be subject to the tax on automotive parts or accessories imposed by section 4061(b). Therefore, the amount of the sale price of a taxable chassis or body that is attributable to such machinery or equipment must be included in the tax base when computing the tax due on a manufacturer's or importer's sale or use of a taxable chassis or body. Examples of the type of machinery or equipment that contribute to the highway transportation function of a chassis or body are the following: loading and unloading equipment; towing winches; and all other machinery or equipment contributing to either the maintenance or safety of the vehicle, the preservation of cargo (other than refrigeration units), or the comfort or convenience of the driver or passengers.

(ii) Amounts charged for machinery or equipment that is installed on a taxable chassis or body are not part of the taxable sale price of the chassis or body if (A) such machinery or equipment does not contribute toward the highway transportation function of the chassis or body and (B) the reasonableness of the charge for the machinery or equipment is supportable by adequate records. Examples of such machinery or equipment are the following: equipment designed to spread materials on the highway; machinery or equipment used solely in the operation of mobile amusement rides; television equipment mounted in a mobile television studio; machine shop equipment mounted in a mobile machine shop; and car crushing equipment mounted on the chassis of a mobile car crusher.

(4) *Passenger automobile chassis and bodies, motorcycles, etc.* No tax is imposed under section 4061 (a) on the sale of a motorcycle or, in the case of a sale made after December 10, 1971, on the sale of automobile chassis and bodies not enumerated in paragraph (a)(1) of this section, or of trailer and semitrailer chassis and bodies suitable for use in combination with passenger automobiles. For tax on certain sales made after December 31, 1958, and before December 11, 1971, see paragraph (b)(4) of this section.

(5) *Cross references.* For additional rules relating to the sale of a chassis or body enumerated in this paragraph for use as a component part of a highway vehicle, see paragraph (e) of this section. For exclusion of certain light-duty highway vehicles, see paragraph (f) of this section. For provisions relating to the tax-free sale of bodies to certain manufacturers, see section 4063(b) and the regulations thereunder. For other exemptions from the tax imposed under section 4061(a), see sections 4063 and 4221 and the regulations thereunder. For special rules relating to the sale by a manufacturer of a vehicle consisting of a

tax-paid chassis and a body manufactured by him, see § 48.4061(a)-5.

(b) *Rate and computation of tax*—(1) *In general.* With respect to the articles enumerated in paragraph (a)(1) of this section, the rate of tax imposed by section 4061(a)(1) is:

	Percent
(i) For articles sold during the period beginning on January 1, 1959, and ending on September 30, 1979	10
(ii) For articles sold on or after October 1, 1979	5

(2) *Determination of price subject to tax.* The tax is computed by applying to the price for which the article is sold the rate in effect at the time of the sale. For definition of the term "price" and for application of the tax to leases of articles, see sections 4216 and 4217, respectively, and the regulations thereunder. If an article subject to tax under section 4061(a) has equipment mounted thereon to perform functions other than in connection with the transportation of persons or property, no tax under section 4061(a) attaches to that part of the selling price of the completed unit which is reasonably attributable to such equipment provided such part of the selling price is billed separately on the invoice to the customer or can otherwise be established by adequate records. For other rules relating to the sale of parts or accessories in connection with the sale of a chassis, body, or completed unit, see § 48.4061(a)-4. For special rules relating to the determination of selling price when equipment or machinery is permanently installed on a taxable chassis or body, see paragraph (a)(3) of this section.

(3) *Tax on trailers sold before December 11, 1971.* With respect to sales made after December 31, 1958, and before December 11, 1971, the rate of tax imposed under section 4061(a) on a trailer or semitrailer chassis or body that is a highway vehicle within the meaning of paragraph (d) of this section depends upon a classification of the article. The sale during this period of a trailer or semitrailer chassis or body (other than a house trailer) suitable for use in combination with passenger automobiles is subject to tax as set forth in paragraph (b)(4) of this section. A trailer suitable for use in combination with a passenger automobile which is designed for purposes other than living or sleeping, commonly referred to as a "utility trailer", is an example of a trailer taxable at the 7 percent rate set forth in paragraph (b)(4) of this section. The sale of a trailer or semitrailer chassis or body that is not suitable for use in combination with passenger automobiles is subject to tax as set forth in paragraph (b)(1) of this section.

(4) *Passenger automobile chassis and bodies and related articles sold before December 11, 1971.* With respect to the sale after December 31, 1958, and before December 11, 1971, of (i) automobile chassis and bodies not enumerated in paragraph (a)(1) of this section or (ii) trailer and semitrailer chassis and bodies suitable for use in combination with passenger automobiles, the tax imposed by section 4061(a) is computed in accordance with paragraph (b)(2) of this section at the rate of 10 percent for sales prior to June 22, 1965, and at the rate of 7 percent thereafter.

(c) *Liability for tax.* The tax imposed by section 4061(a) is payable by the manufacturer, producer, or importer making the sale.

(d) *Highway vehicle*—(1) *Definition.* For purposes of this subchapter, the term "highway vehicle" means any self-propelled vehicle, or any trailer or semitrailer, designed to perform a function of transporting a load over public highways, whether or not also designed to perform other functions, but does not include a vehicle described in paragraph (d)(2) of this section. For purposes of this definition, a vehicle consists of a chassis, or a chassis and a body if the vehicle has a body, but does not include the vehicle's load. Therefore, in determining whether a vehicle is a "highway vehicle", it is immaterial that the vehicle is designed to perform a highway transportation function for only a particular kind of load, such as passengers, furnishings and personal effects (as in a house, office, or utility trailer), a special type of cargo, goods, supplies, or materials, or, except to the extent otherwise provided in paragraph (d)(2)(i) of this section, machinery or equipment specially designed to perform some off-highway task unrelated to highway transportation. In the case of specially designed machinery or equipment, it is also immaterial, except as provided in paragraph (d)(2)(i) of this section, that such machinery or equipment is permanently mounted on the vehicle. For purposes of paragraph (d) of this section, the term "transport" includes the term "tow", and the term "public highway" includes any road (whether a Federal highway, State highway, city street, or otherwise) in the United States which is not a private roadway. A vehicle which is not a highway vehicle within the meaning of this paragraph shall be treated as a nonhighway vehicle for purposes of this subchapter. Examples of vehicles that are designed to perform a function of transporting a load over the public highways are passenger automobiles, motorcycles, buses, and highway-type trucks, truck tractors, trailers, and semi-trailers.

(2) *Exceptions*—(i) *Certain specially designed mobile machinery for nontransportation functions.* A self-propelled vehicle, or trailer or semi-trailer, is not a highway vehicle if it (A) consists of a chassis to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any one of the foregoing enumerated operations if the operation of the machinery or equipment is unrelated to transportation on or off the public highways, (B) the chassis has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and (C) by reason of such special design, such chassis could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

(ii) *Certain vehicles specially designed for offhighway transportation.* A self-propelled vehicle, or a trailer or semitrailer, is not a highway vehicle if it is (A) specially designed for the primary function of transporting a particular type of load other than over the public highway in connection with a construction, manufacturing, processing, farming, mining, drilling, timbering, or operation similar to any one of the foregoing enumerated operations, and (B) if by reason of such special design, the use of such vehicle to transport such load over the public highways is substantially limited or substantially impaired. For purposes of applying the rule of (B) of this subdivision, account may be taken of whether the vehicle may travel at regular highway speeds, requires a special permit for highway use, is overweight, overheight or overwidth for regular highway use, and any other relevant considerations. Solely for purposes of determinations under this paragraph (d)(2)(ii), where there is affixed to the vehicle equipment used for loading, unloading, storing, vending, handling, processing, preserving, or otherwise caring for a load transported by the vehicle over the public highways, the functions are related to the transportation of a load over the public highways even though such functions may be performed off the public highways.

(iii) *Certain trailers and semitrailers specially designed to perform nontransportation functions off the public highways.* A trailer or semi-trailer is not a highway vehicle if it is specially designed to serve no purpose other than providing an enclosed stationary shelter for the carrying on of a function which is directly connected with and necessary struction, manufacturing processing, mining, drilling, farming, timbering, or operation similar to any one of the foregoing enumerated operations such as a trailer specially designed to serve as an office for such an operation.

(3) *Optional application.* For purposes of this subchapter, if any rules existing immediately prior to January 13, 1977 would, if applicable, unequivocally resolve an issue involving the definition of a highway vehicle with respect to a period prior to such date, at the option of the taxpayer, such rules existing prior to such date shall be applied to resolve the issue for all periods prior to such date, and the rules of paragraph (d)(1) and (2) of this section, which define the term "highway vehicle", shall not apply with respect to such issue for all periods prior to such date.

(4) *Highway vehicles not subject to section 4061 tax.* Although for purposes of this paragraph (d) passenger automobiles, automobile trailers and semitrailers, motor homes, motorcycles, light-duty trucks, etc., will be considered to be highway vehicles because they are designed to perform a function of transporting a load over public highways, the tax imposed under section 4061(a) does not apply to the sale of such vehicles because they either are not articles subject to tax under such section or are excluded from tax under section 4061 (a)(2). See also paragraphs (a)(4) and (f) of this section. Despite the fact that passenger automobiles, passenger automobile trailers and semi-trailers, motor homes, motorcycles, light-duty trucks, etc., are not subject to the manufacturers excise tax on highway vehicles imposed by section 4061(a), the fact that they are nevertheless considered highway vehicles for purposes of this subchapter can be of material significance in determining the applicability of such excise taxes as the tax imposed by section 4041 (relating to diesel and special motor fuels), the tax imposed by section 4071(a)(1) (relating to tires of the type used on highway vehicles), or the tax imposed by section 4481 (relating to highway use tax on highway motor vehicles). In addition, the definition of the term "highway vehicle" is material in determining the credits or refunds provided by section 6416(b)(2)(I) (relating to diesel fuel used in certain highway vehicles), section 6421(a) (relating to gasoline used for a nonhighway purpose), section 6424 (relating to lubricating oil used otherwise than in a highway motor vehicle), and section 6427(a) (relating to diesel or special motor fuel not used for a taxable purpose).

(e) *Sale of a chassis or body for use as a component of a vehicle other than a highway vehicle*—(1) *In general.* Except as otherwise provided in paragraphs (a)(4), (e)(2), or (f) of this section, the sale of a chassis or body shall be deemed to be a sale of a chassis or body enumerated in paragraph (a)(1) of this section if such chassis or body is, in any sense, reasonably suitable for use as a component part of a highway vehicle that is either an automobile truck or bus, a truck or bus trailer or semitrailer, or a tractor of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(2) *Exceptions based on unitary concept*—(i) *Completed vehicles not qualifying as highway vehicles.* With respect to the sale of a vehicle after January 13, 1977 which would otherwise be treated under paragraph (e)(1) of this section as a sale of a chassis or body enumerated in paragraph (a)(1) of this section, the tax imposed under section 4061(a) shall not apply to such sale if the vehicle (considered as a completed unit) is not considered to be a highway vehicle within the meaning of paragraph (d) of this section.

(ii) *Tax-free sales of chassis and bodies.* With respect to the sale after January 13, 1977 of a chassis or body (not including the sale of a completed vehicle described in paragraph (e)(2)(i) of this section) which would otherwise be treated under paragraph (e)(1) of this section as a sale of a chassis or body enumerated in paragraph (a)(1) of this section, the tax imposed under section 4061(a) shall not apply to such sale if the chassis or body is actually sold for use, or for resale for use, as a component part of a vehicle that is not a highway vehicle within the meaning of paragraph (d) of this section. For purposes of determining the liability of the manufacturer or reseller for the tax imposed under section 4061(a), the test of the preceding sentence will be considered to be met if (A) the purchaser furnishes the statement set forth in paragraph (e)(2)(iv) of this section to the seller before the manufacturer files a return covering excise taxes for the period in which the sale was made, and (B) the manufacturer or reseller complies with the requirements set forth in paragraph (e)(2)(iii) of this section. However, even though the purchaser and manufacturer (or reseller) have complied with the foregoing, the tax imposed under section 4061(a), shall apply to such sale if the manufacturer or reseller has received a written notification (applicable with respect to such sale) from the Internal Revenue Service that sales of a specified type or types of chassis or bodies may not be made tax free pursuant to this paragraph (e)(2)(ii) until further notification. Any such notification issued by the Internal Revenue Service shall be effectve only with respect to sales after the manufacturer has received such notification.

(iii) *Requirements to be met.* In order for a manufacturer or reseller to sell free of tax under paragraph (e)(2)(ii) of this section an otherwise taxable chassis or body, the manufacturer or reseller must—

(A) Retain in his possession the statement required to be furnished by the purchaser and such other evidence as may be furnished by the purchaser to support the tax-free sale. Such evidence shall be retained for at least 3 years from the due date of the tax that would be due if the transaction in question had been a taxable sale; and

(B) Indicate on the invoice with respect to the sale of the chassis or body that the sale of such article is made free of tax under paragraph (e)(2)(ii) of this section.

(iv) *Form of statement.* In order for an otherwise taxable chassis or body to be sold free of tax under paragraph (e)(2)(ii) of this section, the purchaser must execute and furnish to the manufacturer or reseller a statement that substantially complies with the following form:

_____, 19..

Under the penalty of perjury, the undersigned certifies that he, or the _____

(Name of purchaser if other than the undersigned)

of which he is _____, is in the business

(Title)

of _____

(State nature of business)

and that the chassis and/or bodies covered by the accompanying order or contract for purchase from _____

(Name and address of seller)

are purchased for (check one) ☐ use, or for ☐ resale for use, as components of the following type or types of nonhighway vehicles:

1. _____
2. _____
3. _____

The undersigned understands that he must be prepared to establish by satisfactory evidence the actual use or disposition of such chassis or bodies and that, upon their use or disposition other than use as components of a nonhighway vehicle, he consents to be treated as the manufacturer of any such chassis or body purchased by him free of the tax imposed by section 4061(a).

The undersigned also understands that he and all guilty parties will, for use of this statement to willfully attempt to evade or defeat the tax imposed under section 4061, be subject, under section 7201, to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

The undersigned agrees to retain in his possession a copy of this statement for at least 3 years from its date.

_____

(Signature)

_____

(Address)

(v) *Refund or credit of overpayment.* If a purchaser furnishes the manufacturer with the statement described in paragraph (e)(2)(iv) of this section after the time the manufacurer has filed a return covering excise taxes for the period in which the sale was made, the manufacturer must include the tax on the sale in his return for the period. However, in such case, if the conditions prescribed in paragraph (e)(2)(iii) of this section are met, a claim for refund of the tax paid on such sale may be filed by the manufacturer on Form 843, or a credit taken on a subsequent return, in accordance with the provisions of sections 6402(a) and 6416(a) and § 48.6416(a)-1.

(vi) *Cross reference.* For special rules relating to the sale by a manufacturer of a vehicle consisting of a tax-paid chassis and a body manufactured by him, see § 48.4061(a)-5.

(f) *Exclusion of light-duty trucks, buses, and related articles from tax*—(1) *In general.* (i) No tax is imposed by section 4061(a)(1) on the sale after December 10, 1971, of the following articles, if suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less (as determined under paragraph (f)(3) of this section):

(A) Automobile truck and bus chassis and bodies, and

(B) Truck trailer and semitrailer chassis and bodies, suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less (as so determined).

(ii) For purposes of this part, a chassis or body is suitable for use with a vehicle having a gross vehicle weight of 10,000 pounds or less (hereafter referred to in this paragraph (f) as a "light-duty ve-

hicle") if such chassis or body is commonly used with such a vehicle or possesses actual, practical, and commercial fitness for such use. A truck or bus chassis, sold after December 10, 1971, which is suitable for use with a light-duty vehicle, is not subject to the tax imposed by section 4061(a)(1) regardless of the body actually mounted thereon. Similarly, a truck trailer or semitrailer chassis sold after such date, suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less, which trailer or semitrailer is suitable for use in connection with a light-duty towing vehicle, is not subject to such tax regardless of the body actually mounted thereon. A truck or bus body, sold after such date, which is suitable for use with a light-duty vehicle, is not subject to such tax even though it may also be suitable for use with (and is actually a component of) a vehicle having a gross vehicle weight in excess of 10,000 pounds. Similarly, a truck trailer or semitrailer body sold after such date, suitable for use with a trailer or semitrailer having a gross vehicle weight of 10,000 pounds or less, which trailer or semitrailer is suitable for use with a light-duty towing vehicle, is not subject to such tax even though it may also be suitable for use with (and is actually a component of) a trailer or semitrailer having a gross vehicle weight of more than 10,000 pounds, or is used in connection with a vehicle having a gross vehicle weight of more than 10,000 pounds.

(iii) Where an exempt body is mounted on a taxable chassis, or a taxable body is mounted on an exempt chassis, the taxable chassis or taxable body, as the case may be, nevertheless remains subject to such tax, if the resulting vehicle is a highway vehicle as defined in paragraph (d) of this section.

(2) *Parts and accessories.* (i) The sale of a part or accessory which, if sold on December 10, 1971, would be subject to the tax imposed by section 4061(a)(1) as in effect at such time, is not subject to the tax imposed by section 4061(a)(1) as in effect after such date if—

(A) It is sold by the manufacturer on or in connection therewith, or with the sale of, a vehicle enumerated in paragraph (f)(1)(i) of this section which is not subject to such tax, and

(B) It is not a replacement part (as defined in paragraph (f)(2)(ii) of this section).

(ii) For purposes of this paragraph (f)(2), a part or accessory is considered sold with a vehicle if, as of the time the article is sold by the manufacturer, the part or accessory has been ordered from such manufacturer for use with the vehicle. Thus, for example, original equipment sold after December 10, 1971, with a light-duty vehicle, consisting of parts and accessories which are ordered from the manufacturer of the vehicle not later than the time at which such vehicle is sold by him (whether or not installed as of such time) are not subject to such tax. For purposes of this paragraph (f)(2), a part is a replacement part, regardless of when ordered, if its use with a vehicle is as a replacement for a part of such vehicle. Therefore, spare parts or accessories sold separately or ordered with a light-duty truck are subject to the tax imposed on sales of parts or accessories by section 4061(b)(1), unless they are excluded from tax as articles used interchangeably between truck and passenger vehicles under the provisions of section 4061(b)(2).

(3) *Gross vehicle weight.* (i) For purposes of paragraph (f)(1) of this section, gross vehicle weight means the maximum total weight of a loaded vehicle. Except as otherwise provided in this paragraph (f)(3), such maximum total weight shall be the gross vehicle weight rating of the article (as manufactured) as specified or established by the manufacturer of the completed article, unless such rating is unreasonable in light of the facts and circumstances in a particular case.

(ii) A manufacturer must specify or establish a weight rating for each chassis, body, or vehicle sold by him after September 22, 1971, if such article requires no additional manufacture other than (A) the addition of readily attachable articles, such as tire or rim assemblies or minor accessories, (B) the performance of minor finishing operations, such as painting, or (C) in the case of a chassis, the addition of a body. If an article is specially manufactured to the purchaser's specifications, such specifications may be used to establish the gross vehicle weight of the article.

(iii) A manufacturer shall maintain a record of the gross vehicle weight rating of each truck, bus, trailer, and semitrailer sold by him and excluded from the tax imposed by section 4061(a)(1) by reason of section 4061(a)(2) and this paragraph (f). For this purpose, a record of the serial number of each such article shall be treated as a record of the gross vehicle weight rating of the article if such rating is indicated by the serial number.

(iv) If (A) the manufacturer's rating indicated in a label or identifying device affixed to an article, (B) the rating set forth in his sales invoice or warranty agreement, and (C) his advertised rating for that article (or two or more identical articles) are inconsistent, the highest of such ratings will be considered to be the manufacturer's gross vehicle weight rating specified or established for purposes of the tax imposed by section 4061(a)(1).

(v) With respect to articles sold after January 31, 1972, the manufacturer's gross vehicle weight rating must take into account the strength of the chassis frame, the axle capacity and placement, and the spring, brake, rim, and tire capacities. The component with the lowest weight rating ordinarily shall be considered determinative of the gross vehicle weight. If the capacity of any of the readily attachable components (springs, brakes, rims, or tires) would otherwise be determinative of a gross vehicle weight rating of 10,000 pounds or less, no readily attachable component will be taken into account in determining such rating unless the rating determined solely on the basis of the chassis frame or the total of the axle ratings is 12,000 pounds or less.

(vi) For purposes of paragraph (f)(3)(v) of this section, the term "total of the axle ratings" means the sum of the maximum load carrying capability (capacity and placement) of the axles (without regard to springs, brakes, rims, and tires) and, in the case of a trailer or semitrailer, the weight, if any, that is to be borne by a vehicle used in combination with the trailer or semitrailer for which gross vehicle weight is determined.

PAR. 7. Section 48.4061(a)-5 is revised to read as follows:

§ 48.4061(a)-5 Sale of automobile truck bodies and chassis.

(a) *Sale of completed vehicle.* An automobile truck (as defined by § 48.4061(a)-3(a)) for purposes of the tax imposed by section 4061(a) consists of two parts, namely, a body and a chassis. Generally, the tax applies to the sale by the manufacturer of each. Thus, if the purchaser of a tax-paid chassis attaches to it a taxable body manufactured by him and sells the completed vehicle, he is liable for tax based on the sale price of the body only. However, in such a case, the tax attaches to the selling price of the entire vehicle unless adequate records are available to show the portion of the total selling price attributable to the body.

(b) *Cross references.* For special rules relating to the sale of a chassis or body to a purchaser who will use it in the manufacture or assembly of a nonhighway vehicle, see § 48.4061(a)-1(e). With respect to bodies sold to a chassis manufacturer, see also section 4063(b) and the regulations thereunder.

PAR. 8. Section 48.4063-1 is revised to read as follows:

§ 48.4063-1 Tax-free sales of bodies to chassis manufacturers.

Under the provisions of section 4063(b), the tax imposed by section 4061(a) shall not apply to bodies sold by the manufacturer thereof to a manufacturer (but not an importer) of automobile trucks (as defined by § 48.4061(a)-3(a)) to be sold by the purchaser. Thus, a manufacturer of automobile truck bodies is permitted to sell such bodies tax free to manufacturers of automobile truck chassis. This section does not apply with respect to the sale of an automobile truck chassis to manufacturers of automobile truck bodies. However, see § 48.4061(a)-1(e) with respect to the sale of an automobile truck chassis for use in the manufacture or assembly of a nonhighway vehicle (within the meaning of § 48.4061(a)-1(d)). In order to effect a tax-free sale of a body as provided in this section both the seller and purchaser must comply with the registration and other requirements of section 4222 and the regulations thereunder. A chassis manufac-

turer who purchases a body tax free as provided in this section shall, for purposes of application of the tax imposed by section 4061(a), be considered the manufacturer of such body.

PAR. 9. Section 48.4072–1 is amended by revising paragraph (c) to read as follows:

§ 48.4072–1 Definitions.

* * * * *

(c) *Tires of the type used on highway vehicles.* The term "tires of the type used on highway vehicles", for purposes of §§ 48.4071 through 48.4073–3, means tires of the type used on (1) motor vehicles that are highway vehicles within the meaning of § 48.4061(a)–1(d), such as tires used on motor trucks, buses, passenger automobiles, motor homes, highway tractors, trolley buses or coaches, or motorcycles, and (2) vehicles of the type used in connection with motor vehicles that are highway vehicles within the meaning of § 48.4061(a)–1(d), such as tires used on truck or bus trailers, truck semitrailers, mobile homes, housetrailers, or utility trailers. The term "tires of the type used on highway vehicles" does not include bicycle tires. Bicycle tires, however, are included in the term "other tires" as used in section 4071(a)(2).

* * * * *

PAR. 10. Section 48.4081 is amended by revising subsection (b) and the historical note to read as follows:

§ 48.4081 Statutory provisions; imposition of tax.

Sec. 4081. *Imposition of tax.* * * *

(b) *Rate reduction.* On and after October 1, 1979, the tax imposed by this section shall be 1½ cents per gallon.

[Sec. 4081 as amended and in effect Jan. 1, 1959, and as amended by sec. 201(a), Federal-Aid Highway Act 1959 (73 Stat. 613); sec. 201 (b), (c), and (d), Federal-Aid Highway Act 1961 (75 Stat. 123, 124); sec. 303(a)(6), Act of Dec. 31, 1970 (Pub. L. 91–605, 84 Stat. 1744); sec. 303(a)(6), Act of May 5, 1976 (Pub. L. 94–280, 90 Stat. 456)]

PAR. 11. Section 48.6421(a) is amended to read as follows:

§ 48.6421(a) Statutory provisions; gasoline used for certain nonhighway purposes or by local transit systems; nonhighway uses.

Sec. 6421. *Gasoline used for certain nonhighway purposes or by local transit systems*—(a) *Nonhighway uses.* Except as provided in subsection (i), if gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a highway vehicle owned by the United States, is used on the highway, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon. Except as provided in paragraph (3) of subsection (e) of this section, in the case of gasoline used after June 30, 1970, as a fuel in an aircraft, the Secretary or his delegate shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

[Sec. 6421(a) as added and in effect Jan. 1, 1959, and as amended by sec. 201(d)(2), Federal-Aid Highway Act 1959 (73 Stat. 615); sec. 809(b)(1)(A), Excise Tax Reduction Act 1965 (79 Stat. 166); sec. 205(b)(1)(A), Airport and Airway Rev. Act 1970 (84 Stat. 241)]

PAR. 12. Section 48.6421(a)–1 is amended by revising paragraphs (a)(1), (b), (c)(1), and (d) to read as follows:

§ 48.6421(a)–1 Payments to ultimate purchaser of gasoline used for certain nonhighway purposes.

(a) *In general.* (1) Section 6421(a) provides that if gasoline is used otherwise than as a fuel in a highway vehicle:

(i) Which, at the time the gasoline is so used, is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or

(ii) Which, in the case of a highway vehicle owned by the United States, is used on the highway. Payment (without interest) in respect of such gasoline shall be made to the ultimate purchaser thereof. No payment is authorized, however, with respect to gasoline used after June 30, 1970, as a fuel in noncommercial aviation (as defined in section 4041(c)(4)). Except as hereinafter provided in this paragraph (a)(1), the payment shall be in an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid under section 4081 at the rate of 3 cents a gallon, and 2 cents for each gallon of gasoline so used on which tax was paid under section 4081 at the rate of 4 cents a gallon. In the case of gasoline used after June 30, 1970, as a fuel in an aircraft (other than an aircraft in noncommercial aviation as defined in section 4041(c)(4)), the payment shall be in an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081. However, payment in respect of gasoline used as provided in section 6421(a) shall be made only as to gasoline purchased by an ultimate purchaser after June 30, 1956, and before October 1, 1979, and only if a properly executed claim is filed by the ultimate purchaser within the time prescribed in section 6421(c). For the meaning of the term "gasoline", see § 48.4082–1(b); and for the definition of "State", see section 7701. For provisions relating to payments in respect of gasoline used on a farm for farming purposes, see section 6420 and the regulations thereunder.

* * * * *

(b) *Uses which qualify for payment.* Gasoline in respect of which payment may be made under section 6421(a) includes, for example, gasoline used in nonhighway vehicles, gasoline used in stationary engines to operate pumps, generators, compressors, etc., gasoline used for cleaning purposes, and gasoline used in motor boats, forklifts, etc., and, to the extent provided in paragraph (a)(1) of this section, aircraft. Payment may also be made in respect of gasoline used in a highway vehicle (other than one owned by the United States) if at the time the gasoline is used the vehicle (1) is not registered for highway use under the law of any State or foreign country and (2) is not required to be registered for highway use under the law of the State or foreign country in which it is operated or situated. A highway vehicle which is operated under a dealer's tag, license, or permit is considered to be registered. A highway vehicle is not considered to be registered solely by reason of the fact that there has been issued a special permit for operation of the vehicle at particular times and under specified conditions.

(c) *Meaning of terms*—(1) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to such term under § 48.4061(a)–1(d).

* * * * *

(d) *Dual use of gasoline.* No payment shall be made with respect to gasoline used in the propulsion motor of a highway vehicle solely on the basis of the fact that the motor in such vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle also operates special equipment (such as a pump for discharging fuel from a tank truck) by means of a power take-off or power transfer, no payment shall be made with respect to the gasoline used to operate such special equipment, whether or not the special equipment is mounted on the highway vehicle. However, if a highway vehicle is equipped with a separate motor to operate special equipment (such as a refrigeration unit, pump, generator, or a mixing unit), a claim may be filed in respect of the gasoline used in the separate motor. In those cases where the gasoline used in a separate motor is drawn from the same tanks as the one which supplies gasoline for the propulsion of the vehicle, the determination as to the quantity of gasoline used in the separate motor operating the special equipment must be based on operating experience and supported by records. Devices to measure the number of miles the vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of gasoline used to propel the vehicle. In order to make a final determination of the number of gallons of gasoline used to propel the vehicle, there must be added to this preliminary determination the number of gallons of gasoline consumed while idling or warming up the motor preparatory to propelling the vehicle.

* * * * *

PAR. 13. Section 48.6421(c) is revised to read as follows:

§ 48.6421(c) Statutory provisions; gasoline used for certain nonhighway purposes or by local transit systems; time for filing claims; period covered.

Sec. 6421. *Gasoline used for certain nonhighway purposes or by local transit systems.* * * *

(c) *Time for filing claims; period covered*—(1) *Gasoline used before July 1, 1965.* Except as provided in paragraphs (2) and (3), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during the one-year period ending on June 30 of any year. No claim shall be allowed under this paragraph with respect to any one-year period unless filed on or before September 30 of the year in which such one-year period ends.

(2) *Exception.* Except as provided in paragraph (3), if $1,000 or more is payable under this section to any person with respect to gasoline used during a calendar quarter, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed.

(3) *Gasoline used after June 30, 1965*—(A) *In general.* In the case of gasoline used after June 30, 1965—

(i) Except as provided in subparagraph (B), not more than one claim may be filed under subsection (a), and not more than one claim may be filed under subsection (b), by any person with respect to gasoline used during his taxable year; and

(ii) No claim shall be allowed under this subparagraph with respect to gasoline used during any taxable year unless filed by such person not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year.

For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A, except that a person's first taxable year beginning after June 30, 1965, shall include the period after June 30, 1965, and before the beginning of such first taxable year.

(B) *Exception.* If $1,000 or more is payable under this section to any person with respect to gasoline used during any of the first three quarters of his taxable year, a claim may be filed under this section by such person with respect to gasoline used during such quarter. No claim filed under this subparagraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

[Sec. 6421(c) as added and in effect Jan. 1, 1959, and as amended by sec. 809(b)(2), Excise Tax Reduction Act 1965 (79 Stat. 168); sec. 207(b), Airport and Airway Rev. Act 1970 (84 Stat. 248)]

PAR. 14. Section 48.6421(e) is amended by adding a new paragraph (3) to section 6421(e) and by revising the historical note, as follows:

§ 48.6421(e) Statutory provisions; gasoline used for certain nonhighway purposes or by local transit systems; exempt sales; other payments or refunds available.

Sec. 6421. *Gasoline used for certain nonhighway purposes or by local transit systems.* * * *

(e) *Exempt sales;* other payments or refunds available. * * *

(3) *Gasoline used in noncommercial aviation.* This section shall not apply in respect of gasoline which is used after June 30, 1970, as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)).

[Sec. 6421(e) as added and in effect Jan. 1, 1959, and as amended by sec. 205(b)(1)(B), Airport and Airway Rev. Act 1970 (84 Stat. 241)]

PART 142—TEMPORARY EXCISE TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Par. 15. Section 142.1–1 is amended by deleting paragraph (d), as follows:

§ 142.1–1 Imposition of tax; exclusion for light-duty trucks, etc.; exemptions for local transit buses and trash containers.

* * * * *

(d) [Deleted]

* * * * *

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

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: January 6, 1977.

CHARLES M. WALKER,
Assistant Secretary of the Treasury.

[FR Doc.77-1174 Filed 1-12-77;8:45 am]

Title 29—Labor

CHAPTER XXVI—PENSION BENEFIT GUARANTY CORPORATION

PART 2608—INTERIM REGULATION ON ALLOCATION OF ASSETS

Amendment to Allow Subclasses

On November 3, 1976, the Pension Benefit Guaranty Corporation ("PBGC") published in the FEDERAL REGISTER an Interim Regulation on Allocation of Assets (41 FR 48480 et seq.) and a Supplemental Notice of Proposed Rulemaking on Allocation of Assets (41 FR 48492 et seq.). The Interim Regulation only applied to plans which received a Notice that the PBGC was unable to determine whether the plan would have sufficient assets to pay all guaranteed benefits after the assets were allocated in accordance with § 4044 of the Employee Retirement Income Security Act of 1974 ("Act"). The supplemental notice contained rules for allocating assets in plans that receive a Notice of Sufficiency from the PBGC ("sufficient plan"), and it also prescribed rules under which a plan may establish subclasses for allocating assets within the priority categories contained in section 4044(a) of the Act.

The rules in the supplemental proposal regarding allocation of assets in sufficient plans required that the allocation be based on the value of benefits in those plans. A number of comments were received regarding the valuation of benefits in sufficient plans which the PBGC is studying. Therefore, issuance of rules relating to allocation of assets in those plans would be premature at this time.

However, PBGC received only one comment regarding the proposed subclass rules. The comment noted that permitting subclasses is ill advised because "it is extremely complex and because capricious results may develop as to the benefit delivery to individual participants." Thus, the comment would seem to suggest that subclasses should not be allowed. Section 4044(b)(6) of the Act specifically authorizes a plan to establish subclasses within the priority classes of section 4044(a) of the Act in accordance with PBGC regulations. Therefore, the comment is rejected because it is contrary to the express provisions of the Act.

The language of the exception to the subclasses rule (§ 2608.12(b)) has been changed to make it clear that only those priorities based on greater length of service, older age or disability that were contained in the plan on the effective date of the Act be used as subclasses under the exception. To prevent abuse of the exception, under § 2608.12(b)(ii), a plan that wishes to establish subclasses under the exception must do so within 180 days of the effective date of this amendment. Plans in which the allocation provisions were amended in a good faith effort to comply with the allocation priorities of § 4044 of the Act may reamend within the 180 day period to establish subclasses.

One other comment was directed to a situation in which a participant makes a contribution to a plan to obtain additional benefits funded in part through employer contributions. It noted that such contributions appear to be mandatory contributions and stated that it seemed "inequitable" to deduct all benefits received from the plan from accumulated mandatory contributions as required by § 2608.7(b) of the Interim and Proposed regulations. The comment noted that in the situation it described there were effectively two plans. The second plan being the one that provided additional benefits for employees who made contributions.

Section 4044(b)(5) of the Act specifically requires all amounts paid to an employee from the plan to be deducted in determining the total amount of mandatory contributions. Thus, the suggestion in the comment that not all payments from the plan be deducted is contrary to the express provisions of the Act. There is, however, nothing in Title IV that would prohibit the creation of a separate contributory plan, and if that were done, the apparent inequity referred to in the comment would be cured.

This amendment includes some minor technical changes as well. One technical change is made to clarify the benefits in priority category 5. Those benefits consist of all nonforfeitable benefits in the plan, other than ones contained in a higher priority category, including any lump sums in which a participant is vested, but not including any optional forms of annuity to which a participant is not entitled under § 2605.5 of the Guaranteed Benefits Regulation.

Because the amendments are either of a technical nature and do not change the substance of the regulation, because the regulation interprets section 4044 of the Act, because the section allowing subclasses removes the restriction on subclasses that existed under the Interim Regulation, and because of the need for immediate guidance, the PBGC finds that good cause exists for making these amendments effective immediately.

In consideration of the foregoing Part 2608 of Chapter XXVI, Title 29, is amended as follows:

1. Sections 2608.7(b)(1)(i)(C) and (b)(2)(i)(A) are revised to read:

§ 2608.7 Priority category 2 benefits.

* * * * *

(b) * * *
(1) * * *
(i) * * *

"(C) Interest, if any, on the sum of the of the amounts determined under paragraphs (b)(1)(i) (A) and (B) of this section compounded annually at the applicable rate under section 204(c)(2)(C)(iii) of the Act, from the beginning of the first plan year to which section 204(c) of the Act applies to the earlier of the participant's retirement date or the date of plan termination."

* * * * *

"Add accumulated employee contributions computed under paragraph (b)(1) of this section and interest at the applicable rate on such contributions under section 204(c)(2)(C)(iii) of the Act from the date of plan termination to the date on which the participant would attain normal retirement age."

3. Section 2608.10(a) is revised to read:

§ 2608.10 Priority category 5 benefits.

"Priority category 5 benefits consist of all nonforfeitable benefits payable with respect to a participant in a plan, other than benefits derived from voluntary employee contributions assigned to priority category 1 and all benefits assigned to priority categories 2, 3 or 4. The only benefits payable as annuities contained in this section are those benefits payable as annuities to which a participant is entitled under § 2605.5 of this chapter.

* * * * *

4. A new § 2608.12 is added to read as follows:

§ 2608.12 Subclasses.

(a) *General*—A plan may establish one or more subclasses (which do not result in discrimination prohibited by the Internal Revenue Code of 1954, as amended, and regulations thereunder), within any priority category other than priority categories 1 and 2, based specifically on greater length of service, older age or disability (or any combination thereof) of a participant. Assets of a plan allocable to a priority category may be allocated in accordance with the provisions of the subclasses established by the plan for that priority category to the extent that such allocation does not increase or decrease the assets which otherwise would be allocated to the guaranteed benefits in such priority categories.

(b) *Exception*—(1) *General.* Notwithstanding the provisions of paragraph (a) of this section, a plan that on September 2, 1974, provided for allocation of plan assets to benefits upon termination of the plan based specifically on greater length of service, older age or disability (or any combination thereof) of a participant may adopt an amendment establishing subclasses (which do not result in discrimination prohibited by the Internal Revenue Code of 1954, as amended, and regulations thereunder) within a priority category, other than priority categories 1 or 2, under which the subclasses are the same as the allocation priorities based specifically on greater length of service, older age or disability (or any combination thereof) that were in effect on September 2, 1974.

(2) *Limitation.* The exception contained in this paragraph only applies to subclasses which are adopted before the [one hundred and eighty-first day after publication in the FEDERAL REGISTER], except for modifications that may be required by the Internal Revenue Service as a condition of qualification. If the allocation provisions of a plan were amended after September 2, 1974, the plan may establish subclasses under this paragraph only if the allocation provisions were amended as part of a good faith effort to comply with section 4044 of the Act.

These amendments are effective January 13, 1977.

(Sec. 4002(b)(3), 4044, Pub. L. 93-406, 88 Stat. 1004, 1025-27 (29 U.S.C. 1302(b)(3), 1344).)

Issued at Washington, D.C. on this 30th day of December, 1976.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing the Chairman to issue same.

W. J. USERY, Jr.,
Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

HENRY ROSE,
Secretary, Pension Benefit Guaranty Corporation.

[FR Doc.77-1132 Filed 1-12-77;8:45 am]

PART 2610—INTERIM REGULATION ON VALUATION OF PLAN BENEFITS

Amendment Adopting Additional PBGC Rates

On November 3, 1976, the Pension Benefit Guaranty Corporation ("PBGC") published in the FEDERAL REGISTER an Interim Regulation on the Valuation of Benefits for plans that do not receive a notice from the PBGC that after allocation of assets in accordance with section 4044 of the Employee Retirement Income Security Act of 1974 ("Act") the plan has sufficient assets to pay all benefits guaranteed under Title IV of the Act. (41 FR 48484 et seq.) On that same date the PBGC also published in the FEDERAL REGISTER a Supplemental Notice of Proposed Rulemaking on the Valuation of Plan Benefits that contained rules for valuing the benefits in plans that receive a Notice of Sufficiency from the PBGC ("sufficient plans"). (41 FR 48498 *et seq.*) The supplemental proposal also contained rates to be used for valuing annuities provided by the PBGC for plans that terminated after September 30, 1975 and before September 1, 1976.

A number of comments were received regarding the rules on valuation of benefits in sufficient plans. Those rules are intimately related to the regulation on determination of plan sufficiency on which the PBGC has received many conflicting comments. Therefore, PBGC has decided not to issue final rules on the valuation of benefits in sufficient plans until the determination of sufficiency regulation is finalized.

GENERAL

One commentator objected to the issuance of any regulations by PBGC on the valuation of plan benefits. The commentator expresses concern that the actuarial basis for valuing benefits in terminating plans promulgated by PBGC might be extended to on-going plans. The valuation rates prescribed by the PBGC are designed to reflect PBGC's cost of providing benefits in terminating plans. Those costs do not reflect in any manner the reasonable actuarial assumptions which on-going plans should use. On-going plans must take into account projected benefit levels and other factors which are not relevant in determining costs of a terminated plan because no more benefits will accrue after termination. Therefore, PBGC actuarial factors should not be applied to on-going plan situations unless the plan's actuary determines them to be the most reasonable factors. However, PBGC believes it should inform plan administrators, plan sponsors, and plan participants of the basis on which benefit values are determined when PBGC provides the benefits since those values determine the appropriate allocation of assets to benefits and whether there is any employer liability.

EARLY RETIREMENT BENEFITS

One comment suggested that participants who were entitled to retire early be required to irrevocably elect a retirement date when the plan terminates to eliminate the guesswork involved in estimating rates of early retirement. PBGC disagrees with this suggestion because it would deprive a participant of a vested right under the plan; the flexibility to decide when to retire, and such an election might be unenforceable because it requires the participant to make an irrevocable advance commitment to give up his primary means of support on a given date even though subsequent events may lead the participant to decide not to retire.

PBGC RATES

One comment suggested that PBGC rates on deferred annuities appeared too

conservative (*i.e.* the benefit values under the rates would be too high) and should reflect the rates currently being paid on long term government securities. The commentator also "believed" that the rates for disabled lives not receiving Social Security benefits and the early retirement rates and resulting assumed retirement ages may very well prove to be too conservative. With respect to the first comment, the reason why the discount rates for deferred annuities appear lower is primarily because of two factors.

First, the rates must take into account the rates at which earnings from the initial investments made to fund such annuities can be reinvested. Secondly, PBGC rates contain loading factors for the anticipated expenses associated with providing the annuities. Since annuity payments associated with deferred annuities are generally less than for immediate annuities, recurring administrative costs tend to be a larger percentage of the total cost of providing the annuity. Also, any fixed charges incurred at the time of a commitment are also a larger factor for deferred annuities than for immediate annuities. It is these expenses which account for a large share of the apparent lower yield on deferred annuities.

Regarding the comments on early retirement rates and rates for disabled lives not eligible for Social Security, PBGC has not discovered any accurate tables or valid studies on those types of annuities, and therefore, will as the comment implies monitor its experience to develop such tables and rates. The current rates represent PBGC's best estimate, based on currently available data, of its expected experience in these areas.

Accordingly, PBGC has decided to amend the Interim Regulation to add the additional interest rates and factors published in the supplemental proposal covering the period from October 1, 1975 through August 31, 1976.

Because of the need to provide immediate guidance for the valuation of benefits in plans that terminated before September 1, 1976, and because no adjustment by on-going plans is required by this amendment, PBGC finds that good cause exists for making the amendment effective immediately.

In consideration of the foregoing, Part 2610 of Chapter XXVI, Code of Federal Regulations is amended as follows:

Appendix B—Interest Rates and Quantities Used to Value Annuities is revised to read as follows:

APPENDIX B—INTEREST RATES AND QUANTITIES USED TO VALUE DEFERRED ANNUITIES

I. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after September 2, 1974 and on or before September 30, 1975:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 8% shall be used to value immediate annuities, to compute the quality "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0575$
(3) $k_3 = 1.0425$
(4) $n_1 = 7$
(5) $n_2 = 8$

II. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after October 1, 1975 and on or before December 31, 1975:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¾ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0575$
(3) $k_3 = 1.0425$
(4) $n_1 = 7$
(5) $n_2 = 7$

III. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after January 1, 1976 and on or before February 29, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 8 percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.—*Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0725$
(2) $k_2 = 1.0525$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 10$

IV. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after March 1, 1976 and on or before May 31, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.— *Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.07$
(2) $k_2 = 1.05$
(3) $k_3 = 1.04$
(4) $n_1 = 7$
(5) $n_2 = 10$

V. *The following interest rates and quantities used to value benefits shall be effective for plans which terminate on or after June 1, 1976 and on or before August 31, 1976:*

Table I.—*Interest rate for valuing immediate annuities.* An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "G" in § 2610.6, and for valuing both portions of a cash refund annuity.

Table II.— *Interest rate for valuing death benefits.* An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

Table III.—*Interest rates and quantities used to value deferred annuities.* The following factors shall be used to value deferred annuities pursuant to § 2610.6:

(1) $k_1 = 1.0675$
(2) $k_2 = 1.0475$
(3) $k_3 = 1.035$
(4) $n_1 = 7$
(5) $n_2 = 10$

These amendments are effective January 13, 1977.

(Secs. 4002(b)(3), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1025-27, 1029 (29 U.S.C. 1302(b)(3), 1344, 1362(b)(1)(A)).)

Issued at Washington, D.C. on this 30th day of December 1976.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing the Chairman to issue same.

W. J. USERY, JR.,
Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

HENRY ROSE,
Secretary, Pension Benefit Guaranty Corporation.

[FR Doc.77-1133 Filed 1-12-77;8:45 am]

Title 32—National Defense

CHAPTER XX—INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

PART 2000—ADMINISTRATIVE PROCEDURES

Submission of Reports and Appeals Procedures

The Interagency Classification Review Committee (ICRC) is revising Chapter XX, Part 2000 of its Rules and Regulations to require semiannual rather than quarterly submission of most reports described in Subpart B and to distinguish between classification abuses and administrative security violations for reporting purposes.

The table of contents for Part 2000 is revised as follows:

Subpart A—General

Sec.
2000.1 Purpose.
2000.2 Scope.
2000.3 Jurisdiction.

Subpart B—National Security Information or Material Reports

2000.10 Original classification authorities.
2000.11 Classification abuses/administrative security violations.
2000.12 Unauthorized disclosures.
2000.13 Mandatory declassification review actions.

Sec.
2000.14 Annual review lists.
2000.15 Annual declassification list.
2000.16 Semiannual summary.
2000.17 Listing of national security classified material requiring protection beyond 30 years.

Subpart C—Appeals Procedures

2000.20 Notice of an appeal.
2000.21 Exhaustion of other remedies.
2000.22 Acceptance of appeal.
2000.23 Consideration of appeal.
2000.24 ICRC review.
2000.25 Decision.

Subpart D—Forms

2000.30 Scope of part.
2000.31 Standard forms.

Subpart A—General

1. Section 2000.1 is amended as follows:

§ 2000.1 Purpose.

* * * * *

(b) Procedures and reports for semiannual, annual, and special reporting by the Departments to the ICRC.

* * * * *

Subpart B—National Security Information or Material Reports

2. Subpart B is revised to read as follows:

§ 2000.10 Original classification authorities.

(a) The number of officials who have been designated as original Top Secret, Secret, and Confidential classification authorities pursuant to sections 2(A) and 2(B) of Executive Order 11652, as amended, must be reported to the ICRC semiannually by using Standard Form 244.

(b) The report must:

(1) Be typed and submitted in duplicate;

(2) Not contain any classified information; and

(3) Be submitted no later than 30 calendar days after the end of each reporting period (June 30 and December 31).

(c) Paragraph (a) of this section does not dispense with the provisions of section ID of the National Security Council Directive which requires a list of authorized classifiers to be maintained by each Department. Departments shall ensure the capability of providing prompt access to the current lists upon the request of the Chairman or the Executive Director.

§ 2000.11 Classification abuses and administrative security violations.

(a) A classification abuse is a violation of the terms of Executive Order 11652 (or of implementing regulations or directives of any executive branch Department or Agency) the effect of which would be to preclude or delay the release of official information, to include overclassification, unnecessary classification, classification without authority, unnecessary exemption or exemption without authority.

(b) An administrative security violation is the marking of a document in a manner which does not conform with the requirements of Executive Order 11652 and implementing directives. Examples include: failure to apply downgrading/declassification assignments, failure to indicate classification authority, failure to apply internal classification markings (when required by Agency), or incorrectly computing declassification dates under the General Declassification Schedule.

(c) A reportable abuse or violation which becomes known during the reporting period, including one which is the result of Departmental inspection programs, must be reported semiannually on SF 322.

§ 2000.12 Unauthorized disclosures.

(a) An unauthorized disclosure is a communication or physical transfer of classified information or material to a person not authorized to receive it.

(b) An unauthorized disclosure is reportable when an incident of deliberate or inadvertent release of classified information warrants formal investigation and such investigation confirms that an important disclosure did occur.

(c) Unauthorized disclosures must be reported to the ICRC semiannually using Standard Form 323. The report must be submitted in duplicate no later than 30 calendar days after the end of the reporting period (June 30 and December 31). Any classified information included in the report should be forwarded under separate cover.

§ 2000.13 Mandatory declassification review actions.

Summary information concerning all requests and appeals for mandatory declassification review of classified documents over 10 years old must be submitted, in duplicate, on Standard Forms 242 and 243, no later than 30 calendar days after the end of the reporting period (June 30 and December 31). No classified information may be included on these forms.

§ 2000.14 Annual review list.

(a) An Annual Review List of classified material not scheduled for automatic declassification must be submitted for review by the ICRC by April 1st of each year.

(b) The list must include all documents which:

(1) Are exempt and over 10 years old;

(2) Specify an event for declassification; and

(3) Are in the Data Index System on or before December 31 of the previous calendar year.

(c) Sorting shall be in the following order: classifier in alphabetical sequence by last name and first name or initial; classification category in descending order, "T," "S," then "C". The list shall be printed in the following sequence across the page: origin, classifier, classification category title or description, document date, subject, area code, declassification schedule, exemption category (if any), and declassification date. If any titles or descriptions are classified, such list shall carry the highest classification indicated.

§ 2000.15 Annual declassification list.

(a) The Annual Declassification List is a two part listing of documents including those documents declassified on or before December 31 of the previous calendar year, and those documents listed in the Annual Review List for which a declassification determination has been made. The Annual Declassification List must be printed by both subject and area code; it must be submitted to the ICRC by September 1st of each year.

(b) The List must be printed across the page in the following sequence: subject, originating office, document date, area in unabbreviated form, title or description, and classification category. The area list must be printed in the same sequence across the page except area in abbreviated form shall appear in place of subject as the first item.

§ 2000.16 Semiannual summary.

(a) A Semiannual Summary must be submitted by each Department, Agency or organizational unit that creates classified records. The report must cover data related to the:

(1) Volume of documents being classified;

(2) Use of declassification schedules;

(3) Efforts to increase public access to declassified information; and

(4) Efforts to improve management of classified material.

(b) Reports must:

(1) Be submitted on Standard Form 324 in duplicate;

(2) Be submitted no later than 30 calendar days after the end of the reporting period (June 30 and December 31); and

(3) Not contain any classified information.

§ 2000.17 Listing of national security classified material requiring protection beyond 30 years.

If records need to be exempt from the automatic declassification process and protected beyond 30 years, use Standard Form 325. Submit SF 325 to the Archivist of the United States with a letter from the head of the agency or department attesting to his/her personal determination that records listed on the SF 325 require continued classification beyond 30 years.

Subpart D—Forms

3. Subpart D is revised to read as follows:

§ 2000.30 Scope of subpart.

This Subpart contains the Standard Forms (SF) that are prescribed for use in connection with the subject matter covered in other parts of Chapter XX.

§ 2000.31 List of forms.

The Standard Forms listed below may be obtained from the nearest General Services Administration (GSA) supply source.

SF 242 "Report of Mandatory Review Appeals Actions"
SF 243 "Report of Mandatory Declassification Review Actions"

SF 244 "Report of Original Classification Authorities"
SF 322 "Report of Classification Abuses and Administrative Security Violations"
SF 323 "Report of Unauthorized Disclosures"
SF 324 "Semiannual Summary Report to the ICRC"
SF 325 "Listing of National Security Classified Material Requiring Protection Beyond 30 Years"

Effective date: This regulation is effective January 13, 1977.

NOTE.—The ICRC 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: January 7, 1977.

JAMES B. RHOADS,
Acting Chairman.

[FR Doc.77-1157 Filed 1-12-77; 8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER 1—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 75-174]

PART 92—ANCHORAGE AND NAVIGATION REGULATIONS: ST. MARYS RIVER, MICHIGAN

Lookout Stations

The Coast Guard has completely discontinued Lookout Station No. 3, Mission Point, Little Rapids Cut, St. Marys River.

Lookout Station No. 4, Rock Cut, West Neebish Channel, St. Marys River has been discontinued as a Lookout Station. The Coast Guard may man the site of Lookout Station No. 4, or use automated equipment to monitor channel conditions. Visual channel obstruction or closure signals will no longer be displayed at the site of Lookout Station No. 4.

These are matters of agency procedure and therefore notice of proposed rulemaking and public procedures are unnecessary.

Accordingly, Part 92 of Title 33 of the Code of Federal Regulations is amended as follows:

§ 92.09 [Revoked]

1. By deleting § 92.09.

§ 92.15 [Revoked]

2. By deleting § 92.15.

§ 92.19 [Amended]

3. In § 92.19(a), by deleting the second sentence.

(33 U.S.C. 474.)

Effective date: This amendment shall become effective on January 13, 1977.

Dated: January 4, 1977.

E. L. PERRY,
Vice Admiral, U.S. Coast Gurad,
Acting Commandant.

[FR Doc.77-1184 Filed 1-12-77;8:45 am]

[CGD 75-176]

PART 183—BOATS AND ASSOCIATED EQUIPMENT

Amendments Affecting the Safe Loading and Flotation Standards for Boats

The purpose of these amendments to the Coast Guard safe loading and flotation standards is to clarify the meaning of certain terms used in the standards and to clarify the applicability of the flotation standard.

A notice of proposed rulemaking was published in the FEDERAL REGISTER on May 6, 1976 (41 FR 18679). The date of the end of the public comment period was omitted from the notice. A correction notice was published in the FEDERAL REGISTER on May 19, 1976 (41 FR 20590) and on May 27, 1976 (41 FR 21650) listing June 21, 1976 as the end of the public comment period on the proposed amendments.

No public hearing was held and no written comments were received on the proposed amendments. However, several errors were discovered in the notice which have resulted in minor editorial changes to the final rule. A typographical error in § 183.3 resulted in new paragraph (k) being shown as paragraph (h). In paragraphs §§ 183.33(b)(2)(iv) and 183.35(b)(2)(iv) the word "fuel" in the phrase "weight of full permanent fuel tanks" was misspelled "full." In addition, the phrase "full fuel system and tanks" in the definition of "machinery weight" in paragraph § 183.33(b)(3) was not deleted. This error would have resulted in the addition of the weight of full fuel tanks twice in the calculation of "boat weight" for inboard and inboard-outdrive boats.

Another error was discovered in § 183.37. The word "and" following paragraph § 183.37(b)(iii) should have followed the semicolon at the end of paragraph § 183.37(b)(ii) and a period should have appeared in place of the semicolon at the end of paragraph § 183.37(b)(iii). With the exception of the correction of these errors, the amendments are adopted as proposed.

In consideration of the foregoing, Part 183 of Title 33 of the Code of Federal Regulations is amended as follows:

1. Section 183.3 is amended by adding a new paragraph (k) to read as follows:

§ 183.3 Definitions.

* * * * *

(k) "Permanent appurtenances" means equipment that is mounted or fastened, so that it is not removable without the use of tools. Seats, inboard engines, windshields, helm stations, or hardtops are permanent appurtenaces. Outboard motors, controls, batteries, and portable fuel tanks are not permanent appurtenances.

2. Section 183.33 is amended by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 183.33 Maximum weight capacity: Inboard and inboard-outdrive boats.

* * * * *

(b) * * *

(2) "Boat weight" is the combination of:

(i) Hull weight;

(ii) Deck and superstructure weight;

(iii) Weight of permanent appurtenances; and

(iv) Weight of full permanent fuel tanks.

(3) "Machinery weight" is the combined weight of installed engines or motors, control equipment, drive units, and batteries.

3. Section 183.35 is amended by revising subparagraph (b)(2) to read as follows:

§ 183.35 Maximum weight capacity: Outboard boats.

* * * * *

(b) * * *

(2) "Boat weight" is the combination of:

(i) Hull weight;

(ii) Deck and superstructure weight;

(iii) Weight of permanent appurtenances; and

(iv) Weight of full permanent fuel tanks.

4. Section 183.37 is amended by revising subparagraph (b)(2) to read as follows:

§ 183.37 Maximum weight capacity: Boats without mechanical propulsion.

* * * * *

(b) * * *

(2) "Boat weight" is the combination of:

(i) Hull weight;

(ii) Deck and superstructure weight; and

(iii) Weight of permanent appurtenances.

5. Section 183.61 is revised to read as follows:

§ 183.61 Applicability.

This subpart applies to monohull boats less than 20 feet in length, except sailboats, canoes, kayaks, inflatable boats, submersibles, surface effect vehicles, and amphibious vehicles.

6. Section 183.63 is revised to read as follows:

§ 183.63 Quantity of flotation required.

(a) Each boat must have—

(1) At least that quantity of flotation prescribed in § 183.67; or

(2) Enough flotation to keep any portion of the boat above the surface of the water when the boat is filled with water and loaded with:

(i) A weight that, when submerged, equals two-fifteenths of the persons capacity marked on the boat;

(ii) A weight that, when submerged, equals 25 percent of the dead weight;

(iii) A weight in pounds that, when submerged, equals 62.4 times the volume in cubic feet of the two largest air chambers, if air chambers are used for flotation; and

(iv) For outboard boats, a weight that, when submerged, equals the sum of the submerged motor, control, and battery weight from Table 183.67(a).

(b) For the purpose of this section, "dead weight" means:

(1) For outboard boats and boats without mechanical propulsion, the maximum weight capacity marked on the boat minus the sum of:

(i) Motor and control weight, battery weight (dry), and full portable fuel tanks from Table 183.67(a);

(ii) The persons capacity determined under § 183.41 for the boat; and

(2) For inboard boats, the maximum weight capacity marked on the boat minus the persons capacity determined under § 183.39 for the boat.

(c) Dead weight must be zero or a positive number.

7. Section 183.67 is amended by revising paragraph (a) to read as follows:

§ 183.67 Method for determining quantity of flotation.

* * * * *

(a) Step 1: Determine the Submerged Weight of the boat (Ws) in the formula:

$$W_s = (WhK_1) + (WdK_2) + (0.69W_e)$$

Where:

W_s = Submerged weight of boat.
W_h = Dry weight of hull.
W_d = Dry weight of deck and superstructure.
W_e = Dry weight of permanent appurtenances.
K_1 and K_2 = *Conversion factors for materials* used from Table 183.67(b)

* * * * *

(46 U.S.C. 1454; 49 CFR 1.46(n)(1).)

Effective date: This regulation is effective on July 22, 1977.

NOTE.—Affected persons may voluntarily comply with this amendment prior to July 22, 1977.

NOTE.—The Coast Guard 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: January 4, 1977.

E. L. PERRY,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.77-1185 Filed 1-12-77;8:45 am]

[CGD 74-286]

PART 183—BOATS AND ASSOCIATED EQUIPMENT

Capacity and Safe Loading Requirements for Low Powered and Non-Powered Boats

This amendment to the safe loading standard in Subpart C of Part 183 establishes new formulas for the calculation of maximum weight capacity and persons capacity for boats rated for manual propulsion and boats rated for motors of two horsepower or less. This amendment also establishes two new capacity information formats in Subpart B of Part 183 for displaying the maximum weight capacity and persons capacity for these low powered and non-powered boats.

A notice of proposed rulemaking was published in the FEDERAL REGISTER on June 24, 1976 (41 FR 26027). A comment period was specified during which any interested person could submit written comments on the proposal. The written comment period ended 24 August 1976. No public hearing was held; however, the notice did provide an opportunity for any person who wished to present his comments orally and informally to do so.

Of the comments received, two of them suggested that additional requirements be added to the amendment such as painting a load waterline on boats and requiring additional warning labels with pertinent safety information. The comments were not within the scope of the amendment; however, the Coast Guard is conducting research in these areas and these suggestions may become the subject of a future rulemaking action. The Coast Guard, however, has no relevant data or information at this time that indicates any significant enhancement of boating safety would result from these suggested requirements.

Another commenter suggested that three horsepower should be the horsepower limit for small dinghies because these types of boats have used this size of motor in the past with no apparent safety problems. The amendment does not require a boat manufacturer to rate his boat for two horsepower because it is a dinghy or other small boat. Subpart D of Part 183 allows a manufacturer to rate his boat for three or more horsepower depending on the size of the boat, which does allow a dinghy to be rated for three horsepower. The two horsepower rating is not mandatory, but if a manufacturer chooses to rate his boat for two horsepower or less he can increase the load carrying capacity of his boat as provided in this amendment.

Several comments objected to the eight-inch minimum freeboard requirement in the formula for maximum weight capacity. The commenters stated that the eight inch minimum freeboard requirement does not enhance the safety of a boat. The commenters added that the eight-inch requirement appears to be arbitrary and that it may mislead a boat owner into believing that an eight-inch freeboard is safe regardless of the boat's usage and the conditions in which it operates. The Coast Guard agrees in principle with these comments, except for the comment suggesting that the eight inch requirement is an arbitrary value. The eight inches was adopted from the International Council of Marine Industry Associations (ICOMIA) where it is used as a minimum freeboard requirement for boats of five meters or less in length. The Coast Guard felt that adoption of the eight-inch freeboard restriction was necessary to prevent excessive overloading of small boats in light of the increased capacities that are being allowed by the amendment. The Coast Guard has reconsidered the results of tests of the types of boats that may be rated under this amendment. The boats tested were loaded to the capacities allowed by the amendment and none of them had less than eight inches of freeboard. Based on these results, the Coast Guard does not feel that the eight-inch minimum freeboard requirement is necessary and the requirement has been removed from the final rule. Accordingly, the maximum weight capacity for a boat rated for manual propulsion or for motors of two horsepower or less is 3/10 of the difference between the boat's maximum displacement and the boat's weight in pounds.

Another comment suggested that the amendment should state the location of the test weights in a boat when determining the maximum weight capacity at the eight-inch minimum freeboard. Since the eight-inch restriction has been removed from the amendment this comment is no longer relevant.

The remaining commenters objected to the application of the amendment to canoes, kayaks, and sailboats. These comments were not relevant to the subject of the amendment because canoes, kayaks, and sailboats are specifically excepted in § 183.31 from the safe loading standards.

In consideration of the foregoing, Part 183 of Title 33, Code of Federal Regulations is amended as follows:

1. By amending § 183.25 by revising the introductory text of paragraph (b)(2) and by adding new paragraphs (b)(3) and (b)(4) to read as follows:

§ 183.25 Display of markings.

* * * * *

(b) * * *

(2) For inboard boats and inboard outdrive boats:

* * * * *

(3) For boats rated for motors of two horsepower or less:

U.S. COAST GUARD CAPACITY INFORMATION

Maximum horsepower	XXX
Maximum persons capacity	XXX
Maximum weight capacity (persons, and gear) (pounds)	XXX

(4) For boats rated for manual propulsion:

U.S. COAST GUARD CAPACITY INFORMATION

This boat rated for manual propulsion.

Maximum persons capacity (pounds)	XXX
Maximum weight capacity (persons, and gear) (pounds)	XXX

2. By amending § 183.37 by revising the heading and paragraph (a) to read as follows:

§ 183.37 Maximum weight capacity: Boats rated for manual propulsion and boats rated for motors of two horsepower or less.

(a) The maximum weight capacity marked on a boat that is rated for manual propulsion or for motors of two horsepower or less must not exceed 3/10 of the difference between the boat's

maximum displacement and the boat's weight in pounds.

* * * * * *

3. By revising the heading and text of § 183.43 to read as follows:

§ 183.43 Persons capacity: Boats rated for manual propulsion and boats rated for motors of two horsepower or less.

The persons capacity marked on a boat that is rated for manual propulsion or for motors of two horsepower or less must not exceed—

(a) For boats rated for manual propulsion, 90 percent of the maximum weight capacity in pounds; and

(b) For boats rated for motors of two horsepower or less, 90 percent of the maximum weight capacity in pounds, less 25 pounds.

(46 U.S.C. 1454; 49 CFR 1.46(n)(1).)

Effective date: This regulation is effective on July 22, 1977.

NOTE.—Affected persons may voluntarily comply with this amendment prior to July 22, 1977.

NOTE.—The Coast Guard 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: January 4, 1977.

E. L. PERRY,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.77-1183 Filed 1-12-77;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 3—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 3-3—PROCUREMENT BY NEGOTIATION

Subpart 3-3.3—Determinations, Findings, and Authorities

Chapter 3, Title 41, Code of Federal Regulations, is amended as set forth below. The purpose of these amendments is to allow class determinations for research and development procurements to be in effect for three years instead of one. This period will be consistent with the policy expressed in the revised regulation on noncompetitive procurement concerning "whole project buys."

It is the general policy of the Department to allow time for interested parties to participate in the rule making process. However, the public rule making process is deemed unnecessary in this instance as the amendments concern administrative matters.

1. Subpart 3-3.301(b) is revised to read as follows:

Subpart 3-3.3—Determinations, Findings, and Authorities

§ 3-3.301 General.

* * * * *

(b) Class determinations and findings shall be justified on the basis of need to avoid processing multiple determinations and findings when more than one contract must be negotiated under the same negotiation authority for the same program or project. The multiple procurements must be for items or services which are to be negotiated at or near the same time and are so related as to constitute a logical and distinct class. All class determinations and findings shall be limited to a period of 1 year or less, except that those determinations and findings required by § 1-3.211 may be authorized for 3 years.

2. Subpart 3-3.305-50(a)(3) is revised to read as follows:

§ 3-3.305-50 Sample formats.

* * * * *

(3) Section 1-3.211 Class of contracts

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

DETERMINATION AND FINDINGS

Authority to Negotiate a Class of Contracts under 41 U.S.C. 252(c)(11)

I hereby find that:

(1) The (agency title) proposes to negotiate approximately (number) contracts in support of (identify program or project, and state the anticipated funding level).

(2) The proposed procurements are for (experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research or test [1]).

(a) (Set forth facts and circumstances which support a judgment that the work to be performed is in fact experimental, developmental or research).

(3) It is impracticable to secure competition by formal advertising for the contracts contemplated because:

(a) (Set forth reasons why the procurements cannot be formally advertised, e.g., only ultimate objectives and general scope of work can be outlined, work cannot be described by definite drawings and specifications, etc.)

I hereby determine that:

On the basis of the above findings, the proposed procurements are for (experimental, developmental, or research work, for the manufacture or furnishing of property for experimentation, development, research, or test [1]) and that negotiation of contracts for such (work or property [1]) is authorized pursuant to 41 U.S.C. 252(c)(11); provided the required (work or property [1]) has been authorized by law.

This class determination shall remain in effect until (state terminal date (limit effective period not to exceed three years)).

Date .....

.....
Signature

(5 U.S.C. 301; 40 U.S.C. 486(c))

Effective date: The provisions of this amendment will be effective Thursday, January 13, 1977.

NOTE.—The Department of Health, Education, and Welfare 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: January 7, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

[FR Doc.77-1151 Filed 1-12-77;8:45 am]

[1] Use applicable word or statement.

PROCUREMENT, NEGOTIATION, TYPES AND METHODS, FORMS AND ADMINISTRATIVE MATTERS

Miscellaneous Amendments to Chapter

Chapter 3, Title 41, Code of Federal Regulations, is amended as set forth below. Subparagraph 3-3.303-52(a)(9) is deleted. Subparagraph 3-3.408(d)(1) is amended to execute organizational title changes. Section 3-4.5400 is amended to raise the dollar limit requiring preprocurement clearances of audiovisual materials and contracts for public affairs services. Subparagraphs 3-16.5001(h)(ii)(1)(B) and (2)(B) are amended to clarify the solicitation requirements for technical proposals. Subparagraph 3-16.5001(h)(iii)(C) is amended to revise the Small Business Representation. Subparagraph 3-50.402(a)(3) is amended to reduce the distribution of procurement documents. Paragraph 3-50.603(g) is amended to provide explicit instruction regarding the obligation of funds under the incremental funding concept.

It is the general policy of the Department of Health, Education, and Welfare to allow time for interested parties to take part in the rule making process. However, the amendments herein involve internal administrative procedures. Therefore, the public rule making process is deemed unnecessary in this instance.

(5 U.S.C. 301; 40 U.S.C. 486(c).)

Effective date: These amendments shall be effective January 13, 1977.

NOTE: The Department of Health, Education, and Welfare 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: January 7, 1977.

JOHN OTTINA,
Assistant Secretary for Administration and Management.

PART 3-3—PROCUREMENT BY NEGOTIATION

Subpart 3-3.3—Determinations, Findings, and Authorities

§ 3-3.303-52 [Amended]

* * * * *

Subparagraph 3-3.303-52(a) is amended to delete § 3-3.303-52(a)(9) in its entirety.

Subpart 3-3.4—Types of Contracts

§ 3.3-408 [Amended]

Under Paragraph 3-3.408, Letter contract, the listing of organization titles in

Subparagraph 3-3.408(d)(1) is amended to read as follows:

Office of the Secretary—Director, Office of Administration, Office of the Assistant Secretary for Administration and Management.
Office of the Assistant Secretary for Health—Director, Division of Grants and Contracts, Office of Resource Management, Office of Administrative Management.
Office of Education—Deputy Commissioner for Management.
Office of Human Development—Director, Office of Administration and Management.
National Institute of Education—Associate Director for Administration and Management.
Social and Rehabilitation Service—Assistant Administrator for Financial Management.
Social Security Administration—Director, Office of Materiel Management.

In regional offices, the Regional Director shall appoint the official to approve letter contracts for those activities for which he has delegated procurement authority, provided, however, that this official shall be at an organizational level not lower than the Assistant Regional Director for Administration. Activities within the regional offices not under the procurement authority of the Regional Director shall submit requests for approval of letter contracts, through proper administrative channels, to the appropriate above listed official.

PART 3-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 3-4.54—Procurement Clearance of Audiovisual Material and Contracts for Public Affairs Services

Section 3-4.5400 is amended to read as follows:

§ 3-4.5400 Scope of subpart.

This subpart provides for prior clearances and methods of contracting for the procurement of audiovisual materials and/or contracts for public affairs services in excess of $5,000. Chapter 1-121 of the General Administration Manual sets forth supplementary requirements for review of audiovisual materials intended for use with the public contracts for public affairs services. The term "audiovisual materials," as used in this subpart, refers not only to the completed product but also to all steps and techniques leading to the realization of the completed product. The term includes motion pictures, video tapes, slide shows, film strips, audio recordings, exhibitry, or similar materials; design, layout, preparation of scripts, filming or taping, sound recording, editing, fabrication, or other activities leading to the acquisition or creation of audiovisual materials regardless of intended use.

PART 3-16—PROCUREMENT FORMS

Subpart 3-16.50—Forms for Negotiated Procurement

§ 3-16.5001 [Amended]

Section 3-16.5001, Standardized request for proposal (RFP) format and checklist for solicitation documents, is amended as follows:

Subparagraph 3-16.5001(h)(ii)(1)(B) is deleted and the following is substituted:

(B) Prospective contractor's proposed explanation of technical approaches and a detailed outline of the proposed approach for executing the requirements of the technical scope and achieving the objectives of the project.

The last paragraph of subparagraph 3-16.5001(h)(ii)(2)(B) is deleted and the following is substituted:

Proposals which merely offer to conduct a program in accordance with the requirements of the Government's scope of work will be considered nonresponsive to this request and will not be considered further. The offeror must submit an explanation of the technical approach and a detailed description of the tasks to be performed to achieve the project objectives.

Subparagraph 3-16.5001(h)(iii)(C), Small Business Representation, under Representations and Certifications, is deleted and the following is substituted:

I. SMALL BUSINESS REPRESENTATION

This firm ( ) is, ( ) is not, a small business concern. If the firm is a small business concern and is not the manufacturer of the supplies to be furnished hereunder, the firm also represents that all such supplies ( ) will, ( ) will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico. (A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration.) (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed definitions and related procedures.)

PART 3-50—ADMINISTRATIVE MATTERS

Subpart 3-50.4—Execution and Distribution of Procurement Documents

Subparagraph 3-50.402(a)(3) is amended to read as follows:

§ 3-50.402 Distribution of procurement documents.

(a) Mandatory distribution. Purchasing offices shall distribute bilateral contracts and modifications as follows:

* * * * *

(3) Authenticated copy to appropriate accounting point; and

* * * * *

Subpart 3-50.6—Incremental Funding of Cost-Reimbursement Research and Development Contracts

Paragraph 3-50.603(g) is amended to read as follows:

§ 3-50.603 General.

* * * * *

(g) Sufficient funds must be obligated under the basic contract to cover no less than the first year of performance unless the contracting officer determines it is advantageous to the Government to fund the contract for a lesser period. In that event, the funds obligated shall be sufficient to cover a defined phase of performance which represents a material phase in relation to the project as a whole.

[FR Doc.77-1152 Filed 1-12-77;8:45 am]

CHAPTER 9—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA—PR Temporary Reg. No. 24]

PART 9-51—REVIEW AND APPROVAL OF CONTRACT ACTIONS

Noncompetitive Procurement; Policy On Preparation of Justification

Correction

In FR Doc. 76-36993, appearing at page 55195, in the issue for Friday, December 17, 1976, the following changes should be made:

On page 55197, in the middle column of the table designated "Exhibit 1.—*Noncompetitive procurement justification—review and approval*", the fourth word in the sixth line, and the first word in the tenth line, now reading "processing", should read "procurement".

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5612]

ALASKA

Correction of Public Land Order No. 5611; Clarification of Public Land Order No. 5561, as Amended

In FEDERAL REGISTER Doc. 76-38382, appearing at page 56646 in the issue of Wednesday, December 29, 1976, the last sentence of the last paragraph is corrected by changing "43 Stat. 1610," to read "43 U.S.C. 1610," and inserting the word "not" immediately following the words "vacant and unappropriated or" and immediately preceding the word "reserved."

JACK O. HORTON,
Assistant Secretary of the Interior.

JANUARY 10, 1977.

[FR Doc.77-1148 Filed 1-12-77;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 248—COVERAGE AND CONDITIONS OF ELIGIBILITY FOR MEDICAL ASSISTANCE

Determination of Income and Resources of Spouses and Parents Available to Applicants for or Recipients of Medical Assistance

Notice of proposed rule making was published on December 31, 1975 in the FEDERAL REGISTER (40 FR 60074), to implement sections 1902(a)(10)(C)(i) and 1902(a)(17)(D) of the Social Security Act. These statutory provisions, specify-

ing the conditions under which the financial responsibility of relatives for applicants and/or recipients is taken into account in determining eligibility and the amount of assistance formed the basis of the proposed regulations, in addition to the need for clear Federal rules in the light of questions which have been raised by State agencies, applicants, recipients and a court case on this subject. The purpose of the proposed regulations was to ensure uniformity and equity in Medicaid eligibility determinations.

Section 1902(a)(10)(A) of the Social Security Act requires all State Medicaid programs (except those imposing more restrictive criteria under section 1902(f)), to cover as eligible for Medicaid those aged, blind and disabled persons receiving SSI benefits. Section 1902(a)(10)(C)(i) goes on to state that where a State covers other aged, blind and disabled persons all SSI eligibility criteria must be applied "* * * except for income and resources * * *". This means that while a State might use more generous maintenance amounts in determining financial eligibility (i.e., medically needy levels, optional State supplementary payment levels, disregards or asset exemptions) all other SSI eligibility criteria are to be used.

Hence, for example, just as a medically needy applicant filing as disabled must satisfy the SSI disability definition, likewise all aged, blind and disabled persons applying in States covering all SSI eligibles must have their eligibility determined using all SSI eligibility rules except for—and only except for—higher dollar amounts for income and resource eligibility levels. Thus, relatives whose incomes are looked to and counted in determining SSI eligibility in certain living arrangements must also be looked to and have their incomes counted in Medicaid eligibility determinations by the State; conversely, where relatives' incomes are not counted, or cease to be counted in certain living arrangements, for SSI determinations, Medicaid-only eligibility determinations must do likewise.

Within title XIX, section 1902(a)(17) states that, "A State plan for medical assistance must * * * provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, *available* to the applicant or recipient * * *." These new regulations constitute such standards of availability prescribed by the Secretary.

The new regulations require States to use title XVI availability criteria where Medicaid is provided to all supplemental security income recipients, as is already called for in section 1902(a)(10) of the Act. The portion of the Medicaid law quoted above provides that available income is considered in determining Medicaid eligibility. Long-standing Medicaid regulations (45 CFR 248.3(a)(1)(ii)(A)) already state that if a State covers all individuals eligible for or receiving title XVI benefits for Medicaid it must apply the title XVI income and resource eligibility criteria. The States are now specifically required to use the SSI rules on availability of income.

Title XVI provides that in the case of an eligible individual and eligible spouse, the couple's combined income and resources are considered in determining whether the SSI income and resource limits are exceeded (section 1611(a)(2)). However, if the eligible individual and eligible spouse are separated for more than 6 months, each is then considered as an individual (section 1614(b)). Thus, where the husband and wife (both of whom are eligible for SSI) have been separated for more than 6 months, the income and resources of each are looked at separately in determining whether each is eligible for SSI.

If only one member of the couple is aged, blind, or disabled, then the income and resources of his spouse are considered as available to the individual in determining whether he is eligible for SSI, if the spouse is living in the same household with the eligible individual (section 1614(f)(1)).

It is the Department's view that under section 1902(a)(10) the above-described title XVI provisions apply to situations involving spouses separated by institutionalization. These are the results:

Where a noninstitutionalized spouse is not SSI eligible and the separation is not temporary, his income and resources are not considered in determining whether the institutionalized individual is SSI-eligible since they are not living together in the same household (section 1614(f)(1) and Regulations No. 416.1185(a)).

Where a husband and wife are both eligible as individual and spouse, and one is institutionalized, the income and resources of both are combined and considered in determining eligibility until they have been separated for 6 months; at the point in time each will be considered to be an eligible individual and their income and resources are considered separately in determining each one's eligibility (Section 1614(b)). Under section 1611(e)(1)(B)(ii), as amended by section 502 of P.L. 94-566, the income of such couples is not combined in determining the SSI benefit amount payable to each spouse. That provision relates only to computation of the SSI benefit amount and not to a determinaton of financial eligibility for SSI. Financial eligibility, which during the first 6 months of separation is based on combined income, must first be established.

To recapitulate, the SSI policy on the availability of a relative's income is based on specific provisions of the Act with regulatory expansion in the description of when they are living in the same household for deeming of income purposes.

Of the approximately 80 comments received regarding the NPRM, the greatest number came from consumer advocate groups; the second largest number were from State health and welfare departments. Almost all consumer groups incorrectly perceived the purpose of the regulations as tightening financial eligibility for Medicaid, particularly for SSI-related Medicaid applicants under the proposed § 248.3(b)(4). Few realized that the SSI "deeming" feature they opposed so strongly applies generally only to persons living together in a common household and thus necessarily sharing income and resources—only in highly limited situations does "deeming" apply to physically separated relatives and then only when they can be said to be "constructively" members of the same household, usually for very short periods. The major area of concern of the States was with the cost impact the proposed regulations would have on the State Medicaid programs. Specific major concerns expressed and the Department's responses are as follows:

1. *Comment:* Implementation of the proposed regulations will mean Medicaid program cost increases for both the State and Federal Governments, because some States now "deem" income as available to recipients not in the household on an indefinite basis.

Responses: The added costs of this policy are considered less burdensome for State and Federal Governments than for non-institutionalized spouses and parents who in some States now have their incomes "deemed" available to recipients indefinitely without any test of actual availability. In addition, only seven percent of the Medicaid nursing home population have living spouses, many of whom are themselves already receiving assistance and thus have no "deemable" income. Also, the regulation does not preclude States from enforcing laws to retroactively recoup from responsible relatives medical assistance expenditures paid by the State on behalf of eligible recipients.

2. *Comment:* The regulations are technically difficult to read and may not be properly implemented by States, thus leading to abuses of recipients.

Responses: Medicaid eligibility criteria are the most technically complex of any Federal assistance program; regulations addressing it, unfortunately, are necessarily complex. However, all State agencies which commented indicated an accurate perception of the meaning of the regulations for almost all situations. Nevertheless, in final format greater clarification and specificity have been attempted. The statute and regulations of the SSI program (to be applied under the regulation in certain cases) have been directly cited, and any future changes in SSI policy will be incorporated in revised SRS regulations. In addition, promulgation of this final regulation will be followed by interpretation and instructional manual materials. Parts 12 and 13 of the Social Security Administration Claims Manual are already available to the States for assistance in their performance of SSI-related Medicaid eligibility determinations.

3. *Comment:* The regulations should terminate parental liability for all children age 18 and above, regardless of student status, and for "emancipated" minors in the AFDC-related and under age 21 categories.

Response: The regulations are based on the statutory definition of a blind or disabled "child" for SSI purposes (i.e., ordinarily age 18 but 21 for students). Since section 1902(a)(17)(D) authorizes State relative responsibility requirements for parents of children up to age 21 and 45 CFR 233.20(a)(3)(vi) requires consideration of parental income as available to children under 21 living with

them, States whose statutes confer adult status at age 18 must nevertheless deem parental income available to all children under 21 in family groups living together for Medicaid also in the AFDC-related and under age 21 categories. The final regulation is thus modified to clarify this.

4. *Comment:* Disabled children placed with educational or vocational schools or institutions should not be considered present in the family household for purposes of deeming parental income.

Response: The proposed regulations were based on SSI regulations implementing the title XVI statute which require deeming parental income to home-visiting children. Since these are inconsistent with Medicaid regulations at 45 CFR 250.30(d)(2) and 45 CFR 249.13(a)(1)(ii) (which, respectively, finance and require home-visiting programs), the final regulations have been modified to exempt absent blind or disabled children from this particular SSI "deeming" feature.

5. *Comment:* States cannot effectively apply the SSI policies or procedures governing deeming of income because of difficulties in obtaining up-to-date policies and procedures.

Response: The regulations have been revised to specify more precisely the SSI policies. In addition, States are already required under title XIX to apply the SSI eligibility criteria for all aged, blind and disabled Medicaid applicants unless they have elected to impose more restrictive eligibility standards pursuant to section 1902(f). Thus, the 35 States which have elected to apply SSI criteria in determining Medicaid eligibility for these individuals are responsible for knowing the SSI criteria in effect.

6. *Comment:* The proposed regulations are contrary to State laws specifying financial responsibility of relatives.

Response: Federal law authorizes the establishment of Federal standards with respect to Medicaid eligibility determinations. However, the Medicaid statute does not preclude States from enacting laws of general applicability, specifying the responsibility of spouses and parents with respect to retroactive recovery of the costs of medical assistance furnished by the State to eligible recipients.

7. *Comment:* Only income which is actually available (e.g., contributed) should be counted in determining an applicant's eligibility because "deeming" is "improper" or "unconstitutional."

Response: "Deeming" is expressly required by the Act with respect to SSI applicants and recipients; under section 1902(a)(10)(C)(i), the SSI criteria apply to Medicaid eligibility of the aged, blind and disabled. It is important to note that deeming generally applies only to those sharing expenses in a common household in which they actually, or (in very limited cases) constructively, live together.

8. *Comment:* The regulations will place severe financial hardships on the families of current recipients.

Response: The regulations actually represent a liberalization of current policies in some States and will benefit recipients and applicants of medical assistance. In determinations of eligibility, a number of States currently deem from spouses and parents to applicants and recipients on a permanent basis, whereas the proposed regulations provide that income will be deemed from a noninstitutionalized parent or spouse to an institutionalized child or spouse only on a limited basis. Furthermore, the regulations speak only to availability of relatives' income; they do not mandate use of SSI levels (i.e., $168.70 monthly) where the State Medicaid-only eligibility determination is on the basis of optional State supplementary payment or medically needy programs. In such cases, of course, greater dollar amounts for maintenance are used.

9. *Comment:* The regulations are in conflict with the current statutory provision which specifies no age limit on the parental liability for blind and disabled children.

Response: The regulation's termination of parental financial responsibility for blind and disabled children at age 18 (or age 21 if a student) is consistent with the statutory provisions of title XVI and with the Department's decision to conform the eligibility requirements of the two programs wherever possible. As noted above, State laws on recovery of costs from spouses and parents (of children under age 21 or blind or disabled) are permissible.

In summary, the following clarifying or technical changes have been made in response to suggestions:

1. Provisions have been added to § 248.3 (b)(2) and (3) to specify the actual time limitations (the month after separation or six months after separation) applicable for purposes of deeming spousal and parental income for SSI-related applicants and recipients.

2. Section 248.3(b)(1)–(6) have been revised to simplify and clarify the general and specific requirements applicable to:

(a) States using SSI criteria for aged, blind and disabled individuals,

(b) States using more restrictive criteria for such individuals pursuant to Section 1902(f),

(c) families and non-SSI-related children,

(d) individuals with dual eligibility, and

(e) parental financial responsibility for children age 18–21.

3. Section 248.21(a)(2)(v) has been revised to clarify the requirements specifying parental financial responsibility for children age 18–21.

All comments received were carefully considered and reviewed for adoption or rejection. A report on the comments received and action taken on each is available upon request to: Commissioner, Medical Services Administration, Room 5118 Switzer Building, 330 C Street SW., Washington, D.C. 20201.

Accordingly, the proposed regulations, as modified, are hereby adopted.

Part 248, Chapter II, Title 45 of the Code of Federal Regulations is revised as follows:

1. Section 248.3 is amended by revising paragraphs (b)(1), (2), and (3), redesignating paragraphs (b)(4), (5), and (6) as (b)(7), (8), and (9), respectively, and adding new paragraphs (b)(4) through (b)(6), as set forth below:

§ 248.3 State plan requirements on financial eligibility for medical assistance programs.

* * * * *

(b) With respect to both the categorically needy and, if they are included in the plan, the medically needy, a State plan must:

(1) *General.* Provide that only such income and resources as are considered available under the provisions of this section may be considered as an applicant's or recipient's income in determining eligibility or the amount of assistance and that income and resources will be reasonably evaluated.

(i) Income and resources considered available under this section must be counted in determining eligibility and the amount of assistance. Income and resources of spouses living together in the same household are to be considered available one to the other without proof of actual contribution. Likewise, income and resources of parents (and spouses of parents equally liable with natural parents for the support of children under a State law of general applicability or under the Supplementary Security Income Program, title XVI of the Act) are to be considered available to children under age 21 living together with them in the same household. However, parental income is not to be considered available to children age 18 or over who are not in attendance at an educational or vocational institution and whose eligibility is to be determined as blind or disabled in States basing title XIX eligibility for these groups upon title XVI (SSI) criteria.

(ii) All income and resources actually contributed to any applicant or recipient are considered in determining eligibility and the amount of assistance.

(iii) The financial responsibility (including later collection for assistance paid) of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21 (or blind or disabled).

(2) *Spouses in States using SSI criteria for the aged, blind and disabled.* Provide that: (i) Where both spouses apply as aged, blind or disabled or where both spouses are SSI eligible, and cease to live together, income and resources are considered mutually available without proof of contribution for the first six months after the month they cease to live together in a common household. After that, only actually contributed income and resources may be considered in determining the eligibility or amount of assistance of either individual spouse.

(ii) Where only one spouse applies as aged, blind or disabled or is SSI eligible, and they cease to live together in a common household, only actually contributed income and resources may be considered available in determining the eligibility or amount of assistance of the applicant or recipient after the month during which they cease to live together.

(iii) For determinations of eligibility and amount of assistance of categorically needy aged, blind and disabled individuals, States shall apply the budgeting methodology and applicable dollar amounts set forth in title XVI (SSI) of the Act and 20 CFR Part 416 (with applicable variations to take account of any State Supplementary Payment Program which is federally administered or approved pursuant to 45 CFR 248.2(d) or (e)).

(iv) Such budgeting methodology shall also apply to medically needy eligibility determinations. The income and resource levels against which countable income and resources are compared for the

medically needy shall be the general statewide medically needy levels rather than the dollar amounts of the SSI (or State supplement) program. The general statewide medically needy levels shall be based on the total family size of eligible and ineligible relatives whose income or resources are or can be considered available to the assistance unit, after deducting all such relatives' incurred medical expenses.

(3) *Parents of blind or disabled children in States using SSI criteria for the blind and disabled.* Provided that: (i) Income and resources of parents and spouses of parents actually living together in the same household with a blind or disabled child under age 18 (or 21 if regularly attending a school, college, or university or a course of vocational or technical training designed to prepare him for gainful employment) are considered available to such child applicant or recipient without proof of actual contribution.

(ii) Income and resources of parents and spouses of parents are not considered available to a blind or disabled child not regularly sharing the common household even if the child returns to the common household for periodic visits.

(iii) Only actually contributed income and resources of parents and spouses of parents of blind or disabled applicants or recipients may be considered after the month in which the applicant or recipient ceases to live together with them in the same household.

(iv) For categorically needy determinations of blind or disabled persons under age 18 (or age 21 as provided in paragraph (b)(3)(i) of this section), States shall apply the budgeting methodology and applicable dollar amounts set forth in title XVI (SSI) of the Act and 20 CFR 416 (with applicable variations to take account of any State Supplementary Payment Program which is federally administered or approved under 45 CFR 248.2 (d) or (e).

(v) Such budgeting methodolgoy shall also apply to medically needy determinations except that the income and resource levels against which countable income and resources are compared shall be the general statewide medically needy levels rather than the dollar amounts of the SSI (or State supplement) program. The general statewide medically needy level shall be based on the total family size of eligible and ineligible relatives whose income or resources are or can be considered available to the assistance unit after deducting all such relatives' incurred medical expenses.

(4) *States which have chosen to limit medicaid coverage for the aged, blind and disabled pursuant to section 1902 (f) of the Act.* Provide that the available income and resources of spouses of aged, blind or disabled applicants or recipients, and parents and spouses of parents of blind or disabled applicants or recipients must be considered as available in a manner identical to or more extensive than the manner in which such relatives' income and resources must be considered under paragraphs (b)(2) and (3) of this section. However, such consideration of income and resources may not be more restrictive than that included in the State's January 1972 title XIX plan.

Nothing in this paragraph shall be construed to mandate usage of maintenance levels lesser than or equal to those of the Supplemental Security Income (SSI) program (as set forth in title XVI of the Act and 20 CFR Part 416) where the eligibility determination is to be made under higher categorically needy or medically needy income or resource levels.

(5) *Families and children (except for children eligible as blind or disabled) in all States.* Provide that: (i) For individuals applying for or receiving medical assistance as AFDC-related or as needy individuals under age 21 pursuant to Section 1905 (a)(i) of the Act, the income and resources of their spouses and parents (and stepparents equally liable with natural parents for the support of children under State law of general applicability) with whom they live in the same household, are considered available to such applicants or recipients without proof of actual contribution.

(ii) Even if State law of general applicability confers adult status at an age below 21, parental income is considered available to children to age 21 in family groups living together.

(iii) Except as specified in paragraphs (b)(i) and (ii) of this section, the income and resources of an AFDC-related individual or a needy individual under age 21 eligible pursuant to Section 1905 (a)(i) of the Act shall include only such income and resources (whether from spouse, parent, or other source) as are actually contributed to him.

(iv) In medically needy determinations, the income and resource levels against which countable income and resources are compared shall be the general statewide medically needy levels rather than the dollar amounts of the AFDC program. Such medically needy levels shall be based on the total family size of eligible and ineligible relatives whose income or resources are (or can be) considered available to the assistance unit after deducting all such relatives' incurred medical expenses.

(6) *Individuals establishing eligibility for Medicaid in more than one category covered in the State Plan (Title IV-A-related individuals, blind, disabled or over age 65).* Provide that an individual, or his representative, shall have the right to select the category for which application is made and the income and resources of such an individual's spouse or parents (in the case of children under age 21, or blind or disabled) shall then be considered as available under the appropriate provisions of paragraphs (b)(2), (3), (4), or (5) of this section.

(7) Provide that a lower income level for maintenance shall be used for individuals not living in their own homes but receiving care in hospitals, skilled nursing facilities, intermediate care facilities, and institutions for tuberculosis or mental diseases which are covered under title XIX. This lower income level must be reasonable in amount for clothing and personal needs for such individuals, and

(i) For aged, blind, and disabled individuals, such income level must be at a minimum of $25.00 per month;

(ii) For others, States may establish reasonable standards different from that specified in subdivision (i), provided they are based on a reasonable differential in personal needs.

When such an individual's home is maintained for a spouse or other dependents, the appropriate income level for such dependents, plus the individual's income level for maintenance in a long-term care facility, shall be applied. A higher level of maintenance may also be applied for a temporary period, not to exceed six months, to allow an individual to apply his income and resources to maintenance of a home if a physician has certified that such individual is likely to return to the home within such temporary period.

(8) Provide, for individuals in long-term care facilities specified in paragraph (b)(7) of this section, for the application of income first to personal needs, and for the medically needy only, to any title XIX enrollment fee, premium or similar charge imposed under section 1902(a)(14)(B) of the Act, and provide for the application of the remainder to the cost of medical or remedial care.

(9) Provide that, with respect to an aged, blind, or disabled individual receiving a benefit under title XVI or a State supplemental payment, who is not eligible for medical assistance unless he can meet additional eligibility criteria from the January 1972 standard, the amount of such individual's title XVI benefit and State supplemental payment will be disregarded in determining eligibility for medical assistance.

* * * * *

2. § 248.21(a)(2) is revised to read as set forth below:

§ 248.21 Financial eligibility—medical assistance programs.

* * * * *

(a) *State plan requirements.* A State plan under title XIX of the Social Security Act must:

* * * * *

(2) With respect to both the categorically needy and, if they are included in the plan, the medically needy;

(i) Provide that only such income and resources as are considered available under the provisions of this section may be considered as an applicant's or recipient's income in determining eligibility or the amount of assistance and that income and resources will be reasonably evaluated.

(A) Income and resources considered available under this section must be counted in determining eligibility and the amount of assistance. Income and resources of spouses living together in the same household are to be considered

available one to the other without proof of actual contribution. Likewise, income and resources of parents (and spouses of parents equally liable with natural parents for the support of children under a State law of general applicability) are to be considered available to children under age 21 living together with them in the same household.

(B) Otherwise, only such income and resources as are actually available will be considered.

(C) Any income or resources actually contributed to any applicant or recipient must be considered in determining eligibility and amount of assistance.

(ii) Provide that financial responsibility (including later collection for assistance paid) of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21, or blind, or permanently and totally disabled.

(iii) Provide that in no event will eligibility be determined by taking into account the income or resources of individuals other than the applicant or recipient unless such individuals are the spouses or parents (with respect to children under age 21, or blind or disabled) of the applicant for or recipient of medical assistance, even though the income or resources of additional relatives are considered for purposes of financial assistance to the aged, blind and disabled under the provisions of the State plans pursuant to titles I, X, XIV, and XVI (Aid to the Aged, Blind and Permanently and Totally Disabled (AABD)) of the Act.

(iv) Provide that the available income and resources of spouses and parents of aged, blind and disabled applicants or recipients shall be determined on the basis of the rules which would govern if they were applicants for or recipients of aid under titles I, X, XIV and XVI (AABD) of the Act.

(v) Provide that the available income and resources of spouses and parents of individuals under age 21 or individuals who apply for medical assistance on the basis of their status as AFDC-related individuals shall be determined on the basis of the rules which would govern if they were applicants for aid under title IV–A of the Act. Even if State law of general applicability confers adult status at an age below 21, parental income is considered available to children under age 21 in family groups living together.

(vi) Provide that, where an individual can establish eligibility for medical assistance in more than one category covered in the State plan (title IV–A related persons, individuals under age 21, blind, disabled or over age 65), such individual, or his representative, shall have the right to select the category for which application is made, and the income and resources of such an individual's spouse or parents (in the case of children under age 21 or blind or disabled) shall then be considered as available under the appropriate provisions of paragraphs (a)(2)(iii)(iv) of this section.

* * * * *

(Sec. 1102, 49 Stat. 647 (42 U.S.C 1302).)

Effective date: The regulations in these sections will be effective April 13, 1977.

(Catalog of Federal Domestic Assistance Program No. 13–714, Medical Assistance Program)

Answers to specific questions may be obtained by calling Mary Kenesson, 202–245–0306.

Dated: October 5, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: January 4, 1977.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.77–1150 Filed 1–12–77;8:45 am]

Title 49—Transportation

CHAPTER I—MATERIALS TRANSPORTATION BUREAU, DEPARTMENT OF TRANSPORTATION

[Docket No. HM–134; Amdt. Nos. 173–100, 178–40]

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Hazardous Materials Regulations Reissuance; Corrections

On September 9, 1976, the Materials Transportation Bureau (MTB) published a series of amendments under Docket No. HM–134 to 49 CFR Parts 171–179, effective January 3, 1977 (41 FR 38175). MTB subsequently made changes in those amendments (September 20, 41 FR 40475; September 27, 41 FR 42206; and December 30, 41 FR 56807). This document makes five additional changes in those amendments. Two changes are technical corrections. Three other changes will insure that certain practices, presently authorized under 49 CFR 173.22(a) and under 49 CFR Part 178, will continue to be authorized on and after January 3, 1977.

CHANGES TO SECTION 173.22(a)

Section 173.22(a) states that it is the shipper's responsibility to see that shipments of hazardous materials are made in containers that comply with the specifications of Parts 178 and 179. Prior to the HM–134 amendments, this section authorized the shipper to meet his responsibility by reliance on the manufacturer's specification markings or certification, or by reliance on the carrier's certification when containers are supplied by the carrier.

As amended by HM–134, § 173.22(a) is silent on whether a shipper may rely on a carrier's certification that containers supplied by the carrier meet DOT specifications. This omission has caused concern among several shippers who frequently ship hazardous materials by highway in carrier-supplied cargo tanks. It was not the intention of MTB to eliminate this practice but, as published, the HM–134 amendment of § 173.22 may have that effect. This publication returns to the section an express authorization for shipper reliance on carrier certifications.

CHANGES TO PART 178 CYLINDER SPECIFICATIONS

The amendments in Docket HM–134 as published also amend DOT compressed gas cylinder specifications to require that registered symbols and serial numbers, which must appear on compressed gas cylinders, be those of the manufacturer alone, instead of those of the user or purchaser as was previously authorized. The intent of this change is to ensure that the manufacturer of a cylinder is readily identifiable. However, it is common practice for persons making cylinders also to mark them with the purchaser or user's symbol and serial numbers for purposes of evidencing ownership. There is not any compelling reason to change this practice beyond ensuring identification of the maker. In fact, identification of user or purchaser as well as maker is desirable as a tool to assist the investigation of problems arising in the transportation of gas cylinders, and to establish accountability. Accordingly, in response to a number of petitions on this subject, this document alters the HM–134 amendments to allow continuation of the practice of marking user or purchaser symbols and serial numbers on gas cylinders, provided the cylinder manufacturer also is identified.

An additional change to § 178.65 is being made which concerns Specification 39 nonreuseable compressed gas cylinders. Those cylinders are required to be marked (§ 178.65–14(b)(8)) with a warning of Federal criminal sanctions applicable to persons wrongfully transporting such containers should they be refilled. Previous to the HM–134 amendment, the warning cited 18 U.S.C. 831–835, but on and after January 3, 1977, the HM–134 amendment would require referencing Section 110 of the Hazardous Materials Transportation Act (49 U.S.C. 1809) and differing criminal sanctions. It is permissible for this warning to be displayed on Specification 39 cylinders by use of labels. The MTB has been advised that a substantial manufacturer's inventory of such labels referencing 18 U.S.C. 831–835 exists which will have to be discarded on January 3, 1977, and that new labels may not be available by that date.

Display of the warning on Specification 39 cylinders is intended solely as a warning of the serious criminal nature of transporting unauthorized, refilled cylinders and does not carry with it any specific legal effect. Consequently, the MTB is permitting continued use of old labels for a period of one year to allow depletion of existing inventories of labels.

In consideration of the foregoing, in FR DOC 76–26376 appearing at pages 38175–38183 in the FEDERAL REGISTER of September 9, 1976, the following changes are made.

1. At 41 FR 38180 (as corrected at 41 FR 40476), item "8." is revised to read as follows:

8. In § 173.22, paragraph (a) is revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) Unless otherwise provided in this part, before offering a hazardous material for shipment in a container the shipper shall determine that the container has been made, assembled with all parts or fittings in their proper place and properly secured, and marked in compliance with applicable specifications prescribed in Parts 178 and 179 of this subchapter or with specifications of the Department in effect at date of manufacture of container. In determining whether a specification container is manufactured in accordance with applicable specifications, the shipper may accept the manufacturer's certification or specification marking. (See §§ 178.0–2 and 179.1 of this subchapter.) For containers supplied by the carrier, the shipper may rely on the manufacturer's identification plate, specification marking, or on certification by the carrier. When a shipper performs a function covered by or having an effect on a specification requirement of Part 178 or Part 179, the shipper must perform that function in accordance with the specification.

* * * * *

2. At 41 FR 38180, item "15." is revised to read as follows:

15. In Part 178, new §§ 178.0, 178.0–1, and 178.0–2 are added immediately preceding Subpart A to read as follows:

§ 178.0 Purpose, scope, and applicability.

§ 178.0–1 Purpose and scope.

This part prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials in commerce.

§ 178.0–2 Applicability.

(a) Any person who performs a function prescribed in this part, shall perform that function in accordance with this part.

(b) When this part requires (either expressly or by reference to § 173.24 of this subchapter) a packaging or container to be marked with a DOT specification (for example, DOT–1A, DOT–17E–304HT, DOT–23G40), compliance with that requirement is the responsibility of the packaging or container manufacturer. Marking the packaging or container with the DOT specification shall be understood to certify compliance by the manufacturer, that the functions performed by the manufacturer, as prescribed in this part, have been performed in compliance with this part. (See also § 173.28 "Reuse of containers." That section envisions the marking of containers to be performed by a person other than the original manufacturer.)

(c) Except as specifically provided in §§ 178.337–18 and 178.340–10, the manufacturer of a packaging or container should inform each person to whom that packaging or container is transferred of any specification requirements which have not been met at time of transfer.

3. At 41 FR 38181, item "30." is revised to read as follows:

30. In §§ 178.38–20, 178.39–19, 178.40–20, 178.41–19, 178.42–14, 178.43–20, 178.44–23, 178.47–21, 178.48–19, 178.49–19, 178.50–19, 178.52–19, 178.53–18, 178.54–20, 178.55–20, 178.58–21, 178.59–18, 178.60–22, and 178.68–19, the second sentence in paragraph (a)(2) is revised and in §§ 178.36–20, 178.37–20, and 178.57–20, the second sentence in paragraph (a)(3) is revised to read as follows:

The symbol and numbers must be those of the maker, or of the purchaser or user if the maker's symbol also appears near the date of the original test.

4. At 41 FR 38181, item "31." is revised to read as follows:

31. In §§ 178.51–19, 178.56–19, and 178.61–20, the first sentence in paragraph (a)(2) is revised to read as follows:

A serial number and an identifying symbol of the maker, except that numbers and symbols of user or purchaser are also authorized if the maker's symbol appears near the date of original test.

5. At 41 FR 38181, item "32." is revised to read as follows:

32. In § 178.65–14, paragraph (b)(8) is revised to read as follows:

§ 178.65–14 Marking.

* * * * *

(b) * * *

(8) The following statement: Federal law forbids transportation if refilled—penalty up to $25,000 fine and 5 years imprisonment (49 U.S.C. 1809).

NOTE.—Preprinted labels complying with 49 CFR 178.65–14(b)(8) in effect January 2, 1977, may be used until January 3, 1978.

* * * * *

(49 U.S.C. 1803, 1804, 1808 and 49 CFR 1.53(e))

Issued in Washington, D.C., on December 30, 1976.

JAMES T. CURTIS, Jr.,
Director, Materials Transportation Bureau.

[FR Doc.77–834 Filed 1–12–77;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER 1—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 26—PUBLIC ACCESS, USE AND RECREATION

The following special regulation is issued and is effective on January 13, 1977.

§ 26.34 Special regulations, public access, use and recreation; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public use is permitted on the Crab Orchard National Wildlife Refuge subject to the following special conditions:

(1) Swimming is authorized in the open portion of Crab Orchard Lake and Little Grassy Lake delineated as Area I and III, except at designated areas. These designated "No Swimming" areas include but not limited to: Marina areas, Boat Docks, Boat Ramps, Spillways, Dams, and Causeways. Swimming is not authorized in the closed portions of Crab Orchard Lake delineated as Area II. Swimming, skin diving, snorkeling, or scuba diving is not authorized at Devils Kitchen Lake, except at the Campground Beach.

(2) All flotation devices such as inner tubes, air mattresses, and similar devices not worn by the person, are prohibited on refuge waters.

(3) Foodstuffs, drink containers (cans, bottles, cartons), pets or fires are prohibited at designated beach areas and on the rock area immediately below Crab Orchard Lake Spillway.

(4) The Carterville Beach, Lookout Point, Crab Orchard Beach, Playport Boat Dock, Sailboat Basin, Crab Orchard Spillway Parking Lot and Picnic Areas are closed to unauthorized use from 9:00 p.m. until 5:00 a.m., local time, daily.

(5) Motor vehicle entry to all refuge campgrounds is prohibited from 11:00 p.m. until 7:00 a.m., local time, during the period said campground is open to the public.

(6) Quiet shall be maintained in all refuge campgrounds between 10:00 p.m. and 6:00 a.m., local time.

(7) The drinking or possession of alcoholic liquor by minors, as defined by State law, is prohibited on the refuge area.

(8) The use of boats with motor larger than ten (10) horsepower is prohibited on Devils Kitchen Lake and Little Grassy Lake.

(9) The maximum boat speed limit on Crab Orchard Lake is 40 miles per hour, unless otherwise posted.

(10) Visitors must be attired in an appropriate attire while on the refuge. Public nudity, or topless attire by females is prohibited.

(11) Camping, defined as the use of tents, bedrolls, motorized vehicles, trailers and other shelters for overnight stays for the purpose of sleeping, is prohibited except at the Devils Kitchen Campground, Little Grassy Campground, Crab Orchard Lake Campground and the Marion Boat and Yacht Club Campground.

The provisions of this notice supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in 50 CFR, Part 26, and are effective through December 31, 1977.

WAYNE D. ADAMS,
Project Manager, Crab Orchard National Wildlife Refuge.

JANUARY 5, 1977.

[FR Doc.77–1118 Filed 1–12–77;8:45 am]

PART 26—PUBLIC ENTRY AND USE

The following special regulation is issued and is effective through the period January 18, 1977 to December 31, 1977.

§ 26.34 Special regulations concerning public access, use and recreation, for the individual wildlife refuges.

VIRGINIA AND NORTH CAROLINA

GREAT DISMAL SWAMP NATIONAL WILDLIFE REFUGE

Access to the refuge is permitted from sunrise to sunset for the purpose of nature study, photography, hiking and sightseeing subject to the following restrictions. Travel by bicycle, foot or canoe is permitted on established roads and ditches within the refuge. Boat access is permitted by way of navigable waters connecting Lake Drummond with the intra-coastal waterway known as the Dismal Swamp Canal. Access by motor vehicle within the refuge is by special use permit. Pets are permitted if on a leash not over 10 feet in length.

Information about the refuge area, comprising approximately 53,497 acres, located in the cities of Suffolk and Chesapeake, Virginia, and in Camden County, North Carolina, is available from the Refuge Manager, Great Dismal Swamp National Wildlife Refuge, Box 349, Suffolk, Virginia 23434 or the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
Fish and Wildlife Service.

JANUARY 5, 1977.

[FR Doc.77-1119 Filed 1-12-77;8:45 am]

PART 32—HUNTING

Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued and is effective on January 13, 1977.

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public hunting of pheasants, squirrels, bobwhite quail, rabbits, raccoons, opossums, skunks, weasels and crows is permitted in accordance with the seasons and limits established by the Illinois Department of Conservation. The area open to hunting within Crab Orchard National Wildlife Refuge is designated by green public hunting signs. This open area is delineated on a map available at refuge headquarters, Carterville, Illinois 62918 and from the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

The provisions of this special regulation supplements the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 15, 1978.

WAYNE D. ADAMS,
Project Manager Crab Orchard
National Wildlife Refuge.

JANUARY 4, 1977.

[FR Doc.77-1116 Filed 1-12-77;8:45 am]

PART 33—SPORT FISHING

The following special regulation is issued and is effective on January 13, 1977.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuges.

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Sport fishing on the Crab Orchard National Wildlife Refuge, Illinois, is permitted only on the areas designated by signs as open to fishing. These open areas comprising 8,800 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Sport fishing shall be in accordance with all applicable State regulations, subject to the following special conditions.

(1) The open season for sport fishing on the refuge extends from January 1, 1977 thru December 31, 1977, in areas designated on Map I and III; and from March 15, 1977 thru September 30, 1977, daylight hours only, in areas designated on Map II; except bank fishing is permitted from the Wolf Creek Road and State Highway 148 causeways, during daylight hours from January 1, 1977 thru December 31, 1977. Boat fishing only is permitted between Wolf Creek Road west to the closed portion boundary line (Carterville Road) from January 1, 1977 thru December 31, 1977.

(2) The use of boats and motors is permitted, except that use of a boat with a motor larger than ten (10) horsepower is prohibited on Devils Kitchen Lake and Little Grassy Lake.

(3) Snagging for carp, buffalo, freshwater drum, paddle fish, bowfin, gar and carpsucker is permitted 200 yards downstream from the Crab Orchard Lake Spillway. Fishermen are limited to one (1) pole and line device, with no more than two (2) hooks, which must measure at least ½ inch from hook tip to shank.

(4) Jug fishing in the closed portion of the refuge as shown on Map II east of Wolf Creek Road is authorized from March 15 thru September 30. Jugs may be left in the lake overnight. Personnel are not authorized in the area during the hours of darkness. Jug fishing in the open portion of the refuge as shown on Map I west of the boundary (Carterville Road) is authorized both day and night, except between May 30, 1977 and September 5, 1977, jug fishing is authorized from sunset to sunrise only. Jugs must be removed from the lake at sunrise during this period. In the area from Wolf Creek Road west to the closed portion of the refuge boundary (Carterville Road) jug fishing is permitted from January 1, 1977 through December 31, 1977.

(5) Floating trot lines are not allowed in the open portion of the refuge west of the boundary (Carterville Road) during the hours of daylight from May 31, 1977 through September 6, 1977.

(6) Fishing in designated ponds in the closed portion of the refuge is authorized from March 15, 1977 through September 30, 1977, during daylight hours only.

(7) The minimum legal length for Black Bass (Largemouth) taken from the Crab Orchard Lake is 14 inches or 35.56 centimeter.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

WAYNE D. ADAMS,
Project Manager, Crab Orchard
National Wildlife Refuge.

JANUARY 5, 1977.

[FR Doc.77-1117 Filed 1-12-77;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 967]

[Docket No. AO-354-A3]

CELERY GROWN IN FLORIDA

Hearing On Proposed Amendment of Marketing Agreement and Order

Notice is hereby given of a public hearing to be held February 1, 1977, beginning at 9:00 a.m., local time, in the Florida Fruit and Vegetable Association auditorium, 4401 East Colonial Drive, Orlando, Florida, with respect to proposed amendment of the marketing agreement and Order No. 967, both as amended, regulating the handling of celery grown in Florida.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relates to the proposed amendment, hereinafter set forth, and any appropriate modifications thereof, of the marketing agreement and order.

The proposed amendment would change the methods of determining base quantities and establishing a reserve, add a public representative to the committee, add production research authority to the existing authority for marketing research and development, and make several other minor changes in existing sections.

The proposed amendment has not received the approval of the Secretary of Agriculture.

The proposals are as follows:

PROPOSAL No. 1

Amend § 967.25 to read as follows:

§ 967.25 Establishment and membership.

There is hereby established a Florida Celery Committee consisting of 16 members, including 15 producer or handler members and one public member to administer the terms and provisions of this part. Each shall have a respective alternate who shall have the same qualifications as the member.

PROPOSAL No. 2

Amend § 967.26 to read as follows:

§ 967.26 Eligibility.

Each member and alternate of the committee, except for the public member and alternate, shall be at the time of his selection and during his term of office, a producer or handler, or an officer or employee of a producer or handler in the group for which selected. The public member shall be neither a producer nor handler.

PROPOSAL No. 3

Amend § 967.27 by adding a new paragraph (f) to read:

§ 967.27 Nominations.

* * * * *

(f) The members of the committee selected by the Secretary pursuant to § 967.32 shall nominate a public member and alternate member of the committee, which persons shall not be growers or handlers, or employees of growers or handlers. The committee shall recommend rules for receiving names of persons to be considered for nomination to the public member and alternate positions. Rules shall also be recommended for establishing eligibility of persons nominated to the public member and alternate positions. The persons nominated for the public member and alternate positions shall be submitted by the incumbent committee to the Secretary by July 1 of each year together with information deemed pertinent by the committee or as requested by the Secretary.

PROPOSAL No. 4

Amend § 967.37 to read as follows:

§ 967.37 Base Quantities.

(a) Base Quantities shall be determined for persons with existing Base Quantities as of December 15, 1976 as recorded by the Florida Celery Committee on the basis of the greatest number of crates of harvested celery sold by them or on their behalf during any one of the three seasons, 1973–74 through 1975–76.

(b) Periodically, but at least once each five years, the committee shall review the use being made of Base Quantities and recommend to the Secretary any change in the formula for determining Base Quantities which may be deemed appropriate.

(c) The committee may recommend rules pertaining to producers who wish to obtain, hold or transfer Base Quantities or Marketable Allotments. Such rules shall be subject to the approval of the Secretary and may require producers to file reports and information with respect thereto, including but not limited to quantities marketed in the representative period, their qualifications as producers, as well as particulars on sale and handling of celery as a result of any Base Quantities or Marketable Allotments that may be issued to them.

(d) (1) A reserve in the amount of six percent of the total Base Quantities shall be established annually. Such reserve may be used for the issuance of Base Quantities to new producers and adjustments in Base Quantities for producers with existing Base Quantities, with 50 percent being made available for new producers and 50 percent available for adjustments for producers with existing Base Quantities. Any unallocated portion of the 50 percent available to new producers may at the discretion of the committee be prorated among producers with existing Base Quantities on an equitable basis.

(2) Base Quantities issued to new producers shall be permanent, but any adjustments in Base Quantities issued to producers with existing Base Quantities shall be effective for one season only and a new request by such producers for adjustment in Base Quantity shall be submitted each season.

(3) The committee may recommend rules for establishing such reserve and for procedures whereby persons may apply for Base Quantities thereunder. Such rules shall be subject to approval by the Secretary. Rules may provide for open informal hearings by the committee on applicants' requests and may establish guides or standards for equitable and thorough consideration of pertinent factors relating to each case, including but not limited to past production of celery by applicant, acreage planted, average yields, the production capacity of the farm or land the applicant expects to use, land, labor, and equipment available to applicant for celery production, economic and marketing factors, and other factors deemed pertinent.

(4) Each person filing an application hereunder for a new Base Quantity or adjustment in an established Base Quantity shall be notified by the committee of its determination thereon. Such determination and considerations appertaining thereto shall be subject to review by the Secretary. If a Base Quantity is issued to an applicant hereunder, the requirements of § 967.38(c) shall then apply.

(e) A condition for the continuing validity of a Base Quantity is production of celery thereunder in a proprietary capacity. If no bona fide effort is made to produce and sell celery thereunder for two consecutive seasons commencing with the 1977–78 season, the Base Quantity may be declared invalid due to lack of use and cancelled at the end of the second season of nonproduction. The committee shall determine criteria, subject to approval by the Secretary, as to whether a bona fide effort has been made to produce and sell celery, including one criteria that the producer must have

sold at least 50 percent of each of his seasonal Marketable Allotments, unless prevented from doing so by acts of God or other circumstances beyond his control.

(f) Annual registration of Base Quantity holders will be required no later than May 1. Any Base Quantity holder who has not made firm and substantial commitments to produce celery in a proprietary capacity for the forthcoming season, or who does not register will have his Base Quantity eliminated from the calculations in determining the Uniform Percentage. However, such procedure will not cause the Base Quantity holder to lose his Base Quantity.

PROPOSAL No. 5

Amend § 967.38 as follows:

1. Amend paragraph (e) and add a new paragraph (f) to read as follows:

§ 967.38 Marketable Allotments.

* * * * *

(e) The first 37,500 crates of each and every producer's Base Quantity shall be subtracted from both the Marketable Quantity and total Base Quantities when the Uniform Percentage is calculated in this section (§ 967.38(a)). The Uniform Percentage for the first 37,500 crates will always be 100 percent except when the Uniform Percentage calculated in this section (§ 907.38(a)) exceeds 100 percent in which event the higher percent shall be used.

(f) Marketable Allotments shall be issued only to producers who have registered by May 1 and indicated firm and substantial commitments for the production of celery in a proprietary capacity for the forthcoming season.

PROPOSAL No. 6

Delete the word marketing from the section heading and revise the first sentence of § 967.44 to read as follows:

§ 967.44 Research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of projects involving production research, marketing research and development projects, and marketing promotion including paid advertising, designed to assist, improve or promote the marketing, distribution and consumption or efficient production of celery. * * *

PROPOSAL No. 7

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendment thereto that may result from this hearing.

Copies of this notice of hearing and the order may be obtained from the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, or from "Marketing Field Office, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture" at the following address: Florida Citrus Mutual Bldg., Room 204, 302 South Massachusetts Avenue, P.O. Box 9, Lakeland, Florida 33802.

Signed at Washington, D.C., on January 10, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-1131 Filed 1-12-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 298]

[EDR-317; Docket No. 29792; Dated: January 6, 1977]

CLASSIFICATION AND EXEMPTION OF AIR TAXI OPERATORS

Air Taxi Weight Limitation in Hawaii

Notice is hereby given that the Civil Aeronautics Board is proposing to amend Part 298 of its Economic Regulations (14 CFR Part 298) to make applicable to air taxi operators in the State of Hawaii the aircraft size and weight limitations presently applicable in the other forty-nine states.

The purpose of the proposal is described in the Explanatory Statement and the proposed amendment is set forth in the Proposed Rule. The amendment is proposed under the authority of sections 204(a) and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 711; 49 U.S.C. 1324, 1386.

Interested persons may participate in the proposed rulemaking through submission of twenty (20) copies of written data, views, or arguments pertaining thereto addressed to: Docket 29792, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before February 28, 1977, and reply comments received on or before March 15, 1977, will be considered by the Board before taking final action on the proposed rule. Copies of such documents will be available for examination by interested persons in the Docket Section of the Board, Room 711, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. upon receipt thereof.

Those persons planning to file comments and/or reply comments who wish to be served with the comments filed by others, and are willing to undertake service of their own comments on others, shall file with the Docket Section at the above address by January 24, 1977, a request to be placed on the service list in Docket 29792. The service list will be prepared by the Docket Section and sent to the persons named thereon. The persons on the service list are to serve each other with their comments and/or responsive comments at the time of filing, and are to include appropriate proof of service (Rule 8(e), 14 CFR 302.8(e)) with each filing.

Individual members of the general public who wish to express their interest as consumers by participating informally in this proceeding may do so through submission of comments in letter form to the Docket Section at the address indicated above, without the necessity of filing additional copies thereof.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

EXPLANATORY STATEMENT

Part 298 of the Board's Economic Regulations (14 CFR Part 298) provides for the classification and exemption of air taxi operators. In the "Part 298 Weight Limitation Investigation," by Orders 72-7-61 and 72-9-62, the Board replaced the then-existing 12,500 pound takeoff weight limitation on air taxi aircraft with a more liberal 30 seat/7500 pound payload restriction.[1] This change, however, was made applicable only to air taxi services in the continental United States.[2] With respect to air taxi operations in Hawaii, the Board adopted Administrative Law Judge Ruhlen's finding that retention of the lower weight limitation was necessary to protect the two Hawaiian certificated carriers, Hawaiian Airlines, Inc. (Hawaiian) and Aloha Airlines, Inc. (Aloha), which were then financially unstable and in danger of requiring subsidy. The Board feared that a higher capacity limitation would enable air taxis to invade the largest passenger markets in Hawaii and impede vigorous competition between Hawaiian and Aloha.

Island Air Transfer, Ltd. (IAT), an air taxi cargo operator in Hawaii, has now filed a rulemaking petition to amend Part 298 to conform Hawaiian air taxi size and weight limitations to those applicable in the other forty-nine states.[3] IAT argues that there is now a substantial public need for larger capacity air taxi service in both cargo and passenger operations in Hawaii. With respect to cargo operations, IAT contends that the larger capacity limitation will enable air taxis to provide services not now available from the certificated carriers, such as increased containerization, larger noncontainerized shipments, and expansion of cargo service to more points within Hawaii. In support of its position IAT has submitted 31 letters from Hawaiian merchants and the State of Hawaii indicating a need for increased cargo service.[4] In regard to passenger op-

[1] ER-748, July 18, 1972, 37 FR 14692, as revised by ER-759, September 15, 1972, 37 FR 19609 and by ER-846, May 8, 1974, 39 FR 16341.

[2] Subsequently, on October 1, 1976, the Board amended Part 298 to conform Alaskan air taxi size and weight limitations to those applicable in the continental United States. ER-970, November 5, 1976, 41 FR 44033.

[3] IAT's petition was in response to the Board's statement in Order 76-9-49 that the appropriate context for a reconsideration of air taxi operations in Hawaii was a rulemaking proceeding rather than an exemption application. Earlier, in Order 76-5-10, the Board had denied IAT's application for exemption to operate a DC-3 aircraft for cargo operations, based upon a negative safety evaluation of IAT conducted by the Federal Aviation Administration.

[4] The letters were filed with IAT's application for exemption, Docket 28808, and were incorporated by reference in IAT's petition for rulemaking.

erations, IAT maintains that a significant portion of the traveling public will benefit from larger capacity air taxi service. IAT also contends that the certificated carriers will not be seriously threatened by increased air taxi capacity, since those carriers do not serve many of the markets likely to be affected by greater air taxi service and are now financially stronger than at the time of the Part 298 Investigation.

Answers to IAT's petition were filed by Horizon Air Service, Ltd. (Horizon), Hawaiian, and Aloha. Horizon, the largest commuter[8] air cargo carrier in Hawaii, supports the petition with respect to cargo operations. Horizon maintains that larger capacity cargo service would fill a need not presently being met in Hawaii[9] and would pose no significant economic threat to the certificated carriers.

Hawaiian and Aloha do not directly oppose the petition on economic grounds but instead contend that the Board should set this matter for evidentiary hearing. Aloha maintains that a hearing is not only appropriate but required, in light of the Board's definitive position on Hawaiian air taxi operations as outlined in the "Part 298 Investigation". Hawaiian asserts that the Board cannot make a sound decision without detailed economic data, which is best supplied in an evidentiary proceeding. Hawaiian therefore requests the Board to specify the issues in this inquiry in detail,[7] set down the matter for an expedited hearing and require submission of certain information[8] from all air taxi operators in Hawaii.

In a reply to the answers of Hawaiian and Aloha, IAT contends that the request for a formal hearing is no more than a delaying tactic and that such a procedure will significantly burden the limited resources of the Hawaiian air taxi operators. IAT maintains that written comments will form a sufficient basis for an informed decision by the Board.

Upon consideration of the petition and the answers, we have determined to institute this rulemaking proceeding. The Board believes that, at this juncture, there has been no showing that an evidentiary hearing is either legally required or desirable, since IAT's petition raises no issues which are peculiarly suited to resolution only through oral testimony and cross-examination. There is, of course, no statutory requirement, either express or implied, that an oral hearing must accompany all grants of exemption authority made pursuant to section 416 of the Act and Part 298 of the Board's regulations.[9] Nor is the Board obliged to employ full-scale evidentiary hearing procedures even when it significantly expands the operating authority of exempt carriers, so long as the Board has an adequate basis on which it can fairly make the requisite findings, under section 416 of the Act, in support of its determination that such expanded authority should be granted by exemption.[10] Since the parties will have an opportunity to present their positions fully, including the submission of relevant economic data, through written comments and reply comments, it now appears that an evidentiary hearing in this instance would be an unnecessary burden upon all parties and the Board. In any event, the question of the need for any sort of hearing can better be examined after analysis of the written submissions.

With regard to the merits of IAT's petition, we have tentatively concluded that our reasons for adopting a larger capacity air taxi limitation in the continental United States now justify a similar relaxation of air taxi restrictions in Hawaii. At the outset, we note that the petition, with the support of Horizon's answer, has presented some evidence—unchallenged by the certificated carriers—of a public need for expanded air taxi capacity. Moreover, both Hawaiian and Aloha have experienced steady traffic growth over the past few years and are financially more secure than at the time of the "Part 298 Investigation."[11] Although Hawaiian air taxi traffic has also grown since 1972, air commuter operations account for only a small fraction of the total passenger traffic within Hawaii.[12] Consequently, our tentative conclusion is that a liberalization of air taxi size and weight restrictions will not seriously threaten the certificated carriers.

We wish to emphasize, however, that our conclusions here are only tentative. All comments will be carefully considered before final action is taken. We look forward to receiving constructive comments from the certificated carriers, air taxi operators, other organizations and individuals addressed to the basic issues in this proceeding. Specifically, we request that the comments focus upon the following matters:

1. The public need, if any, for expanded capacity air taxi cargo and passenger service in Hawaii.

2. Anticipated operating plans of air taxi operators in the event that air taxi restrictions are liberalized as here proposed (a) in markets now served by Hawaiian and Aloha, and (b) in other Hawaiian markets.

3. The estimated impact of liberalized air taxi restrictions upon the certificated carriers.

Accordingly, it is proposed to amend Part 298 of the Board's Economic Regulations (14 CFR Part 298) as set forth below:

PROPOSED RULE

1. Amend § 298.2 by revising the definition of "large aircraft" to read as follows:

§ 298.2 Definitions.

As used in this part:

* * * * *

(i) "Large aircraft" means any aircraft having a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds: *Provided, however,* That for the purposes of this part, large aircraft shall include all models of the Convair 240, 340, and 440; Martin 202 and 404; F–27 and FH–227; and Hawker Siddeley 748; and shall also include any other aircraft with a maximum zero fuel weight in excess of 35,000 pounds.

* * * * *

2. Amend § 298.31 to read as follows:

§ 298.31 Scope of service and equipment authorized.

Nothing in this Part shall be construed as authorizing the operation of large aircraft in air transportation, and the exemption provided by this part to air taxi operators which register and reregister with the Board extends only to the direct operation in air transportation in accordance with the limitations and conditions of this part of aircraft having a maximum passenger capacity of 30 seats or less and a maximum payload capacity of 7,500 pounds or less.

[FR Doc.77–1169 Filed 1–12–77;8:45 am]

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[8] A "commuter air carrier" is a subclassification of air taxi, as defined in § 298.2.

[9] Horizon submitted copies of 15 letters from Hawaiian shippers supporting the use of larger aircraft for air taxi cargo services.

[7] Suggested issues include (a) the form of any new weight limitation, (b) whether certificated carriers should be given route protection and (c) whether separate rules should be established for different types of operations (i.e., charter vs. scheduled, freight vs. passenger) and different types of equipment.

[8] Basically, all air taxis would be required to report their present markets, schedules and traffic, and indicate their operating plans if permitted to use larger aircraft.

[9] Eastern Airlines, Inc. v. CAB, 185 F.2d 426 (D.C. Cir. 1950), dismissed as moot, 341 U.S. 901 (1951).

[10] Air Line Pilots Association International v. CAB, 494 F.2d 1118 (D.C. Cir. 1974.)

[11] At the time of the Initial Decision in the Part 298 Investigation Hawaiian and Aloha reported gross revenues of $29.9 million and $16.7 million, respectively (12 months ended June 1971), whereas their most recent Form 41 reports show gross revenues of $62.6 million and $43.8 million, respectively (12 months ended September 1976). The two carriers have also shown dramatic increases in profitability: In June 1971, Hawaiian and Aloha reported net losses of $47,000 and $2.2 million, respectively, whereas in September 1976 they reported net income after taxes of $1.5 million and $468,000, respectively.

[12] In the 12 months ended June 1976, Hawaiian air commuters generated 16 million revenue passenger miles (Forms 298–C, Schedule T1, June 1976), compared to a combined total of 684 million revenue passenger miles for Hawaiian and Aloha (Air Carrier Traffic Statistics, Bureau of Accounts and Statistics, CAB, June 1976).

[14 CFR Part 239]

[Docket No. 30232; EDR–315A]

REPORTING DATA PERTAINING TO FREIGHT LOSS AND DAMAGE CLAIMS BY CERTAIN AIR CARRIERS AND FOREIGN ROUTE AIR CARRIERS

Supplemental Advance Notice of Proposed Rulemaking

JANUARY 10, 1977.

By EDR–315, December 17, 1976, the Board issued a Notice of Proposed Rule-

making in this proceeding requesting comments from interested persons in response to its proposal to modify the definition of "Actual shipper loss," and reduce, as well as improve, the requirements for reporting on CAB Form 239, "Report of Freight Loss and Damage Claims." January 24, 1977, was the filing date.

By letter, dated January 6, 1977, the Air Transport Association of America (ATA) has requested an extention of the filing date for comments to February 24, 1977. In support of their request, the ATA members assert that due to unforeseen problems, subscribers to the CAB Economic Regulation Reporting Service have not yet received copies of this Notice of Proposed Rule Making. ATA also states that they have been notified by a number of carriers that on first reading, there are some significant problems in the proposal. It is felt that an industry meeting will be necessary in order to develop comments that will be constructive and of use to the Board in its deliberations.

No previous extension of time has been granted in this proceeding, and it does not appear that the granting of the requested 30-day extension would prejudice any party to this proceeding. In the interest of receiving the views of all interested persons, the undersigned finds that good cause has been shown for an extension of time for filing comments.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)), the undersigned hereby extends the time for filing comments to February 24, 1977.

(Sec. 204(a), 402 and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757, 766; 49 U.S.C. 1324, 1372, 1377.)

SIMON J. EILENBERG,
Associate General Counsel,
Rules Division.

[FR Doc.77-1165 Filed 1-12-77;8:45 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 447]

DISCLOSURE REGULATIONS CONCERNING RETAIL PRICES FOR PRESCRIPTION DRUGS

Comment Period Extended Regarding Related Supreme Court Decision

On June 4, 1975, the Federal Trade Commission published a proposed trade regulation rule for Disclosure Regulations Concerning Retail Prices for Prescription Drugs, 40 Fed. Reg. 24031 which, if finally promulgated, would preempt State Laws that prohibit or unfairly restrict the advertising of prescription drug price information. A recent decision of the United States Supreme Court, *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 44 U.S.L.W. 4686 (U.S. May 24, 1976), may accomplish that result by First Amendment protection.

Because of this prospect the Commission, on July 2, 1976, invited any interested person to comment prior to November 30, 1976, on why the decision in *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council* cannot accomplish by First Amendment protection what the Commission's proposed rule might have accomplished by preemption.

The Commission's Staff is monitoring the extent to which restrictions on price advertising of the type proscribed in the mentioned Supreme Court decision are being eliminated. It is expected that the results of this monitoring effort will be placed on the public record of this proceeding.

To allow time for this monitoring effort the period for the receipt of additional evidence or comment on the need for the rule in the light of the *Virginia State Board of Pharmacy* decision has been extended to April 1, 1977. Such material should be sent to Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, D.C. 20580 so as to be received no later than April 1, 1977.

Issued: January 13, 1977.

HENRY B. CABELL,
Presiding Officer.

[FR Doc.77-1178 Filed 1-12-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Corporate Separations

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by February 28, 1977.

Pursuant to 26 CFR 601.601(b), designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, persons submitting written comments should not include therein material that they consider to be confidential or inappropriate for disclosure to the public. It will be presumed by the Internal Revenue Service that every written comment submitted to it in response to this notice of proposed rulemaking is intended by the person submitting it to be subject in its entirety to public inspection and copying in accordance with the procedures of 26 CFR 601.702(d)(9). Any person submitting written comments who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Commissioner by February 28, 1977. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

This document contains a proposed amendment to the Income Tax Regulations (26 CFR Part 1) under sections 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954.

Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. Section 355 applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses) and which, generally, have been owned for at least 5 years by the corporation making the distribution of stock or of stock and securities.

Section 355 provides nonrecognition of gain or loss on a distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities only if the distribution is carried out for purposes germane to the business of the corporations and only if there is a continuity of interest in all or a part of the business enterprise by those persons who were the owners of the enterprise before the distribution. In addition, section 355 does not apply to a transaction which has been used principally as a device for the distribution of earnings and profits of the distributing corporation, of the controlled corporation, or of both.

In order to qualify under section 355, the distributing corporation must distribute all of the stock of the controlled corporation which it owns, or at least an amount of the stock which constitutes control as defined in section 368(c). If a part of either the stock or securities is retained by the distributing corporation, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

The proposed amendment contains two major changes to the current regulations. The rules under section 355(a)(1)(B), relating to a transaction which was used principally as a device for the distribution of earnings and profits, have been revised to describe factors which are to be taken into account in making the determination of whether a transaction was such a "device". The rules under

section 355(b), relating to active conduct of a trade or business, have been revised to provide for the separation of a single business consistent with the holdings in "Coady v. Commissioner," 289 F. 2d 490 (6th Cir. 1961), and "United States v. Marett," 325 F. 2d 28 (5th Cir. 1963).

PROPOSED AMENDMENT TO THE REGULATIONS

The Income Tax Regulations (26 CFR Part 1) under section 355, relating to distribution of stock and securities of a controlled corporation, and 346, relating to partial liquidation defined, of the Internal Revenue Code of 1954 are amended as follows:

PARAGRAPH 1. Sections 1.355–1 through 1.355–4 are amended to read as follows:

§ 1.355–1 Distribution of stock and securities of a controlled corporation.

(a) *Application of section.* Section 355 provides for the separation, without recognition of gain or loss to the shareholders and security holders, of one or more existing businesses formerly operated, directly or indirectly, by a single corporation. It applies only to the separation of existing businesses which have been in active operation for at least 5 years (or a business which has been in active operation for at least 5 years into separate businesses), and which, in general, have been owned, directly or indirectly, for at least 5 years by the corporation making the distribution of stock or of stock and securities. For the purpose of section 355, stock rights or stock warrants are not included in the term "stock and securities".

(b) *Type of separations.* Section 355 is concerned with two general types of separations. The first is the distribution of the stock of an existing corporation. The second is the distribution of the stock of a corporation holding assets of a business previously operated by the distributing corporation. In both cases, section 355 contemplates the continued operation of the business or businesses existing prior to the separation.

§ 1.355–2 Limitations.

(a) *Property distributed.* In order for section 355 to apply, the property distributed must consist solely of stock, or stock and securities, of a controlled corporation. If additional property (including an excess principal amount of securities received over securities surrendered is received, see section 356.

(b) *Business purpose and continuity of interest.*—(1) *In general.* A distribution by a corporation of stock or securities of a controlled corporation to its shareholders with respect to its own stock or to its security holders in exchange for its own securities will not qualify under section 355 where carried out for purposes not germane to the business of the corporations. The principal reason for this requirement is to provide nonrecognition treatment only to those distributions or exchanges of stock or securities of the controlled corporation which are incident to such readjustment of corporate structures as is required by business exigencies and which effect only a readjustment of continuing interests in property under modified corporate forms. Depending upon the facts of a particular case, a shareholder purpose for a transaction may be so nearly coextensive with a corporate business purpose as to preclude any distinction between them. In such a case, the transaction is carried out for purposes germane to the business of the corporations. On the other hand, if a transaction is motivated solely by the personal reasons of a shareholder, for example, if a transaction is undertaken solely for the purpose of fulfilling the personal planning purposes of a shareholder, the distribution will not qualify under section 355 since it is not carried out for purposes germane to the business of the corporations. Section 355 contemplates a continuity of interest in all or part of the business enterprise on the part of those persons who, directly or indirectly, were the owners of the enterprise prior to the distribution or exchange. For rules with respect to the requirement of a business purpose for a transfer of assets to a controlled corporation in connection with a reorganization described in section 368(a)(1)(D), see § 1.368–1(b).

(2) *Examples.* The provisions of paragraph (b)(1) of this section may be illustrated by the following examples:

Example (1). Corporation P is engaged in the production, transportation, and refining of petroleum products. In 1962, P acquired all of the properties of corporation S, which was also engaged in the production, transportation, and refining of petroleum products. In 1968, as a result of anti-trust litigation, P was ordered to divest itself of all properties acquired from S. P proposes to transfer the assets acquired from S to a new corporation and to distribute the stock of such new corporation to its shareholders. In view of the divestiture order, the distribution of the stock of the new corporation to the shareholders of P will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (2). Corporation R owns and operates two men's retail clothing stores. The outstanding stock of R is owned equally by two brothers, A and B, and F, their father, who does not take an active part in the retail clothing business. A and B no longer can agree on major decisions affecting the operation of the corporation. Corporation R proposes to transfer one store to a new corporation and distribute 66.7 percent of the stock of such new corporation to one brother in exchange for all of his R stock. The other 33.3 percent of the stock of such new corporation will be exchanged for one-half of F's stock of corporation R. In view of the disagreement between managing shareholders, the distribution of the stock of the new corporation will be considered to have been carried out for a real and substantial nontax reason germane to the business of the corporations.

Example (3). Corporation T is engaged in the manufacture and sale of children's novelty toys. It also manufactures and sells candy and candy products. The shareholders wish to separate the candy business from the risks and vicissitudes of the novelty toy business. It is proposed that the assets and activities associated with the toy business be transferred to a new corporation, the stock of which would then be distributed to T's shareholder. The purpose of protecting the candy business from the risks of the novelty toy business, which is fulfilled when the novelty toy assets and activities are transferred to the new corporation, does not satisfy the requirement there be a substantial nontax reason, germane to the business of the corporation, for the distribution of the stock of the new corporation to the shareholders.

Example (4). The facts are the same as in example (3) except that T also requires outside financing in order to substantially expand its candy business. As a condition of the loan, in order to prevent the potential diversion of funds to the toy business, the lender requires the separation of the candy business and the novelty toy business and the distribution of the stock of the novelty toy corporation to the shareholders. The lender's requirements are based upon customary business practice. In this case, the distribution of the stock of the novelty toy corporation to the shareholders will be considered to have been carried out for purposes germane to the business of the corporations.

(c) *Device for distribution of earnings and profits.*—(1) *In general.* Section 355 does not apply to a transaction which has been used principally as a device for the distributoin of the earnings and profits of the distributing corporation, of the controlled corporation, or of both. The Code recognizes that a tax-free distribution of the stock of a controlled corporation presents an extraordinary potential for tax avoidance by placing the shareholders of the distributing corporation in a position whereby, as a consequence of the subsequent sale of stock or the liquidation of either the distributing corporation or the controlled corporation, they can avoid the dividend provisions of the Code. A distribution which is pro rata or substantially pro rata among the shareholders of the distributing corporation presents the greatest potential for the withdrawal of earnings and profits and is more likely to be undertaken principally as a device for the distribution of earnings and profits. Whether a transaction which has the potential for the distribution of earnings and profits was used principally as such a device shall be determined from all the facts and circumstances. Among the factors to be considered are those factors described in paragraph (c) (2) and (3) of this section. However, in any case in which a distribution with respect to each distributee would be treated as a redemption to which section 302(a) would apply if it were taxable, the transaction is not ordinarily considered to be a device for the distribution of earnings and profits. For purposes of the preceding sentence, section 302(c)(2)(A) shall be applied without regard to clauses (ii) and (iii). Further, if, on the date of the distribution, no part of a distribution of money by the distributing corporation, the controlled corporation, or any corporation controlled, directly or indirectly, by either of such corporations could have been taxable as a dividend as defined in section 316 because of the absence of earnings and profits, the transaction is ordinarily not considered to be such a device.

(2) *Subsequent sales of stock.* If, pursuant to an arrangement negotiated or agreed upon before the distribution, 20 percent or more of the stock of either the distributing corporation or the controlled corporation is to be sold or exchanged after the distribution, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both. If, pursuant to such an arrangement, part or all of the securities or less than 20 percent of the stock of either corporation is to be sold or exchanged after the distribution, this fact will be considered as substantial evidence that the transaction was used principally as such a device. For purposes of this subparagraph, the term "exchange" does not include an exchange of stock or securities in a tax-free transaction in which no gain or loss is recognized or in which an insubstantial amount of gain is recognized. A sale is always pursuant to an arrangement negotiated or agreed upon before the distribution when enforceable rights to buy or sell exist before such distribution. If a sale was discussed by the buyer and the seller before the distribution and was reasonably to be anticipated by both parties, such sale shall ordinarily be considered as made pursuant to an arrangement negotiated or agreed upon before the distribution.

Whether or not a sale is negotiated or agreed upon prior to the distribution, the fact of any sale of stock or securities shall be taken into account with other evidence in determining whether a transaction was used principally as a device for the distribution of earnings and profits.

(3) *Nature and use of assets.*—(i) *General.* In determining whether a transaction was used principally as a device for the distribution of earnings and profits of the distributing corporation, the controlled corporation, or both, consideration will be given to the nature, kind, and amount of the assets of both corporations (and corporations controlled by them immediately after the transactions and to the use of such assets by such corporations.

(ii) *New trade or business.* If a substantial portion of the assets of any post-distribution corporation consists of a trade or business acquired within the 5-year period ending on the date of the distribution in a transaction in which the basis of such assets was not determined in whole or in part by reference to the transferor's basis, this will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iii) *Liquid assets.* The transfer or retention of cash or liquid assets (for example, securities and accounts receivable) which is not related to the reasonable needs of the business of the transferee or retaining corporation will be considered as evidence that the transaction was used principally as a device for the distribution of earnings and profits.

(iv) *Related function.* In certain cases the relationship between the nature and use of the assets of the distributing corporation and the controlled corporation will be considered as evidence that a transaction was used principally as a device for the distribution of earnings and profits. For example, where the principal function of one corporation before the transaction is to perform services for or supply technical or research data to the other corporation, and after the transaction that corporation continues to function on the same basis, this would be considered as evidence that the transaction was used principally as such a device. Thus, in example (9) of § 1.355–3 (c), involving a controlled corporation operating a coal mine for the sole purpose of satisfying the requirements of the parent steel corporation before the transaction, if the coal mining business continued to operate on the same basis after the transaction, this fact would be considered as evidence that the distribution of the stock of the coal mining corporation in example (9) is principally a device for the distribution of earnings and profits. Similarly, in a transaction which separates the manufacturing and sales operations, as in example (8) of § 1.355–3 (c), if the sales corporation merely functions as the exclusive agent for the manufacturing corporation after the transaction, this fact would be considered as evidence that the transaction was principally a device for the distribution of earnings and profits.

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Corporation W has engaged in the commercial banking business in State N for 20 years. The stock of W is owned equally by individuals A, B, and C. Six years ago, W organized corporation X as a wholly-owned subsidiary to offer computerized bookkeeping services to the public. W and X have substantial accumulated earnings and profits. State N has recently amended its banking laws to provide that commercial banks operating in N may not offer computerized bookkeeping services directly or through a subsidiary. D, an individual, has offered to purchase the stock of X. At a stockholders' meeting the offer was rejected and it was decided to distribute the stock of X pro rata to A, B, and C. After the meeting and before the distribution, A, B, and C agreed to sell D one-half of X stock they were to receive in the distribution. Notwithstanding the existence of a corporate business reason for the distribution of the stock of X, the distribution will be considered to have been used principally as a device for the distribution of earnings and profits of W.

Example (2). Assume the same facts as in example (1) except that A, B, and C did not agree to sell any of the X stock they were to receive to D. At the shareholders' meeting it was decided to transfer cash to X before making the pro rata distribution. The amount of cash transferred substantially exceeded the reasonable business needs of X. After the distribution A and B agreed to sell to E, an individual, one-half of their X stock. Notwithstanding the existence of a corporate business purpose for the distribution, the transaction will be considered to have been used principally as a device for the distribution of earnings and profits because of the transfer of cash to X and the subsequent sale of X stock by A and B.

(d) *Stock and securities distributed.* The distributing corporation must distribute:

(1) All of the stock and securities of the controlled corporation which it owns, or

(2) At least an amount of the stock which constitutes control as defined in section 368(c). In such case all, or any part, of the securities of the controlled corporation may be distributed.

Where a part of either the stock or securities is retained under paragraph (d)(2) of this section, it must be established to the satisfaction of the Commissioner that such retention was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax. Ordinarily, the business reasons (as distinguished from the desire to make a distribution of the earnings and profits) which support a distribution of stock and securities of a controlled corporation under paragraph (b) of this section will require the distribution of all of the stock and securities. If the distribution of all of the stock and securities of a controlled corporation would be treated to any extent as a distribution of "other property" under section 356, this fact does not tend to establish that the retention of any of such stock and securities is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(e) *Principal amount of securities.*—(1) *Securities received.* Section 355(a)(1) is not applicable if the principal amount of securities received exceeds the principal amount of securities surrendered or if securities are received and no securities are surrendered. In such cases, see section 356.

(2) *Only stock received.* If only stock is received in a transaction to which section 355 is applicable, the principal amount of securities surrendered, if any, and the par or stated value of stock are not relevant to the application of such section.

(f) *Period of ownership.*—(1) *Other property.* For the purposes of determining whether gain or loss will be recognized upon a distribution, stock of a controlled corporation acquired in a transaction in which gain or loss is recognized, in whole or in part (other than a transaction described in § 1.355–3(b)(4)(ii)) within the 5-year period ending on the date of the distribution of such stock is treated as "other property." Section 355 does not apply to a transaction which includes a distribution of such stock. See section 356. The stock so acquired is "stock", however, for the purpose of the requirements respecting the distribution of stock of such controlled corporation provided in section 355(a)(1)(D).

(2) *Example.* Paragraph (f)(1) of this section may be illustrated by the following example:

Example. Corporation A has held 85 of the 100 outstanding shares of the stock of corporation B for more than 5 years on the date of distribution. Six months before such date, it purchased 10 shares of such stock. If all of the stock of the controlled corporation owned by A is distributed, section 355 is not applicable to such distribution since the 10 shares would represent "other property." See, however, section 356. If, however, for proper business reasons it is decided to retain some of the stock of B, then the determination of the amount of such stock which must be distributed under section 355(a)(1)(D) in order to constitute a distribution to which section 355 is applicable must be made by reference to all of the stock of the controlled corporation including the 10 shares acquired 6 months before such date and the 5 shares owned by others. Similarly, if, by the use of any agency, the distributing corporation acquires any stock of the controlled corporation within the 5-year period ending on the date of distribution in a transaction in which gain or loss is recognized in whole or in part, for example, where another subsidiary purchases such stock, such stock will be treated as "other property." If A had held only 75 of the 100 outstanding shares of stock of B for more than 5 years on the date of distribution and had purchased the remaining 25 shares 6 months before such date, neither section 355 nor section 356 would be applicable.

(g) *Active conduct of a trade or business.* The rules of section 355(b) and § 1.355–3 relating to the active conduct of a trade or business must be satisfied.

§ 1.355–3 Active conduct of a trade or business.

(a) *Requirements as to active business.*—(1) *In general.*—(i) *Application of section 355.* Under section 355(b)(1), a distribution of stock or securities of a controlled corporation is subject to section 355(a) only if:

(A) The distributing corporation and the controlled corporation are each engaged in the active conduct of a trade or business immediately after the distribution of stock or securities of the controlled corporation (section 355(b)(1)(A)), or

(B) Immediately before the distribution the distributing corporation had no assets other than stock or securities in the controlled corporations and each of the controlled corporations is engaged in the active conduct of a trade or business immediately after the distribution (section 355(b)(1)(B)). In connection with the requirement of "no assets" a de minimis rule is applicable.

(ii) *Examples.* Paragraph (a)(1)(i) of this section may be illustrated by the following examples:

Example (1). Corporation A, prior to the distribution, is engaged in the active conduct of a trade or business and owns all of the stock of corporation B which also is engaged in the active conduct of a business. A distributes all of the stock of B to its shareholders, and each corporation continues the active conduct of its business. The active business requirement of section 355(b)(1)(A) is satisfied.

Example (2). The facts are the same as in example (1), except that A transfers all of its assets except the stock of B to a new corporation in exchange for all of the new corporation's stock and transfers the stock of both controlled corporations to its shareholders. The active business requirement of section 355(b)(1)(B) is satisfied.

(b) *Active conduct of a trade or business defined.*—(1) *In general.* Section 355(b)(2) provides rules for determining whether any corporation is treated as engaged in the active conduct of a trade or business for purposes of ascertaining whether the distributing corporation and the controlled corporation meet the requirements of section 355(b)(1). Under section 355(b)(2)(A), a corporation is treated as engaged in the active conduct of a trade or business if it is itself engaged in such a trade or business or if substantially all of its assets consist of the stock and securities of a corporation or corporations controlled by it (immediately after the distribution) each of which is engaged in the active conduct of a trade or business.

(2) *Active conduct of trade or business immediately after distribution.*—(i) *General.* For purposes of section 355(b), a corporation shall be treated as engaged in the "active conduct of a trade or business" immediately after a distribution if the assets and activities of such corporation meet the tests and limitations described in paragraph (b)(2)(ii), (iii), and (iv) of this section.

(ii) *Trade or business.* A corporation shall be treated as engaged in a trade or business immediately after a distribution of stock if a specific group of activities are being carried on by such corporation for the purpose of earning income or profit from such group of activities, and the activities included in such group include every operation which forms a part of, or a step in, the process of earning income or profit from such group. Such group of activities ordinarily must include the collection of income and the payment of expenses.

(iii) *Active conduct.* For purposes of section 355, the determination of whether a trade or business is actively conducted is a question of fact to be determined under all the facts and circumstances. In general, the corporation must perform active and substantial management and operational functions.

(iv) *Limitations.* The active conduct of a trade or business does not include—

(A) The holding for investment purposes of stock, securities, land, or other property, or

(B) The ownership and operation (including leasing) of real or personal property used in a trade or business, unless the owner performs significant services with respect to the operation and management of the property.

(3) *Active conduct for 5-year period preceding distribution.* Under section 355(b)(2)(B), a trade or business must have been actively conducted for the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation. For this purpose, activities which constitute a trade or business under the tests described in paragraph (b)(2) of this section, shall be treated as meeting the test contained in the preceding sentence if such activities were actively conducted throughout such 5-year period. For the purpose of determining whether such trade or business has been actively conducted throughout the 5-year period described in section 355(b)(2), the fact that during such 5-year period such trade or business underwent change (for example, by the addition of new or the dropping of old products, changes in production capacity, and the like) shall be disregarded provided the changes are not of such a character as to constitute the acquisition of a new or different business.

(4) *Special rules for acquisition of a trade or business.*—(i) *General.* For purposes of section 355(b), a trade or business which is relied upon to meet the requirements of such section must not have been acquired by the distributing corporation, the controlled corporation, or another member of the affiliated group during the 5-year period ending on the date of distribution of the stock and securities of the controlled corporation unless it was acquired in a transaction in which no gain or loss was recognized (section 355(b)(2)(C)). For purposes of this subparagraph (4), the term "affiliated group" means an affiliated group as defined in section 1504(a) (without regard to section 1504(b)) except that the term "stock" includes nonvoting stock which is limited and preferred as to dividends. In addition, under section 355(b)(2)(D), such trade or business must not have been indirectly acquired during such 5-year period in a transaction in which gain or loss was recognized in whole or in part by means of the acquisition of control of the corporation that was engaged in such trade or business or by means of an indirect acquisition of control of such corporation through another corporation or any of its predecessors in interest. A business acquired, directly or indirectly, within the 5-year period ending on the date of the distribution in a transaction in which the basis of the assets acquired is not determined in whole or in part by reference to the transferor's basis for such assets will not qualify under section 355(b)(2), even though no gain or loss was recognized by the transferor (for example, by reason of section 337).

(ii) *Gain or loss recognized in certain transactions.* The rules of section 355(b)(2)(C) and (d) are intended to prevent the direct or indirect acquisiiton of a trade or business by a corporation as a temporary investment of liquid assets in anticipation of a distribution by such corporation of such trade or business in a transaction to which section 355 would otherwise apply. A direct or indirect acquisition of a trade or busines by one member of an affiliated group from another member of such group is not the type of transaction to which section 355(b)(2)(C) and (D) is intended to apply. Therefore, in applying section 355(b)(2)(C) or (D), such an acquisition, even though taxable, shall be disregarded.

(iii) *Example.* Paragraph (b)(4)(i) may be illustrated by the following example:

Example: In 1956, corporation B, having cash and other liquid assets, purchased all of the stock of corporation A which was engaged in an active business. Later, in the same year, B in a "downstream" statutory merger merges into A. In 1958, A places the assets formerly owned by B in a new subsidiary, corporation X. A's distribution of the stock of X to the stockholders of A is not within the terms of section 355, since the active business of A had, in effect, been purchased less than 5 years prior to the distribution.

(c) *Examples.* The following examples illustrate the application of the rules provided in section 355(b)(2) (A) and (B). However, a transaction which satisfies the active conduct of a trade or business requirement in these examples will qualify under section 355 (a) only if the other requirements of that section are met.

Example (1). Corporation A is engaged in the manufacture and sale of soap and detergents and owns investment securities. It proposes to place the investment securities in a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of investment securities does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (2). Corporation B owns, manages, and derives rental income from an office building and also owns vacant land. It proposes to transfer the vacant land to a new corporation and distribute the stock of such new corporation to its shareholders. The new corporation's holding of the vacant land does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (3). Corporation C owns land on which it engages in the ranching business. Oil has been discovered in the area and it is apparent that oil may be found under the land on which the ranching activities are conducted. Corporation C has engaged in no significant activities in connection with the mineral rights. It proposes to transfer the mineral rights to a new corporation and distribute the stock of the new corporation to its shareholders. The new corporation's holding of mineral rights does not qualify as the active conduct of a trade or business immediately after the distribution.

Example (4). Corporation D, a bank, has for the past 7 years owned an 11-story downtown office building, the ground floor of which has been occupied by it in the conduct of its banking business. The remaining 10 floors are rented to various tenants and the building is managed and maintained by employees of the bank. Corporation D proposes to transfer the building to a new corporation and to distribute the stock of such new corporation to the bank's shareholders. The new corporation will manage the building, negotiate leases, seek new tenants, and will repair and maintain the building. Immediately after the distribution the activities in connection with banking will constitute the active conduct of a trade or business, as will the activities in connection with the rental of the building.

Example (5). Corporation E, a bank, has for the past 9 years owned a 2-story building in a suburban area, the ground floor and one-half of the second floor of which are occupied by it in the conduct of its banking business. The other one-half of the second floor is rented as storage space to a neighboring retail merchant. Corporation E proposes to transfer the building to a new corporation and distribute the stock of the new corporation to its shareholders. Corporation E will lease the space formerly occupied by it in the bank building from the new corporation and, under the lease, will repair and maintain its portion of the building and pay property taxes and insurance. The new corporation will not be engaged in the active conduct of a trade or business immediately after the distribution.

Example (6). Corporation F is engaged in the retail grocery business and owns all of the stock of corporation G. Corporation G has for the past 10 years derived all of its gross income from the rental of its land and building to F, under a lease in which G's principal activity consists of the collection of rent from the building. Corporation F proposes to distribute the G stock to its shareholders. Corporation G will not be engaged in the active conduct of a trade or business immediately after the distribution, since it has not actively conducted a trade or business throughout the 5-year period ending on the date of the distribution.

Example (7). Corporation H has owned and operated a men's retail clothing store in the downtown area of the City of R for 7 years and has also owned and operated a men's retail clothing store in the suburban area of the City of R for 9 years. Corporation H proposes to transfer the store building, fixtures, inventory, and other assets related to the suburban store's activity to a new corporation. However, the warehouses which formerly served both the downtown and suburban stores will be retained by H, and the new corporation will lease warehouse space from an unrelated public warehouse company. Moreover, the delivery trucks and employees which formerly served both stores will be transferred to the new corporation for its exclusive use, and corporation H will contract with a local public delivery organization to effect its deliveries. Corporation H proposes to distribute the stock of the new corporation to its shareholders. Immediately after the distribution the activities in connection with the downtown store will constitute the active conduct of a trade or business, as will the activities in connection with the suburban store.

Example (8). Corporation I has processed and sold meat products for 8 years. It has no other income. Corporation I proposes to separate the selling from the processing activities by forming a separate corporation, J, to purchase for resale the meats processed by I. Corporation I will transfer to J certain physical assets pertaining to the sales function, plus cash for working capital, in exchange for the capital stock of J which will be distributed to the shareholders of I. Immediatley after the distribution corporation I will be engaged in the active conduct of a meat products processing business and corporation J will be engaged in the active conduct of a meat distribution business. The business of each corporation is deemed to have been actively conducted from the date corporation I began its meat processing and sales business.

Example (9). For 8 years corporation K has been engaged in the manufacture and sale of steel and steel products. For 6 years K's wholly-owned subsidiary, corporation L, has owned and operated a coal mine for the sole purpose of supplying K's coal requirements in the manufacture of steel. It is proposed that the stock of L be distributed to the shareholders of K. Immediately after the disrtibution, the activities of L in connection with the operation of the coal mine constitute the active conduct of a trade or business. The activities of K in connection with the manufacture and sale of steel products immediately after the distribution also constitute the active conduct of a trade or business.

Example (10). Corporation M has for more than 5 years been engaged in the single business of constructing sewage disposal plants and other facilities. Corporation M proposes to transfer one-half of its assets to corporation N. These assets will include a contract for the construction of a sewage disposal plant in State X, construction equipment, cash, and other tangible assets. Corporation M will retain a contract for the construction of a sewage disposal plant in State Y, construction equipment, cash and other intangible assets. The N stock is then to be distributed to one of the M shareholders in exchange for all of his M stock. Both corporations will be engaged in the active conduct of the construction business immediately after the distribution.

Example (11). Corporation O has for the past 6 years owned three factories devoted to the production of edible pork skins. The entire output of two of the factories is sold to one customer. The third factory's output is sold to a number of different customers. Corporation O proposes to transfer the two factories which produce pork skins for the single customer, together with their related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Immediately after the distribution the activities in connection with the production and sale of edible pork skins to the one customer will constitute the active conduct of a trade or business, as will the activities in connection with the production and sale of pork skins to the other customers.

Example (12). Corporation P has owned and operated a department store in the City of W for 9 years. Three years ago P acquired a parcel of land and constructed a branch store in a suburban area of the City of W. The two stores are operated as a single unit and have common advertising, bank accounts, billing, purchasing, and management. Corporation P proposes to transfer the suburban store, together with its related activities, to a new corporation and to distribute the stock of such new corporation to its shareholders. Each store will have its own manager and will be operated independently of the other store. Immediately after the distribution the activities in connection with each of the department stores constitute the active conduct of a trade or business since each store was an integrated part of the single department store business conducted by P for 9 years.

Example (13). Corporation Q is engaged in the business of manufacturing hats in its own factory building. It proposes to transfer the factory building to corporation R and distribute the stock of R to its shareholders. After the transfer, Q will lease the factory building under a long-term lease and will operate and maintain the building and the machinery in the building. The activities of R in connection with the leased factory building immediately after the distribution will not constitute the active conduct of a trade or business.

Example (14). Corporation S has been engaged in the manufacture and sale of household products for 8 years. Throughout this period, in connection with such manufacturing, it has maintained a research department for its own use. The research department has 30 employees actively engaged in the development of new products. Corporation S proposes to transfer the research department to a new corporation and to distribute the stock of the new corporation to its shareholders. After the distribution the new corporation will continue its research opera-

tions on a contractual basis with several corporations including S. Immediately after the distribution the activities of the new corporation in connection with research will constitute the active conduct of a trade or business, as will the activities of S in connection with manufacturing.

§ 1.355–4 Non pro rata distributions, etc.

Section 355 provides for nonrecognition of gain or loss with respect to a distribution whether or not (a) the distribution is pro rata with respect to all of the shareholders of the distributing corporation, (b) the distribution is pursuant to a plan of reorganization (within the meaning of section 368(a)(1)(D)), or (c) the shareholder surrenders stock in the distributing corporation. Under section 355 the stock of a controlled corporation may consist of common or preferred. (See, however, section 306 and the regulations thereunder.) Section 355 does not apply, however, if the substance of a transaction is merely an exchange between shareholders or security holders of stock or securities in one corporation for stock and securities in another corporation. For example if two individuals, A and B, each own directly 50 percent of the stock of corporation M and 50 percent of the stock of corporation N, section 355 would not apply to a transaction in which A and B transfer all of their stock of M and N to a new corporation P, for all of the stock of P, and P then distributes the stock of M to A and the stock of N to B.

§ 1.346–1 [Amended]

PAR. 2. Section 1.346–1 is amended by deleting the last sentence of paragraph (c) and by inserting in lieu thereof "The term 'active conduct of a trade or business' shall have the same meaning in this section as in § 1.355–3(b)(2)."

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POSTAL SERVICE

[39 CFR Parts 1–8]

GOVERNMENT IN THE SUNSHINE ACT—BYLAWS OF THE BOARD OF GOVERNORS

Proposed Rulemaking

Agency: United States Postal Service (Board of Governors).

Action: Proposed Rule.

Summary: This proposed amendment to Postal Service regulations implements the requirements of the Government in the Sunshine Act. In addition, this notice calls public attention to a proposed general revision and republication of the bylaws of the Board of Governors of the Postal Service.

Dates: Comments must be received on or before: February 14, 1977.

Addresses: Written comments should be directed to: Secretary of the Board of Governors, U.S. Postal Service, Room 9150, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

For further information contact: Stanley F. Mires 202–245–4646

Supplemental information: Under 5 U.S.C. 552b(g), each agency subject to the Government in the Sunshine Act is required, after consultation with the Office of the Chairman of the Administrative Conference of the United States, and published notice in the FEDERAL REGISTER of at least 30 days with opportunity for written comment by any person, to issue regulations to implement the requirements of new 5 U.S.C. 552b(a)—(f). The provisions of proposed new Part 7, drafted after consultation with the Office of the Chairman of the Administrative Conference of the United States, are intended to establish the policies and procedures for Postal Service compliance with the Government in the Sunshine Act, Pub. L. No. 94–409.

In addition to proposing new "Sunshine" regulations, the Board of Governors of the Postal Service has determined that it is in the public interest to publish a tentative general revision of its bylaws, incorporating certain unpublished provisions formerly referred to as "operating procedures". The Board believes that the general revision and republication of its bylaws, now codified at 39 CFR Parts 1–6, may best be accomplished in conjunction with the establishment of the new Sunshine regulations which will be an integral part of those bylaws. Although the Board is not required to submit its proposed bylaws (with the exception of those implementing the Government in the Sunshine Act) for public comment, the Board believes that informational publication of the full text of its tentative bylaws at this time will permit a more accurate evaluation of its proposed Sunshine regulations, and improve the level of public participation in this proposed rulemaking.

The Board therefore directs the attention of the public to proposed new 39 CFR Parts 1–8, and particularly solicits written comments, data, views, or arguments concerning proposed new Part 7, entitled "Public Observation".

Accordingly, the Postal Service proposes the following amendment:

In 39 CFR, Parts 1 through 6 are revised, and new parts 7 and 8 are adopted to read as follows:

PART 1—POSTAL POLICY [ARTICLE I]

Sec.
1.1 The United States Postal Service.
1.2 The Board of Governors.
1.3 Delegation of authority.
1.4 Open meetings.

AUTHORITY: The provisions of this Part 1 are issued under authority of 39 U.S.C. 101, 202, 205, 401(2), 402, 403, 3621, as enacted by Pub. L. No. 91–375, and 5 U.S.C. 552b(b), (g), as enacted by Pub. L. No. 94–409.

§ 1.1 The United States Postal Service.

The United States Postal Service is operated as a fundamental service provided to the people by the Government of the United States, authorized by the Constitution, created by Act of Congress, and supported by the people. The Postal Service has as its basic function the obligation to bind the Nation together through the correspondence of the people. It is charged with providing prompt, reliable, and efficient services throughout the Nation; and its statutory charter, the Postal Reorganization Act (the Reorganization Act) of August 12, 1970, Pub. L. No. 91–375, 84 Stat. 719, clothes it with extensive powers intended to enable it to carry out its responsibilities effectively and economically.

§ 1.2 The Board of Governors.

The Board of Governors of the Postal Service (the Board) directs the exercise of its powers under management that is expected to be honest, efficient, and economical. The Board consists of nine Governors chosen by the President, by and with the advice and consent of the Senate, to represent the public interest generally, together with the Postmaster General and Deputy Postmaster General. The Board directs and controls the expenditures of the Postal Service, reviews its practices and policies, and establishes basic objectives and long-range goals in consonance with the provisions of the Postal Reorganization Act.

§ 1.3 Delegation of authority.

Except for powers, duties, or obligations specifically vested in the Governors by law, the Board may delegate its authority to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it finds desirable. The bylaws of the Board are the framework of the system through which the Board monitors the exercise of the authority it has delegated, measures progress toward the goals it has set, and shapes the policies to guide the future development of the Postal Service. Delegations of authority do not relieve the Board of full responsibility for carrying out its duties and functions, and are revocable by the Governors in their exclusive judgment.

§ 1.4 Open meetings.

It is the policy of the United States, established in section 2 of the Government in the Sunshine Act, Pub. L. 94–409, 90 Stat. 1241, that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The Postal Service is charged to provide the public with this information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, except as specifically permitted by statute, every portion of every meeting of the Board of Governors, or of a subdivision of the Board authorized to act on its behalf, is open to public observation.

PART 2—GENERAL AND TECHNICAL PROVISIONS [ARTICLE II]

Sec.
2.1 Establishment of the United States Postal Service.
2.2 Agent for receipt of process.
2.3 Offices.
2.4 Seal.
2.5 Authority.
2.6 Severability, amendment, repeal, and waiver of bylaws.

AUTHORITY: The provisions of this Part 2 are issued under authority of 39 U.S.C. 202, 203, 205(c), 207, 401(2), as enacted by Pub. L. No. 91–375, and 5 U.S.C. 552b(f)(g), as enacted by Pub. L. No. 94–409.

§ 2.1 Establishment of the United States Postal Service.

The United States Postal Service is established under the provisions of the Postal Reorganization Act, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer.

§ 2.2 Agent for receipt of process.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service, and as agent for the receipt of legal process against members of the Board of Governors and all other officers and employees of the Postal Service to the extent that the process arises out of the official functions of those officers and employees. The General Counsel shall also issue public certifications concerning closed meetings of the Board as appropriate under 5 U.S.C. 552(b)(f).

§ 2.3 Offices.

The principal office of the Postal Service is located in Washington, D.C., with such regional and other offices and places of business as the Postmaster General establishes from time to time, or the business of the Postal Service requires.

§ 2.4 Seal.

(a) The Seal of the Postal Service is filed by the Board in the Office of the Secretary of State, and is required by 39 U.S.C. 207 to be judicially noticed. The General Counsel shall keep the Seal in his custody, affix it to all commissions of officers of the Postal Service, and use it to authenticate records of the Postal Service and for other official purposes. The following describes the Seal adopted for the Postal Service:

(1) A stylized bald eagle is poised for flight, facing to the viewer's right, above two horizontal bars between which are the words "U.S. MAIL", surrounded by a square border with rounded corners consisting of the words "UNITED STATES POSTAL SERVICE" on the left, top, and right, and consisting of nine five-pointed stars on the base.

(2) The color representation of the Seal shows, a white field on which the bald eagle appears in dark blue, the words "U.S. MAIL" in black, the bar above the words in red, the bar below in blue, and the entire border consisting of the words "UNITED STATES POSTAL SERVICE" and stars in ochre.



(b) The Postal Service emblem, which is identical with the seal, is registered as a trademark and service mark by the U.S. Patent Office. Except for the emblem on official stationery, the emblem must bear one of the following notations: "Reg. U.S. Pat. Off.", "Registered in U.S. Patent Office", or the letter R enclosed within a circle.

§ 2.5 Authority.

These bylaws are adopted by the Board under the authority conferred upon the Postal Service by 39 U.S.C. 401(2) and 5 U.S.C. 552b(g).

§ 2.6 Severability, Amendment, Repeal, and Waiver of Bylaws.

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least 5 days before the meeting. The members of the Board may waive the 5 days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the FEDERAL REGISTER as soon as practicable after the amendment is adopted by the Board.

PART 3—BOARD OF GOVERNORS [ARTICLE III]

Sec.
3.1 Composition of Board.
3.2 Responsibilities of Board.
3.3 Compensation of Board.
3.4 Matters reserved for decision by Board.
3.5 Delegation of authority by Board.
3.6 Information furnished to Board—Statistical reports.
3.7 Information furnished to Board—Program review.
3.8 Information furnished to Board—Special reports.

AUTHORITY: The provisions of this Part 3 are issued under authority of 39 U.S.C. 202, 203, 205, 401(2), 402, as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b(g), (j), as enacted by Pub. L. No. 94-409.

§ 3.1 Composition of Board.

The Board of Governors consists of 11 members. Nine members (the Governors) are appointed by the President, by and with the advice and consent of the Senate. Not more than five Governors may be adherents of the same political party. The Governors are chosen to represent the public interest generally, may not be representatives of specific interests using the Postal Service, and may be removed only for cause. The Postmaster General, appointed by the nine Governors, and the Deputy Postmaster General, appointed by the Governors and the Postmaster General, are also voting members of the Board of Governors.

§ 3.2 Responsibilities of Board.

The Board directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in 3.5 of these bylaws, and except for those powers, duties, or obligations which the Reorganization Act specifically vests in the Governors, as distinguished from the Board of Governors, the Board accomplishes its purposes by monitoring the operations and performance of the Postal Service, and by establishing basic objectives, broad policies, and long-range goals for the Postal Service.

§ 3.3 Compensation of Board.

As provided by 39 U.S.C. 202(a), each Governor receives a salary of $10,000 a year plus $300 a day for not more than 30 days of meetings each year, and reimbursement for travel and reasonable expenses incurred in attending meetings of the Board.

§ 3.4 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

(a) Appointment, pay, term of service, and removal of the Postmaster General (by the Governors, 39 U.S.C. 202(c)).

(b) Appointment, term of service, and removal of the Deputy Postmaster General (by the Governors and the Postmaster General, 39 U.S.C. 202(d)); pay of the Deputy Postmaster General (by the Governors, 39 U.S.C. 202(d)).

(c) Election of the Chairman of the Board of Governors (by the Governors, 39 U.S.C. 202(a)), the Vice Chairman of the Board, and the Secretary of the Board.

(d) Adoption of, and amendments to, the bylaws of the Board.

(e) Approval of the annual Postal Service budget program in both tentative and final form, including requests for appropriations.

(f) Approval of Postal Service five-year plans and capital investment plans, including specific approval of each capital investment project exceeding $5 million.

(g) Approval of the budget of the Postal Rate Commission, or adjustment of the total amount of the budget (by unanimous written vote of the Governors in office, 39 U.S.C. 3604(d)).

(h) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, including specific authorization of the amount of revenue estimated to be required so that total estimated income and appropriations will equal total estimated costs as nearly as practicable.

(i) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule.

(j) Action upon a recommended decision of the Postal Rate Commission, including action to approve, allow under protest, reject, or modify that decision (by the Governors, 39 U.S.C. 3625); determination of an effective date for changes in postal rates or mail classification.

(k) Authorization of the Postal Service to request the Postal Rate Commission to submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.

(l) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005, except for short-term "line of credit" borrowings and purchase money obligations assumed in the normal course of business .

(m) Approval of the terms and conditions of each issue of obligations by the Postal Service under 39 U.S.C. 2005, including the time and manner of sale and the underwriting arrangements.

(n) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(o) Determination of the number of Assistant Postmasters General, including Senior Assistant Postmasters General and Regional Postmasters General.

(p) Compensation of officers and executives in PES Grade 34 and above.

(q) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

(r) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.

(s) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).

(t) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(g).

(u) All other matters that the Board may consider appropriate to reserve for its decision.

§ 3.5 Delegation of authority by Board.

As authorized by 39 U.S.C. 402, these bylaws delegate to the Postmaster General the authority to exercise the powers of the Postal Service to the extent that this delegation of authority does not conflict with powers reserved to the Governors or to the Board by law, these bylaws, or resolutions adopted by the Board. The Postmaster General may redelegate to any officer, employee, or agency of the Postal Service any of the powers delegated to him by these bylaws that he considers appropriate.

§ 3.6 Information furnished to Board—statistical reports.

To enable the Board to monitor the operations and performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board the following statistical reports at least quarterly:

(a) Detailed summaries of financial and operating statements of the Postal Service, with balance sheet information, for each accounting period during the fiscal year to date, together with comparable figures for the previous year and for the current budget plan, categorized as:

(1) Income (revenue by principal mail classification, subsidies, and reimbursements); and

(2) Expenditures (expenses by function and by unit of organization).

(b) Performance data for the most recent quarter, categorized as:

(1) Service performance measurement (by particular classes and types of mail, and showing delivery times within representative distances); and

(2) Employee productivity measurement (reflecting paid work hours and mail volume).

§ 3.7 Information furnished to Board—Program review.

(a) To enable the Board to review the Postal Service operating program, postal management shall furnish the Board information on all aspects of the Postal Service budget plan, including:

(1) The tentative and final annual budgets submitted to the Office of Management and Budget and the Congress, and amendments to the budget;

(2) Five-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(3) The need for rate increases or decreases and the progress of any pending rate cases and related litigation; and

(4) Debt financing needs, including a review of all borrowings of the Postal Service from the United States Treasury and private sources.

(b) Postal management shall also regularly furnish the Board information regarding major programs for improving postal service or reducing the cost of postal operations.

§ 3.8 Information furnished to Board—Special reports.

To insure that the Board receives significant information on developments meriting its attention, postal management shall bring to the Board's attention the following matters:

(a) Major developments in personnel areas, including but not limited to equal employment opportunity, career development and training, and grade and salary structures.

(b) Other matters of special importance, including but not limited to important research and development initiatives, major changes in Postal Service organization or structure, major litigation and law enforcement activities, and other matters having a significant impact upon the relationship of the Postal Service with its employees, with any major branch of Government, or with the general public.

PART 4—OFFICERS [ARTICLE IV]

Sec.

4.1 Chairman.
4.2 Vice Chairman.
4.3 Postmaster General.
4.4 Deputy Postmaster General.
4.5 Assistant Postmasters General, General Counsel, Judicial Officer.
4.6 Secretary.

AUTHORITY: The provisions of this Part 5 are issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Pub. L. No. 91-375.

§ 4.1 Chairman.

The Chairman of the Board of Governors is elected by the Governors from among the members of the Board. The Chairman:

(a) Shall preside at all regular and special meetings of the Board;

(b) Shall select and appoint the Chairman and members of any committee properly established by the Board;

(c) Serves a term that commences at his election and expires at the end of the first annual meeting following the meeting at which he was elected.

If the Postmaster General is elected Chairman of the Board, the Governors shall also elect one of their number to preside during proceedings dealing with matters upon which only the Governors may vote.

§ 4.2 Vice Chairman.

The Vice Chairman is elected by the Board from among the members of the Board. He shall perform the duties and exercise the powers of the Chairman during the Chairman's absence or disability. The Vice Chairman serves a term that commences at his election and expires at the end of the first annual meeting following the meeting at which he was elected.

§ 4.3 Postmaster General.

The Governors appoint and have the power to remove the Postmaster General, who is a voting member of the

Board. In addition to his responsibilities as a member of the Board, the Postmaster General is the chief executive officer of the Postal Service, authorized to exercise the powers of the Postal Service under the general supervision and direction of the Board. The Governors set the salary of the Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§ 4.4 Deputy Postmaster General.

The Governors and the Postmaster General appoint and have the power to remove the Deputy Postmaster General, who is a voting member of the Board. In addition to his responsibilities as a member of the Board, the Deputy Postmaster General is the alternate chief executive officer of the Postal Service. He shall perform all tasks assigned to him by the Postmaster General, and act as Postmaster General during the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The Governors set the salary of the Deputy Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer.

There are within the Postal Service a General Counsel, a Judicial Officer, and such number of Assistant Postmasters General (including Senior Assistant Postmasters General and Regional Postmasters General) as the Board authorizes by resolution. The Assistant Postmasters General, the General Counsel, and the Judicial Officer are appointed by, and serve at the pleasure of, the Postmaster General. Their powers and duties are delegated to them by the Postmaster General, consistent with these bylaws and the Reorganization Act.

§ 4.6 Secretary.

The Secretary of the Postal Service is elected by the Board. The Secretary shall issue notices of meetings of the Board and its committees, keep minutes of these meetings, and monitor compliance with all statutes and regulations dealing with public observation of meetings. He shall perform all duties incident to his office, including those duties assigned to him by the Board or by the Chairman of the Board. The Chairman may designate such assistant secretaries as he considers necessary to perform any of the duties of the Secretary.

PART 5—COMMITTEES [ARTICLE V]

Sec.
5.1 Establishment and appointment.
5.2 Committee procedure.
5.3 Compensation of members.

AUTHORITY: The provisions of this Part 5 are issued under authority of 39 U.S.C. 202, 203, 204, 205(c), 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b (a), (b), (g) as enacted by Pub. L. No. 94-409.

§ 5.1 Establishment and appointment.

From time to time the Board may establish by resolution special and standing committees of one or more members of the Board. The Board shall specify, in the resolution establishing any committee, whether the committee is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board. Each committee may exercise only those duties, functions, and powers prescribed from time to time by the Board, and the Board may affirm, alter, or revoke any action of any committee. Each member of the Board may have access to all of the information and records of any committee at any time. The Chairman of the Board shall appoint the chairman and members of each committee, who serve terms which expire at the end of each annual meeting. Each committee chairman may assign responsibilities within his committee as he considers appropirate. The committee chairman or his designee shall preside at all meetings of the committee.

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum, and may take action by majority vote of the members present. Except as specifically provided by statute, every portion of every meeting of every committee of more than one member, which is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board, is open to public observation, and is subject to the requirements of §§ 7.1 through 7.8 of these bylaws.

§ 5.3 Compensation of members.

A Governor receives compensation of $300 a day for attendance at committee meetings, and reimbursement for travel and reasonable expenses incurred in attending committee meetings. No Governor may receive compensation under this section and § 3.3 of these bylaws for more than a combination of 30 days of Board meetings and committee meetings in any year.

PART 6—MEETINGS [ARTICLE VI]

Sec.
6.1 Regular meetings, annual meeting.
6.2 Special meetings.
6.3 Notice of meetings.
6.3 Attendance by conference telephone call.
6.5 Quorum and voting.

AUTHORITY: The provisions of this Part 6 are issued under authority of 39 U.S.C. 202, 205, 401(2), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b, (c), (g), as enacted by Pub. L. No. 94-409.

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly in Washington, D.C., on the first Tuesday of each month. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of § 7.5 of these bylaws, the time or place of a regular or annual meet- Chairman, or by a recorded vote of a majority of the members of the Board, with the earliest practicable notice to the other members of the Board and to the Secretary. If the Chairman varies the time or place of a meeting, he shall give not less than 8 days' notice to the other members of the Board and to the Secretary.

§ 6.2 Special meetings.

Consistent with the provisions of § 7.5 of these bylaws, the Chairman may call a special meeting of the Board at any place in the United States, with not less than 8 nor more than 30 days' notice to the other members of the Board and to the Secretary, specifying the date, place, and subject matter of the meeting. By recorded vote a majority of the members of the Board may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the date, place and subject matter of the meeting.

§ 6.3 Notice of meetings.

The Chairman or the members of the Board may give the notice required under § 6.1 or § 6.2 of these bylaws in oral or written form. Oral notice to a member may be delivered by telephone and is sufficient if made to the member personally or to a responsible person in his home or office. Any oral notice to a member must be subsequently confirmed by written notice. Written notice to a member may be delivered by telegram or by mail sent by the fastest regular delivery method addressed to the member at his address of record filed with the Secretary, and except for written notice confirming a ficient time to reach that address at least previous oral notice, must be sent in suf- 2 days before the meeting date under normal delivery conditions. A member waives notice of any meeting by attending the meeting, and may otherwise waive notice of any meeting at any time. Neither oral nor written notice to the Secretary is sufficient until actually received by him, and the Secretary may not waive notice of any meeting.

§ 6.4 Attendance by conference telephone call.

Unless prohibited by law or by these bylaws, a member of the Board may participate in a meeting of the Board by conference telephone or similar communication equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting, except that no Governor may receive compensation for any meeting attended in this manner.

§ 6.5 Quorum and voting.

As provided by 39 U.S.C. 205(c), the Board acts by resolution upon a majority vote of those members who are present. Any 6 members constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, 39 U.S.C. 205(c)(1) requires a favorable vote of an absolute majority of the Governors in office;

(b) In the appointment or removal of the Deputy Postmaster General, 39 U.S.C. 205(c)(2) requires a favorable vote of an absolute majority of the Governors in office and the Postmaster General;

(c) In the adjustment of the total budget of the Postal Rate Commission, 39 U.S.C. 3604(c) requires a unanimous written vote of the Governors in office;

(d) In the modification of a recommended decision of the Postal Rate Commission, 39 U.S.C. 3625 requires a unanimous written vote of the Governors in office; and

(e) In the approval, allowance under protest, or rejection of a recommended decision of the Postal Rate Commission, the Governors act upon a majority vote of the Governors present, and the required quorum of 6 members must include at least 5 Governors.

PART 7—PUBLIC OBSERVATION [ARTICLE VII]

Sec.

7.1 Definitions.
7.2 Open meetings required.
7.3 Exceptions.
7.4 Procedure for closing a meeting.
7.5 Public notice of meetings, subsequent changes.
7.6 Certification and transcripts of closed meetings.
7.7 Enforcement.
7.8 Open meetings, Freedom of Information, and Privacy of Information.

AUTHORITY: The provisions of this Part 7 are issued under authority of 39 U.S.C. 401 (a), as enacted by Pub. L. No. 91-375, and 5 U.S.C. 552b (a)-(m) as enacted by Pub. L. No. 94-409.

§ 7.1 Definitions.

For purposes of §§ 7.2 through 7.8 and 8.1 of these bylaws:

(a) The term "Board" means the Board of Governors, and any subdivision or committee of the Board authorized under section 5.1 of these bylaws to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board.

(b) The term "meeting" means the deliberations of at least the number of individual members required to take action on behalf of the Board under §§ 5.2 or 6.5 of these bylaws, where such deliberations determine or result in the joint conduct or disposition of the official business of the Board. The term "meeting" does not include any procedural deliberations required or permitted by §§ 6.1, 6.2, 7.4, or 7.5 of these bylaws.

§ 7.2 Open meetings required.

(a) Except as provided in § 7.3 of these bylaws, every portion of every meeting of the Board is open to public observation. Members of the Board may not jointly conduct or dispose of business of the Board without complying with §§ 7.2 through 7.8 of these bylaws.

(b) Members of the public may not participate in, electronically record, or photograph any meeting without the permission of the Board. Members of the public may obtain access to documents considered at meetings to the extent provided in the regulations of the Postal Service concerning the release of information.

§ 7.3 Exceptions.

Except where the Board finds that the public interest requires otherwise, § 7.2 of these bylaws does not apply to a portion of a meeting, and §§ 7.4 and 7.5 do not apply to information concerning the meeting which otherwise would be required to be disclosed to the public, if the Board properly determines that such portion of the meeting 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 of foreign policy, and (2) in fact properly classified under that Executive order;

(b) Relate solely to the internal personnel rules and practices of the Postal Service, including the Postal Service position in negotiations or consultations with employee organizations.

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the 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, such as market information pertinent to Postal Service borrowing or investments, technical or patent information related to postal mechanization, or commercial information related to purchases of real estate;

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

(f) Disclose information of a personal nature, such as personal or medical data regarding an individual under consideration for appointment to a Postal Service office, if 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 those records, but only to the extent that the production of those 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 be likely significantly to frustrate implementation of a proposed action of the Board, such as information relating to the negotiation of a labor contract or proposed Postal Service procurement activity, except that this provision does not apply in any instance where (1) the Postal Service has already disclosed to the public the content or nature of the proposed action, or (2) the Postal Service is required by law to make such disclosure on its own initiative before taking final action on the proposal; or

(j) Specifically concern the issuance of a subpoena by the Postal Service, or the participation of the Postal Service in a civil action or proceeding, such as a postal rate or classification proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Postal Service of a particular case of formal adjudication under the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 7.4 Procedure for closing a meeting.

(a) A majority of the entire membership of the Board may vote to close a portion of a meeting or to withhold information concerning a meeting under the provisions of § 7.3 of these bylaws. The members shall take a separate vote with respect to each meeting a portion of which is proposed to be closed to the public, or with respect to any information which is proposed to be withheld, and shall make every reasonable effort to take any such vote at least 8 days before the date of the meeting involved. The members may take a single vote with respect to a series of meetings, portions of which are proposed to be closed to the public, or with respect to information concerning the series, so long as each portion of a meeting in the series involves the same particular matters, and is scheduled to be held no more than 30 days after the initial portion of a meeting in the series.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Board close that portion to the public for any of the reasons referred to in § 7.3 (e), (f), or (g) of these bylaws, upon request of any one of its members the Board shall vote by recorded vote whether to close that portion of the meeting.

(c) The Secretary shall record the vote of each member participating in a vote under subsection (a) or (b) of this

section, and no proxies are allowed. Within 1 day of any vote under subsection (a) or (b) of this section, the Secretary shall make publicly available a written copy of the vote showing the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within 1 day of the vote, make publicly available a full written explanation of the action closing the portion, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If a committee of the Board determines that a majority of its meetings may properly be closed to the public for any combination of reasons referred to in § 7.3 (d), (h), or (j) of these bylaws, it may close a meeting or a portion of a meeting by a recorded vote of a majority of its members at the beginning of the meeting or portion in question. The Secretary shall promptly make available to the public a written copy of the vote showing the vote of each member on the question. Subsections (a), (b), and (c) of this section, and § 7.5 of these bylaws do not apply to any meeting or portion of a meeting closed under this subsection. However, at the earliest practicable time, the Secretary shall publicly announce the time, place, and subject matter of the meeting and each of its portions.

(e) Immediately following each public announcement required under subsections (c) and (d) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER the text of the announcement or the information made available.

§ 7.5 Public notice of meetings, subsequent changes.

(a) At least one week before any meeting of the Board, the Secretary shall publicly announce the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

(b) By a recorded vote, a majority of the members of the Board may determine that the business of the Board requires a meeting to be called with less than a week's notice. At the earliest practicable time, the Secretary shall publicly announce the time, place, and subject matter of the meeting, and whether it is to be open or closed to the public.

(c) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) A majority of the members of the Board may change the time or place of a meeting. At the earliest practicable time, the Secretary shall publicly announce the change.

(2) A majority of the entire membership of the Board may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Board and that no earlier announcement of the change was possible. At the earliest practicable time, the Secretary shall publicly announce the change, and the vote of each member upon the change.

(d) Immediately following each public announcement required under paragraphs (a), (b), or (c) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER a notice of the time, place, and subject matter of the meeting, whether the meeting is open or closed, any change in the preceding, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

§ 7.6 Certification and transcripts of closed meetings.

(a) For every meeting closed under § 7.3 (a) through (j) of these bylaws, the General Counsel shall publicly certify that, in his opinion, the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

(b) The Secretary shall arrange for a complete transcript or electronic recording adequate to record fully the proceedings to be made of each meeting or portion of a meeting of the Board which is closed to the public. The Secretary shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting or portion of a meeting closed to the public for at least 2 years after the meeting, or for 1 year after the conclusion of any Postal Service proceeding with respect to which the meeting was held, whichever occurs later.

(c) Except for those items of discussion or testimony which the Board, by a majority vote of those members who are present, determines to contain information which may be withheld under § 7.3 of these bylaws, the Secretary shall promptly make availalbe to the public, in the Public Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, the transcript or electronic recording of a closed meeting, including the testimony of any witnesses received at the meeting. The Secretary shall furnish a copy of this transcript, or a transcription of this electronic recording disclosing the identity of each speaker, to any person at the actual cost of duplication or transcription.

§ 7.7 Enforcement.

(a) Under 5 US.C. 552b(g), any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside any provisions of these bylaws which are not in accord with the requirements of 5 U.S.C. 552b (a)–(f) and to require the promulgation of provisions that are in accord with those requirements.

(b) Under 5 U.S.C. 552b(h) any person may bring a civil action against the Board in an appropriate United States District Court to obtain judicial review of the alleged failure of the Board to comply with 5 U.S.C. 552b (a)–(f). The burden is on the Board to sustain its action. The court may grant appropriate equitable relief, including enjoining future violations, or ordering the Board to make public information improperly withheld from the public.

(c) Under 5 U.S.C. 552b(i) the court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails, except that the court may assess costs against the plaintiff only if the court finds that he initiated the suit primarily for frivolous or dilatory purposes.

§ 7.8 Open meetings, Freedom of Information, and Privacy of Information.

The provisions of 5 U.S.C. 552b(c)(1)–(10), enacted by Pub. L. No. 94–409, the Government in the Sunshine Act, govern in the case of any request under the Freedom of Information Act, 5 U.S.C. 552, to copy or to inspect the transcripts or electronic recordings described in § 7.6 of these bylaws. Nothing in 5 U.S.C. 552b authorizes the Board to withhold from any individual any record, including the transcripts or electronic recordings described in § 7.6 of these bylaws, to which the individual may otherwise have access under 5 U.S.C. 552a, enacted by the Privacy Act of 1974, Pub. L. No. 93–579.

PART 8—REPORTS AND RECORDS [ARTICLE VIII]

Sec.
8.1 Open meetings report.
8.2 Annual report.
8.3 Annual budget; financial reports.

AUTHORITY: The provisions of this Part 8 are issued under authority of 39 U.S.C. 202, 203, 205(c), 401(2), as enacted by Pub. L. No. 91–375, and 5 U.S.C. 552b (g), (j), as enacted by Pub. L. No. 94–409.

§ 8.1 Open meetings report.

The Secretary shall annually prepare for approval by the Board and transmittal to Congress a report on the Board's compliance with 5 U.S.C. 552b, as enacted by the Government in the Sunshine Act. The report must contain a tabulation of the total number of Board meetings open to the public, the total number of meetings closed to the public, the reasons for closing those meetings and a description of any litigation brought against the Board under the Act, including any costs assessed against the Board in that litigation.

§ 8.2 Annual report.

No later than the annual meeting of the Board, the Postmaster General shall give to the Board an annual report concerning the operations of the Postal Service, as required by 39 U.S.C. 2402. Upon approval of this report, or after making any changes it considers appropriate, the Board shall transmit this report to the President and the Congress.

The Postmaster General shall make the necessary arrangements for the printing of the report and its sale to the public.

§ 8.3 Annual budget; financial reports.

The Postmaster General shall annually submit to the Board a budget for the following fiscal year under requirements as to form, content, and schedule established by the Board. After review by the Board, the Postmaster General shall submit the annual budget of the Postal Service to the Office of Management and Budget of the Executive Office of the President in the manner provided by 39 U.S.C. 2009, and to the Committees on Post Office and Civil Service and the Committees on Appropriations of the Senate and the House of Representatives, as required by 39 U.S.C. 2401(g).

(39 U.S.C. 202, 205, 401(2), 410(a); 5 U.S.C. 552b(g).)

W. ALLEN SANDERS,
Assistant General Counsel,
Legislative Division.

[FR Doc.77-1096 Filed 1-12-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 670-6]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to Washington Plan

• The purpose of this notice is to announce receipt of revisions to the State of Washington Implementation Plan submitted under Section 110(a) of the Clean Air Act, as amended. Public comment on the proposal is invited. •

On May 26, 1976 the State of Washington Department of Ecology submitted for the Environmental Protection Agency's (EPA) approval revisions to the regulations of five of the State's local air pollution control authorities and regulations for three local air pollution control agencies not previously included in the plan. In this notice, EPA will propose the revisions to the regulations of the Puget Sound Air Pollution Control Agency (PSAPCA) only. The regulations of the other authorities will be proposed in separate notices to be published in the FEDERAL REGISTER.

The revisions to PSAPCA's regulations have been adopted by the Board of Directors of PSAPCA since EPA's approval of the State plan in May 1972. The revisions, all of which are applicable to PSAPCA Regulation I, are listed by resolution number in the order in which they were adopted.

1. Resolution No. 178, adopted March 14, 1973, added § 9.19 to control the emissions of arsenic-containing particulate matter from nonferrous smelters. The regulation requires that no visible emissions of arsenic-containing particulate are to be allowed from any building, structure, facility or apparatus used for the primary purpose of manufacturing or transporting arsenic trioxide.

2. Resolution 186, adopted April 11, 1973, revised § 9.03, Emission of Air Contaminant: Visual Standard. The revision requires that all new and existing sources meet 20 percent opacity after July 1, 1975. Previously only sources installed after August 12, 1970 were required to meet the 20 percent limit.

3. Resolution No. 187, adopted April 11, 1973, revised Section 9.16, Reporting of Start-ups, Shutdowns, Unavoidable Failures, Upsets or Breakdowns. This revision was made to combine the former 9.16, Report of Breakdowns, with 9.03(c), which related to shutdowns and breakdowns of process or control equipment.

4. Resolution 214, adopted October 10, 1973 revised various provisions of Regulation I as follows:

The revision to § 3.07, Confidential Information, excludes ambient air quality emissions data from being classified as confidential.

Section 3.25, Penalty, was revised to distinguish between a violation of any provision of the regulation, a willful violation, and a violation of § 3.07, Confidential Information. Each type of violation has separate penalty provisions.

Exhibit A of Article 5 is a list of source categories that are not required to register with the agency. The list was amended to exclude fuel burning equipment, other than smokehouse generators, of less than 1 million BTU input per hour. Previously the cutoff point was 400,000 BTU input per hour. In addition, stationary gas turbine engines are no longer excluded.

Section 6.04, a new section, established a fee schedule for notices of construction.

Section 6.07, Issuance of Approval or Order, was amended to require that no Approval of Construction may be issued unless the source meets the requirements of all applicable Standards of Performance for New Stationary Sources as promulgated by the EPA and that the operation of the new source will not cause a violation of any PSAPCA ambient air quality standard.

Section 9.09, Emission of Particulate Matter: Weight Rate Standard, was amended to require that all refuse burning equipment meet 0.10 grains for each standard cubic foot of exhaust gas after June 30, 1975. The section was also amended to require the use of EPA procedures for source sampling where applicable and available.

Section 9.17, the ambient air quality standard for Nitrogen Oxides, was repealed.

5. Resolution 218, adopted December 12, 1973, amended Resolution 214 relating to § 6.04 Filing Fees—Notice of Construction for refuse burning equipment, portable asphalt batch plants and portable rock crushers.

6. Resolution 230, adopted February 21, 1974 amended § 9.07, Emission of Sulfur Oxides. The revision allows the burning of higher sulfur content fuels than was previously allowed.

7. Resolution 264, adopted August 15, 1974 amended § 7.01, Variances. The revision adds a section to the variance provision establishing parameters and procedures for the extension of previously granted variances.

8. Resolution 285, adopted November 21, 1974 added § 6.06, Public Notice May be Required. The revision adds requirements for public notice of PSAPCA's preliminary determinations and opportunity for public comment on notices of construction.

9. Resolution 312 adopted July 15, 1975 added Article 18, Indirect Carbon Monoxide Source Control Standards. The regulation was adopted on an emergency basis due to the repeal of the state indirect source regulation effective July 18, 1975.

10. Resolution 332, September 18, 1975 adopted Article 18 on a permanent basis, after publication of 30-day notice and public hearing.

11. Resolution 361, adopted March 18, 1976 rescinded § 9.02 (Outdoor Fires) and added Article 8 (Outdoor Fires). The new Article is similar to the old § 9.02 with changes made to reflect the requirements for the use of certified alternatives to open burning.

Under Section 110(a)(3)(A) of the federal Clean Air Act, the Administrator of EPA is required to approve any revision to an implementation plan if it meets the applicable requirements of the Act and has been adopted after reasonable notice and public hearing.

Public participation in the review of these revisions by EPA is invited. Written comments received in the EPA Regional Office postmarked no later than February 14, 1977 will be considered and will be addressed in the Administrator's final decision to approve or disapprove the revisions.

Copies of the Resolutions adopted by the agency's Board of Directors, and the agency's present regulations are available for public review and comment at the following addresses:

Pudget Sound Air Pollution Control Agency, 410 West Harrison Street, Seattle, Washington 98119.

State of Washington, Department of Ecology, Olympia, Washington 98504.

Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101.

Environmental Protection Agency, Public Information Reference Unit, Room 2922 (PM 213), 401 M Street SW, Washington, D.C. 20460.

(Sec. 110(a) of the Clean Air Act, as amended. (42 U.S.C. 1857c-5(a)).)

Dated: December 29, 1976.

DONALD P. DUBIS,
Regional Administrator.

[FR Doc.77-1102 Filed 1-12-77;8:45 am]

[40 CFR Part 52]

[FRL 670-5]

WASHINGTON

Revision to Implementation Plan

• The purpose of this notice is to request public comments on proposed revisions to the State of Washington Clean Air Act Implementation Plan.•

On May 25, 1976 the State of Washington Department of Ecology (DOE) submitted several revisions to the Wash-

ington implementation plan for EPA's approval. Included were regulations for three local air pollution control agencies not previously included in the plan. The three agencies are the Douglas County Air Pollution Control Commission, the Grant County Clean Air Authority and the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority.

The regulations of the three agencies are similar in content. Each contains a section on general information including a policy statement, identification of duties and powers of the Board of Directors and control officer of each agency, and definitions. Another section specifies required emission limitations and preventive measures in general terms and for specific source categories. The State of Washington Clean Air Act requires local agency regulations to be no less stringent than the applicable state regulations. Where the local agency's regulations are less stringent and not specifically approved by DOE, the state regulation controls. Such state regulations can be enforced by the local agency.

Each set of regulations contains procedures for granting variances, for requiring compliance schedules to meet applicable regulations, and for requiring a notice of construction for new or modified sources. Other provisions of the regulations relate to public availability of emissions data, civil and criminal penalties in cases of violations of the regulations and authority to require monitoring and reporting.

Each agency's regulations also contain a section relating to the control of open burning. These sections are not being considered in this action because they were previously approved by EPA on October 29, 1975 (40 FR 50266) and have not been revised since that date.

Under section 110(a) of the federal Clean Air Act, the Administrator of EPA is required to approve or disapprove revisions to an implementation plan submitted by a state. Public comment is invited as to whether the regulations of these three agencies should be approved or disapproved.

The regulations are available for public review at the following addresses:

Douglas County Air Pollution Control Commission, 110 Third Street NE, Wenatchee, Wash. 98801.
Benton-Franklin-Walla Walla Counties Air Pollution Control Authority, 650 George Washington Way, Richland, Wash. 99352.
Grant County Clean Air Authority, Route 3, Box 110, Moses Lake, Wash. 98837.
State of Washington, Department of Ecology, Olympia, Wash. 98504.
Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Wash. 98101.
Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460.

Relevant comments postmarked no later than February 14, 1977 will be evaluated and addressed in the final rulemaking document. An evaluation of the regulations will also be prepared and made available for public review.

(Sec. 110(a) of the Clean Air Act (42 U.S.C. 1857c-5(a)).)

Dated: December 29, 1976.

DONALD P. DUBOIS,
Regional Administrator.

[FR Doc.77-1103 Filed 1-12-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3520]

SODIUM, POTASH, PHOSPHATE OR SULPHUR EXCHANGE LEASES: COAL LEASE EXCHANGE BIDDING RIGHTS

Proposed Rulemaking

This is a proposal to amend 43 CFR 3520 by the addition of a Subpart 3526 to provide that a sodium, phosphate, potash or sulphur preference right lease applicant or lessee may in certain situations exchange the preference right lease to which he is entitled, or the lease he holds, for a mineral lease to another deposit of the same mineral of comparable value. These provisions should be available in cases where the production from the existing or preference right lease would not be in the public interest because of adverse affects, damage or destruction to environmental land and resource values.

The proposal also seeks to amend Part 3520 by the addition of a Subpart 3527 to provide that a coal lessee or preference right lease applicant may in certain circumstances relinquish the lease, or preference right lease to which he is entitled, in exchange for bidding rights equal to the present fair market value of the relinquished leasehold. These rights could be exercised at subsequent competitive coal lease sales. The proposed coal provisions are set out in a separate subpart, and require distinct treatment, because section 2 of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 201(a)(1), enacted August 4, 1976, authorizes the Secretary to issue coal leases only by competitive bidding.

The authority for the new Subpart 3527 is found in the fact that neither the Mineral Leasing Act of 1920, 30 U.S.C. 181 et seq., nor the Federal Coal Leasing Amendments Act of 1975 requires the Secretary to use only cash bonus competitive bidding. By comparison, section 8 (a) of the Outer Continental Shelf Lands Act, 43 U.S.C. 1337(a), requires "cash bonus" bidding. Thus, the Department is still free to provide the manner of competitive bidding, and regards the granting of these proposed exchange bidding rights as a proper method for protecting the public interest in the limited circumstances in which they would apply.

This proposal also would amend 43 CFR 3521.3-2(a) entitled "Action by successful bidder" and 43 CFR 3523.1 entitled "Relinquishments" to reflect the existence of the new Subparts proposed here.

The Department seeks by these regulations to remedy those situations in which, due to newly-identified or newly-established environmental land or resource values, operations on an existing or a preference right lease are not regarded as in the public interest. The Department is constrained by the facts: That its authority to cancel outstanding leases is limited; and that a preference right lease applicant who establishes that he has discovered commercial quantities of coal or a valuable deposit of whichever other mineral is in question, (and for sodium, sulphur and potash that the land is chiefly valuable therefor,) has a right to a lease. The Department has had no alternative but to seek legislation for the condemnation of the leasehold if it sought to prohibit all operations on the lease to protect conflicting environmental values. Section 205(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2755, 43 U.S.C. 1715(a), provides the Bureau of Land Management with some eminent domain authority, but it would not reach the situations for which these exchange provisions are designed. These provisions will allow the Department to protect such resource values and at the same time fairly treat the preference right lease applicant or lessee who has worked to establish a producing deposit of the mineral in question.

The Department would invoke these provisions to protect lands containing unquantifiable resource values such as proposed wilderness designation, habitat for threatened or endangered species, or recreational and esthetic values on land subject to public use, and to shift the effect of mining operations to lands lacking identifiable, conflicting resource values.

The proposed exchange lease and bidding right procedures are invoked by the Department. The Department may offer an exchange but may not force one, since the preference right lease applicant who makes the required showing does have a right to a lease on the land in his prospecting permit. However, the regulations are designed to encourage co-operation between lessees and lease applicants and the Department in the identification of lands (except for coal) eligible for lease in exchange.

The regulations are also designed to assure that the preference right lease-exchange applicant is entitled to a lease and is relinquishing a right, not an expectancy. While the Department would not feel it necessary, to complete the details of work on lease stipulations for a lease which the applicant seeks only to relinquish, completion of the procedures in 43 CFR 3521.1-1 is necessary to establish: (1) That a right to a lease is being relinquished; and (2) the value of the relinquished property for exchange purposes.

Because the exchange provisions necessarily involve some negotiation between the lease applicant and the Department, and involve the weighing of economic and non-economic land use values, the Department seeks to involve

the public in the decision to exchange leases. The Department desires public scrutiny of the attempt to foreclose operations on the preference right or leased land, and (except for coal) the effect of operations on the land offered in exchange. Final judgment on the merits of the exchange, however, lies in the informed discretion of the Secretary or his delegate.

The promulgation of these regulations is not a major federal action significantly affecting the quality of the human environment, as defined by the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., and an environmental impact statement is not required for this action. This determination is based on the fact that environmental assessments, and impact statements if necessary, will be prepared when exchanges are proposed. Leases under these provisions will not be issued under any program whose effects and location can be predicted and planned in advance.

Interested parties may submit comments on this proposal to the Director, Bureau of Land Management (Code 210), Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240 on or before February 28, 1977.

JACK O. HORTON,
Assistant
Secretary of the Interior.

JANUARY 10, 1977.

1. Accordingly, it is proposed that 43 CFR 3521.3–2(a) be modified by the addition of the subsection "(i)" after "*bidder.*" and before "Four" and that subsection (ii) be added to read as follows:

§ 3521.3–2 Compliance with notice of competitive lease offer.

(a) * * *

(ii) A successful bidder may, in lieu of paying the balance of the bonus bid, substitute pro tanto a certificate of bidding rights acquired in exchange for a relinquishment of an existing or preference right coal lease which has been deemed suitable for exchange under the provisions of Subpart 3527 of this Title.

* * * * *

2. It is proposed that 43 CFR 3523.1 "Relinquishments" be amended by the addition of subsection "1–3" to read:

§ 3523.1–3 Relinquishments for value.

The terms and conditions under which the Department will accept relinquishment of a mineral lease for value given in return are set out in Subpart 3526 (for sodium, phosphate, potash and sulphur) and in Subpart 3527 (for coal) of this Title.

3. It is proposed that 43 CFR Part 3520 be amended by the addition of Subpart 3526 to read as follows:

Subpart 3526—Mineral Leases Issued in Exchange for Leases Acquired Under Preference Right

Sec.
3526.1 Purpose.
3526.2 Authority.
3526.3 When exchange provisions apply.
3526.4 Exchange procedures.
3526.5 Issuance of lease.

§ 3526.1 Purpose.

This Subpart is designed to permit a mineral prospecting permittee, or mineral lessee, to exchange the lease to be acquired under preference right, or the existing mineral lease, for a mineral lease of other lands of comparable value for the same mineral, when the Secretary concludes that operations on the preference right or outstanding lease would not be in the public interest, and that operations on the lands leased in exchange would be in the public interest.

§ 3526.2 Authority.

(a) *Sodium.* Section 24 of the Mineral Leasing Act of 1920, 30 U.S.C. 262.

(b) *Phosphate.* Section 9 of the Mineral Leasing Act of 1920, 30 U.S.C. 211.

(c) *Potash.* Section 3 of the Act of February 7, 1927, 30 U.S.C. 283.

(d) *Sulphur.* Section 3 of the Act of April 27, 1926, 30 U.S.C. 273.

(e) *Provisions.* These four statutes authorize the Secretary to lease lands known to contain the mineral in question "through advertisement, competitive bidding, or by such other methods as he may be general regulations adopt. * * *"

§ 3526.3 When exchange provisions apply.

(a) *Invoking the provisions.* The Secretary will invoke the provisions of this Subpart by notifying the preference right lease applicant or lessee that he is prepared to consider exchange leasing for the lands described in the notice.

(b) *In public interest.* An exchange mineral lease will not be issued unless the Secretary finds, after completing the procedures in this Subpart, that the exchange will be in the public interest.

(c) *Public interest defined.* For the purposes of this Subpart, an exchange will be in the public interest if the Secretary finds that the benefits of production from the lease or preference right lease would not outweigh the adverse effects, or threat of damage or destruction to scenic, biological, geologic, historic or other public interest values from lease operations. In exercising his discretion to exchange leases in the public interest, the Secretary will consider, but is not limited to consideration of, these elements of the public interest: recreational use; archeological or historic values; threatened or endangered species; proximity of residential or urban areas; study for potential inclusion in the wilderness or wild and scenic rivers systems; and value for public uses, including public highways, airports, and rights-of-way.

§ 3526.4 Exchange procedures.

(a) *Exchange notice.* The Secretary will notify the preference right lease applicant or lessee when he is prepared to consider exchange leasing for a tract under lease application or lease.

(1) The exchange notice will state why the Secretary believes an exchange would be in the public interest.

(2) The exchange notice will provide that the lease applicant or lessee shall respond by indicating whether he is willing to negotiate for an exchange lease under this Subpart.

(3) The exchange notice may contain a description of the lands on which the Secretary would offer an exchange lease. The lease applicant or lessee's reply may describe the lands on which the lease applicant or lessee would accept an exchange lease.

(4) The Department may seek the exchange of any part or all of the land under lease or preference right lease application. The impact of a partial exchange will be taken into account by the Secretary in determining whether such an exchange is in the public interest.

(b) *Showing on preference right.* A prospecting permittee must have previously submitted a timely mineral preference right lease application containing the initial showing required under § 3521.1–1(b) of this Part, and will then have to make the showing required in § 3521.1–(c) through (e) of this Part, that he has discovered a valuable deposit of the permit mineral on the lands in question (as defined in § 3520.1–1(c) of this Part), and for that he has discovered a valuable deposit of the permit mineral on the lands in question (as defined in § 3520.1–1(c) of this Part), and for sodium, sulphur and potash that the land is chiefly valuable therefor.

(c) *Right to lease.* If the preference right lease applicant's showing under § 3521.1–1(b) through (e) demonstrates to the Secretary that he has shown that he has a preference right to a lease, the Secretary is authorized in lieu of issuing a lease on the preference right land under § 3521.1–1(h) of this Part to negotiate for the selection of appropriate exchange lands, or if such lands have already been described, to establish lease terms on the land to be leased in exchange.

(d) *Comparable land.* (1) The land leased in exchange must, to the satisfaction of the lease applicant or lessee and the Secretary, be a tract of land containing a deposit of the be deemed "comparable" for exchange purposes when the Secretary concludes that the leasehold value of the more valuable tract is less than ten percent greater than the value of the less valuable tract.

(2) The land proposed for inclusion in the exchange lease must be subject to leasing for the same mineral as the preference right lease, under the provisions of 43 CFR Part 3501.

(e) *Notice and public hearing.* After the prospective exchange lessee and the Secretary agree on the land to be leased in exchange, notice of the proposed exchange will be published in the Federal Register and in a newspaper or newspapers of general circulation in the counties where both the preference right or leased lands and the exchange lease lands are located. The Notice will contain notice of a public hearing or hearings to be held not less than 30 days from the date of the Notice in a city or

cities located near the tracts in question. The Notice will also contain the Secretary's finding that the exchange is in the public interest. The hearing will allow public comment on the merits of the proposed exchange.

§ 3526.5 Issuance of lease.

(a) *Stipulations.* If, after public hearing, the Secretary concludes that issuance of the exchange lease is in the public interest, he will proceed to establish lease stipulations for operations on the exchange lease.

(b) *Lease terms.* (1) The exchange lease shall contain a recital that the lessee thereby quitclaims and relinquishes any right or interest in the lands exchanged.

(2) It will also contain a recital of the Secretary's finding that issuance is in the public interest.

(3) In all other respects, the lease will be subject to the relevant provisions of 43 CFR Part 3500 and standard lease terms thereunder.

4. It is proposed that a new Subpart be added, 43 CFR Subpart 3527, to read as follows:

Subpart 3527—Coal Lease Exchanges

Sec.
3527.1 Purpose and authority.
3527.2 When exchange provisions apply.
3527.3 Exchange procedures.
3527.4 Grant of exchange rights.

§ 3527.1 Purpose and authority.

(a) *Purpose.* These provisions are designed to permit a coal lessee, or coal preference right lease applicant, to relinquish the coal lease for value when the lessee and the Secretary agree that operations on the lease would not be in the public interest.

(b) *Authority.* These regulations are issued under the authority of section 2 of the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 201(a)(1), and the Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*

§ 3527.2 When exchange provisions apply.

(a) *Upon notice.* The Secretary will invoke the provisions of this Subpart by notifying the coal preference right lease applicant or lessee that he is prepared to consider the issuance of coal exchange bidding rights for the lands described in the notice.

(b) *In public interest.* A coal lessee will not be granted exchange rights unless the Secretary finds, after completing the procedures in this Subpart, that relinquishment of the lease and the granting of exchange bidding rights would be in the public interest. For the purpose of this Subpart, the definition of "public interest" in 43 CFR 3526.3(c) applies.

§ 3527.3 Exchange procedures.

(a) *Exchange notice.* The Secretary will notify the preference right lease applicant or lessee when he is prepared to consider issuing exchange bidding rights for the tract under lease application or lease.

(1) The exchange notice will state why the Secretary believes an exchange would be in the public interest.

(2) The exchange notice will provide that the lessee or lease applicant will respond by indicating whether he is willing to consider an exchange under this Subpart.

(3) The Department may seek the exchange of any part or all of the land under lease or preference right lease application. The impact of a partial exchange will be taken into account by the Secretary in determining whether such an exchange is in the public interest.

(b) *Showing on preference right.* A prospecting permittee may have previously submitted a timely coal preference right lease application containing the initial showing required under § 3521.1–1(b) of this Part, and will then have to make the showing required under § 3521.1–1(c) through (e) of this Part, that he has discovered commercial quantities of coal on the land in question (as defined in § 3520.1–1(c) of this Part).

(c) *Right to lease.* If the preference right lease applicant's showing demonstrates to the Secretary that he has shown that he has a preference right to a lease, the Secretary is authorized in lieu of issuing a lease on the preference right land under § 3521.1–1(h) of this Part to establish the value of the bidding right to be granted in exchange for relinquishment of the lease.

(d) *Value of the exchange right.* (1) The exchange right shall be equal to the fair market value of the leasehold to be relinquished. By replying to the Secretary's notice that he is willing to consider an exchange, the lease applicant or lessee promises to provide supporting geologic and economic data that will permit the Secretary to establish the fair market value of the relinquished lease.

(e) *Notice and public hearing.* After the exchange right has been valued, and the Secretary has determined that the relinquishment of the existing lease or lease right in exchange would be in the public interest, notice of the proposed relinquishment and exchange rights will be published in the FEDERAL REGISTER and in a newspaper of general circulation in the county where the lands to be relinquished are located. The Notice will contain notice of a public hearing to be held not less than 30 days from the date of the Notice in the county seat for the county in which the lands to be relinquished are located. The Notice will also contain the Secretary's finding that the grant of exchange rights is in the public interest. The hearing will allow public comment on the merits of the proposed grant of exchange rights.

§ 3527.4 Grant of exchange rights.

(a) *Decision.* If, after public hearing, the Secretary concludes that the granting of exchange rights is in the public interest, he will in exchange for a relinquishment of the existing lease or preference right lease application issue a certificate of bidding rights for the value of the relinquished leasehold as previously determined.

(b) *Use of right.* (1) As provided in § 3521.3–2(a) of this Part, an exchange right may be used only as payment pro tanto for the balance due on a successful bonus bid in a competitive coal lease sale.

[FR Doc.77-1146 Filed 1-12-77;8:45 am]

COMMISSION ON CIVIL RIGHTS

[45 CFR Part 706]

PRIVACY ACT OF 1974

Proposed Amendments

Notice is hereby given that amendments are proposed for Title 45 of the Code of Federal Regulations, Section 706—Materials Available pursuant to 5 U.S.C. 552a. These amendments will facilitate efforts by individuals to gain access to information about themselves. In addition, the amendments will provide a more comprehensive procedure whereby additions or corrections are made to an individual's records at his or her request, and will establish a procedure for the accounting of the disclosures of records.

Pursuant to 5 U.S.C. 552a(e)(11) interested persons are invited to submit written comments on these amendments to the Office of General Counsel, U.S. Commission on Civil Rights, 1121 Vermont Avenue, N.W., Washington, D.C. 20425. All comments must be received on or before February 14, 1977. Comments will be available for public inspection in Room 600, 1121 Vermont Avenue, N.W., Washington, D.C., from 8:45 a.m. to 5:30 p.m.

In consideration of the foregoing, the following amendments are proposed to the rules adopted pursuant to the requirements of the Privacy Act of 1974:

§ 706.3 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 706.3 Procedures for requests pertaining to individual records in a system of records.

* * * * *

(b) In addition to meeting the requirements set forth in § 706.4 (c) or (d), any person who requests information under these regulations shall provide a reasonably specific description of the information sought so that it may be located without undue search or inquiry. If possible, that description should include the nature of the records sought, the approximate dates covered by the record, and, if known by the requester, the system in which the record is thought to be included. Requested information that is not identified by a reasonably specific description is not an identifiable record, and the request for that information cannot be treated as a formal request.

(c) If the description is insufficient, the agency will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

§ 706.4 is amended by revising paragraph (d) to read as follows:

§ 706.4 Times, places, and requirements for identification of individuals making requests and identification of records requested.

* * * * *

(d) An individual seeking access to records by mail shall establish his or her identity by a signature, address, date of birth, and one other identification, such as a copy of a driver's license, passport, identification card or badge, credit card or other document. The words "PRIVACY ACT REQUEST" should be placed in capital letters on the face of the envelope in order to facilitate requests by mail.

* * * * *

§ 706.7 is amended by adding the following sentences to the end of the paragraph:

§ 706.7 Agency review of request for correction or amendment of the record.

* * * In the event of correction or amendment, an individual shall be provided with one copy of each record or portion thereof corrected or amended pursuant to his or her request without charge as evidence of the correction or amendment. The Commission shall also provide to all prior recipients of such a record, the corrected or amended information to the extent that it is relevant to the recipient's uses and deemed feasible to do so.

§ 706.8 is amended by adding the following sentence to the end of paragraph (d)(3):

§ 706.8 Appeal of an initial adverse agency determination.

* * * * *

(d)(3) * * * These statements shall also be provided to all prior recipients of the record to the extent that it is relevant to the recipient's uses and deemed feasible to do so.

§ 706.95 Accounting of the disclosures of records.

(a) All disclosures of records covered by Part 706, except for the exemptions listed in § 706.95(b), shall be accounted for by keeping a written record of the particular record disclosed, the name and address of the person or agency to whom or to which disclosed, and the date, nature and purpose of the disclosure.

(b) No accounting is required for disclosures of records to those officials and employees of the Commission who have a need for the record in the performance of their duties, or if disclosure would be required under the Freedom of Information Act, 5 U.S.C. § 552.

(c) The accounting shall be maintained for 5 years or until the record is destroyed or transferred to the National Archives and Record Service for storage, in which event, the accounting pertaining to those records, unless maintained separately, shall be transferred with the records themselves.

(d) The accounting of disclosures may be recorded in any system the Commission determines is sufficient for this purpose, however, the Commission must be able to construct from its system a listing of all disclosures. The system of accounting of disclosures is not a system of records under the definition in § 706.2 (e) and no accounting need be maintained for disclosure of the accounting of disclosures.

(e) Upon request of an individual to whom a record pertains, the accounting of the disclosures of that record shall be made available to the requester, provided that he/she has complied with § 706.3(a) and § 706.4 (c) or (d).

JOHN A. BUGGS,
Staff Director.

JANUARY 7, 1977.

[FR Doc.77-1189 Filed 1-12-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

[49 CFR Parts 173, 179]

[Docket No. HM-144; Notice No. 76-12]

TRANSPORTATION OF HAZARDOUS MATERIALS

Shippers; Specification for Pressure Tank Car Tanks; Extension of Comment Period

On November 29, 1976, the Materials Transportation Bureau published Notice No. 76-12 (41 FR 52324) under Docket No. HM-144 proposing to amend Parts 173 and 179 of the Hazardous Materials Regulations to modify the specifications for uninsulated pressure tank car tanks (112 and 114 specifications) so as to improve design and construction of new and existing cars. The closing date for filing comments to this notice is January 13, 1977.

Two petitions have been received requesting that the time for filing comments be extended in order to allow more time for study of the proposals. The Bureau has considered the reasons submitted in these petitions and has decided that an extension of the comment period is reasonable.

In consideration of the foregoing, the date for filing comments on Notice 76-12 in Docket HM-114 is extended from January 13, 1977 to March 14, 1977.

(18 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e) and paragraph (a)(4) of App. A to Part 102)

Issued in Washington, D.C., on January 5, 1977.

C. H. THOMPSON,
Acting Director, Office of Hazardous Materials Operations.

[FR Doc.77-833 Filed 1-12-77;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

Forest Service

GEOTHERMAL LEASING

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a final environmental statement for the Geothermal Leasing on the Santa Fe National Forest, New Mexico USDA–FS–R3 FES–76–05.

The environmental statement considers probable environmental effects of the proposed project.

The final environmental statement was transmitted to CEQ on January 7, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, So. Agriculture Bldg., Rm 3230, 14th & Independence Ave., SW., Washington, D.C. 20250.

USDA, Forest Service, Southwestern Region, 517 Gold Avenue, SW., Albuquerque, NM 87102.

Santa Fe National Forest, P.O. Box 1689, Santa Fe, NM 87501.

Single copies are available upon request to Forest Supervisor, Santa Fe National Forest, P. O. Box 1689, Santa Fe, NM 87501. Please refer to the name and number of the environmental statement when ordering.

Copies of the environmental statement have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

GARY E. CARGILL,
Acting Regional Forester,
Region 3.

JANUARY 7, 1977.

[FR Doc.77-1158 Filed 1-12-77;8:45 am]

CIVIL AERONAUTICS BOARD

[Order 77-1-27; Docket 25398; Agreement C.A.B. 24277 (as amended by Amendment 24277-A1), and Amendment 24277-A2]

AIR CARRIER AGREEMENT

Order

In the matter of an air carrier agreement concerning air freight credit billing and collection practices.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 6th day of January, 1977.

By Order 76-9-130 dated September 23, 1976, the Board approved an Air Freight Credit Agreement, Agreement C.A.B. No. 24277, as amended, whereby the carriers will establish an Air Freight Settlement Plan through one or more central banks for purposes of billing and collecting charges from large volume shippers. Section 1.01.11 of this Agreement defines the term "shipper" and section 3.01 provides that "Participating shippers shall include all shippers whose annual volume of direct air carrier billings by Parties for interstate and overseas air transportation, determined in accordance with objective, reasonable and uniform procedures and criteria exceeds $250,000 * * *." Section 7.02 of this Agreement establishes an Air Freight Settlement Plan (Plan) and further requires that these procedures be submitted to the Board for approval prior to implementation.

In approving this Agreement, the Board noted that "The Plan will not take effect until after the carriers—with the invited participation of interested shippers—develop precise criteria for determining which shippers meet the $250,000 annual billings standard * * *." Pursuant to the foregoing the carrier parties to this Agreement have now developed procedures for the identification of such shipper participants in the Plan, and by application filed November 23, 1976, seek Board approval thereof. The carriers proposed procedures are set forth in Attachment A hereto.

These procedures will require trunk and all-cargo carrier parties to the agreement to identify those shippers with annual volumes in excess of $50,000 for interstate and overseas air freight charges during the 12 month period ending June 30, 1976. All other carrier parties will be required to provide the identification of shippers with such volumes in excess of $10,000. Thereafter, upon receipt of this data, a consolidated draft list of those shippers so identified as meeting the $25,000 annual billing standard will be prepared and circulated to all parties to the Agreement for their examination. After such review, a master shipper list will be prepared and all such potential participating shippers will be notified of their inclusion on the list. Such shippers will also be given the opportunity to demonstrate that their annual billings do not justify their participation in the Plan.

In support of their application, the carriers state that the procedures adopted by the carriers for identifying shipper participants are the first step toward implementation of the Agreement,[1] and will be included as an integral element of the operating Manual,[2] and that upon Board approval of these procedures, the carriers will meet with participating shippers to establish a Shipper Advisory Group. The purpose of the Advisory Group will be "to provide liaison and exchange of views and information between shippers and Parties in connection with the Administration of this Agreement."[3] Additionally, the carriers state that they have endeavored to fully conform with section 3.01 of the Agreement and the Board's respective orders in establishing these procedures, and that the procedures are objective, reasonable, uniform and precise, and are a practical approach to promptly identifying participating shippers.

No comments on this application have been filed with the Board.

Upon consideration of the application, the Board does not find the Agreement to be adverse to the public interest or in violation of the Act and accordingly the agreement will be approved. The procedures are clearly designed to identify potential participant shippers in the air freight settlement Plan as equitably and fairly as would appear practical and feasible. Moreover, such shippers when selected through the aggregation of the separate carrier data will still have an opportunity to challenge such data. Thus the Board agrees that the implementation of these procedures is a necessary step in the ultimate implementation of the Plan.

Accordingly, pursuant to the Federal Aviation Act, and particularly sections 204(a), 412 and 414 thereof, *It is ordered*, That:

1. Agreement C.A.B. 24277–A2 filed November 23, 1976 in Docket 25398 is approved;

2. The Board's approval of the foregoing will expire with December 31, 1977; and

3. This order shall be served upon all certificated scheduled direct air carriers, all domestic air freight forwarders, and all persons participating in Docket 25398, as listed in the Certificate of Service accompanying Agreement C.A.B. No. 24277 and amendments A–1 and A–2 thereto filed in such docket.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[1] The carriers state that absent prompt consideration of these procedures by the Board, they will be unable to implement the Agreement on or before April 1, 1977.

[2] Air Freight Credit Agreement, sections 1.01.7 and 7.02.

[3] Ibid., section 1.01.12.

ATTACHMENT A—SHIPPERS TO BE INCLUDED IN THE AIR FREIGHT SETTLEMENT PLAN

IDENTIFICATION OF SHIPPER PARTICIPANTS

1.1 To implement the Agreement, a catalog of all known Shippers in the industry with billings of $250,000 or more will be developed.

1.2 Each of the trunk airlines and all cargo carriers will determine the Shippers who did $50,000 or more of business in interstate and overseas air carrier traffic during the 12 month period ending June 30, 1976 and will prepare a listing identifying them. This determination may be based on a summary of activity or on a selected sample. Local airlines will provide a list of shippers over $10,000 for the same period.

1.3 The Administrator will prepare a summary listing that will consolidate the magnetic tapes or tab cards prepared by the trunk airlines and local service carriers, and will generate a draft listing in alphabetical order of all Shippers whose billings exceeded $250,000.

1.4 The computer listing will be sent to all Parties to the Air Freight Credit Agreement with a request that they review their large Shippers and make appropriate modifications to this list.

1.5 These listings will be returned to a third-party contractor who will consolidate a second time and will produce a final alphabetical master listing of all Shippers to be included in the Plan during its first year of operation.

1.6 The Administrator will send notices to all Shippers on this listing to determine whether they did $250,000 or more business in interstate and overseas air carrier traffic during the 12 month period ending June 30, 1976 and are thus to become participating Shippers.

[FR Doc.77-1168 Filed 1-12-77;8:45 am]

[Docket 29198]

ALASKA FARES INVESTIGATION

Reassignment of Proceeding

This proceeding has been reassigned from the undersigned to Administrative Law Judge Stephen J. Gross. Future communications should be addresed to Judge Gross.

Dated at Washington, D.C., January 5, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-1163 Filed 1-12-77;8:45 am]

[Docket Nos. 30309 etc.; Order 77-1-25]

EASTERN AIR LINES, INC. AND SOUTHERN AIRWAYS, INC.

Order Instituting Investigation Regarding Applications for Atlanta-Charleston Competitive Nonstop Case

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 6th day of January 1977.

On September 24, 1975, Eastern Air Lines filed an application for first competitive nonstop service between Charleston, S.C., and Atlanta, Ga.[1] Additionally, Eastern filed a motion for a hearing on its application. If awarded the authority, Eastern proposes to provide four daily round trips between the two points, with the objective of every flight also serving a market beyond Atlanta.[2] Subsequently, Southern Airways filed an application seeking the removal of its Atlanta-Charleston one-stop restriction, accompanied by a motion to consolidate its application in Docket 29941 which seeks removal of that restriction.

In support of its motion, Eastern states that (1) the large Atlanta-Charleston monopoly market (416 flow passengers per day in each direction) deserves competitive nonstop service, because almost half of Delta's service is provided on inconvenient one-stop flights, while its nonstop schedules have very high load factors;[3] (2) Eastern can provide the needed competitive nonstop service on a sound financial basis;[4] and (3) Eastern can provide important first single carrier and new competitive service in numerous beyond Atlanta markets.

An answer in support of Eastern's motion for expedited hearing was filed by the Charleston County Aviation Authority (Charleston).

Delta filed an answer in opposition to Eastern's motion for expedited hearing, on the grounds that (1) Delta's service has satisfied the needs of the market;[5] (2) it plans improved service in the future; (3) any traffic problems in the market are caused by service deficiencies in other Charleston markets in which Eastern is authorized to provide nonstop service; (4) a load factor of 68 percent for the year ending August 31, 1976, is not unduly high; and (5) additional Charleston-Atlanta competitive authority would result only in minimal public benefit.

Eastern filed a response to Delta's answer.[6]

Upon consideration of the pleadings and all the relevant facts, we have decided to institute an investigation, for the purpose of investigating the need for first competitive nonstop service between Charleston, S.C., and Atlanta, Ga. Accordingly, we are consolidating for hearing the applications of Southern, in Docket 29941, and Eastern, in Docket 29825.

Southern has not submitted sufficient information for us to determine at this time the environmental consequences of its certificate amendment application. Therefore, we will require it to file the information set forth in Part 312 of the Board's Procedural Regulations. We will allow the carrier 30 days from the date of adoption of this order to file its environmental evaluation.

Accordingly, it is ordered, That:

1. A proceeding to be known as the "Atlanta-Charleston Competitive Nonstop Case," Docket 30309, be and hereby is instituted and shall be set down for hearing before an administrative law judge of the Board at a time and place hereinafter designated, as the orderly administration of the Board's docket permits;

2. The proceeding instituted by paragraph 1, above, shall include consideration of the following issues:

(a) Do the public convenience and necessity require the certification of an air carrier or air carriers to engage in competitive nonstop air transportation between Charleston, S.C., and Atlanta, Ga?

(b) If the answer to (a) is in the affirmative, which air carrier(s) should be authorized to engage in such service?

(c) What conditions, if any, should be placed on the operation of such carrier(s)?

3. Any authority awarded in this proceeding shall be granted without eligibility for subsidy;

4. The applications of Eastern Air Lines, Inc., in Docket 29825 and Southern Airways, Inc., in Docket 29941, be and they hereby are consolidated with the proceeding instituted by paragraph (1) above;

5. The Charleston County Aviation Authority and Delta Air Lines are hereby made parties to the proceeding instituted in paragraph (1);

6. The motion of Eastern for hearing be and it hereby is granted;

7. The motion of Southern for consolidation of its application in Docket 29941 be and it hereby is granted;

8. The motion of Eastern to file an otherwise unauthorized document be and it hereby is granted;

9. Southern Airways, Inc., and other carriers filing applications in this proceeding shall file environmental evaluations pursuant to § 312.12 of the Board's Procedural Regulations within 30 days from the date of adoption of this order;[7] and

10. Applications, motions to consolidate and petitions for reconsideration of this order shall be filed within twenty days from the service date of this order and answers thereto shall be filed within ten days thereafter.

---

[1] At present Charleston-Atlanta nonstop authority is held only by Delta. In addition, Southern has one-stop and Piedmont has two-stop restrictions on service between the two points. Eastern could provide one-stop service via a circuitous routing by use of the segment junction points of Charleston or Jacksonville.

[2] See Appendices A and B of the motion of Eastern Air Lines, Inc., for Expedited Hearing, Docket 29825.

[3] In 1974, Delta's Atlanta-Charleston nonstop load factor averaged 83 percent, with the carrier providing only three nonstops. In answer to this, Delta states, in its answer, that the high 1974 load factor was the result of capacity limitations resulting from the unavailability of fuel and the National Airlines strike.

[4] Eastern proposes to provide four DC-9 nonstop flights that it contends would attract close to 150,000 passengers and produce an estimated operating profit of $950,000.

[5] Delta currently provides four nonstop round trips and three one-stop round trips in the Atlanta-Charleston market.

[6] Eastern accompanied its response with a motion to file an unauthorized document, which motion will be granted.

[7] Eastern has already submitted its environmental evaluation with its application.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.77-1172 Filed 1-12-77;8:45 am]

[Docket 28672; Agreements CAB 25606 R-1 through R-4]

IATA AGREEMENTS CONCERNING AGENCY MATTERS UNIFORM COMMISSION RATES

Reassignment of Proceeding

This proceeding has been reassigned from Administrative Law Judge Ralph L. Wiser to Administrative Law Judge Katherine A. Kent. Future communications should be addressed to Judge Kent.

Dated at Washington, D.C., January 7, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-1161 Filed 1-12-77;8:45 am]

[Docket 29424, etc.]

LEP TRANSPORT, INC., ET AL.

Hearing

In the matter of LEP Transport, Ltd. (U.K.) d.b.a. LEP Transport, Inc. (U.S.A.), Docket 29424; McGregor, Swire Air Services, Ltd. (U.K.), Docket 29357; Pandair Freight Limited (U.K.) d.b.a. Pandair Freight, Inc. (U.S.A.), Docket 29750.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on March 15, 1977, at 9:30 a.m. (local time) in Room 1003, Hearing Room B, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Administrative Law Judge.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the Prehearing Conference Report, served on December 21, 1976, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., January 5, 1977.

FRANK M. WHITING,
Administrative Law Judge.

[FR Doc.77-1162 Filed 1-12-77;8:45 am]

[Docket 29925]

OVERSEAS NATIONAL AIRWAYS, INC.

Reassignment of Enforcement Proceeding

This proceeding has been reassigned from the undersigned to Administrative Law Judge Stephen J. Gross. Future communications should be addressed to Judge Gross.

Dated at Washington, D.C., January 5, 1977.

HENRY M. SWITKAY,
Acting Chief
Administrative Law Judge.

[FR Doc.77-1164 Filed 1-12-77;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. 534]

ATLANTIC BEAR STEAMSHIP CO.

Notice of Application

Notice is hereby given that Atlantic Bear Steamship Company, a Delaware corporation and wholly owned subsidiary of Pacific Far East Line, Inc., has filed an application dated December 9, 1976, as amended December 14, 1976 and December 15, 1976, with the Maritime Subsidy Board pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act), for a 20-year operating-differential subsidy contract for operation of the following number of vessels and services:

Roll on/Roll off (Ro/Ro) cargo service initially with two chartered Ro/Ro vessels making a maximum of 18 sailings annually between U.S. North Atlantic ports (Maine-Virginia, inclusive) and ports in the Red Sea, Persian Gulf, Gulf of Oman and Gulf of Aden areas, plus service to a port in Greece, and to a port or ports in Egypt, Italy and Southern France. The Applicant anticipates the acquisition of a third Ro/Ro vessel for operation on the proposed service, at which time a maximum of 26 sailings annually is requested.

The application is for a new long-term operating-differential subsidy contract and is not a part of the application by Pacific Far East Line, Inc. for a renewal of its long-term operating-differential subsidy contract. Atlantic Bear Steamship Company presently operates two chartered Ro/Ro vessels, unsubsidized, between ports on the U.S. East Coast and ports in the Persian Gulf and Gulf of Oman.

Interested parties may inspect this application in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14 and E Streets, N.W., Washington, D.C. 20230.

Any person, firm or corporation having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, by the close of business on January 24, 1977. The Maritime Subsidy Board will consider such views and comments, and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidy (ODS)).

By order of the Maritime Subsidy Board.

Dated: January 7, 1977.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 77-1095 Filed 1-12-77;8:45 am]

Patent and Trademark Office

RECOMBINANT DNA

Accelerated Processing of Patent Applications for Inventions

In recent years revolutionary genetic research has been conducted involving recombinant deoxyribonucleic acid ("recombinant DNA"). Recombinant DNA research appears to have extraordinary potential benefit for mankind. It has been suggested, for example, that research in this field might lead to ways of controlling or treating cancer and hereditary defects. The technology also has possible applications in agriculture and industry. It has been likened in importance to the discovery of nuclear fission and fusion. At the same time concern has been expressed over the safety of this type of research. The National Institutes of Health (NIH) has released guidelines for the conduct of research concerning recombinant DNA. "Guidelines for Research Involving Recombinant DNA Molecules," published in the FEDERAL REGISTER of July 7, 1976, 41 F.R. 27902-27943. NIH is sponsoring experimental work to identify possible hazards and safety practices and procedures.

In view of the exceptional importance of recombinant DNA and the desirability of prompt disclosure of developments in the field, the Assistant Secretary of Commerce for Science and Technology has requested that the Patent and Trademark Office accord "special" status to patent applications involving recombinant DNA. Upon appropriate request, the Office will make special patent applications for inventions relating to recombinant DNA, including those that contribute to safety of research in the field. Requests for special status should be written, should identify the application by serial number and filing date, and should be accompanied by affidavits or declarations under 37 CFR 1.102 by the applicant, attorney or agent explaining the relationship of the invention to recombinant DNA research. Requests also must include a statement that the NIH guidelines cited above or as amended in the future are being followed in any experimentation in this field, except that the statement may include an explanation of any deviations considered essential to avoid disclosure of proprietary information or loss of patent rights. The requests will be handled in the same manner as requests to make applications special that relate to energy or environ-

mental quality. See Manual of Patent Examining Procedure 708.02.

Dated: January 7, 1977.

C. MARSHALL DANN,
Commissioner of Patents and Trademarks.

Approved: January 10, 1977.

BETSY ANCKER-JOHNSON,
Assistant Secretary for Science and Technology.

[FR Doc.77-1155 Filed 1-12-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 670-4; PP6G1644/T87]

EXTENSION OF A TEMPORARY TOLERANCE

Methyl 2-[4-(2,4-dichlorophenoxy) phenoxy] propanoate

On January 30, 1976, the Environmental Protection Agency (EPA) announced (41 FR 4636) that in response to a pesticide petition (PP 6G1644) submitted by American Hoechst Corp., Agricultural Chemical Dept., Route 202-206 North, Somerville NJ 88876 a temporary tolerance was established for residues of the herbicide methyl 2-[4-(2,4-dichlorophenoxy) phenoxy] propanoate and its metabolites in or on the raw agricultural commodities barley grain and wheat grain at 0.1 part per million (ppm). This temporary tolerance expires January 26, 1977.

American Hoechst Corp. has requested a one-year extension of this temporary tolerance both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit which is being extended concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act.

The scientific data reported and all other relevant material having been evaluated, it has been determined that an extension of the temporary tolerance will protect the public health, and therefore, the temporary tolerance is extended on condition that the pesticide is used in accordance with the experimental use permit with the following provisions:

1. The total amount of the herbicide to be used must not exceed the quantity authorized by the experimental use permit.

2. American Hoechst Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the reocrds available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires January 26, 1978. Residues in or on barley grain and wheat grain not in excess of 0.1 ppm remaining after this expiration date will not be considered to be actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)].)

Dated: January 3, 1977.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc.77-1106 Filed 1-12-77;8:45 am]

[FRL 670-3; OPP-30000/8A]

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Certain Pesticide Products Containing Compound 1080 and Compound 1081; Extension of Time

On November 22, 1976, the Environmental Protection Agency (EPA) issued a notice of presumption against registration and continued registration of pesticide products containing the ingredients Compound 1080 (sodium fluoroacetate) and Compound 1081 (sodium fluoroacetamide). This notice was published in the FEDERAL REGISTER on December 1, 1976 (41 FR 52792). The regulations governing rebuttable presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause shown, an additional sixty (60) days may be granted in which such evidence may be submitted (40 CFR 162.11(a)(1)(i)).

Requests for an additional 60 days in which to present evidence to the Agency have been received from many of the applicants and registrants who were affected by the notice of presumption as well as by other interested parties. Requestors have specified a need for additional time to retrieve, review, and consolidate a wealth of available data to adequately respond to the issues raised in the notice of presumption. In addition, the Agency has received a request for an extension from the U.S. Department of Agriculture which has recently formed an assessment team to collect use information preparatory to benefit/risk assessments for certain RPAR pesticides which includes Compound 1080 and Compound 1081. The formation of this assessment team has taken considerable time and effort as well as coordination with a number of States and other organizations affected by the notice of presumption. USDA stated that a 60-day extension would permit this team to conduct an effective in-depth data collection effort.

The Agency agrees that additional time would be beneficial for the submission of complete and accurate responses to this notice of presumption. Therefore, because good cause has been shown for an extension of time by those wishing to respond to the notice of presumption, all registrants, applicants for registration, and other interested persons shall have until March 7, 1977, to submit rebuttal evidence and other comments or information. Such evidence, comments, or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the efforts of the Agency and of others interested in inspecting them. All comments should bear the identifying notation "OPP-30000/8". Comments and information received on or before March 7, 1977, shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c)(6) or 7 U.S.C. 136(d)(b)(1). Comments received after March 7, 1977, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section at the above address from 8:30 a.m. to 4 p.m. on normal business days. The filing supporting the Agency's presumption against this pesticide is available for public inspection in the Office of Special Pesticide Review, Rm. 447, East Tower, during the same time period.

Dated: January 6, 1977.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1105 Filed 1-12-77;8:45 am]

[FRL 670-2; OPP-30000/7A]

PESTICIDE PROGRAMS

Rebuttable Presumption Against Registration and Continued Registration of Certain Pesticide Products Containing Strychnine and Strychnine Sulfate; Extension of Time

On November 22, 1976, the Environmental Protection Agency (EPA) issued a notice of presumption against registration and continued registration of pesticide products containing the ingredients strychnine and strychnine sulfate which are registered for outdoor, above-ground use. This notice was published in the FEDERAL REGISTER on December 1, 1976 (41 FR 52810). The regulations governing rebuttable presumptions provide that the applicant or registrant of such pesticide products shall have forty-five (45) days from the date such notice is sent to submit evidence in rebuttal of the presumption. However, for good cause shown, an additional sixty (60) days may be granted in which such evidence may be submitted [40 CFR 162.11(a)(1)(i)].

Requests for an additional 60 days in which to present evidence to the Agency have been received from many of the applicants and registrants who were affected by the notice of presumption as well as by other interested parties. Requestors have specified a need for additional time to retrieve, review, and consolidate a wealth of available data to adequately respond to the issues raised in the notice of presumption. In addition, the Agency has received a request for an extension from the U.S. Department of Agriculture which has recently formed an assessment team to collect use information preparatory to benefit/risk assessments for certain RPAR pesticides which includes strychnine and strychnine sulfate. The formation of this assessment team has taken considerable time and effort as well as coordination with a number of States and other organizations affected by the notice of presumption. USDA stated that a 60-day extension would permit this team to conduct an effective in-depth data collection effort.

The Agency agrees that additional time would be beneficial for the submission of complete and accurate responses to this notice of presumption. Therefore, because good cause has been shown for an extension of time by those wishing to respond to the notice of presumption, all registrants, applicants for registration, and other interested persons shall have until March 7, 1977, to submit rebuttal evidence and other comments or information. Such evidence, comments, or other information relevant to the presumption against registration and continued registration should be submitted to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, East Tower, 401 M St. SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the efforts of the Agency and of others interested in inspecting them. All comments should bear the identifying notation "OPP-30000/7__. Comments and information received on or before March 7, 1977, shall be considered before it is determined whether a notice shall be issued in accordance with 40 CFR 162.11(a)(5)(ii) and 7 U.S.C. 136(a)(c) (6) or 7 U.S.C. 136(d)(b)(1). Comments received after March 7, 1977, shall be considered only to the extent feasible consistent with the time limits imposed by 40 CFR 162.11(a)(5)(ii). All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section at the above address from 8:30 a.m. to 4 p.m. on normal business days. The file supporting the Agency's presumption against this pesticide is available for public inspection in the Office of Special Pesticide Review, Rm. 477, East Tower, during the same time period.

Dated: January 6, 1977.

JAMES M. CONLON,
Acting Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-1104 Filed 1-12-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

POWER PLANT ENERGY SOURCES; COAL USE

Intention To Issue Construction Order

The Federal Energy Administration (FEA) hereby gives notice of its intention to issue a Construction Order pursuant to section 2 of the Energy Supply and Environmental Coordination Act of 1974, as amended (ESECA), and 10 CFR 303 and 307, to the following powerplant in the early planning process:

Docket No.	Owner	Generating station	Unit No.	Location
OCU-186-N	Gainesville-Alachua County Regional Utilities Board.	Deerhaven.	2	Hague, Fla. (Alachua County).

FEA hereby also gives notice of the opportunity for written and oral presentation of data, views and arguments by interested persons regarding this proposed Construction Order.

The proposed order would require the above-named powerplant in the early planning process to be designated and constructed to be capable of using coal as its primary energy source.

Prior to the issuance of a Construction Order to a powerplant, section 2(c) of ESECA and 10 CFR 303.46(b), 307.3(b), and 307.3(c) require that FEA find that the powerplant is in the early planning process. They also prohibit FEA from issuing a Construction Order if FEA finds that (1) the order is likely to result in an impairment of reliability or adequacy of service, or that (2) an adequate and reliable supply of coal is not reasonably expected to be available. FEA's proposed findings, as well as its proposed conclusions and rationale with respect to these findings, for the powerplant are set out in Section I of Appendix A to this notice. These findings, conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information availabale to FEA. The findings, conclusions and rationale will be included, with any amendments, in the Construction Order if it is issued.

In addition, Section 2(c) of ESECA and 10 CFR 303.46(b), 307.3(d) require that FEA consider certain other factors prior to issuance of a Construction Order. FEA's initial conclusions, and a brief statement of the rationale for each, with respect to such considerations are set out in Section II of Appendix A to this notice. The conclusions and rationale may be amended as a result of comments received by FEA pursuant to this notice and other information available to FEA. The conclusions and rationale will be included, with any amendments, in the Construction Order if it is issued.

Upon completion of the proceeding described in this notice, FEA may determine to issue a Construction Order to the above-named powerplant. The Construction Order will not become effective, however, until FEA has considered the environmental impact of the order, pursuant to 10 CFR 208.3(a)(4) and 307.7, and has served the affected powerplant with a Notice of Effectiveness, as provided in 10 CFR 303.10(b), 303.47(b) and 307.5. 10 CFR 307.7(c) requires that prior to the issuance of a Notice of Effectivness to a powerplant, FEA shall perform an analysis of the environmental impact of the issuance of such Notice of Effectiveness. That analysis shall result in either 1) a declaration that the Construction Order will not, if made effective by a Notice of Effectiveness, be likely to have a significant impact on the quality of the human environment; or, 2) the preparation by FEA of an environmental impact statement covering the significan site-specific impacts that are likely to result from the Construction Order and that have not been adequately addressed in the programmatic Environmental Impact Statement (FES 75-1, dated April 25, 1975) for the FEA program to implement section 2 of ESECA, or in other official documents made publicly available during the FEA proceeding in connection with issuance of the Construction Order, or otherwise made available to the public. If FEA prepares an environmental impact statement covering significant site-specific impacts from the Construction Order, the statement shall be prepared and published for comment in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 prior to issuance of a Notice of Effectiveness. Interested persons may request a public hearing pursuant to 10 CFR 303.173 to comment on the contents of a draft environmental impact statement.

Comments are solicited addressing (1) the adequacy and validity of each of the proposed findings, and the conclusions and rationale in support of these findings, as well as the conclusions with respect to the other factors FEA must consider and rationale in support of these conclusions, (2) the environmental impact of the issuance of a Construction Order, including any site specific environmental impacts, and, (3) any other aspects or impacts of the proposed Construction Order believed to be relevant.

Any powerplant issued a Construction Order will have to comply with applicable new source performance standards prescribed by the Environmental Protection Agency under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

Pursuant to 10 CFR 303.173 (c) and (d), FEA hereby announces that a public hearing to receive oral presentation of data, views and arguments from interested persons will be held beginning at 2 p.m., e.s.t., on January 28, 1977, at City

Commission Meeting Room, 4th Floor, City Hall, Gainesville, Florida 32601. Any person who has an interest in the subject of the hearing, or who is a representative of a group or class of persons which has an interest in the subject of the hearing, should contact Warren W. Zurn, FEA Region IV, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309, (404) 257–2944. The request should be received before 4:30 p.m., e.s.t., January 21, 1977. The request should describe the person's interest in the issue(s) involved; if appropriate, it should state why the person is an appropriate spokesperson for the group or class of persons which has such an interest; it should give a concise summary of the proposed oral presentation and a phone number where the person may be contacted through January 27, 1977. Speakers will be contacted by an FEA representative before 4:30 p.m., e.s.t., January 24, 1977, and should submit 10 copies of the oral presentation to be made at the hearing, if possible, unless such presentation is less than five (5) pages, in which case only one copy is required. The copies of the statement should be sent to Warren W. Zurn, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309 before 4:30 p.m., e.s.t., January 27, 1977.

If an oral presentation is to be made, detailed technical data, views and arguments should be made in written comments submitted in support of the oral presentation, and the oral presentation itself should be a summary of those written comments.

While FEA will endeavor to provide adequate opportunity to all who desire to speak, FEA reserves the right to limit the number of persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of time allocated to each presentation may be limited, based on the number of persons requesting to be heard. The FEA will prepare an agenda that shall provide, to the extent possible, for the presentation of all relevant data, views and arguments.

An FEA official will be designated to preside at the hearing, which will not be a judicial or evidentiary hearing. During oral presentations, only those conducting the hearing may ask questions. There will be no cross-examination. At the conclusion of all initial oral presentations, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement.

Any interested person may submit written questions to the presiding officer to be asked of any person making an oral presentation. The presiding officer will determine whether to ask questions, having first determined whether the question is relevant, and whether adequate time may be afforded for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and it, together with any written comments submitted in the course of the hearing, will be retained by the FEA and made available for inspection and copying at the public reading room located in Room 2107, Federal Building, 12th & Pennsylvania Avenue, N.W., Washington, D.C., and the FEA Regional Office, 1655 Peachtree Street, N.E., Atlanta, Georgia, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Anyone may purchase a copy of the transcript from the reporter.

Interested persons are invited to submit written comments consisting of data, views, or arguments with respect to the proposed Construction Order to Executive Communications, Federal Energy Administration, Box KC, Washington, D.C. 20461.

Comments and other documents submitted to FEA Executive Communications should be identified on the outside of the envelope in which they are transmitted and on the document with the designation "Proposed Construction Order for the Deerhaven No. 2 Powerplant." Fifteen copies should be submitted.

All written comments received by 4:30 p.m., e.s.t., February 25, 1977, all oral presentations, and all other relevant information submitted to or otherwise available to FEA will be considered by FEA prior to issuance of the Construction Order.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. The FEA reserves the right to determine the confidential status of the information or data and to treat it in accordance with that determination.

Copies of the regulations implementing section 2 of ESECA (10 CFR Parts 303 and 307) are available from the FEA Regional Offices:

Federal Energy Administration, regional offices

Region	Address	Phone
I	Robert Mitchell, Regional Administrator, 150 Causeway St., room 700, Boston, Mass. 02114.	(617)223-370
II	Alfred Kleinfeld, Regional Administrator, 26 Federal Plaza, room 3206, New York, N.Y. 10007.	(212)264-102
III	J. A. LaSala, Regional Administrator, 1421 Cherry St., room 1001, Philadelphia, Pa. 19102.	(215)597-389
IV	Donald Allen, Regional Administrator, 1655 Peachtree St. NE., 8th floor, Atlanta, Ga. 30309.	(404)526-283
V	N. Allen Andersen, Regional Administrator, Federal Office Bldg., 175 West Jackson Blvd., room A-333, Chicago, Ill. 60604.	(312)353-842
VI	Delbert Fowler, Regional Administrator, P.O. Box 35228, 2626 West Mockingbird Lane, Dallas, Tex. 75235.	(214)749-734
VII	Nell Adams, Regional Administrator, Twelve Grand Bldg., P.O. Box 2208, 112 East 12th St., Kansas City, Mo. 64142.	(816)374-206
VIII	Dudley Faver, Regional Administrator, P.O. Box 26247, Belmar Branch, 1075 South Yukon St., Lakewood, Colo. 80226.	(303)234-2420
IX	William Arntz, Regional Administrator, 111 Pine St., San Francisco, Calif. 94111.	(415)556-7216
X	Jack B. Robertson, Regional Administrator, 1992 Federal Bldg., 915 2d Ave., Seattle, Wash. 98174.	(206)442-7280

Any questions regarding this Notice should be directed to the FEA National Office as follows: Federal Energy Administration, Code OCU (Construction Order: Deerhaven No. 2) Washington, D.C. 20461.

(Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 *et seq.*), as amended by Pub. L. 94–163; Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*), as amended by Pub. L. 94–385; E.O. 11790 (39 FR 23185)).

Issued in Washington, D.C. January 7, 1977.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

APPENDIX A, PROPOSED FINDINGS AND CONCLUSIONS

ESECA and the FEA regulations require FEA to make certain findings and to consider certain factors before issuing a Construction Order. FEA's initial findings, as well as its initial conclusions with respect to the factors FEA is required to consider, are set out below with respect to the powerplant named below. Supporting rationale and conclusions are also set forth.

Docket No.	Owner	Generating station	Unit No.	Location
OCU-186-R	Gainesville-Alachua County Regional Utilities Board.	Deerhaven.	2	Hague, Fla. (Alachua County).

I. PROPOSED FINDINGS

A. *The Powerplant Is In The Early Planning Process.* Based on an analysis of the information submitted to or otherwise available to FEA, including the information provided by the powerplant on FEA Form C–603–S–0 (Identification Report) and information provided by the powerplant in response to subsequent inquiry to assure the continued applicability and currency of such information, including an on-site inspection visit, FEA proposes to find that the powerplant is in the early planning process. This proposed finding is based on the facts, assumptions, and reasoning stated below:

(1) The powerplant has identified itself as a powerplant in the early planning process by filing with FEA Form C–603–S–0 in accordance with 10 CFR 307.6(b) and with the notice of the requirement to file such report that was published in the FEDERAL REGISTER on May 22, 1975 (40 FR 22309).

(2) The date by which the powerplant plans to commence the sale or exchange of electric power is not more than 10 years from December 31, 1976, and the driving of the foundation piling, or the equivalent foundation structural event, in accordance with the approved final drawings for the main boiler of the powerplant, has not commenced.

(a) The State of Florida Department of Environmental Regulation has not yet completed the site certification process for the Deerhaven No. 2 unit. No construction work at the site can begin until the site certification is granted.

(b) An inspection of the proposed powerplant site by an FEA official was conducted on September 17, 1976. The inspection confirmed that the driving of the foundation piling, or the equivalent structural event, had not commenced.

B. *FEA cannot find that the design and construction of Deerhaven No. 2 with the capability of using coal as its primary energy source is likely to result in an impairment of the reliability or adequacy of service in the area served by the affected powerplant.* Based on an analysis of the information submitted to or otherwise available to FEA and after consultation with the Federal Power Commission (FPC), FEA proposes that it cannot find that the requirement that this powerplant be designed and constructed to be capable of using coal as its primary energy source is likely to result in an impairment of the reliability or adequacy of service. This proposed finding is based on the facts, assumptions, and reasoning stated below:

(1) *Interconnection and Power Dispatching.* (a) The powerplant will be within the geographical area of the Southeastern Electric Reliability Council (SERC).

(b) The powerplant will be interconnected with and participate in Regional Power Planning with the Florida Power Corporation (Florida). Gainesville-Alachua County Regional Electric, Water, and Sewer Utilities Board (Gainesville) and Florida presently rely upon each other for emergency interchange of electricity. Gainesville and Florida have negotiated an agreement pursuant to which Florida will purchase a minimum of 75 MWe from the Deerhaven No. 2 Unit.

(c) Dispatching of electric power is controlled by Gainesville.

(d) "Dispatching system" as used in this proposed finding means the Gainesville dispatching system.

(2) *Forecast Peak Loads.* (a) The Gainesville system has experienced peak loads during the summer season for the past several years. FEA estimates that the requirement that Deerhaven No. 2 be designed and constructed to be capable of using coal as its primary energy source could delay the commencement of sale or exchange of electric power by the powerplant for one year. The official statement issued by the City of Gainesville on May 26, 1976, for the issuance of Electric, Water and Sewer Revenue Bonds, First series of 1976, states that the proposed powerplant, as presently planned, with oil firing, is scheduled to commence commercial operation in the fourth quarter of 1979. The summer peak load for the dispatching system during the year in which FEA etsimates that Deerhaven No. 2 will not be engaged in the sale or exchange of electric power is forecast to be 222MWe.

(b) The peak load forecasts have been compared with peak loads in previous similar periods and the average load growth rate for the 1979–1982 period is forecast to be 7.4%, which is considered reasonable. For example, in 1976 the summer peak load was 158 megawatts which was an increase of 11 megawatts (7.5%) over the 1975 peak load.

(3) *Capacity.* (a) As of September 1976, the net dependable capacity of the Gainesville system was 245 MWe (FPC Form 12–E–2, 10/7/76).

(b) As of the first quarter of 1979, the estimated net dependable capacity of all powerplants of the dispatching system excluding Deerhaven No. 2, will be 257 MWe (FPC Form 12–E–2, dated 10/7/76).

(c) No other additions, retirements, and powerplant reratings are forecast during the period in which Deerhaven No. 2 will not be engaged in the sale or exchange of electric power as a result of this Construction Order (1979–80).

(4) *Outages.* (a) FEA has received no information that any outages will be scheduled or planned within the dispatching system during the period while Deerhaven No. 2 will not be available for the sale or exchange of electric power as a result of the Construction Order (1979–80).

(b) FEA has received no information that maintenance of other powerplants within the dispatching system is planned during the period while Deerhaven No. 2 will not be available for the sale or exchange of electric power as a result of the Construction Order (1979–80).

(5) *Net Dependable Capacity.* The forecast net dependable capacity for the dispatching system during the period in which Deerhaven No. 2 may not be engaged in the sale or exchange of electric power as a result of this Construction Order is 257 MWe.

(6) *Gross Reserve Margin-Dispatching System.* The expected minimum gross reserve margin (difference between net system capability and peak load in percent of peak load) of the dispatching system is as follows:

GAINESVILLE

	Percent
1977 summer peak	44.6
1978 summer peak	34.3
1979 summer peak	29.9
1980 summer peak	20.8

(7) *System Stability.* Available information regarding dispatching system stability has been evaluated for the period stated in part 6), above. The issuance of a Construction Order to the powerplant will not cause a significant system stability problem since it is estimated that Deerhaven No. 2 will be available for commercial service prior to the 4th quarter 1980.

(8) *Reliability of Service.* (a) The estimated gross reserve margin of the dispatching system during the summer peaks in 1979 and 1980, when this powerplant will not be engaged in the sale or exchange of electric power, is forecast to range between 29.9% and 20.8%. The Federal Power Commission considers this to be an acceptable reserve margin.

(b) If dispatching system conditions during the period in which Deerhaven No. 2 will not be engaged in the sale or exchange of electric power are as presently forecast by FEA, there will be no impairment, within the meaning of ESECA, of reliability of service provided by Gainesville.

(c) It should be noted that Gainesville relies on its interconnections with Florida Power Corporation for emergency exchange of electricity. Existing transmission system interconnections are presently able to transfer approximately 100,000 KVA of power into the dispatching system at the Archer Station. This additional available capacity will provide a standby of electric power, and will enhance the reliability of service. In addition, the Idylwild substation provides 88,000 KVA. The installation of a second 100,000 KVA transformer is curerntly underway at the Archer Station and will provide the dispatching system with a total transfer capability of 288,000 KVA, or the approximate equivalent of 288 MWe under ideal conditions.

(d) The FPC in its reliability analysis has concluded that the Deerhaven Unit No. 2 can probably be delayed until the winter 1980–81 peak load period without creating any reliability problem within the dispatching system.

3. *FEA cannot find an adequate and reliable supply of coal is not expected to be available.* This finding is based upon the facts, interpretations, and assumptions stated below:

Rationale

A. *Total coal reserves.* United States coal reserves are more than sufficient to supply national needs for the distant future. U.S. Department of the Interior, Bureau of Mines data show a coal reserve base of over 400 billion tons, over half of which is currently technically and economically mineable. (Mineral Industry Surveys, Demonstrated Coal Reserve Base of the United States, by Sulfur Category, on January 1, 1974, prepared in Mineral and Materials Supply/Demand Analysis, May 1975 [hereafter "BOM Survey"]). Within these mineable reserves approximately 200 billion tons contain 1% or less sulfur by weight. To determine the quantities of these reserves that will be available and time frames in which such coal will be expected to be available FEA has consulted several studies, referenced herein, which taken together provide the best current evidence as to coal availability for the period ending in 1985.

For projected production beyond 1985, FEA has determined that, it is reasonable to rely on the BOM Survey, which indicated recoverable national coal reserves of over 200 billion tons and, consequently, continued availability of coal beyond 1985.

B. *Nationwide coal supply/demand.* The comparison, stated below, of estimated national coal production and the total tonnages of uncommitted planned coal production derived from a sample of surveyed companies shows there should be sufficient production of coal to meet the requirements of the total ESECA program demands. An adequate quantity of coal is projected to be produced through 1980 to meet all demands. Beyond 1980, plans for new production are not

yet fully developed because few coal producers have firm expansion plans that extend that far into the future; however, the projected total national coal production for 1985, although known to be only a partial projection at this time, already meets over 96% of the total U.S. demand expected in 1985. With time, more potential mine developments will become firm plans, thus increasing the planned production. The surveyed sample of companies indicates that plans for considerable production have been or are being made.

(1) It is estimated that it will be practicable to produce coal nationally as follows:

Year:	*Production (million tons)*
1979	851.4
1980	911.7
1981	960.0
1982	994.3
1983	1,017.4
1984	1,028.7
1985	1,029.6

The figures above are derived from FEA's Coal Mine Expansion Study (May 1976, ICF, Inc., under contract to FEA, Office of Coal). A survey conducted in the process of performing this study shows that most coal producers do not currently have firm or accurate plans for new capacity additions beyond 1980. The 1985 production projection, therefore, tends to underestimate actual production potential.

An FEA survey, (Availability of Potential Coal Supply Through 1985 by Quality Characteristic, August 1976, Prepared by Resource Analysis Division, NUS Corporation [hereafter "NUS Market Study"]), conducted under contract for FEA, indicates national total tonnages of uncommitted coal presently planned for production:

Year:	*Tonnage (million tons)*
1978	122.2
1979	237.1
1980	287.3
1981	344.0
1982	363.9
1983	390.1
1984	469.5
1985	544.9

(b) The estimated national demand, excluding any increased demand resulting from FEA action under the authority of section 2 of ESECA, is as follows (1976 National Energy Outlook, FEA, 1976):

Year:	*Demand (million tons)*
1978	730
1979	761
1980	799
1981	842
1982	887
1983	935
1984	985
1985	1,040

(3) The estimated additional demand for coal resulting from this order and from all recipients to date of outstanding prohibition orders under authority of section 2 of ESECA is estimated to be as follows: Coal Availability and Demand: Round I and II Coal Conversion Candidates, prepared by NUS Corporation [hereafter "NUS-1997 Study"].

Year:	*Demand (million tons)*
1978	9.1
1979	12.0
1980	17.0
1981	19.5
1982 (and after)	20.7

(4) FEA expects that the coal for the plant will most likely be bought from producers according to regional supply/demand relationships related to the plant's location. These coal supply areas consist of Bureau of Mines Districts 7 through 15. FEA acknowledges, however, that the powerplant could purchase coal in other markets as such production becomes available. The national nature of the coal market has become more apparent in recent years. (*The Feasibility of Considering Expanded Use of Western Coal by Midwestern and Eastern Utilities in the Period 1978 and Beyond*, School of Engineering, University of Penn., Nov. 7, 1975).

C. *Market survey.* The NUS Market Study is based on data from 31 mining companies that supplied useful information on 96 logical mining units (a logical mining unit is a company's operation distinct from other mining operations). Responses from these companies identified planned production of coal which is not committed to a specific buyer. For those companies which did not respond to the survey FEA estimated their uncommitted planned production based upon their 1974 production.

(1) FEA's "NUS-1997 Study," prepared in conjunction with the NUS Market Study, has determined that Deerhaven No. 2 is able to burn coal of the following characteristics and comply with all applicable air pollution requirements:

BTU per pound	12,500 minimum.
Moisture (percent)	15 percent maximum.
Ash (percent)	20 percent maximum.
Volatile (percent)	15 percent minimum.
Ash softening temperature (°F)	2,200 minimum.
Sulfur [1]	0.8 percent maximum (approximate).

[1] The coal used shall have a maximum sulfur content such that when burned it will result in emissions not greater than 1.2 lbs. of sulfur dioxide per million BTU (*State Implementation Plan Emission Regulations for Sulfur Oxides: Fuel Combustion, Environmental Protection Agency*, Publication No. EPA-450/2-76-002, February 7, 1976).

The additional demand for coal, described above, resulting from this Construction Order is estimated to be as follows (at a 70% capacity factor):

Year:	*Demand (thousand tons)*
1979	0
1980	330
1981	660
1982 (and after)	660

(2) *Planned production*

(a) FEA has determined that coal of the type described in paragraph C(1), above, is uncommitted to a specific buyer and will be potentially available to the powerplant in a nationwide market as follows:

Year:	*Production (thousand tons)*
1980	38,309
1981	45,117
1982	47,560
1983	50,782
1984	60,891

This amount of coal (described by characteristic) exceeds demand expected from the candidate for this Construction Order. The amount also exceeds the demand expected from all recipients to date of outstanding prohibition orders issued pursuant to Section 2 of ESECA (regardless of coal characteristics required). Such demand as stated in paragraph A(3), above is:

Year:	*Demand (thousand tons)*
1978	9,100
1979	12,000
1980	17,000
1981	19,500
1982	20,700
1983	20,700
1984	20,700

(b) Coal of the type described in paragraph C(1), above, is uncommitted to a specific buyer and will be potentially available to the powerplant in Bureau of Mines, Districts 7 through 15 as follows:

Year:	*Production (thousand tons)*
1980	34,841
1981	40,972
1982	43,186
1983	46,109
1984	55,153

This expected production (described by characteristic) exceeds the demand for coal from Bureau of Mines Districts 7 through 15 expected to result from all recipients to date of outstanding prohibition orders issued pursuant to section 2 of ESECA (regardless of coal characteristics required). Such demand is estimated as follows:

Year	Demand (thousand tons)					
	Percent sulfur					
	<0.6	0.61-1.0	1.01-1.4	1.41-1.8	1.81-2.2	>2.21
1980	0	5,166	2,030	2,796	377	1,563
1981	0	6,394	2,686	3,278	377	1,733
1982	0	6,821	2,686	3,374	992	1,733
1983	0	6,821	2,686	3,374	992	1,733
1984	0	6,821	2,686	3,374	992	1,733

(3) *Results of the Market Survey.* (a) FEA's market survey has identified nationally and in Bureau of Mines Districts 7 through 15 uncommitted coal that is of, or can be blended to, the powerplants' requirements as described in paragraph C(1), above. This uncommitted coal production, by large quantities, so exceeds expected demand not only from one possible order recipient but from added total demand resulting from orders issued pursuant to section 2 of ESECA that FEA is able to find that this uncommitted coal exists in amounts sufficient in any year to meet the estimated additional demand for coal, both nationally and from these Districts, resulting from this Construction Order and other FEA orders issued under section 2 of ESECA.

D. *State or local laws.* FEA has found no state or local laws or policies limiting the extraction or utilization of coal that would adversely affect these production figures, and none have been brought to FEA's attention.

E. *Coal transportation facilities.* (a) *Route of coal shipment.* A typical route for the Deerhaven No. 2 powerplant is to originate coal on the Louisville and Nashville Railroad to Dossett, Tennessee, via Winchester, Kentucky. Southern would move the coal from there to Knoxville, Tennessee, where Louisville and Nashville would pick it up again and carry it to Atlanta, Georgia. Southern would move it from Atlanta to Hampton, Florida, via Macon and Valdosta, Georgia. Seaboard Coast Line would deliver

the coal to Deerhaven No. 2 in Gainesville, Florida. Total mileage is approximately 600 miles.

(b) *Originating trunk carrier.* The Louisville and Nashville Railroad (of Seaboard Coast Line Industries), the originator of coal for Deerhaven No. 2, had about 35,000 hopper cars as of 1976, with an average capacity of 75 tons per car, and a range in capacities from 55 to 100 tons per car. As indicated above, Deerhaven No. 2 is expected to require about 660,000 tons of coal per year by 1982. With an average of 20 deliveries per year, carrying an average of 75 tons per car, an estimated 440 dedicated cars will be required by the Nashville and Louisville Railroad to handle the additional demand from Deerhaven No. 2. This conservatively assumes that the railroad will not utilize any existing excess originating capacity or cars from other carriers in the originating vicinity. Thus these estimates represent maximum new car needs for the conversion of the plant to coal, when realistically these needs will be somewhat smaller. The carrier estimates that it has about 2,000 cars in heavy bad order, with a plan to retire 1,500 to 1,800 cars in the current year (1976) and to repair about 5,600 cars in 1977. Hopper capacity is expected to expand at the rate of about 3.5 to 4 percent annually through 1985. The Louisville and Nashville Railroad indicated that it is willing to acquire any needed capacity involved in shipment to the Deerhaven facility and that it will modify its expansion plans with demand conditions. The railroad also indicated that its carrying capacity could be expanded as quickly as the utilities prepare to burn coal. Either general trains or unit trains could be negotiated.

The Louisville and Nashville Railroad indicated that mine sites within the district are in satisfactory condition and that loading facilities could handle the required coal volumes. There are no apparent constraints to carrying coal for any intermediate carriers used.

(c) *Destination carrier and powerplant facilities.* The destination carrier for Deerhaven No. 2 is the Seaboard Coast Line, whose jurisdiction includes tracks to the powerplant. At present, the plant is designed to receive oil from Jacksonville, Florida, by transport truck. A railroad spur exists connecting the Seaboard Coast Line tracks to the powerplant property. The spur deadends with one section leading to an oil loading and unloading area and the other to the powerplant for delivery of large freight items. In order to be able to accommodate coal delivery, a loop will have to be built so that cars can be brought in, unloaded and sent out. Coal would be released from bottom dumping cars onto a conveyor system, which would move the coal to the coal pile. No major obstacle to installing the necesary facilities is anticipated. Existing tracks to the powerplant will be adequate to handle the coal traffic that may result from issuance of this order.

(d) Based on the above, PEA concludes that sufficient rolling stock will be available to transport the increased coal demand resulting from this Construction Order and that adequate rail facilities exist to transport the coal required.

II. PROPOSED CONCLUSIONS CONCERNING FACTORS FEA IS REQUIRED TO CONSIDER

A. *The Existence and Effects of Any Contractual Commitment for the Construction of the Powerplant.* The powerplant has informed FEA of the existence of contracts for the purchase of oil storage tanks, an oil-fired steam generator, transformers, a turbine generator, pumps, heating and cooling equipment, and electrical equipment. In addition, contracts have been identified for site improvement and the engineering and construction of the powerplant. Issuance of a Construction Order to Deerhaven No. 2 is expected to result in the cancellation of the contract for an oil-fired steam generator. The utility indicates that all other existing contractual commitments for Deerhaven No. 2 can be adapted to a coal-fired powerplant. The powerplant informed FEA by letter dated September 27, 1976, that the sum of the added expenditures that would be required to alter the presently planned oil-fired powerplant is estimated to be $44 million if a low sulfur coal system is constructed or $64.3 million if a high sulfur coal system is constructed. These estimates include the cost of cancellation of the oil-fired steam generator contract.

B. *The Capability of the Powerplant To Recover Any Increase in Projected Capital Investment Required as a Result of a Construction Order.* Pursuant to its Charter and Chapter 75-200, Laws of Florida, the City of Gainesville is authorized to issue revenue bonds to finance the cost of acquisition and construction of electric systems and extensions, additions and improvements thereto.

In the past the City of Gainesville has demonstrated the ability to raise capital. In 1966 the City issued Electric, Water and Sewer Bonds presently outstanding in the principal amount of $95,080,000. Pursuant to Ordinance No. 2112, the City Commission on March 8, 1976, authorized the issuance of $99,400,000 of Bonds on a parity with the presently outstanding 1966 Bonds for the purpose of financing the cost of Deerhaven No. 2, Crystal River No. 3, and certain related projects. On May 26, 1976, $30,000,000 of Bonds were successfully placed. These bonds were well received by the investing public and rated AA by Standard and Poor's and A1 by Moody's.

Since the powerplant has estimated that it will require an additional capital investment of $44.0 million if it utilizes a low sulfur coal-fired steam generator or $64.34 million if it utilizes a higher sulfur coal-fired steam generator, the City will need to raise this additional capital.

Gainesville has studied the question of the raising and recovery of capital and presently plans to raise the additional capital through a financing plan which is basically a 29 year issue with no provision for capitalization of interest or reserve fund. (Gainesville-Alachua County Regional Electric, Water and Sewer Utilities Board Report, page 29, November 10, 1976.)

C. *The Potential Loss of Revenue Resulting from a Delay in Commencement of the Sale or Exchange of Electric Power, If Any, as a Result of a Construction Order.* FEA proposes to conclude that there will be no loss of revenue within the meaning of ESECA.

D. *The Relevant Regulations or Policies of Any State or Local Agency with Jurisdiction Over the Sale or Exchange of Electric Power by the Powerplant.* No relevant regulations or policies of any State or local agency with jurisdiction over the sale or exchange of electric power by the powerplant have been brought to FEA's attention that would affect the powerplant as a result of the FEA requirement that the powerplant be designed and constructed to be capable of using coal as its primary energy source, nor is FEA aware of any such regulations or policies. FEA, therefore, proposes to conclude that it is not necessary or appropriate to consider the effects on the powerplant of such regulations and policies.

[FR Doc.77-1115 Filed 1-10-77;10:32 am]

FEDERAL MARITIME COMMISSION

[Docket No. 76-43]

MATSON NAVIGATION CO.—PROPOSED RATE INCREASES IN THE UNITED STATES PACIFIC COAST/HAWAII DOMESTIC OFFSHORE TRADE

Modification of Order of Investigation

The Commission's Order of August 5, 1976, instituting this proceeding provided, inter alia, that:

The Commission is of the further opinion that action should be deferred in this investigation until the issues relating to the above described methodology (i.e., that employed by Matson in arriving at its rate of return figures, including its depreciated rate base and deferred income tax calculations) in either Docket No. 73-22 or Docket No. 75-57 are resolved and a final Commission decision therein issued, because a resolution of those issues in either of these cases will directly affect the course of this investigation.

* * * the hearing date shall not be set until this Commission issues a final decision on the issues relating to methodology in either Docket No. 73-22 or Docket No. 75-57.[1]

Matson Navigation Company (Matson) has now filed a motion requesting that the Commission amend its Order of Investigation to allow hearings to go forward on issues other than those concerned with Matson's methodology in calculating its rate base. The grounds cited by Matson are as follows:

(1) There is no issue as to 'mootness' in this proceeding.

(2) The basic statistical and financial data will have to be presented for the record, and the nature and scope of this presentation will not be affected by the rulings on methodology issues. The methodology rulings will affect only the legal significance of and conclusions to be drawn from the basic data.

(3) All the parties to the instant proceeding were also parties to the investigations in Docket No. 75-57 and 73-22. It will, therefore, be feasible to incorporate by reference in this proceeding appropriate portions of the record in the prior investigations. This will avoid duplicative effort. It is unnecessary to resolve the methodology issues in advance and the evidentiary hearing in this proceeding.

(4) At the conclusion of the evidentiary phase of the hearing, the Presiding Administrative Law Judge or the Commission may make any order appropriate in the premises with respect to methodology. Meanwhile, most of the time consuming work in the instant proceeding will have been completed.

The Military Sealift Command supports Matson's request. Commission Hearing Counsel "are not opposed to the Motion *per se*" but wish to preserve their right to object to holding hearings prior

[1] Docket No. 73-22, Matson Navigation Co.—Proposed Changes in Rates Between U.S. Pacific Coast and Hawaii, et al. and Docket No. 75-57, Matson Navigation Company—Proposed Rate Increases in the United States Pacific Coast/Hawaii Domestic Offshore Trade, are pending investigations into rate increases in the Hawaii/Pacific Coast trade. The methodology issues are the same in all these proceedings.

to the adjudication of Docket No. 73–22 or Docket No. 75–57, if it becomes apparent during the prehearing conference "that Matson's procedural proposals are unworkable or inequitable to the other parties in this proceeding."

We find merit in Matson's request. Accordingly, our Order of Investigation will be modified to allow the Presiding Administrative Law Judge to proceed forthwith with the investigation. It is still our intention, however, to avoid unnecessary expense and duplication of effort. Therefore, the issue as to the proper methodology to be applied will await the outcome of either Docket No. 73–22 or Docket No. 75–57. The methodology determinations which evolve from either of those proceedings can then be applied to the basic data in the instant proceeding. This procedure is particularly appropriate here in light of the fact that the parties are the same in all three proceedings.

Therefore, it is ordered, That our August 5, 1976 Order of Investigation and Hearing in this proceeding is amended by deleting, in the 6th ordering paragraph thereof, the phrase which reads "but in any event, the hearing date shall not be set until this Commission issues a final decision on the issues relating to methodology in either Docket No. 73–22 or Docket No. 75–57."

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.77–1120 Filed 1–12–77;8:45 am]

FEDERAL TRADE COMMISSION

STAFF MEMBERS

Delegation of Authority

Section 102(c) of the Magnuson-Moss Warranty Act prohibits a warrantor from conditioning the warranty on the consumer's use of another article or service which is identified by brand, trade, or corporate name and which is not provided without charge under the terms of the warranty. This section also provides that a warrantor may apply for a waiver of this prohibition. The procedure for hearing waiver applications is also set out in Section 102(c). It directs the Commission to "identify in the FEDERAL REGISTER, and permit public comment on, all applications for waiver of this subsection * * *", 15 U.S.C. 2302(c).

Pursuant to the authority provided by Reorganization Plan No. 4 of 1961 (26 FR 6191), the Federal Trade Commission announces that it has delegated the authority to order publication in the FEDERAL REGISTER of notices of applications for waiver of Section 102(c) of the Magnuson-Moss Warranty Act to the Director of the Bureau of Consumer Protection.

By direction of the Commission dated December 27, 1976.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77–1177 Filed 1–12–77;8:45 am]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on January 4, 1977 (FEA), and January 6, 1977 (CAB). 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 receipts.

The notice includes the title of each 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 FEA and CAB requests 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 requests, comments (in triplicate) must be received on or before January 31, 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, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–376–5425.

FEDERAL ENERGY ADMINISTRATION

FEA requests clearance of a new single-time voluntary proposed survey form FEA–U531–S–0, Buildings Workshops Survey. The voluntary evaluation forms will be used to help evaluate buildings workshops presented as a part of the Energy Conservation Workshops Program (ECWP). The ECWP will present a series of executive conferences and workshops. Participation in the program is voluntary. The conferences and workshops will promote accelerated implementation of conservation in the private sector. A control group of invitees who chose not to attend the workshops will be given the opportunity to supply information concerning buildings energy conservation by using Form U531–S–0. A sample of invitees choosing not to attend will be drawn to make up the control group and will be invited to fill out Form U531–S–0. The form will be distributed to and collected from the control group by mail. Workshop participants will also be given the opportunity to evaluate the workshops by completing Form U531–S–0 during the workshop. Data from Form FEA–U531–S–0 will be used in the management, monitoring, and evaluation of the Buildings Workshops. FEA estimates potential respondents will be approximately 4,600 building owners and managers, of which 4,000 will be conference attendees and 600 nonattendees; and burden is estimated to be 15 minutes per response.

FEA requests clearance of a new single time voluntary proposed survey form FEA–U532–S–O, Industrial Workshops Survey. The voluntary evaluation forms will be used to help evaluate industrial workshops presented as a part of the Energy Conservation Workshops Program (ECWP). The ECWP will present a series of executive workshops and conferences Participation in the program is voluntary. The conferences and workshops will promote accelerated implementation of conservation in the private sector. A control group of invitees who chose not to attend the workshops will be given the opportunity to supply information concerning industrial energy conservation by using Form U532–S–O. A sample of invitees choosing not to attend will be drawn to make up the control group and will be asked to fill out Form U532–S–O. The form will be distributed to and collected from the control group by mail. Workshop participants will also be given the opportunity to evaluate the workshops by completing Form U532–S–O during and following the workshop. Data from Form FEA–U532–S–O will be used in the management, monitoring and evaluation of the Industrial Workshops. FEA estimates potential respondents will be approximately 5,600 plant engineers and plant managers, of which 5,000 will be conference attendees and 600 nonattendees; and burden is estimated to be 20 minutes per response.

FEA requests clearance of a new single time voluntary proposed survey form FEA–U533–S–O, Vanpool Workshops Survey. The voluntary evaluation forms will be used to help evaluate vanpool workshops presented as a part of the Energy Conservation Workshops Program (ECWP). The ECWP will present a series of executive conferences and workshops. Participation in the program is voluntary.

Conferences and workshops will promote accelerated implementation of conservation in the private sector. All vanpool workshop participants will be given the opportunity to evaluate the conference using Form U533–S–O. A control group of invitees who chose not to attend will also be given the opportunity to supply information concerning vanpools by using Form U533–S–O. FEA estimates that close to 100 percent of the participants will wish to comment. For the control group FEA estimates a lower response rate. Form U533–S–O will be distributed to and collected from participants at each workshop and distributed to non-participants by mail. Data from Form FEA–U5333–S–O will be used in the management, monitoring, and evaluation of the Vanpool Workshops. FEA estimates potential respondents will be approximately 3,000 commercial and industrial organization workshop participants and 600 nonattendees and burden is estimated to be 5 minutes per response.

CIVIL AERONAUTICS BOARD

CAB requests an extension no change clearance of the recordkeeping requirements contained in Part 208 of the Board's Economic Regulations—Terms, Conditions and Limitations of Certificates to Engage in Supplemental Air Transportation. These recordkeeping requirements are mandatory under the Federal Aviation Act of 1958, as amended. CAB estimates that of the 7 active U.S. supplemental air carriers, one or more operates daily a charter flight. Under Part 208 of the Board's regulations the chartering organization is required to file two primary reports with the air carrier; one is a passenger list (name, address, telephone number, length of membership in the organization and relation thereto) and the other report is the statement of supporting information which gives all the significant details about the charter flight. CAB estimates it would take each of the carriers approximately two hours to prepare these two reports for each charter if requested by CAB to submit them. When CAB is informed or suspects a charter flight is not proper it requests submission of these documents.

CAB requests an extension no change clearance of Form 321, Report of Cargo Operations Under Foreign Aircraft Permit. This form is an after-flight cargo report filed by carriers authorized to conduct operations under section 1108(b) of the Federal Aviation Act of 1958, as amended. Submission of Form 321 by these carriers is mandatory under the Act. Initial reports must be submitted not later than the 30th day following commencement of operations and shall report all flights conducted during that period; like reports shall be filed for each succeeding 30-day period. CAB estimates potential respondents are 5 foreign private air carriers and reporting burden is estimated to be 30 minutes per response.

JOHN M. LOVELADY,
Acting Assistant Director,
Regulatory Reports Review.

[FR Doc.77-1147 Filed 1-12-77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Resources Administration

ADVISORY COUNCILS

Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, (5 U.S.C. Appendix I), the Health Resources Administration announces the rechartering by the Secretary, HEW, on the dates indicated, of the following advisory Councils:

Councils	Rechartering date	Termination date
National Council on Health Planning and Development.	Dec. 3, 1976	Continuing.
National Advisory Council on Nurse Training.	Dec. 8, 1976	Do.
Federal Hospital Council....	Dec. 21, 1976	Do.

Authority for these Councils is continuing and charters will be filed every two years in accordance with section 14(b)(2) of Pub. L. 92-463.

Dated: January 7, 1977.

CLIFFORD ALLEN,
Acting Associate Administrator for Operations and Management.

[FR Doc.77-1182 Filed 1-12-77;8:45 am]

GRANTS FOR PHYSICIANS' ASSISTANTS TRAINING PROGRAMS

Announcement of Application Cycle and Funding Preferences

The Bureau of Health Manpower, Health Resources Administration, announces that applications for grants in fiscal year 1977 for Physicians' Assistants Training Programs are now being accepted under authority of section 774(a) of the Public Health Service Act, as extended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 774(a) of the Public Health Service Act (42 U.S.C. 295f-4(a)) authorizes the Secretary of Health, Education, and Welfare to make grants to public and nonprofit private health or educational entities for the purpose of improving the distribution, supply, quality, utilization, and efficiency of health personnel and the health services delivery system.

This application cycle and announcement of funding preferences for grants for Physicians' Assistants Training Programs under Section 774(a) is in addition to the application cycle for Health Manpower Education Initiative Projects under Section 774(a), previously announced in the FEDERAL REGISTER on November 23, 1976 (41 FR 51657).

Section 57.2606(a) of the implementing regulations (42 CFR Part 57, Subpart AA), provides that the Secretary in awarding grants will take into consideration, among other pertinent factors, the national need which the particular project proposes to serve.

Notice is hereby given that the Secretary has determined there is a priority national need for programs to train physicians' assistants, especially in States which have no such programs, and further, to maintain the output of trained physicians' assistants in current programs. Therefore, for grants in fiscal year 1977 for Physicians' Assistants Training Programs, preference in funding will be given to projects to:

1. Establish programs in States which do not have a training program, or
2. Prevent a reduction of the number of students currently being trained in an accredited program.

Although funding preference will be given to projects addressing the national needs, all applications for Physicians' Assistants Training Programs will be received and considered for funding.

It should be noted that the accrediting body recognized by the Commissioner of Education for physicians' assistants training programs is the Council on Medical Education of the American Medical Association.

A "health or educational entity" is defined in the regulations (§ 57.2602(f)) as "a public agency or organization or a private nonprofit organization which has the provision of health or educational programs as one of its major functions." Eligible applicants may request application materials by contacting immediately the Regional Health Administrator of the appropriate DHEW Regional Office (addresses indicated below).

To be considered for fiscal year 1977 funding, completed applications must be submitted to the Regional Health Administrator of the appropriate Regional Office no later than February 1, 1977.

DHEW regional offices	*States within regions*
Regional Health Administrator, DHEW Region I—PHS, J. F. Kennedy Federal Building, Government Center, Boston, Mass. 02203.	Connecticut, Maine, Vermont, New Hampshire, Rhode Island, and Massachusetts.
Regional Health Administrator, DHEW Region II—PHS, Federal Building, 26 Federal Plaza, New York, N.Y. 10007.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Regional Health Administrator, DHEW Region III—PHS, P.O. Box 13716, Philadelphia, Pa. 19101.	Delaware, Maryland, Virginia, West Virginia, Pennsylvania, and District of Columbia.
Regional Health Administrator, DHEW Region IV—PHS, Peachtree-Seventh Bldg., 50 7th St. NE., Atlanta, Ga. 30323.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Regional Health Administrator, DHEW Region V—PHS, 300 South Wacker Dr., Chicago, Ill. 60606.	Illinois, Indiana, Michigan, Ohio, Wisconsin, and Minnesota.
Regional Health Administrator, DHEW Region VI—PHS, 1200 Main Tower Building, Dallas, Tex. 75202.	Arkansas, Louisiana, New Mexico, Texas, and Oklahoma.
Regional Health Administrator, DHEW Region VII—PHS, Federal Office Bldg., 601 East 12th St., Kansas City, Mo. 64106.	Iowa, Missouri, Kansas, and Nebraska.
Regional Health Administrator, DHEW Region VIII—PHS, Federal Office Bldg., 19th and Stout Sts., Denver, Colo. 80202.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Regional Health Administrator, DHEW Region IX—PHS, Federal Office Bldg., 50 United Nations Plaza, San Francisco, Calif. 94102.	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Trust Territory of the Pacific Islands.
Regional Health Administrator, DHEW Region X—PHS, Arcade Plaza Bldg., 1321 2d Avenue, Seattle, Wash. 98101.	Alaska, Idaho, Oregon, and Washington.

Dated: January 6, 1977.

HAROLD MARGULIES,
Acting Administrator,
Health Resources Administration.

[FR Doc.77-1093 Filed 1-12-77;8:45 am]

NATIONAL COUNCIL ON HEALTH PLANNING AND DEVELOPMENT

Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to assemble during the month of February 1977.

Name: National Council on Health Planning and Development.

Date and time: February 14, 1977, 9 a.m.

Place: HEW Auditorium, 330 Independence Avenue, SW, Washington, D.C. 20201.

Open for entire meeting.

Purpose: The National Council on Health Planning and Development is responsible for advising and making recommendations with respect to (1) the development of national guidelines under section 1501 of Pub. L. 93-641, (2) the implementation and administration of Title XV and XVI of Pub. L. 93-641, and (3) an evaluation of the implications of new medical technology for the organization, delivery and equitable distribution of health care services. In addition, the Council advises and assists the Secretary in the preparation of general regulations to carry out the purposes of section 1122 of the Social Security Act and on policy matters arising out of the implementation of it, including the coordination of activities under that section with those under other parts of the Social Security Act or under other Federal or federally assisted health programs. The Council considers and advises the Secretary on proposals submitted by the Secretary under the provisions of section 1122(d)(2) that health care facilities or health maintenance organizations be reimbursed for expenses related to capital expenditures notwithstanding that under section 1122(d)(1) there would otherwise be exclusion of reimbursement for such expenses.

Agenda: This meeting of the Council will primarily be devoted to planning the future work schedule.

The meeting is open to the public for observation. A portion of the meeting will be available for comments and public participation. Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Mr. Daniel I. Zwick, Room 10A-56, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1206.

Agenda items are subject to change as priorities dictate.

Date: January 7, 1977.

CLIFFORD ALLEN,
Acting Associate Administrator for Operations and Management.

[FR Doc.77-1181 Filed 1-12-77;8:45 am]

National Institutes of Health

NATIONAL ADVISORY EYE COUNCIL

Meeting Change

Notice is hereby given of a change in the meeting of January 24, 25, and 26, 1977 of the National Advisory Eye Council, National Eye Institute which was published in the FEDERAL REGISTER on December 21, 1976, 41 FR 55592.

This meeting was to have convened at 9:00 a.m. on all three days, but has been changed to convene at 8:30 a.m. on all three days. On Monday, January 24, the meeting was to have been open to the public until 3:30 p.m., but has been changed to remain open to the public only until 1:30 p.m. The schedules for Tuesday, January 25, and Wednesday, January 26, will remain as published in the above cited issue of the FEDERAL REGISTER, i.e., closing at approximately 3:30 p.m. until adjournment on Tuesday, January 25 for the review of grant applications and remaining closed for the entire day of Wednesday, January 26, 1977.

Dated: January 10, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-1255 Filed 1-12-77;8:45 am]

NATIONAL ADVISORY EYE COUNCIL

Vision Research Program Planning Subcommittee; Meeting Cancelled

Notice is hereby given of the cancellation of the meeting of the Vision Research Program Planning Subcommittee of the National Advisory Eye Council, National Eye Institute, on Sunday, January 23, 1977, Building 31, Room 6A-21, which was published in the FEDERAL REGISTER on January 4, 1977, 42 FR 860.

(Catalog of Federal Domestic Assistance Program No. 13.331, National Institutes of Health).

Dated: January 10, 1977.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc.77-1254 Filed 1-12-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 29467, 29476, 29477, and 29480]

NEW MEXICO

Applications

JANUARY 6, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 6⅝-inch three 4½-inch natural gas pipeline rights-of-way across the following lands:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 22 S., R. 25 E.,
Sec. 4, SW¼SE¼;
Sec. 9, NE¼;
Sec. 10, lots 7, 8, W½SW¼ and SE¼SW¼;
Sec. 11, SW¼;
Sec. 14, W½NE¼, E½NW¼, N½SE¼ and SE¼SE¼;
Sec. 23, E½NE¼ and NE¼SE¼.
T. 20 S., R. 29 E.,
Sec. 17, SE¼NE¼, N½SE¼ and SW¼SE¼;
Sec. 20, NW¼NE¼.
T. 18 S., R. 32 E.,
Sec. 27, NW¼NE¼ and E½W½;
Sec. 34, E½NW¼.

These pipelines will convey natural gas across 6.439 miles of national resource lands in Eddy and Lea Counties, 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.77-1159 Filed 1-12-77;8:45 am]

[NM 29479]

NEW MEXICO

Application

JANUARY 6, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 31 N., R. 10 W.,
Sec. 22, lots 1 and 8;
Sec. 23, lot 2.

This pipeline will convey natural gas across .488 mile of national resource land in San Juan County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-1160 Filed 1-12-77;8:45 am]

[M 141]

SOUTH DAKOTA

Transfer of Submarginal Lands, Crow Creek Indian Reservation

JANUARY 7, 1977.

1. Pursuant to Public Law 94-114 (89 Stat. 577) and Sec. 2 thereof the land described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the use and benefit of the Crow Creek Sioux Tribe of South Dakota. The land shall be a part of the established Crow Creek Indian Reservation. These lands were submarginal lands ac-

quired under Title II of the National Industrial Recovery Act of June 16, 1933 (48 Stat. 200), the Emergency Relief Appropriation Act of April 8, 1935 (49 Stat. 115), and Sec. 55 of the Act of August 24, 1935 (49 Stat. 750, 781). This notice is issued under the authority delegated to me by Bureau Order No. 701, dated July 23, 1946, as amended.

2. All existing mineral lease, including oil and gas leases, which has been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Crow Creek Sioux Tribe.

FIFTH PRINCIPAL MERIDIAN, SOUTH DAKOTA

T. 106 N., R. 69 W.,
Sec. 7, Lots 1 and 2, and E½NW¼;
Sec. 8, W½SW¼; and
Sec. 20, E½NW¼ and SW¼.
T. 107 N., R. 69 W.,
Sec. 17, W½SW¼;
Sec. 19, NE¼;
Sec. 30, Lots 1 and 2, NE¼, and E½NW¼; and
Sec. 32, W½NW¼.
T. 106 N., R. 70 W.,
Sec. 2, SE¼;
Sec. 5, Lots 1 and 2, S½NE¼, and SE¼;
Sec. 8, NE¼, SW¼, and W½SE¼;
Sec. 16, S½NW¼;
Sec. 17, NE¼; and
Sec. 19, Lots 3 and 4.
T. 107 N., R. 70 W.,
Sec. 16, NE¼;
Sec. 19, E½;
Sec. 21, NE¼; and
Sec. 26, All.
T. 106 N., R. 71 W.,
Sec. 1 Lot 1 and SE¼NE¼.
T. 107 N., R. 71 W.,
Sec. 1, Lots 1 and 2, and S½NE¼;
Sec. 9, Lots 2, 3, 6, and 7, SW¼NE¼, and SE¼NW¼;
Sec. 11, SW¼ and NW¼SE¼;
Sec. 13, NE¼;
Sec. 22, E½NW¼ and SW¼.
Sec. 26, S½;
Sec. 27, SE¼;
Sec. 35, NW¼; and
Sec. 36, E½NE¼ and E½SW¼.
T. 108 N., R. 71 W.,
Sec. 2, Lots 1 and 2, and S½NE¼;
Sec. 3, Lots 1 and 2, and S½NE¼ (except west 3 rods of all)
Sec. 4 ,Lots 2, 3, and 4, SW¼NE¼, S½NW¼, and SW¼;
Sec. 5, W½SW¼;
Sec. 11, SW¼;
Sec. 17, W½;
Sec. 18, Lots 3 and 4, E½ and E½SW¼;
Sec. 28, SE¼;
Sec. 34, NW¼; and
Sec. 35, W½NE¼.
T. 109 N., R. 71 W.,
Sec. 23, SE¼;
Sec. 24, SE¼;
Sec. 27, E½;
Sec. 32, W½SW¼;
Sec. 34, E½NE¼, E½NW¼, and SW¼; and
Sec. 35, E½NW¼.
T. 107 N., R. 72 W.,
Sec. 3, SW¼.
T. 108 N., R. 72 W.,
Sec. 2, NW¼SE¼;
Sec. 21, S½; and
Sec. 23, SE¼.
T. 109 N., R. 72 W.,
Sec. 17, N½;
Sec. 21, E½;
Sec. 22, W½SW¼;
Sec. 25, NE¼;
Sec. 26, N½ and S½SW¼;
Sec. 28, SE¼; and
Sec. 35, N½NW¼ and W½SW¼.
T. 108 N., R. 73 W.,
Sec. 32, NW¼NE¼, W½NE¼NE¼, W½SE¼NE¼NE¼, W½SW¼NE¼, W½E½SW¼NE¼, NE¼NE¼SW¼NE¼, and that portion of the W½NE¼NE¼NE¼ bounded by south and west sides and a diagonal line extending from the northwest corner to the southeast corner.
T. 109 N., R. 73 W.,
Sec. 2, Lots 1 and 2;
Sec. 3, Lots 3 and 4, S½NW¼, and SE¼;
Sec. 4, Lot 3, SE¼NW¼, and SE¼;
Sec. 10, E½SE¼;
Sec. 11, W½SW¼;
Sec. 14, SE¼;
Sec. 19, N½ of Lot 3, N½S½ of Lot 3 except triangular portion of N½S½ of east 660 feet of Lot 3 bounded by the south and east sides and a line extending from the northeast corner to the southwest corner, N½NE¼SW¼, SE¼NE¼SW¼, NW¼NW¼SE¼, and that portion of the SW¼NW¼SE¼ bounded by the north and west sides and a diagonal line extending from the northeast corner to the southwest corner;
Sec. 20, N½SW¼SE¼, N½S½SW¼SE¼, SE¼SE¼SW¼SE¼, and SE¼SE¼;
Sec. 22, SW¼;
Sec. 23, NE¼;
Sec. 27, NE¼; and
Sec. 29, NE¼NE¼NE¼NE¼.
T. 108 N., R. 74 W.,
Sec. 3, SW¼NW¼, W½NW¼SW¼, W½E½NW¼SW¼, NE¼NE¼NW¼SW¼, SE¼SE¼NW¼SW¼, and that portion of W½NW¼SE¼NW¼ bounded by north and west sides and a diagonal line extending from the northeast corner to the southwest corner thereof;
Sec. 4, S½N½ and N½S½;
Sec. 7, NE¼;
Sec. 15, SE¼; and
Sec. 17, NE¼.
T. 109 N., R. 74 W.,
Sec. 1, Lots 3 and 4, and S½NW¼;
Sec. 3, Lots 3 and 4, and S½NW¼;
Sec. 6, Lots 1, 2, 3, 4, and 5, S½NE¼, and SE¼NW¼;
Sec. 7, Lots 1 and 2, NE¼, and E½NW¼;
Sec. 8, W½NW¼;
Sec. 10, SE¼;
Sec. 11, W½NW¼;
Sec. 13, S½S½;
Sec. 14, SE¼;
Sec. 17, NE¼;
Sec. 20, W½SW¼;
Sec. 21, SW¼;
Sec. 28, NE¼ and SW¼;
Sec. 29, SW¼;
Sec. 32, NW¼; and
Sec. 33, NE¼ and E½NW¼.
T. 108 N., R. 75 W.,
Sec. 1, Lots 1, 2, 3, and 4, S½N½;
Sec. 5, Lots 1 and 2, and S½NE¼;
Sec. 13, NW¼ and N½SW¼;
Sec. 14, E½SE¼;
Sec. 18, N½ of Lot 1, East 660 feet of S½ of Lot 1, East 660 feet of N½ of Lot 2, East 330 feet of S½ of Lot 2, East 660 feet of N½ of Lot 5, East 330 feet of S½ of Lot 5, E½NW¼, N½NE¼SW¼, SE¼NE¼SW¼, and E½SW¼NE¼SW¼;
Sec. 19, NE¼NE¼, N½N½NW¼NE¼, SE¼NE¼NW¼NE¼, E½SE¼NW¼NE, N½SE¼NE¼, NE¼SW¼SE¼NE¼, N½SE¼SE¼NE¼, and SE¼SE¼SE¼NE¼;
Sec. 20, N½; and
Sec. 21, NW¼.
T. 109 N., R. 75 W.,
Sec. 19, E½SE¼ and SW¼SE¼;
Sec. 20, E½NW¼, and SW¼NW¼, E½NW¼NW¼, SW¼NW¼NW¼, and E½NW¼NW¼NW¼;
Sec. 30, Lots 3 and 4, E½ and E½SW¼; and
Sec. 36, S½NE¼ and NW¼.
T. 109 N., R. 76 W.,
Sec. 25, South 660 feet of the east 660 feet of Lot 2, east 330 feet of south 990 feet of Lot 4, E½NE¼SE¼, SW¼NE¼SE¼, S½NW¼NE¼SE¼, N½SW¼SE¼, SE¼SW¼SE¼, N½SW¼SW¼SE¼, SE¼SW¼SW¼SE¼, and SE¼SE¼. (This tract is off reservation).

The areas described aggregate 19,169.89 acres.

EDWIN ZAIDLICZ,
State Director.

[FR Doc.77-1125 Filed 1-12-77;8:45 am]

Fish and Wildlife Service

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (P.L. 93-205).

Applicant: Caretta Research, Inc., Post Office Drawer E, Sanibel, Florida 33957, Charles R. LeBuff, Jr.

CARETTA RESEARCH,
Sanibel Island, Florida,
October 12, 1976.

Mr. C. R. BAVIN, Chief,
Division of Law Enforcement,
U.S. Fish & Wildlife Service,
Washington, D.C.

DEAR MR. BAVIN: Reference is made to Mr. Hester's letter dated 21 September 1976 relative to the above cited Endangered Species permit application that would allow Caretta Research, Inc. to collect six eggs or hatchlings of the leatherback turtle (*Dermochelys coriacea*). The additional information which was requested in the form of two questions is discussed below:

1. We have transported both eggs and hatchlings of *Caretta caretta* in styrofoam containers with excellent results. In the case of viable eggs we have customarily surrounded them with sand whereas with hatchlings, providing they are in transit, we have simply maintained them moist and carefully watched the temperature situation. We propose to transport the leatherback eggs/hatchlings in a like manner.

2. In the five year period preceding the date of our application we have maintained seven (7) individuals of this genus (*Dermochelys*). In 1973 three specimens were available from the Florida Department of Natural Resources and we attempted to rear the three. As has been typical like everyone who tried before us we were unsuccessful. In 1975 Mr. Phillips tried with four hatchlings and successfully brought three back to Florida for release (at nine months of age). The fourth specimen succumbed because of a feeding error. According to Mr. Phillips "The leatherback which died was being kept by the Springfield College (Mass.). The food

was cut into large pieces and it was unable to swallow them. One piece got lodged in its throat and it could neither get it down or back out and choked to death. To prevent this, food must be cut into smaller pieces. The deceased specimen is preserved and in my possession. It is used as a visual aid during my lectures to school children in Westfield and Longmeadow (Mass.) schools."

We hope that the above information is satisfactory and meets the requirements for material which you requested.

Sincerely yours,

CARETTA RESEARCH, INC.,
CHARLES R. LEBUFF, Jr.,
Project Director.

CARETTA RESEARCH,
Sanibel Island, Florida 33957,
September 7, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service,
Washington, D.C.

DEAR SIR: Reference is made to our letter and Federal Fish and Wildlife License/Permit Application dated 27 August 1976.

This is to advise that we have received approval from the Florida Department of Natural Resources to go forward with the subject study for which the endangered species permit is requested. A copy of the letter of State approval is attached and should be appended to our permit application paperwork.

Sincerely yours,

CARETTA RESEARCH, INC.,
CHARLES R. LEBUFF, JR.,
Project Director.

STATE OF FLORIDA,
Department of Natural Resources,
September 3, 1976.

Mr. CHARLES R. LEBUFF, JR.,
Project Director,
Caretta Research,
Sanibel Island, Florida.

DEAR MR. LEBUFF: Thank you for your letter of 27 August 1976 requesting an amendment to your current turtle permit. Rather than issue a separate permit, you may use this letter as the amendment.

Caretta Research, Inc., is authorized to collect six eggs or hatchlings of the leatherback turtle, *Dermochelys coriacea*, (endangered species) from Florida or import from Costa Rica; transport to Massachusetts; rear said hatchlings and return survivors to Florida at 9–10 months of age for release (June, 1978).

Best wishes for success.

Yours truly,

DIVISION OF MARINE RESOURCES,
CHARLES R. FUTCH,
Assistant Bureau Chief, Bureau of
Marine Science and Technology.

CARETTA RESEARCH
Sanibel Island, Florida 33957,
August 27, 1976.

DIRECTOR (FWS/LE),
U.S. Fish and Wildlife Service,
Washington, D.C.

DEAR SIR: Enclosed is a completed Federal Fish and Wildlife license/permit application and the necessary attachments.

Mr. Edward J. Phillips, one of our special project directors, has been remarkably successful in captive rearing hatchling leatherback turtles. He has recently maintained this species in a closed system aquarium far longer than anyone thought possible. His success has excited several marine turtle specialists.

A few weeks ago at a sea turtle conference here in Florida we discussed Mr. Phillips' experiences and new techniques relative to the leatherback turtle with Dr. Archie Carr, well-known marine turtle specialist at the University of Florida. Dr. Carr was of the opinion that Caretta Research, Inc. should continue studies on the captive rearing of these endangered sea turtles. He offered his help in obtaining eggs or hatchlings.

We hope that the application and attachments are in order and our permit will be approved without delay.

Sincerely yours,

CARETTA RESEARCH, INC.,
CHARLES R. LEBUFF, JR.,
Project Director.

OMB NO. 42-R1675

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
Collect six (6) eggs or hatchlings of the leatherback turtle, *Dermochelys coriacea*, (endangered species), from Florida or import from Costa Rica; transport to Massachusetts; captive rear young; return those surviving to Florida at 9 - 10 months of age for release (June 1978).

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Caretta Research, Inc.
Post Office Drawer E
Sanibel, Florida 33957
(813) 472-1041

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT: WEIGHT:
DATE OF BIRTH: COLOR HAIR: COLOR EYES:
PHONE NUMBER WHERE EMPLOYED: SOCIAL SECURITY NUMBER:
OCCUPATION:

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Marine turtle research and conservation.
Non-profit corporation

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT:

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC. (813) 472-1041
Charles R. LeBuff, Jr., Pres.
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Florida

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Eggs or hatchlings will be collected in Florida or Costa Rica. Young will be maintained by Edward J. Phillips at 71 Jefferson St., Westfield, Massachusetts 01085

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit numbers)
PRT 8-3499-I-C

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of documents)
State of Florida approval for this activity applied for and pending.

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF:
$

10. DESIRED EFFECTIVE DATE: July 1, 1977
11. DURATION NEEDED: one year

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(a)) MUST BE ATTACHED. IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.
50 CFR 17.22

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink): Charles R. LeBuff, Jr.
DATE: August 27, 1976

3-200
10/74

ATTACHMENT TO FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

Dated: August 27, 1976.

From Caretta Research, Inc., Post Office Drawer E, Sanibel, Florida 33957.

From Title 50 CFR 17.22

(A) Application requirements

1. Leatherback turtle, *Dermochelys coriacea*, endangered species. To allow collection of six (6) eggs or hatchlings in the State of Florida or from Costa Rica, transport same to Massachusetts where they will be captive reared for nine or ten months; those surviving will be returned to Florida and released.

2. The eggs/hatchlings would be collected during the summer of 1977.

3. Viable eggs or hatchlings of this marine turtle are only available in the wild.

4. Not applicable

5. The hatchlings will be maintained under the supervision of Edward J. Phillips in his home at 71 Jefferson Street, Westfield, Massachusetts 01085—Phone (413) 568-3692.

6. The specimens will be kept in a series of 20 gallon marine aquariums. These will be filtered and temperature controlled.

7. Mr. Phillips has successfully reared *Dermochelys* hatchlings utilizing the above equipment. He has written a paper, "Raising *Dermochelys coriacea* L. hatchlings," which is in press with the *British Journal of Herpetology* at the time this application was prepared.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-363-07; please refer to this number when submitting comments. All relevant comments received within 30 days of the date of publication will be considered.

Dated: January 10, 1977.

DONALD G. DONOHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1112 Filed 1-12-77;8:45 am]

ENDANGERED SPECIES PERMIT

Receipt of Application

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: St. Louis Zoological Park, Forest Park, St. Louis, Missouri 63110, Richard D. Schultz, Director.

OMB NO. 42-R1275

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED.
To ship one female captive reared White Eared Pheasant Crossoptilon crossoptilon drouyni from Charles Sivelle, 41 Westcliff Drive, Dix Hills, New York 11746, for display, propagation and zoological purposes.

3. APPLICANT. (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
St. Louis Zoological Park
Forest Park
St. Louis, Missouri 63110
1-314-781-0900

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
City and county owned public zoo, USDA licensed, engaged in conservation and propagation of wildlife, education, exhibits, research and recreation.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Richard D. Schultz, Director
IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
St. Louis Zoological Park
Forest Park
St. Louis, Missouri 63110
1-314-781-0900

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT ☒ YES ☐ NO
(If yes, list license or permit numbers)
ES-14, ES-311, ES-156, ES-331, 6-SP-77, PRT-7-172-P-2 (K.C.), 6-SC-78, PRT-2-291

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☐ YES ☒ NO
(If yes, list jurisdictions and type of document)
N/A

9. CERTIFIED CHECK OR MONEY ORDER (if applicable) PAYABLE TO THE U.S. FISH AND WILDLIFE SERVICE ENCLOSED IN AMOUNT OF
$ N/A

10. DESIRED EFFECTIVE DATE: Feb.-April, 1977
11. DURATION NEEDED: until completed

12. ATTACHMENTS. THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE/PERMIT REQUESTED (See 50 CFR 13.12(b)) MUST BE ATTACHED, IT CONSTITUTES AN INTEGRAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS IN SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND I FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (In ink) — DATE
Nov 23 '76

3-200
(8/75)

ST. LOUIS ZOOLOGICAL PARK,
Saint Louis, Missouri, November 17, 1976.

MR. RICK PARSONS,
Chief, Federal Wildlife Permit Office, U.S. Fish & Wildlife Service, Washington, D.C.

DEAR MR. PARSONS: The St. Louis Zoological Park hereby applies for an endangered species permit under Section 10(a) of the Endangered Species Act of 1973. We submit the following information pursuant to Sections 13.12 of Volume 39, No. 3 and 17.22 of Volume 40, No. 188 of the Federal Register.

1. Request is for permit to obtain one female 1976 hatch Tibetan White Eared Pheasant *Crossoptilon crossoptilon drouyni* by means of interstate commerce.

2. (iii.) The specimen was captive-born.

3. Not applicable.

4. The specimen was hatched and reared at the privately owned pheasant collection of Mr. Charles Sivelle, 41 Westcliff Drive, Dix Hills, New York 11746, U.S.A.

5. The birds will be maintained at the St. Louis Zoological Park, Forest Park, St. Louis, Missouri 63110. A current zoo album and other appropriate materials are on file with U.S. Fish & Wildlife Service, Law Enforcement Division. (Please consult Endangered Species application and materials submitted October 13, 1975 for original pair of White Eared Pheasants). We are also submitting a current annual report.

6. (i.) Please consult application and materials of October 13, 1975 for photos and drawings.

(ii.) The curatorial staff, as well as the keepers of the bird department have a long history of success in rearing waterfowl, pheasants, ratites, as well as various perching birds and birds of prey. Great expense and effort has also been invested in propagating and rearing facilities.

(iii) Offspring resulting from successful propagation will be made available to cooperative zoological institutions to insure future captive populations. The St. Louis Zoo is also involved in cooperative breeding programs, studbook data maintenance, as well as ISIS (International Species Inventory System) in an effort to enhance captive propagation of all zoo species, especially those of rare and endangered status.

(iv.) The bird will be shipped in a crate similar and equal to International Air Transport Association, Style "K" (see enclosure) taken from I.A.T.A. Live Animal Regulations, 5th Edition, June 1, 1976, Geneva, Switzerland.

(v.) See enclosure

7. See Enclosures

8. (i.) The bird will be maintained for propagation and zoological purposes.

(ii.) Modern avicultural techniques already in practice at the St. Louis Zoo, such as artificial incubation and the utilization of brooding and rearing facilities will be used (consult photos from October 13, 1975 application).

(iii.) Studies of reproductive behavior will be conducted. Progeny resulting from propagational efforts will be available to cooperating zoological institutions to insure future captive populations, thus relieving pressures on the collecting of wild stock.

(iv.) Autopsies will be performed on the deceased specimen and if desirable, its remains will be made available to appropriate public educational facilities.

A completed form 3-200 with accompanying documents regarding this request are enclosed. We sincerely hope that we can receive

your consideration on our request at your earliest convenience.

Sincerely,

CHARLES H. HOESSLE,
General Curator,
Deputy Director.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, N.W., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-509-07; please refer to this number when submitting comments. All relevant comments received within 30 days of the date of publication will be considered.

Dated: January 10, 1977.

DONALD G. DONOHOO,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.77-1111 Filed 1-12-77;8:45 am]

Bureau of Land Management

[INT FES 77-1]

FUTURE DEVELOPMENT OF FEDERAL COAL RESOURCES IN NORTHWEST COLORADO

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Final Environmental Statement (ES) on the Development of Federal Coal Resources in Northwest Colorado.

The statement contains site-specific environmental assessments of four proposed coal mining plans plus a right-of-way application for a proposed 25-mile railroad. In a regional analysis, the ES further addresses the cumulative effects of the proposed actions and possible future Federal actions that would lead to increased coal development in Routt, Moffat, and northern Rio Blanco Counties.

Public reading copies are available for review at the following locations:

BUREAU OF LAND MANAGEMENT OFFICES

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, N.W., Washington, D.C. 20240.
Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.
State District Office, 455 Emerson Street, Craig, Colorado 81625.

U.S. GEOLOGICAL SURVEY OFFICES

Area Oil and Gas Supervisor, U.S. Geological Survey, Denver Federal Center, Post Office Box 25046, Denver, Colorado 80225.
U.S. Geological Survey, Public Inquiries Office, National Center, Mail Stop 302, Reston, Virginia 22092.
U.S. Geological Survey, Library Exchange and Gift Unit, National Center, Mail Stop 950, Reston, Virginia 22092.

COUNTY COURTHOUSES

Moffat County Courthouse, Craig, Colorado 81625.
Routt County Courthouse, 523 Lincoln, Steamboat Springs, Colorado 80477.
Rio Blanco County Courthouse, Meeker, Colorado 81641.

PUBLIC LIBRARIES

Conservation Library, Denver Public Library, 1357 Broadway, Denver, Colorado 80206.
Public Library of Craig, Colorado 81625.
Public Library of Hayden, Colorado 81639.
Public Library of Oak Creek, Colorado 80467.
Public Library of Meeker, 200 Main Street, Meeker, Colorado 81641.
Public Library of Rangely, 109 East Main, Rangely, Colorado 81648.
Werner Memorial Library, Steamboat Springs, Colorado 80477.

A limited number of copies are available upon request by writing to the Colorado State Office or to the Craig District Office.

Notice of availability of the draft environmental statement appeared in the FEDERAL REGISTER, Vol. 41, No. 110—June 7, 1976 41 FR 22850. Written comments were invited for a 45-day review period which was extended to September 1, 1976, by request. Additional opportunity to comment was provided by public hearings held in Craig, Colorado, and Denver on July 7 and 8, respectively, and again on August 17 and 18, by request.

The final environmental statement contains specific responses to both written comments and oral testimony that dealt with the adequacy of environmental analyses contained in the draft environmental statement.

Necessary revisions have also been made in the FES to reflect newly enacted coal mining operating regulations, the new EMARS Federal coal leasing procedures, and the Federal Coal Leasing Amendments Act of 1975.

ARNOLD E. PETTY,
Acting Associate Director,
Bureau of Land Management.

Approved: January 7, 1977.

RONALD G. COLEMAN,
Assistant Secretary of the Interior.

[FR Doc.77-1149 Filed 1-12-77;8:45 am]

[Int Des 77-1]

GRAZING MANAGEMENT; SAN LUIS RESOURCE AREA, COLORADO

Availability of Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared an environmental statement on grazing management in the San Luis Resource Area, Colorado, and invites written comments by March 1, 1977.

The draft statement analyzes environmental impacts that would result from implementation of intensive grazing management plans, including necessary range improvements, on 92 percent of the national resource land (NRL) (473,916 acres) in the San Luis Valley. Other allotments would be managed less intensively (16,625 acres), or would be entirely eliminated from grazing use (5,930 acres). The remaining 19,900 acres are not currently grazed by livestock and that status would remain the same.

Copies of the draft statement are available for inspection at the following locations:

Bureau of Land Management, Office of Information, Interior Building, 18th and C Streets, NW, Washington, D.C. 20240 (Phone: (202) 343-5717).
Bureau of Land Management, Room 700, Colorado State Bank Bldg., 1600 Broadway, Denver, Colorado 80202 (Phone: (303) 837-4481).
Canon City District Office, Bureau of Land Management, 3080 E. Main Street, P.O. Box 311, Canon City, Colorado 81212 (Phone: (303) 175-7494).
San Luis Resource Area Office, Bureau of Land Management, 1921 State Street, Alamosa, Colorado 81101 (Phone: (303) 589-4975).

PUBLIC LIBRARIES

Carnegie Public Library, 120 Jefferson, Monte Vista, Colorado 81144.
Saguache County Public Library, 702 Pitkin, Saguache, Colorado 81149.
Southern Peaks Library, 424—4th, Alamosa, Colorado 81101.
Conservation Library, Denver Public Library, 1357 Broadway, Denver, Colorado 80206.

COUNTY COURTHOUSES

Alamosa County, Alamosa, Colorado.
Conejos County, Conejos, Colorado.
Rio Grande County, Del Norte, Colorado.
Saguache County, Saguache, Colorado.

Single copies of the draft statement can be obtained from the District Manager, Canon City District Office, Bureau of Land Management, 3080 E. Main Street, P.O. Box 311, Canon City, Colorado 81212; the Area Manager, San Luis Resource Area Headquarters, Bureau of Land Management, 1921 State Street, Alamosa, Colorado 81101; or the State Director, Colorado State Office, Bureau of Land Management, Room 700 Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202.

Written comments on the draft environmental statement should be submitted by March 1, 1977, to the District Manager, Canon City District Office, Bureau of Land Management, 3080 E. Main Street, P.O. Box 311, Canon City, Colorado 81212.

Oral and written comments will also be received at a public hearing on February 23, 1977, at the Alamosa County Court House, Alamosa, Colorado. Hearing times are scheduled at 1 p.m. and 7 p.m.

Oral testimony of 10 minutes maximum duration will be accepted from each witness at the hearing in lieu of written comments or in addition to any written comments submitted by such witness. The 10-minute time limitation will be strictly enforced. Complete text of prepared speeches may be filed with the presiding officer at the hearing whether

or not the speaker has been able to finish with oral delivery in the allotted 10 minutes.

Speakers will be heard, if present, in their estalished order on the witness list. After the last listed witness has been heard, the presiding officer will consider the request of any other person present and wishing to testify. Only one witness will be allowed to represent the viewpoints of a single organization. However, any witness will be permitted to give germane testimony if offered as the views or opinions of a private citizen.

Written requests to testify orally should be received at the Canon City District Office at the above address prior to close of business on February 17, 1977. Requests should identify the organization represented, should be signed by the prospective witness, and should state the approximate time (afternoon or evening) for giving oral testimony. The cut-off date is necessary so that a witness list can be made available on the day before the public hearing.

Comments on the draft environmental statement, whether written or oral, will receive equal consideration in preparation of a final environmental statement.

CURT BERKLUND,
Director.

JANUARY 6, 1977.

Approved: January 7, 1977.

RONALD G. COLEMAN,
Assistant Secretary of the Interior.

[FR Doc.77-1179 Filed 1-12-77;8:45 am]

INTERNATIONAL TRADE COMMISSION

[Docket No. 419]

CERTAIN WELDED STAINLESS STEEL PIPE AND TUBE

Procedure for Commission Action

Notice is hereby given that—

(1) On November 15, 1976, a revised complaint was filed with the United States International Trade Commission under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Acme Tube, Inc., Allegheny Ludlum Steel Corp., Armco Steel Corp., Bristol Metals, Inc., Carpenter Technology Corp., Colt Industries, Inc., Consolidated Metals Corp., and Sharon Steel Corp., alleging unfair methods of competition and unfair acts in the importation of welded stainless steel pipe and tube into the United States, and in their sale, by reason of the alleged sale in the United States of such welded stainless steel pipe and tube at unreasonably low prices, often below the cost of production. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an efficiently and economically operated welded stainless steel pipe and tube industry in the United States or to restrain or monopolize trade and commerce of these products in the United States.

(2) On Thursday, December 23, 1976, the Commission ordered a proceeding to show cause why an investigation under section 337 of the Tariff Act of 1930, as amended, should be instituted on the basis of the allegations and statement of facts contained in the complaint filed November 15, 1976. The Commission will consider whether the complaint alleges a violation of section 337 and contains a statement of facts in support thereof in a manner which complies with section 337 of the Tariff Act and § 210.20 of the Commission's Rules of Practice and Procedure, as amended (41 FR 17710, Apr. 27, 1976).

(3) Any person or party interested in this proceding may file briefs of no more than 20 pages and in form and number as set forth in section 201.8 of the Commission's Rules of Practice and Procedure, as amended. Such briefs shall be filed no later than January 21, 1977.

(4) The Commission will hear oral argument concerning this proceeding in the Commission's Hearing Room, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, beginning at 10 a.m., e.s.t., on January 28, 1977. Any interested person or party may present oral argument if notice to that effect is included in the briefs filed pursuant to paragraph 3 of this notice.

(5) The Commission will reach its decision in this proceeding on or before February 4, 1977.

Issued: January 10, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1154 Filed 1-12-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Commission Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 17, 1977, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda of future meetings;
2. Minutes of January 4 and 6, 1977;
3. Reorganization;
4. GSP (Inv. 503(a)-3 and 332-81)—consideration of draft report;
5. Possible study on TSUS items 806.30 and 807.00;
6. Footwear (Inv. TA-201-18)—see draft determination circulated in action jacket GC-76-163;
7. Any other items left over from previous agenda.

If you have any questions concerning the agenda for the January 17, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 C.F.R. 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 7, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1153 Filed 1-12-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Commission Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on January 7, 1977, beginning at 10:00 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Items left over from previous agenda.

A majority of the entire membership of the Commission determined by recorded vote that Commission business requires that the meeting of January 7, 1977, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the January 7, 1977, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Access to documents to be considered by the Commission at the meeting is provided for in Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 C.F.R. 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: January 7, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1108 Filed 1-12-77;8:45 am]

GOVERNMENT IN THE SUNSHINE

Closed Portion of Agenda Item

In deliberations held on January 7, 1977, the United States International Trade Commission, acting on the author-

ity of 19 U.S.C. 1335 and in conformity with proposed 19 CFR 201.37, voted to close the following portion of agenda item No. 1 for its meeting of January 7, 1977:

1. Items left over from previous agenda (discussion of the Morrison matter).

Pursuant to the specific exemption of 5 U.S.C. 552b(c)(6), on the authority of 19 U.S.C. 1335 and in conformity with 19 CFR 201.37(b)(6), Commissioners Parker, Moore, Bedell, and Ablondi voted to hold this portion of this agenda item in closed session. Commissioners Minchew and Leonard voted against closing this portion to the public.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since information to be discussed in such portion is likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations are listed as follows:

Daniel Minchew, Chairman; Joseph O. Parker, Vice Chairman; Will E. Leonard, Commissioner; George M. Moore, Commissioner; Catherine Bedell, Commissioner; Italo H. Ablondi, Commissioner; Kenneth R. Mason, Secretary; Charles R. Ramsdale, Director of Personnel; Steven K. Morrison, Attorney-Advisor; Albert R. Sparks, Court Reporter.

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of January 7, 1977, was properly taken by a vote of a majorty of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proposed 19 CFR 201.37(d). The discussion to be held in closed session is within the specific exemption of 5 U.S.C. 552b(c)(6) and proposed 19 CFR 201.37(b)(6).

Issued: January 7, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1109 Filed 1-12-77;8:45 am]

PRELIMINARY DRAFT OF PARTS OF AN ENUMERATION OF ARTICLES TO PROVIDE FOR COMPARABILITY AMONG U.S. IMPORT, PRODUCTION, AND EXPORT DATA

Release for Public Comment

Notice is hereby given that the United States Departments of the Treasury and Commerce and the United States International Trade Commission are releasing for public comment the following preliminary draft of parts of an enumeration of articles which will provide for comparability among U.S. import, production, and export data pursuant to section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)), as amended by section 608(a) of the Trade Act of 1974 (19 U.S.C. 2101):

Buttons, Buckels, Pins, Hooks and Eyes, and Slide Fasteners—schedule 7, part 7A, Tariff Schedules of the United States Annotated (TSUSA).

Background.—The preparation of the draft by the three agencies has generally proceeded from recommendations made in a joint report of the Secretary of Commerce and the U.S. International Trade Commission, dated August 1, 1975, submitted to Congress and the President pursuant to section 608(b) of the Trade Act of 1974, and entitled "Principles and Concepts Which Should Guide the Organization and Development of an Enumeration of Articles Which Would Result in Comparability of U.S. Import, Production, and Export Data."

The report noted that the principal advantages of achieving comparability among import, production, and export data are—

1. To permit the development and implementation of a more coordinated and efficient program for the administration, interpretation, and maintenance of national systems;
2. To improve and facilitate the publication of trade data most useful for international economic analysis;
3. To permit more reliable analysis of the impact of external trade on domestic industry.

In making specific recommendations concerning the organization and development of an enumeration of articles which would result in comparability, the report recognized various prerequisites to achieving comparability, such as adhering to sound nomenclature principles, employing identical descriptive techniques and product definitions, using compatible standards of valuation and measurement, and providing for centralized responsibility for interpretation and coordinated responsibility for maintenance. The report also acknowledged many of the practical considerations involved in achieving comparability among the three generally discordant classification systems presently used for the collection of import, production, and export data, including reconciling differences among the three existing systems, preserving statistical continuity, and achieving useful levels of product comparability with the least disruptive impact on current programs and reporting.

In summary, the specific recommendations provided that—

1. The organizational framework of the TSUS should be adopted as the basis for the enumeration of the export schedule.
2. The review and development of an enumeration should take into account the current import, production, and export product consist of individual TSUSA classifications, or combinations of individual TSUSA classificacomparability of the relatively rigid classificlassifications.
3. Changes may be proposed to any system, including combinations, subdivisions, and modifications of existing language and content. In particular, consideration should be given to updating of definitions and terms to make them more reflective of current practice in the trade. It must be borne in mind that the TSUS structure and detail are legally based. Therefore, the enumeration should consist of individual TSUSA classifications, or combinations of individual TSUSA classifications (current or as proposed by this program), since this is the only way to attain comparability to the relatively rigid classifications of imports. Combinations may be made of commodities falling in different TSUS classes, if necessary, as long as they consist of aggregations of individual TSUSA classifications.

Continuing program for statistical annotation. The establishment of an enumeration for statistical purposes is, and should be looked upon as, a continuing program. It is intended that the initial modifications to the import, production, and export schedules will serve as a basis for further refinement and change. Modifications to each of the systems will be made from time to time to reflect changing statistical needs and also to improve the comparability of U.S. trade data with trade data reported by other countries on the basis of the Standard International Trade Classification (SITC). The publication of trade data by the Department of Commerce on the basis of the SITC will continue.

Modifications to the Tariff Schedules of the United States. Any proposals to modify the TSUS (other than statistical annotations thereto) could not be implemented without legislative approval. After comments have been recovered and reviewed, consideration may then be given to the extent of, and need for, amendatory legislation.

Comments by interested parties. Over the next several months further preliminary drafts will be released for public comment and consideration. Interested parties are invited to comment on all aspects of the comparability program. Specific recommendations and proposals are invited with respect to the extent to which the drafts would—

Recognize the specific needs of users of statistics; Facilitate economic analysis; Reflect sound principles of commodity identification and specification; and Impose undue reporting burdens for business establishments.

We would also welcome comments with respect to modifications which would provide greater comparability with the SITC (revision 2).

Copies of the drafts are available from the Chief, Industry and Commodity Classification Branch, Economic Surveys Division, U.S. Bureau of the Census, Washington, D.C. 20233.

Written comments should be submitted at the earliest practicable date, but, to be assured of consideration, not later than 60 days after release of the drafts. Such statements should be submitted to the Chief, Industry and Commodity Classification Branch, at the address shown above.

Issued: January 7, 1977.

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.77-1110 Filed 1-12-77;8:45 am]

DEPARTMENT OF JUSTICE

Bureau of Prisons

NATIONAL INSTITUTE OF CORRECTIONS ADVISORY BOARD

Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) will meet on Sunday, February 6, 1977, starting at 5:30 p.m., and on Monday, February 7, 1977, starting at 8:00 a.m., in the Federal Bureau of Prisons Conference Room (Room 500), 320 First Street, N.W., Washington, D.C.

At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive the report of its Policy Review Committee, and will further delineate and evaluate programmatic issues.

SHERMAN R. DAY,
Director.

[FR Doc.77-1124 Filed 1-12-77; 8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

EDUCATION PROGRAMS PANEL

Meeting

JANUARY 7, 1977.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463) notice is hereby given that a meeting of the Education Panel will convene at 9:00 a.m. each day in Room 1023-1025 at 806 Fifteenth Street, NW., Washington, D.C., on February 10 and 11, 1977.

The purpose of the meeting is to review Development applications submitted to the National Endowment for the Humanities for grants to educational institutions and non-profit organizations.

Because the proposed meeting will consider financial information and personnel and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated August 13, 1973, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 Fifteenth Street, NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.77-1143 Filed 1-12-77;8:45 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY PANEL FOR ECOLOGICAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecological Sciences.

Date and time: February 2, 3 and 4, 1977—8:30 a.m. to 5:00 p.m. each day.

Place: Room 628, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: Part Open—Open February 2, 1977, 10:30 a.m.-5:00 p.m.; Closed—February 2, 1977, 8:30 a.m.-10:30 a.m., February 3, 1977, 8:30 a.m.-5:00 p.m. and February 4, 1977, 8:30 a.m.-5:00 p.m.

Contact person: Dr. William A. Reiners, Program Director, Ecosystem Studies Program, Room 336, National Science Foundation, Washington, D.C. 20550, telephone 202-632-5854. Open part of meeting: William E. Sievers, Program Director, Biological Resources Progrem, Room 336, National Science Foundation, Washington, D.C. 20550, telephone 202-634-4135.

Purpose of panel: To provide advice and recommendations concerning support for research in ecological sciences. Open part of meeting to discuss Experimental Ecological Reserves.

Agenda: Closed—To review and evaluate research proposals and projects as part of the selection process for awards. Open—February 2, 1977—10:30 a.m.-5:00 p.m.

Discussion to include: (1) Current status and future goals and objectives of the Biological Research Resources Program; (2) Presentation on the Experimental Ecological Reserves study recently completed by the Institute of Ecology; (3) Recent developments in respect to the Federal Committee on Ecological Reserves; (4) Proposed workshop on long-term data needs in respect to experimental ecological reserves.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

Dated: January 10, 1977.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.77-1200 Filed 1-12-77;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON THE BLUE HILLS STATION, UNITS 1 AND 2

Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on the Blue Hills Station, Units 1 and 2 will hold a meeting on January 28, 1977 at the Chateau Inn, Jasper TX 75951 to review the application of the Gulf States Utility Company for an early site review.

The agenda for subject meeting shall be as follows:

FRIDAY, JANUARY 28, 1977

10:30 A.M.—10:45 A.M. (OPEN)

The Subcommittee with any of its consultants who may be present will meet in Executive Session to explore preliminary opinions regarding matters which should be considered in order to formulate a report and recommendations to the full Committee.

10:45 A.M. UNTIL THE CONCLUSION OF BUSINESS (OPEN)

The Subcommittee will hear presentations by representatives of the NRC Staff, the Gulf States Utility Company, and their consultants, and will hold discussions with these groups pertinent to this review.

At the conclusion of this session, the Subcommittee may caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee. Upon conclusion of this caucus, the Subcommittee will announce its determination.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing 15 readily reproducible copies to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 21, 1977, to Mr. Gary R. Quittschreiber, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., NW, Washington, DC 20555 and at the Newton County Library, Newton, TX 77034.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Subcommittee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 27, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Gary R. Quittschreiber) between 8:15 a.m. and 5:00 p.m., e.s.t.

(d) Questions may be propounded only by members of the Subcommittee and their consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after February 4, 1977 at the NRC Public Document Room, 1717 H St., NW, Washington, DC 20555 and at the Newton County Library, Newton, TX 77034.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., NW, Washington, DC 20555 after April 28, 1977.

Copies may be obtained upon payment of appropriate charges.

Dated: January 7, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-1135 Filed 1-12-77;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS, SUBCOMMITTEE ON EMERGENCY CORE COOLING SYSTEMS

Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the ACRS Subcommittee on Emergency Core Cooling Systems (ECCS) will hold a meeting on January 29, 1977 in Room 1046, 1717 H Street NW., Washington, DC 20555. The purpose of this meeting is to review Exxon Nuclear Company, Inc. analytical model formulated to meet current ECCS criteria for fuel fabricated by Exxon for boiling water reactors and to review the application of the model to the Oyster Creek Nuclear Power Plant.

The agenda for subject meeting shall be as follows:

SATURDAY, JANUARY 29, 1977, 8:30 A.M. UNTIL THE CONCLUSION OF BUSINESS

The Subcommittee with any of its consultants who may be present will meet in open session for discussion with the NRC Staff and representatives of the Exxon Nuclear Company, Inc. of evaluation models formulated to meet ECCS criteria and with representatives of the Jersey Central Power and Light Company regarding application of the model to the Oyster Creek Nuclear Power Plant.

It may be necessary for the Subcommittee to hold one or more closed sessions with the NRC Staff and participants for the purpose of discussing proprietary information.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that it is necessary to conduct the above closed sessions to protect confidential proprietary information (5 U.S.C. 552(b)(4)).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety and Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by sending a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 22, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting regarding the Oyster Creek Nuclear Power Plant can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 and at the Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753.

(b) Persons desiring to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Subcommittee will receive oral statements on topics relevant to its purview at an appropriate time chosen by the Chairman.

(c) Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call on January 28, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., e.s.t.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agree-

ment. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. Thomas G. McCreless of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after February 4, 1977 at the NRC Public Document Room, 1717 H St., NW., Washington, DC 20555 and at the Ocean County Library, 15 Hooper Avenue, Toms River, NJ 08753 (regarding the Oyster Creek Nuclear Power Plant).

A copy of the minutes of the meeting will be available for inspection after May 2, 1977 at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Copies may be obtained upon payment of appropriate charges.

Dated: January 7, 1977.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc.77-1137 Filed 1-12-77;8:45 am]

[Docket No. PRM-50-18]

NATURAL RESOURCES DEFENSE COUNCIL, INC.

Filing of Petition for Rulemaking

Notice is hereby given that Richard Cotton, Ssq., and Terry R. Lash, Ph. D., by letter dated November 8, 1976, have filed with the Nuclear Regulatory Commission a petition for rulemaking on behalf of the Natural Resources Defense Council, Inc., 917 15th Street, NW., Washington, D.C. Attached to the petition are four exhibits in support of the petition.

The petitioner requests the Comission (1) to conduct a rulemaking for the explicit purpose of determining whether radioactive wastes can be generated in nuclear power reactors and subsequently disposed of without undue risk of the public health and safety, and (2) to refrain from acting finally to grant pending or future requests for reactor operating licenses until such time as this definitive finding of safety can be and is made.

The petitioner states that it seeks to have the Commission aply the relevant safety standards of the Atomic Energy Act of 1954, as amended, to determine whether or not high-level radioactive wastes that will be generated in reactors can be safely disposed of before the Commission acts to grant operating licenses to power reactors. The petitioner contends that the provisions of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and the Commission's regulations require the Commission to follow this procedure.

The petitioner states that "high-level radioactive wastes," as used in the petition, means (1) high-level wastes as defined in 10 CFR Part 50, Appendix F, (2) spent fuel rods, and (3) transuranic-contaminated wastes. The petitioner alleges that no adequately safe disposal plan has been approved and that creation of additional radioactive wastes in new reactors at the present time, in the absence of an accepted plan for disposing of these wastes, does not provide for adequate protection to the health and safety of the public, in violation of the Atomic Energy Act of 1954, as amended.

A copy of the petition for rulemaking is available for public inspection in the Commission's Public Document Room, 171 H Street, NW., Washington, D.C. A copy of the petition may be obtained by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 10555.

All persons who desire to submit written comments or suggestions concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by February 14, 1977.

Dated at Washington, D.C. this 7th day of January 1977.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.77-1136 Filed 1-12-77;8:45 am]

[Docket No. 50-133]

PACIFIC GAS AND ELECTRIC CO., (HUMBOLDT BAY POWER PLANT, UNIT NO. 3

Order for Modification of License

I. Pacific Gas and Electric Company, 77 Beale Street, San Francisco, California 94106, (licensee), is the holder of Operating License No. DPR-7 which authorizes the operation of nuclear power reactor Unit No. 3 at the Humboldt Bay Power Plant near Eureka, California, under certain conditions specified therein.

II. By Order for Modification of License issued May 21, 1976, a condition was added to the license which requires that geologic/seismic concerns be addressed in six specified areas (paragraphs E.2.a through E.2.f of the license). Paragraph E3, which was also added to the license by the Order, states that satisfactory completion of items E.2.a, b, c, e, and f is required prior to the end of the outage and the results of the licensee's investigations for item E.2.d will be submitted by the end of 1976 but need not necessarily be completed or found acceptable prior to return to power operation.

By letter dated December 29, 1976, the staff was informed that the licensee will be unable to submit the information required by item E.2.d by the end of 1976 due to the increased scope of field investigations required for those items which must be completed prior to restart. In this letter the licensee requested that the schedule for completion of this item be revised to require submittal within 60 days after submission of the information required for items E.2.a, b, c, e, and f.

The staff has reviewed the licensee's letter dated December 29, 1976, and has concluded that before reaching a decision concerning the requested change the staff must evaluate the existing geologic/seismic information and determine if there is a necessity to complete the requirements of paragraph E.2.d prior to resumption of power operation. In the interim, until this evaluation is complete, the maximum extension of time which the staff will authorize is to require submittal of the information required for Item E.2.d coincident with the submittal of information required for items E.2.a, b, c, e, and f.

When the staff evaluation of the change requested in the licensee's letter dated December 29, 1976, is complete the licensee will be informed of the results and the license modified as necessary.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR Parts 2, 50, and 100: *It is ordered*, That Facility Operating License No. DPR-7 is hereby amended changing paragraph E.3 to read as follows:

3. commence a controlled shutdown of the facility by July 2, 1976, to begin the 1976 refueling outage. Commission approval by amendment to the license, with respect to the satisfactory completion of the requirements listed in items 1 and 2 a, b, c, e, and f above, is required prior to power operation following the 1976 refueling outage. The results of the licensee's investigations for item 2.d above will be submitted coincident with the submittal of information required for items 2 a, b, c, e, and f above.

This order shall become effective immediately upon issuance.

Dated at Bethesda, Md., this 30th day of December 1976.

For the Nuclear Regulatory Commission.

BEN C. RUSCHE,
Director, Office of Nuclear Reactor Regulation.

[FR Doc.77-1139 Filed 1-12-77;8:45 am]

[Docket No. 50-272]

PUBLIC SERVICE ELECTRIC AND GAS CO., ET AL.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Company, Philadelphia Electric Company, Delmarva Power and Light Company and Atlantic City Electric Company (the licensee), which revised the operating license for Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of its date of issuance.

This amendment deletes from the license and its attachment a limitation

of power operation to twenty percent of rated core power until the Commission staff has approved a reanalysis of the emergency core cooling system (ECCS) performance. The staff has reviewed the ECCS reanalysis submitted by Public Service Electric and Gas Company by letter dated December 27, 1976 and has found that it conforms to the Commission's acceptance criteria of § 50.46 of 10 CFR Part 50. This amendment also deletes certain requirements for snubber tests since the tests have been completed to the satisfaction of the Commission. Finally, this amendment also incorporates a condition restricting facility operation with less than four reactor coolant pumps. This condition was inadvertently omitted from Amendment No. 3. The Public Service Electric and Gas Company is now authorized to proceed in the power ascension program to a power level which will not exceed forty percent of rated core power pending subsequent authorization by the Commission.

Facility Operating License No. DPR–70, as amended, shall expire at midnight, September 25, 2008. This action is in furtherance of the licensing action encompassed in the "Notice of Consideration of Issuance of Facility Operating Licenses and Notice of Opportunity for Hearing," dated October 6, 1972.

The commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. The Commission has also made appropriate findings which are set forth in the license amendment regarding the environmental impacts associated with operation of the facility.

For further details with respect to this action, see (1) the letter from Public Service Electric and Gas Company dated December 27, 1976, (2) Amendment No. 4 to License No. DPR–70, and (3) the Commission's related Safety Evaluation. All of these are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, New Jersey. A single copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md., this 6th day of January 1977.

For the Nuclear Regulatory Commission.

KARL KNIEL,
Light Water Reactors, Branch No. 2, Division of Project Management.

[FR Doc.77-1142 Filed 1-12-77;8:45 am]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 10.2, Revision 1, "Guidance to Academic Institutions Applying for Specific Byproduct Material Licenses of Limited Scope," describes the type of information that should be submitted in applications for specific licenses of limited scope for the possession and use of byproduct material by academic institutions. This revision reflects comments received from the public and other factors.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides should be made in writing to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 5th day of January 1977.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc.77-1140 Filed 1-12-77;8:45 am]

[Docket No. STN 50-545]

WESTINGHOUSE ELECTRIC CORP.

Reference Safety Analysis Report (RESAR–3S Nuclear Steam Supply System Standard Design); Issuance of A Safety Evaluation Report and Preliminary Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission (the NRC staff) has issued a Safety Evaluation Report (SER) dated December 1976, and a Preliminary Design Approval No. PDA–7 dated December 30, 1976 for the nuclear steam supply system portion of a nuclear power plant as described in Westinghouse Electric Corporation Reference Safety Analysis Report (RESAR–3S). RESAR–3S was reviewed by the NRC staff pursuant to Appendix 0 to 10 CFR Part 50.

RESAR–3S contains preliminary safety-related design information for the nuclear steam supply system portion of a pressurized water type nuclear power plant which includes the reactor coolant system, emergency core cooling system, reactor control and protection systems, engineered safety features actuation system, chemical and volume control system, boron recycle system, residual heat removal system, fuel handling equipment, and related systems and features. The RESAR–36 reference system is designed to operate at a core thermal power level of 3411 megawatts.

The SER documents the results of the staff's review and evaluation of RESAR–3S, including Amendments 1 through 13 thereto. The SER addresses the comments of the Advisory Committee on Reactor Safeguards (ACRS) as reflected in its report to the Commission, dated July 14, 1976. A copy of the ACRS report is included as Appendix C to the SER.

PDA–7 provides NRC staff approval of the preliminary nuclear steam supply system design described in RESAR–3S, including Amendments 1 through 13 and described and evaluated in Sections 1 through 19 of the SER. By the issuance of PDA–7, the NRC staff has determined that the design is acceptable for referencing in utility applications for construction permits. The RESAR–3S nuclear steam supply system design as described in that document, subject to the conditions of PDA–7, shall be utilized by and relied upon, by the NRC staff and the ACRS in their review of facility license applications for construction permits incorporating by reference the RESAR–3S nuclear steam supply system preliminary standard design, unless there exists significant new information which substantially affects the determinations in PDA–7 or other good cause.

Issuance of PDA–7 and the staff's Safety Evaluation Report does not constitute a commitment to issue a permit or license, or in any way affect the authority of the Commission, Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards and other presiding officers in any proceeding under Subpart 6 to 10 CFR Part 2. This action only approves the design of a nuclear steam supply system for use for reference purposes in applications for permits to construct a nuclear power plant. It does not authorize the construction or operation of any nuclear power plant or any other facility. The environmental impacts associated with any facility proposed to be constructed utilizing the approved reference design will be considered in accordance with the Commission's regulations in 10 CFR Part 51.

PDA–7 is effective as of its date of issuance and shall expire on December 30, 1979, unless earlier superseded by issuance of an appropriate Final Design Approval (FDA) for the RESAR–3S nuclear steam supply system standard design or extended by the NRC staff. The expiration of PDA–7 on December 30, 1979,

should not affect use of PDA–7 for reference in any construction permit application docketed prior to such date.

A copy of (1) the Preliminary Design Approval No. PDA–7 dated December 30, 1976; (2) the report of the Advisory Committee on Reactor Safeguards dated July 14, 1976; (3) the NRC staff's Safety Evaluation Report, NUREG–0104, dated December 1976; (4) the Westinghouse Electric Corporation Standard Safety Analysis Report and Amendments 1 through 13 thereto; and (5) WASH 1341, the Commission's "Programmatic Information for the Licensing of Standardized Nuclear Power Plants", dated August 1974, which also includes the Standardization Policy issued on March 5, 1973, are available for public inspection at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555. A copy of PDA–7 may be obtained upon request. The request should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management. Copies of the Safety Evaluation Report (Document No. NUREG–0104) may be purchased at current rates from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Bethesda, Md., this 30th day of December, 1976.

For the Nuclear Regulatory Commission.

JOHN F. STOLZ,
Chief, Light Water Reactors Branch No. 1, Division of Project Management.

[FR Doc.77–1141 Filed 1–12–77;8:45 am]

[Docket No. 50–29]

YANKEE ATOMIC ELECTRIC CO.

Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 33 to Facility Operating License No. DPR–3, issued to Yankee Atomic Electric Company (the licensee), which revised Technical Specifications for operation of the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Rowe, Franklin County, Massachusetts. The amendment is effective as of its date of issuance.

The amendment replaces descriptive pages in Section 218 "Fuel Handling System" of the Final Hazard Summary Report (FHSR) which is incorporated in the Technical Specifications appended to License No. DPR–3. The amendment allows changes in the design of the spent fuel pit storage racks from that reviewed and approved in the operating license review and as described in the FHSR for increasing the spent fuel storage capacity from 172 to 391 fuel assemblies. The amendment also adds license conditions which: (1) Prohibits spent fuel cask handling over the spent fuel pit, (2) permits handling of the spent fuel pit building roof hatches by administrative control, and (3) permits handling of the spent fuel storage racks with restriction of movement of racks over spent fuel. Concurrently, the amendment also incorporates the same provisions in the new format Technical Specifications (issued on July 14, 1976, with Amendment No. 27) which will become effective as of January 1, 1977.

The application for the amendment compiles with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Operating License in connection with this action was published in the FEDERAL REGISTER on December 2, 1975 (40 FR 55909). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared an environmental impact appraisal for the revised Technical Specifications and has concluded that an environmental impact statement for this particular action is not warranted because there will be no significant environmental impact attributable to the action.

For further details with respect to this action, see (1) the application for amendment dated September 25, 1975, as supplemented by letters dated January 5, January 29, April 2, April 27, May 5, October 28, and November 17, 1976, (2) Amendment No. 33 to Facility License No. DPR–3, and (3) the Commission's related Safety Evaluation and Environmental Impact Appraisal. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Greenfield Public Library, 422 Main Street, Greenfield, Massachusetts 01581. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of December 1976.

For the Nuclear Regulatory Commission.

CHARLES M. TRAMMELL,
Acting Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc.77–1138 Filed 1–12–77;8:45 am]

NATIONAL TRANSPORTATION SAFETY BOARD

[N–AR 77–2]

SAFETY RECOMMENDATION AND RESPONSE

Availability and Receipt

As a result of preliminary investigations of three derailments of Amtrak train James Whitcomb Riley, the National Transportation Safety Board is urging the Federal Railroad Administration to restrict train speeds in the area of the derailments to a maximum of 30 mph until the track is safe for higher operating speeds. The three derailments have occurred within the past six months on the rails of the Chesapeake and Ohio Company's New River Subdivision in West Virginia—June 8 at Hinton, September 29 at East Sewell, and November 29 at Sewell.

In its letter of January 6 issuing recommendation R–76–58 to FRA, the Safety Board stated that in addition to these three derailments, three freight trains have derailed recently on the New River Subdivision, and in one accident some of the derailed cars toppled into the New River. Preliminary investigations of the three derailments of the Amtrak train indicate that individual deviations from FRA's Track Safety Standards, while not violations, do in combination constitute safety hazards. The recommendation is designated "Class I, Urgent followup."

The Materials Transportation Bureau of the U.S. Department of Transportation has responded to Safety Board recommendations P–76–65 and P–76–66 issued last August 11. Both recommendations resulted from Board investigation of an incident last March 23 in Lehigh Acres, Florida, involving the rapture of a 1,000-gallon tank storing liquefied petroleum gas (LPG). (See 41 FR 35089, August 19, 1976.) MTB's letter response to these recommendations was forwarded to the Board on December 23.

Recommendation P–76–65 asked that MTB's Office of Pipeline Safety Operations (OPSO) clarify its jurisdiction with respect to LPG tanks which are connected to a pipeline system that transports LPG vapor. MTB, noting that the Board prefaced its recommendation with a statement that OPSO has not determined whether it has jurisdiction over LPG tanks which are connected to pipeline systems, states, "On the contrary, by letter dated May 27, 1976, OPSO advised the National LP-Gas Association that as the term is used in 49 CFR 192.11, 'a "system" normally consists of a *tank storing petroleum gas in liquid form* and the appurtenant pipelines and other facilities used by the operator of the system to deliver petroleum gas to one or more customers' (emphasis added)."

MTB contends that this interpretation is supported by definitions in Part 192, identical to those in section 2 of the Natural Gas Pipeline Safety Act of 1968 concerning jurisdictional facilities. These definitions provide, MTB states, that "pipeline facilities" include "without limitation * * * any equipment, facility, or building used in the transportation of gas" and that "transportation of gas" means "the gathering, transmission or distribution of gas by pipeline or its storage * * *." MTB believes that the interpretation clarifies the jurisdiction of

Part 192 over LPG tanks in petroleum gas distribution systems. OPSO published this interpretation in the October issue of its Advisory Bulletin and has notified the Florida Insurance Commission of the interpretation in an effort to eliminate any further misunderstanding.

In answer to recommendation P-76-66, which asked OPSO to modify the exemption from 49 CFR Part 192 for pipelines with less than 10 customers to include systems that have pipeline facilities which expose a substantial part of a community or neighborhood to a potential hazard, MTB states, "Under 49 CFR 192.11, a petroleum gas system serving less than 10 customers is not subject to the Federal safety standards unless a portion of the system is located in a public place."

MTB objects to recommendation P-76-66 because "the test of jurisdiction over a system—whether the system exposes a substantial part of a community or neighborhood to a potential hazard—would be too vague." MTB states that under this test it would be extremely difficult if not impossible for either government or industry to identify the pipeline facilities subject to Federal regulation. As a consequence, MTB states, the regulation would be unenforceable and probably ruled invalid.

According to MTB's response, refusal to adopt recommendation P-76-66 does not mean that the systems would go unregulated. MTB notes that most States regulate petroleum gas systems for safety, and that by and large State safety standards are the standards in National Fire Protection Association Standard No. 58, incorporated by reference in Part 192. MTB concludes that systems not covered by State regulation are either subject to local controls or bound to follow NFPA Standard 58 as the generally recognized industry standard of performance.

Safety recommendation letters are available to the general public; single copies may be obtained without charge. Copies of letters responding to safety recommendations may be obtained at a cost of $4.00 for service and 10¢ per page for reproduction. All requests must be in writing, identified by recommendation number and date of publication of this notice in the FEDERAL REGISTER. Address inquiries to: Publications Unit, National Transportation Safety Board, Washington, D.C. 20594.

(Sec. 307 of the Independent Safety Board Act of 1974 (Pub. L. 93-633, 88 Stat. 2172 (49 U.S.C. 1906)).)

MARGARET L. FISHER,
Federal Register
Liaison Officer.

JANUARY 10, 1977.

[FR Doc.77-1176 Filed 1-12-77;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

COLUMBUS FUND, INC.

[811-1892]

Filing of Application for an Order Declaring That Columbus Fund, Inc., has Ceased To Be an Investment Company

Notice is hereby given that The Columbus Fund, Inc. ("Applicant"), 88 East Broad Street, Columbus, Ohio 43215, registered as an open-end diversified management investment company under the Investment Company Act of 1940 ("Act"), filed an application on December 7, 1976 and an amendment thereto on December 20, 1976, pursuant to section 8(f) of the Act for an order of the Commission declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application and amendment on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant, incorporated under the laws of the State of Ohio, registered under the Act on June 16, 1969. Applicant states that it commenced operations on August 11, 1970 and offered its shares to the public from that date until April 30, 1975, when the offering of shares was indefinitely suspended due to receipt of notice of termination of Applicant's advisory contract with Metropolitan Advisers Corporation ("Metropolitan") as of June 28, 1975. Since June 28, 1975, Applicant asserts it has been internally managed by its officers rather than by an investment adviser.

On November 12, 1975 the Commission filed a civil injunctive complaint in the United States District Court of Ohio, Eastern Division ("SEC v. J. L. Mead & Co., et al.," Civil Action No. C-2-75-777), against Applicant, Metropolitan, J. L. Mead & Co., Inc. and J. L. Mead (the latter two of which were persons controlling Metropolitan), J. Roger Pearsall (at that time a director of Applicant) and Advisers Fund, Inc., another mutual fund advised by Metropolitan. With the consent of Applicant, a final judgment of permanent injunction was entered against Applicant on May 10, 1976 which, *inter alia*, required Applicant to prepare and file with the Commission proxy materials pertaining to a special meeting of shareholders to be called for the primary purpose of considering and acting upon a plan of dissolution and liquidation.

According to the Application, on September 30, 1976, the shareholders of Applicant, at a special meeting of shareholders held on that date, adopted a resolution of dissolution and plan of liquidation, providing for the dissolution of Applicant in accordance with the laws of the State of Ohio, the winding-up of the affairs of Applicant, and the termination of Applicant's status as a registered investment company under the Act.

On November 22, 1976, Applicant filed a Certificate of Dissolution with the Secretary of State of Ohio and since that date has continued as a corporation under Ohio law solely for the purpose of performing such acts as are required to wind-up its affairs.

Applicant states that on December 3, 1976, Applicant distributed to each shareholder of record as of November 22, 1976, cash in the amount of $4.29 per share for each share held of record on that date, withholding only an amount equal to $0.51 per share as a reserve for liquidation. Applicant further states that on the date of distribution it had total assets of $201,158, of which $176,272 was distributed in cash to its shareholders, and $24,886 was retained as a reserve.

Applicant asserts that it has ceased doing business and the only remaining acts to be taken by Applicant to wind-up its affairs consist of the payment of remaining known obligations and the preparation and filing of various forms, reports and/or returns required by governmental authorities.

Section 8(f) of the Act provides, in pertinent part, that whenever 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 taking effect 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 February 4, 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 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 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who re-

quest 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.77-1199 Filed 1-12-77;8:45 am]

GULF POWER CO.

[70-5953]

Proposed Issuance and Sale of Preferred Stock and First Mortgage Bonds At Competitive Bidding

Notice is hereby given that Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 02520, a public utility subsidiary company of The Southern Company, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act") designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the declaration which is summarized below for a complete statement of the proposed transaction.

Gulf proposes in February 1977, to issue up to 150,000 shares of its preferred stock, par value $100 per share (the "new Preferred Stock") and to sell such securities at competitive bidding for the best price obtainable but for a price to Gulf of not less than $100 per share nor more than $102.75 per share, which shall also be the public offering price of such shares. In addition, Gulf proposes to pay to the purchasers of the shares of the new Preferred Stock compensation for their services in purchasing and making a public offering of such shares. Gulf states that it may, if it deems it desirable to do so, make provisions for a cumulative sinking fund for the benefit of the new Preferred Stock which would retire not more than 5 percent annually of the number of shares initially issued, commencing five years after the sale, with the non-cumulative option on any sinking fund date commencing five years or later after the sale of redeeming an additional like numbers of shares.

Gulf proposes in March 1977, or as soon thereafter as practicable, to issue up to $50,000,000 principal amount of its First Mortgage Bonds of a series having a term of not less than five years nor more than 30 years (the "new Bonds") and to sell such securities at competitive bidding for the best price obtainable but for a price to Gulf of not less than 98 percent nor more than 102¾ percent of the principal amount thereof plus accured interest.

The new Bonds will be issued under the Indenture dated as of September 1, 1941, between Gulf and The Chase Manhattan Bank ("National Association") and The Citizens and Peoples National Bank of Pensacola, as Trustees, as heretofore supplemented by various indentures thereto and as to be further supplemented by another Indenture to be dated as of March 1, 1977.

Gulf states that it is difficult to determine, under present bond market conditions, whether it would be more advantageous to sell new Bonds having a 30 year term or some shorter term. Gulf states that it is in the public interest that Gulf be afforded the necessary flexibility to adjust its financing program to developments in the markets for long term debt securities when and as they occur in order to obtain the best possible price, interest rate and term for its new Bonds. Gulf proposes, therefore, that Gulf decide on the term of the new Bonds after the date of public invitation for proposals and then notify prospective bidders by telephone, confirmed in writing of its decision, not less than 72 hours prior to the time of the bidding.

Gulf proposes to use the proceeds from the sale of the new Preferred Stock and the new Bonds together with (1) $16,000,000 of additional equity funds from The Southern Company during 1977; (2) $2,700,000 provided through the issuance of pollution control revenue bonds by public authorities for construction of certain pollution control facilities; and (3) $9,838,000 expected to be accumulated from usual internal sources, to finance its 1977 construction program, to pay all or a portion of short-term notes payable in the form of bank notes and commercial paper notes incurred from such purpose.

The total construction expenditures of Gulf during 1977 are estimated at $74,538,000. Gulf estimates that no additional financing will be required for construction purposes during 1977 except for the issuance of short-term notes payable to be made after the sale of the new Preferred Stock. It is estimated that $26,350,000 of such short-term notes payable will be outstanding at January 31, 1977.

At least six days prior to entering into any contract or agreement for the issuance or sale of the new Preferred Stock or new Bonds, Gulf will publicly invite sealed written proposals for the purchase or underwriting of the new Preferred Stock and new Bonds.

The fees and expenses to be incurred in connection with this transaction will be supplied by amendment. The Florida Public Service Commission has jurisdiction over the issuance and sale of the new Preferred Stock and new Bonds. It is stated that no other State or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than January 31, 1977, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said 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 declarant at the above-stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations permitted 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.77-1198 Filed 1-12-77;8:45 am]

[Release No. 34-13138; File No. SR-MSTC-76-16]

MIDWEST SECURITIES TRUST CO.

Self-Regulatory Organizations, Proposed Rule Change; Operational Audit

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 20, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

(Brackets indicate deletions; *Italics* indicate new material)

Rule 17, Section 2, Midwest Securities Trust Company Rules.

[Surprise] *Operational* Audit

[A] *An* [surprise] *operational audit of* the affairs of the Corporation shall be conducted annually by independent public accountants [at a date to be selected by such accountants without prior notice to the Corporation]. Such audit shall include a physical count or confirmation of all securities held by the Corporation for the accounts of Participants and the confirmation of [all] open transactions of Participants with the Corporation.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is designed to reflect a change in the type of audit that is conducted by its independent public accountants. The

surprise nature of the audit created some confusion in the Trust Company due to the tremendous amount of manpower that was suddenly called upon to produce documentation and to do other tasks than their regular jobs without having planned for them. The Trust Company now chooses to plan for such an audit and avoid confusion and delay. Also, a statistical sampling of open transactions in the securities and money accounts of the participant population was deemed an adequate method of determining internal control within the Trust Company by independent public accountants, again avoiding delays in standard procedures of the Company.

The proposed rule change enhances the Midwest Securities Trust Company's capacity to safeguard securities and funds in its custody by eliminating a time-wasting method of an internal operational audit which created confusion in daily operations and by replacing it with a faster and equally as reliable method.

Comments have neither been solicited nor received.

The Midwest Securities Trust Company believes that no burdens have been placed on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (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, 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 NW., 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 February 3, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 5, 1977.

[FR Doc.77-1130 Filed 1-12-77;8:45 am]

[Release 34-13137, File No. SR-NASD-77-1]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organizations, Proposed Rule Change; Arbitration

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 on January 3, 1977 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

(Brackets indicates deletions; italics, new material)

The following are amendments to Section 4 of the Association's Code of Arbitration Procedure. The full text is as follows:

SECTION 4—SIMPLIFIED ARBITRATION

(a) *Member Controversies*

With the exception of controversies arising between the National Clearing Corporation and its clearing members, a dispute, claim or controversy arising between or among members submitted to arbitration under this Code involving a dollar amount not exceeding $5,000, exclusive of attendant costs, shall be resolved by an arbitration panel constituted pursuant to the provisions of subsection [(e)] (d) hereof solely upon the pleadings and documentary evidence filed by the disputants, unless one of the parties to the proceeding files with the Office of the Director of Arbitration within ten (10) business days following the filing of the last pleading a request for a hearing of the matter.

(b) *Public-Member Controversies (Not exceeding $500)*

Any dispute, claim or controversy arising between a public customer or others, including non-member broker/dealers, and a member or members submitted to arbitration under this Code involving a dollar amount not exceeding $500, exclusive of attendant costs, shall be resolved by one (1) arbitrator from without the securities industry solely upon the pleadings and documentary evidence filed by the disputants unless the public customer files with the Office of the Director of Arbitration within ten (10) business days following the filing of the last pleading a request for a hearing of the matter. In the event a hearing is held pursuant to the provisions of this subsection, a member may not be represented by counsel unless the public customer is also so represented.

The parties shall each deposit the sum of ten (10) dollars as a deposit of costs which sum shall be subject to such assessment as the presiding arbitrator shall determine.

[(b)] (c) *Public-Member Controversies (Exceeding $500 but not exceeding $2,000)*

With the exception of controversies arising between the National Clearing Corporation and its clearing members, a dispute, claim or controversy arising between a public customer or others, including non-member broker/dealers, and Code involving a dollar amount [not] exceeding *$500 but not exceeding* $2,000, exclusive of attendant costs, shall be resolved by an arbitration panel constituted pursuant to the provisions of subsection [(e)] (d) hereof solely upon the pleadings and documentary evidence filed by the disputants unless one of the parties files with the Office of the Director of Arbitration within ten (10) business days folowing the filing of the last pleading a request for a hearing of the matter.

[(c)] (d) *Composition of Panels*

In any proceeding pursuant to subsection (a) hereof, an arbitration panel shall consist of no less than one but no more than three arbitrators, all of whom shall be from within the securities industry. In any proceeding pursuant to subsection [(b)] (c) hereof an arbitration panel shall consist of three arbitrators, at least two of whom shall be from without the securities industry. The Director of Arbitration shall name the chairman of all panels.

[(d)] (e) *Authority of Arbitrators*

Notwithstanding the provisions of this section, any member of an arbitration panel constituted pursuant to subsection [(c)] (b) *or* (d) hereof shall be authorized to request the submission of further documentary evidence in a proceeding and any such panel may by majority vote call and conduct a hearing if such is deemed to be necessary. *Any hearing called under subsection (b) or (c) hereof shall be conducted by the persiding arbitrator(s).*

[(e)] (f) *Awards*

All awards rendered in proceedings pursuant to *this* [sub]section [(a) or (b) hereof] shall be made within thirty (30) business days from the date the arbitrator(s) review all of the written statements, documents and other evidentiary material filed by the parties and/*or conduct a hearing* and declare the matter closed.

[(f)] (g) *Other Matters*

The Code of Arbitration Procedure shall be deemed to apply as to all matters not covered by this section.

PURPOSE OF PROPOSED RULE CHANGE

The purpose of the proposed amendments is to further simplify the dispute-grievance procedure for investors with small claims. In that regard the proposal modifies the NASD's existing simplified arbitration procedures in connection with disputes among members and public customers not exceeding $500. These procedures would provide for the establishment of one-man arbitration panels to review and resolve such disputes solely

on the pleading and documentary evidence. The only fee would be a modest filing fee of $10, and these procedures would be mandatory for all member firms. If the arbitrator believes that a final determination of the dispute can be reached only with a hearing, such would be held by him pursuant to existing arbitration procedures. Counsel, however, would not be permitted to attend on behalf of a member unless the complainant was also represented by counsel.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A(b)(6) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the Association are designed to protect investors and the public interest and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. To carry out this mandate the Code of Arbitration Procedure was created. The Code of Arbitration Procedure is prescribed and adopted pursuant to Article IV, Section 2(b) of the By-Laws of the NASD for the arbitration of clearing controversies and any other disputes arising out of or in connection with the securities business of any member of the association between or among members, between or among members and public customers or others, and between or among members, the clearing corporation, the clearing banks or associated banks.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

Section 37 of the Code of Arbitration Procedure provides that the Board of Governors may upon a majority vote alter, amend, modify, or cancel any provision of the Code. Comments of the membership were not solicited or received.

BURDEN ON COMPETITION

It is believed that no burden on competition arises from the proposal.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to ninety (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 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 February 14, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 5, 1977.

[FR Doc.77-1120 Filed 1-12-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0114]

FRONTENAC CAPITAL CORP.

Issuance of a Small Business Investment Company License

On November 23, 1976, a notice was published in the FEDERAL REGISTER (41 FR 51641) stating that an application had been filed by Frontenac Capital Corporation, 208 South LaSalle Street, Chicago, Illinois 60604 with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1976)) for a license as a small business investment company.

Interested parties were given until close of business December 8, 1976, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05-0114 on December 29, 1976, to Frontenac Capital Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies.)

Dated: January 5, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1122 Filed 1-12-77;8:45 am]

[License No. 06/06-0186]

SOUTHWEST VENTURE CAPITAL, INC.

Issuance of License To Operate as a Small Business Investment Company

On November 2, 1976, a notice was published in the FEDERAL REGISTER (41 FR 48199) stating that Southwest Venture Capital, Inc., 1920 First Place, Tulsa, Oklahoma 74103, had filed an application with the Small Business Administration (SBA), pursuant to § 107.102 of the Rules and Regulations governing small business investment companies (13 CFR 107.102 (1976)) for a license to operate as a small business investment company (SBIC).

Interested parties were given to the close of business November 17, 1976, to submit their written comments to SBA.

Notice is hereby given that, having considered the application and all other information SBA has issued License No. 06/06-0186 to Southwest Venture Capital, Inc., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: January 5, 1977.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.77-1121 Filed 1-12-77;8:45 am]

DEPARTMENT OF STATE

ADVISORY COMMITTEES

Renewal and Continuation

Pursuant to the appropriate provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1) and the Office of Management and Budget Circular A-63, Transmittal Memorandum No. 1, the Department of State has determined that it is in the public interest to continue as active entities the advisory committees named herein. The Committees and their field of interest are:

ADVISORY COMMITTEE ON "FOREIGN RELATIONS OF THE UNITED STATES"

Advises regarding the solution of professional problems connected with the preparation of the "Foreign Relations" volumes.

AVISORY COMMITTEE ON INTERNATIONAL INTELLECTUAL PROPERTY

Serves as a forum for Government officials and experts from private organizations to discuss matters involving patents, trademarks, and copy rights as they relate to international agreements.

ADVISORY COMMITTEE ON THE LAW OF THE SEA

Advises with respect to U.S. law of the sea policy concerning hard minerals, marine science environment, et cetera as related to the Third United Nations Conference on the Law of the Sea.

ADVISORY COMMITTEE ON TRANSNATIONAL ENTERPRISES

Advises on matters inter alia with respect to codes of conduct on taxation technology transfer, socio-cultural effects involving transnational enterprises.

ADVISORY COMMITTEE TO THE UNITED STATES NATIONAL SECTION OF THE INTER-AMERICAN TROPICAL TUNA COMMISSION

In accordance with the Tuna Conventions Act of 1950 advises as to U.S. par-

ticipation in the work of the Commission particularly in the development of policies, positions, and negotiating tactics.

ADVISORY COMMITTEE TO THE UNITED STATES SECTION, INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION

In accordance with the North Pacific Fisheries Act of 1954 advises in like manner as set forth above.

ADVISORY PANEL ON ACADEMIC MUSIC

ADVISORY PANEL ON FOLK MUSIC AND JAZZ

ADVISORY PANEL ON MUSIC

The listed Panels are separate entities and artistically evaluate the professional ability of performers for the Department of State's arts programs abroad.

ADVISORY PANEL ON INTERNATIONAL LAW

Provides information and advice on questions of United States law that could have an effect upon the conduct of foreign relations and on current questions of international law, the interpretation of treaty obligations, et cetera.

FINE ARTS COMMITTEE

Guides, advises and serves the Fine Arts Office in furnishing the Diplomatic Reception Rooms and the 7th Floor Reception Rooms in the Department of State, with quality examples of American 18th and 19th century furniture, paintings, and decorative objects.

GOVERNMENT ADVISORY COMMITTEE ON INTERNATIONAL BOOK AND LIBRARY PROGRAMS

Advises the Government on the policies and operations of its overseas book, educational materials and library programs.

NORTHWEST ATLANTIC FISHERIES ADVISORY COMMITTEE

In accordance with the Northwest Atlantic Fisheries Act of 1950 advises with respect to United States participation in the work of the Commission in developing policies, positions and negotiating tactics.

OCEAN AFFAIRS ADVISORY COMMITTEE

Advises on all aspects of ocean affairs, particularly formulation and implementation of international policies in marine science and environment, and fisheries.

OVERSEAS SCHOOL ADVISORY COUNCIL

Advises with respect to the American sponsored elementary and secondary schools abroad, which serve the personnel of both the Government and the private sector, that are assisted by the Department of State.

SECRETARY OF STATE'S ADVISORY COMMITTEE ON PRIVATE INTERNATIONAL LAW

Advises on issues that do or are likely to arise in the foreign relations of the United States including *inter alia* product liability, matrimony, matters of estate, and recognition and enforcement of foreign judgments.

SHIPPING COORDINATING COMMITTEE

Advises on matters relating to international shipping, e.g., safety, design, equipment, et cetera and makes recommendations for the United States negotiating positions in the Intergovernmental Maritime Consultative Organization.

UNITED STATES ADVISORY COMMISSION ON INTERNATIONAL EDUCATIONAL AND CULTURAL AFFAIRS

Formulates and recommends to the President policies for exercising his authority under the Mutual Educational and Cultural Exchange Act of 1961 and appraises the effectiveness of programs carried out pursuant to the Act.

UNITED STATES NATIONAL COMMITTEE FOR THE INTERNATIONAL RADIO CONSULTATIVE COMMITTEE (CCIR) AND ITS STUDY GROUPS

Assists and advises the Department of State on matters concerning United States participation in the International Radio Consultative Committee (a permanent organ established by the International Telecommunication Convention—a treaty obligation) and to promote the best interests of the United States in CCIR activities.

UNITED STATES NATIONAL COMMITTEE FOR THE INTERNATIONAL TELEGRAPH AND TELEPHONE CONSULTATIVE COMMITTEE (CCITT) AND ITS STUDY GROUPS

The same as set forth above except for the field of interest, i.e., telegraph and telephone.

New Charters for the above named Committees have been executed and copies filed in accordance with Section 9(c) of the Federal Advisory Committee Act (5 U.S.C. App. I). In addition, a copy of said Charters have been sent to the Library of Congress, Rare Book Room 10 First Street, S.E., Washington, D.C., for public use.

SUE M. MORELAND,
Advisory Committee Management Officer.

JANUARY 4, 1977.

[FR Doc.77-1123 Filed 1-12-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[77008]

NATIONAL BOATING SAFETY ADVISORY COUNCIL

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Tuesday and Wednesday, February 22-23, 1977, in the Heron's Nest, Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, Florida. The meeting is scheduled to begin at 9 a.m. both days and adjourn at 4 p.m. on Tuesday, February 22nd and in the early afternoon on Wednesday, February 23rd. The agenda for this meeting will be as follows:

1. Review of action taken at the fifteenth meeting of the Council.
2. Executive Director's Report.
3. Discussion and vote on proposed amendment concerning flotation material acceptability for Level Flotation Standards.
4. Progress Report on Glare Elimination.
5. Progress Report on the Navigation Light Project.
6. Visual Distress Signal Subcommittee Report.
7. A live windsurfing demonstration.
8. A live P.F.D. impact test demonstration.
9. A tour of Underwriters' Laboratories Marine Test Facility.
10. Capacity Label Subcommittee Report.
11. Discussion on need to amend Certification Regulations.
12. Progress Report on Personal Flotation Device Research.
13. Marine Dealer Responsibility Subcommittee Report.
14. Office of Boating Safety Activity Report.
15. Members Items.
16. Chairman's Session.

Attendance is open to the interested public. With approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from CDR M. TUBELLA, JR., Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA/TRPT), Washington, D.C. 20590, or by calling (202) 426-1080. Any member of the public may present a written statement to the Council at any time.

Issued in Washington, D.C. on January 10, 1977.

D. F. LAUTH,
Rear Admiral, U.S. Coast Guard, Chief, Office of Boating Safety.

[FR Doc.77-1187 Filed 1-12-77;8:45 am]

[77-007]

NATIONAL BOATING SAFETY ADVISORY COUNCIL; MARINE DEALER RESPONSIBILITY SUBCOMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the National Boating Safety Advisory Council's Marine Dealer Responsibility Subcommittee to be held on Monday, February 21, 1977, in Suite 226, Bay Harbor Inn, 7700 Campbell Courtney Causeway, Tampa, Florida. The meeting is scheduled to begin at 1 p.m. and adjourn at 5 p.m.

The purpose of this meeting is to determine a method of promulgating rules and regulations to involve marine dealers and distributors in assisting the boat manufacturers in their defect notification program. Attendance is open to the interested public.

With the approval of the Chairman, members of the public may present oral

statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting and information may be obtained from Commander M. Tubella, Jr., Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard (G-BA/TRPT), Washington, D.C. 20590, or by calling (202) 426-1080.

Any member of the public may present a written statement to the Council's Subcommittee at any time.

Issued in Washington, D.C. on January 10, 1977.

D. F. LAUTH,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Boating Safety.

[FR Doc.77-1188 Filed 1-12-77;8:45 am]

[CGD 76-234]

VESSEL TRAFFIC SERVICES IN THE CHESAPEAKE BAY AREA

Public Hearing

The Coast Guard will hold a public hearing on vessel traffic services in the Chesapeake Bay area on January 27, 1977, at 9:00 a.m. in the Norfolk City Council Chambers, 11th floor, Norfolk City Hall Building, Waterfront Drive at St. Pauls Blvd., Norfolk, Virginia and a second public hearing on February 1, 1977, at 9:00 a.m. in the Forum, North Building, 3rd floor, Baltimore Community College, Harbor Campus, Lombard Street at Market Place, Baltimore, Maryland.

The purpose of these hearings is to receive comments from the public to help the Coast Guard evaluate present vessel traffic services, including aids to navigation, and determine if there is a need for additional or different vessel traffic management techniques in the Chesapeake Bay area, including the port areas of Baltimore, Maryland and Hampton Roads, Virginia. A summary of the progress of the Coast Guard's review of a need for additional vessel traffic services in the Chesapeake Bay area is available on request from the Commander (mps), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23705. Copies may also be requested by telephone by contacting Lieutenant Commander Hill at (804) 393-9611, Extension 398 or 446.

Interested persons are invited to attend the hearing and present oral statements. Persons wishing to present oral statements are requested to fill out a registration card, available from the Commander (mps), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia, 23705, and return it by 4:00 p.m. on January 19, 1977. Persons may also submit written statements. All written statements received by February 14, 1977, and oral statements presented at the hearings will be fully considered by the Coast Guard before it takes any action that affects the vessel traffic services.

Dated: January 6, 1977.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Marine Environment and Systems.

[FR Doc.77-1186 Filed 1-12-77;8:45 am]

Federal Aviation Administration

RNAV POLICY STATEMENT

INTRODUCTION

The Federal Aviation Administration (FAA) endorses the concept of area navigation (RNAV) and recognizes the benefits that RNAV offers to both the airspace user and the national airspace system (NAS). This policy statement puts forth a two-part action plan designed to facilitate the use of RNAV in the national airspace system. The mandatory carriage of RNAV avionics in order to use the air traffic control system is not envisioned in the near future.

BACKGROUND

Early in 1972 a task force was formed to make an indepth study of area navigation to determine its potential value in the national airspace system. The task force was comprised of representatives of commercial and general aviation groups, and the FAA. The findings, concepts developed, and recommendations of this group were published in a report titled "FAA/Industry RNAV Task Force Report."

The task force report issued in February 1973 is a concept paper showing how RNAV could be used in the system. The RNAV task force made many assumptions, several of which required extensive R&D efforts. The task force report specified an action plan to implement a charted route and terminal system design concept which would replace the VOR route structure with a charted RNAV route system in an orderly fashion with identification of specific areas which would need detailed attention.

The user/public comments on the task force report did not reveal any significant new facts or issues that were not known and considered by the task force. However, the commentors collectively agree with the task force, concerning the need for the findings to be thoroughly examined, studied and validated, particularly from the cost benefit aspect.

In April 1974, the FAA issued its area navigation interim policy statement which stated in part that: "The agency will, therefore, proceed with the operational and the research and development efforts necessary to validate the concepts in the report and continue to plan for an orderly development and transition toward an RNAV-based system. * * * **The most important** of the initial R&D tasks will be a comprehensive cost/benefit analysis to determine user and system payoffs as a prerequisite to implementation of the plan."

Since then, significant research and development work has been accomplished. This work culminated in an assessment of RNAV Task Force concepts and payoffs (RD-76-196 Implementation of Area Navigation in the National Airspace System, December 1976.) It concludes that: "The results obtained from economic and operational impact analysis, and from various supporting system studies, indicate that the advantages of area navigation to both the users and the ATC system are sufficient to warrant implementation of the charted route and terminal area navigation concept, particularly when all users are RNAV equipped." This concept is based on the task force recommendations, but modifies those recommendations to insure that maximum benefits will accrue to both the ATC system and the users. Although additional research and development work is still required in some areas, implementation of the area navigation concept can proceed in parallel with these efforts.

User responses to the recommended modification of the RNAV Task Force Concepts and to the RNAV Payoff Study were favorable. There was general agreement that RNAV should not be made mandatory for participation in the ATC system at this time, but FAA should take positive steps to promote RNAV implementation in accordance with the modified concepts persented in this study.

In addition to the studies showing the efficacy of RNAV, the number of aircraft with RNAV capability is increasing. There is a growing immediate demand for routes and procedures which will allow users to obtain the advantages offered by their RNAV avionics.

POLICY STATEMENT

The FAA, under public law 85-726, has the responsibility for development and implementation of radio-navigation systems to meet the needs for safe and efficient navigation and traffic control of all civil and military aviation throughout the national aviation system. This policy statement pertains only to area navigation and is supplementary to overall FAA navigation policy.

The FAA recognizes the advantages that RNAV offers to both the ATC system user and operator, and will pursue a two-part program leading to the ultimate objective of an RNAV based airspace structure. This structure will be based on the modified RNAV task force enroute and terminal concepts. Implementation will be consistent with the rate of user implementation of RNAV avionics, but the mandatory carriage of

RNAV avionics as a condition to participate in the ATC system is not envisioned in the near future.

To be responsive to current and near-term RNAV users, the FAA will determine RNAV user needs and take positive steps to facilitate RNAV use within the existing air traffic control environment. This will include:

Eliminating existing RNAV routes which do not respond to user requirements.
Establishing, on a case-by-case basis, RNAV routes with the accompanying RNAV transition segments, SIDs and STARs.
Promoting the establishment of RNAV approaches at noninstrumented airports.
Establishing a continuing program to educate pilots, air traffic controllers, flight service specialists and flight standards specialists about RNAV and its capabilities.
Developing a national waypoint system to facilitate pilot selection of direct routes.
Development and promulgation of RNAV avionics minimum selection standards.

Concurrently, the FAA will undertake a long-range effort to develop a master enroute and terminal RNAV route design and transition plan to bridge the gap between today's structure and the future RNAV structure. Development of the master RNAV design will require close and continuous coordination with all airspace users and will include an environmental analysis.

(Secs. 307(a) and 312(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1353(a)) and Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Washington, D.C., on January 7, 1977.

JOHN L. MCLUCAS,
Administrator.

[FR Doc.77-1227 Filed 1-12-77;8:45 am]

National Highway Traffic Safety Administration

FORD MERCURY FRONT WHEEL SPINDLE FAILURE

Public Proceeding

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Pub. L. 93-492, 88 Stat. 1470, October 27, 1974) 15 U.S.C. 1412, the Associate Administrator, Motor Vehicle Programs, has made an initial determination that a defect relating to motor vehicle safety exists with respect to 1969 Ford and Mercury passenger cars, equipped with disc brakes, and presently or formerly used in police service. Specifically, such vehicles are subject to unforewarned spindle stem separation due to failures of the stem at the inner bearing fillet location. Such a failure causes sudden loss of the wheel, creating an unreasonable risk of accidents.

A public proceeding will be held at 10:00 a.m., February 3, 1977, in Room 5332, Department of Transportation Headquarters, 400 Seventh Street S.W., Washington, D.C. 20590, at which Ford Motor Company will be afforded an opportunity to present data, views, and arguments to establish that the alleged defect does not exist or does not relate to motor vehicle safety.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Mrs. Nancy Martus, Office of Defects Investigation, National Highway Traffic Safety Administration, Washington, D.C. 20590, Tel. (202) 426-2850, before the close of business (4:15 p.m.) on January 31, 1977. A transcript will be kept and exhibits may be accepted. There will be no cross examination of witnesses.

The agency's investigative file regarding this matter is available for public inspection during regular working hours (7:45 a.m.-4:15 p.m.) in the Technical Reference Division, Room 5108, 400 Seventh Street S.W., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 6, 1977.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.77-841 Filed 1-12-77;8:45 am]

NATIONAL MOTOR VEHICLE SAFETY COUNCIL

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the National Motor Vehicle Safety Advisory Council to be held on February 8, 9 and 10, 1977 at the DOT Headquarters Building, 400 Seventh Street, SW, Washington, D.C.

On February 8 at 9:00 a.m. in room 4234 there will be a joint meeting of the Crashworthiness Subcommittee and the Accident Avoidance and Operating Systems Subcommittee. The agenda will include a review of NHTSA rulemaking actions, presentation on recreational vehicle safety, and old/new business.

At 3:00 p.m. on February 8 in room 4234 there will be a briefing for newly appointed Advisory Council members. This will include briefings on Council responsibilities and activities, DOT and NHTSA programs and organization, Council "housekeeping" information and the responsibilities and activities of the Council's subcommittees.

Also on February 8 at 2:00 p.m. in room 6200 the Fifth International Con-

gress Committee will meet to present a status report on Congress progress.

On February 9 at 9:00 a.m. in room 2230 the Motorcycle Subcommittee will meet. The agenda will include a review of NHTSA rulemaking actions, update on Head and Neck Injury Seminar, update on California Demonstration Project on Motorcycle Driver Licensing, review of FMVSS Standard 119—Tires—Multipurpose Passenger Vehicles, Trucks, Buses, Trailers, and Motorcycles, New and Current Tire Designs, presentation on tire compliance testing program, and old/new business.

At 2:00 p.m. on February 9 in room 4234 the Consumer and Public Information Subcommittee will meet. The agenda will include a review of NHTSA rulemaking actions, discussion of safety belt usage—development of new materials, briefing on DOT activities regarding public information on necessity for 55 mph, discussion of proposed resolution on public information on barrier equivalent velocity (factor of 2), and old/new business.

On February 10 at 9:00 a.m. in room 2230 the full Council will meet. The agenda will include an introduction and welcome to new members, approval of Council minutes, swearing in of new members, election of new Council Chairman, remarks by new Chairman, reports by the following subcommittees: Joint Accident Avoidance and Operating Systems and Crashworthiness, Motorcycle, Consumer and Public Information, Congress, and Awards, and old/new business.

At 12:15 p.m. on February 10 in room 2230 the Executive Subcommittee will meet to plan future meeting agendas and activities.

The above meetings are subject to the approval of the National Highway Traffic Safety Administrator.

With the approval of the Chairman members of the public may present oral statements at the meeting. Any member of the public may present a written statement to the Council at any time.

Additional information may be obtained from the NHTSA Executive Secretary, room 5215, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202–426–2872.

Issued in Washington, D.C., on January 7, 1977.

WM. H. MARSH,
Executive Secretary.

[FR Doc.77-1114 Filed 1-12-77;8:45 am]

YOUTH HIGHWAY SAFETY ADVISORY COMMITTEE

Notice of Renewal

Notice is hereby given that the Youth Highway Safety Advisory Committee is being renewed. The Committee is composed of persons appointed by the National Highway Traffic Safety Administrator to consult with and advise him concerning programs and activities to attract and sustain the participation of young people in the national effort to combat highway deaths and injuries. The National Highway Traffic Safety Administration sponsors the Committee, which consists of 15 Members between the ages of 15–24.

The Committee reviews highway safety programs as they relate to young people and advises the Administrator on those aspects of the safety standards and countermeasures programs relating to young people. The Committee is limited to advisory functions only.

The Secretary of Transportation has determined that the formation and use of the Youth Highway Safety Advisory Committee are necessary in the public interest in connection with the performance of duties imposed on the Department by law.

Issued in Washington, D.C., on January 6, 1977.

WM. H. MARSH,
Executive Secretary.

[FR Doc.77-1092 Filed 1-12-77;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ART ADVISORY PANEL

Closed Meeting

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463, that a closed meeting of the Art Advisory Panel will be held on February 15 and 16, 1977, beginning at 9:30 a.m. in Room 3313, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

The agenda will consist of the review and evaluation of the acceptability of market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This involves the discussion of materials in individual tax returns made confidential by the provisions of sections 6103 and 7213 of Title 26 of the United States Code and section 1905 of Title 18 of the Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552(b)(3), (4), (5), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.77-1145 Filed 1-12-77;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 303]

ASSIGNMENT OF HEARINGS

JANUARY 10, 1977.

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 44735 (Sub-No. 28), Kissick Truck Lines, Inc., now assigned February 8, 1977 at Kansas City, Mo., will be held in Room 609 Federal Office Building, 911 Walnut Street.

MC 136711 (Sub-No. 28), McCorkle Truck Line, Inc., now assigned February 9, 1977 at Kansas City, Mo., will be held in Room 609 Federal Office Building, 911 Walnut Street.

MC 124774 (Sub-96), Midwest Refrigerated Express, Inc., now assigned February 14, 1977 at Kansas City, Mo., will be held in Room 609 Federal Office Building, 911 Walnut Street.

MC 133566 (Sub-57), Gangloff & Downham Trucking Co., Inc.; MC 134755 (Sub-77), Charter Express, Inc.; MC 134922 (Sub-188), B. J. McAdams, Inc. and MC 139999 (Sub-12), Redfeather Fast Freight, Inc., now assigned February 14, 1977 at Kansas City, Mo., will be held in Room 609 Federal Office Building, 911 Walnut St.

MC 136632 Sub 6, Copeland Transportation Co., Inc., now assigned February 16, 1977 at Kansas City, Mo., will be held in Room 609 Federal Office Bldg., 911 Walnut Street.

MC 83835 Sub 134, Wales Transportation Inc., now assigned February 17, 1977 at Dallas, Tex., will be held in Room 5A15–17 Federal Bldg., 1100 Commerce Street.

MC 124947 Sub 47, Machinery Transport, Inc., now assigned Febrnary 16, 1977, at Dallas, Tex., will be held in Room 5A15–17 Federal Bldg., 1100 Commerce Street.

MC 135518 Sub 4, Everett Trucking, Inc., now assigned February 14, 1977, at San Francisco, Calif., will be held in the Hyatt Regency, No. 5 Embarcodero Center.

MC 107295 Sub 824, Pre-Fab Transit Co., A corp., now assigned February 7, 1977, at Memphis, Tenn., will be held in Room 396, Federal Bldg., 167 N. Main Street.

MC 139193 Sub 40, Roberts & Oake, Inc., now assigned February 8, 1977 at Memphis, Tenn,. will be held in Room 396, 167 N. Main Street, Federal Bldg.

MC 111302 Sub 93, Highway Transport, Inc., & MC 112801 Sub 186, Transport Service Co., now assigned February 3, 1977 at Chicago, Ill., has been postponed indefinitely.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1191 Filed 1-12-77:8:45 am]

[Notice No. 102]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission within 30-days after the date of this publication. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

Finance Docket No. 28351, filed November 29, 1976. Transferee: R. S. KITAMURA, LTD., Suite 101, 1849 Old Bayshore Highway, Burlingame, County of San Mateo, California 94010. Transferor: HC&D Forwarders International, Inc., Suite 101, 1849 Old Bayshore Highway, Burlingame, County of San Mateo, California 94010. Applicant's Representative: Alan F. Wohlstetter, Esquire, Denning & Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Permit No. FF-363 issued September 6, 1972, authorizing operations, in interstate commerce, as a freight forwarder of (a) used household goods and unaccompanied baggage between points in the United States (including Hawaii, but excluding Alaska), (b) of used automobiles between points in the United States (including Hawaii, but excluding Alaska), restricted to import-export traffic, and (c) of used automobiles between points in Hawaii on the one hand, and, on the other, points in the United States (including Hawaii, but excluding Alaska), restricted against shipments to or from the facilities of automobile dealers. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority.

No. MC-FC-76757, filed September 30, 1976. Transferee: E. W. BELCHER TRUCKING, INC., 201 Dallas Drive, Denton, Tx. 76201. Transferor: John G. Everett, doing business as E & P Truck Service, Rt. 2, McCrory, Ark. 72101. Applicants representative: William D. Lynch, Attorney at Law, P.O. Box 912, Austin, Tx. 78767. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-124158, issued February 11, 1976, as follows: *Potash*, over irregular routes, from points in Lea and Eddy Counties, N. Mex., to points in Jackson, Poinsett, Craighead, Cross, and Mississippi Counties, Ark., and *Potash*, except in tank vehicles, over irregular routes, from points in Lea and Eddy Counties, N. Mex., to points in Greene, Randolph, Lawrence, Clay, Woodruff, Lee, Monroe, Arkansas, Prairie, Lonoke, Ashley, Drew, Phillips, and St. Francis Counties, Ark., and *soybean meal*, from points in Jackson and Mississippi Counties, Ark., to points in that part of Texas on and west of a line beginning at the Texas-Oklahoma State line near Higgins, Tex., and extending along U.S. Highway 83 to Abilene, Tex., and thence along U.S. Highway 277 to Eagle Pass, Tex., and points in that part of New Mexico on and east of U.S. Highway 54, and *soybean meal*, except in tank vehicles, from Stuttgart, Pine Bluff, North Little Rock, Newport, Wilson, and Helena, Ark., Greenville, Greenwood, Marks, Hollandale, and Clarksdale, Miss., and points within ten miles of each of said points, and Memphis and Tiptonville, Tenn., to points in Texas, except Houston, Tex. Transferee is presently authorized to operate as a common carrier under Certificate No. MC-133494 and subs thereafter. Application has been filed for temporary authority under Section 210a(b).

No. MC-FC-76809, filed November 2, 1976. Transferee: A & A TRUCK LINES, INC., 1221 La Paloma Way, Colorado Springs, Colorado 80906. Transferor: Ruby D. Jackson, doing business as Mountain Express Truck Line, 2903 N. Tejon Street, Colorado Springs, Colorado 80907. Applicant's representatives: John P. Thompson and Raymond M. Kelley, Attorneys at Law, 450 Capitol Life Center, Denver, Colorado 80203. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate of Registration No. MC-121234 (Sub-No. 2) issued by the Commission April 1, 1976, as follows: General freight between specified points in the state of Colorado. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76812, filed November 2, 1976. Transferee: S & S EXPRESS, INC., 8 Plain Street, Easthampton, Massachusetts 01027. Transferor: The National Corporation, doing business as National Transport, 101 Eastern and Moonachie Avenues, Carlstadt, New Jersey 07072. Applicants representatives: Paul A. Marshuk for transferee, President, S & S Express, Inc., 8 Plain Street, Easthampton, Massachusetts 01027. William

W. Becker, Attorney at Law, 1819 H Street, N.W., Washington, D.C. 20006. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate No. MC-9876 issued July 19, 1965, as corrected September 24, 1965 as follows: General commodities with the usual exceptions between Springfield, Mass. and West Suffield, Conn. and the off-route point of Feeding Hills, Mass. over a specified regular route.

Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

No. MC-FC-76822, filed November 11, 1976. Transferee: GARY W. GRAY, P.O. Box 48, Delaware, New Jersey 07833. Transferor: Columbia Transport, Inc., R.D. No. 1, Columbia, New Jersey 07832. Applicant's representative: Joseph F. Hoary, 121 S. Main Street, Taylor, Pennsylvania 18517. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-124905 (Sub-No. 1), MC-124905 (Sub-No. 2), and MC-124905 (Sub-No. 3) issued August 18, 1967, November 18, 1969, and July 7, 1975, respectively, as follows: Used wire, waylite, sand, gravel, and stone, from specified points in Pennsylvania, New Jersey, and New York to specified points in New York and Pennsylvania. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76829, filed December 30, 1976. Transferee: JACK MITCHELL MOVING & STORAGE CORP., 105-109 Grove St., Cooperstown, N.Y. 13326. Transferor: Joseph F. Mitchell, 6 Hickory St., Oneonta, N.Y. 13326. Applicant's representative: John J. Mitchell, 105 Grove St., Cooperstown, N.Y. 13326. Authority sought for purchase by transferee of the operating rights set forth in Certificates Nos. MC-6228 and MC-6228 (Sub-No. 1), issued by the Commission September 28, 1949, and October 15, 1948, respectively, in the name of transferor, as follows: Household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 267, over irregular routes, between Oneonta, N.Y., on the one hand, and, on the other, points and places in Massachusetts, Vermont, New York, Pennsylvania, New Jersey, and Connecticut; and between points in Otsego, Chenango, Delaware and Schoharie Counties, N.Y., on the one hand, and, on the other, points in New York, Pennsylvania, New Jersey, Maryland, Vermont, Massachusetts, Connecticut, and the District of Columbia. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76831, filed November 19, 1976. Transferee: CML, INC., a Corporation, doing business as Colony Motor Lines, 9506 Timberlake Rd., Lynchburg, Va. 24504. Transferor: Morton Transfer, Inc., 4th and Maury Sts., Richmond, Va. 23224. Applicant's representative: Michael L. Rigsby, Attorney at Law, 200 West Grace Street, Suite 415, Richmond, Va. 23220. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC-126186, issued December 9, 1971, as follows: *New furniture*, in cartons, over irregular routes, from Kenbridge, Va., to points in Alabama, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Massachusetts, Michigan, Mississippi, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia, Delaware (except those in the Wilmington, Del., Commercial Zone as defined by the Commission), Maryland (except those in the Baltimore, Md., Commercial Zone as defined by the Commission), New York (except those in the New York, N.Y., Commercial Zone as defined by the Commission) and specified points in Pennsylvania with restrictions and from Richmond, Va., to points in Alabama, Florida, Georgia, and South Carolina; and *Damaged and defective shipments of new furniture*, in cartons, from points in Alabama, Florida, Georgia, and South Carolina, to Richmond, Va. and *New furniture*, in cartons, set up, from Richmond, Va., to points in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Ohio, West Virginia, Michigan, Indiana, Kentucky, Illinois, and Tennessee, New York (except those in the New York, N.Y., Commercial Zone as defined by the Commission), Maryland (except those in the Baltimore, Md., Commercial Zone as defined by the Commission), Delaware (except those in the Wilmington, Del., Commercial Zone as defined by the Commission), and specified points in Pennsylvania and *New furniture*, crated or uncrated, as described in Appendix II to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, from Richmond, Va., to points in Mississippi; and *Defective shipments* of the immediately above-specified commodity, from points in Mississippi to Richmond, Va. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

No. MC-FC-76844, filed November 29, 1976. Transferee: ANDO AMERICA TRANSPORT CORP., 13-16 133rd Place, College Point, N.Y. 11356. Transferor: John G. Hemmings, doing business as, Hemmings Express, 228 E. Mill Rd., Long Valley, N.J. 07853 .Applicant's representative: Arthur J. Piken, Attorney at Law, One Lefrank City Plaza, Flushing, N.Y. 11368. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-44102, issued July 11, 1962, as follows: *Household goods*, over irregular routes, between New York, N.Y., and points in Essex, Union, and Hudson Counties, N.J., on the one hand, and, on the other, points in New Jersey, New York, Connecticut, and Pennsylvania, and *Signs*, and *fur dressing and dyeing equipment*, From Newark, N.J., to White Haven, Pa., and New York, N.Y. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76846, filed December 1, 1976. Transferee: JOHN R. PROCHAZKA AND LORRAINE V. PROCHAZKA, Individuals, doing business as, Star Route & Transfer, Rural Route, Carter, S. Dak. 57526. Transferor: Floyd Teigh, doing business as, Teigh Transfer, 329 Washington St., Winner, S. Dak. 57580. Applicant's representative: Ruben G. Maulis, Attorney at Law, P.O. Box 150, 338 S. Main St., Winner, S. Dak. 57580. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-81119, issued September 29, 1961, as follows: *General commodities*, except those of unusual value, high explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those contaminating to other lading, between Winner, S. Dak., and Mission, S. Dak., serving the intermediate points of Carter and Okreek, S. Dak.; From Winner over U.S. Highway 18 to Mission, and return over the same route. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76851 filed December 2, 1976. Transferee: PENN-PACIFIC, INC., 20815 Currier Rd., Walnut, California, 91789. Transferor: Dick Simon Trucking, Inc., 3700 South, 4355 West, Salt Lake City, Utah 84120. Applicants representative: Irene Warr, 430 Judge Building, Salt Lake City, Utah 84111. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 135221 issued November 4, 1975, as follows: Bananas, and agricultural commodities exempt from economic regulation under section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with bananas, from points in Maricopa, Mohave, Pima, Pinal, Santa Cruz, and Yuma Counties, Arizona; that part of California in and south of Sonoma, Lake, Colusa, Butte, and Nevada, to ports of entry on the United States-Canada Boundary line in Idaho, Montana, and North Dakota, and points in that part of Washington east of U.S. Highway 97. Transferee presently holds no authority form this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76852 filed December 2, 1976. Transferee: RILEY'S MOTOR EXPRESS, Inc., 86 Porete Avenue, North Arlington, New Jersey 07032. Transferor: Asbestos Eastern Transport (U.S.) Inc., 10 Oak Street, Plattsburgh, New York 12901. Applicants representatives: Robert B. Pepper, Practitioner for Trans-

feree, 168 Woodbridge Avenue, Highland Park, New Jersey 08904. Ronald I. Shapss Attorney for Transferor, 450 Seventh Avenue, New York, New York 10001. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 39123 (Sub-No. 2), issued March 28, 1950, as follows: Irregular routes: General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, and liquid commodities in bulk, between North Bergen, N.J., and points in New Jersey within 15 miles of North Bergen, on the one hand, and, on the other, points in Suffolk County, N.Y. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76860 filed December 3, 1976. Transferee: ISLAND FREIGHT SYSTEMS, INC., 36-15 13th Street, Long Island City, New York 11106. Transferor: CMR Transportation, Inc., P.O. Box 267, Bound Brook, New Jersey 08805. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, New Jersey 08904. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 62254 (Sub-No. 1) issued July 8, 1970, as follows: General commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Clifton and Caldwell, N.J., on the one hand, and, on the other, New Brunswick, N.J. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76870, filed December 13, 1976. Transferee: LAKESHORE TRANSPORT, INC., 1691 Wyway W, Grafton, Wis. 53024. Transferor: Tisch & Drews, Inc., 212 Green Bay Ave., Oconto Falls, Wis. 54154. Applicant's representative: William C. Cineen, Attorney-at-Law, 710 North Plankinton Ave., Milwaukee, Wis. 53203. Authority sought for purchase by transferee of the operating rights of transferor set forth in Permit No. MC 117200 (Sub-No. 13), issued July 11, 1968, as follows: Lime, from Eden, Knowles, and Green Bay, Wis., to points in the Upper Peninsula of Michigan and those in that part of Michigan on and north of Michigan Highway 46, limited to a transportation service to be performed under a continuing contract, or contracts, with Western Lime and Cement Company, of Milwaukee, Wis. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76871, filed December 13, 1976. Transferee: BESTWAY MOVING & STORAGE, INC., 1915 N. National St., Springfield, MO 65803. Transferor: Gilbert Clotfelter, doing business as Bestway Moving & Storage, 1915 N. National St., Springfield, MO 65803. Applicants' representative: Thomas P. Rose, attorney-at-law, P.O. Box 205, Jefferson City, MO 65101. Authority sought for purchase by transferee of the operating rights set forth in Permit No. MC-136610, issued September 19, 1974, in the name of transferor, as follows: Such commodities as are dealt in by retail department stores, from the facilities of Montgomery Ward & Co., Inc., at Joplin, Mo., to points in Benton and Carroll Counties, Ark., Allen, Bourbon, Cherokee, Crawford, Labette, Montgomery, Neosho, and Wilson Counties, Kans., and Craig, Delaware, Mayes, Nowata, Ottawa, and Rogers Counties, Okla.; and returned shipments of the commodities specified above from the above-named destination points to the facilities of Montgomery Ward & Co., Inc., at Joplin, Mo., limited to a transportation service to be performed under a continuing contract, or contracts, with Montgomery Ward & Co., Inc. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1192 Filed 1-12-77;8:45 am]

[AB 125 (Sub-No. 1)]

NORFOLK SOUTHERN RAILWAY CO.

Abandonment Between Diamond Springs and Shelton, in Virginia Beach, Virginia

DECEMBER 28, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Norfolk and Southern Railway Company between Diamond Springs and Shelton, in Virginia Beach, Va., a total distance of 1.4 miles, if approved by the Commission, does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, and that preparation of a detailed environmental impact statement will not be required under section 4332(2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because of the lack of traffic over the line for the last 4 years. Consequently, there will not be any change in air quality and fuel consumption although there may be some temporary adverse effects on the environment during salvage operations. No land use plans of economic importance exist which would necessitate the continued operation of the line. The right-of-way has been determined to be suitable for transportation or recreation use following abandonment.

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 writi gnwhit Wash-_.
writing with the Interstate Commerce Commission, Washington, D.C. 20423, on or before February 10, 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.77-1195 Filed 1-12-77;8:45 am]

Office of Proceedings

[Volume No. 65]

PETITIONS, APPLICATIONS, FINANCE MATTERS (INCLUDING TEMPORARY AUTHORITIES), RAILROAD ABANDONMENTS, ALTERNATE ROUTE DEVIATIONS, AND INTRASTATE APPLICATIONS

Petitions for Modification, Interpretation or Reinstatement of Operating Rights Authority

The following petitions seek modification or interpretation of existing operating rights authority, or reinstatement of terminated operating rights authority.

An original and one copy of protests to the granting of the requested authority must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protest shall comply with Special Rule 247(d) of the Commission's General Rules of Practice (49 CFR 1100.247)[1] and shall include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon petitioner's representative, or petitioner if no representative is named.

No. MC 3322 (notice of filing of petition to modify commodity description) filed December 15, 1976. Petitioner: PAUL E. GREGORY, doing business as WHITTINGTON TRANSFER, 329 Oak St., Martinsburg, W. Va. 25401. Petitioner's representative: Dave L. Bennett, 129 Edgington Lane, Wheeling, W. Va. 26003.

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

Petitioner holds a motor *common carrier* Certificate in No. MC 3322, issued March 21, 1968, authorizing transportation, as pertinent, over irregular routes, of *new furniture*, uncrated, from Martinsburg, W. Va., to points in West Virginia, Virginia, Maryland, New York, Pennsylvania, Ohio, New Jersey, Delaware, and the District of Columbia. By the instant petition, petitioner seeks to modify the commodity description above by deleting the commodity description above and substituting *"new furniture*, crated or uncrated, or otherwise packaged" in lieu thereof.

No. MC 7832 (notice of filing of petition to add an additional contracting shipper) filed December 8, 1976. Petitioner: SUPER M LTD., a Corporation, 411 A North Wood Avenue, Linden, N.J. 07036. Petitioner's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Petitioner holds a motor *contract carrier* Permit in No. MC 7832, issued April 28, 1976, authorizing transportation as pertinent over irregular routes of *such merchandise* as is dealt in by wholesale, retail, chain grocery, department stores, and food business houses (except commodities in bulk), and in connection therewith, *equipment, materials and supplies* use in the conduct of such business (except commodities in bulk), between points in New Jersey, Pennsylvania, Maryland, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Delaware, Virginia, and Washington, D.C., under a continuing contract, or contracts, with Food Fair Stores, Inc., of Philadelphia, Pa., and Lever Brothers Company. By the instant petition, petitioner seeks to add the Colgate-Palmolive Company as an additional contracting shipper to the authority above.

No. MC 54200 (Sub-No. 2) (Notice of filing of petition to add radial points) filed December 7, 1976. Petitioner: SEIGLE'S EXPRESS, INC., 81 Porete Ave., N. Arlington, N.J. 07032. Petitioner's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, N.J. 08904. Petitioner holds a motor *common carrier* Certificate in No. MC 54200 (Sub-No. 2), issued March 5, 1974, authorizing transportation over irregular routes, of *gas ranges, electric materials, paints and raw material* (shoddy), between New York, N.Y., on the one hand, and, on the other, points in that part of New Jersey (except Newark, N.J., and points in New Jersey within 10 miles of Newark), New York, and Connecticut within 35 miles of Columbus Circle, New York, N.Y. By the instant petition, petitioner seeks to broaden the territorial description above by adding Kingston, Newburgh, and Poughkeepsie, N.Y. as additional radial points.

No. MC 123778 (Sub-No. 23) (Notice of filing of petition to add an additional contracting shipper) filed December 2, 1976. Petitioner: JALT CORP., doing business as: UNITED NEWSPAPER DELIVERY SERVICE, P.O. Box 398, 75 Cutters Dock Road, Woodbridge, N.J. 07095. Petitioner's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Petitioner holds a motor *contract carrier* Permit in No. MC 123778 (Sub-No. 23), issued December 9, 1976, authorizing transportation, as pertinent, over irregular routes, of *magazines* and *advertising matter* shipped with magazines, from Old Saybrook, Conn., to points in New Jersey, points in that part of Pennsylvania on and east of U.S. Highway 15, and points in that part of New York on, east, and south of a line beginning at the New York-Pennsylvania State line, and extending along U.S. Highway 11 to Syracuse, thence along New York Highway 5 to Schenectady, and thence along New York Highway 7 to the New York-Vermont State line, and to Wilmington, Del., Baltimore, Md., and the District of Columbia, under a continuing contract, or contracts, with U.S. News & World Report, of Chicago, Ill., and McGraw-Hill Publications Company, of Chicago, Ill. By the instant petition, petitioner seeks to add New Times as an additional contracting shipper to the above authority.

No. MC 125035 (Sub-No. 42) (Notice of filing of petition to substitute contracting shippers) filed December 8, 1976. Petitioner: RAY E. BROWN TRUCKING, INC., 1266 Stuart St., N.W., P.O. Box 501, Massillon, Ohio 44646. Petitioner's representative: David L. Pemberton, 50 West Broad Street, Columbus, Ohio 43215. Petitioner holds a motor *contract carrier* Permit in No. MC 125035 (Sub-No. 42), issued March 25, 1976, authorizing transportation over irregular routes, of *animal feed, materials, and supplies* (except commodities in bulk), between Sebring, Ohio and Everson, Pa., on the one hand, and, on the other, points in that part of the United States east of U.S. Highway 85, under a continuing contract, or contracts, with Allied Mills, Inc. of Sebring, Ohio. By the instant petition, petitioner seeks to delete Allied Mills, Inc. of Sebring, Ohio as the contracting shipper from the above authority, and substitute, in lieu thereof, Carnation Company located at Sebring, Ohio, and Allied Mills, Inc. of Everson, Pa. as contracting shippers.

No. MC 127304 (Sub-No. 4) (Notice of filing of petition to modify commodity description and add additional origin points) filed December 10, 1976. Petitioner: CLEAR WATER TRUCK COMPANY, INC., 9101 N. West St., Valley Center, Kans. 67147. Petitioner's representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Petitioner holds a motor *contract carrier* Permit in No. MC 127304 (Sub-No. 4), issued August 6, 1970, authorizing transportation over irregular routes, of (1) *Dichlorodifluoromethane and monochloridifluoromethane*, in containers, and *plastic and plastic articles*, from Colwich, Kans., to points in the United States (except Alaska and Hawaii); and (2) *empty containers*, from Philadelphia, Pa., and Columbus, Ohio, to Colwich, Kans., under a continuing contract, or contracts, with International Plastics, Inc. By the instant petition, petitioner seeks (a) to modify the commodity description in part (1) of the above authority to read: *"Fluorocarbon chemicals and antifreeze*, in containers and cylinders, and *replacement parts for air conditioning systems*; and (b) to add, with respect to part (2) of the above authority, the additional origin points of Paducah, Ky.; Decatur, Ala.; Everett, Mass.; and West Warwick, R.I.

REPUBLICATIONS OF GRANTS OF OPERATING RIGHTS AUTHORITY PRIOR TO CERTIFICATION

NOTICE

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the FEDERAL REGISTER.

An original and one copy of protests to the granting of the authority must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protest shall comply with Special Rule 247(d) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition shall not be tendered at this time. A copy of the protest shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

No. MC 139495 (Sub-No. 127) (Republication), filed February 26, 1976, published in the FEDERAL REGISTER issue of April 1, 1976, and republished this issue. Applicant: NATIONAL CARRIERS, INC., 1501 East 8th St., P.O. Box 1358, Liberal, Kans. 67901. Applicant's representative: Herbert Alan Dubin, 1819 H St., N.W., Suite 1030, Washington, D.C. 20006. An Order of the Commission, Review Board Number 3, issued November 15, 1976, and served December 22, 1976, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle over irregular routes, in the transportation of *such merchandise* as dealt in by retail shoe stores and *equipment, materials and supplies* used in the conduct of retail shoe stores (except commodities in bulk), from the facilities of Thom McAn Shoe Company, at or near Brockton and Auburn, Mass., to Los Angeles, La Mirada, San Francisco, and Oakland, Calif.; that applicant is fit, willing, and able to properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. The purpose of this republication is to indicate the substitution of Brockton, Mass. as an origin point in lieu of Worcester, Mass. in applicant's grant of authority.

MOTOR CARRIER, BROKER, WATER CARRIER AND FREIGHT FORWARDER OPERATING RIGHTS APPLICATIONS

NOTICE

The following applications are governed by Special Rule 247 of the Commission's *General Rules of Practice* (49 CFR § 1100.247). These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after the date of notice of filing of the application is published in the FEDERAL REGISTER. Failure to seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirement of the rules may be rejected. The original and one copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) further provides, in part, that an applicant who does not intend timely to prosecute its application shall promptly request dismissal thereof, and that failure to prosecute an application under procedures ordered by the Commission will result in dismissal of the application.

Further processing steps will be by Commission order which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the Federal Register of a notice that the proceeding has been assigned for oral hearing.*

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 2202 (Sub-No. 523), filed December 8, 1976. Applicant: ROADWAY EXPRESS, INC., 1077 Gorge Blvd., P.O. Box 471, Akron, Ohio 44309. Applicant's representative: William O. Turney, Suite 1010, 7101 Wisconsin Avenue, Washington, D.C. 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of Oklahoma Gas and Electric Company, located at or near Red Rock, Okla., as an off-route point in connection with applicant's present authority.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Oklahoma City, Okla., or Washington, D.C.

No. MC 4405 (Sub-No. 541), filed December 10, 1976. Applicant: DEALERS TRANSIT, INC., 522 South Boston Ave., Enterprise Bldg., Tulsa, Okla. 74103. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tanks, bins, conveyors, bag houses, coolers, and mixers, and parts, attachments and accessories* for the above named commodities, from Glasgow, Mo., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 4405 (Sub-No. 543), filed December 10, 1976. Applicant: DEALERS TRANSIT, INC., 522 South Boston Avenue, Enterprise Bldg., Tulsa, Okla. 74103. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bottle pasteurizer and bottle washing machinery and parts, attachments and accessories* for the above named commodities, from St. Louis, Mo., to points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 15728 (Sub-No. 12), filed December 8, 1976. Applicant: AUTO PRODUSTS TRANSPORT, INC., 28000 Southfield Road, Lathrup Village, Mich. 48076. Applicant's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, Mich. 48080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, between Toledo, Ohio, on the one hand, and, on the other, points in Indiana, under a continuing contract with Mead Containers Division of Mead Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Detroit or Lansing, Mich.; Toledo, Ohio; or Chicago, Ill.

No. MC 44053 (Sub-No. 9), filed December 2, 1976. Applicant: TOWNE SERVICES HOUSEHOLD GOODS, TRANSPORTATION CO., INC., P.O. Box 17005, San Antonio, Tex. 78217. Applicant's representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty household goods shipping containers*, set up or knocked down, between points in the United States, including Hawaii and Alaska.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at San Antonio, Tex.

No. MC 47710 (Sub-No. 3), filed December 10, 1976. Applicant: G. J. R. INC., 7390 Harrison Pike, Cincinnati, Ohio 45247. Applicant's representative: Norbert B. Flick, 715 Executive Building, Cincinnati, Ohio 45202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel or crushed stone*, in bulk, in dump trucks, from the plant facilities of American Materials Corp., located at or near Harrison, Ohio, to points in Dearborn County, Ind.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at either Cincinnati, or Columbus, Ohio.

No. MC 51146 (Sub-No. 482), filed December 2, 1976. Applicant: SCHNEIDER TRANSPORT, INC., 2261 South Broadway, Green Bay, Wis. 54304. Applicant's representative: James W. Muldoon, Suite 1815, 50 W. Broad Street, Columbus, Ohio 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Adhesives*, when moving in mixed loads with paper and paper products, from Chillicothe and Schooleys, Ohio, to points in the United States (except points in Maryland, Virginia, and the District of Columbia, and points in that part of North Carolina east of U.S. Highway 25; South Carolina east of a line beginning at the North Carolina-South Carolina state line and extending southeast along U.S. Highway 176 to Columbia, thence east along Interstate Highway 20 to Florence, thence south along U.S. Highway 52 to Charleston).

NOTE.—Applicant states that it presently holds authority to transport paper and paper products from the above described origin to the requested destination territory. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Columbus, Ohio or Chicago, Ill.

No. MC 52579 (Sub-No. 158), filed December 9, 1976. Applicant: GILBERT CARRIER CORP., 1 Gilbert Drive, Secaucus, N.J. 07095. Applicant's representative: Irving Klein, 371 Seventh Avenue, New York, N.Y. 10001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel*, loose, on hangers, from points in Alabama, Florida, Kentucky, Mississippi, North Carolina and Tennessee, to points in the Chicago, Ill. commercial zone as defined by the Commission.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 52704 (Sub-No. 136), filed December 10, 1976. Applicant: GLENN

MCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, Ala. 36872. Applicant's representative: Archie B. Culbreth, Suite 246, 1252 West Peachtree St., N.W., Atlanta, Ga. 30309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper, paper products and woodpulp* (except in bulk), from the plantsite of Bowater Carolina Corporation, at or near Catawba, S.C., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia; and (2) *materials, equipment and supplies*, used in the manufacture of paper, paper products and woodpulp (except in bulk), from the destination points named in (1) above, to the plantsite of Bowater Carolina Corporation, at or near Catawba, S.C.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Washington, D.C.

No. MC 53841 (Sub-No. 4), filed December 8, 1976. Applicant: W. H. CHRISTIE & SONS, INC., Box 517, Knox, Pa. 16232. Applicant's representative: John A. Pillar, 205 Ross Street, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned evaporated milk*, from South Dayton, N.Y., to points in New Jersey, and New York, N.Y.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C. or Pittsburgh, Pa.

No. MC 56409 (Sub-No. 11), filed November 30, 1976. Applicant: MAJOR TRANSPORT, INC., Box 204, Highway 135 and Airport Road, Palmyra, Wis. 53156. Applicant's representative: David V. Purcell, 111 East Wisconsin Avenue, Milwaukee, Wis. 53202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Grass pellets*, from the plantsites and facilities of Warren's Turf Nursery, Inc. located in Jefferson County, Wis., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and (2) *shipper owned trailers, sod in mixed loads, and used equipment, materials, and supplies* used in the growing, harvesting, processing or distribution of the commodities described in (1) above, or *ingredients thereof*, between points in Jefferson and Winnebargo Counties, Wis. and points in Illinois, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or Milwaukee, Wis.

No. MC 59655 (Sub-No. 7), filed Demember 13, 1976. Applicant: SHEEHAN CARRIERS, INC., 62 Lime Kiln Road, Suffern, N.Y. 10952. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Containers;* and (2) *materials and supplies*, used in the manufacture, distribution or sale of containers (except commodities in bulk), between points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, restricted to the transportation of shipments originating at or destined to the facilities of National Can Corporation.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 64808 (Sub-No. 25), filed December 10, 1976. Applicant: W. S. THOMAS TRANSFER, INC., 1854 Morgantown Avenue, Fairmont, W. Va. 26554. Applicant's representative: John A. Vuono, 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry animal foods* (except in bulk), from the facilities of the Sunshine Mills, Inc., at or near Tupelo, Miss., and Red Bay, Ala., to points in Delaware, Kentucky, Maryland, New Jersey, New York Pennsylvania, Virginia, West Virginia, and the District of Columbia.

NOTE.—If a hearing is deemed necessary, applicant does not specify a location.

No. MC 67818 (Sub-No. 85), filed November 29, 1976. Applicant: MICHIGAN EXPRESS, INC., 34200 Mound Road, Sterling Heights, Mich. 48077. Applicant's representative: Walter N. Bieneman, 100 West Long Lake Road, Suite 102, Bloomfield Hills, Mich. 48013. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture, new household, office and store fixtures and furnishings;* and (2) *parts, materials and supplies* used in the manufacture, distribution or sale of the commodities described in (1) above, between points in Michigan, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Grand Rapids, Mich. or Lansing, Mich.

No. MC 78687 (Sub-No. 44), filed December 10, 1976. Applicant: LOTT MOTOR LINES, INC., 118 Monell Street, Penn Yan, N.Y. 14527. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and feed ingredients*, from Montezuma (Cuyaga County), N.Y., to points in the United States in and east of Arkansas, Iowa, Louisiana, Minnesota, and Missouri.

NOTE.—Applicant holds contract carrier authority in MC 2505, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 83539 (Sub-No. 448), filed December 8, 1976. Applicant: C & H TRANSPORTATION CO., INC., 1936-2010 West Commerce St., P.O. Box 5976, Dallas, Tex. 75222. Applicant's representative: Thomas E. James (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Rail track, attachments and accessories*, for rail track; and (2) *equipment*, used in connection with the removal and installation of rail track, between points in the United States (except Alaska and Hawaii), restricted to shipments originating at or destined to the plantsites, facilities, or jobsites of L. B. Foster Company.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at either Dallas or Houston, Tex.

No. MC 98952 (Sub-No. 41), filed December 6, 1976. Applicant: GENERAL TRANSFER COMPANY, a Corporation, 2880 North Woodford Street, Decatur, Ill. 62525. Applicant's representative: John E. Harvey, P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, liquid, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located in Decatur, Ill., to points in the United States (except Alaska and Hawaii), restricted to the transportation of traffic originating at the above named origin and destined to the above named destination points.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill., St. Louis, Mo. or Springfield, Ill.

No. MC 104123 (Sub-No. 79), filed December 6, 1976. Applicant: JOHN SCHUTT, JR., INC., 665 River Road, North Tonawanda, N.Y. 14120. Applicant's representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *cryogenic tanks and parts and accessories* thereof when moving therewith and *equipment, materials, and supplies* (except commodities in bulk, in tank vehicles) used in the installation of such tanks from the plant site and facilities of Union Carbide Corporation located at or near Theodore, Ala., to points in the United States (except Alaska and Hawaii); and (2) *materials, equipment and supplies* (except commodities in bulk, in tank vehicles) used in the manufacture of the commodities named in (1) above from the destination area named in (1) above to the said plant site and facilities as named in (1) above.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 106920 (Sub-No. 67), filed December 9, 1976. Applicant: RIGGS FOOD EXPRESS, INC., P.O. Box 26, West Monroe Street, New Bremen, Ohio 45869. Applicant's representative: E.

Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), between the warehouse facilities of Beatrice Foods Co. located at Scranton, Pa., and at or near Allentown, Pa., on the one hand, and, on the other, points in Illinois, Indiana, Kentucky, Michigan, Ohio, and West Virginia, restricted to the transportation of traffic originating at the above named origin points and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests a consolidated hearing with other similar applications at either Chicago, Ill. or Washington, D.C.

No. MC 107012 (Sub-No. 231), filed November 26, 1976. Applicant: NORTH AMERICAN VAN LINES, INC., P.O. Box 988, Lincoln Highway East and Meyer Road, Fort Wayne, Ind. 46801. Applicant's representative: David D. Bishop (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass fiber reinforced plastic articles and accessories*, from the plantsite and storage facilities of Owens-Corning Fiberglas Corporation, at or near Huntsville, Ala., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Columbus, Ohio, or Chicago, Ill.

No. MC 107403 (Sub-No. 994), filed December 8, 1976. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry chemicals*, in bulk, in tank vehicles, from the site of the Raritan Center Industrial Park, located at Edison, N.J., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 107544 (Sub-No. 129), filed November 30, 1976. Applicant: LEMMON TRANSPORT COMPANY, a Corporation, P.O. Box 580, Marion, Va. 24354. Applicant's representative: Harry C. Ames, Jr., 666 11th St. NW., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carbon*, in bulk, in tank or hopper type vehicles, from Catlettsburg, Ky., to points in Alabama, Indiana, Iowa, New York, Tennessee, and Wyoming.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C. or Roanoke, Va.

No. MC 108587 (Sub-No. 21), filed December 1, 1976. Applicant: SCHUSTER EXPRESS, INC., 48 Norwich Avenue, Colchester, Conn. 06415. Aplicant's representative: S. Harrison Kahn, Suite 733 Investment Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Connecticut, Massachusetts, those points in that part of Rhode Island on U.S. Highway 1 (portions formerly alternate U.S. Highway 1) from the Massachusetts-Rhode Island State line to the Rhode Island-Connecticut State line, and those points in Rhode Island on U.S. Highways 6 and 44, and Rhode Island Highway 3, on the one hand, and, on the other, those points in that part of New York on and south of a line beginning at Youngstown, N.Y., and extending along the shore line of Lake Ontario to Oswego, N.Y., thence along New York Highway 57 to Syracuse, N.Y., thence along New York Highway 5 through Utica, N.Y., to Schenectady, N.Y., thence along New York Highway 7 to Troy, N.Y., thence along New York Highway 66 to junction New York Highway 43, and thence along New York Highway 43 to the New York-Massachusetts State line.

NOTE.—Applicant seeks to eliminate the gateways of New York, N.Y., and a defined portion of northern New Jersey. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 110525 (Sub-No. 1176), filed December 2, 1976. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Dowington, Pa. 19335. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Arsenic acid and arsenical compounds*, in bulk, in tank vehicles, from Bonham, Tex., to points in Alabama, Florida, Georgia, Iowa, Kentucky, North Carolina, South Carolina, and Virginia.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Houston, Tex.

No. MC 110563 (Sub-No. 193), filed December 8, 1976. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, Sidney, Ohio 45365. Applicant's representative: Joseph M. Scanlan, 111 W. Washington, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Confectionery* (except in bulk), in vehicles equipped with mechanical refrigeration, from Chicago and Carol Stream, Ill., to points in Connecticut, Delaware, Massachusetts, Maryland, New York, New Jersey, Pennsylvania, Rhode Island, West Virginia, Virginia, and the District of Columbia, restricted to traffic originating at the plantsites and warehouse facilities utilized by E. J. Brach & Sons, Div. of American Home Products Corp., located at or near Chicago and Carol Stream, Ill.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 110683 (Sub-No. 112), filed Decemebr 7, 1976. Applicant: SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, Va. 24401. Applicant's representative: Francis W. McInerny, 1000 16th Street, N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (A) Between Louisville and Lexington, Ky.: From Louisville, Ky., over U.S. Highway 60 to Lexington, Ky., and return over the same route, serving all intermediate points and off-route points in Anderson, Fayette, Franklin, Jefferson, Scott, Shelby, Spencer, and Woodford Counties, Ky., (B) Between Cincinnati, Ohio, and junction of U.S. Highway 31W and the Kentucky-Tennessee State Boundary line: From Cincinnati, Ohio, over U.S. Highway 42 to junction U.S. Highway 31W (at or about Louisville, Ky.), thence over U.S. Highway 31W to the Kentucky-Tennessee State Boundary line, and return over the same route, serving all intermediate points and off-route points in Allen, Barren, Boone, Bullitt, Carroll, Edmonson, Gallatin, Hardin, Hart, Henry, Jefferson, Kenton, Larue, Logan, Meade, Oldham, Owen, Simpson, Trimble, and Warren Counties, Ky., (C) Between Elizabethtown, and Lexington, Ky.: From Elizabethtown, Ky., over U.S. Highway 62 to junction U.S. Highway 60 thence over U.S. Highway 60 to Lexington, Ky., and return over the same route, serving all intermediate points and off-route points in Anderson, Fayete, Hardin, Larue, Mercer, Nelson, Spencer, Washington, and Woodford Counties, Ky., (D) Between junction U..S Highway 25 and Kentucky Highway 80 near London, Ky., and Bowling Green, Ky.: From junction U.S. Highway 25 and Kentucky Highway 80, over Kentucky Highway 80 to Bowling Green, Ky., and return over the same route, serving all intermediate points and off-route points in Adair, Allen, Barren, Casey, Clinton, Cumberland, Laurel, McCreary, Metcalfe, Monroe, Pulaski, Rockcastle, Russell, Warren, and Wayne Counties, Ky.; and (E) Between Lexington and Tomkinsville, Ky.: From Lexington, Ky., over U.S. Highway 68 to junction Kentucky Highway 163, thence over Kentucky Highway 163 to Tompkinsville, and return over the same route, serving all intermediate points and off-route points in Adair, Boyle, Cumberland, Fayette, Green, Jessamine, Marion, Mercer, Metcalfe, Monroe, Taylor, and Washington Counties, Ky.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Lexington or Louisville, Ky., or Washington, D.C.

No. MC 111401 (Sub-No. 473), filed December 6, 1976. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, P.O. Box 632, Enid, Okla. 73701. Applicant's representative: Alvin J. Meiklejohn, Jr., 1660 Lincoln Street, Suite 1600 Lincoln Street, Denver, Colo. 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Sulphuric Acid*, in bulk, in tank vehicles, from Borger, Tex., to points in Oklahoma and Kansas; and (2) *chemicals* (except petroleum base chemicals), in bulk, from Norman, Okla., to points in the United States (except Alaska and Hawaii).

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Oklahoma City or Tulsa, Okla.

No. MC 111545 (Sub-No. 228), filed December 2, 1976. Applicant: HOME TRANSPORTATION COMPANY, INC., 1425 Franklin Road, S.E., Marietta, Ga. 30067. Applicant's representative: Robert E. Born, P.O. Box 6426, Station A, Marietta, Ga. 30065. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Construction, earthmoving, excavating, and material handling machinery and equipment;* and (2) *attachments, parts and accessories* being returned to factory for service, exchange, repair or warranty adjustment, between the plantsite of Clark Equipment Company, located at Skyland, N.C., on the one hand, and, on the other, points in the United States in and east of Iowa, Kansas, Minnesota, Nebraska, Oklahoma and Texas.

NOTE.—If a hearing is deemed necessary, the applicant does not specify a location.

No. MC 111729 (Sub-No. 689), filed November 26, 1976. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, N.Y. 11040. Applicant's representative: Elizabeth L. Henoch (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cut flowers, decorative greens, and green plants*, when moving at the same time and in the same vehicle with commodities the transportation of which is subject to economic regulation, restricted to traffic having an immediately prior or subsequent movement by air or motor vehicle, between points in Florida.

NOTE.—Applicant holds contract carrier authority in MC 112750 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 112148 (Sub-No. 60), filed November 24, 1976. Applicant: WORSTER-IOWA, INC., R.D. No. 1, Gay Road, North East, North East, Pa. 16428. Applicant's representative: Joseph F. MacKrell, 23 West Tenth Street, Erie, Pa. 16501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat, meat products, meat by-products, articles distributed by meat packinghouses and foodstuffs* (except hides and commodities in bulk), from the plantsite and warehouse facilities utilized by Geo. A. Hormel & Co., located at or near Fort Dodge, Iowa, to points in Ohio, Pennsylvania, and points in that part of New York west of Interstate Highway 81, restricted to traffic originating at the named origins and destined to the named destination points; and (2) *meat, meat products, meat by-products, articles distributed by meat packinghouses, foodstuffs, and packing plant materials, equipment and supplies*, from points in Ohio, Pennsylvania, and points in that part of New York west of Interstate Highway 81, to the plantsite and warehouse facilities utilized by Geo. A. Hormel & Co., located at or near Fort Dodge, Iowa, restricted to traffic originating at the named origins and destined to the named destination points.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 113495 (Sub-No. 80), filed December 8, 1976. Applicant: GREGORY HEAVY HAULERS, INC., 51 Oldham Street, P.O. Box 60628, Nashville, Tenn. 37206. Applicant's representative: Wilmer B. Hills, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Construction, earthmoving, excavating, and material handling machinery and equipment;* (2) *attachments, parts, and accessories* used for the commodities named in (1) above and when moving in mixed shipments with said commodities; and (3) *attachments, parts, and accessories* being returned to factory for service, exchange, repair or warranty adjustment, between the plantsite and storage facilities of Clark Equipment Company, located at or near Skyland, N.C., on the one hand, and, on the other points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held on a consolidated record with similar applications at either Chicago, Ill. Washington, D.C. or Nashville, Tenn.

No. MC 113855 (Sub-No. 365), filed December 10, 1976. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Mining equipment;* (2) *attachments and parts of mining equipment;* and (3) *equipment, materials and supplies*, used in the manufacture of mining equipment, between the facilities of Reading, U.S. Inc., located at or near Orange Park, Fla., on the one hand, and, on the other, other, points in the United States (including Alaska, but excluding Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 113855 (Sub-No. 366), filed December 6, 1976. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road SE, Rochester, Minn. 55901. Applicant's representative: Alan Foss, 502 First National Bank Bldg., Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum, aluminum products, and supplies, materials and equipment*, used in the manufacture of aluminum and aluminum products (except in bulk), between the plantsites of Alumax, Inc. located at Decatur, Ala.; Casa Grande, Ariz.; Long Beach, Riverside, Visalia, Perrs Valley and Woodland, Calif.; Loveland, Colo.; Ocala and Plant City, Fla.; Peachtree City and Jonesboro, Ga.; Twin Falls, Idaho; Chicago and Morris, Ill.; Lebanon, Bristol and Franklin, Ind.; McPherson, Kans.; Frederick, Md.; Montevideo, Minn.; St. Louis, Mo.; Hernando, Miss.; Reidsville, N.C.; Cleveland, Ohio, Tulsa and Checotah, Okla.; Stayton, Oreg.; Bloomsburg, Pa.; Mansfield, Tex.; Harrisonburg, Va.; Spokane and Ferndale, Wash.; and Marshfield, Wis., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 114457 (Sub-No. 277), filed December 6, 1976. Applicant: DART TRANSIT COMPANY, a Corporation, 2102 University Avenue, St. Paul, Minn. 55114. Applicant's representative: James H. Wills (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Kitchen cabinets, bathroom vanities*, set up in boxes, *and repair parts*, from Jeffersonville, Ind., to points in Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, and points in the upper peninsula of Michigan.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Paul, Minn. or Chicago, Ill.

No. MC 115162 (Sub-No. 340), filed December 2, 1976. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier* by motor vehicle, over irregular routes, transporting: (1) *Laminated beams and accessories therewith, lumber and lumber products* from points in Cedar County, Mo., to points in the United States in and east of Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas; and (2) *materials and supplies* used in the production of the commodities named in (1) above (except commodities in bulk, in tank vehicles), from

points in the United States in and east of Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas, to points in Cedar County, Mo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo. or Birmingham, Ala.

No. MC 115162 (Sub-No. 341), filed December 6, 1976. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, composition board, paper board, panels, plastic articles and moulding* (except commodities in bulk, in tank vehicles), from Chesapeake, Norfolk, and Suffolk, Va., to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Norfolk, Va. or Washington, D.C.

No. MC 115162 (Sub-No. 343), filed December 10, 1976. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, Ala. 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Seats, baby carriers and tubing*, from Opelika, Ala., and Moscow, Tenn., to points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas; and (2) *materials and supplies*, used in the manufacture of seats, baby carriers and tubing (except commodities in bulk, in tank vehicles), from points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, to Opelika, Ala., and Moscow, Tenn.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn., or Birmingham, Ala.

No. MC 115311 (Sub-No. 203), filed December 10, 1976. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, Ga. 31061. Applicant's representative: Paul M. Daniell, P.O. Box 872, Atlanta, Ga. 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pulpboard boxes* (except corrugated), from Cleveland, Tenn., to points in California, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New York, North Carolina, Ohio, Pennsylvania, and Texas; and (2) *materials, supplies and equipment* (except commodities in bulk), from points in Georgia, Kentucky, North Carolina, and Virginia, to Cleveland, Tenn.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at either Nashville or Memphis, Tenn., or New York, N.Y.

No. MC 115353 (Sub-No. 24), filed December 6, 1976. Applicant: LOUIS J. KENNEDY TRUCKING COMPANY, a Corporation, 342 Schuyler Avenue, Kearny, N.J. 07032. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and distribution of cast iron products and finished products thereof (except commodities in bulk), (1) between Lynchburg, Va., on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Michigan, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, Vermont, West Virginia, and the District of Columbia; and (2) between points in Burlington County, N.J., on the one hand, and, on the other, points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Michigan, Maine, Massachusetts, Maryland, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, Vermont, West Virginia, and the District of Columbia, restricted to service to be performed under contract with the Griffin Pipe Products Co. and its affiliate, Glamorgan Pipe and Foundry Company.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 115826 (Sub-No. 264), filed December 7, 1976. Applicant: W. J. DIGBY, INC., 1960 31st Street, Denver, Colo. 80217. Applicant's representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman Street, Denver, Colo. 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the Report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from points in Colorado, to points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, and Washington.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Denver, Colo.

No. MC 116519 (Sub-No. 39), filed December 7, 1976. Applicant: FREDERICK TRANSPORT LIMITED, A Corporation, R.R. No. 6, Chatham Ontario, Canada. Applicant's representative: Jeremy Kahn, Investment Building, Suite 733, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Snow removal equipment, and agricultural machinery and agricultural implements*, from the ports of entry on the International Boundary Line between the United States and Canada located in New York and Michigan, to points in the United States (except Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming), restricted to the transportation of shipments originating at the facilities of McKee Bros. Limited, located at or near Elmira, Ontario, Canada and restricted to shipments moving in foreign commerce.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 116725 (Sub-No. 22), filed December 3, 1976. Applicant: INDIAN VALLEY ENTERPRISES, INC., 855 Maple Avenue, Harleysville, Pa. 19438. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Co., located in Scranton, Pa., and at or near Allentown, Pa., to points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, and the District of Columbia, restricted to the transportation of traffic originating at the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., restricted to the movement of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Harrisburg, Pa.

No. MC 116947 (Sub-No. 51), filed December 6, 1976. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street SW., Atlanta, Ga. 30310. Applicant's representative: William Addams, 5299 Roswell Road NE., Suite 212, Atlanta, Ga. 30342. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fibre cans, and can ends, aluminum, steel or tin*, from the plantsite of Container Corporation of America located in Fulton County, Ga., to points in Alabama, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia; and (2) *materials and supplies* (except commodities in bulk) used in the manufacture and distribution of fibre cans and can ends from the destination States named as in (1) above to the plantsite of Container Corporation of America located in Fulton

County, Ga., under a continuing contract or contracts with Container Corporation of America.

NOTE.—Applicant holds common carrier authority in MC 117956 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Atlanta, Ga.

No. MC 117068 (Sub-No. 75), filed December 6, 1976. Applicant: MIDWEST SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, North Highway 63, Rochester, Minn. 55901. Applicant's representative: Richard C. McGinnis, 711 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting, (1) *Irrigation systems and parts, attachments and accessories thereof*, from Havana, Ill. to points in the United States (except Alaska and Hawaii); and (2) *materials, equipment and supplies*, used in the manufacture and distribution of irrigation systems (except commodities in bulk), from the destination area specified in (1) above, to Havana, Ill.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Washington, D.C.

No. MC 117940 (Sub-No. 202), filed December 6, 1976. Applicant: NATION-WIDE CARRIERS, INC., P.O. Box 104, Maple Plains, Minn. 55359. Applicant's representative: Allan L. Timmerman (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by discount and variety stores (except foodstuffs and commodities in bulk), from the facilities of U.S. Packing and Shipping Company located at or near Jersey City, N.J., and from the facilities of K Mart Apparel Corporation located at or near North Bergen, N.J., to points in Georgia, North Carolina and South Carolina, restricted to the transportation of traffic originating at the facilities of U.S. Packing and Shipping Company located at or near Jersey City, N.J. and the facilities of K Mart Apparel Corporation located at or near North Bergen, N.J. and destined to points in the above named destination states.

NOTE.—Applicant holds contract caarrier authority in No. MC 114789 and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at New York, N.Y.

No. MC 118142 (Sub-No. 140), filed December 2, 1976. Applicant: M. BRUENGER & CO., INC., 6250 North Broadway, Wichita, Kans. 67219. Applicant's representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, Kans. 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the *Report in Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite of Hyplains Dressed Beef, Inc., located at Dodge City, Kans., to Aurora, Chicago, Cicero, Joliet, Peoria, Rockford and Springfield, Ill.; Indianapolis, Muncie, and Terre Haute, Ind.; Covington, Frankfort, Lexington and Louisville, Ky.; Baton Rouge, New Orleans, Shreveport and Westwego, La.; Baltimore, Md.; Detroit, Flint, Grand Rapids, Lansing and Livonia, Mich.; Gulfport, Miss.; Jersey City, Passaic and Wood Ridge, N.J.; Albany, Buffalo, New York City, Rochester and Syracuse, N.Y.; Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Springfield and Toledo, Ohio; Blooming Glen, Elizabethville, Harrisburg, Irwin, Pittsburgh and Sounderton, Pa.; Norfolk, Richmond, Roanoke and Salem, Va.; and Charleston and Huntington, W. Va., restricted to traffic originating at the plantsite of Hyplains Dressed Beef, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Wichita, Kans. or Kansas City, Mo.

No. MC 118535 (Sub-No. 93), filed December 10, 1976. Applicant: TIONA TRUCK LINE, INC., 111 S. Prospect, Butler, Mo. 64730. Applicant's representative: Jim Tiona, Jr., 111 S. Prospect, P.O. Box 312, Butler, Mo. 64730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry beet pulp pellets*, in bulk, from Fremont and Ottawa, Ohio, and East Grand Forks and Crookston, Minn., to East St. Louis, Ill.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Kansas City, Mo. or Omaha, Nebr.

No. MC 118959 (Sub-No. 142), filed December 2, 1976. Applicant: JERRY LIPPS, INC., 130 South Frederick St., Cape Girardeau, Mo. 63701. Applicant's representative: Robert M. Pearce, P.O. Box 1111, Bowling Green, Ky. 42101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel wire, iron and steel cable, and iron and steel spirals*, from the plantsite of Florida Wire and Cable Co. located at or near Jacksonville, Fla. and the plantsite of Wiremil, Inc. located at or near Sanderson, Fla., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in No. MC 125664, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, the applicant requests it be held at either Jacksonville or Miami, Fla.

No. MC 119619 (Sub-No. 92), filed November 22, 1976. Applicant: DISTRIBUTORS SERVICE CO., 2000 West 43rd Street, Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Suite 1515, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients* and *meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, and the District of Columbia, restricted to the transportation of traffic originating at the warehouse of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Rhode Island, Virginia, West Virginia, and the District of Columbia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and located at or near Allentown, Pa., restricted to the movement of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods Co., located at Scranton, Pa. and located at or near Allentown, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Philadelphia, Pa., or Washington, D.C.

No. MC 119619 (Sub-No. 94), filed December 6, 1976. Applicant: DISTRIBUTORS SERVICE CO., 2000 West 43rd Street, Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Suite 1515, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods*, frozen or other than frozen (except commodities in bulk), in vehicles equipped with mechanical refrigeration, from Clayton and Milford, Del., and Pocomoke City, Md., to Omaha, Nebr.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Washington, D.C., or Philadelphia, Pa.

No. MC 119619 (Sub-No. 95), filed December 6, 1976. Applicant: DISTRIBUTORS SERVICE CO., 2000 West 43rd Street, Chicago, Ill. 60609. Applicant's representative: Arthur J. Piken, One Lefrak City Plaza, Suite 1515, Flushing, N.Y. 11368. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meats* in combination bins, in Government-sealed trailers, from the facilities of Illinois Meat Company, located at Chicago, Ill., to the facilities of Granite State Packing Co., located at Manchester, N.H.

NOTE.—If a hearing is deemed necessary the applicant requests it be held at Chicago, Ill.

No. MC 119875 (Sub-No. 8), filed December 2, 1976. Applicant: WAR-HUNT TRUCKING CO., INC., R.D. No. 3, Allentown, Pa. 18104. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, Pa. 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients and meat by-products* (except in bulk), (1) from

the warehouses of Beatrice Foods Co., located at Scranton, Pa. and at or near Allentown, Pa., to points in Connecticut, Delaware, that portion of Indiana on and south of U.S. Highway 50, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, that portion of Ohio on and south of U.S. Highway 50, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, restricted to the transportation of traffic originating at the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, that portion of Indiana on and south of U.S. Highway 50, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, that portion of Ohio on and south of U.S. Highway 50, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., restricted to the movement of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Harrisburg, Pa.

No. MC 119880 (Sub-No. 91) filed December 8, 1976. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, East Peoria, Ill. 61611. Applicant's representative: Bruce A. Bullock, 7100 West Center Road, Univac Building, Suite 530, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: *Grape juice*, pure or containing slurry, in bulk, in tank vehicles, from points in Yakima, Benton, Walla Walla and Franklin Counties, Wash., to points in Allegan, Van Buren, Berrian and Grand Traverse Counties, Mich., and St. Joseph County, Ind.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Seattle, Wash.

No. MC 119880 (Sub-No. 92), filed December 8, 1976. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, East Peoria, Ill. 61611. Applicant's representative: Bruce A. Bullock, 7100 West Center Road, Univac Building, Suite 530, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal feed supplement*, in bulk, in tank vehicles, from Manteca and Los Angeles, Calif., to Kankakee, Ill., and Topeka, Kan.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Los Angeles, or San Francisco, Calif.

No. MC 119880 (Sub-No. 93), filed December 8, 1976. Applicant: DRUM TRANSPORT, INC., P.O. Box 2056, East Peoria, Ill. 61611. Applicant's representative: Bruce A. Bullock, Suite 530 Univac Bldg., 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: **Grain neutral spirits, alcohol and alcoholic liquors**, in bulk, in tank vehicles, from Peoria and Delavan, Ill., to points in Indiana, Kentucky and Ohio; (2) *grain neutral spirits, grape neutral spirits, alcohol and alcoholic liquors*, in bulk, in tank vehicles, from Delavan, Ill., to points in New York, South Carolina and Virginia; and (3) *alcoholic liquors*, in bulk, in tank vehicles, from Pekin, Ill., to Cleveland, Ohio.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 120472 (Sub-No. 3), filed December 13, 1976. Applicant: GOLLOTT & SONS TRANSFER & STORAGE, INC., 1255 Caillavet Street, Biloxi, Miss. 39533. Applicant's representative: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., N.W., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty household goods shipping containers*, set up or knocked down, between points in Mississippi, on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Tennessee and Texas.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held on a consolidated record with similar application(s) at Biloxi, Miss.

No. MC 121489 (Sub-No. 12), filed December 8, 1976. Applicant: NEBRASKA-IOWA EXPRESS, INC., 3219 Nebraska Avenue, Council Bluffs, Iowa 51501. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, Between Denver, Colo. and Chappell, Nebr., serving all intermediate and off route points in Sedgwick County, Colo.: (1) From Denver over Interstate Highway 76 (formerly Interstate Highway 80S) to junction Interstate Highway 80, thence over Interstate Highway 80 to Chappell, and return over the same route; (2) From Denver over Interstate Highway 76 (formerly Interstate Highway 80S) to junction U.S. Highway 385, thence over U.S. Highway 385 to Chappell, and return over the same route; and (3) From Denver over U.S. Highway 6 to junction U.S. Highway 138, thence over U.S. Highway 138 to U.S. Highway 385, thence over U.S. Highway 385 to Chappell, and return over the same route.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Scottsbluff and Omaha, Nebr.

No. MC 123887 (Sub-No. 9), filed November 29, 1976. Applicant: L. J. NAVY TRUCKING CO., a corporation, 2300 Eighth Avenue, Huntington, W. Va. 25703. Applicant's representative: John M. Friedman, 2930 Putnam Avenue, Hurricane, W. Va. 25526. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, in containers (1) from Louisville, Ky., to points in that part of Ohio lying on and east of U.S. Highway 23 and on and north of Interstate Highway 70, and; from Peoria, Ill., to Logan, W. Va.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Charleston, W. Va., or Columbus, Ohio.

No. MC 124211 (Sub-No. 282), filed December 6, 1976. Applicant: HILT TRUCK LINE, INC., P.O. Box 988, D.T.S., Omaha, Nebr. 68101. Applicant's representative: Thomas L. Hilt (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in and used by manufacturers and distributors of plumbing fixtures, plumbing supplies, and paint materials (except commodities in bulk in tank vehicles), between the sites of the plant and warehouses of William H. Harvey Company located at points in Douglas and Washington Counties, Nebr., and points in Union County, S. Dak., on the one hand, and, on the other, points in Arizona, Delaware, Idaho, Maine, Montana, Nevada, New Hampshire, New Mexico, Oregon, Rhode Island, Utah, Vermont, Virginia, West Virginia, Washington, Wyoming and the District of Columbia.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Omaha, Nebr.

No. MC 124947 (Sub-No. 50), filed November 26, 1976. Applicant: MACHINERY TRANSPORTS, INC., P.O. Box 2338, East Peoria, Ill. 61611. Applicant's representative: Michael J. Norton, P.O. Box 2135, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber mill products*, from (1) Panguitch, Escalante, Vernal, and Kamas, Utah; (2) Durango, Paradox, Montrose, Pagosa Springs, and South Fork, Colo.; and (3) Fredonia, Flagstaff, Williams, Winslow, Snowflake, Cutter, McNary, Eager, White River, Payson, and Show Low, Ariz., to points in Arkansas, Illinois, Indiana, Iowa, Kansas, Missouri, Nebraska, Ohio, Oklahoma, Texas and Wisconsin.

NOTE.—Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Denver, Colo., or San Francisco, Calif.

No. MC 125544 (Sub-No. 6), filed December 9, 1976. Applicant: LESTER M. HAYS, 803 West Mulberry, Carlinville, Ill. 62626. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Milk cartons*, (a) from Sikeston, Mo., to Peoria, Ill. and Des Moines, Iowa; and (b) from Clinton, Iowa, to Carbondale, Carlinville, Granite City, Olney, Quincy, Pana and Peoria, Ill., under a continuing contract or contracts, with Prairie Farms Dairy, Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo. or Chicago, Ill.

No. MC 126904 (Sub-No. 20), filed December 6, 1976. Applicant: H. C. PARRISH TRUCK SERVICE, INC., RFD No. 2, Box 264, Freeburg, Ill. 62243. Applicant's representative: B. W. La Tourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, Mo. 63105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Concrete filter blocks, concrete lawn crypts, and mausoleum crypts*, from St. Louis, Mo., to points in the United States (except Alaska and Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis or Kansas City, Mo.

No. MC 128375 (Sub-No. 151), filed November 26, 1976. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, Nebr. 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting. *Such commodities* as are dealt in and used by manufacturers and distributors of automotive parts, accessories, equipment, materials and supplies (except in bulk), (1) between N. Kansas City, Mo., on the one hand, and, on the other, points in Illinois and Missouri; (2) between points in Tennessee, on the one hand, and, on the other, points in Minnesota; and (3) between Ft. Loramie, Ohio, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii), under contract with Maremont Corporation.

NOTE.—Applicant holds common carrier authority in MC 126118 and subs thereunder, therefore dual operations may be involved. Common control may also be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Lincoln, Nebr.

No. MC 128813 (Sub-No. 9), filed November 24, 1976. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, Utah 84119. Applicant's representative: Daniel E. England, 716 Newhouse Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Filters, component parts* of filters, *spark plugs, windshield wipers, machinery, materials* and *supplies* used in the manufacture, inspection, installation and promotion of automotive parts and equipment, between Greenville, Ohio, and Clearfield, Utah., on the one hand, and on the other, points in California, Oregon and Washington, under a continuing contract, or contracts, with Fram Corporation.

NOTE.—Applicant holds common carrier authority in No. MC 124679 and subs thereunder, therefore dual operations may be involved. Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Salt Lake City, Utah, or Providence, R.I.

No. MC 129387 (Sub-No. 29), filed November 26, 1976. Applicant: BILL PAYNE, doing business as BILL PAYNE TRUCKING COMPANY, P.O. Box 1271, Hgwy. 14E, Huron, S. Dak. 57350. Applicant's representative: Patrick E. Quinn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail and wholesale department and hardware stores (except commodities in bulk), (1) from points in that part of the United States in and east of Alabama, New York, Pennsylvania, Tennessee, Virginia and West Virginia, to the facilities of Coast to Coast Stores Central Organization, Inc., at or near Crawfordsville, Ind.; (2) from points in that part of the United States in and east of Alabama, Indiana, Kentucky, Michigan and Tennessee, to the facilities of Coast to Coast Stores Central Organization, Inc., located at Kansas City, Mo.; and (3) from points in that part of the United States in and east of Alabama, Illinois, Missouri, Tennessee and Wisconsin, to the facilities of Coast to Coast Stores Central Organization, Inc., at or near Brookings, S. Dak., and Springfield, Oreg.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn.

No. MC 133095 (Sub-No. 122), filed December 6, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, Tex. 76039. Applicant's representative: Arlyn L. Westergren, Suite 530 Univac Bldg., 7100 West Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), as defined in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766, from the plantsite and warehouse facilities of Wilson Foods Corporation located at Albert Lea, Minn., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia, restricted to the transportation of traffic originating at the above named origins and destined to the named destinations.

NOTE.—Applicant holds contract carrier authority in No. MC 136032 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Dallas, Tex. or Kansas City, Mo.

No. MC 133095 (Sub-No. 123), filed December 6, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, Tex. 76039. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper articles*, from the facilities of the Scott Paper Company located at or near Mobile, Ala., to points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, West Virginia and the District of Columbia.

NOTE.—Applicant holds contract carrier authority in No. MC 136032 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Atlanta, Ga. or Washington, D.C.

No. MC 133233 (Sub-No. 48), filed December 6, 1976. Applicant: CLARENCE L. WERNER, doing business as WERNER ENTERPRISES, 805 32nd Avenue, P.O. Box 831, Council Bluffs, Iowa 51501. Applicant's representative: Michael Ogborn, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials and supplies* used in the manufacture and distribution of cast iron products and finished products thereof, between points in Pottawattamie County, Iowa, on the one hand, and, on the other, points in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming, under a continuing contract, or contracts, with the Griffin Pipe Products Co.

NOTE.—Applicant holds common carrier authority in No. MC 138328 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Omaha, Nebr. or Chicago, Ill.

No. MC 133566 (Sub-No. 69), filed December 6, 1976. Applicant: GANGLOFF & DOWNHAM TRUCKING CO., INC., P.O. Box 479, Logansport, Ind. 46947 Applicant's representative: Charles W. Beinhauer, 1224 Seventeenth St., NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, aimal foods, animal food ingredients, and meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Company, located at Scranton, Pa., and located at or near Allentown, Pa., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia, and the District of Columbia, restricted to the transportation of traffic originating at the warehouses of Beatrice Foods Company located at Scranton, Pa., and located at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Vermont, Rhode Island, Virginia, West Virginia, and the District of Columbia, to the warehouses of Beatrice Foods Company located at Scranton, Pa., and located at or near Allentown, Pa., restricted to movement of traffic originating in the named origin states and destined to the warehouses of Beatrice

Foods Company located at Scranton, Pa., and located at or near Allentown, Pa.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Milwaukee, Wis., or Washington, D.C.

No. MC 133796 (Sub-No. 41), filed December 6, 1976. Applicant: GEORGE APPEL, 249 Carverton Road, Trucksville, Pa. 18708. Applicant's representative: Joseph F. Hoary, 121 S. Main Street, Taylor, Pa. 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rope, synthetic cordage and strapping and tools, seals and buckles* as used with synthetic strapping, oakum and packing and synthetic twine, from Honesdale, Pa., to Emeryville, Calif.; Seattle, Wash.; New Orleans, La.; and Jacksonville, Fla.

NOTE.—Applicant holds contract carrier authority in No. MC 129239, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 134922 (Sub-No. 209), filed December 6, 1976. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tile and such commodities* as are manufactured or distributed by manufacturers or distributors of tile (except commodities in bulk and those which because of size or weight require the use of special equipment), from the plantsite and storage facilities of American Olean Tile located at or near Landsdale, Pa., to points in Arizona, California, Idaho, Nevada, Oregon, Utah and Washington.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark. or Philadelphia, Pa.

No. MC 134922 (Sub-No. 210), filed December 6, 1976. Applicant: B. J. MCADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except in bulk), having a prior or subsequent movement by rail, between Lanett and Fairfax, Ala., on the one hand, and, on the other, points in the United States, including Alaska, but excluding Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Little Rock, Ark. or Atlanta, Ga.

No. MC 135640 (Sub-No. 6), filed December 6, 1976. Applicant: STALEY EXPRESS, INC., 2501 N. Brush College Road, Decatur, Ill. 62526. Applicant's representative: John E. Harvey, P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol*, liquid, in bulk, from the plant and storage facilities of Archer Daniels Midland Company located in Decatur, Ill., to point in the United States (except Alaska and Hawaii), restricted to traffic originating at the above named origin and destined to the above named destinations.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill.; St. Louis, Mo.; or Springfield, Ill.

No. MC 136285 (Sub-No. 20), filed December 7, 1976. Applicant: SOUTHERN INTERMODAL LOGISTICS, INC., 413 Garden Ave., P.O. Box 143, Thomasville, Ga. 31792. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1267, Arlington, Va. 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Paper and paper products* (except in bulk), from the facilities of Union Camp Corporation, located in Savannah, Ga., to points in Florida; and (2) *materials, equipment and supplies* (except in bulk) used in the manufacture and distribution of paper and paper products, from points in Florida, to the facilities of Union Camp Corporation, located in Savannah, Ga.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Savannah, Ga. or Jacksonville, Fla.

No. MC 136407 (Sub-No. 14), filed December 6, 1976. Applicant: COORS TRANSPORTATION COMPANY, a Corporation, 5101 York Street, Denver, Colo. 80216. Applicant's representative: Leslie R. Kehl, Suite 1600 Lincoln Center Bldg., 1600 Lincoln Street, Denver, Colo. 80264. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages*, from points in Jefferson County, Colo., to points in Nebraska, under a continuing contract, or contracts, with Adolph Coors Company of Golden, Colo.; (2) *equipment, materials and supplies* used and dealt in by breweries, porcelain manufacturers, or container manufacturers, from points in Nebraska, to Jefferson and Boulder Counties, Colo., under a continuing contract, or contracts, with Adolph Coors Company, Coors Porcelain Company, or Coors Container Company, all of Golden Colo.; and (3) *equipment, materials and supplies* used and dealt in by container manufacturers, from points in Arizona, California, Kansas, Louisiana, Montana, Oklahoma, Texas, New Mexico, Idaho, Washington, Wyoming, Utah and Nevada, to points in Jefferson and Boulder Counties, Colo., under a continuing contract, or contracts, with Coors Container Company of Golden, Colo.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Denver, Colo.

No. MC 136635 (Sub-No. 4), filed December 6, 1976. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, Ind. 46614. Applicant's representative: Donald W. Smith, Suite 2465, One Indiana Square, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Pre-stressed concrete forms and materials and supplies* used in the erection of such concrete forms, when transported in the same vehicle with concrete forms, from points in St. Joseph County, Ind., to points in Illinois, Kentucky, Michigan and Ohio; and (2) *materials and supplies* used in the erection of such concrete forms, from points in Illinois, Kentucky, Michigan and Ohio, to points in St. Joseph County, Ind.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

No. MC 138000 (Sub-No. 24), filed December 9, 1976. Applicant: ARTHUR H. FULTON, P.O. Box 86, Stephens City, Va. 22655. Applicant's representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, Md. 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Winston-Salem, N.C., to Cumberland, Md.

NOTE.—Applicant holds contract carrier authority in MC 129613 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 138237 (Sub-No. 5), filed December 1, 1976. Applicant: METRO HAULING, INC., 20848 77th Street, Kent, Wash. 98188. Applicant's representative: Boyd Hartman, 221 First West, Seattle, Wash. 98119. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, between points in Washington, on the one hand, and, on the other, points in Oregon.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Seattle or Portland, Wash.

No. MC 138635 (Sub-No. 29), filed November 15, 1976. Applicant: CAROLINA-WESTERN EXPRESS, INC., Box 3901, 650 Eastwood Drive, Gastonia, N.C. 28050. Applicant's representative: Eric Meierhoefer, Suite 145, 4 Professional Drive, Gaithersburg, Md. 20760. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and foodstuffs and materials and supplies* used in the manufacture and sale of frozen foods and foodstuffs, from Ontario, Oregon and Burley, Idaho, to points in Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New York, New Jersey, New Hampshire, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, West Virginia and the District of Columbia.

NOTE.—Applicant holds contract carrier authority in MC 136464, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Boise, Idaho.

No. MC 139112 (Sub-No. 11), filed December 6, 1976. Applicant: CALEX EXPRESS, INC., 149 Warden Avenue, Trucksville, Pa. 18708. Applicant's representative: Joseph F. Hoary, 121 S. Main Street, Taylor, Pa. 18517. Authority sought to operate as a *common car-*

rier, by motor vehicle, over irregular routes, transporting: *Above ground swimming pools and plastic toys*, from Wilkes-Barre, Pa., to points in the United States (except Alaska and Hawaii).

NOTE.—Applicant holds contract carrier authority in MC 140557, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 139533 (Sub-No. 3), filed December 9, 1976. Applicant: ALEX K. SCHERER, 22 Oak Lane, Ottawa, Ill. 61350. Applicant's representative: Paul J. Maton, Suite 1620, 10 S. LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers*, in bulk, from North Pekin, Ill., to points in Iowa, Minnesota, Missouri and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Chicago or Springfield, Ill.

No. MC 139577 (Sub-No. 2), filed December 10, 1976. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, 205 East Winnebago Street, Friesland, Wis. 53935. Applicant's representative: Delbert De Young (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal containers and container parts*, from points in Wisconsin, to Fort Dodge and Fort Madison, Iowa, restricted to traffic originating from the facilities utilized by the Carnation Company.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Milwaukee, Wis., or Chicago, Ill.

No. MC 139973 (Sub-No. 11), filed December 2, 1976. Applicant: J. H. WARE TRUCKING, INC., 909 Brown Street, P.O. Box 398, Fulton, Mo. 65251. Applicant's representative: Larry D. Knox, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* (except commodities the transportation of which because of their size or weight require the use of special equipment), (1) from the facilities of Keystone Steel & Wire Division, Keystone Consolidated Industries, Inc. located at or near Peoria, Ill., to points in Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Oregon, Texas, Utah and Washington; and (2) from Sherman, Tex., to the facilities of Keystone Steel & Wire located at or near Peoria, Ill.

NOTE.—Applicant holds contract carrier authority in No. MC 138375 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or St. Louis, Mo.

No. MC 139973 (Sub-No. 12), filed December 9, 1976. Applicant: J. H. WARE TRUCKING, INC., 909 Brown Street, P.O. Box 398, Fulton, Mo. 65251. Applicant's representative: Larry D. Knox, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Magazines, periodicals, and printed matter*, (1) from Kokomo, Ind., to points in Arizona, Colorado, Florida, Louisiana, New Mexico, Oklahoma, Texas and Utah; (2) from Philadelphia, Pa., to Memphis, Tenn., and points in Arizona, Arkansas, California, Colorado, Kansas, Louisiana, Missouri, Montana, Oklahoma, Oregon, Texas, Utah and Washington; and (3) from Chicago, Ill., to Los Angeles, Calif.; Denver, Colo.; Kansas City, Mo.; Oklahoma City, Okla.; Dallas, Tex.; Omaha, Nebr.; and Des Moines, Iowa.

NOTE.—Applicant holds contract carrier authority in No. MC 138375 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Chicago, Ill. or St. Louis, Mo.

No. MC 140024 (Sub-No. 67), filed December 8, 1976. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Avenue, Commerce City, Colo. 80022. Applicant's representative: John F. DeCock (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foods, food products, food ingredients, animal foods, animal food ingredients, and meat by-products* (except in bulk), (1) from the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., to points in Illinois, Indiana, Michigan, and Ohio, restricted to the transportation of traffic originating at the warehouses of Beatrice Foods Co. Scranton, Pa., and at or near Allentown, Pa., and destined to the named destination states; and (2) from points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and Virginia, to the warehouses of Beatrice Foods Co., located at Scranton, Pa., and at or near Allentown, Pa., restricted to the transportation of traffic originating in the named origin states and destined to the warehouses of Beatrice Foods, Co., at Scranton, Pa., and at or near Allentown, Pa.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 140484 (Sub-No. 20), filed December 6, 1976. Applicant: LESTER COGGINS TRUCKING, INC., P.O. Box 69, Fort Myers, Fla. 33902. Applicant's representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Electric motors, electric gear motors, power transmission equipment and machinery and controllers or controller parts* and *parts and accessories therefor*, from Lawrenceburg, Ky., to points in Arizona, California, Colorado, Louisiana, Nebraska, New Mexico, Oklahoma, Oregon, Texas, Utah and Washington.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

No. MC 141121 (Sub-No. 2), filed December 9, 1976. Applicant: MENSCH TRUCKING, INC., 3540 South Lawrence Street, Philadelphia, Pa. 19148. Applicant's representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of American Home Foods Division of American Home Products Corporation located at or near Milton, Pa., to points in New York.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y. or Washington, D.C.

No. MC 141320 (Sub-No. 6), filed December 2, 1976. Applicant: UNITED STATES PRIORITY TRANSPORT CORPORATION, P.O. Box 522, Wheatley Heights, N.Y. 11798. Applicant's representative: Eugene M. Malkin, Suite 6193, 5 World Trade Center, New York, N.Y. 10048. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Radiopharmaceuticals, medical test kits, and related medical apparatus*, between South Plainfield, N.J., on the one hand, and, on the other, points in Pennsylvania (except Lehigh, Northampton, Bucks, Montgomery, Delaware and Philadelphia Counties), under a continuing contract, or contracts, with Medi-Physics, Inc.; (2) *radiopharmaceuticals, medical isotopes, and medical test kits*, between Carlstadt, N.J., on the one hand, and, on the other, points in Pennsylvania, Delaware, Maryland, Maine, Vermont, New Hampshire, and New York, under a continuing contract, or contracts, with Mallinckrodt, Inc.; and (3) *radiopharmaceuticals, medical isotopes and medical test kits*, between North Billerica, Mass., on the one hand, and, on the other, points in New York (except New York), N.Y. and points in Nassau, Suffolk, Westchester, Rockland, Orange, Ulster, Sullivan, Putnam and Dutchess Counties), points in Delaware (except New Castle County), points in Connecticut (except Fairfield County), points in Pennsylvania (except Delaware, Montgomery, Philadelphia, Chester and Bucks Counties), and points in New Jersey, Vermont, New Hampshire, Maine, Massachusetts and Rhode Island, under a continuing contract, or contracts, with New England Nuclear Corp.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either New York, N.Y., or Washington, D.C.

No. MC 141377 (Sub-No. 4), filed December 6, 1976. Applicant: THEA O. ELLIOTT, 5612 Heywood Road, Richmond, Va. 23224. Applicant's representative: Carroll B. Jackson, 1810 Vincennes Road, Richmond, Va. 23229. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Motor vehicle parts; generators; machinery and machinery parts; road construction machinery and equipment; and* (2) *materials, equipment and supplies* (except commodities in bulk, in tank vehicles),

used in the distribution and sales of the commodities named in (1) above, between York, Pa., on the one hand, and, on the other, Culpeper, Harrisonburg and Winchester, Va., and points in Fauquier and Warren Counties, Va., under contract with Virginia Tractor Company, Inc., at Richmond, Va.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at Richmond, Va., or Washington, D.C.

No. MC 141452 (Sub-No. 1), filed December 8, 1976. Applicant: INDUSTRIAL MOLASSES COMPNAY, INC., P.O. Box 1607, Englewood Cliffs, N.J. 07632. Applicant's representative: James C. Hardman, 33 North LaSalle Street, Chicago, Ill. 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Liquid feed and feed ingredients*, (1) from the plant and storage facilities of Westway Trading Corporation, at or near Sioux City, Iowa, to points in Minnesota, Nebraska, North Dakota and South Dakota; and (2) from Mapleton, N. Dak., to points in Iowa, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin, under a continuing contract or contracts with Westway Trading Corporation, at Englewood Cliffs, N.J.

NOTE.—If a hearing is deemed necessary, applicant requests it be held at St. Paul, Minn., or Chicago, Ill.

No. MC 141804 (Sub-No. 37), filed December 6, 1976. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, Tenn. 37072. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, Nebr. 68509. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Auto and motorcycle parts*, from the plant site and storage facilities of Nippondenso located at or near Carson, Calif., to points east of the Mississippi River, restricted to traffic originating at the above location; and (2) *materials and supplies* used in the manufacture of the above items, from Clinton, Tenn., and Cleveland, Ohio to the plant site and storage facilities of Nippondenso located at or near Carson, Calif., restricted to traffic destined to the above-named destination point.

NOTE: Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Los Angeles, Calif., or Lincoln, Nebr.

No. MC 141804 (Sub-No. 38), filed December 10, 1976. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, Tenn. 37072. Applicant's representative: Michael J. Norton, Suite 404 Boston Building, Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionaries*, from the plantsite and storage facilities of Mrs. J. G. McDonald's Chocolate Company, at or near Salt Lake City, Utah, to points in the United States located on or east of U.S. Highway 85, restricted to traffic originating at the above-named location.

NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah, or Nashville, Tenn.

No. MC 142028 (Sub-No. 4), filed December 7, 1976. Applicant: ELI G. TRAVIS, doing business as TRAVIS TRUCKING COMPANY, R.D. No. 1, Benton, Pa. 17814. Applicant's representative: Chester A. Zyblut, 1030 Fifteenth Street, N.W., 366 Executive Building, Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood and plastic products, toothpick dispensers, sporting goods and accessories*, from Wilton, Maine to points in New Jersey (except those located north of U.S. Highway 130 and New Jersey Highway 33), Delaware, Pennsylvania, Maryland, Virginia and the District of Columbia, under a continuing contract or contracts with Forster Manufacturing Co., Inc.

NOTE.—If a hearing is deemed necessary, applicant does not specify.

No. MC 142107 (Sub-No. 1) (Correction), filed May 24, 1976, published in the FEDERAL REGISTER issue of July 15, 1976, republished as amended in the FEDERAL REGISTER issue of December 30, 1976, and republished as corrected this issue. Applicant: H & M TRUCKING CO., P.O. Box 173, Clinton, Ill. 61727. Applicant's representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, Mo. 63105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed ingredients* (except commodities in bulk, in tank vehicles, and salt), between Cold Water, Mich.; Muncie, Plymouth, Logansport, Hammond, Indianapolis, Columbus, Frankfort and Mashawaka, Ind.; Cincinnati, Cleveland, Defiance, Wauseon and Clyde, Ohio; Kankakee, Deer Creek, Mason City, Chicago, Decatur, Rochelle, Lynn Center, East St. Louis, Danville, Champaign, Gibson City, Taylorville and Galesburg, Ill.; Milwaukee and Green Bay, Wis.; Cedar Rapids, Washington, Des Moines, Sioux City, Eagle Grove, Ft. Dodge, Belmont, Iowa Falls, Mason City, Davenport, Waterloo, Alta Vista and Tama, Iowa; Mankato, Red Wing and Albert Lea, Minn.; and Marshall and Blackwater, Mo. *Hearing:* Set for January 25, 1977 (2 days), at 9:30 a.m. local time, at Chicago, Ill.

NOTE.—The purpose of this republication is to indicate Mankato, Minn. as a service point, which was omitted in the notice of December 30, 1976.

No. MC 142212 (Sub-No. 2), filed December 10, 1976. Applicant: COUTURE TRANSPORT, INC., Box 279, Saranac, N.Y. 12981. Applicant's representative: Neil D. Breslin, 99 Washington Avenue, Suite 1111, Albany, N.Y. 12210. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum poles and related parts*, between the Village of Champlain, N.Y., on the one hand, and, on the other, points in Alabama, Arkansas, Delaware, Iowa, Kansas, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, Virginia, West Virginia, and the District of Columbia; and (2) *aluminum flagpoles, overhead sign structures, stadium seats and portable grandstand seats all in aluminum, and steel lighting poles*, between the Village of Champlain, N.Y., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, under contract with Pole-Lite Industries Ltd.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Albany, N.Y.

No. MC 142276 (Sub-No. 1), filed December 1, 1976. Applicant: JAYHAWK TRUCK LINE, INC., 624 East Morris, Wichita, Kans. 67211. Applicant's representative: William H. Shawn, 1730 M Street, N.W., Suite 501, Washington, D.C. 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aircraft tires and retreaded aircraft tires*, between the facilities of Thompson Aircraft Tire Corp., located at Salina, Kans., on the one hand, and, on the other, Bloomington, Minn.; Denver, Colo.; Dallas and Houston, Tex.; Tulsa, Okla.; Chicago and Bensonville, Ill.; and Platte City and St. Louis, Mo., under a continuing contract or contracts with Thompson Aircraft Tire Corp.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Wichita, Kans., or Kansas City, Mo.

No. MC 142437 (Sub-No. 1), filed December 9, 1976. Applicant: ROBERT E. ARONDELLI AND ROBERT E. ARONDELLI, JR., a Partnership, doing business as: ARONDELLI TRUCKING SERVICE, P.O. Box 92, Christopher, Ill. 62822. Applicant's representative: Robert T. Lawley, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor evhicle, over irregular routes, transporting: *Malt beverages*, from the facilities of Anheuser-Busch, Inc. located at St. Louis, Mo., to West Frankfort, Ill., under a continuing contract, or contracts, with Crespi Distributing Company located at West Frankfort, Ill.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either St. Louis, Mo. or Chicago, Ill.

No. MC 142504 (Sub-No. 1), filed December 3, 1976. Applicant: JACK T. MOORHEAD, doing business as JACK MOORHEAD TRUCKING, Niagara Road, Pleasant Valley, N.Y. 12569. Ap-

plicant's representative: Neil D. Breslin, 99 Washington Avenue, Suite 1111, Albany, N.Y. 12210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the City of Poughkeepsie, N.Y., to points in Connecticut, Massachusetts, New Jersey, Pennsylvania, Rhode Island and Vermont.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Albany, N.Y.

No. MC 142678 (Sub-No. 1), filed November 29, 1976. Applicant: LES RAY & SONS, INC., Rural Route 2, Box 114A, Lindsborg, Kans. 67456. Applicant's representative: Clyde N. Christey, 514 Capitol Federal Building, 700 Kansas Avenue, Topeka, Kans. 66603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer and dry fertilizer materials*, from Carlsbad, N. Mex., and Joplin, St. Joseph and Kansas City, Mo., to points in McPherson County, Kans., north of U.S. Highway 56, and points in Saline County, Kans., south of Interstate Highway 70 (except Salina); and (2) *liquid fertilizer* (except anhydrous ammonia), from Joplin, Mo., and Borger, Tex., to points in McPherson County, Kans., north of U.S. Highway 56 and points in Saline County, Kans., south of Interstate Highway 70 (except Salina), under a continuing contract or contracts with Farmers Union Elevator Co., Inc.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Kansas City, Mo.

No. MC 142719 (Sub-No. 1), filed December 6, 1976. Applicant: ROBERT J. KIRKPATRICK, doing business as: KIRK'S TOWING SERVICE, 411 Seventh Street, La Grange, Ill. 60525. Applicant's representative: Richard A. Kerwin, 180 North La Salle Street, Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, repaired, used, stolen, repossessed, and replacement motor vehicles*, in tow away service, between points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at Chicago, Ill.

BROKER APPLICATION

No. MC 130248 (Sub-No. 1), filed December 6, 1976. Applicant: EAST TENNESSEE AUTOMOBILE CLUB INCORPORATED, 100 West Fifth Avenue, Knoxville, Tenn. 39717. Applicant's representative: Morris J. Levin, 1620 Eye Street, NW., Washington, D.C. 20006. Authority sought to engage in operation, in interstate or foreign commerce, as a *broker* at Bristol, Va., and Knoxville and Kingsport, Tenn., to sell or offer to sell the transportation of *individual passengers and groups of passengers and their baggage*, in special and charter operations, by motor, rail, water and air carriers, between points in Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cock, Grainger, Green, Hamblem, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Union, Unicoi, and Washington Counties, Tenn., on the one hand, and, on the other points in the United States, including Alaska but, excluding Hawaii.

NOTE.—If a hearing is deemed necessary, the applicant requests it be held at either Knoxville or Nashville, Tenn.

WATER CARRIER

No. WC 1263 (Sub-No. 5), filed December 9, 1976. Applicant: NEW ENGLAND STEAMBOAT LINES, INC., Steamboat Landing, Haddam, Conn. 06438. Applicant's representative: J. Raymond Clark, Suite 1150, 600 New Hampshire Ave., N.W., Washington, D.C. 20037. Authority sought to engage in operation, in interstate or foreign commerce as a *common carrier by water* in the transportation of *Passengers*, in one-way and round-trip scheduled service, by self-propelled vessel, between Chester, Deep River, East Haddam, Essex, Haddam, Middletown and Old Saybrook, Conn., on the one hand, and, on the other, Greenport, and Sag Harbor, Long Island, N.Y.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at either Hartford or Middletown, Conn.

FREIGHT FORWARDER APPLICATION

No. FF-491, filed December 8, 1976. Applicant: INTERCONTINENTAL EXPORT LTD., a Corporation, P.O. Box 172, Springfield, Va. 22153. Applicant's representative: Alan F. Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006. Authority sought to engage in operation, in interstate commerce, as a *freight forwarder*, through use of the facilities of common carriers by railroad, motor vehicle, water, and express, in the transportation of (a) *used household goods and unaccompanied baggage;* and (b) *used automobiles*, between points in the United States, including Hawaii but excluding Alaska, restricted in (b) above to the transportation of export-import traffic.

NOTE.—Common control may be involved. If a hearing is deemed necessary, the applicant requests it be held at Washington, D.C.

FINANCE APPLICATIONS

NOTICE

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control through ownership of stock, of rail carriers or motor carriers pursuant to Sections 5(2) or 210a(b) of the Interstate Commerce Act.

An original and two copies of protests against the granting of the requested authority must be filed with the Commission within 30 days after the date of this Federal Register notice. Such protest shall comply with Special Rules 240(c) or 240(d) of the Commission's *General Rules of Practice* (49 CFR 1100.240) and shall include a concise statement of protestant's interest in the proceeding. A copy of the protest shall be served concurrently upon applicant's representative, or applicant, if no representative is named.

No. MC-F-13048. Authority sought for purchase by PACE MOTOR LINES, INC., 132 West Dudleytown Road, Bloomfield, CT., 06002 of a portion of the operating rights of ERNEST F. MONTZ, JR., an individual, dba J. F. RIEMER & CO., 15 Bailey Drive, West Haven, CT., 06516, and for acquisition by PATRICK R. PACELLI, 133 Far Harizon Dr., Monroe, CT., 06468, and WILLIAM T. PACILLI, 36 Hillston Rd., Trumbull, CT., 06611, of control of such rights through the purchase. Applicants' attorney: John E. Fay, 630 Oakwood Avenue, West Hartford, CT., 06110. Operating rights sought to be transferred: Meats and packing house products, as a *common carrier* over irregular routes from New Haven, Connecticut to Providence and Westerly, Rhode Island, return, with no transportation for compensation except as otherwise authorized, to New Haven and Bridgeport. Vendee is authorized to operate as a common carrier in Connecticut, Massachusetts, Rhode Island, New York, and New Jersey. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC 9268 (Sub-No. 16) is a directly related matter.

No. MC-F-13057. Authority sought for purchase by NEW PENN MOTOR EXPRESS, INC., P.O. Box 630, Lebanon, Pennsylvania, 17042, of the operating rights of H. N. RATHMELL and J. N. RATHMELL, DBA CITY DRAY LINE, 2649 Reach Road, Williamsport, PA., 17701, and for acquisition by VIRGINIA A. PHILLIPS, and EDWARD H. ARNOLD, both of P.O. Box 630, Lebanon, PA., 17042, of control of such rights through the purchase. Applicants' attorney: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C., 20005. Operating rights sought to be transferred: *General commodities*, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes as a *common carrier* between points and places within 25 miles of Williamsport, Pa., including Williamsport. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Rhode Island, Connecticut, and Massachusetts. Application has been filed for temporary authority under section 210a(b).

No. MC-F-13061. Authority sought for purchase by PLANES MOVING & STORAGE, a non-carrier, 1714 Cleneay Avenue, Cincinnati, OH 45212, of the operating rights of MERLE FINE AND RITA C. FINE DBA MERLE FINE MOVING & STORAGE, 3846 Montgomery Road, Norwood, OH 45212, and for acquisition by JOHN J. PLANES, 3640 Erie

Avenue, Cincinnati, OH 45208, of control of such rights through the purchase. Applicants' representative: James J. Sheridan, 7350 Miami Avenue, P.O. Box 43229, Madeira, OH 45243. Operating rights sought to be transferred: Household goods, as a common carrier over irregular routes between points and places in Hamilton County, OH on the one hand, and, points and places in Indiana and Kentucky, on the other. PLANES MOVING & STORAGE, holds no authority from this Commission. However, it is affiliated with GLOBAL VAN LINES, INC., who under MC-41098 and subs thereunder is authorized to operate as a common carrier in all the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

MOTOR CARRIER OF PASSENGERS

No. MC-F-13062. Authority sought for purchase by MARLBORO TRANSPORTATION CO., INC., a non-carrier, 133-03-35th Avenue, Flushing, N.Y. 11354, of a portion of the operating rights of CARAVAN TOURS, INC., dba CARAVAN TOWNE, Route 3, Box 451, Wharton, N.J. 07885, and for acquisition by JACK MIROW, 133-03-35th Avenue, Flushing, N.Y., 11354, and GEORGE H. ROSEN, 265 Broadway, P.O. Box 348, Monticello, N.Y. 12701, of control of such right through the purchase. Applicants' attorneys: George H. Rosen, 265 Broadway, P.O. Box 348, Monticello, N.Y. 12701 and L. C. Major, Jr., Suite 400, Overlook Bldg., 6121 Lincolnia Road, Alexandria, VA 22312. Operating rights sought to be transferred: Passengers and their baggage in the same vehicle with passengers, in special operations, in non-scheduled service, limited to the transportation of not more than 11 passengers in any one vehicle, not including the driver thereof and not including children under 10 years of age who do not occupy a seat or seats, as a *common carrier* over irregular routes between King of Prussia, Fort Washington and Willow Grove, Pa., on the one hand, and, on the other, New York, N.Y. MARLBORO TRANSPORTATION CO., INC., holds no authority from this Commission. However, JACK MIROW and GEORGE H. ROSEN, who are in control of MARLBORO TRANSPORTATION CO., INC., also holds 50% of the stock of SALEM TRANSPORTATION CO., INC., who under MC 107583 and subs thereunder is authorized to operate in Pennsylvania, New York, and New Jersey. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13063. Authority sought for purchase by GENOVA EXPRESS, INC., 484A Clayton Road., Williamstown, N.J., 08094, of the operating rights of LERNER, INC., Box 491 Line & Washington St., Hammonton, N.J., 08037, and for acquisition by JOSEPH S. GENOVA, also of Williamstown, N.J., 08094 address, of control of such rights through the purchase. Applicants' representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J., 07306. Operating rights sought to be transferred: *Agricultural commodities, canned goods*, and *packed fruits*, as a *common carrier* over irregular routes from Hammonton, N.J., to New York, N.Y., Philadelphia, Pa., and Baltimore, Md.; and *general commodities*, with exceptions from New York, N.Y., Philadelphia, Pa., and Baltimore, Md., to Hammonton, N.J.; *lime and limestone*, from Norristown, Plymouth Meeting, Malvern, and Cedar Hollow, Pa., to points in that part of New Jersey bounded by a line beginning at Glassboro and extending in a northeasterly direction to Berlin, N.J., thence in an easterly direction through Indian Mills, N.J., to Chatsworth, N.J., thence in a southeasterly direction to Manhawkin, N.Y., thence in a southwesterly direction through Oceanville, to Somers Point, N.J., thence in a northwesterly direction through Mays Landing and Malaga, N.J., to Glassboro; *canned and processed foods and bakery products*, from Bridgeton and Cedarville, N.J., and points in Atlantic County, N.J., to points in Delaware, Maryland, New York, Pennsylvania, and the District of Columbia; and *tin cans, glass bottles, cartons and packing materials*, used in or incidental to the packaging of the commodities specified above, from points in Delaware, Maryland, New York, Pennsylvania, and the District of Columbia, to Bridgeton and Cedarville, N.J., and points in Atlantic County, N.J. Vendee is authorized to operate as a *common carrier* in Connecticut, Delaware, the District of Columbia, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Virginia. Application has been filed for temporary authority under section 210a(b).

NOTE.—MC 381 (Sub-No. 7) is a directly related matter.

No. MC-F-13064. Authority sought for control by GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, Idaho, 83401, of Taggart Trucking Company, 11 Federal Blvd. No. 1, Denver, CO., 80219, and for acquisition by Louis Grover, Donna Grover, Neil Grover, Nancy Grover Jennings, Wendy Grover, and Rick Grover, all of the Idaho Falls, Idaho, 83401 address, of control of Taggart Trucking Company through the acquisition by Louis Grover, Donna Grover, Neil Grover, Nancy Grover Jennings, Wendy Grover, and Rick Grover. Applicants' attorney: Miss Irene Warr, 430 Judge Building, Salt Lake City, Utah, 84111. Operating rights sought to be controlled: *Poles, posts*, and *timbers*, as a *common carrier* over irregular routes from Denver, Colo., to points in Wyoming, Nebraska, and New Mexico, with no transportation for compensation on return except as otherwise authorized; *forest products* and *sawmill products*, between points in Colorado and Wyoming, between points in Colorado and Wyoming on the one hand, and, on the other, points in Utah, Nebraska, and New Mexico, those in that part of Kansas on and west of U.S. Highway 81, except Wichita, and those in that part of Oklahoma in and west of Beaver County, except Boise City, with restrictions. Vendee is authorized to operate as a *common carrier* in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, Wyoming, North Dakota, and South Dakota. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-13066. Authority sought for purchase by RIGGS FOODS EXPRESS, INC., P.O. Box 26, New Bremen, Ohio, 45869 of a portion of the operating rights of Keller Transfer Line, Inc., 5631 Clay Avenue SW., Grand Rapids, Mich., 49508. Applicants' attorney: Michael M. Briley, 300 Madison Avenue, P.O. Box 2088, Toledo, Ohio, 43603. Operating rights sought to be transferred: *Frozen foods and food products*, in vehicles equipped with mechanical refrigeration, as a *common carrier* over irregular routes from the facilities of Kitchens of Sara Lee, located at Deerfield and Chicago, Ill., to points in Indiana and Ohio, with no transportation for compensation on return except as otherwise authorized, with restrictions. Vendee is authorized to operate a *common carrier* in Ohio, Pennsylvania, Maryland, Massachusetts, New York, North Carolina, South Carolina, West Virginia, Virginia, New Jersey, Delaware, Connecticut, Rhode Island, Indiana, the District of Columbia, Florida, Georgia, Alabama, Mississippi, Kentucky, Tennessee, Wisconsin, Minnesota, Arkansas, Illinois, Michigan, Missouri, Texas, Maine, New Hampshire, Vermont, Louisiana, Kansas, Nebraska, Oklahoma, and Colorado. Application has been filed for temporary authority under section 210a(b).

OPERATING RIGHTS APPLICATION(S) DIRECTLY RELATED TO FINANCE PROCEEDINGS

NOTICE

The following operating rights application(s) are filed in connection with pending finance applications under Section 5 (2) of the Interstate Commerce Act, or seek tacking and or gateway elimination in connection with transfer applications under Section 212(b) of the Interstate Commerce Act.

An original and two copies of protests to the granting of the authorities must be filed with the Commission within 30 days after the date of this FEDERAL REGISTER notice. Such protests shall comply with Special Rule 247(d) of the Commission's *General Rules of Practice* (49 CFR 1100.247) and include a concise statement of protestant's interest in the proceeding and copies of its conflicting authorities. Verified statements in opposition should not be tendered at this time. A copy of the protest shall be served concurrently upon applicant's representative, or applicant if no representative is named.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

No. MC 10761 (Sub-No. 280), filed November 16, 1976. Applicant. TRANS-AMERICAN FREIGHT LINES, INC.,

5650 Foremost Drive SE., Grand Rapids, Mich. 49506. Applicant's representative: A. David Millner, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: (A) *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment) (1) Between St. Louis, Mo. and Indianapolis, Ind., serving all intermediate points: From St. Louis, Mo., over U.S. Highway 40 to Indianapolis, Ind. and return over the same route, Restriction: Operations between St. Louis, Missouri and Indianapolis, Ind., shall be restricted against service between the termini or at any intermediate point, except on traffic originating at or destined to points beyond said termini. (2) Between Sandusky, Ohio and Cleveland, Ohio serving all intermediate points: From Sandusky, Ohio over U.S. Highway 6 to Lorain, Ohio, thence over Ohio Highway 57 to junction Ohio Highway 57 to junction Ohio High-Highway 254, and thence over Ohio Highway 254 to Cleveland, Ohio, and return over the same route, Restriction: Service at points between Sandusky and Cleveland including Sandusky and Cleveland restricted to traffic moving through Sandusky or Cleveland. (3) Between Findlay, Ohio, and Indianapolis, Ind., serving all intermediate points: From Findlay over U.S. Highway 25 to Wapakoneta, Ohio, thence over U.S. Highway 33 to junction Ohio 29, thence over Ohio 29 to Ohio-Indiana State Line, thence over Indiana Highway 67 to Indianapolis, Ind., and return over the same route; (4) Between Cincinnati, Ohio and Columbus, Ohio, serving all intermediate points: From Cincinnati over U.S. Highway 22 to Washington Courthouse, thence over U.S. Highway 62 to Columbus, and return over the same route.

(5) Between East Liverpool, Ohio and Pittsburgh, Pa., serving all intermediate points: From East Liverpool over Ohio Highway 39 to the Ohio-Pennsylvania State Line, thence over Pennsylvania Highway 88 to Pittsburgh, and return over the same route; (6) Between Seymour, Ind., and Cincinnati, Ohio, serving no intermediate points and serving Seymour, Ind., for purpose of joinder only: From Seymour over U.S. Highway 50 to Cincinnati, and return over the same route; (7) Between Richmond, Ind., and Springfield, Ohio, serving all intermediate points: From Richmond over U.S. Highway 40 to Springfield, and return over the same route; (8) Between Richmond, Ind., and Cincinnati, Ohio, serving all intermediate points: From Richmond over U.S. Highway 35 to Eaton, Ohio, and thence over U.S. Highway 127 to Cincinnati, and return over the same route; (9) Between West Jefferson, Ohio and Columbus, Ohio, serving no intermediate points and serving West Jefferson for purposes of joinder only. From West Jefferson, over U.S. Highway 40 to Columbus, and return over the same route; (10) Between Cadiz, Ohio and East Liverpool, Ohio, serving no intermediate points and serving Cadiz and East Liverpool for purpose of joinder only: From Cadiz over U.S. Highway 22 to Steubenville, Ohio, thence over Ohio Highway 7 to East Liverpool, Ohio, and return over the same route; (11) Between Louisville, Ky., and St. Louis, Mo., serving no intermediate points and serving St. Louis for purposes of joinder only in connection with carrier's existing route between Louisville and Kansas City, Mo.: From Louisville over U.S. Highway 150 to Shoals, Ind., thence over U.S. Highway 50 to St. Louis, and return over the same route; and (B) *General commodities*, (except those of unusual value, livestock, Classes A and B explosives, household goods as defined by the Commission, perishables, and commodities in bulk).

(1) Between Buffalo, N.Y., Tonawanda, N.Y., and Niagara Falls, N.Y. serving all intermediate points: (a) From Buffalo over New York Highway 384 to Niagara Falls, and return over the same route; (2) From Buffalo over New York Highway 265 to Tonawanda, and return over the same route; and (3) Between Anderson, Ind., and Indianapolis, Ind., serving no intermediate points and serving Anderson, Ind., for purpose of joinder only: From Anderson over Indiana Highway 67 to Indianapolis, and return over the same route. Note: The purpose of this application is to assure that certain routes retained by applicant upon sale of portion of operating rights in Docket No. MC–F–12713 are nevertheless available to applicant following transfer in the directly related Section 5 proceeding. This is a matter directly related to a Section 5(2) finance proceeding in No. MC–F–12713 published in the FEDERAL REGISTER issue of December 23, 1975, therein hearings have been held in October and November 1976 and January 4–6, 1977 and supporting shipper evidence has already been included in the record. Applicant's request that this application be granted is conditioned upon approval of applicant's request to sell said authority in No. MC–F–12713. Any protest shall request service of shipper certification which have been filed with this application. Applicant or applicant's counsel shall serve any such protestant by February 21, 1977 with a copy of shipper certifications of those shipper witnesses (who have already testified) together with a copy of their testimony. Protestant deriving to do so shall, on or before February 28, 1977, notify applicant's counsel of such witness or witnesses, if any, they desire to be made available for purposes of cross-examination. Hearing, if deemed necessary, will be held at the Commission's Offices in Washington, D.C. on March 3, 1977. Parties already of record in the No. MC–F–12713 proceeding need not file protests, but shall notify applicant's counsel on or before February 28, 1977, of such witness or witnesses, if any, they desire to be made available for purposes of further cross-examination.

MOTOR CARRIER ALTERNATE ROUTE DEVIATIONS

NOTICE

The following letter-notices to operate over deviation routes for operating convenience only have been filed with the Commission under the Deviation Rules—Motor Carrier of Property (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Commission in the manner and form provided in such rules at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of this FEDERAL REGISTER notice.

Each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its request.

MOTOR CARRIERS OF PROPERTY

No. MC 98327 (Deviation No. 4), SYSTEM 99, 8201 Edgewater Drive, Oakland, Calif. 94621, filed December 28, 1976. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, over a deviation route as follows: From junction U.S. Highway 395 and Lessen County Highway A–3, near Buntingville, Calif., over Lassen County Highway A–3 to Standish, Calif., and return over the same route for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over a pertinent service route as follows: From Reno, Nev., over U.S. Highway 395 to Alturas, Calif., and return over the same route.

MOTOR CARRIER INTRASTATE APPLICATION(S)

NOTICE

The following application(s) for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to Section 206(a)(6) of the Interstate Commerce Act. These applications are governed by Sperial Rule 245 of the Commission's *General Rules of Practice* (49 CFR 1100.245), which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent ehanges therein, and any other related matters shall be directed to the State Commission with which the application is filed and shall *not* be addressed to or filed with the Interstate Commerce Commission.

Tennessee Docket No. MC 6757, filed November 24, 1976. Applicant: CHATTANOOGA-MEMPHIS EXPRESS, INC., 120 3rd Avenue, South, Franklin, Tenn. 37064. Applicant's representative: A. O. Buck, Sixth Floor, United American Bank Building, Nashville, Tenn. 37219. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of

General commodities (except Classes A and B explosives, household goods, commodities in bulk and those requiring special equipment), (1) Between Chattanooga, Tenn. and Memphis, Tenn. serving no intermediate points; From Chattanooga over U.S. Highway 64 to Memphis, and return over the same route. (2) Between Nashville, Tenn. and Chattanooga, Tenn., serving no intermediate points; From Nashville over Interstate Highway 24 to its junction with Tennessee Highway 28, thence over Tennessee Highway 28 to its junction with U.S. Highway 41, thence southeast over U.S. Highway 41 to its junction with Interstate Highway 24, thence over Interstate Highway 24 to Chattanooga, and return over the same route; and (3) Between Nashville, Tenn. and Memphis, Tenn., as an alternate route for operating convenience only; From Nashville over Interstate Highway 40 to Memphis, and return over the same route. Applicant proposes to tack at all common points and to use all routes in conjunction with each other. Restriction: Service at Memphis, Tenn. and its commercial zone is restricted against the handling of traffic originating at, destined to or interchanged at Nashville, Tenn. and its commercial zone. Applicant seeks corresponding interstate and foreign commerce authority. *HEARING:* Date, time and place is scheduled for April 11, 1977, at 9:30 a.m., at the Commission's Court Room, C-1 Cordell Hull Building, Nashville, Tenn. Requests for procedural information should be addressed to the Tennessee Public Service Commission, Room C1-111 Cordell Hull Building, Nashville, Tenn. 37129 and should *not* be directed to the Interstate Commerce Commission.

Texas Docket No. 002339A2A, filed December 17, 1976. Applicant: ALAMO EXPRESS, INC., 6013 Rittiman Plaza, P.O. Box 18747, Serna Station, San Antonio, Tex. 78218. Applicant's representative: Dan Felts, P.O. Box 2207, Austin, Tex. 78768. Certificate of Public Convenience and Necessity sought to operate a freight service as follows: Transportation of *General commodities*, as follows: (1) between junction Texas Highway 60 and Farm Road 521 and the junction of Farm Road 521 and Texas Highway 35 as follows: From the junction of Texas Highway 60 and Farm Road 521 over Farm Road 521 to junction Farm Road 521 and Texas Highway 35, and return, serving the termini and all intermediate points including the plantsite known as South Texas Project, Houston Lighting & Power Company; and (2) between Bay City and the junction of Farm Road 2668 and Farm Road 521, as follows: From Bay City over Farm Road 2668 to the junction of Farm Road 2668 and Farm Road 521, and return, serving the termini and all intermediate points. Applicant proposes to join, tack and coordinate the proposed additional services with all services authorized in intrastate commerce under Common Carrier Motor Carrier Certificate No. 002339 and with all services authorized in interstate and foreign commerce under authorities granted in Docket No. MC 107727 and subs thereunder. Intrastate, interstate and foreign commerce authority sought. HEARING: Date, time and place will be scheduled approximately 30 days after publication in the FEDERAL REGISTER. Requests for procedural information should be addressed to the Texas Railroad Commission, P.O. Drawer 12967, Capitol Station, Austin, Tex. 78711 and should *not* be directed to the Interstate Commerce Commission.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1080 Filed 1-12-77;8:45 am]

[AB 12 (Sub-No. 25)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Hazen and Fallon in Churchill County, Nevada

NOVEMBER 22, 1976.

The Interstate Commerce Commission hereby gives notice that comments received in response to the environmental threshold assessment survey (TAS) in the above-entitled proceeding have not caused the Commission's Section of Energy and Environment to modify its previous conclusion that this proceeding does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

Said comments have been responded to in an an addendum to the TAS which is available upon request to the Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7011.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-1194 Filed 1-12-77;8:45 am]

[AB 12 (Sub-No. 34)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment Between Fall Creek Junction and Fall Creek in Lane County, Oregon

DECEMBER 28, 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 its line of railroad between Fall Creek Junction and Fall Creek, a distance of 2.14 miles, all in Lane County, Oreg., 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 associated environmental effects are not considered significant because the line has been out of service since May 1973 due to a landslide which buried a portion of the line. Prior to that time the line had not generated any traffic since at least 1970. Accordingly, no traffic diversion and subsequent alterations in fuel consumption, exhaust emissions, ambient noise levels, or safety conditions would occur, if the proposed abandonment is approved. In addition, abandonment would not create any major ecological or historic effects. Furthermore, no industrial development plans are dependent on the subject line; therefore, rural and community development would not be subjected to a serious adverse impact.

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 February 10, 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.77-1196 Filed 1-12-77;8:45 am]

[AB 12 (Sub-No. 30)]

SOUTHERN PACIFIC TRANSPORTATION CO.

Abandonment of a Portion of the Lick Branch, Santa Clara County, California

DECEMBER 28, 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 3.73 mile portion of the Lick Branch in Santa Clara County, Calif., 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 diversion to motor carrier of the low level of current rail traffic will produce negligible effects on the ambient environmental conditions. Due to the lack of economic development plans for the rapidly growing residential area adja-

cent to the line, approval of the abandonment will not adversely affect community or rural development. No historic or archaeological site nor endangered species will be affected by the proposed action. Interest has been expressed in use of the right-of-way for a light-rail, rapid transit system, should the abandonment be authorized.

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 February 10, 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.77-1197 Filed 1-12-77;8:45 am]

[AB 126]

WELLSVILLE, ADDISON & GALETON RAILROAD CORP.

Abandonment of Entire Line In Potter and Tioga Counties, Pa.

DECEMBER 28, 1976.

The Interstate Commerce Commission hereby gives notice that its Section of Energy and Environment has concluded that the proposed abandonment by the Wellsville, Addison & Galeton Railroad of its entire line of railroad extending from Galeton in Potter County, to Elkland in Tioga County, a distance of approximately 31.5 miles, and from Gaines Junction to Ansonia, in Tioga County, a distance of approximately 8.5 miles, all in the Commonwealth of Pennsylvania, 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 statewill not be required under section 4332 (2)(C) of the NEPA.

It was concluded, among other things, that the environmental impacts of the proposed action are considered insignificant because the line has handled low volumes of traffic, there are alternative railheads in close proximity to the subject line, and there is an adequate highway network to accommodate a diversion from rail to motor carriage. Although abandonment may be inconsistent with local efforts to attract certain types of industries, no serious adverse impact on rural and community development will occur. The line to be abandoned passes through a very scenic area which attracts large number of tourists each year. As a result, the line has been found to be suitable for other public purposes.

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 February 10, 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.77-1193 Filed 1-12-77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

■

PROTECTION OF HUMAN SUBJECTS

Proposed Amendments Concerning Fetuses, Pregnant Women, and In Vitro Fertilization

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 46]

PROTECTION OF HUMAN SUBJECTS

Proposed Amendments Concerning Fetuses, Pregnant Women, and In Vitro Fertilization

On August 8, 1975, final regulations were published in the FEDERAL REGISTER (40 FR 33526) relating to research supported by the Department involving fetuses, pregnant women, and *in vitro* fertilization. These regulations are codified in 45 CFR, Part 46, Subpart B. Also published in the same issue of the FEDERAL REGISTER were the Report and Recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (40 FR 33530).

As required by Pub. L. 93-348, section 205, the Secretary announced that he would take into consideration any comments submitted regarding the Recommendations and would proceed to any further rulemaking with respect to any amendments to the regulations which might appear warranted.

Comments on the Recommendations of the National Commission were accepted through the middle of January 1976. The great majority of these comments addressed issues discussed both in the preamble to the final regulations published on August 8, 1975, and in the preamble to the notice of proposed rulemaking published in the FEDERAL REGISTER on August 23, 1974 (39 FR 30648), which preceded the final regulations. Consequently, there seems no reason to repeat these discussions here.

Some comments were addressed to substantive issues not considered in the earlier proposed rulemaking. Specifically, several comments were received suggesting that the term "fetus" be redefined to mean the product of conception from the time of conception, rather than from the time of implantation, since the phrase "confirmation of pregnancy" did not define a specific, recognizable point in time. Designation of the time of implantation as the beginning of the fetal period is a matter of practical medical and regulatory necessity. No medical tests exist which can confirm conception. Numerous tests exist which can confirm implantation on the basis of the hormonal changes which occur as a result of that process. However, the Department agrees that the regulations implementing the Recommendations should not appear to ignore the generally accepted signs of the presence of the fetus, such as missed menses, or the need in some instances to establish the presence or absence of the fetus by more sensitive medical tests. Therefore, the Department proposed to amend §§ 46.102(c), 46.203 (b), and 46.203(c) of the implementing regulations to indicate that these signs and tests shall be employed, as appropriate, to establish the presence or absence of the fetus.

Another group of comments was directed to those definitions concerned with the concept of viability as it applies to the fetus *ex utero*. The criticisms of "viability" centered upon concern that the term could be interpreted loosely to permit any type of nontherapeutic research. Use of the term "fetus *ex utero*" was also criticized as a device to include "infants" together with fetuses. Having considered these criticisms, the Department notes that both it and the Commission were quite aware of the medical uncertainty surrounding the term "viability" both with respect to the individual fetus *ex utero* or infant, and with respect to fetuses historically as reflected by the steady improvement in fetal survival rates over the past several decades. The definitions of fetal viability and death are discussed at some length in the Commission's Report (40 FR 33542). The Commission notes at one point that "* * * no cases were found from any documentable source of any infant surviving with a birth weight below 600 grams at a gestational age of 24 weeks or less." To insure against medical error in determining viability, the Commission recommended, and the Department concurred, that a still lower limit of 500 grams and 20 weeks or less be established as guidelines to assist in distinguished the "Nonviable fetus * * * *ex utero*" from the viable infant. In order to permit further lowering of this limit in advance of improvements in fetal survival, the Department's implementing regulations provided that "The Secretary may from time to time * * * publish in the FEDERAL REGISTER guidelines to assist in determining whether a fetus is viable * * *." A notice setting forth these guidelines was published in the same FEDERAL REGISTER as the regulations (40 FR 33552). The term "fetus *ex utero*" was used to maintain consistency with the terms of Pub. L. 93-348. Section 202(3)(b) of that law required the Commission to conduct an investigation and study of the nature and extent of research involving living fetuses generally. Section 213 referred to the fetus "before or after the induced abortion of such fetus," even though the product of an abortion is by custom termed an "abortus." The terms "fetus *in utero*" and "fetus *ex utero*" are therefore necessary distinctions, even though most of the regulations can be written applying uniformly to the fetus, as in the "minimal risk" provisions of § 46.206. No changes are proposed with respect to the use of the terms "viability" or "fetus *ex utero*."

The Commission implicitly recommended the establishment of "a national ethical review body." The provisions of § 46.204 would establish two Ethical Advisory Boards, one to serve the Public Health Service and the other to serve all other agencies and components of the Department. The Department received only a few comments about the issue of review bodies. Those comments, however, served to emphasize the inflexibility of § 46.204 which would create a review system along organizational rather than program lines and which would not permit the establishment of additional Boards which might be required. The Department therefore proposes to amend § 46.204(a) by changing the first sentence to read: "One or more Ethical Advisory Boards shall be established by the Secretary," deleting § 46.204(b) and making such other editorial and numbering changes as are required.

The largest group of the criticisms received were concerned with the Commission's recommendation on nontherapeutic research after abortion, and the Department's interpretation of these in § 46.209. Specifically, it was noted that the Commission's recommendation 6(h) that "* * * no intrusion into the fetus (be) made which alters the duration of life" was not codified in the regulations. Instead, the Department's implementing regulation stated at § 46.209(b)(1) that "vital functions of the fetus will not be artificially maintained except where the purpose of the activity is to develop new methods for enabling fetuses to survive to the point of viability."

In a letter dated October 29, 1975, to the Secretary, the Commission took issue with this provision noting that:

> In its accumulation of facts on the subject and in the taking of public testimony of scientists, the Commission was not made aware of any compelling evidence that nontherapeutic testing of vital function support mechanisms, such as keeping a nonviable fetus on a perfusion pump, artificial lung or artificial placenta, was needed for the desired advances in medical technology. Success in the newborn nursery in keeping small babies alive has, however, been accomplished in a strictly therapeutic setting. The nonviable fetus considered for such research under the regulations as presently worded would be under 20 gestational weeks of age. The frontier for such research is on the "possibly viable" infant in the 20 to 24 week category according to our definitions. Research on the small nonviable fetus which involved artificial maintenance of life by perfusion techniques and then withdrawal of such support was objected to by all segments of the public, including scientists who in public testimony did not defend the practice when specifically questioned about it. The Commission recommends that § 46.209(b)(1) be amended, so that study of life support mechanisms to bring viability to smaller infants is restricted to the borderline period of 20-24 weeks, until such time as a lower age/weight definition of viability is determined by the Ethical Advisory Board, and that such study be conducted with the intent and expectation of saving the infant's life. To do otherwise might permit the sort of research that has been found most objectionable by the public and led to the formation of this Commission by Congress.

On review of § 46.209(b)(1) it became evident that the provision did not adequately reflect the Department's actual intent, simply to permit artificial maintenance of vital functions only to enable the particular fetus "to survive to the point of viability." The Department proposes to amend § 46.209 accordingly.

Written comments, criticisms and inquiries concerning these proposed amendments are invited from interested persons, institutions and organizations. Letters should be addressed to the Di-

rector, Office for Protection from Research Risks, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014. Additional copies of these proposed amendments and/or of the current regulations may be obtained by writing to the same address.

All comments received become available to the public for inspection and copying at the National Institutes of Health, Room 303, Westwood Building, 5333 Westbard Avenue, Bethesda, Maryland, weekdays (Federal holidays excepted) between the hours of 9 a.m. and 4:30 p.m. All comments received on or before (60 days after publication) will be considered.

Notice is hereby given that it is proposed to make any amendments that are adopted effective upon their publication in the FEDERAL REGISTER.

The Department of Health, Education, and Welfare 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: November 10, 1976.

THEODORE COOPER,
Assistant Secretary for Health.

Approved: January 5, 1977.

MARJORIE LYNCH,
Acting Secretary.

It is therefore proposed to amend Part 46 of 45 CFR, Subtitle A, by:

1. Revising § 46.102(c) to read:

§ 46.102 Policy.

* * * * *

(c) Unless the activity is covered by Subpart B of this part, if it involves as subjects women who could become pregnant, the Board shall also determine as part of its review that adequate and appropriate steps will be taken to avoid involvement of women who are in fact pregnant (as evidenced by any of the presumptive signs of pregnancy, such as missed menses, or by a medically acceptable pregnancy test), when such activity would involve risk to a fetus.

* * * * *

2. Revising §§ 46.203(b) and 46.203(c) to read:

§ 46.203 Definitions.

* * * * *

(b) "Pregnancy" encompasses the period of time from confirmation of implantation (through any of the presumptive signs of pregnancy, such as missed menses or a medically acceptable pregnancy test) until expulsion or extraction of the fetus.

(c) "Fetus" means the product of conception from the time of implantation (as evidenced by any of the presumptive signs of pregnancy, such as missed menses, or a medically acceptable pregnancy test) until a determination is made, following explusion or extraction of the fetus, that is viable.

* * * * *

§ 46.204 [Amended]

3. Revising § 46.204(a) to read:

(a) One or more Ethical Advisory Boards shall be established by the Secretary. Members of these Board(s) shall be so selected that the Board(s) will be competent to deal with medical, legal, social, ethical, and related issues and may include, for example, research scientists, physicians, psychologists, sociologists, educators, lawyers, and ethicists, as well as representatives of the general public. No board member may be a regular, full-time employee of the Federal Government.

* * * * *

4. Deleting § 46.204(b) and redesignating §§ 46.204(c) through 46.204(e) as §§ 46.204(b) through 46.204(d).

5. Amending § 46.204(b), as so redesignated, by deleting the word "appropriate" wherever it occurs.

6. Amending §§ 46.209(a) and 46.209 (b) to read:

§ 46.209 Activities directed toward fetuses ex utero, including nonviable fetuses, as subjects.

(a) Until it has been ascertained whether or not a fetus *ex utero* is viable, a fetus *ex utero* may not be involved as a subject in an activity covered by this subpart unless;

(1) (i) There will be no added risk to the fetus resulting from the activity, and

(ii) The purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means, or

(2) The purpose of the activity is to enhance the possibility of survival of the particular fetus to the point of viability.

(b) No nonviable fetus may be involved as a subpart in an activity covered by this subpart unless;

(1) Vital functions of the fetus will not be artificially maintained,

(2) Experimental activities which of themselves would terminate the heartbeat or respiration of the fetus will not be employed, and

(3) The purpose of the activity is the development of important biomedical knowledge which cannot be obtained by other means.

* * * * *

[FR Doc.77-1038 Filed 1-12-77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART III

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

HOUSING MANAGERS

Proposed Standards For Granting Certification

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 406]

[Docket No. R-77-351]

HOUSING MANAGERS

Standards for Granting Certification

The Department of Housing and Urban Development published a proposed rule on September 15, 1975, (40 FR 42560) which would add a new Part 406, to Chapter IV, Subchapter A of Title 24, designated "Resident Manager Qualifications." The proposed rule published on that date was designed to prescribe specific qualifications and training for Housing Managers of HUD-related Multifamily Housing Projects with 100 or more units.

Interested persons were given the opportunity to comment on the proposed rule. The Department received 51 responses, each of which contained several comments; some pertained to substantive matters while others pertained to technical changes. Several changes in the rule are proposed as a result of comments received.

Since a parallel regulation has been issued to cover PHA-owned projects, it was felt that a single approach should be employed throughout the two rules. To this end, some additional modifications were made:

(1) HUD would no longer be the certifying entity; national housing management organizations would be approved by HUD to undertake the responsibilities of certification. The Approved Certifying Organization would assume responsibility for the appeal procedure in connection, with denial, suspension, or revocation of the certificate.

(2) The point system would be eliminated; Housing Managers would now meet the standards as prescribed by the Approved Certifying Organization.

(3) The regulation would apply to Housing Managers of HUD-related Multifamily Housing Projects with 75 or more units, rather than the initially proposed 100-unit minimum. No change is made, however, in the definition of HUD-related Multifamily Housing Projects: projects financed by a mortgage insured or held by HUD under the National Housing Act, projects financed by a loan from HUD under Section 202 of the Housing Act of 1959 and projects owned by the Department.

(4) The applicability of this regulation would now include Assistant Housing Managers.

All the modifications were intended to make the rule clearer and to accomplish more effectively the Department's purpose of upgrading the quality of the Housing Manager who is employed at a HUD-related multifamily housing project.

Many persons commented that certification should be required of the management agent, not the Housing Manager. The Department has determined that it already has substantial controls over the activities of the managing agents via the Regulatory Agreement and the Previous Participation Review and Clearance Procedures. The Department is concerned with the quality of performance of the Housing Manager who is directly responsible for the day-to-day operation of a multifamily housing project. Therefore, the Department has deemed it in the Government's best interest to require certification of Housing Managers.

In order to provide latitude to hire an individual who may not meet the qualifications for certification at hiring but who has potential, the Department has added a new Paragraph 406.11(b) providing for a probationary certificate.

Several persons commented that the costs of specialized training required for certification should be borne by the project. The Department has determined that during each 12-month period the expenses for two one-week courses or seminars in prepartion for meeting certification standards may be paid from project income.

Several persons questioned the ability of a HUD-related project to pay the salary commanded by a Housing Manager with the experience and educational requirements necessary for certification. Other persons were concerned that these regulations would create an artificial demand for certified Housing Managers, thereby increasing the costs of their salaries. The Department has determined that a sufficient number of certified Housing Managers will be generated during the period before the certification process becomes effective on January 1, 1979, (§ 406.11(a)). In addition, the Department believes that any minor increased costs for salaries will be more than compensated for by the savings resulting from improved management.

Several persons commented that the Department did not have the authority nor was there Congressional intent for HUD to issue regulations requiring Housing Managers to be certified. In addition, other persons commented that this regulation would inject HUD into an expanding role in management which could hamper an owner's effort to provide quality management. Each section of the National Housing Act contains authority for the Secretary to regulate the mortgagor as to rents or sales, charges, capital structure, rate of return and methods of operation. This broad authority granted by Congress is consistent with the Congressional intent to foster production of housing so that dwelling units can be provided at reasonable rentals for those people that the various programs were designed to house. To the extent that the Department can assure that projects are operated by professionally competent Housing Managers, a considerable step has been taken in the direction of increasing the quality of life in these projects and in keeping the rental rates at reasonable levels. This policy also promotes the interest of the owner that the project remain economically viable. For this reason, the Department seeks to establish uniform standards applicable to Housing Managers in HUD-related multifamily housing projects. These regulations do not hamper an owner's effort to provide quality management, but rather seek to bring all Housing Managers up to a minimum level of effectiveness. There is nothing contained in these regulations which would preclude an owner from imposing additional standards for Housing Managers.

A few persons commented that the proposed regulation did not set forth an objective standard by which certification may be revoked. The specific grounds for revocation or suspension of a certificate have been expanded in § 406.15(a), Revocation or Suspension of Certification.

The proposed rule provided that a certification could not be suspended or revoked without providing the certificate holder with an informal hearing meeting the requirements of due process. This principle has been extended to certifications. § 406.17 now provides that an applicant denied certification may, upon submitting a request for reconsideration, ask for and be entitled to a hearing by the certifying organization.

Organizations listed in the previous proposed rule have been deleted from this proposal. The functions of such organizations have changed from that of training organizations to that of certifying organizations.

It has been determined to be in the public interest to republish this regulation as a proposed rule since the changes made have been substantial. Interested persons may participate in this rulemaking by submitting written data, views, or arguments to the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451-7th Street, S.W., Washington, D.C. 20410. Each person submitting a comment should include his name and address and refer to the document by the docket number indicated in the heading and give reasons for any recommendations. Comments received by February 11, 1977, will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons in the Office of the Rules Docket Clerk at the address listed above. The proposal may be changed in the light of the comments received.

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 at the above address.

Accordingly, the Department proposes to amend Title 24 by adding a new part 406 to read as follows:

PART 406—CERTIFICATION OF HOUSING MANAGERS

Sec.

406.1 Purpose.
406.5 Definitions.
406.10 HUD Approval of Certifying Organizations.
406.11 Requirements for Certification of Housing Managers and Assistant Housing Managers.
406.12 Cost of Training Necessary for Certification.

Sec.
406.13 Refusal to Grant Certification.
406.15 Revocation or Suspension of Certification.
406.17 Appeals to HUD.
406.20 Authority under the Regulatory Agreement.
406.25 Responsibility for Selection.
406.30 Recommended Applicability.

AUTHORITY: Section 7(d) Department of HUD Act, (42 U.S.C. 3535(d)).

§ 406.1 Purpose.

This part sets forth standards which will apply in granting the certification required for a person who serves as a Housing Manager or an Assistant Housing Manager of a multifamily housing project consisting of 75 or more units which is financed by a mortgage insured or held by HUD or a project owned by HUD.

§ 406.5 Definitions.

(a) *Approved certifying organization.* Any organization approved by HUD, pursuant to § 406.10, which will administer a program for certification under this part.

(b) *Assistant Housing Manager.* Any person who, irrespective of title, serves as the principal assistant to the Housing Manager.

(c) *Certification.* The process by which an Approved Certifying Organization determines and certifies that an individual has met predetermined qualifications which are deemed to constitute a level of proficiency adequate to manage a HUD-related Multifamily Housing project.

(d) *Housing manager.* The person who has direct responsibility for the day-to-day operation of a Multifamily Housing Project, or in the case of projects owned by HUD, the on-site manager.

(e) *HUD.* The Department of Housing and Urban Development or its designated officer or employee.

(f) *HUD-related multifamily housing project.* A project:

(1) Financed by a mortgage insured by HUD pursuant to Sections 207, 608, 213, 220, 221, 234, or 236 of the National Housing Act (12 U.S.C. §§ 1713, 1743, 1715e, 1715K, 1715l, 1715v, 1715y, 1715z-1); or

(2) Financed by a loan from HUD under Section 202 of the Housing Act of 1959 (12 U.S.C. § 1701q); or

(3) Financed by a mortgage held by HUD; or

(4) Owned by HUD.

(g) *Management agent.* The individual or organization with whom the owner executed the management contract for management and operation of a Multifamily Housing Project.

(h) *Management contractor.* The individual or organization to whom HUD has awarded the Management Contract for management and operation of HUD acquired property.

(i) *Multifamily housing project.* A HUD-related Multifamily Housing Project as well as any non-HUD-related multifamily project.

§ 406.10 HUD Approval of Certifying Organizations.

(a) *Approval procedure.* Any national housing management organization may apply to HUD for approval for the purpose of providing certification of individuals as Housing Managers or Assistant Housing Managers. HUD's Certification Review Committee will evaluate applicant organizations upon their past performance in the field of housing management and compliance with HUD's nondiscrimination policies and the suitability of the programs submitted. Every applicant shall submit to HUD appropriate evidence that such organization:

(1) Has the experience and capacity to deal with HUD-related multifamily management;

(2) Has developed a certification program which includes specific criteria and standards for qualifying for certification: *Provided,* That the criteria and standards shall in all cases be reasonably related to job requirements, and shall take into account minimum levels of experience and education, and may consider training, abilities, performance and accomplishments in the field of housing management (including certification based solely upon acceptable on the job performance for a minimum of 3 years): *And provided further,* That the organization may consider housing management training programs other than its own, and may adopt, where appropriate, standards that reflect or give effect to such programs; and

(3) Has developed a certification program which includes:

(i) Suitable procedures which afford any person the opportunity to apply for certification and receive certification if he or she meets the standards;

(ii) A right of appeal as set forth in § 406.17;

(iii) Suitable procedures which provide for a probationary certificate;

(iv) Suitable procedures for the certification of persons who have successfully served as Housing Managers or Assistant Housing Managers for at least three years;

(v) Procedures governing suspension and revocation of certificates which are consistent with § 406.15;

(vi) Procedures for responding to complaints submitted to them by any person, including HUD, about a Housing Manager or an Assistant Housing Manager they have certified;

(vii) A reasonable fee schedule listing all fees which the certifying organization intends to charge individuals seeking certification.

(b) The HUD Certification Review Committee shall evaluate the evidence submitted by the organization in accordance with paragraph (a) of this section and will determine in its discretion, on the basis of that evidence and such other material as may be relevant, whether the organization meets the criteria set forth in paragraph (a) of this section. Upon approval of any organization, HUD shall promptly so notify it.

(c) In the event HUD denies approval of the organization, the notification to the organization shall set forth the reasons for HUD's action in sufficient detail so as to enable the organization to request reconsideration of the determination.

(d) *Periodic review of HUD approvals; rescission.* The standards, criteria and program of each Approved Certifying Organization shall be subject to periodic review and reapproval or disapproval at intervals to be determined by the HUD Certification Review Committee. Such periodic reviews shall include the procedures and methods by which the organization incorporates in its training, evaluation and certification program the current regulations, policies and procedures of HUD, as well as the due process protection afforded the persons certified or applying for certification. The HUD Certification Review Committee may for good cause rescind the approval of any Approved Certifying Organization.

(e) *Membership; fees.* No person may be denied a certification nor may any certification be suspended or revoked because he is not a member of an Approved Certifying Organization. However, a certifying organization may, with the approval of HUD, charge reasonable fees to assist in defraying the cost of administration of its certification program.

(f) *Publication of names and standards of approved certifying organizations.* A current list of Approved Certifying Organizations and their standards and criteria shall be published in the FEDERAL REGISTER as organizations are approved or reapproved by HUD.

§ 406.11 Requirements for certification of housing managers and assistant housing managers.

(a) *General.* On and after January 1, 1979, no Project Mortgagor, Management Agent or Management Contractor of a HUD-related Multifamily Housing Project consisting of 75 or more units shall select any person as a Housing Manager or Assistant Housing Manager or continue such person in employment unless such person has been certified as a Housing Manager or Assistant Housing Manager, as the case may be, by an Approved Certifying Organization in accordance with its approved certification program and such certificate is in good order: *Provided,* That this requirement shall not apply to any incumbent Housing Manager or Assistant Manager who has served in this capacity for at least three years, and any Approved Certifying Organization to whom such incumbent applies shall issue a special certification.

(b) *Probationary certification.* In order to provide latitude to hire an individual who may not meet the initial qualifications for certification at hiring, but who has potential, the Approved Certifying Organization shall issue a probationary certificate for a period of one year. The Approved Certifying Organization may extend the term of the

probationary certificate to allow the applicant sufficient time to obtain a certificate, in accordance with the organization's existing policies.

§ 406.12 Costs of training necessary for certification.

The costs of specialized training for a Housing Manager or Assistant Housing Manager employed by a project shall be deemed an expense reasonably related to the operation of such project, if the training is directly related to qualifying for certification and if the training does not exceed two one-week courses or seminars during each 12-month period for each individual.

§ 406.13 Refusal to grant certification.

Whenever an application for certification is denied by an Approved Certifying Organization, the applicant shall, if he so requests within a reasonable period of time, be entitled to a hearing before a hearing officer. The rules set forth in § 406.15(c) with respect to the appointment of the hearing officer and the nature of the hearing shall be generally applicable. Upon request of an applicant, an Approved Certifying Organization may at any time reconsider an application for certification and may for good cause certify such applicant.

§ 406.15 Revocation or suspension of certification.

(a) *Grounds for Revocation or Suspension of Certification.* Pursuant to the procedures set forth in paragraph (b) of this section, the certification of any individual may be revoked or suspended by the Approved Certifying Organization which granted the certification nor by its successor, or if there be no successor, by HUD, for the following reasons:

(1) Acts of fraud, deceit or misrepresentation in obtaining the certification.

(2) Acts or gross negligence, incompetency or misconduct in carrying out the duties of Housing Manager or Assistant Housing Manager.

(3) Conviction of a crime involving violence or dishonesty.

(4) Non-compliance with the requirements of the Regulatory Agreement with HUD.

(b) *Notice by the approved certifying organization.* The Approved Certifying Organization shall serve a written notice on the certified person that revocation or suspension is being considered and shall set forth in the notice with reasonable specificity the reasons for the proposed action. Said notice shall also advise the certified person that he or she has a specified number of days, which shall be at least 15 days from receipt of the notice, to respond in writing with a statement in his or her support or a request for an informal hearing, or both. If the certified person does not respond within the specified period, the Approved Certifying Organization may revoke or suspend the certification and shall immediately so advise the certified person, the owner and HUD.

(c) *Consideration by hearing officer.* If the certified person responds within the specified period with a written statement in his or her support or with a request for an informal hearing, the Approved Certifying Organization shall promptly appoint one or more hearing officers to hear the appeal. The hearing officer need not be a member of the bar and must not have participated in any prior consideration of the matter in controversy. The certified person may examine and, at his expense, copy all documents, records and regulations of the Approved Certifying Organization that are relevant to the matter. The certified person shall have the right to present evidence and arguments before the hearing officer in opposition to the proposed revocation or suspension and to controvert evidence relied on by the Approved Certifying Organization, and he or she may elect to do this in writing, or at the informal hearing, or both. The certified person shall be entitled to confront in a reasonable manner and cross-examine all witnesses on whose testimony or information the Approved Certifying Organization relies. The hearing officer may also in his discretion receive additional evidence from the Approved Certifying Organization. Evidence pertinent to the issues raised in the Approved Certifying Organization's notice may be received and considered without regard to its admissibility under rules of evidence employed in judicial proceedings. Upon considering all evidence and arguments presented, the hearing officer shall determine whether certification should be revoked or suspended and shall promptly serve on the certified person and the Approved Certifying Organization a notice of this determination. Whenever the hearing officer's decision is to revoke or suspend certification, said notice shall set forth with reasonable specificity the findings and the Approved Certifying Organization shall promptly take final action revoking or suspending the certification. Testimony shall be recorded in some form and such records shall be maintained by the Approved Certifying Organization for a period of not less than 1 year.

(d) *Reconsideration by approved certifying organization.* Upon the request of any person whose certification has been revoked or suspended, the Approved Certifying Organization may at any time reconsider the revocation or suspension and may for good cause recertify such person.

§ 406.17 Appeals to HUD.

Any person who is aggrieved by the determination of the hearing officer of an Approved Certifying Organization in connection with a refusal to grant certification or a revocation or suspension of certification may file an appeal to HUD within 30 days after being advised of the adverse decision. The appellant shall file with HUD a written statement in support of his appeal, including all pertinent documents, records and other evidence including the pertinent determinations of the Approved Certifying Organization and the hearing officer. HUD shall promptly review the material and may request the Certifying Organization to supply other relevant information. HUD shall promptly render a decision on the appeal and advise both the appellant and the Approved Certifying Oganization. If the HUD determination is in support of the appellant's request for certification or recertification, the Approved Certifying Organization shall promptly comply.

§ 406.20 Authority under the Regulatory Agreement.

Nothing herein shall be construed to limit in any way the authority of HUD under any Regulatory Agreement or Management Contract (Form HUD-9740) to terminate any management agreement or to otherwise enforce the obligation of a project mortgagor to provide for satisfactory management.

§ 406.25 Responsibility for Selection.

The selection of Housing Managers and Assistant Housing Managers from among certificate holders is the responsibility of Project Mortgagors or Management Contractors. For projects with insured or HUD-held mortgages, this selection responsibility may be delegated to a Management Agent in accordance with a HUD-approved Management Contract and Management Plan, but responsibility for the selection as well as the adequacy of management rests ultimately with the Project Mortgagor or HUD, in the case of HUD-owned properties. HUD, at its discretion may require an owner to furnish proof of a Housing Manager's or an Assistant Housing Manager's certification.

§ 406.30 Recommended Applicability.

Applicability of this Part is optional for Project Mortgagors, Management Agents, and Management Contractors selecting Housing Managers and Assistant Housing Managers during the period following the date of publication, but prior to January 1, 1979. Management Agents and Management Contractors are encouraged to make strong efforts during this period to select or retain persons who meet the stated requirements or who will qualify after completion of appropriate training. Applicability is also recommended for HUD-related Multifamily Housing Projects which contain 74 units or less.

(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.)

Issued at Washington, D.C., January 4, 1977.

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

[FR Doc.77-1050 Filed 1-12-77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART IV

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

■

SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

Proposed Mandatory Safety Standards

DEPARTMENT OF THE INTERIOR

Mining Enforcement and Safety Administration

[30 CFR Part 77]

SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

Proposed Mandatory Safety Standards

Notice is hereby given that in accordance with the provisions of section 101 of the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 91-173, 83 Stat. 745, 30 U.S.C. 811) and pursuant to the authority vested in the Secretary of the Interior under section 101(a) of the Act, it is proposed that Part 77, Subchapter O, Chapter I, Title 30, Code of Federal Regulations be revised and amended as set forth below.

Section 101(a) of the Act directs the Secretary to "develop, promulgate, and revise, as may be appropriate, improved mandatory safety standards * * *." These revisions and amendments to 30 CFR Part 77 are proposed as part of a continuous review by the Mining Enforcement and Safety Administration (MESA) of existing mandatory health and safety standards for our nation's coal mines. In accordance with section 101(c) of the Act, public meetings were held during the months of November and December 1974 and February 1975 in Pittsburgh, Pennsylvania; Charleston, West Virginia; Evansville, Indiana; Denver, Colorado; Hazelton, Pennsylvania; and Birmingham, Alabama for the purpose of discussing MESA's preliminary draft of proposed revisions and amendments. These proposed revisions and amendments are based on the voluminous comments received from industry and labor representatives at the public meetings, and on experience and technical expertise within MESA.

In numerous cases the proposed revisions and amendments clarify ambiguities in existing mandatory safety standards, and some subparts and sections have been reorganized to facilitate their use by operators and MESA inspectors. Other standards are completely revised. Because of the extent of the revisions proposed to be made in Part 77, this preamble does not attempt to explain each one in detail. Rather, selected major revisions are highlighted below. Standards that have recently been proposed or promulgated are not affected by this proposal, and they are also identified below.

Subpart A—General

(1) Under § 77.2, "Definitions", terms which have been redefined or added include:

"Blasting agents" which has been redefined to mean any material or mixture, consisting of fuel and oxidizer, intended for blasting, and not otherwise classified as an explosive by the Department of Transportation, provided that the finished product, as mixed for use or shipment, cannot be initiated by a No. 8 detonator when unconfined. (§ 77.2(d)), and

"Charged hole" which has been defined to mean any hole containing explosives, or blasting agents with a primer. (§ 77.2(i))

Subpart B—Qualified and Certified Persons

(1) Subpart B is not affected by this proposed rulemaking.

Subpart C—Surface Installations and Equipment

(1) The heading of Subpart C is changed to specifically refer to "Equipment". This change is made to remove any confusion which may have previously existed as to the scope of Subpart C.

(2) Construction, installation and maintenance requirements for ladders are expanded, and standards for scaffolding have been adopted. (§§ 77.206 and 77.206-1)

(3) Average illumination intensities are specified for interiors and exterior work areas of structures and facilities; slopes, tunnels and shafts; and self-propelled equipment. (§ 77.207)

(4) Light measuring instruments and methods of measurement are specified. (§ 77.207-1)

(5) The transportation, storage, use and maintenance of liquefied and non-liquefied compressed gas cylinders are now covered. (§§ 77.208-1—77.208-4)

(6) Rigging equipment standards have been added, which include tables to assist in determinations such as maximum working load limits and rated capacities. (§ 77.210-1)

(7) Regulations regarding refuse piles and impounding structures are not affected by this proposed rulemaking. (§§ 77.214-77.217)

Subpart D—Thermal Dryers

(1) Thermal dryer bypass stacks are required to be fitted with a clean-out door or other effective means to permit removal of material. (§ 77.302)

(2) Requirements for checking and cleaning dryer chamber drop-out doors are added. (§ 77.303)

(3) Explosion release vents are required to be checked by manual operation at intervals not exceeding 90 days. (§ 77.304)

Subpart E—Safeguards for Mechanical Equipment

(1) Standards for power operated hand-held tools are added. (§ 77.402-1)

(2) Regulations regarding falling object protective structures (FOPS) and rollover protective structures (ROPS) are not affected by this proposed rulemaking. (§§ 77.403—77.403b)

(3) Additional requirements for welding operations have been included. (§ 77.408)

(4) Rubber tired front-end loaders and dozers purchased after the effective date of this section will be required to be equipped with parking and emergency stopping systems. (§ 77.410)

(5) Tire and rim repair standards have been added. (§ 77.410-1)

(6) New standards covering marine operation and equipment have been added. (§ 77.414)

Subpart F—Electrical Equipment—General

(1) The electrical subparts (F, G, H, I, J, and S) have been reorganized so that all the specific requirements relating to a specific type of circuit are within a single subpart. As proposed, Subpart F contains the general requirements applicable to all circuits.

(2) Sections 77.500 and 77.501 are consolidated, and gloves are required when testing and troubleshooting on low- and medium-voltage circuits. (§ 77.500)

(3) Electric powered hand-held tools are considered electrical equipment for the purposes of Part 77. (§ 77.502-2)

(4) Ampacity requirements and ampacity ratings are specified for specific types of circuits and conductors respectively. (§§ 77.503-1 and 77.503-2)

(6) Voltage limitations have been added for motor control circuits that are external to the motor controller enclosure. (§ 77.507)

(7) Guarding requirements for all low- and medium-voltage electric equipment have been specified. (§ 77.512)

(8) MESA's interpretation of the National Electrical Code as applied to hazardous locations has been specified. (§§ 77.516-1 through 77.516-4)

(9) Requirements for the installation of electric wiring and equipment have been added. (§ 77.517)

(10) New stationary electric utilization equipment is required to have an identifying nameplate. (§ 77.518)

Subpart G—Circuits to Portable and Self-Propelled Electric Equipment

(1) Subpart G defines trailing cable circuit, trailing cable, feeder cable circuit and portable feeder cable and specifies short-circuit, overload and ground fault protection requirements. (§§ 77.600—77.602-1)

(2) Fail safe ground check circuit requirements are modified to allow impedence monitoring of grounding circuits. Ground check circuits other than fail safe ground check circuits or without ground check wires may be approved by the Assistant Administrator—Technical Support. (§§ 77.603—77.603-2)

(3) Requirements are added for testing of circuit breakers protecting trailing cable circuits and feeder cable circuits. (§§ 77.604 and 77.604-1)

(4) Locations for disconnecting devices are specified. (§ 77.605)

(5) Ampacity requirements and ampacity ratings for trailing cable circuits and feeder cable circuits are specified. (§§ 77.606 and 77.606-1)

(6) Shielding is required for new low- and medium-voltage trailing cables and portable feeder cables which supply power to three-phase equipment. (§ 77.607)

(7) Connections shall not be made while cables are energized at more than 150 volts. (§ 77.614)

Subpart H—Direct Current Circuits

(1) The requirements for grounding have been moved to the appropriate subpart for each type of circuit.

(2) Proposed Subpart H contains provisions pertaining exclusively to direct current circuits.

(3) Ground fault protection is required for resistance grounded and solidly grounded direct current circuits. (§ 77.700(a))

(4) Ground fault protection or ground fault indication is required for ungrounded direct current circuits. (§ 77.700(b))

SUBPART I—HIGH-VOLTAGE ALTERNATING CUURENT CIRCUITS

(1) Ground fault protection is required for resistance grounded and solidly grounded high-voltage circuits supplying power to stationary equipment. (§ 77.800(a))

(2) Ground fault protection or ground fault indication is required for ungrounded high-voltage circuits. (§ 77.800(b))

(3) System and enclosure grounding is specified for high-voltage systems supplying power to stationary equipment. (§ 77.802)

(4) Criteria is established for allowing earth as a grounding conductor. (§§ 77.802–2 and 77.802–3)

(5) Requirements are established for guarding high voltage equipment, conductors, cables and parts. (§ 77.804)

(6) Higher clearances are required in areas where dump trucks operate under high-voltage powerlines (§ 77.805–3)

(7) Proximity warning devices are required for self-propelled equipment with booms and masts which can extend higher than 15 feet above ground. (§ 77.805–4).

SUBPART J—LOW- AND MEDIUM-VOLTAGE ALTERNATING CURRENT CIRCUITS

(1) Ground fault protection is required for resistance grounded, solidly ground and ungrounded low- and medium-voltage circuits supplying power to stationary equipment. (§ 77.900)

(2) System and enclosure grounding is specified for low- and medium-voltage systems supplying power to stationary equipment. (§ 77.902)

SUBPART K—GROUND CONTROL

(1) Detailed ground control plans are required to be approved by MESA and adopted by the operator. (§ 77.1000)

(2) Standards regarding loose material, box cuts, benches, and scaling of highwalls are now covered within the approved ground control plan and are therefore dropped as individual sections. (§§ 77.1000—77.1000–5)

(3) Highwalls sloping into working areas are required to be examined by a certified person within two hours before each operating shift. (§ 77.1001)

SUBPART L—FIRE PROTECTION

(1) Subpart L is not affected by this proposed rulemaking.

SUBPART M—MAPS

(1) Mine maps are required to be revised and supplemented, and to be kept up-to-date by temporary notations. (§ 77.1200–1)

(2) A final certified mine map must be filed within 60 days by an operator when he permanently closes or abandons a coal mine. (§ 77.1203)

SUBPART N—EXPLOSIVES AND BLASTING

(1) Magazine location requirements include locating the magazine at distances from certain structures and facilities as specified for "inhabited buildings" in the "American Table of Distances for Storage of Explosives." (§ 77.1301(a)(2))

(2) At least two screened ventilation openings are required for over-the-road, drop-off vans containing blasting agents when the van is serving as a storage facility. (§ 77.1304(1))

(3) Restrictions are placed on certain work activities conducted within the blasting area containing charged holes. (§ 77.1308(g))

(4) Blasting is prohibited after dark. (§ 77.1308(i))

SUBPART O—HOISTING, ELEVATORS AND MANLIFTS

(1) Subpart O coverage has been extended to elevators and manlifts.

(2) Requirements covering overspeed, overtravel and automatic stop controls, and brakes have been modified. (§§ 77.1401—77.1401–4)

(3) Wire rope and wire rope attachment removal criteria have been adopted. (§ 77.1402–1)

(4) Communication and signaling requirements are added. (§§ 77.1405 and 77. 1405–1)

SUBPART P—AUGER MINING

(1) The unnecessary requirement for oxygen deficiency testing at auger operations is dropped. (§ 77.1501)

(2) Methane detectors are required to be available at each auger machine. (§ 77.1501(c))

(3) Persons, including the machine operator, are prohibited from being stationed in direct line with the borehole during augering. (§ 77.1504)

(4) Auger holes must be blocked within a specified time and distance. (§ 77.1505)

SUBPART Q—LOADING, HAULAGE, STRIPPING, DRILLING AND RECLAMATION

(1) The scope of this subpart has been expanded to include stripping, drilling and reclamation as well as loading and haulage.

(2) The subpart has been reorganized so that general provisions and transportation of persons regulations are followed by detailed installation and operation regulations for aerial tramways (§ 77.1603), conveyors (§ 77.1604), railroad trains (§ 77.1605), rubber tire and crawler mounted mobile equipment (§ 77.1606) and dumping facilities (§ 77.1607).

(3) Only maintenance men may ride in empty buckets on aerial tramways. (§ 77.1062)

(4) All self-propelled rail haulage equipment must have hydraulic brakes, pneumatic brakes or dynamic braking in addition to manual brakes, each capable of stopping and holding the maximum load. (§ 77.1605(e))

(5) Car droppers shall not ride on the front of moving trips or on the front of a single car which is being dropped. (§ 77.1605(n))

(6) Berms or guards are required on the outer banks of elevated roadways or specified conditions must be met in lieu of providing berms. (§ 77.1606(g))

(7) All new bridges must be sufficiently strong and at least one and one-half times the width of the widest vehicle which regularly uses the bridge. (§ 77.1606(h))

SUBPART R—MISCELLANEOUS

(1) All supervisory employees are required to have first-aid training and retraining. (§§ 77.1703–77.1705)

(2) Requirements for first-aid training and retraining for non-supervisory miners have been deleted from Subpart R and were proposed as Subpart U-Training and Retraining of Miners on July 29, 1976 (41 FR 31556).

(3) Protective clothing requirements have been specified in greater detail for face and eye protection, hard hats, safety belts, and seatbelts. (§§ 77.1710)

(4) Requirements for distinctively colored hard hats for newly employed miners are not affected by this proposed rulemaking. (§ 77.1710–1)

SUBPART S—TROLLEY CIRCUITS

(1) Miximum trip currents and trip times have been specified for circuit breakers protecting trolley circuits. (§§ 77.1800–1 and 77.1800–2)

(2) Requirements for testing of circuit breakers protecting trolley circuits have been added. (§ 77.1800–4)

(3) Training requirements for persons who repair energized trolley wires have been specified. (§ 77.1803–1)

SUBPART T—SLOPE AND SHAFT SINKING

(1) Standards affecting filing, approval and modification of a slope and shaft plan have been added. Additional information to be included within the plan is also required. (§§ 77.1900–77.1900–4)

(2) Wire rope and wire rope attachment removal criteria have been adopted. (§ 77.1903)

(3) When persons are transported by a hoist or endangered thereby, the hoist must meet the requirements of Subpart O of this part. This includes the requirements for two independent brakes. (§ 77.1905)

SUBPART U—TRAINING AND RETRAINING OF MINERS

Subpart U was proposed in the FEDERAL REGISTER for July 29, 1976. (41 FR 31556). That proposal is not affected by this proposed rulemaking.

SUBPART V—STRUCTURAL ERECTION

(1) New requirements for structural erection have been added. The primary source used in developing these standards was the Occupational Safety and Health Administration (OSHA) regulations for similar construction.

Interested persons may submit written comments, suggestions, data and objec-

tions to the proposed standards stating the grounds for such objections and requesting a public hearing, to the Administrator, Mining Enforcement and Safety Administration, Department of the Interior, Room 618, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, no later than February 28, 1977.

NOTE.—The Department of the Interior 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.

Date: January 6, 1977.

WILLIAM L. FISHER,
Assistant Secretary of the Interior.

It is proposed that Part 77, Subchapter O, Chapter I, Title 30, Code of Federal Regulations be amended as follows:

1. The following entries in the table of controls are revised:

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77.1	Scope.
77.2	Definitions.
*	* * * * *

Subpart C—Surface Installations and Equipment

77.200	Surface installations; equipment; general.
77.201	Methane content in surface installations.
77.201-1	Tests for methane; qualified person; use of approved device.
77.201-2	Methane accumulations; change in ventilation.
77.202	Coal and coal dust accumulations in surface installations.
77.203	Use of material or equipment overhead; safeguards.
77.204	Openings in surface installations and equipment; safeguards.
77.205	Travelways at and on surface installations and equipment.
77.206	Ladders and scaffolding; construction; installations; maintenance.
77.206-1	Scaffolding; general.
77.207	Illumination.
77.207-1	Light measuring instruments and methods of measurement.
77.208	Storage of materials; general.
77.208-1	Transportation of liquefied and nonliquefied compressed gas cylinders.
77.208-2	Storage of liquefied and nonliquefied compressed gas cylinders.
77.208-3	Use of liquefied and nonliquefied compressed gas cylinders.
77.208-4	Maintenance and tests of liquefied and nonliquefied compressed gas cylinders; accessories and equipment.
77.208-5	Exemption of small low-pressure gas cylinders containing nonflammable or nonexplosive gas mixtures.
77.209	Surge and storage piles.
77.210	Hoisting of materials.
77.210-1	Rigging equipment for material handling.
77.211	Draw-off tunnels; stockpiling and reclaiming operations; general.
77.211-1	Continuous methane monitoring device; installation and operation; automatic deenergization of electric equipment.
77.212	Draw-off tunnel ventilation fans; installation.
77.213	Draw-off tunnel escapeways.
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77.218	Incorporation by reference.

Subpart D—Thermal Dryers

77.300	Thermal dryers; general.
77.301	Dryer heating units; operation.
77.302	Bypass stacks.
77.303	Dryer chamber drop-out doors.
77.304	Explosion release vents.
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77.308	Visual check of system equipment.
77.308-1	Control stations; location.
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77.310	Alarm devices.
77.311	Fail safe monitoring systems.
77.312	Wet-coal feedbins; low-level indicators.
77.313	Automatic temperature control instruments.
77.314	Thermal dryers; examination and inspection.
77.315	Incorporation by reference.

Subpart E—Safeguards for Mechanical Equipment

77.400	Mechanical equipment guards.
77.401	Stationary grinding machines; protective devices.
77.402	Hand-held power tools; safety devices.
77.402-1	Power operated hand-held tools.
*	* * * * *
77.404	Portable, self-propelled and stationary machinery.
77.405	Performing work from a raised position; safeguards.
77.406	Drive belts.
77.407	Power-driven pulleys.
77.408	Welding operations.
77.409	Shovels, draglines and tractors.
77.410	Self-propelled equipment; automatic warning devices and braking systems.
77.410-1	Tires and rim repair.
77.411	Compressed air and boilers; general.
77.412	Compressed air systems.
77.413	Boilers.
77.414	Marine operation and equipment.
77.415	Incorporation by reference.

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77.501	Electric circuits and equipment; maintenance.
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77.502-1	Electric powered hand-held tools.
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77.601	Trailing cable circuits; protection.
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77.603-2	Ground check circuits not employing a ground check wire; approval.
77.604	High-voltage circuit breakers; examination, testing and adjustment.
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77.606	Trailing cable circuits and feeder cable circuits; ampacity requirements.
77.606-1	Trailing cable circuits and feeder cable circuits; ampacity ratings.
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77.700-3 Ground-fault indicator; requirements.
77.701 Direct current systems; system and enclosure grounding.
77.702 Incorporation by reference.

Subpart I—High-Voltage Alternating Current Circuits

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77.800-1 Short-circuit and overload protection; requirements.
77.800-2 Ground-fault protection; requirements.
77.800-3 Ground-fault indicator; requirements.
77.801 High-voltage alternating current systems supplying power to portable or self-propelled equipment; system and enclosure grounding.
77.801-1 Grounding resistors; portable and self-propelled equipment.
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77.806 Work on high-voltage powerlines; deenergization and grounding.
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77.1000-3 Mines without plans on file on the effective date of this section.
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77.1905 Hoist safeguards; general.
77.1906 Hoists; inspection and maintenance.
77.1907 Hoist construction; general.
77.1908 Hoist installations; use.
77.1908-1 Hoist operation; qualified hoistman.
77.1909 Explosives and blasting; use of permissible explosives and shot-firing units.
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77.1910 Explosives and blasting; general.
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Subpart V—Structural Erection

77.3000 Structural erection; general.
77.3001 Steel erection; flooring requirements.
77.3001-1 Structural steel assembly.
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77.3002-1 Forms and shoring.

AUTHORITY: Sec. 101, Pub. L. 91-173, 83 Stat. 745 (30 U.S.C. 811).

2. Subpart A is revised as follows:

Subpart A—General

§ 77.1 Scope.

This Part 77 sets forth mandatory safety standards for surface coal mines and for the surface work areas of underground coal mines.

§ 77.2 Definitions.

For the purpose of this Part 77, the term:

(a) "Active workings" means any place in a coal mine where miners are normally required to work or travel;

(b) "Barricaded" means to obstruct passage of persons and vehicles;

(c) "Berm" means a pile or mound of material capable of restraining a vehicle;

(d) "Blasting agents" means any material or mixture, consisting of fuel and oxidizer, intended for blasting, and not otherwise classified as an explosive by the Department of Transportation in 49 CFR §§ 173.53, 173.88 and 173.100, revised as of October 1, 1975, provided that the finished product, as mixed for use or shipment, cannot be initiated by a No. 8 detonator when unconfined;

(e) "Blasting area" means the area near blasting operations in which concussion or flying material can reasonably be expected to cause injury;

(f) "Blasting cap" means a detonator which is initiated by a safety fuse;

(g) "Blasting circuit" means the electrical circuit used to fire one or more electric blasting caps;

(h) "Certified" or "registered" as applied to any person means a person certified or registered by the State in which the coal mine is located to perform duties prescribed by this Part 77, except that, in a State where no program of certification or registration is provided or where the program does not meet at least minimum Federal standards established by the Secretary, such certification or registration shall be by the Secretary;

(i) "Charged hole" means any hole containing explosives, or blasting agents with a primer;

(j) "Delay connector" means a non-electric short interval delay device for use in delaying blasts which are initiated by detonating cord;

(k) "Detonating cord" means a flexible cord containing a solid core of high explosives;

(l) "Detonator" means any device containing a detonating charge that is used to initiate an explosive and includes but is not liimted to blasing caps, electric blasting caps, and non-electric instantaneous or delay blasting caps;

(m) "Electric blasting cap" means a detonator designed for and capable of being initiated by means of an electric current;

(n) "Electrical grounding" means to connect with the ground to make the earth part of the circuit.

(o) "Explosive" means either any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; or, any compound, mixture, or device that is classified as an explosive by the Department of Transportation in 49 CFR §§ 173.53, 173.88 and 173.100, revised as of October 1, 1975;

(p) "Flash point" means the minimum temperature at which sufficient vapor is released by a liquid or solid to form a flammable vapor-air mixture at atmospheric pressure;

(q) "Low-voltage" means up to and including 660 volts, "medium-voltage" means voltages from 661 to 1,000, and "high-voltage" means more than 1,000 volts;

(r) "Magazine" means a facility for the storage of explosives, blasting agents or detonators;

(s) "MESA" means the United States Department of the Interior, Mining Enforcement and Safety Administration;

(t) "Misfire" means the complete or partial failure of a blasting charge to explode as planned;

(u) "Non-electric instantaneous or delay blasting cap" means a detonator with or without an integral delay element and capable of being initiated by a flexible cord containing explosive material;

(v) "Primer" means a unit, package or cartridge of explosives used to initiate other explosives or blasting agents, and which contains:

(1) A detonator, or

(2) Detonating cord when assembled with the unit, package or cartridge of explosives at the time of use;

(w) "Qualified person" means, as the context requires,

(1) An individual deemed qualified by the Secretary and designated by the operator to make tests and examinations required by this Part 77; and,

(2) An individual deemed, in accordance with the minimum requirements established by the Secretary, qualified by training, education, and experience, to perform electrical work, to maintain electrical equipment, and to conduct examinations and make tests of all electrical equipment;

(x) "Safety can" means an approved container, of not over 5 gallons capacity, having a spring-closing lid and spout cover;

(y) "Safety fuse" means a flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing blasting caps; and

(z) "Secretary" means the Secretary of the Interior or his delegate.

Subpart C—Surface Installations and Equipment

3. In Subpart C, §§ 77.200 through 77.213 are revised as follows:

§ 77.200 Surface installations; equipment; general.

All mine structures, enclosures, equipment, and other facilities (including coal preparation plants, facilities used in the work of preparing coal, construction areas, offices, shops, garages and laboratories) shall be maintained in good repair to prevent accidents and injuries to miners.

§ 77.201 Methane content in surface installations.

The methane content in the air of any structure, enclosure or other facility shall be less than 1.0 volume per centum.

§ 77.201-1 Tests for methane; qualified person; use of approved device.

Tests for methane in structures, enclosures, or other facilities in which coal is handled or stored shall be made by an approved methane monitor or by a qualified person with a methane detector or other device, approved by the Secretary, at least once during each operating shift, and immediately prior to any repair

work in which welding or an open flame is used, or a spark may be produced.

§ 77.201–2 Methane accumulations; change in ventilation.

If, at any time, the air in any structure, enclosure, or other facility contains 1.0 volume per centum or more of methane, changes or adjustments in the ventilation of such installation shall be made at once so that the air shall contain less than 1.0 volume per centum of methane.

§ 77.202 Coal and coal dust accumulations in surface installations.

Coal and coal dust in the air of, or in, or on the surfaces of structures, enclosures, or other facilities shall not be allowed to exist or accumulate in dangerous amounts.

§ 77.203 Use of material or equipment overhead; safeguards.

Where overhead repairs are being made at surface installations or on surface equipment and equipment or material is taken into such overhead work areas, adequate protection shall be provided for all persons working or passing below the overhead work areas.

§ 77.204 Openings in surface installations and equipment; safeguards.

Openings in surface installations and equipment through which men or material may fall shall be protected by railings, barriers, covers or other protective devices.

§ 77.205 Travelways at and on surface installations and equipment.

(a) Safe means of access shall be provided and maintained to all working places.

(b) Travelways and platforms or other means of access to areas where persons travel or work shall be kept clear of all extraneous material and other stumbling or slipping hazards.

(c) Inclined travelways shall be constructed of nonskid material or equipped with cleats.

(d) Regularly used travelways shall be sanded, salted, or cleared of snow and ice as soon as practicable.

(e) Crossovers, elevated walkways, elevated ramps and stairways shall be of substantial construction, provided with handrails and maintained in good condition. Where necessary, toeboards shall be provided.

(f) Crossovers shall be provided where it is necessary to cross conveyors.

(g) Conveyors shall be crossed only at designated crossover points, except where repairs or maintenance is performed and the power is off and the conveyor is blocked against motion.

§ 77.206 Ladders and scaffolding; construction; installation; maintenance.

(a) *General requirements; ladders.* (1) Ladders shall be of substantial construction and maintained in good condition.

(2) Oil and grease shall not be allowed to accumulate on ladders.

(3) Ladders shall not be used in a horizontal position as platforms, runways, or scaffolds.

(4) Ladders shall be visually inspected before each use for broken rungs, split side rails, loose fastenings, decayed wood or other defects. Ladders with defects shall not be used.

(b) *Portable ladders; construction, use and maintenance.* (1) Portable ladders shall be so placed as to prevent slipping, or they shall be properly secured in position.

(2) On two section extension ladders, the minimum overlap for the two sections in use shall be as follows:

Size of ladder (feet):	*Overlap (feet)*
Up to and including 36	3
Over 36 and up to and including 48	4
Over 48 and up to and including 60	5

(3) No ladder shall be used to gain access to a roof or platform unless the top of the ladder extends at least 3 feet above the point of support, eave, gutter, roof line or platform.

(c) *Fixed ladders.* (1) Steep or vertical ladders (60° to 90° from the horizontal) shall be anchored securely and provided with:

(i) Backguards extending from a point not more than 7 feet from the bottom of the ladder to the top of the ladder, or

(ii) A ladder safety device meeting the requirements of American National Standards Institute (ANSI) A14.3–1974, "Safety Requirements for Fixed Ladders."

(2) Ladders shall extend at least 3 feet above the landing or substantial handholds shall be provided above the landing.

(3) Ladders shall not incline backwards at any point unless provided with backguards.

(4) Ladders shall be anchored securely and installed to provide at least 3 inches of toe clearance.

§ 77.206–1 Scaffolding; general.

(a) Scaffolds shall be erected in accordance with the requirements of this section.

(b) The footing or anchorage for scaffolds shall be sound, rigid, and capable of carrying the maximum intended load without settling or displacement. Unstable objects shall not be used to support scaffolds.

(c) No scaffold shall be erected, moved, dismantled or altered except under supervision of a person experienced in performing such work.

(d) Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor.

(e) Scaffolds and their components shall be capable of supporting at least four times the maximum intended load.

(f) Any scaffold, including accessories such as braces, brackets, trusses, screw lugs and ladders, damaged or weakened from any cause shall be immediately repaired or replaced.

(g) All planking or platforms shall be overlapped (minimum 12 inches) or secured from movement.

(h) Scaffold planks shall extend over their end supports not less than 6 inches and not more than 18 inches.

(i) The poles, legs or uprights of scaffolds shall be securely and rigidly braced and aligned to prevent swaying and displacement.

(j) Overhead protection shall be provided for men on a scaffold exposed to overhead hazards.

(k) Slippery conditions on scaffolds shall be eliminated prior to any other work being performed on or from such scaffolds.

(l) No welding, burning, riveting or open flame work shall be performed on or from any staging suspended by means of fiber or synthetic rope. Only treated or protected fiber or synthetic rope shall be used for or near any work involving the use of corrosive substances or chemicals.

(m) Wire, synthetic or fiber rope, used for scaffold suspension shall be capable of supporting six times the applied load.

(n) The use of shore or lean-to scaffolds is prohibited.

(o) Work shall not be performed on or from exposed scaffolds during storms or high winds that create a hazard.

§ 77.207 Illumination.

All areas where persons regularly work or travel shall be illuminated to not less than the average illumination intensities specified in this section. The illumination shall not exceed the uniformity ratio specified in this section.

(a) *Interiors of structures and facilities—illumination intensities while persons are present:*

Location	Average illumination intensity in foot-candles	Uniformity ratio
(1) Control rooms and control stations	10.0	5/1
(2) Electrical equipment rooms and power switch gear	10.0	5/1
(3) Shops	10.0	5/1
(4) Storerooms	2.0	5/1
(5) Walkways	5.0	5/1
(6) All other areas	5.0	5/1

(b) *Exterior work areas of structures and facilities—illumination intensities at all times unless otherwise noted:*

Location	Average illumination intensity in foot-candles	Uniformity ratio
(1) Active building entrances and exits	2.0	5/1
(2) Shaft landing	2.0	5/1
(3) Storage areas while persons are present	2.0	10/1
(4) Coal loading and unloading while persons are present	2.0	5/1
(5) Conveyor walkways while persons are present:		
(i) Guarded conveyors	2.0	10/1
(ii) Unguarded conveyors	5.0	10/1
(6) Loading platforms while persons are present	2.0	10/1
(7) Paths and walkways within 200 ft of surface structures	1.0	10/1
(8) Refueling areas while persons are present	5.0	10/1
(9) Active tracks	1.0	10/1
(10) Active track switch points	2.0	10/1
(11) Parking lots	.5	10/1
(12) General work areas while persons are present	5.0	10/1

(c) *Slopes, tunnels and shafts—illumination intensities while persons are present:*

Location	Average illumination intensity in foot-candles	Uniformity ratio
(1) Bottoms of slopes, tunnels, and shafts under construction and shafts under construction	5.0	5/1
(2) Walkways in slopes and tunnels	2.0	10/1
(3) All other areas in slopes and tunnels	2.0	10/1

(d) *Draglines, shovels and wheel excavators—illumination intensities while equipment is operated unless otherwise noted:*

Location	Average illumination intensity in foot-candles	Uniformity ratio
(1) Interior walkways while persons are present	10.0	10/1
(2) All other interior areas, except operating cabs while persons are present	10.0	10/1
(3) All areas 20 ft in all directions from the main frame, including all work or travel areas beneath the main frame	5.0	10/1
(4) Exterior walkways on board draglines, shovels, and wheels excavators	5.0	10/1
(5) The area beneath the boom from 20 ft from the main frame to the farthest point the equipment is capable of excavating or discharging material	1.0	10/1

(e) *Other self-propelled equipment—illumination intensities while the equipment is operated:*

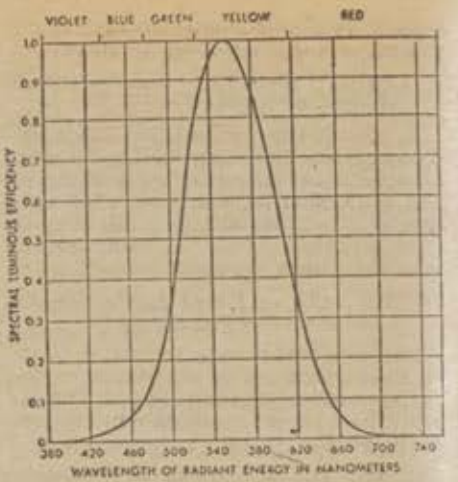
Location	Average illumination intensity in foot-candles	Uniformity ratio
(1) Except as provided in par. (e)(2) an area to the front and to the rear of all rubber tired or crawler mounted scrapers, front-end loaders, dozers, graders, loaders, and tractors. The areas shall start at the point the operator can normally see the ground surface and extend for a distance of 20 ft and for a width equal to the machine width	1.0	10/1
(2) An area to the side of equipment where operating visibility is normally to the side. The area shall start at the side edge of the blade or bucket and extend to the side and rear of the blade or bucket for a distance of 5 ft	1.0	10/1
(3) All areas within 10 ft of the hole being drilled by vertical drills, except small pneumatic drills	5.0	10/1
(4) All areas within 10 ft of horizontal drills and coal augers. On board work areas of horizontal drills and coal augers	5.0	10/1

(f) Persons assigned, or allowed, or required to perform work or travel in locations not covered by paragraphs (a) through (e) of this section and the illumination is less than 0.5 footcandles shall be provided with and shall use a hand or cap lamp sufficient to provide adequate illumination for safe performance of assigned tasks.

§ 77.207–1 Light measuring instruments and methods of measurement.

(a) Compliance with § 77.207 shall be determined by MESA using light measuring instruments and methods of measurement prescribed by this section.

(b) Light measuring instruments shall be cosine-corrected and properly calibrated and maintained. Instruments shall be calibrated against standards traceable to the National Bureau of Standards and color-corrected to the Commission International de l'Eclairage (CIE) Spectral Luminous Curve. The CIE Spectral Luminous Curve is as follows:



(c) Except as provided in paragraph (d) and (e) of this section, the surfaces to be measured shall be divided into fields having an area not greater than 100 square feet. The surface of the light-sensitive cell shall be held in a horizontal plane approximately 30 inches from the surface to be measured. The average illumination intensity for that field shall be considered to be the average of five readings; one taken at each of the four corners of the field and one taken in the center of the field. When measuring the areas specified in § 77.207(e) the light-sensitive cell shall be angled for the maximum reading.

(d) The average illumination intensity for paths and walkways specified in §§ 77.207(a)(5), (b)(5), (b)(7), (c)(2), (d)(1) and (d)(4) shall be considered to be the average of at least four evenly spaced readings taken at intervals of 10 feet along the path or walkway. Where the length of the path or walkway is insufficient to allow four readings to be taken at 10-foot intervals, the average illumination intensity shall be considered to be the average of four evenly spaced readings taken along the path or walkway. The surface of the light-sensitive cell shall be held in a horizontal plane approximately 30 inches from the surface to be measured. Where the path or walkway is illuminated by evenly spaced luminaries installed above or along the path or walkway, the average of at least four evenly spaced readings taken at intervals of not more than 10 feet shall be sufficient to determine compliance for the entire path or walkway; provided the first reading is taken under one luminarie and the last reading is taken under the next adjacent luminarie.

(e) The average illumination intensity for areas beneath booms of draglines, shovels and wheel excavators, shall be

considered to be the average of the readings taken when the boom is positioned over level terrain. At least four evenly spaced readings shall be taken at intervals of not more than 10 feet along the center line of the boom from 20 feet from the main frame of the machine to the farthest point the machine is capable of excavating or discharging material. The light-sensitive cell shall be held in a horizontal plane and approximately 30 inches above ground.

(f) The uniformity ration (UR) shall be calculated as the average to minimum illumination intensity for paragraphs (c), (d) and (e) of this section. Two examples are shown below. Both examples have the required illumination in footcandles (fc); however, example (1) exceeds the uniformity ratio.

(1) *Control room*

$$UR = \frac{\text{Average illumination intensity}}{\text{Minimum illumination intensity}} = \frac{14.4fc}{2fc} = 7.2/1$$

(2) *Belt walkway*

$$UR = \frac{\text{Average illumination intensity}}{\text{Minimum illumination intensity}} = \frac{6.0fc}{.7fc} = 8.6/1$$

§ 77.208 Storage of materials; general.

(a) Materials shall be stored and stacked in a manner which minimizes stumbling or fall-of-material hazards.

(1) All materials stored in tiers shall lie stacked, racked, blocked, interlocked or secured by other means to prevent sliding, falling or collapse.

(2) Aisles and passageways shall be kept clear, clean and in good repair.

(3) Material stored inside buildings under construction shall not be stored within 6 feet of any hoistway or inside floor opening. Material shall not be stored within 10 feet of an exterior wall which does not extend above the top of material stored.

(b) Materials that can create hazards if accidentally liberated from their containers shall be stored in a manner to prevent the danger.

(c) Hazardous materials shall be stored in containers of a type approved for such use by recognized agencies; such containers shall be labeled appropriately.

§ 77.208–1 Transportation of liquefied and nonliquefied compressed gas cylinders.

(a) Liquefied and nonliquefied compressed gas cylinders while being transpored shall be:

(1) Placed securely in devices designed to hold the cylinder in place during transit;

(2) Disconnected from all hoses and gauges except when the cylinder is mounted as an integral part of mobile equipment, and the gauges and cylinder valve are protected by the design of mobile equipment from being knocked off or dislodged;

(3) Equipped with a metal cap or "headband" (fence-type metal protector around the valve stem) to protect the cylinder valve during transit except when the cylinder valve is protected as provided in paragraph (a)(2) of this section; and

(4) Shut off at cylinder valve.

(b) When liquefied and nonliquefied compressed gas cylinders are transported by a trolley wire haulage system, such cylinders shall be placed in well insulated and substantially constructed containers which are specifically designed for holding such cylinders.

(c) Liquefied and nonliquefied compressed gas cylinders shall not be transported on mantrips.

(d) Valve protection caps, where a cylinder is designed to accept a cap, shall be in place, hand-tight, except where cylinders are in use or connected for use.

§ 77.208–2 Storage of liquefied and nonliquefied compressed gas cylinders.

(a) In addition to the general storage requirements prescribed in § 77.208, liquefied and nonliquefied compressed gas cylinders in storage shall be:

(1) Clearly marked and identified as to their contents.

(2) Placed securely in storage areas designated by the operator for such purpose, in an upright position and secured against being accidentally tipped over.

(3) Protected against damage from falling material, contact with powerlines and energized electrical equipment, heat from welding, cutting, or soldering, and exposure to flammable liquids. Oxygen cylinders shall not be stored in an acetylene generator compartment.

§ 77.208–3 Use of liquefied and nonliquefied compressed gas cylinders.

(a) Persons assigned by the operator to use and work with liquefied and nonliquefied compressed gas shall be trained and designated by the operator to perform the work to which they are assigned, and such persons shall be specifically instructed with respect to the dangers in the use of such gases.

(b) Persons who perform welding, cutting or burning operations shall wear clothing free from excessive oil or grease.

(c) Liquefied and nonliquefied compressed gas cylinders shall be placed in an upright position and chained or otherwise secured against falling.

(d) Liquefied and nonliquefied compressed gas shall not be used under direct pressure from the cylinder and where such gases are used under reduced pressure, the pressure level shall not exceed that recommended by the manufacturer.

(e) "Manifolding of cylinders" shall only be performed in well ventilated areas where the necesary equipment is properly installed and operated in accordance with specifications for safety prescribed by the manufacturer.

(f) When in storage, the valves of all liquefied and nonliquefied compressed gas cylinder shall be in the closed position. Valve protection caps, where a cylinder is designed to accept a cap, shall be in place and hand-tight.

§ 77.208–4 Maintenance and tests of liquefied and nonliquefied compressed gas cylinders; accessories and equipment.

(a) Hose lines, gauges and other cylinder accessories shall be maintained in a safe operating condition.

(b) Defective cylinders, cylinder accessories, torches and other welding, cutting and burning equipment shall be labeled "Defective" and taken out of service.

(c) Liquefied and nonliquefied compressed gas cylinders, when in use, shall be equipped with a wrench specifically designed for use with liquefied and nonliquefied compressed gas cylinders and a suitable torchtip cleaner to maintain torches in a safe operating condition.

(d) Tests for leaks on the hose valves or gauges of liquefied and nonliquefied compressed gas cylinders shall only be made with a soft brush and soapy water or soap suds, or other device approved by the Secretary.

(e) Hose lines shall be provided with check valves at the gauge end to protect the gauges.

§ 77.208–5 Exemption of small low-pressure gas cylinders containing nonflammable or nonexplosive gas mixtures.

Small low-pressure gas cylinders containing nonflammable or nonexplosive gas mixtures, which provide for the emission of such gas under a pressure reduced from a pressure which does not exceed 250 P.S.I.G., and which is manufactured and sold in conformance with U.S. Department of Transportation Special Permit No. 6029 as a calibration test kit for methane monitoring systems, shall be exempt from the requirements of §§ 77.208–1(c) and 77.208.3(c).

§ 77.209 Surge and storage piles.

No persons shall be permitted to walk or stand immediately above a reclaiming area or in any other area at or near a surge or storage pile where the reclaiming operation may expose him to a hazard.

§ 77.210 Hoisting of materials.

(a) Hitches and slings used to hoist materials shall be suitable for handling the type of materials being hoisted.

(b) A hoist shall not lift loads greater than the rated capacity of the hoist being used.

(c) Men shall stay clear of hoisted loads.

(d) Taglines shall be attached to hoisted materials that require steadying or guidance.

§ 77.210–1 Rigging equipment for material handling.

(a) *General requirements.* (1) Rigging equipment used for material handling shall be inspected immediately prior to each use, except excavation equipment where persons are not required to work under the load. Defective rigging equipment shall be removed from service.

(2) Rigging equipment shall not be loaded in excess of its safe working load.

(3) Special custom design grabs, hooks, clamps or other similar accessory rigging equipment used for lifting shall be marked to indicate the safe working loads.

(b) *Alloy steel chains.* (1) Hooks, rings, oblong links, pear-shaped links, welded or mechanical coupling links or other attachments, when used with alloy steel chains shall have a rated capacity at least equal to that of the chain.

(2) Shop made hooks, rings, links or other attachments, shall be properly designed and well constructed.

(3) Rated capacity (maximum working load limit) for alloy steel chain slings shall conform to the valves shown in Table C–1.

(4) Whenever wear at any point of any chain link exceeds that shown in Table C–2, the assembly shall be removed from service.

TABLE C–1.—*Rated capacity (maximum working load limit) for alloy steel chain slings—pounds*

Chain size, inches	Single branch sling—90° loading	Double sling vertical angle			Triple and quadruple sling vertical angle		
		30°	45°	60°	30°	45°	60°
		Horizontal angle			Horizontal angle		
		60°	45°	30°	60°	45°	30°
¼	3,250	5,560	4,550	3,250	8,400	6,800	4,900
⅜	6,600	11,400	9,300	6,600	17,000	14,000	9,900
½	11,250	19,500	15,900	11,250	29,000	24,000	17,000
⅝	16,500	28,500	23,300	16,500	43,000	35,000	24,500
¾	23,000	39,800	32,500	23,000	59,500	48,500	34,500
⅞	28,750	49,800	40,600	28,750	74,500	61,000	43,000
1	38,750	67,100	54,800	38,750	101,000	82,000	58,000
1¼	44,500	77,000	63,000	44,500	115,500	94,500	66,500
1¼	57,500	99,500	81,000	57,500	149,000	121,500	86,000
1⅜	67,000	116,000	94,000	67,000	174,000	141,000	100,500
1½	80,000	138,000	112,500	80,000	207,000	169,000	119,500
1¾	100,000	172,000	140,000	100,000	258,000	210,000	150,000

TABLE C–2.—*Maximum allowable wear at any point of link*

Chain size (inches)	Maximum allowable wear (inch)	Chain size (inches)	Maximum allowable wear (inch)	Chain size (inches)	Maximum allowable wear (inch)
¼	3/64	⅝	5/32	1¼	¼
⅜	5/64	¾	11/64	1⅜	9/32
½	7/64	⅞	3/16	1½	5/16
⅝	9/64	1	7/32	1¾	11/32

(c) *Wire rope.* (1) Tables C–3 through C–6 shall be used to determine the safe working loads of various sizes and classifications of improved plow steel wire rope and wire rope slings. For sizes, classifications and grades not included in these tables, the safe working load recommended by the manufacturer for specific identifiable products shall be followed, if a factor of safety of not less than 5 is provided.

TABLE C–3.—*Rated capacities for single leg slings—6 by 19 and 6 by 37 classification improved plow steel grade rope with fiber core (FC)*

Rope diameter (inches)	Construction	Rated capacities, tons (2,000 lb)								
		Vertical			Choker			Vertical basket [1]		
		HT	MS	S	HT	MS	S	HT	MS	S
¼	6 by 19	0.49	0.51	0.55	0.37	0.38	0.41	0.99	1.0	1.1
5/16	do	.76	.79	.85	.57	.59	.64	1.5	1.6	1.7
⅜	do	1.1	1.1	1.2	.80	.85	.91	2.1	2.2	2.4
7/16	do	1.4	1.5	1.6	1.1	1.1	1.2	1.9	3.0	3.3
½	do	1.8	2.0	2.1	1.4	1.5	1.6	3.7	3.9	4.3
9/16	do	2.3	2.5	2.7	1.7	1.9	2.0	4.6	5.0	5.4
⅝	do	2.8	3.1	3.3	2.1	2.3	2.5	5.6	6.2	6.7
¾	do	3.9	4.4	4.8	2.9	3.3	3.6	7.8	8.8	9.5
⅞	do	5.1	5.9	6.4	3.9	4.5	4.8	10.0	12.0	13.0
1	do	6.7	7.7	8.4	5.0	5.8	6.3	13.0	15.0	17.0
1¼	do	8.4	9.5	10.0	6.3	7.1	7.9	17.0	19.0	21.0
1¼	6 by 37	9.8	11.0	12.0	7.4	8.3	9.2	20.0	22.0	25.0
1⅜	do	12.0	13.0	15.0	8.9	10.0	11.0	24.0	27.0	30.0
1⅜	do	14.0	16.0	17.0	10.0	12.0	13.0	28.0	32.0	35.0
1½	do	16.0	18.0	21.0	12.0	14.0	15.0	33.0	37.0	41.0
1¾	do	19.0	21.0	24.0	14.0	16.0	18.0	38.0	43.0	48.0
2	do	25.0	28.0	31.0	18.0	21.0	23.0	49.0	55.0	62.0

[1] These values only apply when the D/d ratio for HT slings is 10 or greater, and for MS and S slings is 20 or greater where: D=diameter of curvature around which the body of the sling is bent; d=diameter of rope.

HT=hand tucked splice and hidden tuck splice. For hidden tuck splice (IWRC) use values in HT columns.
MS=mechanical splice.
S=swaged or zinc poured socket.

TABLE C–4.—*Rated capacities for single-leg slings—6 by 19 and 6 by 37 classification improved plow steel grade rope with independent wire rope core (IWRC)*

Rope		Rated capacities, tons (2,000 lb)								
		Vertical			Choker			Vertical Basket[1]		
Dia (inches)	Construction	HT	MS	S	HT	MS	S	HT	MS	S
½	6 by 19	0.53	0.56	0.59	0.40	0.42	0.44	1.0	1.1	1.3
9/16	do	.81	.87	.92	.61	.65	.69	1.6	1.7	1.8
⅝	do	1.1	1.2	1.3	.86	.93	.98	2.3	2.5	2.6
11/16	do	1.5	1.7	1.8	1.2	1.3	1.3	3.1	3.4	3.5
¾	do	2.0	2.2	2.3	1.5	1.6	1.7	3.9	4.4	4.6
13/16	do	2.5	2.7	2.9	1.8	2.1	2.2	4.9	5.5	5.8
⅞	do	3.0	3.4	3.6	2.2	2.5	2.7	6.0	6.8	7.2
15/16	do	4.2	4.9	5.1	3.1	3.6	3.8	8.4	9.7	10.0
1	do	5.5	6.6	6.9	4.1	4.9	5.2	11.0	13.0	14.0
1	do	7.2	8.5	9.0	5.4	6.4	6.7	14.0	17.0	18.0
1⅛	do	9.0	10.0	11.0	6.8	7.8	8.5	18.0	21.0	23.0
1⅛	6 by 37	10.0	12.0	13.0	7.9	9.2	9.9	21.0	24.0	26.0
1¼	do	13.0	15.0	16.0	9.6	11.0	12.0	25.0	29.0	32.0
1⅜	do	15.0	17.0	19.0	11.0	13.0	14.0	30.0	35.0	38.0
1½	do	18.0	20.0	22.0	13.0	15.0	17.0	35.0	41.0	44.0
1⅝	do	20.0	24.0	26.0	15.0	18.0	19.0	41.0	47.0	51.0
2	do	26.0	30.0	33.0	20.0	23.0	25.0	53.0	61.0	66.0

[1] These values only apply when the D/d ration for HT slings is 10 or greater, and for MS and S slings is 20 or greater where: D=diameter of curvature around which the body of the sling is bent; d=diameter of rope.

HT=Hand tucked splice. For hidden tuck splice (IWRC) use table H–3 values in HT column.
MS=Mechanical splice.
S=Swaged or zinc poured socket.

TABLE C–5.—*Rated capacities for 2-leg and 3-leg bridle slings—6 by 19 and 6 by 37 classification improved plow steel grade rope with fiber core (FC)*

Rope		Rated capacities, tons (2,000 lb)											
		2-leg bridle slings						3-leg bridle slings					
		Vertical 30° Horizontal 60°		45° angle		Vertical 60° Horizontal 30°		Vertical 30° Horizontal 60°		45° angle		Vertical 60° Horizontal 30°	
Dia (inches)	Construction	HT	MS	HT	MS	HT	MS	HT	MS	HT	MS	HT	MS
½	6 by 19	0.85	0.88	0.70	0.72	0.49	0.51	1.3	1.3	1.0	1.1	0.74	0.7
9/16	do	1.3	1.4	1.1	1.1	.76	.79	2.0	2.0	1.6	1.7	1.1	1.2
⅝	do	1.8	1.9	1.5	1.6	1.1	1.1	2.8	2.9	2.3	2.4	1.6	1.7
11/16	do	2.5	2.6	2.0	2.2	1.4	1.5	3.7	4.0	3.0	3.2	2.1	2.3
¾	do	3.2	3.4	2.6	2.8	1.8	2.0	4.8	5.1	3.9	4.2	2.8	3.0
13/16	do	4.0	4.3	3.2	3.5	2.3	2.5	6.0	6.5	4.9	5.3	3.4	3.7
⅞	do	4.8	5.3	4.0	4.4	3.8	3.1	7.3	8.0	5.9	6.5	4.2	4.6
15/16	do	6.8	7.6	5.5	6.2	3.9	4.4	10.0	11.0	8.3	9.3	5.8	6.6
1	do	8.9	10.0	7.3	8.4	5.1	5.9	13.0	15.0	11.0	13.0	7.7	8.9
1	do	11.0	13.0	9.4	11.0	6.7	7.7	17.0	20.0	14.0	16.0	10.0	11.0
1⅛	do	14.0	16.0	12.0	13.0	8.4	9.5	22.0	24.0	18.0	20.0	13.0	14.0
1⅛	6 by 37	17.0	19.0	14.0	16.0	9.8	11.0	25.0	29.0	21.0	23.0	15.0	17.0
1¼	do	20.0	23.0	17.0	19.0	12.0	13.0	31.0	35.0	25.0	28.0	18.0	20.0
1⅜	do	24.0	27.0	20.0	22.0	14.0	16.0	36.0	41.0	30.0	33.0	21.0	24.0
1½	do	28.0	32.0	23.0	26.0	16.0	18.0	43.0	48.0	35.0	39.0	25.0	28.0
1⅝	do	33.0	37.0	27.0	30.0	19.0	21.0	49.0	56.0	40.0	45.0	28.0	32.0
2	do	43.0	48.0	35.0	39.0	25.0	28.0	64.0	72.0	52.0	59.0	37.0	41.0

HT=Hand tucked splice.
MS=Mechanical splice.

TABLE C–6.—*Rated capacities for 2-leg and 3-leg bridle slings—6 by 19 and 6 by 37 classification improved plow steel grade rope with independent wire rope core (IWRC)*

Rope		Rated capacities, tons (2,000 lb)											
		2-leg bridle sling						3-leg bridle sling					
		Vertical 30° Horizontal 60°		45° angle		Vertical 60° Horizontal 30°		Vertical 30° Horizontal 60°		45° angle		Vertical 60° Horizontal 30°	
Dia (inches)	Constr	HT	MS	HT	MS	HT	MS	HT	MS	HT	MS	HT	MS
½	6 by 19	0.92	0.97	0.75	0.79	0.53	0.56	1.4	1.4	1.1	1.2	0.79	0.8[1]
9/16	do	1.4	1.5	1.1	1.2	1.81	.87	2.1	2.3	1.7	1.8	1.3	1.3
⅝	do	2.0	2.1	1.6	1.8	1.1	1.2	3.0	3.2	2.4	2.6	1.7	1.9
11/16	do	2.7	2.9	2.2	2.4	1.5	1.7	4.0	4.4	3.3	3.6	2.3	2.5
¾	do	3.4	3.8	2.8	3.1	2.0	2.2	5.1	5.7	4.2	4.6	3.0	3.3
13/16	do	4.3	4.8	3.5	3.9	2.5	2.7	6.4	7.1	5.2	5.8	3.7	4.1
⅞	do	5.2	5.9	4.2	4.8	3.0	3.4	7.8	8.8	6.4	7.2	4.5	5.1
15/16	do	7.3	8.4	5.9	6.9	4.2	4.9	11.0	13.0	8.9	10.0	6.3	7.3
1	do	9.6	11.0	7.8	9.3	5.5	6.6	14.0	17.0	12.0	14.0	8.3	9.9
1	do	12.0	15.0	10.0	12.0	7.2	8.5	19.0	22.0	15.0	18.0	11.0	13.0
1⅛	do	16.0	18.0	13.0	15.0	9.0	10.0	23.0	27.0	19.0	22.0	13.0	16.0
1⅛	6 by 37	18.0	21.0	15.0	17.0	10.0	12.0	27.0	32.0	22.0	26.0	16.0	18.0
1¼	do	23.0	25.0	18.0	21.0	13.0	15.0	33.0	38.0	27.0	31.0	19.0	22.0
1⅜	do	26.0	30.0	21.0	25.0	15.0	17.0	39.0	45.0	32.0	37.0	23.0	26.0
1½	do	31.0	35.0	25.0	29.0	18.0	20.0	46.0	53.0	38.0	43.0	27.0	31.0
1⅝	do	35.0	41.0	29.0	33.0	20.0	24.0	53.0	61.0	43.0	50.0	31.0	35.0
2	do	46.0	53.0	37.0	43.0	26.0	30.0	68.0	79.0	56.0	65.0	40.0	46.0

HT=Hand tucked splice.
MS=Mechanical splice.

(2) Protruding ends of strands in splices on slings and bridles shall be covered or blunted.

(3) Wire rope shall not be secured by knots.

(4) When U-bolt wire clips are used to form eyes, Table C–7 shall be used to determine the number and spacing of clips.

TABLE C–7.—*Number and spacing of U-bolt wire rope clips*

Improved plow steel, rope diameter inches	Number of clips		Minimum spacing (inches)
	Drop forged	Other material	
½	3	4	3
⅝	3	4	3½
¾	4	5	4½
⅞	4	5	5¼
1	5	6	6
1⅛	6	6	6¾
1¼	6	7	7½
1⅜	7	7	8¼
1½	7	8	9

(d) *Natural and synthetic fiber rope.* (1) All splices in rope slings shall be made in accordance with the rope manufacturer's recommendations and in accordance with the following:

(i) In Manila rope, eye splices shall contain at least three full tucks and short splices shall contain at least six full tucks (three on each side of the centerline of the splice).

(ii) In layed synthetic fiber rope, eye splices shall contain at least four full tucks and short splices shall contain at least eight full tucks (four on each side of the centerline of the splice).

(iii) Strand-end tails shall not be trimmed short (flush with the rope surface) immediately adjacent to the full tucks. This precaution applies to both eye and short splices and all types of fiber rope. For fiber ropes under 1-inch diameter, the tails shall project at least six rope diameters beyond the last full tuck. For fiber ropes 1-inch diameter and larger, the tails shall project at least six inches beyond the last full tuck. Where the projecting tails create a hazard, the tails shall be tapered and spliced into the body of the rope using at least two additional tucks (which will require a tail length of approximately six rope diameters beyond the last full tuck).

(iv) For all eye splices, the eye shall be sufficiently large to provide an included angle of not greater than 60 degrees at the splice when the eye is placed over the load or support.

(2) Knots shall not be used in lieu of splices.

(e) *Synthetic webbing (nylon, polyester, and polypropylene).* (1) Each synthetic web sling shall be marked or coded to show:

(i) Name or trademark of manufacturer.

(ii) Rated capacities for the type of hitch.

(iii) Type of material.

(2) Rated capacity shall not be exceeded.

(f) *Shackles and hooks.* (1) Table C–8 shall be used to determine the safe working loads of various sizes of shack-

les, except that higher safe working loads are acceptable when recommended by the manufacturer for specific identifiable products if a safety factor of not less than 5 is provided.

TABLE C–8.—*Safe working loads for shackles*

[In tons of 2,000 lb]

Material size (inches)	Pin diameter (inches)	Safe working load
⅝	⅝	1.4
¾	¾	2.2
⅞	⅞	3.2
1	1	4.3
1⅛	1¼	5.6
1¼	1⅜	6.7
1⅜	1½	8.2
1½	1⅝	10.0
1⅝	1¾	11.9
1¾	2	16.2
2	2¼	21.2

(2) The manufacturer's recommendations shall be followed in determining the safe working loads of the various sizes and types of specified and identifiable hooks. All hooks for which no applicable manufacturer's recommendations are available shall be tested to twice the intended safe working load before they are initially put into use. A record of the dates and results of such tests shall be kept at the mine.

§ 77.211 Draw-off tunnels; stockpiling and reclaiming operations; general.

(a) Tunnels located below stockpiles, surge piles and coal storage silos shall be ventilated so as to maintain concentrations of methane below 1.0 volume per centum.

(b) In addition to the tests for methane required by § 47.201–1, such tests shall also be made before any electric equipment is energized or repaired, unless equipped with a continuous methane monitoring device installed and operated in accordance with the provisions of § 77.211–1. Electric equipment shall not be energized, operated or repaired until the air contains less than 1.0 volume per centum of methane.

§ 77.211–1 Continuous methane monitoring device; installation and operation; automatic deenergization of electric equipment.

Continuous methane monitoring devices shall be set to deenergize, automatically, electric equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane. An authorized representative of the Secretary shall require such monitor to deenergize, automatically, electric equipment when the concentration of methane reaches a maximum percentage determined by such representative which shall not be more than 2.0 volume per centum of methane.

§ 77.212 Draw-off tunnel ventilation fans; installation.

When fans are used to ventilate draw-off tunnels, the fans shall be:

(a) Installed on the surface;

(b) Installed in noncombustible housings and connected to the tunnel opening with noncombustible air ducts; and

(c) Offset from the tunnel opening.

§ 77.213 Draw-off tunnel escapeways.

When it is necessary for a tunnel to be closed at one end, an escapeway not less than 30 inches in diameter (or the equivalent, if the escapeway does not have a circular cross section) shall be installed which extends from the closed end of the tunnel to a safe location on the surface; and, if the escapeway is inclined more than 30 degrees from the horizontal, it shall be equipped with a ladder which runs the full length of the inclined portion of the escapeway.

4. A new § 77.218 is added as follows:

§ 77.218 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the American National Standards Institute publication to which reference is made in this subpart is hereby incorporated by reference and made a part hereof. The incorporated publication is available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. It is also available from the American National Standards, Inc., 1430 Broadway, New York, N.Y. 10018. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

5. Subpart D is revised as follows:

Subpart D—Thermal Dryers

§ 77.300 Thermal dryers; general.

(a) Dryer systems used for drying coal at high temperatures, hereinafter referred to as thermal dryers, including rotary dryers, continuous carrier dryers, vertical tray and cascade dryers, multilouver dryers, suspension or flash dryers and fluidized bed dryers, shall be maintained and operated in accordance with the provisions of §§ 77.300 through 77.306.

(b) For purposes of this subpart, "high temperature" means 212 degrees Fahrenheit or above.

§ 77.301 Dryer heating units; operation.

(a) Dryer heating units shall be operated to provide reasonably complete combustion before gases are allowed to enter hot gas inlets.

(b) Dryer heating units which are fired by pulverized coal shall be operated and maintained in accordance with National Fire Protection Association (NFPA) Code No. 60, "Standard for the Installation and Operation of Pulverized Fuel Systems" (1961).

§ 77.302 Bypass stacks.

(a) Thermal dryers systems shall include a bypass stack, relief stack or individual discharge stack provided with automatic venting which will permit gases from the dryer heating unit to bypass the heating chamber and vent to the outside atmosphere during any shutdown operation.

(b) Thermal dryer bypass stacks shall be equipped with a clean-out door at or near the bottom or with other effective means which permits coal, fly-ash, and other heated material to be removed.

§ 77.303 Dryer chamber drop-out doors.

(a) Thermal dryer systems which employ a hot gas inlet chamber shall be equipped with drop-out doors at the bottom of the inlet chamber or with other effective means which permits coal, fly-ash, or other heater material to fall from the chamber.

(b) Dryers which are fired by pulverized coal and positive pressure dryers which are not equipped with a constant drop-out door shall be checked once a week, and cleaned when necessary.

(c) Dryers which are fired by coal other than pulverized coal which are not equipped with a constant drop-out door shall be checked daily and cleaned when necessary.

§ 77.304 Explosion release vents.

(a) Drying chambers, dry-dust collectors, ductwork connecting dryers to dust collectors, and ductwork between dust collectors and discharge stacks shall be protected:

(1) With explosion release vents which open directly to the outside atmosphere, and all such vents shall be:

(i) Hinged to prevent dislodgment,

(ii) Designed and constructed to permit checking and testing by manual operation,

(iii) Checked by manual operation at intervals not exceeding 90 days. A record shall be kept of the date of the manual operation for at least one year, and

(iv) Equal in size to the cross-sectional area of the collector vortex finder when used to vent dry-dust collectors; or

(2) With a no less effective system approved by the District Manager.

§ 77.305 Access to drying chambers, hot gas inlet chambers and ductwork; installation and maintenance.

(a) Drying chambers, hot gas inlet chambers, and all ductwork in which coal dust may accumulate shall be equipped with tight sealing access doors which shall remain latched during dryer operations to prevent the emission of coal dust and the loss of fluidizing air.

(b) Cyclones and all ductwork shall be maintained in good repair.

§ 77.306 Fire protection.

(a) Based on the need for fire protection measures in connection with the particular design of the thermal dryers, the District Manager of the District in which the thermal dryer is located may require any of the following measures to be employed:

(1) Water sprays automatically actuated by a rise in temperature to prevent fire, installed inside the thermal dryer systems, and such sprays shall be designed to provide for manual operation in the event of power failure.

(2) Fog nozzles, or other no less effective means, installed inside the thermal dryer systems to provide ad-

ditional moisture or an artificial drying load within the drying system when the system is being started or shut down.

(b) The water system of each thermal dryer shall be inter-connected to a supply of compressed air which permits constant or frequent purging of all water sprays and fog nozzles or other no less effective means of purging shall be provided.

§ 77.307 Thermal dryers; location and installation; general.

(a) Thermal dryer systems erected or installed at any coal mine after June 30, 1971, except those thermal dryer systems referred to in paragraph (c) of this section, shall be located at least 100 feet from any underground coal mine opening, and 100 feet from any surface installation where the heat, sparks, flames, or coal dust from the system might cause a fire or explosion.

(b) Thermal dryer systems erected or installed after June 30, 1971, may be covered by roofs; however, such systems shall not be otherwise enclosed unless necessary to protect the health and safety of persons employed at the mine. Where such systems are enclosed, they shall be located in separate fireproof structures of heavy construction with explosion pressure release devices (such as hinged wall panels, window sashes, or louvers), which provide at least 1 square foot of area for each 80 cubic feet of space volume and which are distributed as uniformly as possible throughout the structure.

(c) Thermal dryer systems erected or installed after June 30, 1971 but [before the effective date of this section] in any structure which also houses a tipple, cleaning plant, or other operating facilities shall be separated from all other working areas of spuch structure by a substantial partition capable of providing greater resistance to explosion pressures than the exterior wall or walls of the structure. The partition shall also include substantial, self-closing fire doors at all entrances to the areas adjoining the dryer system.

(d) Thermal dryer systems erected or installed [after the effective date of this section] shall not be erected or installed in any structure which also houses a tipple, cleaning plant, or other operating facilities.

§ 77.308 Visual check of system equipment.

Frequent visual checks shall be made by the operator of th ethermal dryer system control station, or by some other person experienced in performing such work, of the bypass dampers, air-tempering louvers, discharge mechanism, and other dryer system equipment, and no dryer shall beb operated with defective equipment which would affect the safe operation of the thermal dryer.

§ 77.308–1 Control stations; location.

Thermal dryer system control stations constructed after June 30, 1971, shall be installed at a location which will give to the operator of the control station the widest field of visibility of the system and equipment.

§ 77.309 Control panels.

(a) All thermal dryer system control panels constructed after June 30, 1971, shall be located in an area which is relatively free of moisture and dust and shall be installed in such a manner as to minimize vibration.

(b) A schematic diagram containing legends which show the location of each thermocouple, pressure tap, or other control or gaging instrument in the drying system shall be posted on or near the control panel of each thermal drying system.

(c) Each instrument on the control panel shall be identified by a name-plate or equivalent marking.

(d) The manufacturer's safe drying inlet temperatures of the dryer shall be posted on or near the control panel of each thermal drying system.

(e) A plan to control the operation of each thermal dryer system shall be posted on or near the control panel showing a sequence of startup, normal shutdown, and emergency shutdown procedures.

§ 77.310 Alarm devices.

Thermal dryer systems shall be equipped with both audible and visual alarm devices set to operate when safe dryer temperatures are exceeded.

§ 77.311 Fail safe monitoring systems.

Thermal dryer systems and controls shall be protected by a fail safe monitoring system which will safely shut down the system and any related equipment upon failure of any component in the dryer system.

§ 77.312 Wet-coal feedbins; low-level indicators.

Wet-coal bins feeding thermal dryer systems shall be equipped with both audible and visual low-coal level indicators.

§ 77.313 Automatic temperature control instruments.

(a) Thermal dryer systems shall be equipped with automatic temperature control instruments.

(b) Automatic temperature control instruments for thermal dryer systems shall be of the recording type. The recording charts shall be kept for 3 months.

(c) Automatic temperature control instruments shall be locked or sealed to prevent tampering or unauthorized adjustment. These instruments shall not be set above the maximum allowable operating temperatures.

(d) All dryer control instruments shall be inspected and calibrated at least once every 3 months and a record or certificate of accuracy, signed by a trained person or by a servicing agent, shall be kept at the plant.

§ 77.314 Thermal dryers; examination and inspection.

(a) Thermal dryer systems shall be examined for fires and coal dust accumulations if the dryers are not restarted within the time period prescribed by the manufacturer after a shutdown.

(b) Before any person is permitted to enter a drying chamber which contains coal, the coal on the bedplate or screen shall be saturated with water.

§ 77.315 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the National Fire Protection Association publication to which reference is made in this subpart is hereby incorporated by reference and made a part hereof. The incorporated publication is available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. It is also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

6. Sections 77.400 through 77.402 are revised and a new § 77.402–1 is added as follows:

Subpart E—Safeguards for Mechanical Equipment

§ 77.400 Mechanical equipment guards.

(a) Gears; sprockets; chains; conveyor-drive, head, tail and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded.

(b) Overhead belts shall be guarded if the whipping action from a broken belt would be hazardous to persons below.

(c) Guards at the conveyor-drive, head, tail and takeup pulleys shall extend a distance sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

(d) Except when testing the machinery, guards shall be securely in place while machinery is being operated.

§ 77.401 Stationary grinding machines; protective devices.

(a) Stationary grinding machines other than special bit grinders shall be equipped with:

(1) Peripheral hoods (less than 90° throat openings) capable of withstanding the force of a bursting wheel.

(2) Adjustable tool rests set as close as practical to the wheel.

(3) Safety washers.

(b) Grinding wheels shall be operated within the specifications of the manufacturer of the wheel.

(c) Face shields or goggles, in good condition, shall be worn when operating a grinding wheel.

(d) Cutting bit grinding machines shall be equipped with dust collectors or exhaust ventilation systems vented to the outside of the building.

§ 77.402 Hand-held power tools; safety devices.

Hand-held power tools shall be equipped with controls requiring constant hand or finger pressure to operate the tools or shall be equipped with friction or other equivalent safety devices.

§ 77.402–1 Power operated hand-held tools.

(a) *Electric power hand-held tools.* (1) Electric cords shall not be used for hoisting, lowering, or carrying of hand-held tools.

(b) *Pneumatic power hand-held tools.* (1) Safety clips or retainers shall be securely installed on pneumatic impact tools to prevent attachments from being accidentally ejected.

(2) All pneumatically driven nailers, staplers, and other similar equipment provided with an automatic fastener feed and which operate at more than 100 p.s.i., at the tool, shall have a safety device on the muzzle to prevent the tool from ejecting fasteners unless the muzzle is in contact with the work surface.

(3) Hoses shall not be used for hoisting, lowering, or carrying of such tools.

(c) *Fuel-powered hand-held tools.* (1) All fuel-powered tools shall be stopped while being refueled, serviced, or maintained.

(d) *Powder-actuated hand-held tools.* (1) Only persons who have been instructed in the limitations and safe operation of the particular tool being used shall be permitted to operate a powder-actuated tool.

(2) The tool shall be tested each day before loading to see that the safety devices are in safe working condition. The method of testing shall be in accordance with the manufacturer's recommended procedure.

(3) Tools shall not be loaded until immediately prior to the intended firing time. Neither loaded nor empty tools shall be pointed at any person.

(4) Loaded tools shall not be left unattended.

(5) Fasteners shall be used in accordance with the manufacturer's recommendations.

(6) Driving into material easily penetrated shall be avoided unless such materials are backed by a substance that will prevent the fastening device from passing completely through and creating a flying missile hazard on the other side.

(7) Powder-actuated tools shall not be used in hazardous locations as set forth in §§ 77.516–1 and 77.516–3.

(8) All tools shall be used with the appropriate shield, guard, or attachment recommended by the manufacturer.

(9) Persons operating powder-actuated tools shall keep all parts of their bodies behind the tool.

7. Sections 77.404 through 77.413 are revised and new §§ 77.414 and 77.415 are added as follows:

§ 77.404 Portable, self-propelled and stationary machinery and equipment; operation and maintenance.

(a) Machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

(b) Machinery and equipment shall be operated only by persons trained in the use of and authorized to operate such machinery and equipment.

(c) Repairs or maintenance shall not be performed on machinery and equipment until the power is off and the machinery and equipment is blocked against motion, except where motion is necessary to make adjustments.

(d) Machinery and equipment shall not be lubricated while in motion where a hazard exists, unless equipped with extended fittings or cups.

§ 77.405 Performing work from a raised position; safeguards.

(a) Persons shall not work on or from a piece of mobile equipment in a raised position until it has been blocked in place securely. This does not preclude the use of equipment specifically designed as elevated mobile work platforms.

(b) No work shall be performed under machinery or equipment that has been raised until such machinery or equipment has been securely blocked in position.

§ 77.406 Drive belts.

(a) Drive belts shall not be shifted while in motion unles the machines are provided with mechanical shifters.

(b) Belt dressing shall not be applied while belts are in motion except where it can be applied without endangering a person.

§ 77.407 Power-driven pulleys.

(a) Belts, chains, and ropes shall not be guided onto power-driven moving pulleys, sprockets, or drums with the hands except slow moving equipment especially designed for hand feeding.

(b) Pulleys and rollers of conveyors shall not be cleaned manually while the conveyor is in motion.

(c) Coal or other material spilled beneath belt conveyor-drives, heads, tails or take-ups shall not be removed while the conveyor is in motion, unless 8 feet of clearance is maintained between the floor and conveyor-drive, head, tail or takeup.

§ 77.408 Welding operations.

(a) Welding operations shall be shielded and the area shall be well-ventilated.

(b) Defective electrode holders, cables, helmets or shields shall not be used.

(c) Electrodes shall not be changed in confined areas where restricted movement of the hands and arms would cause a shock hazard while the welding cable is energized.

§ 77.409 Shovels, draglines and tractors.

(a) Shovels, draglines, and tractors shall not be operated in the presence of any person exposed to a hazard from its operation, and all such equipment shall be provided with an adequate warning device which shall be sounded by the operator prior to starting operation.

(b) Shovels and draglines shall be equipped with handrails along and around all walkways and platforms.

§ 77.410 Self-propelled equipment; automatic warning devices and braking systems.

(a) Self-propelled equipment, such as trucks with an obstructed view to the rear, forklifts, front-end loaders, tractors, dozers and graders, shall be equipped with an adequate automatic warning device that shall give an audible alarm before such equipment is moved in the reverse direction and remain in operation until the equipment is at a complete stop or is placed in neutral or forward direction.

(b) Barrels, machine parts or supplies transported in front-end loader buckets shall be secured or properly loaded to prevent shifting, slipping or spillage.

(c) Rubber tired front-end loaders and dozers purchased after the effective date of this section shall be equipped with parking and emergency stopping systems which shall comply with the "Minimum Performance Criteria for Brake Systems for Off-Highway, Rubber-Tired Front-End Loaders and Dozers-SAE J 237" of the Society of Automotive Engineers.

§ 77.410–1 Tires and rim repair.

(a) A safety tire rack, cage, or equivalent protection shall be provided when inflating tires installed on split rims or rims equipped with locking rings or similar devices.

(b) Heat shall not be applied to lugbolts, rims or wheels while the tires are inflated.

(c) Before rims are repaired, tires shall be deflated and removed from the rims.

§ 77.411 Compressed air and boilers; general.

All boilers and pressure vessels shall be constructed, installed, and maintained in accordance with the standards and specifications of the American Society of Mechanical Engineers' Boiler and Pressure Vessel Code.

§ 77.412 Compressed air systems.

(a) Compressors and compressed air receivers shall be equipped with automatic pressure-relief valves, pressure gauges, and drain valves.

(b) Repairs involving the pressure system of compressors, receivers, or compressed-air-powered equipment shall not be attempted until the pressure has been relieved from that part of the system to be repaired.

(c) At no time shall compressed air be directed toward a person. When compressed air is used, all necessary precautions shall be taken to protect persons from injury. Compressed air shall not be used for cleaning purposes unless a face shield or goggles which meet the requirements of § 77.1710(a) is used.

(d) Safety chains, suitable locking devices or automatic cutoff valves shall be used at connections to machines of high-pressure hose lines of ¾ inch outside diameter or larger, and between high-pressure hose lines of ¾ inch inside diameter or larger, where a connection failure

would create a hazard. For purposes of this paragraph, high-pressure means pressure of 100 p.s.i. or more.

§ 77.413 Boilers.

(a) Boilers shall be equipped with guarded, well-maintained water gauges and pressure gauges placed so that they can be observed easily. Water gauges and pipe passages to the gauges shall be kept clean and free of scale and rust.

(b) Boilers shall be equipped with automatic pressure-relief valves; valves shall be opened manually at least once a week to determine that they will function properly.

(c) Blowoff valves shall be piped outside the building or directly into drains and shall have outlets so located or protected that persons passing by, near, or under them will not be scalded.

(d) Where needed, boilers shall be provided with safety devices acceptable to MESA, to protect against hazards of flame-outs, fuel interruptions, and low water level.

(e) Boilers shall be inspected internally at least once a year by a representative of the manufacturer of such boiler or a state licensed inspector and a certificate of inspection, signed by the inspector, shall be displayed in the vicinity of the boiler.

§ 77.414 Marine operation and equipment.

(a) Unless persons can step safely to or from the wharf, float, barge, or river towboat, a safe walkway shall be provided.

(b) Decks or other working surfaces shall be maintained in a safe condition.

(c) Persons shall not pass fore or aft, over, or around deck-loads, unless a safe passage is provided.

(d) At least one U.S. Coast Guard approved 30 inch lifering with not less than 90 feet of line attached, and at least one portable or permanent ladder which will reach from the top of the apron to the surface of the water shall be provided in the vicinity of the barge.

§ 77.415 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. SAE documents are also available from the Society of Automative Engineers, Inc., Two Pennsylvania Plaza, New York, N.Y. 10001. The ASME Boiler and Pressure Vessel Code is also available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, N.Y. 10017. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

8. Subparts F, G, H, I, J, and K are revised as follows:

Subpart F—Electrical Circuits and Equipment—General

§ 77.500 Electric power circuits and electric equipment; deenergization.

(a) Circuits which supply power to stationary and portable electric equipment, and circuits which supply power to electric equipment on board self-propelled equipment shall be deenergized before electrical or mechanical work is done on such circuits or equipment, except for testing or trouble-shooting as provided in this section and for repair of energized trolly wires as provided in § 77.1803. Other electric circuits or electric equipment in the vicinity of electrical or mechanical work shall also be deenergized if the location of such circuits or equipment creates a hazard to persons performing such work.

(b) Disconnecting devices used to deenergize such circuits and equipment shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are not available, by persons authorized by the operator or his agent.

(c) Persons performing testing or trouble-shooting functions on circuits or equipment energized at more than 150 volts, but less than 1000 volts, shall wear protective gloves. Such gloves shall meet American Society for Testing and Materials (ASTM "Standard Specification for Rubber Insulating Gloves" (D120–70) and shall be rated in accordance with the following:

Nominal circuit voltage:	*ASTM glove class*
151 to 750 v	0
751 to 1,000 v	1

(d) Persons performing testing or trouble-shooting functions on circuits or equipment energized at more than 1,000 volts shall comply with the requirements of §§ 77.806 through 77.806–9.

(e) Protective gloves worn while performing testing or trouble-shooting functions shall be inspected for defects before each use. Defective gloves shall not be used.

§ 77.501 Electric circuits and equipment; maintenance.

(a) Electric circuits and equipment shall be maintained at all times in safe operating condition.

(b) Except as provided in § 77.1803, electrical installation and maintenance work shall not be performed on electric circuits or equipment except by a qualified person or by a person trained to perform electrical work and to maintain electric circuits and equipment at the direction of a qualified person. When such work is done by a trained person, the circuits or equipment shall be examined and tested by a qualified person to assure safe operating condition before such circuits or equipment are energized.

§ 77.502 Electric circuits and equipment; examination and testing.

Electric circuits and equipment shall be examined and tested at least monthly by a qualified person to assure safe operating conditions. When a potentially dangerous condition is found on electric circuits or equipment, by the qualified person making the required examination, such circuits or equipment shall be removed from service until such condition is corrected. A record of such examinations shall be kept in a book provided for this purpose and shall include the date of examination, all dangerous conditions found, corrective action taken, and the name of the examiner. The record of examination shall be signed by the official responsible for maintaining the circuits and equipment in safe operating condition and such records shall be made available to an authorized representative of the Secretary and an authorized representative of the miners of such mine.

§ 77.502–1 Electric circuits and equipment; potentially dangerous condition.

A potentially dangerous condition as used in § 77.502 shall include, but not be limited to, damaged conductor insulation, improper frame grounding, missing guards, missing inspection covers, poorly-made splices, inoperative ground fault protection and defective monitoring circuits.

§ 77.502–2 Electric powered hand-held tools.

Electric powered hand-held tools shall be considered electric equipment for the purposes of this subpart.

§ 77.503 Power conductors; capacity and insulation.

Power conductors shall be sufficient in size and have adequate current-carrying capacity and be of such construction that arise in temperature resulting from normal operation will not damage the conductor or the insulating materials.

§ 77.503–1 Power conductors; ampacity requirements.

(a) The required ampacities of all power conductors, except power conductors installed in high-voltage distribution circuits and power conductors installed in circuits referred to in § 77.606, shall be as specified in the National Electrical Code as follows:

(1) For conductors installed prior to June 30, 1971—the National Electrical Code, 1968, 1971, or 1975.

(2) For conductors installed after June 30, 1971, but before [the effective date of this section]—the National Electrical Code, 1971, or 1975.

(3) For conductors installed after [the effective date of this section]—the National Electrical Code, 1975.

(b) The required ampacities of power conductors installed in high-voltage distribution circuits are not specified.

(c) The required ampacities of power conductors installed in circuits referred to in § 77.606 shall be as specified in § 77.606.

§ 77.503–2 Power conductors; ampacity ratings.

(a) The ampacity rating of all power conductors, except uninsulated overhead power lines, trailing cables and portable feeder cables, shall be as specified in the National Electrical Code, 1975, as follows:

(1) Conductors for General Wiring—Article 310

(2) Flexible Cords and Cables—Article 400

(3) Fixture Wires—Article 402

(b) The ampacity rating of uninsulated overhead powerlines shall be as specified in the standards of the Insulated Power Cable Engineers Association (IPCEA) as follows:

Conductor material	IPCEA standard	Table
Single-layer ACSR	P-50-431	III
Multilayer ACSR	P-50-431	IV
Bare all aluminum	P-50-431	V
Weather-resistant all aluminum	P-50-431	IX
Weather-resistant ACSR	P-50-431	X
Copper	P-51-432	XIII
Weather-resistant hard drawn copper	P-51-432	XIV

(c) The ampacity rating of trailing cables and portable feeder cables shall be as specified in § 77.606–1(a).

§ 77.504 Electrical connections, splices and insulation.

(a) Connections and splices in conductors shall be mechanically strong and electrically efficient, and suitable connectors shall be used.

(b) Splices in multi-conductor cables shall provide continuity of each conductor.

(c) Splices in insulated conductors shall be reinsulated so as to provide at least the same insulation value as the insulation on the remainder of the conductor and shall be sealed so as to exclude moisture.

(d) Splices in shielded conductors shall be reshielded so as to provide at least the same degree of protection as the shielding on the remainder of the conductor.

(e) Splices in jacketed conductors and cables shall be vulcanized or otherwise made with suitable materials to provide good bonding to the existing conductor jacket, to exclude moisture from the completed splice, and to provide at least the same degree of protection as the remainder of the conductor jacket.

§ 77.504–1 Repair of damaged conductors.

Damaged conductor insulation or jackets shall be repaired in a workmanlike manner so as to exclude moisture and to provide at least the same degree of protection as provided by the remainder of the conductor insulation or jacket.

§ 77.505 Cable fittings; suitability.

Cables and insulated conductors other than wiring installed in conduit shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings and shall be securely clamped to prevent chafing of the insulation and to prevent strain on the electric connections. In addition, when insulated conductors pass through metal frames, the holes shall be substantially bushed with insulating bushings.

§ 77.506 Electric equipment; short-circuit and overload protection.

(a) Except as provided in paragraph (b) of this section, automatic circuit breaking devices or fuses shall be installed so as to provide short-circuit and overload protection for all electric equipment. Such automatic circuit-breaking devices or fuses shall conform to the requirements for protection of electric equipment as specified in the National Electrical Code as follows:

(1) For equipment installed before [the effective date of this section]—the National Electrical Code, 1968, 1971, or 1975.

(2) For equipment installed after [the effective date of this section]—the National Electrical Code, 1975.

(b) Motors driving single or multiple direct-current generators, supplying a system operating on a cyclic load basis, do not require running overcurrent protection, *Provided*, That the thermal rating of the alternating-current drive motor cannot be exceeded under any operating condition; however, short-circuit and locked-rotor protection shall be provided for such motors.

§ 77.507 Electric equipment; switches.

All electric equipment shall be provided with switches or other controls that are safely designed, constructed, installed, and maintained. The voltage of alternating-current remote motor control circuits that are installed external to the controller enclosure shall not exceed 150 volts unless the circuit is installed in metal conduit. Stop switches shall be provided at the operating controls of all electric equipment.

§ 77.508 Electrical rating; switches, fuses, circuit breakers and controllers.

All switches, fuses, circuit breakers, and controllers shall have adequate interrupting capacity and shall have voltage and current ratings consistent with the voltage and current ratings of the circuits in which they are installed.

§ 77.509 Identification.

Disconnecting devices, power switches, circuit breakers, controllers, control switches and push buttons shall be marked to show which circuit they control, unless identification can be made readily by location.

§ 77.510 Lightning arresters for ungrounded exposed power conductors, control lines and communication wires.

(a) All ungrounded, unshielded power conductors, control lines and communication wires that are exposed to lightning shall be equipped with suitable lightning arresters which are adequately installed and connected to a low-resistance grounding medium in accordance with § 77.519, except that lightning arresters protecting control lines and communication wires may be grounded in accordance with the requirements of Section 800–31(b) of the National Electrical Code, 1975.

(b) Lightning arresters protecting exposed overhead conductors entering buildings shall be provided near the point where each such conductor enters the building.

§ 77.511 Resistors; location and guarding.

Resistors, heaters, and rheostats shall be located so as to minimize fire hazards, and, where necessary, shall be provided with guards to prevent personal contact.

§ 77.512 Guarding of electric equipment.

(a) Live parts of low- and medium-voltage electric equipment energized at 50 volts or more shall be guarded against accidental contact by installation in cabinets or enclosures or by any of the following means:

(1) By location in a locked room, vault, or similar enclosure that is accessible only to qualified persons.

(2) By suitable permanent, substantial partitions or screens so arranged that only qualified persons will have access to the space within reach of the live parts. Any openings in such partitions or screens shall be so sized and located that persons are not likely to come into accidental contact with the live parts or to bring conducting objects into contact with them.

(3) By location on a suitable balcony, gallery, or platform so elevated and arranged as to be accessible only to qualified persons.

(4) By elevation of 8 feet or more above the floor or other working surface.

(b) In locations where electric equipment would be exposed to physical damage, enclosures or guards shall be so arranged and of such strength as to prevent such damage.

(c) Entrances to rooms and other guarded locations containing exposed live parts shall be marked with conspicuous warning signs forbidding unqualified persons to enter.

(d) Enclosures shall be kept closed and guards shall be kept in place at all times such equipment is energized except when testing or troubleshooting is being performed.

§ 77.513 Insulating mats.

Insulating mats shall be kept in front of the following:

(a) All switchboards energized at more than 150 volts.

(b) All linestarters, fuse boxes, and other switchgear containing renewable components energized at more than 150 volts and installed less than 8 feet above the floor or other working surface at stationary installations or on board self-propelled electric equipment.

(c) All enclosures containing readily accessible parts which are energized at more than 150 volts and installed less than 8 feet above the floor or other working surface at stationary installations or on board self-propelled electric equipment. Readily accessible parts are those parts contained in an enclosure to which a person can gain access by such methods as opening hinged doors or lids or removing latched covers.

§ 77.514 Switchboards; passageways and clearance.

Switchboards in stationary installations which require back access for inspection, adjustment, or repair shall be installed to provide passageways or lanes of travel which permit access to the back of the switchboard from both directions.

§ 77.515 Power conductors, signal conductors and control circuit conductors; insulation and guarding.

(a) Except as specified in paragraphs (a)(1) through (a)(6) of this section, all power conductors, signal conductors and control circuit conductors shall be insulated. Such insulation shall have a rating not less than the nominal voltage of the circuit in which the conductor is installed.

(1) Trolley wires;

(2) Trolley feeder wires;

(3) Overhead powerlines installed so as to provide the minimum vertical clearance as specified in Section 232 of the National Electrical Safety Code, 1973;

(4) High-voltage power conductors installed in accordance with the provisions §§ 77.804(b)(5) or 77.804(b)(6);

(5) Grounded service entrance conductors permitted to be uninsulated by the exception in Section 230-40(a) of the National Electrical Code, 1975; and

(6) Signal conductors and control circuit conductors energized at 40 volts or less.

(b) Trolley wires, trolley feeder wires, uninsulated signal conductors and uninsulated control circuit conductors shall be adequately guarded at all points where men are required to work or pass regularly under the wires and at all mantrip stations.

(c) Temporary guards shall be provided where trackmen and other persons are required to work in proximity to energized trolley wires and trolley feeder wires.

(d) An authorized representative of the Secretary may specify other conditions where trolley wires, trolley feeder wires and uninsulated signal conductors and control circuit conductors shall be adequately protected to prevent contact by any person, or many require the use of improved methods to prevent such contact.

§ 77.516 Electric wiring and equipment; installation and maintenance.

(a) Except as otherwise provided in this part, all electric wiring and equipment installed in stationary installations after June 30, 1971, and before [the effective date of this section], shall meet the requirements of the National Electrical Code, 1971 or 1975.

(b) Except as otherwise provided in this part, all electric wiring and equipment installed in stationary installations after [the effective date of this section] shall meet the requirements of the National Electrical Code, 1975.

§ 77.516-1 Class I hazardous locations; surface facilities.

(a) The inside of all enclosed coal storage facilities, such as coal silos and surge bins, shall be classified as Class I, Division I, locations.

(b) (1) The inside of enclosed rooms or other areas which are over, under, or adjacent to enclosed coal storage facilities, such as enclosed belt transfer points on top of coal silos and tunnels containing equipment beneath coal stockpiles, shall be classified as Class I, Division I, locations. Tunnels beneath coal silos and coal storage areas through which railroad trains pass are not considered to be Class I areas, provided the length of the tunnel is less than 125 feet and the tunnel is open at both ends.

(2) The term adjacent, as used in this section, means any two enclosed areas which have one or more surfaces in common.

(c) Locations in facilities or areas specified in paragraph (b) of this section which do not contain coal handling, storage, or processing equipment shall not be classified Class I, Division I, locations if Type X purged in accordance with National Fire Protection Association publication NFPA No. 496, "Purged and Pressurized Enclosures for Electrical Equipment, 1971."

§ 77.516-2 Electric wiring and equipment in Class I hazardous locations.

(a) Electric wiring and equipment in Class I, Division I, locations shall be installed and maintained in accordance with the following:

(1)(i) For wiring and equipment installed after June 30, 1971 and before (the effective date of this section), Article 501 of the National Electrical Code, 1971 or 1975;

(ii) For wiring and equipment installed after (the effective date of this section), Article 501 of the National Electrical Code, 1975; or

(2) Enclosed areas which contain electric wiring and equipment shall be ventilated and maintained in accordance with the following:

(i) A forced mechanical ventilation system which will prevent the methane content in the enclosed area from exceeding 1.0 volume per centum; and

(ii) A continuous methane-monitoring device shall be installed to deenergize all electric wiring and equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage which shall not be more than 1.0 volume per centum of methane. Such monitor shall deenergize, automatically, electric wiring and equipment when the concentration of methane reaches a maximum percentage which shall not be more than 2.0 volume per centum of methane except that wiring and equipment installed and maintained as specified in paragraph (a)(1) of this section may remain energized.

(b) All electric wiring and equipment that is required by Article 501 of the National Electrical Code to be approved for Class I locations shall be listed by Underwriters' Laboratories, Inc. or Factory Mutual, Inc., for Class I, Group D, locations or certified or approved as explosionproof or permissible by MESA under this title.

§ 77.516-3 Class II hazardous locations; surface facilities.

(a) The inside of enclosed coal storage facilities and the inside of enclosed coal processing equipment shall be classified as Class II, Division I, locations.

(b) Rooms or enclosures housing coal handling or processing equipment shall be classified as Class II, Division II, locations.

§ 77.516-4 Electric wiring and equipment in Class II hazardous locations.

(a) Electric wiring and equipment in Class II, Division I and II, locations shall be installed and maintained in accordance with the following:

(1) For electric wiring and equipment installed after June 30, 1971, and before the effective date of this section, Article 502 of the National Electrical Code, 1971, or 1975;

(2) For electric wiring and equipment installed after the effective date of this section, Article 502 of the National Electrical Code, 1975.

(b) All electric wiring and equipment that is required by Article 502 of the National Electrical Code to be approved for Class II locations shall be listed by Underwriters' Laboratories, Inc., or Factory Mutual, Inc., for a Class II, Group F, location or certified or approved as explosion-proof or permissible by MESA under this title.

§ 77.517 Protection of electric wiring and equipment.

All electric wiring except trailing cables and portable feeder cables shall be installed in a workmanlike manner, protected against mechanical damage, securely fastened in place, and suitable for the environment in which they are installed. All raceways, fittings, boxes, cabinets and enclosures shall be protected against mechanical damage, securely fastened in place and suitable for the environment in which they are installed.

§ 77.518 Equipment marking.

Stationary electric utilization equipment purchased or rebuilt after the effective date of this section shall be provided with a plate, which indicates the manufacturer's name, rated voltage, full-load current, duty cycle, and, if applicable, horsepower.

§ 77.519 Low-resistance grounding medium.

(a) "Low-resistance grounding medium" means made electrodes, buried metallic piping system, metal framework of a building, well or borehole casing, steel piling or other buried metal structure having a total resistance to ground of not more than 5 ohms. A low-resistance grounding medium may consist of more than one ground field provided:

(1) At least one ground field shall be installed at each location a low-resistance grounding medium is required;

(2) The resistance to ground of each ground field shall not exceed 25 ohms; and

(3) The parallel resistance to ground of all ground fields which serve as a single low-resistance grounding medium shall not exceed 5 ohms.

(b) Low-resistance grounding mediums shall be measured at the time of installation and at least annually thereafter to insure a sufficiently low resistance to ground has been achieved and is being maintained. The results of such measurements shall be recorded and made available to the authorized representative of the Secretary.

§ 77.520 Ground wire.

"Ground wire" means a copper or other corrosion-resistant wire which shall have a breaking strength and a direct-current resistance in accordance with the following:

(a) When the power conductor is smaller than No. 6 AWG, the ground wire shall have a breaking strength no less than and a direct-current resistance no greater than that of the power conductor.

(b) When the power conductor is No. 6 AWG or larger, the ground wire shall have a breaking strength no less than and a direct-current resistance no greater than a wire of the same material as the power conductor and a cross-sectional area of one-half that of the power conductor.

(c) When a ground wire is used to ground the metallic shielding of a power conductor or cable, the ground wire shall have a breaking strength no less than and a direct-current resistance no greater than that of a wire of the same material and the same cross-sectional area as that of the shielding.

§ 77.521 Grounding conductor.

(a) A grounding conductor shall be permanent and continuous, shall have current-carrying capacity at least equal to the wire specified in § 77.520, shall be able to conduct safely any currents likely to be imposed on it, and shall have impedance sufficiently low to facilitate the operation of the ground fault protective devices in the circuit under ground fault conditions. Such grounding conductor shall consist of:

(1) A properly sized copper or other corrosion-resistant wire which meets the requirements of § 77.520;

(2) Properly bonded rigid metal conduit; or

(3) Properly bonded electrical metallic tubing; or

(4) The structural metal frame of a building or machine, provided the equipment is solidly connected to the metal frame.

§ 77.522 Guy wires; grounding.

Guy wires from poles supporting power lines shall be securely connected to the system grounding medium or shall be provided with insulators installed near the pole end.

§ 77.523 Use of grounding connectors.

If ground wires are attached to grounded power conductors, separate clamps, suitable for such purpose, shall be used and installed to provide a solid connection.

§ 77.524 Protection other than grounding.

Methods other than grounding which provide no less effective protection may be approved by an authorized representative of the Secretary. Such methods shall not be used unless so approved.

§ 77.525 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. ASTM publications are also available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pa. 19103. The National Electrical Codes and NFPA publications are also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. IPCEA publications are also available from the Insulated Power Cable Engineers Association, 192 Washington Street, Belmont, Mass. 02178. The National Electrical Safety Code is also available from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th St., New York, N.Y. 10017. Underwriters' Laboratories publications are also available from Underwriters' Laboratories, Inc., 207 E. Ohio St., Chicago, Ill. Factory Mutual publications are also available from Factory Mutual Research Corp., 1151 Boston-Providence Turnpike, Norwood, Mass. 02062. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart G—Circuits to Portable and Self-Propelled Electric Equipment

§ 77.600 Definitions.

For the purposes of this part:

(a) "Trailing cable circuit" means a circuit which supplies power to a single unit of self-propelled electric equipment;

(b) "Trailing cable" means any power cable which is used as part or all of a trailing cable circuit;

(c) "Feeder cable circuit" means a circuit which supplies power to two or more units of self-propelled electric equipment or one or more units of portable electric equipment; and

(d) "Portable feeder cable" means any power cable which is used as part or all of a feeder cable circuit.

§ 77.601 Trailing cable circuits; protection.

Except as provided in § 77.601–1, each trailing cable circuit shall be protected by an individual circuit breaker which shall interrupt each ungrounded power conductor and shall be equipped with devices to provide short-circuit and ground-fault protection in accordance with the following:

(a) Short-circuit protection shall be provided by instantaneous overcurrent devices which shall be adjusted to trip the circuit breaker when the current in any power conductor exceeds the value specified in paragraph (a)(1) or (a)(2) of this section, whichever is lower:

(1) 115 percent of the maximum starting current for the unit of self-propelled electric equipment or 115 percent of the peak load current for the unit of self-propelled electric equipment, whichever is higher; or

(2) 60 percent of the lowest value of bolted, line-to-line short-circuit current at any point in the circuit.

(b) Devices providing ground-fault protection for resistance-grounded circuits shall be adjusted to trip the circuit breaker when the ground-fault current exceeds 50 percent of the current rating of the grounding resistor.

(c) Devices providing ground-fault protection for solidly grounded single-phase and solidly grounded direct-current circuits shall be adjusted to trip the circuit breaker when the ground-fault current exceeds 50 percent of the lowest value of bolted ground-fault current at any point in the circuit.

(d) Devices providing ground-fault protection for ungrounded single-phase and ungrounded direct-current circuits shall be adjusted to trip the circuit breaker when more than 15 milliamperes of current flows from an ungrounded power conductor to earth.

§ 77.601–1 Dual element fuses; trailing cable circuits.

Dual element fuses are acceptable as providing short-circuit and ground-fault protection for a solidly grounded low- or medium-voltage single-phase or solidly grounded direct-current trailing cable circuit provided:

(a) One fuse is installed in each ungrounded power conductor;

(b) Each fuse has adequate interrupting capacity and voltage and current ratings consistent with the voltage and current ratings of the circuit in which it is installed; and

(c) The rating of the fuse does not exceed the ampacity of the power conductor in the circuit with the lowest ampacity.

§ 77.602 Feeder cable circuits; protection.

Except as provided in § 77.602–1, feeder cable circuits shall be protected by circuit breakers which shall interrupt each ungrounded power conductor and shall be equipped with devices to provide short-circuit, overload and ground-fault protection in accordance with the following:

(a) Devices providing short-circuit and overload protection for high-voltage feeder cable circuits shall be adjusted to trip the circuit breaker when the current in any power conductor exceeds the value specified in paragraph (a)(1) or (a)(2) of this section, whichever is lower:

(1) 125 percent of the ampacity of the power conductor in the circuit with the lowest ampacity.

(2) 50 percent of the lowest value of bolted phase-to-phase short-circuit current at any point in the circuit.

(b) Devices providing short-circuit and overload protection for low- and medium-voltage feeder cable circuits shall be set or adjusted in accordance with the National Electrical Code, 1975.

(c) Devices specified in paragraphs (a) and (b) of this section to trip the circuit breakers before any power conductor in the circuit sustains thermal damage due to short-circuit current.

(d) One circuit breaker may be used to provide short-circuit and overload protection for two or more feeder cable circuits provided the short-circuit and overload devices are adjusted to provide short-circuit and overload protection for each circuit in accordance with the requirements of this section.

(e) Devices providing ground-fault protection for resistance-grounded feeder cable circuits shall be adjusted to trip the circuit breaker when the ground-fault current exceeds 50 percent of the current rating of the grounding resistor.

(f) Devices providing ground-fault protection for solidly grounded single-phase and solidly grounded direct-current feeder cable circuits shall be adjusted to trip the circuit breaker when the ground-fault current exceeds 50 percent of the lowest value of bolted ground-fault current at any point in the circuit.

(g) Devices providing ground-fault protection for ungrounded single-phase and ungrounded direct-current feeder cable circuits shall be adjusted to trip the circuit breaker when more than 15 milliamperes flows from an ungrounded power conductor to earth.

(h) One circuit breaker may be used to provide ground-fault protection for two or more feeder cable circuits provided the ground-fault device is adjusted to provide ground-fault protection for each circuit in accordance with the requirements of this section.

§ 77.602–1 Dual element fuses; feeder cable circuits.

Dual element fuses are acceptable as providing short-circuit, overload and ground-fault protection for a solidly grounded low- or medium-voltage single-phase or solidly grounded direct-current feeder cable circuit provided:

(a) One fuse is installed in each ungrounded power conductor.

(b) Each fuse has adequate interrupting capacity and voltage and current ratings consistent with the voltage and current ratings of the circuit in which it is installed.

(c) The rating of the fuse does not exceed the ampacity of the power conductor in the circuit with the lowest ampacity.

§ 77.603 Ground check circuits.

(a) All low- and medium-voltage three-phase resistance grounded circuits and high-voltage resistance grounded circuits supplying power to portable or self-propelled equipment shall be equipped with a ground check circuit to monitor continuously the grounding circuit to assure continuity between the grounded side of the grounding resistor and the frames of the portable and self-propelled equipment.

(b) Except as provided in § 77.603–1 the ground check circuit shall be fail safe.

(c) Except as provided in § 77.603–2 the ground check circuit shall employ a ground check wire.

(d) The ground check circuit shall cause the circuit breaker to trip when any of the following occur:

(1) The ground check wire is broken.

(2) Either the ground wire is broken at any point, or the impedance of the grounding circuit increases beyond the amount necessary to cause:

(i) a 40-volt drop in the grounding circuit external to the grounding resistor under fault conditions for low- and medium-voltage resistance-grounded circuits, or

(ii) a 100-volt drop in the grounding circuit external to the grounding resistor under fault conditions for high-voltage resistance-grounded circuits.

(e) The maximum voltage used for ground check circuits shall not exceed 40 volts for low- and medium-voltage resistance-grounded circuits, or 96 volts for high-voltage resistance-grounded circuits.

(f) When the ground check circuit employs an electro-mechanical relay to trip the circuit breaker, the relay shall be normally energized.

(g) A time-delay device may be used to delay circuit breaker tripping for not more than 15 cycles only for the purpose of preventing unnecessary circuit breaker tripping when power is restored after an interruption.

(h) The ground check wire and the ground wire shall be attached to the frames of portable and self-propelled equipment by means of separate connections.

§ 77.603–1 Ground check circuits other than fail safe ground check circuits; approval.

An operator may apply to the Assistant Administrator—Technical Support, MESA, Room 901, 4015 Wilson Boulevard, Arlington, Virginia 22203, for approval of a ground check circuit other than a fail safe ground check circuit. The Assistant Administrator—Technical Support may approve such circuit if he determines that the ground check circuit is reliable and otherwise meets requirements of § 77.603.

§ 77.603–2 Ground check circuits not employing a ground check wire; approval.

An operator may apply to the Assistant Administrator—Technical Support, MESA, Room 901, 4015 Wilson Boulevard, Arlington, Virginia 22203, for approval of a ground check circuit which does not employ a ground check wire. The Assistant Administrator—Technical Support may approve such circuit if he determines that the ground check circuit does not pose a hazard to miners and otherwise meets the requirements of § 77.603.

§ 77.604 High-voltage circuit breakers; examination, testing and adjustment.

(a) Circuit breakers required by §§ 77.601 and 77.602 which are installed in high-voltage circuits shall be examined monthly. Such examination shall include observation of all readily accessible components of the circuit breaker and its auxiliary devices.

(b) Circuit breakers required by §§ 77.601 and 77.602 which are installed in high-voltage circuits before [the effective date of this section] shall be tested:

(1) Not later than 6 months after [the effective date of this section] in accordance with paragraphs (d)(1), (e) and (f) of this section, and

(2) At least annually thereafter in accordance with paragraphs (d)(2), (e) and (f) of this section,

(c) Circuit breakers required by §§ 77.601 and 77.602 which are installed in high-voltage circuits after [the effective date of this section] shall be tested:

(1) At the time of installation in accordance with paragraphs (d)(1), (e) and (f) of this section, and

(2) At least annually thereafter in accordance with paragraphs (d)(2), (e) and (f) of this section.

(d) Short-circuit and overload devices used in conjunction with a high-voltage circuit breaker shall be tested as follows:

(1) The initial testing required by paragraphs (b)(1) and (c)(1) of this section shall include testing of all short-circuit and overload relays to verify operation at the indicated settings, or of all over current trip coils to verify operation at indicated current ratings by passing no less than the current necessary for relay pickup or series trip coil operation through the poles of the circuit breaker. The circuit breaker shall be tripped by electrically or manually operating the overcurrent devices.

(2) The annual testing required by paragraphs (b)(2) and (c)(2) of this section shall include testing all short-circuit and overload relays to verify operation at the indicated settings, or of all over-current trip coils to verify operation at indicated current ratings. If relays are used, the circuit from the current transformer secondary to the short-

circuit and overload relay terminals shall be tested to verify continuity. The circuit breaker shall be tripped by electrically or manually operating the overcurrent devices.

(e) Ground-fault devices used in conjunction with a high-voltage circuit breaker shall be tested as follows: (1) For the initial and annual testing required by paragraphs (b) and (c) of this section, the circuit breaker shall be tripped by passing no more than 60 percent of the current rating of the grounding resistor through the ground-fault current transformer, or a phase current transformer when residual ground-fault tripping is used. The grounding resistor shall be tested to insure proper ohmic value and continuity. If potential ground-fault tripping is used, the circuit breaker shall be tripped by impressing a voltage on the ground-fault relay equal to no more than 60 percent of the voltage that would appear at the relay terminals during a ground-fault. In addition the transformer coil continuity and ratio shall be checked. The grounding resistor shall be tested to insure proper ohmic value and continuity.

(f) Ground check circuits used in conjunction with a high-voltage circuit breaker shall be tested as follows: (1) For the initial and annual testing required by paragraphs (b) and (c) of this section, the circuit breaker trip circuit shall be activated by breaking the continuity of the ground check conductor at the extreme end of the monitoring circuit, and either breaking the ground wire at any point between the grounded side of the resistor and the equipment being served, or increasing the resistance of the grounding circuit to that amount necessary to cause a voltage drop in the grounding circuit of not more than 100 volts under fault conditions.

(g) Repairs or adjustments as are indicated by such examinations and tests shall be carried out immediately. All relays shall be adjusted to plus or minus 10 percent of the indicated setting.

(h) An authorized representative of the Secretary may require additional testing or adjusting of circuit breakers and associated components.

§ 77.604–1 Low- and medium-voltage circuit breakers; examination, testing and adjustment.

(a) Circuit breakers required by §§ 77.601 and 77.602 which are installed in low- and medium-voltage circuits shall be examined monthly. Such examination shall include visual observation of all readily accessible components of the circuit breaker and its auxiliary devices.

(b) Circuit breakers required by §§ 77.601 and 77.602 which are installed in low and medium-voltage circuits before [the effective date of this section] shall be tested not later than 6 months after [the effective date of this section] and at least every 6 months thereafter. Such testing shall be performed in accordance with paragraph (d) of this section.

(c) Circuit breakers required by §§ 77.601 and 77.602 which are installed in low- and medium-voltage circuits after [the effective date of this section] shall be tested at the time of installation, and at least every 6 months thereafter. Such testing shall be performed in accordance with paragraph (d) of this section.

(d) For the tests required by paragraphs (b) and (c) of this section, the circuit breaker shall be tripped by:

(1) Passing no more than 60 percent of the current rating of the grounding resistor through the ground-fault current transformer;

(2) Breaking the continuity of the ground-check conductor at the extreme end of the monitoring circuit; and

(3) Either breaking the ground conductor at any point between the grounded side of the resistor and the equipment being served, or increasing the resistance of the grounding circuit to that amount necessary to cause a voltage drop in the grounding circuit of not more than 40 volts under fault conditions.

(e) Repairs or adjustments as are indicated by such examination and tests shall be carried out immediately. All relays shall be adjusted to plus or minus 10 percent of the indicated setting.

(f) An authorized representative of the Secretary may require additional testing or adjusting of circuit breakers and associated components.

§ 77.604–2 Qualified person.

Examinations and tests required by §§ 77.604 and 77.604–1 shall be made by a qualified person.

§ 77.604–3 High-, medium-, and low-voltage circuit breakers; record of examination, testing and adjustment.

The operator shall maintain a written record of each examination and test of all circuit breakers and their associated components. Such records shall include the name of the examiner and date of examination, and shall be signed by the official responsible for maintaining the circuit breakers in safe operating condition. Such records shall be made available to an authorized representative of the Secretary and an authorized representative of the miners of such mine.

§ 77.605 Disconnecting devices.

(a) Disconnecting devices shall be installed in each trailing cable circuit at a distance of not more than 40 feet from each circuit breaker required by § 77.601.

(b) Disconnecting devices shall be installed in the trailing cable circuit not more than 3,000 feet from self-propelled equipment, unless such equipment is equipped with a remote-control switch which can be used to remove power from the equipment in case of emergency by tripping the circuit breaker required by § 77.601.

(c) Disconnecting devices shall be installed in each feeder cable circuit within 40 feet from the beginning of such feeder cable circuit.

(d) Disconnecting devices shall be designed so that it can be determined by visual observation that the power is disconnected.

§ 77.606 Trailing cable circuits and feeder cable circuits; ampacity requirements.

The required ampacity of all power conductors installed in trailing cable circuits and feeder cable circuits shall be as follows:

(a) The required ampacity of all power conductors installed in a trailing cable circuit shall not be less than the maximum average current demand for the connected load for a 15-minute-period.

(b) The required ampacity of all power conductors installed in a high-voltage feeder cable circuit is not specified.

(c) The required ampacity of all power conductors installed in a low- or medium-voltage feeder cable circuit shall be as specified in the National Electrical Code, 1975.

§ 77.606–1 Trailing cable circuits and feeder cable circuits; ampacity ratings.

The ampacity ratings of all power conductors installed in trailing cable circuits and feeder cable circuits shall be determined in accordance with the following:

(a) The ampacity ratings of trailing cables and portable feeder cables shall be as specified in the standards of the Insulated Power Cable Engineers Association (IPCEA) as follows:

Insulation rating	Table	IPCEA standard
75° C	8-1	S-19-81
90° C	G-1	S-68-516

(b) The ampacity ratings of power conductors other than trailing cables and portable feeder cables shall be as specified in § 77.503–2.

§ 77.607 Trailing cables and portable feeder cables; requirements.

(a) High-voltage trailing cables and high-voltage portable feeder cables shall be equipped with metallic shielding around each power conductor. Such shielding shall meet or exceed the coverage requirements specified in Section 7.2.16.2 or Section 7.2.16.3 of Insulated Power Cable Engineers Association Publication Number S–68–516, 1976. All such cables shall be equipped with one or more ground wires. The combined cross-sectional area of the ground wires and shielding shall not be less than that required by § 77.520.

(b) Low- and medium-voltage trailing cables and low- and medium-voltage portable feeder cables purchased after [the effective date of this section] supplying power to three-phase equipment shall be equipped with metallic shielding around each power conductor. Such shielding shall meet or exceed the coverage requirements specified in Section 7.2.16.2 or Section 7.2.16.3 of Insulated Power Cable Engineers Association Publication Number S–68–516, 1976. All such cables shall be equipped with one or more

ground wires. The combined cross-sectional area of the ground wires and shielding shall not be less than that required by § 77.520.

(c) Low- and medium-voltage trailing cables and low- and medium-voltage portable feeder cables purchased before [the effective date of this section] supplying power to three-phase equipment shall be equipped with one or more ground wires. The cross-sectional area of the ground wires shall not be less than that required by § 77.520.

(d) Low- and medium-voltage trailing cables and low- and medium-voltage portable feeder cables purchased before [the effective date of this section] supplying power to single phase equipment shall be equipped with one or more ground wires. The cross-sectional area of the ground wires shall not be less than that required by § 77.520.

§ 77.608 Trailing cables and portable feeder cables; splices, insulation and repair.

(a) Splices made in trailing cables and portable feeder cables shall meet the requirements of § 77.504.

(b) Damaged trailing cables and portable feeder cables shall be repaired in a workmanlike manner so as to exclude moisture and to provide at least the same degree of protection as provided by the remainder of the cable.

(c) Prior to splicing or making repairs to trailing cables and portable feeder cables, the disconnecting device required by § 77.605 shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are not available, by persons authorized by the operator or his agent.

§ 77.609 Securing of trailing cables and portable feeder cables.

Trailing cables and portable feeder cables shall be secured to self-propelled or portable equipment to protect the cables from damage and to prevent strain on the electrical connections.

§ 77.610 Mechanical protection of trailing cables and portable feeder cables.

(a) Trailing cables and portable feeder cables shall be protected to prevent damage by equipment and placed to afford reasonable protection against rock slides and other falling objects.

(b) Trailing cables and portable feeder cables shall not be moved with self-propelled equipment unless cable slings, sleds, or equivalent protection is provided.

§ 77.611 Energized trailing cables and portable feeder cables; handling.

(a) Persons handling trailing cables and portable feeder cables, energized at more than 150 volts, shall wear protective gloves. Such gloves shall meet American Society for Testing and Materials (ASTM), "Standard Specification for Rubber Insulating Gloves" (D120–70) and shall be rated in accordance with the following:

Normal circuit voltage:	*ASTM class glove*
151 to 750	0
751 to 10,000	1
10,001 to 15,000	2
15,001 to 20,000	3
20,001 to 35,000	4

(b) Protective gloves, worn while handling energized trailing cables and portable feeder cables, shall be inspected for defects before each use. Defective gloves shall not be used.

(c) Protective gloves, worn while handling energized high-voltage trailing cables and portable feeder cables, shall be tested in accordance with § 77.806–6.

§ 77.612 Cable couplers; requirements.

(a) Cable couplers that are used in three-phase circuits shall be of the three-phase type and enclosed in a full metallic shell.

(b) Cable couplers shall be adequate for the intended current and voltage.

(c) The metallic shell of cable couplers shall be grounded to the ground wire in the cable.

(d) Cable couplers shall be constructed in such manner so that the ground-check monitoring conductor, when required, will break first and the ground wire will break last when being uncoupled.

§ 77.613 Cable connection boxes; requirements.

(a) Cable connection boxes shall be of substantial construction and designed to guard all energized parts from personal contact.

(b) The box entrance lid or door shall be interlocked so that the circuit will be deenergized when the lid or door is opened.

(c) The current-carrying parts shall be deenergized and grounded before any work is performed inside such boxes.

§ 77.614 Trailing cables and portable feeder cables; connections.

Plugs and connectors in trailing cables and portable feeder cables energized at more than 150 volts shall not be connected or disconnected while the circuit is energized.

§ 77.615 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof.

The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. The National Electrical Codes are also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. IPCEA publications are also available from the Insulated Power Cables Engineers Association, 192 Washington St., Belmont, Mass. 02178. ASTM publications are also available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pa. 19103. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart H—Direct Current Circuits

§ 77.700 Protection of direct current circuits.

All direct current circuits, except those circuits protected under §§ 77.601, 77.602 and 77.1800 shall be protected as follows:

(a) Resistance-grounded and solidly grounded direct current circuits shall be protected against short-circuit, overload and ground fault by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity.

(b) Ungrounded direct current circuits shall be protected against short-circuit and overload by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity. Circuits supplied power from an ungrounded direct current system shall be protected against ground-fault by a circuit breaker equipped with a device to provide such protection, or a ground-fault indicator shall be installed that will give visual warning at an attended location upon occurrence of a ground-fault on any circuit supplied power from such system. A ground-fault condition shall not be allowed to exist on an energized circuit for longer than 24 hours.

§ 77.700–1 Short-circuit and overload protection; requirements.

Where circuit breakers or fuses provide short-circuit and overload protection for direct current circuits, such circuit breakers or fuses shall conform to the requirements for protection of circuits as specified in the National Electrical Code as follows:

(a) For circuits installed before [the effective date of this section]—the National Electrical Code, 1968, 1971, or 1975.

(b) For circuits installed after [the effective date of this section]—the National Electrical Code, 1975.

§ 77.700–2 Ground-fault protection; requirements.

(a) Where a circuit breaker provides ground-fault protection for a resistance-grounded or a solidly grounded direct current circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the ground-fault current in any ungrounded power conductor exceeds 50 percent of the lowest value of bolted ground-fault current at any point in the circuit.

(b) Where a circuit breaker provides ground-fault protection for an ungrounded direct current circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the line-to-ground voltage on any power conductor decreases to less than 50 percent of the nominal system voltage.

(c) Where fuses provide ground-fault protection for a resistance-grounded or solidly grounded direct current circuit, one fuse shall be installed in each un-

grounded power conductor. Each fuse shall have a current rating not exceeding 40 percent of the lowest value of bolted ground-fault current at any point in the circuit.

§ 77.700–3 Ground-fault indicator; requirements.

Where a ground-fault indicator is used to provide ground-fault indication for an ungrounded direct current circuit, it shall be adjusted to give a visual indication when the line-to-ground voltage on any power conductor decreases to less than 50 percent of the nominal system voltage.

§ 77.701 Direct current systems; system and enclosure grounding.

(a) *System grounding.* All direct current systems:

(1) Shall be installed and maintained ungrounded, or

(2) Shall have one polarity of the generator or rectifier solidly grounded to a low-resistance grounding medium at the generator or rectifier, or

(3) Shall have the midpoint of the 3-wire generator solidly grounded to a low-resistance grounding medium at the generator, or

(4) Shall have the neutral of the alternating current source which supplies power to the rectifier solidly grounded to a low-resistance grounding medium at the alternating current power source, or

(5) Shall have the neutral of the alternating current source which supplies power to the rectifier grounded through a suitable grounding resistor to a low-resistance grounding medium at the alternating current power source.

(b) *Enclosure grounding.* Metallic frames and other metallic enclosures of electric equipment and circuits supplied power from direct current systems shall be grounded in accordance with the following:

(1) *Ungrounded systems.* A grounding conductor which meets the requirements of § 77.521 shall originate at a low-resistance grounding medium located at the power source. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source, including the rectifier, and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(2) *Solidly grounded systems.* Except as provided in paragraph (b)(2)(i) of this section, a grounding conductor which meets the requirements of § 77.521 shall originate at the grounded point of the power source. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source, including the rectifier, and shall extend along with the power conductor and serve as the grounding circuit for the metallic frames and other metallic enclosures of all electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(i) Metallic frames and other metallic enclosures of electric requipment which is supplied power from a trolley system in which one polarity is grounded to the track rail may be grounded to the track rail or grounded feeder wire. In such installation, a grounding conductor which meets the requirements of § 77.521 shall originate at the track rail or grounded feeder wire and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all circuits and equipment supplied power from the circuit.

(3) *Resistance-grounded systems.* A grounding conductor which meets the requirements of § 77.521 shall originate at the grounded side of the grounding resistor. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source, including the rectifier, and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

§ 77.702 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. The National Electrical Codes are also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart I—High-Voltage Alternating Current Circuits

§ 77.800 Protection of high-voltage alternating current circuits.

All high-voltage alternating current circuits, except those circuits protected under §§ 77.601, 77.602 and 77.1800, shall be protected as follows:

(a) Resistance-grounded and solidly grounded high-voltage circuits shall be protected against short-circuit, overload and ground-fault by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity.

(b) Ungrounded high-voltage circuits shall be protected against short-circuit and overload by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity. Circuits supplied power from an ungrounded high-voltage system shall be protected against ground-fault by a circuit breaker equipped with a device to provide such protection, or a ground-fault indicator shall be installed that will give visual warning at an attended location upon occurrence of a ground-fault on any circuit supplied power from such system. A ground-fault condition shall not be allowed to exist on an energized circuit for longer than 24 hours.

§ 77.800–1 Short-circuit and overload protection; requirements.

(a) Where circuit breakers or fuses provide short-circuit and overload protection for high-voltage circuits installed within portable and self-propelled equipment, high-voltage circuits installed within buildings, and high-voltage services to buildings, such circuit breakers or fuses shall conform to the requirements for protection of circuits as specified in the National Electrical Code as follows:

(1) For circuits installed before [the effective date of this section]—the National Electrical Code, 1968, 1971 or 1975.

(2) For circuits installed after [the effective date of this section]—the National Electrical Code, 1975.

(b) Where a circuit breaker provides short-circuit and overload protection for a high-voltage circuit, except those circuits specified in paragraph (a) of this section, such circuit breaker shall be equipped with devices which shall be adjusted to trip the circuit breaker when the current in any power conductor exceeds the value specified in paragraph (b)(1) or (b)(2) of this section, whichever is lower:

(1) 125 percent of the ampacity of the power conductor in the circuit with the lowest ampacity; or

(2) 50 percent of the lowest value of bolted phase-to-phase short-circuit current at any point in the circuit. Such devices shall be adjusted to trip the circuit breaker before any power conductor in the circuit sustains thermal damage due to short-circuit or overload.

(c) Where fuses provide short-circuit and overload protection for high-voltage circuits, except those circuits specified in paragraph (a) of this section, one fuse shall be installed in each ungrounded power conductor. Each fuse shall have a current rating not exceeding the value specified in paragraph (c)(1) or (c)(2) of this section, whichever is lower:

(1) 100 percent of the ampacity of the power conductor in the circuit with the lowest ampacity; or

(2) 40 percent of the lowest value of bolted phase-to-phase short-circuit current at any point in the circuit.

§ 77.800–2 Ground-fault protection; requirements.

(a) Where a circuit breaker provides ground-fault protection for a resistance-grounded or a solidly grounded high-voltage circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the ground-fault current in any ungrounded power conductor exceeds 50 percent of the lowest value of bolted

ground-fault current at any point in the circuit.

(b) Where a circuit breaker provides ground-fault protection for an ungrounded high-voltage circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the line-to-ground voltage on any power conductor decreases to less than 30 percent of the nominal system voltage for a circuit supplied power from a three phase system or 50 percent of the nominal system voltage for a circuit supplied power from a single phase system.

(c) Where fuses provide ground-fault protection for a resistance-grounded or a solidly grounded high-voltage circuit, one fuse shall be installed in each ungrounded power conductor. Each fuse shall have a current rating not exceeding 40 percent of the lowest value of bolted ground-fault current at any point in the circuit.

§ 77.800–3 Ground-fault indicator; requirements.

Where a ground-fault indicator is used to provide ground-fault indication for an ungrounded high-voltage circuit, it shall be adjusted to give a visual indication when the line-to-ground voltage on any power conductor decreases to less than 30 percent of the nominal system voltage for a circuit supplied power from a three phase system, or 50 percent of the nominal system voltage from a circuit supplied power from a single phase system.

§ 77.801 High-voltage alternating current systems supplying power to portable or self-propelled equipment; system and enclosure grounding.

(a) *System grounding.* High-voltage systems supplying power to portable or self-propelled equipment shall contain either a direct or derived neutral which shall be grounded through a suitable grounding resistor to a low-resistance grounding medium at the power source.

(b) *Enclosure grounding.* A ground wire which meets the requirements of § 77.520 shall be connected to the grounded side of the grounding resistor and shall extend along with the power conductors and serve as the grounding circuit for:

(1) The metallic frames and other metallic enclosures of all portable and self-propelled equipment supplied power from the system, and

(2) The metallic enclosures of all circuits which are supplied power from the system and extend to portable and self-propelled equipment.

§ 77.801–1 Grounding resistors; portable and self-propelled equipment.

(a) The grounding resistor required by § 77.801(a) shall be of the proper ohmic value to limit the voltage drop in the grounding circuit external to the resistor to no more than 100 volts under fault conditions.

(b) The ground-fault current rating of the grounding resistor required by § 77.801(a) shall meet the "extended time rating" set forth in American Institute of Electrical Engineers (AIEE) Standard No. 32. Such grounding resistor shall be insulated from ground for a voltage not less than the phase-to-phase voltage of the system in which it is installed.

§ 77.801–2 Grounding medium; portable and self-propelled equipment.

The low-resistance grounding medium required by § 77.801(a) shall be separated from the source transformer substation ground field by at least 25 feet.

§ 77.802 High-voltage alternating current systems supplying power to stationary equipment; system and grounding.

(a) *System grounding.* High-voltage alternating current systems supplying power to stationary equipment shall be grounded in accordance with the following:

(1) The neutral point of wye connected three-phase four-wire systems in which the neutral is used as a power conductor shall be solidly grounded to a low-resistance grounding medium at the power source.

(2) All other three-phase systems:

(i) Shall be installed and maintained ungrounded, or

(ii) Shall be solidly grounded to a low-resistance grounding medium at the power source, or

(iii) Shall contain a direct or derived neutral which shall be grounded through a suitable grounding resistor to a low-resistance grounding medium at the power source.

(3) All single-phase systems shall be installed and maintained ungrounded or shall be solidly grounded to a low-resistance grounding medium at the power source.

(b) *Enclosure grounding.* Except as provided in § 77.802–2, metallic frames and other metallic enclosures of stationary electric equipment and circuits supplied power from high-voltage alternating current three-phase systems shall be grounded in accordance with the following:

(1) *Resistance-grounded systems.* A grounding conductor which meets the requirements of § 77.521 shall be connected to the grounded side of the grounding resistor, and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(2) *Solidly grounded systems.* Except as provided in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, a grounding conductor which meets the requirements of § 77.521 shall be connected to the grounded point of the power source and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(i) Metallic frames and other metallic enclosures of service equipment and circuits may be grounded to the grounded power conductor of the system provided the grounded power conductor meets the requirements of § 77.520 and is connected to a low-resistance grounding medium at the power source and at the service equipment for buildings and other stationary installations. In such installations, a grounding conductor meeting the requirements of § 77.521 shall be connected to the grounded service equipment and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary equipment and circuits supplied power from such service equipment.

(ii) Substation enclosures and metallic frames of transformers, circuit breakers and other substation equipment may be grounded to the grounded power conductor of the system provided the grounded power conductor meets the requirements of § 77.520 and is connected to a low-resistance grounding medium at the power source and at the transformer, circuit breaker or substation installation.

(3) *Ungrounded systems.* A grounding conductor which meets the requirements of § 77.521 shall be connected to a low-resistance grounding medium located at the power source and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary equipment and circuits supplied power from the system. The grounding circuit shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

§ 77.802–1 Grounding resistors; stationary equipment.

The ground-fault current rating of the grounding resistor for high-voltage systems supplying power to stationary equipment shall meet the "ten-minute rating" set forth in American Institute of Electrical Engineers (AIEE) Standard No. 32. Such grounding resistor shall be insulated from ground for a voltage not less than the phase-to-phase voltage of the system in which it is installed.

§ 77.802–2 Earth as a grounding conductor.

The District Manager may approve the use of earth as a grounding conductor for metallic frames and other metallic enclosures of stationary equipment and circuits supplied power from high-voltage circuits. Section 77.802–3 sets out the criteria by which the District Manager will be guided in approving earth as a grounding conductor on a mine-by-mine basis. Additional measures may be required.

§ 77.802–3 Criteria for use by the District Manager in approval of earth as a grounding conductor.

(a) An investigation shall be made to assure that the use of earth as a grounding conductor does not create a hazard to miners.

(b) The frames of all equipment should be installed on a ground grid which complies with the requirements of § 77.519 and which serves as the grounding medium for frames of all equipment at that location.

(c) The interrupting time of the circuit breaker or fuses required by § 77.800, and the design of the ground grid should be in accordance with Institute of Electrical and Electronics Engineers (IEEE) No. 80–1971, "Guide for Safety in Alternating-Current Substation Grounding".

(d) Earth should not be used as a power conductor.

(e) The high-voltage system should not supply power to equipment in underground coal mines or to portable or self-propelled equipment.

§ 77.803 Connection of single-phase loads.

Single-phase loads shall be connected phase-to-phase in resistance-grounded systems.

§ 77.804 Guarding of high-voltage equipment, conductors, cables and parts.

(a) High-voltage equipment shall be of the totally enclosed type or shall be:

(1) Located in a room, vault or similar enclosure that is accessible only to qualified persons; or

(2) Elevated 8 feet or more above the floor or other working surface; or

(3) Enclosed within a substantial fence at least 6 feet high and at least 3 feet from any part or wiring.

(b) High-voltage conductors and high-voltage cables, other than trailing cables and portable feeder cables, shall be:

(1) Shielded in accordance with Section 4.1.1.1, 7.5.16.2 or 7.5.16.3 of Insulated Power Cable Engineers Association (IPCEA) Publication Number S–68–516, April 1976; or

(2) Shielded in accordance with Section 4.1.1.3 of Insulated Power Cable Engineers Association Publication Number S–68–516, April 1976, provided the conductor or cable is designed for direct burial and buried at least 30 inches deep; or

(3) Totally enclosed within grounded rigid metal conduit; or

(4) Totally enclosed within a cabinet or other enclosure; or

(5) Guarded so as to prevent contact by persons or objects and protected in accordance with paragraph (a)(1) or (a)(3) of this section; or

(6) Protected in accordance with paragraph (a)(1) or (a)(3) of this section, and installed with a minimum vertical clearance above the floor or other working surface as follows:

Nominal voltage between phases	Minimal vertical clearance of energized parts and conductors	
	Feet	Inches
1,001 to 6,600	8	0
6,601 to 11,000	9	0
11,001 to 22,000	9	3
22,001 to 33,000	9	6
33,001 to 44,000	9	10
44,001 to 66,000	10	5
66,001 to 88,000	11	0
88,001 to 110,000	11	7
110,000 to 132,000	12	2

(c) Live parts of high-voltage equipment shall be protected as prescribed in paragraph (b)(4), (b)(5) or (b)(6) of this section.

(d) Entrances to enclosures specified in paragraphs (a), (b), and (c) of this section shall be locked against unauthorized entry, and marked with conspicuous signs forbidding unqualified persons to enter.

§ 77.804–1 Performing work in proximity to high-voltage conductors and parts.

Where work is to be performed within 4 feet of high-voltage power conductors or live parts of high-voltage equipment, and such work requires the removal of the protection specified in §§ 77.804(b) and 77.804(c) the operator shall comply with the provisions of §§ 77.806 through 77.806–10.

§ 77.805 High-voltage powerlines; clearance above ground.

High-voltage powerlines located above driveways, haulageways, and railroad tracks shall be installed so as to provide the minimum vertical clearance as specified in Section 232 of the National Electrical Safety Code, 1973; *Provided, however,* That in no event shall any high-voltage powerline be installed less than 15 feet above ground, walkways, or working areas.

§ 77.805–1 Booms and masts; minimum distance from high-voltage powerlines.

The booms and masts of equipment, except insulated aerial buckets when used in repair of energized powerlines, operated on the surface of any coal mine shall not be operated within 10 feet of an energized overhead high-voltage powerline. Where the voltage of overhead powerlines is 69,000 volts or more, the minimum distance from the boom or mast shall be as follows:

Nominal powerline voltage (in 1,000 v):	*Minimum distance (feet)*
69 to 114	12
115 to 229	15
230 to 344	20
345 to 499	25
500 or more	35

§ 77.805–2 Movement of equipment; minimum distance from high-voltage powerlines.

When any part of any equipment operated on the surface of any coal mine is required to pass under or by an energized high-voltage powerline and the clearance between such equipment and powerline is less than that specified in § 77.805–1 for booms and masts, such powerlines shall be deenergized.

§ 77.805–3 Operation of dump trucks under high-voltage powerlines.

(a) When dumping points, shop areas or parking areas for dump trucks are located under high-voltage powerlines, the minimum vertical clearance of such powerlines shall be 5 feet more than the maximum height of the truck bed measured with the truck bed in the extreme raised position.

(b) In cases where dump trucks are operated on haulage roads, the minimum vertical clearance of overhead high-voltage powerlines shall be 5 feet more than the maximum height of the truck bed measured with the truck bed in the extreme raised position unless a grounded conductor in compliance with § 77.520 is installed directly under each phase conductor so that a truck bed will contact the grounded conductor first as the truck bed is raised.

§ 77.805–4 Booms and masts; warning devices.

(a) Except as provided paragraph (b) of this section, self-propelled equipment with booms and masts which can extend higher than 15 feet above ground shall be equipped with an audible and visible warning device that gives a warning when the boom or mast is within the distance specified in § 77.805–1. The distance shall be measured from that point on the equipment which can be moved closest to the powerline by normal operation.

(b) Warning devices are not required for draglines, shovels, wheel excavators and crawler mounted drills which are not operated within 300 feet of high-voltage powerlines, and for line trucks equipped with insulated aerial buckets designed for use in repair of energized powerlines.

§ 77.806 Work on high-voltage powerlines; deenergization and grounding.

(a) Except as provided in paragraphs (b) and (c) of this section, high-voltage powerlines shall be deenergized and grounded before work is performed on or within 4 feet of such powerlines.

(b) Repairs shall be permitted on energized high-voltage powerlines if such repairs are made by a qualified person in accordance with procedures and safeguards set forth in §§ 77.806–2 through 77.806–9, as applicable.

(c) An additional circuit may be connected to an energized high-voltage powerline provided such work is performed from the ground by a person qualified under the provisions of § 77.104. Such qualified person shall wear rubber insulating gloves and shall use an insulated stick. The insulated stick shall be designed for such use and shall be maintained to protect the qualified person from the voltage to which he is exposed. Rubber insulating gloves and insulated sticks shall meet the requirements of §§ 77.806–7 and 77.806–7, as applicable.

§ 77.806–1 Work on high-voltage powerlines.

(a) No high-voltage powerline shall be regarded as deenergized for the purpose of performing work on it, until it has been determined by a qualified person that such powerline has been deenergized and grounded. The qualified person shall by visual observation:

(1) Determine that the disconnecting devices on the high-voltage powerline are in an open position, and

(2) Insure that each ungrounded conductor of the high-voltage powerline upon which work is to be done is properly connected to the system grounding medium. In the case of resistance-grounded or solidly grounded systems, the neutral wire is the system grounding medium. In the case of an ungrounded power system, either the steel armor or conduit enclosing the system conductors or a surface ground field is a system grounding medium.

(b) No work shall be performed on any high-voltage powerline which is supported by any pole or structure which also supports other high-voltage powerlines until:

(1) All high-voltage powerlines supported on the pole or structure are deenergized and ground in accordance with the provisions of paragraph (a) of this section; or

(2) The provisions of §§ 77.806–2 through 77.806–9 have been complied with, with respect to all energized powerlines which are supported on the pole or structure.

§ 77.806–2 Repairs on energized high-voltage powerlines.

Before energized high-voltage powerlines are repaired:

(a) The operator shall determine that:

(1) Such repairs cannot be scheduled during a period when the power circuit could be properly deenergized and grounded;

(2) Such repairs will be performed on power circuits with a phase-to-phase nominal voltage no greater than 15,000 volts;

(3) Such repairs on circuits with a phase-to-phase nominal voltage of 5,000 volts or more will be performed only with the use of live line tools;

(4) Weather conditions will not interfere with such repairs or expose those persons assigned to such work to danger; and

(b) The operator shall designate a person qualified under the provisions § 77.104 as the person responsible for carrying out such repairs. The operator shall require that the qualified person file with the operator:

(1) A general description of the nature and location of the damage or defect to be repaired;

(2) The general plan to be followed in making such repairs;

(3) A statement that a briefing of all qualified persons assigned to make such repairs was conducted informing them of the general plan, their individual assignments, and the dangers inherent in such assignments;

(4) A list of the proper protective equipment and clothing that will be provided; and

(5) Such other information as the qualified person designated by the operator feels necessary to describe properly the means or methods to be employed in such repairs.

(c) The operator shall submit a repair plan to and obtain approval from the District Manager for work performed on powerlines energized at more than 15,000 volts. Repair of such powerlines shall be performed in accordance with the approved plan.

§ 77.806–3 Repairs on energized high-voltage powerlines; reporting.

Any operator designating and assigning qualified persons to perform repairs on energized high-voltage powerlines under provisions of § 77.806–2 shall maintain a record of such repairs. Such record shall contain the time, date, location, general nature of the repairs, and a copy of the information filed with the operator by the qualified person designated as responsible for performing such repairs.

§ 77.806–4 Simultaneous repairs.

When two or more qualified persons are repairing energized high-voltage powerlines simultaneously, and any one of them is within reach of another, such persons shall not be allowed to work on different phases or on equipment with different potentials.

§ 77.806–5 Protective equipment; installation and use.

(a) Before repair work on energized high-voltage powerlines is begun, rubber protective equipment shall be used to cover all bare conductors, ground wires, guys, telephone lines, and other attachments in proximity to the area of planned repairs. Such protective equipment shall be installed from a safe position below the conductors or other apparatus being covered.

(b) All qualified persons repairing energized high-voltage powerlines shall wear protective rubber lineman's gloves, sleeves, and climber guards if climbers are worn. Protective rubber gloves shall not be worn wrong side out or without protective leather gloves. Protective equipment worn by a person assigned to perform repairs on energized high-voltage powerlines shall be worn continuously from the time he leaves the ground until he returns to the ground.

§ 77.806–6 Protective equipment; design, manufacture and testing.

(a) All rubber protective equipment required by §§ 77.806(c), 77.806–5, and 77.807 shall have a minimum electrical rating of 20,000 volts a.c. and shall be designed, manufactured and tested in accordance with the provisions of the American National Standards Institute standards or the American Society for Testing and Materials standards as follows:

Item	ANSI standard	ASTM standard
Rubber insulating:		
Gloves	J6.6-1971	D120-70
Blankets	J6.4-1971	D1048-70
Hoods	J6.2-1971	D1049-70(70)
Line hose	J6.1-1971	D1050-70(70)
Sleeves	J6.5-1971	D1051-70

(1) Rubber protective equipment shall be tested in accordance with the following schedules:

(i) Rubber gloves; once each month.

(ii) Rubber sleeves; once every 3 months.

(iii) Rubber blanket; once every 6 months.

(iv) Rubber hoods and line hose; once a year.

(b) Live line tool poles required to be used by §§ 77.806(c) and 77.807 shall have a manufacturer's certification that such poles will withstand the following minimum tests:

(1) 100,000 volts per foot of length for 5 minutes when the tool is made of fiberglass, or

(2) 75,000 volts per foot of length for 3 minutes when the tool is made of wood.

(c) Where insulated aerial buckets are used in the repair of energized high-voltage powerlines, they shall be subjected to a leakage current test before use each day, each time during the day when a higher voltage is going to be worked and when changed conditions indicate a need for additional tests. Such test shall consist of placing the bucket in contact with an energized source equal to the voltage to be worked for a minimum time of three minutes. The leakage current shall not exceed 1 microampere per kilovolt of nominal line-to-line voltage.

§ 77.806–7 Protective equipment; inspection and storage.

(a) Each qualified person shall visually inspect the protective equipment provided him in accordance with §§ 77.806(c), 77.806–5, and 77.807 before using such equipment, and any protective equipment containing any defect or damage shall not be used.

(b) Rubber insulating gloves shall not be stored wrong side out. Rubber insulating blankets shall be rolled when not in use. Rubber insulating line hose and hoods shall be stored in their natural position and shape.

§ 77.806–8 Use of grounded messenger wires; ungrounded systems.

Grounded messenger wires used to suspend cables supplied power from an ungrounded high-voltage system may be used to ground the power conductors for the purposes of performing work on the power conductors.

§ 77.806–9 Metal measuring tapes and ropes.

Measuring tapes and measuring ropes containing metal shall not be used when working on or near energized parts.

§ 77.807 Operating disconnecting devices.

All disconnecting devices designed to be operated by means of an insulated stick, fuse tong or puller shall be operated only by a person qualified under the provision of §§ 77.103 or 77.104. Such qualified person shall wear rubber insulating gloves and shall use an insulated stick, fuse tong or puller which shall be maintained to protect such person from the voltage to which he is exposed. Rubber insulating gloves and insulated sticks, fuse tongs and pullers shall meet the requirements of §§ 77.806–6 and 77.806–7, as applicable.

§ 77.807–1 Platforms at disconnecting devices.

Platforms insulated for the phase-to-phase voltage of the system, shall be installed at all overhead disconnecting devices that are operated from the ground by means of mechanical linkage. However, metal plates or grids on which a person normally would stand which are electrically bonded to the metal operating handles of the power switches may be used.

§ 77.808 Visual disconnecting devices.

Disconnecting devices shall be installed at the beginning of each branch line in high-voltage circuits and at the entrance to all high-voltage installations and they shall be equipped or designed in such a manner that it can be determined by visual observation that the circuit is deenergized when such devices are open.

§ 77.809 Movement of high-voltage power substations, transformers and switchgear.

High-voltage portable substations, transformers and switchgear shall be deenergized before they are moved from one location to another and shall be examined by a qualified person to assure safe operating condition prior to reenergization.

§ 77.810 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. The National Electrical Codes are also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. AIEE publications are also available from the American Institute of Electrical Engineers, the National Electrical Safety Code, IEEE and AIEE, publications are also available from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th St., New York, N.Y. 10017. IPCEA publications are also available from the Insulated Power Cables Engineers Association, 192 Washington St., Belmont, Mass. 02178. ASTM publications are also available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pa. 19103. ANSI publications are also available from American National Standards Institute, Inc., 1430 Broadway, New York, N.Y. 10018. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart J—Low- and Medium-Voltage Alternating Current Circuits

§ 77.900 Protection of low- and medium-voltage alternating current circuits.

All low- and medium-voltage alternating current circuits, except those circuits protected under §§ 77.601, 77.602, and 77.1800, shall be protected as follows:

(a) Resistance-grounded and solidly grounded low- and medium-voltage circuits shall be protected against short-circuit, overload and ground-fault by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity.

(b) Ungrounded low- and medium-voltage circuits shall be protected against short-circuit and overload by circuit breakers equipped with devices to provide such protection, or by fuses of the correct type and capacity. Circuits supplied power from an ungrounded low- and medium-voltage system shall be protected against ground-fault by a circuit breaker equipped with a device to provide such protection, or a ground-fault indicator shall be installed that will give visual warning at an attended location upon occurrence of a ground-fault on any circuit supplied power from such system. A ground-fault condition shall not be allowed to exist on an energized circuit for longer than 24 hours.

§ 77.900–1 Short-circuit and overload protection; requirements.

(a) Where circuit breakers or fuses provide short-circuit and overload protection for low- or medium-voltage circuit breakers or fuses shall conform to the requirements for protection of circuits as specified in the National Electrical Code as follows:

(1) For circuits installed before [the effective date of this section]—the National Electrical Code, 1968, 1971, or 1975.

(2) For circuits installed after [the effective date of this section]—the National Electrical Code, 1975.

§ 77.900–2 Ground-fault protection; requirements.

(a) Where a circuit breaker provides ground-fault protection for a resistance-grounded or a solidly grounded low- or medium-voltage circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the ground-fault current in any ungrounded power conductor exceeds 50 percent of the lowest value of bolted ground-fault current at any point in the circuit.

(b) Where a circuit breaker provides ground-fault protection for an ungrounded low- or medium-voltage circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the line-to-ground voltage on any power conductor decreases to less than 30 percent of the nominal system voltage for a circuit supplied power from a three phase system or 50 percent of the nominal system voltage for a circuit supplied power from a single phase system.

(c) Where fuses provide ground-fault protection for a resistance-grounded or solidly grounded low- or medium-voltage circuit, one fuse shall be installed in each ungrounded power conductor. Each fuse shall have a current rating not exceeding 40 percent of the lowest value of bolted ground-fault current at any point in the circuit.

§ 77.900–3 Ground-fault indicator; requirements.

Where a ground-fault indicator is used to provide ground-fault indication for an ungrounded low- or medium-voltage circuit, it shall be adjusted to give a visual indication when the line-to-ground voltage on any power conductor decreases to less than 30 percent of the nominal system voltage for a circuit supplied power from a three phase system or 50 percent of the nominal system voltage for a circuit supplied power from a single phase system.

§ 77.901 Low- and medium-voltage alternating current systems supplying power to portable or self-propelled equipment; system and enclosure grounding.

(a) *System Grounding.* (1) Low- and medium-voltage systems supplying power to three-phase portable or self-propelled equipment shall contain either a direct or derived neutral which shall be grounded through a suitable grounding resistor to a low-resistance grounding medium at the power source.

(2) Low- and medium-voltage systems supplying power to single-phase portable or self-propelled equipment shall be grounded in accordance with §§ 77.902(a)(4) and (a)(5).

(b) *Enclosure grounding.* (1) A ground wire which meets the requirements of § 77.520 shall originate at the grounded side of the grounding resistor. Such ground wire shall be connected to the metallic frames and enclosures of the power source and shall extend along with the power conductors and serve as the grounding circuit for:

(i) The metallic frames and other metallic enclosures of all portable and self-propelled equipment supplied power from the system, and

(ii) The metallic enclosures of all circuits which are supplied power from the system and extend to portable and self-propelled equipment.

(2) The metallic frames and other metallic enclosures of all single-phase portable or self-propelled equipment and the metallic enclosures of all circuits which extend to single-phase portable and self-propelled equipment shall be grounded in accordance with § 77.902(b).

§ 77.901–1 Grounding resistors; portable and self-propelled equipment.

(a) The grounding resistor required by § 77.901(a)(1) shall be of the proper ohmic value to limit the ground fault current to no more than 25 amperes.

(b) The ground-fault current rating of the grounding resistor required by § 77.901(a)(1) shall meet the "extended time rating" set forth in American Institute of Electrical Engineers, Standard No. 32. Such grounding resistor shall be insulated from ground for a voltage not less than the phase-to-phase voltage of the system in which it is installed.

§ 77.902 Low- and medium-voltage alternating current systems supplying power to stationary equipment; system and enclosure grounding.

(a) *System grounding.* Low- and medium-voltage alternating current systems supplying power to stationary equipment shall be grounded in accordance with the following:

(1) The neutral point of wye connected three-phase four-wire systems in which the neutral is used as a power conductor shall be solidly grounded to a low-resistance grounding medium at the power source.

(2) The midpoint of one phase of 240/120 volt three-phase four-wire systems in which such midpoint is used as a power conductor shall be grounded to a low-resistance grounding medium at the power source.

(3) All other three-phase systems:

(i) Shall be installed and maintained ungrounded, or

(ii) Shall contain a direct or derived neutral which shall be solidly grounded to a low-resistance grounding medium at the power source, or

(iii) Shall contain a direct or derived neutral which shall be grounded through a suitable grounding resistor to a low-resistance grounding medium at the power source.

(4) Single-phase systems shall be grounded when the system can be grounded so that the maximum voltage on the ungrounded conductors does not exceed 150 volts.

(5) All other single-phase systems:

(i) Shall be installed and maintained ungrounded, or

(ii) Shall be solidly grounded to a low-resistance grounding medium at the power source, or

(iii) Shall contain a direct or derived neutral which shall be grounded through a suitable grounding resistor to a low-resistance grounding medium at the power source.

(b) *Enclosure grounding.* Metallic frames and other metallic enclosures of stationary electric equipment and circuits supplied power from low- and medium-voltage alternating current systems shall be grounded in accordance with the following:

(1) *Resistance-grounded systems.* A grounding conductor which meets the requirements of § 77.521 shall originate at the grounded side of the grounding resistor. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(2) *Solidly grounded systems.* Except as provided in paragraph (b)(2)(i) of this section, a grounding conductor which meets the requirements of § 77.521 shall originate at the grounded point of the power source. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary electric equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

(i) Metallic frames and other metallic enclosures of service equipment and circuits may be grounded to the grounded power conductor of the system provided the grounded power conductor meets the requirements of § 77.520 and originates at the grounded point of the power source. Such grounded power conductor shall be connected to the metallic frames and enclosures of the power source, and to a low-resistance grounding medium at the power source and to a low-resistance grounding medium at the service equipment for buildings and other stationary installations. In such installations, a grounding conductor which meets the requirements of § 77.521 shall be connected to the grounded service equipment and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary equipment and circuits supplied power from such service equipment.

(3) *Ungrounded systems.* A grounding conductor which meets the requirements of § 77.521 shall originate at a low-resistance grounding medium at the power source. Such grounding conductor shall be connected to the metallic frames and enclosures of the power source and shall extend along with the power conductors and serve as the grounding circuit for the metallic frames and other metallic enclosures of all stationary equipment and circuits supplied power from the system. The grounding conductor shall also be connected to a low-resistance grounding medium at the service equipment for buildings and other stationary installations.

§ 77.902–1 Grounding resistors; stationary equipment.

The ground-fault current rating of the grounding resistor for a low- and medium-voltage system supplying power to stationary equipment shall meet the "ten-minute rating" set forth in American Institute of Electrical Engineers (AIEE) Standard No. 32. Such grounding resistor shall be insulated from ground for a voltage not less than the phase-to-phase voltage of the system in which it is installed.

§ 77.903 Connection of single-phase loads.

Single-phase loads shall be connected phase-to-phase in resistance-grounded systems.

§ 77.904 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. The National Electrical Codes are also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. The AIEE publication is also available from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th St., New York, N.Y. 10017. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart K—Ground Control

§ 77.1000 Highwalls, pits and spoil banks; plan.

Each operator of a surface coal mine shall establish and follow a ground control plan, approved in accordance with the provisions of §§ 77.1000–1 through 77.1000–6, for the safe control of all highwalls, pits and spoil banks developed at such mine.

§ 77.1000–1 Filing of ground control plan.

Ground control plans shall be filed with the District Manager of the Coal Mine Health and Safety District in which the mine is located.

§ 77.1000–2 Mines with plans on file on the effective date of this section.

(a) Ground control plans on file with the District Manager for mines operating on the effective date of this section shall be considered approved until such plans are reviewed and approved or disapproved in accordance with the provisions of this section.

(b) Mines operating on the effective date of this section that have ground control plans on file with the District Manager shall have their plans reviewed within one year from the effective date of this section, and the operator shall be advised in writing of the approval or disapproval of his ground control plan.

§ 77.1000–3 Mines without plans on file on the effective date of this section.

(a) Operators of new mines and mines without approved ground control plans shall submit a ground control plan to the District Manager prior to the commencement of excavation.

(b) The operator shall be advised in writing of the approval or disapproval of his ground control plan.

§ 77.1000–4 Revision in ground control plans prior to approval.

If the District Manager determines that revisions are required before a ground control plan can be approved, the revisions required shall be specified, the operator shall be afforded an opportunity to discuss the revisions, and the operator shall be given not less than 30 days to submit revisions.

§ 77.1000–5 Modification of approved ground control plans.

Each operator, prior to initiating a modification of any approved ground control plan, shall file such modification with the District Manager. The operator shall be notified in writing of the approval or disapproval of his modification. If the District Manager determines that revisions are required before the modification can be approved, the revisions required shall be specified and the operator shall be afforded an opportunity to discuss the revisions.

§ 77.1000–6 Information required in ground control plans.

(a) Ground control plans shall contain the following information:

(1) Name and address of the operator.

(2) Name, identification number and address of the mine.

(3) Geographic location of all pits.

(4) List of equipment used for moving overburden and loading coal.

(5) Description of the mining sequence.

(6) General characteristics of the strata.

(7) Average height and angle of the highwall.

(8) Approximate width and location of highwall benches.

(9) Approximate width of pit.

(10) Minimum and maximum slope of ground to be stripped.

(11) Angle and diameter of boreholes.

(12) Description of blasting methods.

(13) Method of trimming and scaling the highwall.

(14) Method of preventing material from rolling into the pit including the distance material will be stripped from the highwall.

(15) Method of controlling or draining water.

§ 77.1000–7 Criteria for approval of ground control plans.

(a) Each ground control plan shall be considered on its own merits in providing protection to miners. District Managers shall be guided by the following criteria in approving ground control plans:

(1) All loose hazardous material should be stripped for a safe distance from the top edge of pits, highwalls and benches.

(2) Hazardous highwall areas should be scaled by a safe means before any other work is performed in the hazardous area.

(3) Highwall benches should be required if necessary to assure that scaling and trimming can be accomplished with available equipment.

(4) The method of mining should minimize the exposure time of unprotected persons near the highwall.

(5) The width and height of benches should be consistent with the type of equipment to be used and the operation to be performed.

(6) Spoil material should be sloped to the angle of repose or other measures taken to prevent the material from rolling into active work areas.

(7) Drilling and blasting methods should be used which will maximize highwall stability.

§ 77.1001 Ground control inspection and maintenance; general.

Highwalls, banks, benches and terrain sloping into the working areas shall be examined by a certified person within two hours before each operating shift and after every rain, freeze or thaw before men work in such areas; and such examinations shall be made and recorded in accordance with § 77.1713.

§ 77.1002 Highwalls; men working.

(a) Persons, other than those necessary to correct unsafe conditions, shall not work near or under dangerous highwalls or banks.

(b) Except as provided in paragraph (c) of this section, persons shall not work between equipment and the highwall or spoil bank where the equipment may hinder escape from falls or slides.

(c) Special safety precautions shall be taken when persons are required to perform repair work between immobilized equipment and the highwall or spoil bank and such equipment may hinder escape from falls or slides.

§ 77.1003 Drilling; equipment, general.

(a) Drilling equipment that is to be used during a shift shall be inspected each shift by a competent person. Equipment defects affecting safety shall be reported.

(b) Drilling equipment defects affecting safety shall be corrected before the equipment is used.

§ 77.1004 Relocation of drills; safeguards.

(a) When a drill is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast placed in a safe position.

(b) When a drill helper is used, his location shall be made known to the operator at all times when the drill is being moved.

§ 77.1005 Drill; operation.

(a) While in operation, drills shall be attended at all times.

(b) Persons shall not drill from positions that hinder their access to the control levers, or from insecure footing or staging, or from atop equipment not designed for this purpose.

(c) Persons shall not be on a mast while the drill bit is in operation unless a safe platform is provided and safety belts are used.

(d) Drill crews and others shall stay clear of augers or drill stems that are in motion. Persons shall not pass under or step over a moving stem or auger.

(e) In the event of a power failure, drill controls shall be placed in the neutral position until power is restored.

(f) When churn drills or vertical rotary drills are used, drillers shall not be permitted to work under suspended tools, and when collaring holes, inspecting, or during any operation in which tools are removed from the hole, all tools shall be lowered to the ground or platform.

(g) Where horizontal holes are drilled in the overburden, a careful inspection of the face of the highway shall be made before drilling operations begin, and all loose hazardous material shall be removed before other work is done, or the area shall be vacated and posted.

§ 77.1006 Collaring holes.

(a) Starter steels shall be used when collaring holes with hand-held drills.

(b) Persons shall not hold the drill steel while collaring holes, or rest their hands on the chuck or centralizer while drilling.

§ 77.1007 Drill holes; guarding.

Drill holes large enough to constitute a hazard shall be covered or guarded.

§ 77.1008 Jackhammers; operation; safeguards.

Persons operating or working near jackhammers or jackleg drills, or other drilling machines shall position themselves so that they will not be struck or lose their balance if the drill steel breaks or sticks.

§ 77.1009 Air drills; safeguards.

Air shall be turned off and bled from the air hoses before hand-held air drills are moved from one working area to another.

9. Subparts M, N, O, P, and Q are revised as follows:

Subpart M—Maps

§ 77.1200 Mine map.

The operator shall maintain an accurate and up-to-date map of the mine, on a scale of not less than 100 or more than 500 feet to the inch, at or near the mine, in an area chosen by the mine operator, with a duplicate copy on file at a separate and distinct location, to minimize the danger of destruction by fire or other hazard. The map shall show:

(a) Name and address of the mine;

(b) The property or boundary lines of the active areas of the mine;

(c) Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the District Manager for steeply pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps;

(d) The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

(e) Producing or abandoned oil and gas wells located on the mine property

and the location of all oil and gas pipelines on the mine property;

(f) The location and elevation of any body of water dammed or held back in any portion of the mine; provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps;

(g) All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;

(h) All auger and strip mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maxium depth of holes drilled during auger mining operations;

(i) All worked out and abandoned areas;

(j) The location of overhead powerlines, railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

(k) Underground mine workings, active or abandoned, in underlying, overlying, or in the same coalbed(s) and within 1,000 feet in any direction of the active areas of the mine; provided, however, such workings may be shown on overlays or tracings attached to the mine map;

(l) The location and description of at least two permanent base line points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys; and

(m) The scale of the map.

§ 77.1200–1 Temporary notations, revisions and supplements.

(a) Mine maps shall be revised and supplemented at intervals of not more than 6 months on the basis of a survey made or certified as required by § 77.1201.

(b) Mine maps shall be kept up-to-date by temporary notations. Up-to-date is interpreted to mean at least once a month. Temporary notations shall include:

(1) Areas where overburden has been removed; and

(2) Areas where coal has been removed, either by surface mining or augering.

§ 77.1201 Certification of mine map.

The mine map shall be made or certified by an engineer or surveyor registered by any State.

§ 77.1202 Availability of mine map.

The mine map maintained in accordance with the provisions of § 77.1200 shall be available for inspection by the Secretary or his authorized representative.

§ 77.1203 Mine closure; filing of map with Secretary or his representative.

Whenever an operator permanently closes or abandons a coal mine, he shall promptly notify the Coal Mine Health and Safety District or Subdistrict Office for the area in which the mine is located of such closure. Within 60 days after the permanent closure or abandonment of a mine, the operator shall file with the Secretary or his authorized representative, a copy of the mine map revised and supplemented to the date of the closure. Such copy of the mine map shall be certified by an engineer or surveyor registered by any State.

Subpart N—Explosives and Blasting

§ 77.1300 Explosive material; general.

Explosives, blasting agents, detonators, or any other related blasting device or material shall not be stored, transported, carried, handled, charged, fired, destroyed or otherwise used, employed or disposed of by any person at a coal mine except in accordance with the storage provisions of Bureau of Alcohol, Tobacco and Firearms regulations in 27 CFR Subpart J of Part 181, and as prescribed in this subpart.

§ 77.1301 Magazine; location.

(a) In addition to the magazine location requirements of Bureau of Alcohol, Tobacco and Firearms regulations in 27 CFR Subpart J of Part 181 the magazine shall be:

(1) Located outside the blasting area, and

(2) Located at distances from any office, shop, tipple or plant, wash and changehouse, and any stationary equipment, structure or facility used in the mine operation including fans, fan housings, mine openings, dams and electrical transformers or substation installations as specified for "inhabited buildings" in the "American Table of Distances for Storage of Explosives" as revised and approved by the Institute of Makers of Explosives (IME)—November 5, 1971, and published in the Code for the Manufacture, Transportation, Storage, and Use of Explosive Materials 1973, NFPA No. 495, pages 59 through 62.

§ 77.1302 Magazine; storage.

In addition to storage provisions of Bureau of Alcohol, Tobacco and Firearms regulations in 27 CFR Subpart J of Part 181, the following shall apply:

(a) Ammonium nitrate-fuel oil blasting agents shall be separated from explosives or detonating cord stored in the same magazine and in such a manner that oil does not contaminate the explosives or detonating cord.

(b) The magazines shall be detached structures located at least 50 feet away from that point or area directly beneath powerlines.

(c) The magazine area shall be posted with appropriate danger signs which are so located that a bullet passing in the direction of the sign will not strike the magazine.

(d) The magazines shall be unheated unless heating can be provided in a manner that does not create a fire or explosion hazard.

(e) Containers of explosives or blasting agents shall be stacked in a stable manner, but not more than 8 feet high.

§ 77.1303 Persons permitted to use explosives.

(a) Each blasting operation shall be under the direct supervision of a person trained and experienced in the handling of explosives and blasting agents.

(b) Trainees shall work under the direct supervision of and in the immediate presence of a trained and experienced person.

§ 77.1304 Transport of explosives or blasting agents.

(a) Vehicles used to transport explosives shall have substantially constructed bodies, no sparking metal exposed in the cargo space, and shall be equipped with suitable sides and tail gates. Explosives shall not be piled higher than the side or end of the cargo space.

(b) Vehicles used to transport explosives or blasting agents shall be maintained in good condition and shall be operated at a safe speed and in accordance with safe operating practices.

(c) Vehicles containing explosives or blasting agents shall be posted with appropriate warning signs.

(d) Other materials or supplies shall not be placed on or in the cargo space of a vehicle containing explosives, except for properly secured nonsparking equipment used expressly in the handling of such explosives.

(e) Explosives or blasting agents shall be transported in separate vehicles from detonators unless in closed containers separated by 4 inches of substantially fastened hardwood or equivalent partition.

(f) Explosives or blasting agents shall be transported without undue delay and over routes and at times that expose a minimum number of persons.

(g) Only persons necessary for safe transport shall ride in vehicles containing explosives or blasting agents.

(h) Vehicles shall be attended while loaded with explosives or blasting agents except in areas where charging is in progress.

(i) When vehicles containing explosives or blasting agents are parked, the brakes shall be set, the motive power shut off unless utilized to discharge bulk blasting agents. The vehicle shall be provided with chocks and the vehicle blocked securely against rolling when parked on a grade.

(j) Vehicles containing explosives or blasting agents shall not be taken to a repair garage or shop for any purpose.

(k) Vehicles used to transport blasting agents to the blasting site shall have substantially constructed bodies with no zinc or copper exposed in the cargo space. If an end screw is used to discharge the blasting agents from the vehicle, the conveyor shall be constructed to prevent development of excessive internal pressure and frictional heat in the blasting agent.

(l) Over-the-road, drop-off vans containing blasting agents shall be effectively ventilated with at least two screened ventilation openings near the

floor and the ceiling when serving as a storage facility, but these ventilation openings shall be closed off securely during transport of the blasting agent.

(m) Caution shall be exercised in the movement of the vehicle in the blasting area to avoid driving the vehicle over or dragging hoses over firing lines, detonator wires, explosives, blasting agents or detonators.

§ 77.1305 Priming of explosives or blasting agents.

(a) Primers shall be made up only at the time of charging and as close to the blasting area as conditions allow.

(b) Primers: (1) Containing a detonator shall be prepared with the detonator contained securely and completely within the explosive charge or within a suitable tunnel or cap well.

(2) Using detonating cord shall be prepared with the detonating cord threated through, attached securely to, or otherwise in intimate contact with the explosive charge.

(c) Adequate priming shall be employed to minimize misfires, toxic fumes, and poor performance.

(d) Only nonsparking implements shall be used to punch holes in an explosive cartridge.

(e) Tamping poles shall be of wood or other material acceptable to MESA. Couplers of tamping poles shall be of nonsparking materials.

(f) Tamping shall not be done directly on a primer.

(g) Charging of boreholes shall be suspended and persons withdrawn from the blasting area to a safe location upon the approach and progress of an electrical storm.

§ 77.1306 Firing of explosive charges.

(a) Safety fuse and blasting cap initiation shall not be used.

(b) Electrical blasts shall be fired only with instruments designed specifically for initiating electrical detonators, and having adequate capacity for the number of electrical detonators, the resistance of the blasting circuit and the type of blasting circuit used.

(c) A person trained and experienced in the handling of explosives and blasting agents and who is authorized by the operator to fire the shots shall control the electrical firing device.

(d) Electric blasting caps of different manufacturers shall not be used in the same circuit.

(e) Blasting circuits and electric blasting caps which are capable of being initiated by conventional power sources shall be protected from sources of extraneous electricity.

(f) When blasting electrically, a basting galvanometer, or other instruments that are specifically designed for testing blasting circuits, shall be used to test:

(1) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line,

(2) Continuity of blasting lines prior to the connection of electric blasting cap series, and

(3) Total blasting circuit resistance prior to connection to the power source.

(g) Except when being tested for continuity or resistance:

(1) Electric blasting caps shall be kept shunted until being connected to the blasting line or wired into a blasting circuit,

(2) Wired rounds shall be kept shunted until being connected to the blasting line, and

(3) Blasting lines shall be kept shunted until immediately before blasting.

(h) Blasting lines shall be properly insulated and kept in good repair.

(i) Electric blasting shall be prohibited in the vicinity of operating radio frequency (RF) transmitters except within clearances as published in the Institute of Makers of Explosive (IME), Publication No. 20, March 1971, "Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Electric Blasting Caps."

(j) Appropriate warning signs shall be posted on all roads within 350 feet of charging operations, when blasting electrically, prohibiting the use of mobile radio transmitters except in accordance with paragraph (i) of this section.

§ 77.1307 Detonating cord.

(a) Delay connectors shall be treated and handled with the same safety precautions as detonators.

(b) Detonating cord shall not be used if it has been kinked, bent sharply or otherwise damaged.

(c) The line of detonating cord extending out of a borehole shall be cut from the supply spool after the primer is correctly positioned and the line secured.

(d) All detonating cord knots shall be tight and all connections shall be kept at right angles to the trunk lines.

§ 77.1308 Blasting area.

(a) Substantial non-conductive closed containers shall be used to carry explosives other than blasting agents to the blasting area.

(b) Explosives or blasting agents shall be kept separated from detonators until charging is started.

(c) Smoking and open flame shall not be permitted within 50 feet of the area in which explosives or blasting agents are being handled and used.

(d) Unused explosives, blasting agents and detonators shall be moved to a safe location as soon as practical after charging operations are completed.

(e) Boreholes shall be stemmed immediately after charging. Shots shall be fired as soon as practical after stemming has been completed.

(f) Areas in which charged holes are being finally prepared for firing shall be guarded, or barricaded and posted, or flagged against unauthorized entry.

(g) Work activities may be conducted within the blasting area containing charged holes, *Provided*, That:

(1) Detonating cord shall be protected from physical damage.

(2) Refueling operations shall not be conducted within a horizontal distance of 100 feet of a charged hole.

(3) Burning, cutting or welding shall not be conducted within a horizontal distance of 100 feet of a charged hole unless such work is done in a fire resistant enclosure.

(4) Drilling operations shall not be conducted within a horizontal distance of 25 feet of a charged hole, and

(5) Energized electric equipment and energized power distribution circuits including trailing cables and feeder cables shall not be within a horizontal distance of 50 feet of a charged hole.

(h) Ample warning shall be given before blasts are fired. All persons shall be removed from the blasting area.

(i) The firing of blasts shall be conducting during daylight hours, except in shafts and slopes driven to depths where no flying material can reach the surface.

(j) Blasting areas shall not be reentered after firing until dangerous concentrations of smoke, dust and fumes have been reduced to safe limits.

(k) Special precautions shall be taken when blasting in close proximity to underground operations, and no blasting shall be done that would be hazardous to persons working underground.

§ 77.1309 Misfires and damaged explosives or blasting agents.

(a) Damaged or deteriorated explosives or blasting agents shall be destroyed in a safe manner under the instructions of the explosives or blasting agents manufacturer or his designated agent.

(b) Misfires shall be reported to the proper supervisor and shall be disposed of safely before any other work is performed in that blasting area.

(c) No person shall return to a misfired hole for at least 15 minutes.

(d) If explosives or blasting agents are suspected of burning in a hole, all persons in the blasting area shall move to a safe location and no person shall return to the hole for at least one hour.

(e) Blasted areas shall be examined for undetonated explosives or blasting agents after each blast and undetonated explosives or blasting agents found shall be disposed of in accordance with paragraph (a) of this section.

(f) Holes shall be not be drilled where there is danger of intersecting a charged or misfired hole.

§ 77.1310 Blasting agents; special provisions.

Ammonium nitrate and the components used for the sensitizing thereof shall be stored, mixed, transported and used in accordance with the recommendations in Bureau of Mines Information Circular 8179, "Safety Recommendations for Sensitized Ammonium Nitrate Blasting Agents, 1963."

§ 77.1311 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in Subpart A of this part and in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA, Bureau of Alcohol,

Tobacco and Firearms regulations and Department of Transportation regulations are available from the U.S. Government Printing Office, Washington, D.C. 20402. The Code for the Manufacture, Transportation, Storage, and Use of Explosive Materials 1973, NFPA No. 495 is available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. IME Publication No. 20, March 1971 is available from the Institute of Makers of Explosives, 420 Lexington Ave., New York, N.Y. 10017. Bureau of Mines Information Circular 8179 is available from the Assistant Administrator—Technical Support, MESA, 4015 Wilson Blvd., Arlington, Va. 22203. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart O—Hoisting, Elevators, and Manlifts

§ 77.1400 Hoists and other hoisting devices.

The standards set forth in §§ 77.1400 through 77.1405–1, apply to hoists and other hoisting devices, together with their appurtenances, used to transport persons.

§ 77.1401 Automatic controls and brakes.

Hoists and other hoisting devices shall be equipped with overspeed controls, overtravel controls, automatic stop controls and brakes. Such controls and brakes shall be protected from the weather to prevent malfunction and shall perform as prescribed in §§ 77.1401–1 through 77.1401–6.

§ 77.1401–1 Overspeed controls.

Overspeed controls on hoists and other hoisting devices shall be directly driven from the hoist drum or drum shaft and, when activated, shall interrupt the power, set the hoist drum brakes, and bring the conveyance to a safe stop. Overspeed activation for hoists and other hoisting devices shall be at a setting not to exceed 115 percent of the rated safe man hoisting speed. Deceleration for hoists and other hoisting devices shall not be greater than 6 feet per second per second.

§ 77.1401–2 Overtravel controls.

Overtravel controls shall be provided on all hoists and other hoisting devices to automatically prevent overtravel of the conveyance. These controls shall be driven from the hoist drum or drum shaft, or activated by the conveyance travel to bring the conveyance to a safe stop.

§ 77.1401–3 Automatic stop controls.

Hoists and other hoisting devices shall be equipped with controls which will cause automatic application of the brakes in case of operator or power failure. A manual override of the controls shall be provided to permit lowering the conveyance by means of the brakes in case of emergency.

§ 77.1401–4 Brakes.

Hoists and other hoisting devices shall be equipped with at least two independent brakes, one of which shall be on the drum. Each brake shall be capable of safely stopping a fully loaded conveyance traveling at the maximum allowable hoisting speed and holding the fully loaded conveyance at any point. These two brakes shall be operable at all times. The mechanism that operates the brakes shall be guarded to prevent material or tools from accidentally fouling or jamming the brake system. These two brakes shall be arranged so that the failure of one brake will not interfere with proper operation of the other brake. Persons shall not be lowered by the brakes alone, except as provided in § 77.1401–3.

§ 77.1401–5 Indicators.

An accurate and reliable indicator of the position of the conveyance shall be provided except where the conveyance is visible at all times to the operator. The indicator shall be driven from the hoist drum or drum shaft by a chain, gear or other direct drive and show the position of the conveyance at all times. This indicator shall be placed so that it is in clear view of the operator.

§ 77.1402 Rated capacity.

Loads transported by hoists and other hoisting devices shall not exceed rated capacities of the hoist, conveyance, rope, rope fastenings used, and the static load safety factors of the ropes as prescribed in § 77.1402–1(b).

§ 77.1402–1 Wire ropes and wire rope attachments.

(a) American National Standards Institute "Specifications for the Use of Wire Ropes for Mines," M11.1–1960, shall be used as a guide in the use, selection, installation, and maintenance of wire ropes used for hoisting.

(b) The following static load safety factors shall be used for selecting ropes to be used on hoists and for determining when such ropes shall be removed from hoists:

Length of rope in shaft (feet)	Minimum factor of safety (new rope)	Minimum factor of safety (remove)
500 or less	8	6.4
501 to 1,000	7	5.8
1,001 to 2,000	6	5.0
2,001 to 3,000	5	4.3
3,001 or more	4	3.6

(c) Wire rope shall be removed when inspection shows:

(1) Six randomly distributed broken wires in one rope lay or three broken wires in one standard in one rope lay. Snagged, nicked or severely bent wires shall be counted as broken wires; or

(2) Abrasion, scrubbing or peening causing loss of more than ⅓ the original diameter of the outside individual wires; or

(3) Evidence of rope deterioration from corrosion; or

(4) Kinking, crushing or other damage that results in distortion of the rope structure; or

(5) Reduction in nominal rope diameter determined as follows:

(i) 1/64 inch for rope diameters up to and including 5/16 inch;

(ii) 1/32 inch for rope diameters 3/8 inch to ½ inch inclusive;

(iii) 3/64 inch for rope diameters 9/16 inch to ¾ inch inclusive;

(iv) 1/16 inch for rope diameters 7/8 inch to 1⅛ inches inclusive;

(v) 3/32 inch for rope diameters 1¼ inches to 1½ inches inclusive;

(vi) Rope diameters over 1½ inches, as recommended by the wire rope manufacturer.

(d) Wire rope attachments shall be replaced when inspection shows:

(1) Improper installation of attachment; or

(2) Cracked, deformed, excessively worn, or loosened attachments; or

(3) Wire rope slippage at attachment; or

(4) More than one broken wire at the point of attachment of a spelter filled or swaged attachment.

§ 77.1402–2 Maximum load; posting.

The operator shall designate and conspicuously post on each conveyance the maximum number of persons permitted to ride on the conveyance.

§ 77.1402–3 Bridle chains or cables.

Each conveyance shall be provided with two bridle chains or cables which are connected securely to the rope at least 3 feet above the socket or at least 3 feet above the last rope clip if a thimble is used and which are securely fastened to the conveyance.

§ 77.1403 Inspection and maintenance.

(a) Hoists and other hoisting devices shall be inspected daily when in use and such inspections shall include, but not be limited to, the following:

(1) A visual inspection of the rope for wear, broken wires, and corrosion, especially at excessive strain points;

(2) An inspection of the rope fastenings for defects;

(3) An inspection of the conveyance for loose, missing, or defective parts;

(4) An inspection of sheaves for broken flanges, defective bearings, rope alignment, and proper lubrication; and

(5) An inspection of the automatic controls, indicator, and brakes.

(b) A report of the daily inspections shall be signed by the person making such inspection and the report shall be signed or countersigned by any of the persons listed in § 77.1713(d).

(c) Prior to each working shift, and before a hoist or other device is returned to service after it has been out of normal service for any reason, and if a change of hoistmen is made for any reason, it shall be operated by the hoistman through one complete cycle of operation before any person is permitted to be transported.

(d) The ropes of hoists and other hoisting devices shall be kept well lubri-

cated from end to end as recommended by the manufacturer.

(e) Persons shall not be permitted to ride on a conveyance with tools or materials other than small hand tools.

§ 77.1404 Qualified hoistman.

Hoists and other hoisting devices shall be under the control of and operated by a qualified hoistman when persons are being transported, except for automatically operated hoists.

§ 77.1405 Communications.

There shall be at least two effective methods approved by the Secretary of signaling between each station and the hoistman, one of which shall be by voice transmission.

§ 77.1405–1 Standard signaling code.

A standard code of hoisting signals shall be adopted, used, and conspicuously posted within easy view of the hoistman and at each station. Movement of a conveyance on a single audible signal shall be prohibited unless preceded by a preliminary signal.

§ 77.1406 Elevators.

Elevators shall comply with the requirements of American National Standards Institute (ANSI) A17.1–1971 with addenda A17.1A–1972, A17.1B–1973 and A17.1C–1974, and shall be inspected in accordance with ANSI A17.2–1973 and § 77.1403.

§ 77.1407 Manlifts.

Manlifts shall be installed, maintained, inspected, and operated in accordance with the requirements of the American Society of Mechanical Engineers (ASME) "Safety Standard for Manlifts" USAS A90.1–1969 and addenda ANSI A90.1A–1972.

§ 77.1408 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. ANSI publications are also available from the American National Standards, Inc., 1430 Broadway, New York, N.Y. 10018. ASME publications are also available from the American Society of Mechanical Engineers, 345 E. 47th St., New York, N.Y. 10017. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

Subpart P—Auger Mining

§ 77.1500 Auger mining; planning.

Auger mining shall be planned and conducted by the operator to insure against any hazard to underground workings located at or near such auger operations and all auger holes shall be located so as to prevent:

(a) The disruption of the ventilation system of any active underground mine.

(b) Inundation hazards from surface water entering any active underground mine.

(c) Damage to the roof and ribs of active underground workings.

(d) Intersection of auger holes with underground mine workings known to contain dangerous quantities of impounded water.

§ 77.1501 Auger mining; inspections.

(a) The face of all highwalls, to a distace of 25 feet on both sides of each drilling site, shall be inspected by a certified person before any augering operation is begun, and at least once during each coal producing shift, and all loose hazardous material shall be removed from the drilling site before persons are permitted to enter the drilling area. The results of all such inspections shall be recorded daily in a book approved by the Secretary.

(b) In addition, the face of all highwalls, to a distance of 25 feet on both sides of each drilling site, shall be inspected frequently by a certified person during any auger operation conducted either during or after a heavy rainfall, or during any period of intermittent freezing and thawing and the results of such inspections shall be recorded as provided in paragraph (a) of this section.

(c) When an auger hole penetrates an abandoned or mined out area of an underground mine, tests for methane shall be made at the collar of the hole by a qualified person using a methane detector approved by the Secretary to determine if dangerous quantities of methane are present or being emitted. If such is found, no further work shall be performed until the atmosphere has been made safe.

(1) At least one methane detector shall be available at all times at each auger machine for the use of qualified persons.

(2) Internal combustion engines shall not be operated in the vicinity of any auger hole in which tests for methane are being made.

§ 77.1502 Auger holes; restriction against entering.

No person shall be permitted to enter an auger hole except with the approval of the Coal Mine Health and Safety District Manager or Subdistrict Manager of the district in which the mine is located and under such conditions as may be prescribed by him.

§ 77.1503 Auger equipment; overhead protection.

(a) Auger machines which are exposed to highwall hazards, together with all those parts of any coal elevating conveyors, where persons are required to work during augering operations, shall be covered with heavy gauge screen which does not obstruct the view of the highwall and is strong enough to prevent injuries to persons from spalling material.

(b) No work shall be done under any overhang and, when a crew is engaged in connecting or disconnecting auger sections under a highwall, at least one person shall be assigned to observe the highwall for possible movement.

§ 77.1504 Auger equipment; operation.

(a) Persons shall be kept clear of the auger train while it is in motion and shall not be permitted to pass under or over an auger train, except where adequate crossing facilities are provided.

(b) Persons shall stay clear of auger sections being swung into position.

(c) No person, including the auger machine operator, shall be stationed in direct line with the borehole during augering operations.

(d) The operator of auger equipment shall not leave the controls of such equipment while the auger is in operation.

§ 77.1505 Auger holes; blocking.

Auger holes shall be blocked with inert material to within 200 feet of the active working area. All auger holes shall be blocked with inert material within 30 days after the hole has been drilled.

Subpart Q—Loading, Haulage, Stripping, Drilling and Reclamation

§ 77.1600 Loading, haulage, stripping, drilling and reclamation areas; general.

(a) Only authorized persons shall be permitted on roads on coal mine property at loading, dumping, stripping, drilling and reclamation areas.

(b) Traffic rules, signals and warning signs shall be standardized at each mine and conspicuously posted.

(c) Where side or overhead clearances on any haulage road or at any loading or dumping location at the mine are hazardous, such areas shall be conspicuously marked or warning devices shall be installed.

(d) Guard nets or other suitable protection against spillage shall be provided where a tramway, roadway, elevated track or any type of conveyor passes over a roadway, walkway or building.

(e) Chute-loading installations shall be designed so that the persons pulling chutes are not required to be in a hazardous position during loading operations.

(f) Cabs of self-propelled equipment shall be kept free of extraneous materials.

(g) Operators shall sit facing the direction of travel while operating equipment with dual controls.

(h) When an equipment operator is present, persons shall notify him before getting on or off equipment.

(i) Equipment operators shall be certain, by signal or other means, that all persons are clear before starting or moving equipment unless the equipment is designed to have persons board and leave it safely without such notification.

(j) Dust control measures shall be taken where dust significantly reduces visibility of equipment operators.

§ 77.1601 Transportation of persons; restrictions.

No person shall be permitted to ride or be otherwise transported on or in the

following equipment whether loaded or empty:

(a) Dippers, shovels, buckets, forks, and clamshells.

(b) The cargo space of dump trucks or haulage equipment used to transport coal or other material.

(c) Outside the cabs and beds of self-propelled equipment.

(d) Chain, belt, or bucket conveyors, except where such conveyors are specifically designed to transport persons.

§ 77.1602 Use of aerial tramways to transport persons.

(a) Persons shall not ride loaded buckets on aerial tramways.

(b) Persons other than maintenance persons shall not ride empty buckets on aerial tramways. Prior to maintenance persons riding aerial tramways, an examination of the protective safety devices required in paragraphs (b)(1) through (b)(4) of this section shall be made and a record kept of such examinations. When maintenance men ride empty aerial tramways, the following shall be provided:

(1) Two independent brakes, each capable of stopping and holding the maximum load.

(2) Direct communication between terminals.

(3) Power drives with emergency power available in case of primary power failure.

(4) Buckets equipped with positive locks to prevent accidental tripping or dumping.

§ 77.1603 Aerial tramways; installations; operations.

(a) Positive-action type brakes shall be provided on aerial tramways.

(b) Guards shall be installed to prevent swaying buckets from hitting the towers of aerial tramways.

(c) Aerial tramway cable connections shall be designed to offer minimum obstruction to the passage of wheels.

(d) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices, or other suitable devices.

(e) When the entire length of an aerial tramway is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting such equipment. When the entire length of such equipment is not visible from the starting switch, an audible alarm system shall be installed and operated to warn persons that such equipment will be started.

(f) Aerial tram buckets shall not be overloaded, and feed shall be regulated to prevent spillage.

§ 77.1604 Conveyors; installations; operations.

(a) When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting such equipment. When the entire length of such equipment is not visible from the starting switch, an audible alarm system shall be installed and operated to warn persons that such equipment will be started.

(b) Unguarded conveyors with walkways shall be equipped with emergency stop devices or cords along their full length.

(c) Adequate backstops or brakes shall be installed on inclined-conveyor drive units to prevent conveyors from running in reverse, or out of control in the forward direction, if a hazard to personnel would be caused.

(d) Before startup of equipment in a preparation plant and in the event of an emergency in such plant, an audible alarm shall be sounded.

§ 77.1605 Railroad trains; installations; operations.

(a) Only authorized persons shall ride on a train or locomotive, and they shall ride in a safe position.

(b) Persons shall not get on or off moving equipment.

(c) No man-trip vehicle or other track conveyance used to transport persons to and from work areas shall be overcrowded, and all persons shall ride in a safe position.

(d) Supplies, materials, and tools other than handtools shall not be transported with persons in man-trip vehicles unless such vehicles are specifically designed to make such transportation safe.

(e) All self-propelled rail haulage equipment shall be provided with hydraulic brakes, pneumatic brakes or dynamic braking in addition to manual brakes, each capable of stopping and holding the maximum load.

(f) Equipment operating speeds shall be consistent with conditions of roadways, grades, clearance, visibility, traffic, and the type of equipment used.

(g) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices, or other suitable devices.

(h) Ramps and dumps shall be of solid construction, of ample width, have ample clearance and headroom, and be kept reasonably free of spillage.

(i) Where practicable, a minimum of 30 inches continuous clearance from the farthest projection of moving railroad equipment shall be provided on at least one side of the tracks; all places where it is not possible to provide 30 inches clearance shall be marked conspicuously. If less than 18 inches continuous clearance is maintained on either side of the tracks, the area shall be barricaded against entry.

(j) Track guardrails, lead rails, and frogs shall be protected or blocked so as to prevent a person's foot from becoming wedged.

(k) Positive-acting stop-blocks, derail devices, track skates, or other adequate means shall be installed wherever necessary to protect persons from runaway or moving railroad equipment.

(l) Switch throws shall be installed to provide adequate clearance for switchmen.

(m) Where necessary, bumper blocks or the equivalent shall be provided at all track dead ends.

(n) Car droppers shall not ride on the front of moving trips or on the front of a single car which is being dropped.

(o) Cars shall be dropped at a safe rate and in a manner that will insure that the car dropper maintains a safe position while working and traveling around the cars.

(1) Safe operating procedures shall be established and maintained and shall be posted in a conspicuous place and distributed to each person engaged in car dropping operations.

(2) Cars shall be inspected for defective brakes before dropping and such defective cars shall not be loaded and shall not be dropped without the aid of hoists or equivalent means.

(3) An audible alarm shall be sounded before any car or cars are dropped.

(p) Persons shall wear and use safety belts when dropping railroad cars.

(q) Railroad cars shall not be left on sidetracks unless ample clearance is provided for traffic on adjacent tracks.

(r) Railroad cars shall not be coupled or uncoupled manually from the inside of curves unless the railroad and cars are so designed to eliminate any hazard from coupling or uncoupling cars from inside of curves.

(s) Railroad cars shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

§ 77.1606 Rubber tire and crawler mounted mobile equipment; installations; operations.

(a) No mobile equipment used to transport persons to and from work areas shall be overcrowded, and all persons shall ride in a safe position.

(b) Supplies, materials, and tools other than handtools shall not be transported with persons in man-trip vehicles unless such vehicles are specifically designed to make such transportation safe.

(c) Cab windows shall be of safety glass or the equivalent, and shall be in good condition and kept clean.

(d) Self-propelled equipment shall be equipped with brakes capable of stopping and holding the maximum load. All such equipment shall be equipped with parking brakes capable of holding the maximum load.

(e) Self-propelled equipment shall be provided with an audible warning device and lights visible from both ends.

(f) Ramps and dumps shall be of solid construction, of ample width, have ample clearance and headroom, and be kept reasonably free of spillage.

(g) Berms or guards shall be provided on the outer banks of elevated roadways, or:

(1) The width of single lane roads shall be one and a half times the width of the widest vehicle that normally uses the road. The width of two lane roads shall be two and one-half times the width of the widest vehicle that normally uses the road; and

(2) The traffic control system shall require loaded haulage vehicles to be driven on the natural protected side of the elevated roadways regardless of their direction of travel; and

(3) Roadway signs and markings shall be suitable, located along the elevated roadways and at other potential hazard-

ous locations that indicate proper safeguards to be taken, such as safe vehicle speed and gear.

(h) All bridges shall be of sufficient strength to support the maximum potential load. All bridges constructed after [the effective date of this section] shall be at least one and one half times the width of the widest vehicle which regularly uses such bridge.

(i) Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent overtravel and overturning at dumping locations.

(j) Equipment operating speeds shall be consistent with conditions of roadway, grades, clearance, visibility, traffic, and the type of equipment used.

(k) Dippers, buckets, loading booms, or suspended loads shall not be swung over the cabs of haulage vehicles until the drivers are out of the cabs and in safe locations.

(l) Persons shall not work or pass under the booms of any self-propelled equipment when such booms may be hazardous.

(m) Electrically powered mobile equipment shall not be left unattended unless the master switch is in the off position, all operating controls are in the neutral position, and the brakes are set or other equivalent precautions are taken against rolling.

(n) Self-propelled equipment shall not be left unattended unless the brakes are set. The wheels shall be turned into a bank or berm, or shall be blocked, when such equipment is parked on a grade.

(o) Lights, flares, or other warning devices shall be positioned to the front and rear on the traffic side or sides of parked equipment when such parked equipment creates a hazard to vehicular traffic.

(p) Dippers, buckets, scrapper blades, and similar movable parts shall be secured or lowered to the ground when not in use.

(q) Equipment which is to be hauled shall be loaded and protected to prevent sliding or spillage.

(r) When moving between work areas, the components of the equipment shall be secured in the travel position.

(s) Any load extending more than 4 feet beyond the rear of the vehicle body shall be marked clearly at the end of the projection with a warning flag by day and a warning light at night.

(t) Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar. Persons shall not be permitted to get between the towed and towing vehicles or vehicles being prepared for towing operations until both vehicles have been stopped and secured against movement.

(u) All trucks shall be trimmed properly when they have been loaded higher than the confines of their cargo space.

§ 77.1607 Dumping facilities.

(a) Dumping locations and haulage roads shall be kept reasonably free of water, debris, and spillage.

(b) Where the ground at a dumping place may fail to support the weight of a loaded dump truck, trucks shall be dumped a safe distance back from the edge of the bank.

(c) Adequate protection shall be provided at dumping locations where persons may be endangered by falling material.

(d) Grizzlies, grates, and other sizing devices at dumping and transfer points shall be anchored securely in place.

(e) If truck spotters are used, they shall be well in the clear while trucks are backing into dumping position and dumping, and they shall use lights at night to direct trucks.

10. Sections 77.1700 through 77.1710 are revised as follows:

Subpart R—Miscellaneous

§ 77.1700 Communications in work areas.

No persons shall be assigned, or allowed, or be required to perform work alone in any area where hazardous conditions exist that would endanger his safety unless he can communicate with others, can be heard, or can be seen.

§ 77.1701 Emergency communications; requirements.

(a) Each operator of a surface coal mine shall establish and maintain a communication system from the mine to the nearest point of medical assistance for use in an emergency.

(b) The emergency communication system required to be maintained under paragraph (a) of this section may be established by telephone or radio transmission or by any other means of prompt communication to any facility (for example, the local sheriff, the State highway patrol, or local hospital) which has available the means of communication with the person or persons providing emergency medical assistance or transportation in accordance with the provisions of paragraph (a) of this section.

§ 77.1702 Arrangements for emergency medical assistance and transportation for injured persons; reporting requirements; posting requirements.

(a) Each operator of a surface coal mine shall make arrangements with a licensed physician, medical service, medical clinic, or hospital to provide 24-hour emergency medical assistance for any person injured at the mine.

(b) Each operator shall make arrangements with an ambulance service, or otherwise provide for 24-hour emergency transportation for any person injured at the mine.

(c) Each operator shall report to the Coal Mine Health and Safety District Manager for the district in which the mine is located the name, title and address of the physician, medical service, medical clinic, hospital, or ambulance service with whom arrangements have been made, or otherwise provided, in accordance with the provisions of paragraphs (a) and (b) of this section.

(d) Each operator shall, within 10 days after any change of the arrangements required to be reported under the provisions of this section, report such changes to the Coal Mine Health and Safety District Manager. If such changes involve a substitution of persons, the operator shall provide the name, title, and address of the person substituted together with the name and address of the medical service, medical clinic, hospital, or ambulance service with which such person or persons are associated.

(e) Each operator shall, immediately after making an arrangement required under the provisions of paragraphs (a) and (b) of this section, or immediately after any change in such agreement, post at appropriate places at the mine the names, titles, addresses, and telephone numbers of all persons or services currently available under such arrangements to provide medical assistance and transportation at the mine.

§ 77.1703 First aid training; supervisory employees.

Within 90 days after [the effective date of this section], each operator of a surface coal mine shall conduct a first aid training course for all supervisory employees at the mine who have not had such training within one year and report in writing to the District Manager the names and job titles of all supervisory employees so trained. New supervisory employees shall be provided such training within 90 days of the date of employment as a supervisor.

§ 77.1704 First aid training program; retraining of supervisory employees.

Each operator of a surface coal mine shall conduct refresher first aid training programs each calendar year for all supervisory employees at the mine.

§ 77.1705 First aid training program; requirements.

(a) First aid training programs required under § 77.1703 shall include 10 class hours of training in a course of instruction similar to that outlined in "First Aid, A Bureau of Mines Instruction Manual."

(b) Refresher first aid training programs required under § 77.1704 shall include 5 class hours of refresher training in a course of instruction similar to that outlined in "First Aid, A Bureau of Mines Instruction Manual."

§ 77.1706 First aid equipment; location; requirements.

(a) A supply of the first aid equipment set forth in paragraph (b) of this section shall be maintained at each surface coal mine and surface work area of underground coal mine as follows:

(1) At or near each working place where coal is being mined;

(2) At each preparation plant; and,

(3) At shops and other surface installations where ten or more persons are regularly employed.

(b) The first aid equipment required to be maintained under the provisions of paragraph (a) of this section shall include at least the following:

(1) One stretcher;

(2) One broken-back board (a splint-stretcher combination may be used to satisfy the requirements of paragraphs (b)(1) and (b)(2) of this section);

(3) Twenty-four triangular bandages (15 if a splint-stretcher combination is used);
(4) Eight 4-inch bandage compresses;
(5) Eight 2-inch bandage compresses;
(6) Twelve 1-inch adhesive compresses;
(7) An approved burn remedy;
(8) Two cloth blankets;
(9) One rubber blanket or equivalent substitute;
(10) Two tourniquets;
(11) One 1-ounce bottle of aromatic spirits of ammonia or 1 dozen ammonia ampules; and,
(12) The necessary complements of arm and leg splints or two each inflatable arm and leg splints.

(c) All first aid supplies required to be maintained under the provisions of paragraphs (a) and (b) of this section shall be stored in suitable, sanitary, dust tight, moisture proof containers and such supplies shall be accessible to the miners.

§ 77.1707 Safety program for supervisory employees.

Each operator of a surface coal mine shall establish and maintain for all supervisory employees a program of instruction with respect to the safety regulations and procedures to be followed at the mine.

§ 77.1708 Distribution of safety regulations.

Each operator shall distribute to each employee, safety regulations and procedures to be followed at the mine.

§ 77.1709 [Reserved]

§ 77.1710 Protective clothing; requirements.

Each employee shall be required to wear protective clothing and devices as follows:

(a) Protective clothing or equipment and faceshields or goggles shall be worn when welding, cutting, or working with molten metal or when other hazards to the eyes exist.

(1) Eye and face protection equipment required by this subpart shall meet the requirements prescribed in American National Standards Institute (ANSI) Z87.-1-1968, "Practice for Occupational and Educational Eye and Face Protection."

(2) Employees whose vision requires the use of corrective lenses, when required by this regulation to wear eye protection, shall be protected by goggles or spectacles of one of the following types:

(i) Safety glass spectacles whose protective lenses provide optical correction.

(ii) Goggles or faceshields that can be worn over corrective lenses without disturbing the lens adjustment.

(iii) Goggles that incorporate corrective lenses mounted behind protective lenses.

(3) Face and eye protection equipment shall be kept clean and in good repair. Eye protection equipment with structural or optical defects shall not be used.

(b) Suitable protective clothing to protect the entire body when handling corrosive or toxic substances or other materials which might cause injury to the skin.

(c) Protective gloves when handling materials or performing work which might cause injury to the hands; however, gloves shall not be worn where they would create a greater hazard by becoming entangled in the moving parts of equipment.

(d) A suitable hard hat or cap when in or around a mine or plant where falling objects or exposed electric circuits may create a hazard.

(1) Hard hats or caps used for protection against impact and penetration of falling or flying objects shall meet specifications for helmets prescribed in American National Standards Institute (ANSI) Z89.1–1969, "Safety Requirements For Industrial Head Protection."

(2) Hard hats or caps used for head protection of employees exposed to electrical shock and burns shall meet specifications for helmets as prescribed in American National Standards Institute (ANSI) Z89.2, 1971, "Safety Requirements For Industrial Protective Helmets For Electrical Workers, Class B."

(e) Suitable protective footwear.

(f) Snug-fitting clothing when working around moving machinery or equipment.

(g) Safety belts and lines where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.

(1) Lifelines, safety belts, and lanyards shall be used only as an employee safeguard. Any lifeline, safety belt, or lanyard actually subjected to in-service loading, as disinguished from static load testing, shall be immediately removed from service and shall not be used again as an employee safeguarding device.

(2) Where possible, lifelines shall be secured above the point of operation to an anchorage or structural member capable of supporting a minimum dead weight of 5,400 pounds.

(3) Safety belt lanyards shall be constructed of a minimum of ½-inch nylon or equivalent material, with a maximum length to provide for a fall not greater than 6 feet. The rope shall have a nominal breaking strength of 5,400 pounds.

(4) All safety belt and lanyard hardware, except rivets, shall be capable of withstanding a tensile loading of 4,000 pounds without fracturing or taking a permanent deformation.

(h) U.S. Coast Guard approved lifejackets or belts where there is danger from falling into water.

(i) Seatbelts in a vehicle where there is a danger of overturning and where roll protection is provided.

(1) Seatbelts shall meet the requirements of the Society of Automotive Engineers (SAE), "Motor Vehicle Seatbelts Assemblies"—SAE J4c, approved November 1955, revised July 1965; "Seatbelt Hardware Test Procedures"—SAE J140a, approved April 1970, revised February 1973; and "Seatbelt Hardware Performance Requirements"—SAE J141 and "Seatbelts for Construction Equipment"—SAE J386, approved March 1968.

11. Sections 77.1711 through 77.1713 are revised and a new § 17.1714 is added as follows:

§ 77.1711 Smoking prohibition.

No person shall smoke or use an open flame where such practice may cause a fire or explosion.

§ 77.1712 Reopening mines; notifications; inspection prior to mining.

Prior to reopening any surface coal mine after it has been abandoned or declared inactive by the operator, the operator shall notify the Coal Mine Health and Safety District Manager for the district in which the mine is located, and an inspection of the entire mine shall be completed by an authorized representative of the Secretary before any mining operations in such mine are instituted.

§ 77.1713 Daily inspection of surface working areas and installations; certified persons; reports of inspection.

(a) At least once during each working shift, or more often if necessary for safety, each active working area and each active surface installation shall be examined by a certified person designated by the operator to conduct such examinations for hazardous conditions and any hazardous conditions noted during such examinations shall be reported to the operator and shall be corrected by the operator.

(b) If any hazardous condition noted during an examination conducted in accordance with paragraph (a) of this section creates an imminent danger, the person conducting such examination shall notify the operator and the operator shall withdraw all persons from the area affected, except those persons referred to in section 104(d) of the Act, until the danger is abated.

(c) After each examination conducted in accordance with the provisions of paragraph (a) of this section, each certified person who conducted all or part of the examination required shall enter with ink or indelible pencil in a book approved by the Secretary the date and a report of the condition of the mine or any area of the mine which he has inspected together with a report of the nature and location of any hazardous condition found to be present at the mine. The book in which such entries are made shall be kept in an area at the mine designated by the operator to minimize the danger of destruction by fire or other hazard.

(d) All examination reports recorded in accordance with the provisions of paragraph (c) of this section shall include a report of the action taken to abate hazardous conditions and, shall be signed by the person making the inspection and shall be signed or countersigned each day by at least one of the following persons:
(1) The general foreman;
(2) The assistant superintendent;
(3) The superintendent; or,
(4) The person designated by the operator as responsible for health and safety.

§ 77.1714 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. Bureau of Mines publications are also available from the Assistant Administrator—Coal Mine Health and Safety, MESA, 4015 Wilson Blvd., Arlington, Va. 22203. ANSI publications are also available from the American National Standards, Inc., 1430 Broadway, New York, N.Y. 10018. SAE publications are also available from the Society of Automotive Engineers, Inc., Two Pennsylvania Plaza, New York, N.Y. 10001. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

12. Subparts S and T are revised as follows:

Subpart S—Trolley Circuits

§ 77.1800 Protection of trolley circuits.

(a) Except as provided in paragraph (b) of this section, trolley circuits shall be protected against short-circuit and ground-fault by circuit breakers as prescribed in §§ 77.1800–1 and 77.1800–2.

(b) Trolley circuits in which the track rail serves as the grounded power conductor shall be protected against short-circuit by circuit breakers as prescribed in § 77.1800–1.

§ 77.1800–1 Short-circuit protection; requirements.

Where a circuit breaker provides short-circuit protection for a trolley circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the current in any ungrounded power conductor exceeds 70 percent of the lowest value of bolted short-circuit current at any point in the circuit. Such short-circuit device shall cause the circuit breaker to trip within 75 milliseconds for short-circuit current flow equivalent to 200 percent of the device setting.

§ 77.1800–2 Ground-fault protection; requirements.

Where a circuit breaker provides ground-fault protection for a trolley circuit, such circuit breaker shall be equipped with a device which shall be adjusted to trip the circuit breaker when the ground-fault current in any ungrounded power conductor exceeds 50 percent of the lowest value of a bolted ground-fault current at any point in the circuit. Such ground-fault device shall cause the circuit breaker to trip within 75 milliseconds for ground-fault current flow equivalent to 200 percent of the device setting.

§ 77.1800–3 Reclosing circuit breakers; requirements.

(a) All circuit breakers installed to comply with § 77.1800(a) shall not automatically reclose after tripping due to a ground-fault.

(b) All circuit breakers installed to protect trolley circuits energized at more than 660 volts shall not automatically reclose after tripping.

(c) All circuit breakers installed to comply with § 77.1800 which automatically reclose after tripping shall be equipped with a load measuring device which shall prevent the circuit breaker from reclosing whenever the load current would exceed 300 amperes or 15 percent of the setting of the short-circuit device, whichever is lower.

(d) Tie-feeder and multi-feeder circuit breakers installed to comply with § 77.1800 which automatically reclose after tripping shall be equipped with a voltage differential device which shall prevent the circuit breaker from reclosing whenever the voltage across the circuit breaker exceeds 15 percent of the nominal circuit voltage; except that whenever the voltage across the circuit breaker exceeds 85 percent of the nominal circuit voltage, the load measuring devices shall determine whether the circuit breaker will reclose.

§ 77.1800–4 Circuit breakers and associated devices; test and adjustment requirements.

(a) Circuit breakers and associated devices required by this subpart shall be tested and adjusted by a qualified person at intervals not exceeding 6 months. Such tests and adjustments shall be made in accordance with the following:

(1) Except as provided in paragraph (a)(2) or (a)(3) of this section, direct-current circuit breakers shall be tested by passing sufficient current from a calibrated current source through the circuit breaker to cause the circuit breaker to trip.

(2) Direct-current circuit breakers which utilize electromechanical short-circuit devices with calibration coils shall be tested in accordance with paragraph (a)(1) of this section or shall be tested by passing sufficient current from a calibrated current source through the calibration coil to cause the circuit breaker to trip.

(3) Direct-current circuit breakers which utilize shunt operated electronic short-circuit and ground-fault devices shall be tested in accordance with paragraph (a)(1) of this section or shall be tested by:

(i) Testing the short-circuit and ground-fault devices with a calibrated voltage source to verify that such devices operate at the indicated setting;

(ii) Testing the circuit from the shunt to the short-circuit and ground-fault devices to verify continuity; and

(iii) Tripping the circuit breaker by electrically or manually operating the short-circuit and ground-fault devices.

(4) Except as provided in paragraph (a)(5) of this section, alternating-current circuit breakers shall be tested by passing sufficient current from a calibrated current source through the circuit breaker to cause the circuit breaker to trip.

(5) Alternating-current circuit breakers which utilize current transformer operated short-circuit and ground-fault devices shall be tested in accordance with paragraph (a)(4) of this section or shall be tested by:

(i) Testing the short-circuit and ground-fault devices with a calibrated current source to verify that such devices operate at the indicated setting;

(ii) Testing the circuit from the current transformer secondary to the short-circuit and ground fault devices to verify continuity; and

(iii) Tripping the circuit breaker by electrically or manually operating the short-circuit and ground-fault devices.

(6) Load measuring devices and voltage differential devices shall be tested to assure proper operation.

(7) Short-circuit devices, ground-fault devices, load measuring devices and voltage differential devices shall be adjusted to an accuracy of not less than ±10 percent of the indicated setting.

(8) Voltage sources and current sources used to test and adjust circuit breakers and associated devices shall possess an accuracy of not less than ±5 percent.

(b) An authorized representative of the Secretary may require additional testing of circuit breakers and associated devices.

(c) A record of the tests required by this section shall be kept and shall be made available to an authorized representative of the Secretary.

§ 77.1801 Trolley wires and trolley feeder wires; support.

Trolley wires and trolley feeder wires shall be securely attached to each support by proper insulators designed for the duty involved.

§ 77.1802 Cutout switches.

Trolley wires and trolley feeder wires shall be provided with cutout switches at intervals of not more than 2,000 feet and near the beginning of all branch lines.

§ 77.1803 Repairs to energized trolley wires.

Trolley wires, energized at 660 volts or less, may be repaired by a person who has been trained in accordance with the requirements of § 77.1803–1. Persons who make repairs to energized trolley wires shall wear rubber boots or rubber overshoes, and protective gloves which meet American Society for Testing and Materials (ASTM) "Standard Specification for Rubber Insulating Gloves" (D120–70) for Class Zero rubber insulation gloves.

§ 77.1803–1 Repairs to energized trolley wires; training.

The training required by § 77.1803 shall include at least 4 hours of training in the repair and maintenance of energized trolley wires, in the hazards in making such repairs, in the limitations and inspections of protective clothing and in the treatment of electrical shock. A record of such training shall be kept and made available to an authorized representative of the miners and to an authorized representative of the Secretary.

§ 77.1303–2 Protective gloves; inspection.

Protective gloves worn while making repairs to energized trolley wires shall be inspected for defects before each use. Defective gloves shall not be used.

§ 77.1304 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the American Society for Testing and Materials publication to which reference is made in this subpart is hereby incorporated by reference and made a part hereof. The incorporated publication is available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. It is also available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pa. 19103. Incorporation by reference provisions approved by the Director of the FEDERAL REGISTER on (date to be inserted prior to final rulemaking).

Subpart T—Slope and Shaft Sinking

§ 77.1900 Slopes and shafts; plan.

Each operator shall establish and follow a slope and shaft plan, approved in accordance with §§77.1900–1 through 77.1900–4, providing for the safety of persons in each slope of shaft that is commenced or extended. The methods employed by the operator shall be selected to minimize hazards to those employed in the initial and subsequent development of the slope or shaft.

§ 77.1900–1 Filing of a slope and shaft plan.

Each operator, prior to the commencement or extension of a slope or shaft sinking operation, shall file a slope and shaft plan with the District Manager of theh Coal Mine Health and Safety District in which the slope or shaft is located.

§ 77.1900–2 Approval of plans.

The operator shall be notified in writing of the approval or disapproval of his slope and shaft plan. If the District Manager determines that revisions are required before the slope and shaft plan can be approved, the revisions required shall be specified and the operator shall be afforded an opportunity to discuss the revisions.

§ 77.1900–3 Information required in slope and shaft plan.

Slope and shaft plans shall include but not be limited to the following information:

(a) Name and address of the contractor and/or operator performing the work.

(b) Name, identification number, and address of the mine.

(c) A surface map showing:

(1) Georgraphic location of slope or shaft;

(2) Surface drainage and impoundments;

(3) Known underground workings or construction projects within 500 feet; and

(4) Dumping area.

(d) Drawings with dimensions of hoisting facilities.

(e) Specifications of hoisting apparatus showing:

(1) Size, capacity and safety factor of ropes, motors, drums, headframe, brakes and sheaves;

(2) Methods of rigging;

(3) Distance from head sheave to nearest rope attachment after overwind device is actuated; and

(4) Emergency hoisting devices.

(f) Operational sequences for initial and subsequent excavation:

(1) Clean-up for drilling;

(2) Drilling;

(3) Loading of explosives;

(4) Blasting including type and quantities of explosives, pattern, type of stemming materials, type of blasting device, and use of galvanometer;

(5) Loading and transportation of broken material;

(6) Installation of temporary or permanent service line; and

(7) Placement of linings, concrete forms, and work platforms.

(g) Roof and rib, or shaft wall control including method of examining and scaling, type of support and method of installing support.

(h) Ventilation including size and capacity of fan, and type and location of vent tubing.

(i) General characteristics of strata.

§ 77.1900–4 Modification of approved slope and shaft plans.

Each operator, prior to initiating a modification of any approved slope and shaft plan, shall file such modification with the District Manager. The operator shall be notified in writing of the approval or disapproval of his modification. If the District Manager determines that revisions are required before the modification can be approved, the revisions required shall be specified and the operator shall be afforded an opportunity to discuss the revisions.

§ 77.1901 Preshift and onshift inspections.

(a) Examinations of slope and shaft areas shall be made by a certified person for hazardous conditions, including tests for methane and for oxygen deficiency, as follows:

(1) Within 90 minutes before each shift;

(2) At least once on any shift during which persons are working inside any slope or shaft; and

(3) Both before and after blasting.

(b) The surface area surrounding each slope and shaft shall be inspected by a certified person and all hazardous conditions in the vicinity shall be corrected before persons are permitted to enter the excavation.

(c) All hazardous conditions found during any preshift or onshift inspection required by paragraph (a) of this section shall be corrected before persons are allowed to enter or continue to work in such slope or shaft. If any hazardous condition creates an imminent danger, the operator shall withdraw all persons from the excavation, except those persons referred to in section 104(d) of the Act, and no person shall be permitted to reenter the slope or shaft to continue slope and shaft sinking operations until the imminent danger has been abated. A methane content of 1.5 volume per centum or more shall be considered an imminent danger.

(d) No work shall be performed in any slope or shaft, no drilling equipment shall be started, and no electrical equipment shall be energized if the methane content in such slope or shaft is 1.0 volume per centum or more.

(e) Nothing in this section shall prevent the specific assignment of persons in the slope or shaft for purposes of abating excessive methane concentrations or any other hazardous condition.

(f) The results of all inspections conducted in accordance with this section shall be recorded daily in a book approved by the Secretary, and shall be signed by the person making the inspection and shall be signed or countersigned daily by any of the persons listed in § 77.1713(d).

§ 77.1901–1 Methane and oxygen deficiency tests; approved devices.

Tests for oxygen deficiency shall be made with a permissible flame safety lamp or other means approved by the Secretary, and tests for methane shall be made with a methane detector approved by the Secretary.

§ 77.1902 Drilling and mucking operations.

Diesel-powered equipment used in the drilling, mucking, or other excavating operation in any slope or shaft shall be permissible. Such equipment shall be operated in a permissible manner, shall be maintained in a permissible condition, and shall be provided with at least one portable fire extinguisher.

§ 77.1902–1 Permissible diesel-powered equipment.

Diesel-powered equipment which has been approved by the Bureau of Mines or the Mining Enforcement and Safety Administration under Part 36 of this chapter (Bureau of Mines Schedule 31) is permissible under the provisions of § 77.1902.

§ 77.1903 Hoists and hoisting.

(a) Loads handled by hoists employed in transporting persons or material in any slope or shaft shall not exceed the rated capacities of the hoist, the rope fastenings used, and the static load safety factors of the ropes used on such hoists as prescribed in paragraph (c) of this section. The rated capacities shall be as stated by the manufacturer or certified by a registered engineer. The rated capacity shall be posted within the view of the hoistman.

(b) American National Standards Institute, "Specifications for the Use of Wire Ropes for Mines," M11.1–1960, shall be used as a guide in the use, selection, installation, and maintenance of wire ropes.

(c) The following static load safety factors shall be used for selecting ropes

to be used on hoists and for determining when such ropes shall be removed from hoists:

Length of rope in shaft (feet)	Minimum factor of safety (new rope)	Minimum factor of safety (remove)
500 or less	8	6.4
501 to 1,000	7	5.8
1,001 to 2,000	6	5.0
2,001 to 3,000	5	4.3
3,001 or more	4	3.6

(d) Wire rope shall be removed when inspection shows:

(1) Six randomly distributed broken wires in one rope lay or three broken wires in one strand in one rope lay. Snagged, nicked or severely bent wires shall be counted as broken wires; or

(2) Abrasion, scrubbing or peening causing loss of more than ⅓ the original diameter of the outside individual wires; or

(3) Evidence of rope deterioration from corrosion; or

(4) Kinking, crushing or other damage that results in distortion of the rope structure; or

(5) Reduction in nominal rope diameter determined as follows:

(i) 1/64 inch for rope diameters up to and including 5/16 inch;

(ii) 1/32 inch for rope diameters 3/8 inch to ½ inch inclusive;

(iii) 3/64 inch for rope diameters 9/16 inch to ¾ inch inclusive;

(iv) 1/16 inch for rope diameters 7/8 inch to 1⅛ inches inclusive;

(v) 3/32 inch for rope diameters 1¼ inches to 1½ inches inclusive;

(vi) Rope diameters over 1½ inches, as recommended by the wire rope manufacturer.

(e) Wire rope attachments shall be replaced when inspection shows:

(1) Improper installation of attachment; or

(2) Cracked, deformed, excessively worn, or loosened attachments; or

(3) Wire rope slippage at attachment; or

(4) More than one broken wire at the point of attachment of a spelter filled or swaged attachment.

(f) Each hoist employed in drilling, mucking or other exacavating operations shall be equipped with an accurate and reliable indicator of the position of the conveyance, except where the conveyance is visible at all times to the hoistman. The indicator shall be driven from the hoist drum or drum shaft by a chain, gear or other direct drive and show the position of the conveyance at all times. The indicator shall be placed so that it is in clear view of the hoistman.

(g) Hoist drive units shall be protected from the weather, and the mechanism that operates the brakes shall be guarded to prevent material or tools from accidentally fouling or jamming the brake system.

§ 77.1904 Communications between slope and shaft bottoms and hoist operators.

At least two independent means of signaling shall be provided between the hoistman and all points in a slope or shaft where persons are required to work. At least one of these means shall be audible to the hoistman. Signal codes used in any communication system shall be standardized and posted conspicuously at each slope and shaft and in clear view of the hoistman.

§ 77.1905 Hoist safeguards; general.

(a) Hoists used to transport materials shall be equipped with brakes capable of safely stopping and holding the cage, bucket, platform, or other conveyance when fully loaded. Such conveyances shall not be lowered by the brakes alone, except in an emergency.

(b) When persons are transported by a hoist or when persons may be endangered by the hoisting operation, such hoist shall meet the requirements of Subpart O of this part.

§ 77.1906 Hoists; inspection and maintenance.

Hoists shall be inspected daily and shall be maintained in accordance with § 77.1403.

§ 77.1907 Hoist construction; general.

(a) Hoisting ropes shall be equipped with a spelter-filled socket, wedge socket, or thimble with an adequate number of clips properly spaced and installed along the rope.

(b) Cages, buckets, or slope cars when used for transporting persons shall be provided with two bridle chains or cables connected securely to the rope at least 3 feet above the socket or at least 3 feet above the last rope clip if a thimble is used and which shall be securely fastened to the cage, bucket or slope car.

(c) Where hooks are used to attach cages, buckets, or other conveyances to the socket or thimble of a hoisting rope, such hooks shall be self-closing.

(d) At least three full turns of rope shall remain on the hoist drum when the rope is extended to its maximum working length. At least one full turn of the hoist rope shall be placed around the drum shaft or around the spoke of a free drum and shall be fastened securely by means of rope clips or clamps, except where hoist drums are designed with proper rope terminations.

(e) Self-dumping conveyances used for transporting persons shall have a locking mechanism to prevent dumping or tilting when persons are transported.

§ 77.1908 Hoist installations; use.

(a) Where persons are transported by means of a hoist and the depth of the shaft exceeds 50 feet, the hoist rope shall be suspended from a hoisting installation capable of withstanding forces at least equal to the breaking strength of the hoist rope.

(b) Where persons are transported by means of a hoist and the depth of the shaft exceeds 100 feet, temporary shaft guides and guide attachments shall be installed to prevent the cage, platform, bucket, or other conveyance from swinging, unless the District Manager approves other means which will provide no less than the same degree of protection to persons being transported.

(c) All guides and guide attachments installed in accordance with paragraph (b) of this section shall be maintained to a depth of not more than 75 feet from the bottom of the shaft.

(d) Where crossheads are used, the cage, bucket, or other conveyance shall not be hung more than 10 feet below the crosshead.

(e) Where persons are required to embark or disembark over or within a shaft, a loading platform shall be installed to insure safe footing.

(f) During the development of each slope or shaft, either a ladder or independently powered auxiliary hoist shall be provided to permit persons to escape quickly in the event of an emergency.

(g) No person shall be permitted to ride the rim of any bucket or on the top of a loaded bucket.

(h) The maximum number of persons permitted to ride the conveyance at one time shall be posted conspicuously at the point of entrance to the shaft or slope.

(i) Persons shall not be permitted to ride on a conveyance with tools or materials, other than small hand tools.

(j) The speed of a conveyance transporting persons shall not exceed 500 feet per minute and not more than 200 feet per minute when within 100 feet of any stop.

(k) A notice of established speeds shall be posted in clear view of the hoistman.

(l) Conveyances being lowered in a shaft in which persons are working shall be stopped at least 15 feet above such persons and shall be lowered further only after the hoistman has received a signal that all persons who may be endangered by the conveyance are in the clear.

(m) No conveyance shall be raised or lowered in a slope or shaft until it has been stabilized and trimmed.

(n) Measures shall be taken to prevent material from falling back into the shaft while buckets or other conveyances are being unloaded.

(o) Properly attached safety belts shall be worn by all persons required to work in or over any shaft where there is a drop of 10 or more feet, unless other acceptable means are provided to prevent such persons from falling into the shaft.

§ 77.1908–1 Hoist operation; qualified hoistman.

Hoists shall be under the control of and operated by a qualified hoistman when persons are being transported or when persons are in a slope or shaft.

§ 77.1909 Explosives and blasting; use of permissible explosives and shot-firing units.

Except as provided in §§ 77.1909–1 and 77.1909–2, only permissible explosives and permissible shot-firing units shall be

used in slopes and shaft sinking operations.

§ 77.1909–1 Use of nonpermissible explosives; approval.

Where the District Manager of the Coal Mine Health and Safety District in which the slope or shaft is located has determined that the use of nonpermissible explosives will not pose a hazard to any persons during the development of a slope or shaft, he may, after written application by the operator, approve the use of such explosives and issue a permit setting forth the safeguards to be employed by the operator to protect the health and safety of any person exposed to such blasting.

§ 77.1909–2 Use of nonpermissible shot-firing device.

A nonpermissible shot-firing device may be used provided that all persons are removed to a safe location on the surface prior to the connection of the shooting cable to the blasting device.

§ 77.1910 Explosives and blasting; general.

(a) Light and power circuits shall be disconnected or removed from the blasting area before charging and blasting.

(b) All explosive materials, detonators, and any other related blasting material employed in the development of any slope or shaft shall be stored, transported, carried, charged, and fired in accordance with the provisions of Subpart N of this part. Except as provided in paragraph (c) of this section, all shots shall be fired from the surface.

(c) Where tests for methane have been conducted and methane has not been found and only permissible blasting units are being employed, shots may be fired from an upper level of the slope or shaft.

(d) Except as provided in paragraph (c) of this section, all persons shall be removed from the slope or shaft prior to blasting.

(e) Blasting areas in slopes or shafts shall be covered with mats or other suitable material when the excavation is too shallow to retain basted material.

(f) Where it is impracticable to prepare primers in the blasting area, only the number of primers needed for one round of shots shall be prepared and remain on the surface in an isolated area prior to use. The primers shall be carried in insulated, covered containers.

(g) No other development operation shall be conducted in a shaft or at the face of a slope while holes are being charged and until after all shots have been fired.

(h) The slope or shaft shall be examined after each blast and loose material shall be removed.

(i) Loose rock and other material shall be removed from timbers and platforms after each blast before persons are lowered to the shaft bottom.

§ 77.1911 Ventilation of slopes and shafts.

(a) All slopes and shafts shall be ventilated by mechanical ventilation equipment during development. Mechanical ventilation equipment shall be examined before each shift by a person trained by the operator to perform such examination. The quality and quantity of air in the slope or shaft shall be determined each shift by a person trained by the operator to make such determination. The results of such examinations and measurements shall be recorded in a book approved by the Secretary and shall be signed by the person making the examinations and measurements, and countersigned daily by any of the persons listed in § 77.1713(d).

(b) Ventilation fans shall be:

(1) Installed on the surface;

(2) Installed in noncombustible housing;

(3) Designed to permit the reversal of the air current, and located in an area which will prevent a recirculation of air from the slope or shaft or air contamination from any other source;

(4) Equipped with an automatic signal device designed to give an alarm in the event the fan slows or stops which can be seen or heard by any person on duty in the vicinity of the fan, except where fans are constantly attended;

(5) Offset not less than 15 feet from the shaft or slope; and

(6) Equipped with air ducts which are noncombustible and maintained so as to prevent excessive leakage of air.

(i) Flexible ducts shall be constructed to permit ventilation by either exhausting or blowing methods and when metal air ducts are used, they shall be grounded effectively to remove static and other electrical charges; and

(ii) Ducts shall extend as close to the bottom as necessary to keep the face clear of dangerous and noxious gases. "Face" as used in this subpart means where excavating is progressing or was last done.

(c) Each ventilating system shall be properly maintained by a person trained by the operator to perform such maintenance.

(d) The fan shall be operated at least one half hour prior to entering the underground area of a slope or shaft by any persons and shall be operated continuously when persons are below the surface. Any accidental stoppage or reduction in air flow shall be corrected immediately. If such corrections cannot be made immediately, development work below the surface shall be stopped, and all persons not needed to make necessary corrections to the ventilation system shall be removed to the surface.

§ 77.1912 Ladders and stairways.

(a) Substantial stairways or ladders shall be used during the construction of all shafts where no mechanical means are provided for persons to travel.

(b) Landings at intervals of not more than 30 feet shall be installed.

(c) Shaft ladders shall project 3 feet above the collar of the shaft, and shall be placed at least 6 inches from the side of the shaft.

§ 77.1913 Fire-retardant wood.

All wood products, with the exception of crossties, which are permanently installed in slopes and shafts shall be fire-retardant.

§ 77.1914 Electric equipment.

(a) All electric cap lamps used below the collar of a slope or shaft shall be approved by MESA as permissible and shall be maintained in permissibe condition.

(b) All other electric equipment used below the collar of a slope on shaft shall be:

(1) Approved by MESA as permissible, installed in a permissible manner and maintained in permissible condition; or

(2) Listed by Underwriters' Laboratories, Inc. or Factory Mutual, Inc. as suitable for use in Class I, Group D and Class II, Group F locations and installed and maintained in accordance with Article 501 and 502 of the National Electrical Code, 1975.

(c) The outer jacket or covering of all conductors and cables used below the collar of a slope or shaft, except conductors installed in rigid metal conduit and conductors used in an intrinsically safe circuit, shall meet the requirements for flame resistant cables as set forth in § 18.64 of this chapter.

(d) For the purposes of this part, all electric equipment, other than self-propelled electric equipment, which is used below the collar of a slope or shaft shall be considered portable electric equipment.

(e) The voltage of alternating current systems which supply power to portable lighting fixtures used below the collar of a slope or shaft shall not exceed 70 volts to ground.

(f) The voltage of direct current systems which supply power to portable lighting fixtures used below the collar of a slope or shaft shall not exceed 150 volts to ground.

(g) (1) In addition to the requirements of §§ 77.901 and 77.901–1, alternating current systems energized at 100 volts or more which supply power to portable lighting fixtures used below the collar of a slope or shaft shall contain either a direct or derived neutral which shall be grounded through a suitable resistor to a low-resistance grounding medium at the power source.

(2) A ground wire which meets the requirements of § 77.520 shall originate at the grounded side of the grounding resistor. Such ground wire shall be connected to the metallic frames and enclosures of the power source and shall extend along with the power conductors and serve as the grounding circuit for:

(i) The metallic frames and other metallic enclosures of all portable and self-propelled equipment supplied power from the system, and

(ii) The metallic enclosures of all circuits which are supplied power from the system and extend to portable and self-propelled equipment.

(3) Such grounding resistor shall be of the proper ohmic value to limit the ground fault current to no more than 5

amperes. The ground fault current rating of the grounding resistor shall meet the "extended time rating" set forth in Institute of Electrical and Electronic Engineers, Inc. Standard No. 32 (IEEE) Standard 32-1972. The grounding resistor shall be insulated from ground for a voltage not less than the phase-to-phase, or line-to-line, voltage of the system in which it is installed.

(h) Lighting fixtures which are mounted on a unit of self-propelled electric equipment shall be grounded to the equipment frame by means of a separate ground wire which meets the requirements of § 77.520.

§ 77.1915 Storage and handling of combustible materials.

(a) Liquefied and nonliquefied compressed gas cylinders, and oil, gasoline and other petroleum products shall not be stored within 100 feet of any slope or shaft opening.

(b) Combustible material and supplies, other than those specified in paragraph (a) of this section, shall not be stored within 25 feet of any slope or shaft opening.

(c) Pyritic slates, bony coal, culm or other material capable of spontaneous combustion shall not be used for fill or as surfacing material within 100 feet of any slope or shaft opening.

(d) Areas surrounding the opening of each slope or shaft shall be constructed to insure the drainage of flammable liquids away from the slope or shaft in the event of spillage.

(e) Oily rags, waste, waste paper, and other combustible waste material disposed of within, or in the vicinity of any slope or shaft opening shall be stored in closed, noncombustible containers until removed from the area.

§ 77.1916 Welding, cutting and soldering; fire protection.

(a) At least one portable fire extinguisher shall be provided where welding, cutting or soldering with arc or flame is performed.

(b) Welding, cutting or soldering with arc or flame in any slope or shaft, or within the vicinity thereof, except where such operations are performed in fireproof enclosures, shall be done under the supervision of a qualified person who shall make a diligent search within or in the vicinity of the slope or shaft for fire during and after such operations.

(c) Before welding, cutting or soldering is performed in any slope or shaft, an examination for methane shall be made by a qualified person with a device approved by the Secretary for detecting methane. Examinations for methane should be made immediately before and periodically during welding, cutting or soldering and such work shall not be permitted to commence or continue in air which contains 1.0 volume per centum or more of methane.

(d) Noncombustible barriers shall be installed below welding, cutting or soldering operations in or over a shaft.

§ 77.1917 Incorporation by reference.

In accordance with 5 U.S.C. 552(a)(1), the publications to which references are made in this subpart are hereby incorporated by reference and made a part hereof. The incorporated publications are available for examination at each Coal Mine Health and Safety District and Subdistrict Office of MESA. ANSI publications are also available from the American National Standards, Institute Inc., 1430 Broadway, New York, N.Y. 10018. The National Electrical Code is also available from the National Fire Protection Association, 470 Atlantic Ave., Boston, Mass. 02210. The Underwriters' Laboratories publication is also available from Underwriters' Laboratories, Inc., 207 E. Ohio St., Chicago, Ill. 60611. The IEEE publication may also be obtained from the Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, N.Y. 10017. Incorporation by reference provisions approved by the Director of the Federal Register on (date to be inserted prior to final rulemaking).

13. Subpart V is revised as follows:

Subpart V—Structural Erection

§ 77.3000 Structural erection; general.

The following requirements shall apply when structural erection is undertaken:

(a) Wood planking shall be of proper thickness to carry the working load, but shall be not less than 2 inches thick, full size, undressed planking; or ¾ inch thick exterior grade plywood; or equivalent material.

(b) Metal decking of sufficient strength shall be laid tight and secured to prevent movement.

(c) Planks shall overlap the bearing of each end by a minimum of 12 inches.

(d) Wire mesh, exterior plywood, or equivalent material shall be used and fit tightly around columns where plants do not fit tightly.

(e) Provisions shall be made to secure temporary flooring against displacement.

(f) Where safety belts are used, they shall be so connected to limit the free fall to six feet or less.

(g) Safety nets shall be hung with sufficient clearance to prevent user's contact with surfaces or structures below.

§ 77.3001 Steel erection; flooring requirements.

(a) *Permanent flooring—skeleton steel construction in tiered buildings.* (1) Permanent floors shall be installed as the erection of structural members progresses, and there shall be not more than eight stories between the erection floor and the uppermost permanent floor, except where the structural integrity is maintained as a result of the design.

(2) At no time shall there be more than four floors or 48 feet of unfinished bolting or welding above the foundation or uppermost permanently secured floor.

(b) *Temporary flooring—skeleton steel construction in tiered buildings.* (1) (i) The derrick or erection floor shall be solidly planked or decked over its entire surface except for access openings. Planking or decking of equivalent strength, shall be of proper thickness to carry the working load.

(ii) On buildings or structures not adaptable to temporary floors, and where scaffolds are not used, safety nets shall be installed and maintained whenever the potential fall distance exceeds two stories or 25 feet.

(ii) A safety railing of ½-inch wire rope or equivalent shall be installed, approximately 42 inches high, around the periphery of all temporary-planked or temporary metal-decked floors of tier buildings and other multifloored structures during structural steel assembly.

(2) Where erection is being done by means of a crane operating on the ground, a tight and substantial floor shall be maintained within two stories or 25 feet, whichever is less, below and directly under that portion of each tier of beams on which bolting, riveting, welding, or painting is being done, except on structures where no flooring is intended or planned and safety belts, safety nets, or scaffolds are used.

(c) *Flooring—other construction.* (1) In the erection of a building having double wood floor construction, the rough flooring shall be completed as the building progresses, including the tier below the one on which floor joists are being installed.

(2) For single wood floor or other flooring systems, the floor immediately below the story where the floor joists are being installed shall be kept planked or decked over.

§ 77.3001-1 Structural steel assembly.

(a) During the final placing of solid web structural members, the load shall not be released from the hoisting line until the members are safely secured.

(b) Open-web steel joists shall not be placed on any structural steel framework unless such framework is safely bolted or welded.

(c) In steel framing, where bar joists are utilized and columns are not framed in at lease two directions with structural steel members, a bar joist shall be field-bolted at columns or the equivalent to provide lateral stability during construction.

(d) Where long span joists or trusses, 40 feet or longer, are used, a center row of bolted or welded bridging shall be installed to provide lateral stability during construction.

(e) No load shall be placed on open-web steel joists until the requirements of this section are met.

(f) Loads that need to be controlled shall be controlled safely by the use of tag lines, guides, or equivalent.

§ 77.3001-2 Steel erection; bolting, riveting, fitting-up and plumbing-up.

(a) Containers shall be provided for storing or carrying rivets, bolts and drift pins and shall be secured against accidental displacement when aloft.

(b) When bolts or drifts pins are being knocked out, means shall be provided to keep them from falling where the possibility of injury exists.

(c) Riveting shall not be done in the vicinity of combustible or flammable material unless precautions are taken to prevent fire and explosion.

(d) When rivet heads are knocked off or backed out, means shall be provided to prevent them from falling where the possibility of injury exists.

(e) Connections used in plumbing-up equipment shall be properly secured.

(1) The turnbuckles shall be secured to prevent unwinding while under stress.

(2) Equipment related to plumbing-up guys shall be placed in a manner that will enable persons to get at the connection points.

(3) Plumbing-up guys shall be removed only under the supervision of a person experienced in performing such work.

§ 77.3002 Concrete, concrete forms and shoring; general.

(a) Persons working more than 6 feet above any adjacent working surfaces, placing and tying reinforcing steel shall be provided with a safety belt, or equivalent device.

(b) Persons shall not be permitted to work above vertically protruding reinforcing steel unless it has been protected to eliminate the hazard of impalement.

(c) Reinforcing steel for walls, piers, columns and similar vertical structures shall be guyed and supported to prevent collapse.

(d) Wire mesh rolls shall be secured at each end to prevent recoiling action.

(e) Bulk storage bins, containers or silos shall have conical or tapered bottoms with mechanical or pneumatic means of starting the flow of material.

(f) Concrete mixers equipped with 1 yard or larger loading skips shall be equipped with a mechanical device to clear the skip of material.

(g) Handles on bull floats, used where they may contact energized electrical conductors, shall be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of noncorrective material.

(h) Pumpcrete or similar systems using discharge pipes shall be provided with pipe supports designed for 100 percent overload unless the pipe is laying on the ground.

(i) Concrete buckets equipped with hydraulic or pneumatically operated gates shall have positive safety latches or similar safety devices installed to prevent accidental opening of the gates.

(j) Persons shall not ride concrete buckets.

(k) When discharging concrete on a slope, the wheels of ready-mixed trucks shall be blocked and the brakes set to prevent movement.

(l) The sills for shoring shall be sound, rigid, and capable of carrying the maximum intended load.

(m) All shoring equipment shall be inspected prior to erection. Any equipment found to be damaged shall not be used for shoring.

(n) Erected shoring equipment shall be inspected immediately prior to, during, and immediately after the placement of concrete. Any shoring equipment that is found to be damaged or weakened shall be immediately reinforced or reshored to original strength.

(o) Reshoring shall be provided when necessary to safely support slabs and beams after stripping, or where such members are subjected to super-imposed loads.

(p) *Metal tubular frames.* (1) Metal tubular frames used for shoring shall not be loaded beyond the safe working load recommended by the manufacturer.

(2) All locking devices on frames and braces shall be in good working order; coupling pins shall align the frame or panel legs; pivoted cross braces shall have their center pivot in place; and all components shall be in a condition similar to that of original manufacture.

(3) Devices for attaching the external lateral-stability bracing shall be securely fastened to the legs of the shoring frames.

(q) Formwork and shoring shall be designed, erected, supported, braced, and maintained so that it will safely support all vertical and lateral loads.

(r) In all areas in which persons are expected to work or pass, stripped forms and shoring shall be stockpiled promptly after stripping. Protruding nails, wire ties, and other form accessories not necessary to subsequent work, shall be pulled, cut, or other means taken to eliminate any hazard.

(s) Imposition of any construction loads on the partially completed structure shall not be permitted unless such loading has been considered in the design and has been approved by the engineer-architect.

§ 77.3002–1 Forms and shoring.

(a) *Vertical slip forms.* (1) The steel rods or pipe on which the jacks climb or by which forms are lifted shall be specifically designed for the purpose. Such rods shall be adequately braced where not encased in concrete.

(2) Jacks and vertical supports shall be positioned in a manner that the vertical loads are distributed equally and do not exceed the capacity of the jacks.

(3) The jacks or other lifting devices shall be provided with mechanical dogs or other automatic holding devices to provide protection in case of failure of the power supply or the lifting mechanism.

(4) Lifting shall proceed steadily and uniformly and shall not exceed the predetermined safe rate of lift.

(5) Lateral and diagonal bracing of the forms shall be provided to prevent excessive distortion of the structure during the lifting operation.

(6) During lifting operations, the form structure shall be maintained in line and plumb.

(7) All vertical lift forms shall be provided with scaffolding or work platforms completely encircling the area of placement.

(b) *Tubed and coupler shoring.* (1) Couplers (clamps) shall not be used if they are deformed, broken, or have defective or missing threads on bolts or other defects.

(2) The material used for the coupler (clamp) shall be of a structural type, such as drop-forged steel, malleable iron, or structural grade aluminum. Gray cast iron shall not be used.

(3) When checking the erected shoring towers with a shoring layout, the spacing between posts shall not exceed that shown on the layout, and all interlocking of tubular members and tightness of couplers shall be checked.

(4) All baseplates, shore heads, extension devices, or adjustment screws shall be in firm contact with the footing sill and the form material and shall be snug against the posts.

(c) *Single post shore.* (1) For stability, single post shores shall be horizontally braced in both the longitudinal and transverse directions, and diagonal bracing shall also be installed. Such bracing shall be installed as the shores are being erected.

(2) All baseplates or shore heads of single post shores shall be in firm contact with the footing sill and the form materials.

(3) Whenever single post shores are used in more than one tier, the layout shall be designed and inspected by a structural engineer.

(4) when formwork is at an angle, or sloping, or when the surface shored is sloping, the shoring shall be designed and built for such loading.

(5) Adjustments of single post shores to raise formwork shall not be made after concrete is in place.

(6) All nails used to secure bracing or adjustable timber single-post shores shall be driven home and the nail clinched if its protrudes through.

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PART V



ENVIRONMENTAL PROTECTION AGENCY

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GRAIN ELEVATORS

Standards of Performance for New Stationary Sources

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 661-1]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Grain Elevators

Notice is hereby given that under the authority of section 111 of the Clean Air Act, as amended, the Administrator is proposing standards of performance for new, modified, and reconstructed grain elevators.

PROPOSED STANDARDS

The proposed standards would limit emissions of particulate matter from eight affected facilities and the air pollution control devices on these facilities at grain elevators. The standards apply to farm elevators, country elevators, terminal elevators, and commerical rice dryers which have grain leg capacities greater than 352 cubic meters per hour (m^3/h) (ca. 10,000 bushels/hr) and to storage elevators at wheat flour mills, wet corn mills, dry corn mills (human consumption), rice mills, or soybean extraction plants. The standards are: (1) 0.023 gram per standard cubic meter dry basis (g/std. m^3 dry basis) and zero percent opacity from control devices on any affected facility except grain dryers; (2) zero percent opacity from any truck unloading station, grain handling operation, railroad hopper car loading station, or railroad boxcar loading station; (3) no visible emissions from any railroad hopper car unloading station or railroad boxcar loading station; (4) ten percent opacity from any truck loading station; (5) ten percent opacity, except that the opacity may not exceed fifteen percent during topping-off operations, from any barge or ship loading station; (6) zero percent opacity from any grain dryer (column dryers would be considered in compliance with the standard provided the diameters of all column plate perforations do not exceed 2.1 millimeters [mm] [ca. 0.084 inch], and rack dryers would be considered in compliance provided all exhaust gases pass through a 50 or finer mesh screen filter); (7) operation of a leg which is enclosed from the top (including the receiving hopper) to the center line of the bottom pulley, and ventilation of at least 32.1 actual cubic meters per cubic meter of grain handling capacity (ca. 40 ft^3/bu) to a particulate control device on both sides of the leg and the grain receiving hopper, at any barge or ship unloading station.

ENVIRONMENTAL AND ECONOMIC IMPACT

The proposed standards would reduce the uncontrolled particulate matter emissions from new grain elevators by more than 99 percent. Estimates for various model grain elevators show that the standards would reduce particulate matter emissions to a level that is 67 to 94 percent less than the level required by typical State standards. This reduction in emissions results in a significant reduction of ambient concentrations of particulate matter in the vicinity of grain elevators. The maximum 24-hour average concentration at a distance of 0.3 kilometer (km) from the model facilities would be reduced to a level that is 52 to 76 percent lower than the maximum concentration that results from control to the level of typical State standards. By 1981, the proposed standards would reduce the total amount of particulate matter emissions into the atmosphere by 21,000 megagrams per year (ca. 23,000 tons/yr).

The secondary environmental impacts of the proposed standards would be minor. There would be no impact on water pollution because only dry type collectors would be used to control particulate emissions. Minimal additional solid waste handling or disposal problems would be caused by the standard. Currently, approximately 68 percent of the grain dust collected by emission control devices at elevators is returned to the grain, 30 percent is sold for use in feed manufacturing, and 2 percent is disposed of as solid waste. The additional grain dust collected by a more efficient control device would either be sold for feed or landfilled. The proposed standards would have minimal adverse impacts on noise and land-use considerations. A relatively minor amount of particulate matter, sulfur dioxide, and nitrogen oxides would be discharged into the atmosphere from power plants supplying the additional electrical power that would be required to operate the control device needed to achieve the proposed standards.

The incremental energy required, above the typical State standard requirements, by the proposed standards to control all new, modified, or reconstructed grain elevators constructed by 1981 is equivalent to about 2700 m^3 per year (ca. 17,000 barrels per year) of Number 6 fuel oil. This indicates that the proposed standards would have a minor impact on the imbalance between national energy demand and domestic supply. The energy requirements of the proposed standards result from the use of fabric filter control instead of the existing cyclone control requirements. The total air pollution control energy that would be required to meet the proposed standards represents approximately 23 percent of the total process energy requirements of new grain elevators. This is an increase of about 5 percent above the energy presently needed to meet typical State standard requirements for new grain elevators.

The proposed standards would affect approximately 500 grain elevators in the next five years. The incremental control costs of the proposed standards over typical State control requirements is estimated to be $26 million in capital cost in this five-year period and $5.5 million in annual costs in the fifth year. The proposed standards would result in a total added production cost of 0.5 percent based on a selling price of $68.20 per m^3 (ca. $2.40 per bushel) for corn. This cost includes the cost imposed by the proposed standards on grain production from the farm to the port terminal elevator. The maximum cost added to the grain as a result of the proposed standards at an individual grain elevator would be less than one cent per bushel. The effect that the proposed standards would have on supply and demand of grain and grain products and on the future growth of the grain industry is considered negligible. In the judgment of EPA, these costs are considered reasonable for new, modified, and reconstructed sources.

EPA 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.

SELECTION OF SOURCE CATEGORY AND AFFECTED FACILITIES

Section 111 of the Clean Air Act directs the Administrator to establish standards of performance for stationary sources that may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. Also, under section 109 of the Act, particulate matter has been designated as a criteria pollutant, and National Ambient Air Quality Standards (NAAQS) have been set for particulate matter.

It is estimated that the grain elevator industry, which consists of about 7,900 grain elevators located nationwide, emits 550,000 megagrams per year (ca. 606,000 tons/yr) of particulate matter. In a study performed for EPA by The Research Corporation of New England,[1] significant sources of particulate matter were identified and ranked in order of total emissions. Four grain handling operations were shown to be significant sources of particulate: processing was ranked fifth, transfer was ranked seventh, cleaning and screening was ranked tenth, and drying was ranked number thirty-three among all known sources of particulate emissions. In addition, the report of the Committee on Public Works of the United States Senate[2] listed grain elevators as a source for which standards of performance should be developed.

Growth in the grain elevator and grain processing industries is expected to be slow since the per capita consumption of grain products is remaining constant or decreasing. The total number of grain elevators is expected to decrease; however, the total throughput of grain is expected to increase slightly. Of the processing plants, only soybean processors have significant incentive to invest in new storage capacity. Soybean production has increased over twenty-fold in the United States in less than 34 years. Approximately 500 new, modified, or reconstructed grain elevators are ex-

[1] Hopper, T. G., and W. A. Marrone. Impact of New Source Performance Standards on 1985 National Emissions from Stationary Sources, Volume I. Environmental Protection Agency, Research Triangle Park, N.C. Contract Number 68-02-1382, October 24, 1975. pp. 52-59.

[2] *Report of the Committee on Public Works*, U.S. Senate Report No. 91-1196, September 17, 1970. pp. 15-17.

pected to be constructed by 1981. This growth rate of about 100 grain elevators per year is considered to be significant.

EPA has determined that particulate emissions from grain elevators contribute significantly to air pollution which causes or contributes to the endangerment of the public health. For this reason, the source category of grain elevators has been selected for establishing new source performance standards.

The proposed standards would apply to affected facilities that handle wheat, corn, soybeans, milo, rice, rye, oats, or barley. These grains were selected to be subject to the standards because they are the primary grains produced in the United States. There are several other grains (e.g., millet), but these crops are grown and handled in small quantities. Therefore, the handling of these grains is not considered a significant source of particulate matter at this time.

Animal, pet food, and cereal manufacturers; breweries; and feedlots also handle and process whole grain. These industries were beyond the scope of the backgornud industry studies. Consequently, no data are available on these sources and they are not subject to the proposed standards. In addition, there are relatively few plants in these peripheral industries.

Consideration was given to classifying an entire grain elevator, including all its various functions, as the affected facility. If this were done, however, modification or reconstruction of a substantial portion of an existing grain elevator would make the entire elevator subject to the proposed standard. Since this is not considered reasonable, the operations at grain elevators were classified into eight affected facilities. The affected facilities are: Each truck unloading station, each railroad hopper car and boxcar unloading station, equipment at each barge and ship unloading station, all grain handling operations, each grain dryer, each truck loading station, each railroad hopper car and boxcar loading station, and each barge and ship loading station. There are several advantages to naming the separate operations as affected facilities. For example, unloading stations and loading stations are often physically separated from other parts of the elevator and often have separate capture systems and air pollution control devices. Modification or reconstruction of one of these facilities would make it, but not the entire elevator, subject to the proposed standards. This is desirable because there can be an increase in the unloading or loading capacities without affecting other facilities at the elevator.

Grain handling operations are grouped as one affected facility since they have similar operating capacities, and air pollution control devices frequently serve several pieces of handling equipment. Modification of one part of the grain handling system will usually require modification of other parts in the system; therefore, the whole handling system would be subject to the proposed standards.

Rationale

The purpose of the proposed standards is to require that best demonstrated emission control technology, considering costs, for particulate matter be installed and operated at new, modified, and reconstructed grain elevators. The proposed standards would ensure particulate containment and pickup at the locations of dust generation, as well as proper operation and maintenance of air pollution control devices. The individual emission sources covered by the proposed standards include all sources of fugitive emissions generated by process equipment, and process exhaust gas streams at grain elevators which are significant sources of particulate matter.

It should be noted that standards of performance for new sources established under section 111 of the 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.

The proposed standards for grain elevators are based largely on results of a previous EPA-sponsored investigation of air pollution emissions and control techniques in the grain and feed industry. This earlier study includes the responses from 509 owners or operators of elevators throughout the country to a questionnaire on the air pollution aspects of their operations. The proposed standards are also based on data concerning emission control systems and methods of process operation received through on-site observations of plant operations and control systems, consultation with industry representatives and manufacturers of control systems and devices, emission tests conducted by EPA and operators of grain elevators, and meetings with industry associations and the National Air Pollution Control Techniques Advisory Committee.

Particulate emissions from the affected facilities at a grain elevator, excluding emissions from air pollution control devices, are considered fugitive emissions. These emissions are discharged from an exhaust area that is usually very large. Therefore, it is difficult to apply the usual particulate source test methods designed for measuring stack emissions to affected facilities at grain elevators. In addition, numerous difficulties, such as low exit gas velocity, skewed exit velocity, variability of particulate concentration and velocity over the exit area, and the variability in the design of exhaust areas make source testing impractical. EPA has concluded that practical and feasible methods for measuring the mass of fugitive emissions from affected facilities at grain elevators are not available at this time. Therefore, neither mass nor concentration standards have been proposed for affected facilities at grain elevators. The remaining options for regulating emissions are visible emission/opacity standards and equipment standards. The proposed standards include visible emission/opacity standards for six affected facilities, an opacity standard with the alternative of using specified equipment for one affected facility, and an equipment standard for one affected facility. A concentration standard and an opacity standard are proposed for air pollution control devices.

The proposed visible emission standards include zero percent, 10 percent, and 15 percent opacity standards and a no visible emission standard. These various visible emission standards are necessary because of the different characteristics of the emissions from the affected facilities. The no visible emission limit means that an inspector viewing a source would see no visible emissions without the aid of instruments. This is achievable when an affected facility is totally enclosed with proper ventilation. With this control system, no visible emissions escape to the atmosphere. The emissions from facilities subject to the zero or greater percent opacity levels would be evaluated according to EPA Reference Method 9. Reference Method 9 specifies that 24 observations be taken at 15-second intervals and averaged over a six-minute period. The individual observations are recorded in 5 percent increments (0, 5, 10, etc.); however, averaging 24 observations may result in a six-minute average which is not a whole number. The six-minute average is to be rounded off to the nearest whole number following the standard rules of rounding (e.g. 0.49 would be rounded off to 0, 0.50 would be 1, 7.51 would be 8 etc.). This means that an affected facility subject to a zero percent opacity standard could have two of 24 observations at 5 percent opacity and the other 22 observations at 0 percent opacity and still be in compliance. The six-minute average in this case would be 0.42 percent and would be rounded off to 0 percent, the nearest whole number.

Grain Dryers

The current trend in the grain elevator industry is to install column dryers instead of rack dryers at country elevators, and this trend is expected to continue. The trend has developed primarily because typical State standards require that rack dryers be operated with a 20 to 30 mesh screen for air pollution control, whereas no air pollution control device is usually required for column dryers.

This gives a significant capital and operating cost advantage to the column dryer. EPA believes the majority of new, modified, or reconstructed dryers will be column dryers; however, new rack dryers may be installed in high throughput elevators because maintenance costs appear to be less for rack dryers in these applications.

Emissions from grain dryers are discharged from an exhaust area that is usually very large. Therefore, it is not technologically or economically feasible to apply the usual particulate source test methods designed for measuring stack emissions to this source. Several attempts to carry out source tests were made by EPA and by operators of grain elevators. The data collected, however, can only be used as a guide in developing a standard due to the numerous difficulties encountered in the measurement technique. The accuracy and precision of the technique are not sufficient for determining compliance. EPA has concluded that methods for measuring mass particiate matter emissions from grain dryers are not available at this time. The only practical and feasible method of measuring particulate matter emissions from grain dryers is visible emission determinations.

EPA considered several alternate control systems for grain dryers in developing the proposed standards. The alternatives considered for column dryers were no screen filter with a perforation size range of 1.25 to 2.1 mm (ca. 0.050 to 0.084 inch) and a vacuum-cleaned screen filter (50 mesh and 100 mesh screen size). The alternatives considered for rack dryers were a screen filter (24–30 mesh screen size) and a vacuum-cleaned screen filter (50 mesh and 100 mesh screen size). The factors evaluated in considering these alternatives included the amount of emissions (visible and mass), capital costs, annual costs, energy requirements, operating and maintenance problems, and trends in the industry to use certain types of equipment. After considering all of these factors, EPA concluded that the best system of emission reduction (considering costs) is a column dryer equipped with column plate perforation diameters of 2.1 mm (ca. 0.084 inch) or less and a rack dryer equipped with a 50 mesh screen filter. Both of these systems are considered economically reasonable and comparable in control of particulate matter emissions.

A zero percent opacity standard (based on six-minute averages) is proposed for all grain dryers. The owner or operator of any column dryer would be considered in compliance with the standard provided the diameters of all column plate perforations do not exceed 2.1 mm (ca. 0.084 inch) and the owner or operator of any rack dryer would be considered in compliance provided all exhaust gases pass through a 50 or finer mesh screen filter. EPA observed five column dryers, of two different designs, with perforation plate diameters ranging from 1.25 to 2.1 mm (ca. 0.050 to 0.084 inch). A total of 126 six-minute opacity averages were obtained. EPA observed two rack dryers, one equipped with a 50 mesh vacuum-cleaned screen filter and the other with no screen filter. A total of 5 six-minute opacity averages were obtained at the dryer equipped with the 50 mesh screen. Based on the available data, EPA concluded that a standard of zero percent opacity can be achieved by the best system of emission reduction (considering costs) for grain dryers.

Air Pollution Control Devices

EPA separately considered the capture systems at various grain operations and the air pollution control devices used to remove the captured particulate matter from the gas stream before discharge to the atmosphere. The proposed standards would require air pollution control devices on all affected facilities at a grain elevator, except grain dryers and some types of dust-tight grain handling operations. EPA measured particulate matter emissions according to Reference Method 5, except that the probe was not heated, from eleven grain processes controlled with fabric filters. EPA did not measure emissions from cyclones, but estimates that emissions from grain operations controlled by cyclones average a factor of 10 times those from fabric filter control devices. Based on these data, EPA has determined that the best demonstrated air pollution control device (considering costs) for grain operations is a fabric filter.

EPA considered both mass and concentration units for the proposed standards. The basic difference is that a standard which restricts the mass rate of emissions would limit the total mass emitted, whereas a standard with concentration units would allow the mass rate to increase in direct proportion to the volume of gas exhausted through the control device. This is an advantage for concentration units for grain elevators since a standard with concentration units does not discourage use of large volumes of ventilation air. As one might surmize, adequate capture velocity at the collection hood is necessary for complete capture of the particulate matter generated by the process. Another advantage of concentration units is that the emission test provides all information necessary for enforcement (determination of mass emissions per volume of gas discharged through the control device). Mass standards, however, are usually based on a unit of product or raw material to the process. They require an accurate determination of both mass emissions and product or raw material weight. Product and raw material weight are obtainable only from an operator and are often difficult parameters to measure. This is particularly true for grain elevator operations for the following reasons.

1. The weight of grain handled on conveyor belts, legs, or cleaners is generally not measured.

2. If more than one process is controlled by a single collector (i.e., headhouse filter), it may be impossible to determine the process weight during performance testing. When a standard with concentration units is applicable to each process, compliance for any number of processes can be determined only by measuring the concentration from the control device.

The average concentration of particulate matter emissions from all the grain processes tested, excluding one which had high emissions due to process irregularities, was 0.007 g/std. m^3 dry basis. Most of the individual test results were below 0.023 g/std. m^3 dry basis. Therefore, EPA selected 0.023 g/std. m^3 dry basis as the emission limit for the proposed standards. To meet this emission limit, it would be necessary for grain operations to install and properly operate fabric filter control systems rather than less effective control systems such as high efficiency cyclones.

A zero percent opacity standard (based on six-minute averages) is also proposed for air pollution control devices. EPA observed two fabric filter systems on grain processes, and all of the individual readings, a total of 56 six-minute averages, were no visible emissions. EPA believes that the proposed standard of zero percent opacity would ensure the proper operation and maintenance of the air pollution control device.

Truck and Railcar Unloading Stations

The demonstrated methods for controlling particulate matter emissions from truck and railcar unloading operations include a collection hood in the receiving hopper ventilated to an air pollution control device and a protective enclosure around the facility to reduce the interfering effect of winds. Generally, enclosures or sheds are used to protect the grain and workers from inclement weather. In some locations, however, where the weather is consistently dry, unloading stations do not have sheds. In developing the proposed standards, EPA determined that a protective enclosure is required to prevent wind from interfering with the effectiveness of particulate capture by the hopper ventilation system. Three alternatives were evaluated by EPA concerning protective enclosures of the unloading station: (1) a shed with two open ends, (2) a shed with one open end, and (3) a totally enclosed shed. A shed with two open ends was determined to be least effective because it allows the wind to blow directly through and over the receiving hopper. A shed with one open end and a totally enclosed shed were found to diminish the effects of wind upon the ventilation system.

The totally enclosed shed has been demonstrated in railcar (hopper and boxcar) unloading operations, where the two ends of the shed are equipped with quick-operating doors. However, all of the truck unloading facilities inspected by EPA were designed so that the front end of the truck extends out from the open end of the shed. Some reduction in particulate emissions could be achieved by totally enclosing the truck unloading operation; however, EPA knows of no elevators that use this method. In order to totally enclose the operation, the shed would have to be increased in both

length and height because the front ends of the trucks are raised considerably to allow the grain to flow out the rear of the truck. This would increase the cost of the shed substantially. In addition, truck unloading operations are located at all small country elevators. Greatly increased costs would be incurred, especially at small elevators, from the use of a completely enclosed shed on truck unloading operations. Therefore, EPA has concluded that the best demonstrated system of emission reduction (considering costs) for truck unloading stations is a shed with one open end and for railcar unloading stations it is a totally enclosed shed.

The system for railcar unloading would include a receiving hopper equipped with baffles and ventilated at a rate of approximately 420 to 710 actual cubic meters per minute (act m^3/min) (ca. 15,000 to 25,000 cfm) depending on the size of the facility. The system for truck unloading would include a receiving hopper equipped with baffles and ventilated at a rate of approximately 340 act m^3/min (ca. 12,000 cfm).

An emission standard of zero percent opacity (six-minute average) is proposed for truck unloading operations at grain elevators. A total of 138 six-minute opacity averages were gathered by EPA. The range for these six-minute averages is no visible emissions to one percent. A total of 120 six-minute averages were no visible emissions and 17 six-minute averages were zero percent opacity. Based on the available data, EPA concluded that a standard of zero percent opacity can be achieved by the best demonstrated system of emission reduction (considering costs) for truck unloading.

The proposed standard for railcar unloading (boxcars and hopper cars) is no visible emissions. A total of two hours of visible emission/opacity data were gathered by EPA on a boxcar unloading operation. Every data point, taken at 15-second intervals, indicated no visible emissions. Data to substantiate the proposed standard were not collected for hopper car unloading operations. However, EPA has observed that unloading of boxcars is a dustier operation than unloading of hopper cars. Therefore, the proposed standard applies to both hopper cars and boxcars. Based on the available data, EPA concluded that a standard of no visible emissions can be achieved by the best system of emission reduction (considering costs) for railcar unloading.

Barge and Ship Unloading Stations

An equipment standard is proposed for barge and ship unloading operations. EPA observed the levels of visible emissions at a barge unloading station. The resulting data showed an extremely wide range of visible emissions, with some six-minute averages above 65 percent opacity. EPA concluded that an opacity standard could not be established that would ensure the installation of the best system of emission reduction (considering costs) because of this wide range of visible emissions.

All of the bucket elevators (legs) observed by EPA at barge and ship unloading stations during the development of the proposed standards had various types of enclosures and were ventilated. A facility with the leg enclosed from the top (including the receiving hopper) to the center line of the bottom pulley appeared to perform with the least emissions. This facility was observed in operation with and without the ventilation system in operation. Visible emissions were observed to be significantly lower when the ventilation system was operating than when it was not. EPA concluded that this system represents the best demonstrated system of emission reduction (considering costs) and proposes an equipment standard based on the design of this system.

Grain Handling Operations

Particulate matter emissions from grain handling operations can be minimized through the use of totally enclosed equipment, by handling the grain at a slower rate, or by using ventilated hooding systems designed to capture emissions.

Separate data were not obtained on each item of grain handling equipment included under grain handling operations. However, during observation of the headhouse, the items included under this affected facility were in operation. An exterior conveyor and a headhouse were observed and all data recorded were no visible emissions. A zero percent opacity standard has been proposed instead of no visible emissions because zero percent opacity (six-minute average) allows the possibility of slight emissions from the headhouse. EPA has concluded that the best demonstrated systems of emission reduction (considering costs) for grain handling operations are totally enclosed equipment or hooding systems ventilated to air pollution control devices.

Truck and Railcar Loading Stations

During the development of the proposed standards, EPA could not locate a truck loading operation in the grain industry that used what was considered to be the best system of emission reduction that could be applied. Therefore, other industries such as lime, and flour and grain processing were studied in an attempt to find well-controlled truck loading operations in these industries. EPA located and observed a soybean, meal truck loading operation. This operation is well controlled; however, it does not have what is considered to be the best system of emission reduction. Loading soybean meal into trucks was determined by EPA to be as dusty an operation as loading grain into trucks; therefore, a direct transfer of technology to grain loading operations is possible. The ten percent opacity limit is based on data gathered at this facility. EPA believes that a better control system can be designed than the one observed; however, this is the best system that has been demonstrated for truck loading operations which are very similar to grain loading operations. EPA has concluded that the best system of emission reduction (considering costs) for truck loading stations is a shed with one open end, equipped with a loading spout with a canvas sleeve and a hooding system ventilated at a rate of about 280 to 350 act m^3/min (ca. 10,000 to 12,250 cfm).

Particulate matter emissions which result from the loading of grain into hopper cars is controlled in the grain industry by a hooding system, ventilated to an air pollution control device, located at the end of the loading spout. The loading operation is usually enclosed in a shed with two open ends. This control method is the only effective demonstrated particulate control system used for loading grain into hopper cars. The type of hooding and the ventilation rates are the only variables. Several hopper car grain loading systems were studied by EPA by reviewing the manufacturer's designs of the systems and through communications with grain elevator operators and plant engineers. EPA gathered data from the operation which was determined to be the most effective system. The individual 15-second opacity data collected were all zero percent opacity or no visible emissions. There was no appreciable wind during this observation period. Therefore, EPA was proposed a zero percent opacity limit to allow for possible slight particulate emissions during other than ideal conditions. EPA has concluded that the best system of emission reduction (considering costs) for railroad hopper car loading stations is a shed with two open ends, and a hooding system located next to the loading spout which is ventilated at a rate of about 280 act m^3/min (ca. 10,000 cfm).

The grain industry has essentially only one demonstrated particulate control system for loading boxcars. The entire operation is usually enclosed in a shed with two open ends. EPA took opacity observations on the best controlled facility which was found. The data ranged from three to five percent opacity. The operation observed, however, was not considered to employ the best control technology that could be applied. The facility could have been maintained in better condition and higher ventilation rates could have been used.

Hopper car loading and boxcar loading operations are similar and best technology requires a shed with two open ends and a hooded loading spout ventilated to an air pollution control device on both facilities. The grain flows through a loading spout and is deposited in a receiving vessel (the railcar) at each facility. Fugitive particulate matter emissions are also generated in a similar manner. The stream of grain and induced air flowing into the railcar disturbs and displaces the air in the railcar. Also, when the grain impacts against the receiving vessel, turbulence is created in the surrounding air. Particulate matter can be entrained in the turbulent air currents and flow out of the railcar with the displaced air. EPA is proposing a zero percent opacity standard on boxcar loading stations based on a transfer of

technology from hopper car loading stations.

EPA has concluded that the best system of emission reduction (considering costs) for railroad boxcar loading stations is a shed with two open ends. A loading spout enclosed by a small building-like structure which extends to within 150 mm (ca. 6 inches) of the side of the boxcar and hinged doors about 200 mm (ca. 8 inches) wide, equipped with rubber flaps, which seal the sides of the enclosure to the boxcar are part of this best control system. This building-like structure is ventilated at a rate of about 280 act m^3/min (ca. 10,000 cfm).

Barge and Ship Loading Stations

EPA considered two systems for controlling particulate matter emissions from barge and ship loading. The first consists of a telescoping loading spout that is adjusted to the elevation of the grain surface as loading proceeds. Ventilation is applied at the end of the spout and then vented to a fabric filter. Two variations of this system were observed by EPA. The second system considered was to cover the hold with canvas or plastic sheeting except where the loading spout enters. However, no system of this type was observed in operation. EPA believes both control systems can achieve the proposed opacity standards.

Data were gathered from a ship loading operation employing the first control approach mentioned. These data revealed that during topping-off operations, recorded opacities were greater than during general loading operations. EPA, therefore, has proposed a two-level opacity standard for barge and ship loading operations. General loading operations have a ten percent opacity limit and topping-off operations have a fifteen percent opacity limit.

EPA has no data on loading grain into barges. However, EPA has visited barge loading operations and believes the operations to be similar to ship loading operations; therefore, the proposed standards apply to barge loading as well as to ship loading.

Testing and Recordkeeping

Under the proposed standards, performance tests for particulate matter emissions would be required for air pollution control devices on all affected facilities. Particulate matter would be measured by Reference Methods 1 through 5 and 17. EPA Reference Method 17 was proposed in the Standards of Performance for Kraft Pulp Mills on September 24, 1976 (41 FR 42012).

The definition of particulate matter has been revised to allow measurement by the reference method specified under each applicable subpart. This definition has been revised because Method 17 has been proposed as a reference method for particulate matter.

Records of performance testing measurements would have to be maintained and retained for at least two years following the date of the measurements by owners or operators subject to the proposed regulations. This requirement is included under section 60.7(d) of the regulations.

Public Participation

As prescribed by section 111, this proposal of standards of performance has been preceded by the Administrator's determination that grain elevators contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare and by his publication of this determination in this issue of the Federal Register. In accordance with section 117 of the Act, publication of these proposed standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Interested persons may participate in this rulemaking by submitting comments (in triplicate) to the Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin. The Administrator will welcome comments on all aspects of the proposed regulations, including the designation of grain elevators as a significant contributor to air pollution which causes or contributes to the endangerment of public health or welfare, economic and technological issues, and on the proposed test methods.

Comments are invited specifically on the proposed standard for railcar unloading stations and its effect on the unloading of unit trains. A number of interested parties have expressed concern that the uncoupling of railcars, which would be required when operating a totally enclosed unloading shed would have an adverse economic impact. Comments on this issue should contain specific information and data pertinent to an evaluation of the magnitude of this impact and its severity.

In addition, EPA is interested in receiving comments on the selection of the best system of emission reduction, considering costs, for grain dryers. The comments should address the factors EPA used in evaluating the alternative emission control systems.

All relevant comments received on or before March 14, 1977 will be considered. Comments received will be available for public inspection and copying at the Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, S.W., Washington, D.C. 20460.

Background information on these proposed standards of performance has been published in a document "Standards Support and Environmental Impact Statement, Volume 1: Proposed Standards of Performance for the Grain Elevator Industry." This report presents the factors considered in the development of the proposed standards, including alternative emission control systems, emission test data, environmental impact, costs, and economic considerations. Copies of this document may be obtained by writing to the Public Information Center (PM-215), Environmental Protection Agency, Washington, D.C. 20460.

Authority

(Sec. 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)).

Dated: January 4, 1977.

John Quarles,
Acting Administrator.

References

1. Hopper, T. G., and W. A. Marrone. Impact of New Source Performance Standards on 1985 National Emissions from Stationary Sources, Volume I. Environmental Protection Agency, Research Triangle Park, N.C. Contract Number 68-02-1382, October 24, 1975. pp. 52-59.

2. *Report of the Committee on Public Works*, U.S. Senate Report No. 91-1196. September 17, 1970. pp. 15-17.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

It is proposed to amend Part 60 of Chapter I of Title 40 of the Code of Federal Regulations as follows:

Subpart A—General Provisions

1. Section 60.2 is amended by revising paragraph (v). The revised paragraph reads as follows:

§ 60.2 Definitions.

* * * * *

(v) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under each applicable subpart, or an equivalent or alternative method.

* * * * *

2. Part 60 is amended by adding subpart DD as follows:

Subpart DD—Standards of Performance for Grain Elevators

Sec.

60.300 Aplicability and designation of affected facility.
60.301 Definitions.
60.302 Standard for particulate matter.
60.303 Test methods and procedures.

Authority: 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 sec. 15(c)(2) of Pub. L. 91-604.

Subpart DD—Standards of Performance for Grain Elevators

§ 60.300 Applicability and designation of affected facility.

The provisions of this subpart apply to the following affected facilities at any grain elevator except at farm elevators, country elevators, terminal elevators, and commercial rice dryers having a total leg capacity of less than 352 m^3/h (ca. 10,000 bushels/hr) and at animal, pet food, and cereal manufacturers, breweries, and feedlots each truck unloading station, each railroad hopper car and boxcar unloading station, equipment at each barge and ship unloading station, all grain handling operations, each grain dryer, each truck loading station, each railroad hopper car and boxcar loading station, and each barge and ship loading station.

§ 60.301 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) "Grain" includes corn, wheat, milo, rice, rye, oats, barley and soybeans.

(b) "Grain elevator" means any operation at which grain is unloaded, handled, loaded, dried or stored at any farm elevator, country elevator, terminal elevator, commercial rice dryer or storage elevator at wheat flour mills, wet corn mills, dry corn mills (human consumption), rice mills, or soybean oil extraction plants.

(c) "Control device" means the air pollution control equipment used to remove particulate matter generated by an affected facility at a grain elevator.

(d) "Capture system" means the equipment including sheds, hoods, ducts, fans, dampers, etc. used to capture or transport particulate matter generated by an affected facility at a grain elevator to the control device.

(e) "Fugitive emission" means the particulate matter generated by an affected facility at a grain elevator which is not collected by a capture system and is discharged to the atmosphere.

(f) "Grain unloading station" means that portion of a grain elevator where the grain is transferred from a truck, railcar, barge or ship to a receiving hopper.

(g) "Grain loading station" means that portion of a grain elevator where the grain is transferred from the elevator to a truck, railcar, barge or ship.

(h) "Grain handling operations" include bucket elevators or legs (excluding legs used to unload barges or ships), scale hoppers and surge bins (garners), turn heads, scalpers, cleaners, tripers, and the headhouse and other such structures.

(i) "Grain dryer" includes any equipment used to reduce the moisture content of grain.

(j) "Column dryer" means a grain dryer in which the grain flows from the top to the bottom in one or more continuous packed columns between two perforated metal sheets.

(k) "Rack dryer" means a grain dryer in which the grain flows from the top to the bottom in a cascading flow around rows of baffles (racks).

(l) "Topping off" means that portion of a barge or ship loading operation which occurs within 1.2 meters (ca. 4 feet) of the top of the hold.

§ 60.302 Standard for particulate matter.

(a) On and after the sixtieth day of operating at the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial start-up, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any grain dryer any gases which exhibit greater than zero percent opacity (column dryers would be considered in compliance with the standard provided the diameters of all column plate perforations do not exceed 2.1 mm (ca. 0.084 inch), and rack dryers would be considered in compliance provided all exhaust gases pass through a 50 or finer mesh screen filter).

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility except a grain dryer any gases which:

(1) Exit from a control device and contain particulate matter in excess of 0.023 g/std. m^3 dry basis (ca. 0.01 gr/dscf).

(2) Exist from a control device and exhibit greater than zero percent opacity.

(c) On and after the sixtieth day of operating at the maximum production rate at which the affected facility will be operated, but no later than 180 days after initial start-up, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere any fugitive emission from:

(1) Any truck unloading station, railroad hopper car loading station, railroad boxcar loading station, or grain handling operation which exhibits greater than zero percent opacity.

(2) Any railroad hopper car unloading station or railroad boxcar unloading station which is visible without the aid of instruments.

(3) Any truck loading station which exhibits greater than ten percent opacity.

(4) Any barge or ship loading station which exhibits greater than ten perment opacity, except that the opacity may not exceed fifteen percent during topping-off operations.

(d) The owner or operator of any barge or ship unloading station shall operate as follows:

(1) The leg shall be enclosed from the top (including the receiving hopper) to the center line of the bottom pulley and ventilation to a control device shall be maintained on both sides of the leg and the grain receiving hopper.

(2) The total rate of air ventilated shall be at least 32.1 actual cubic meters per cubic meter of grain handling capacity (ca. 40 ft^3/bu).

(3) Rather than meet the requirements of subparagraphs (1) and (2), the owner or operator may use other methods of control if demonstrated to the Administrator's satisfaction that there would be less than or equivalent amounts of particulate matter emissions by using the alternative methods.

§ 60.303 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with the standards prescribed under § 60.302 as follows:

(1) Method 5 or Method 17 for concentration of particulate matter and associated moisture content;

(2) Method 1 for sample and velocity traverses;

(3) Method 2 for velocity and volumetric flow rate;

(4) Method 3 for gas analysis; and

(5) Method 9 for visible emissions.

(b) For Method 5, the sampling probe and filter holder shall be operated without heaters. The sampling time for each run, using Method 5 or Method 17, shall be at least 60 minutes. The minimum sample volume shall be 1.7 std. m^3 dry basis (ca. 60 dscf).

[FR Doc.77-1097 Filed 1-12-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[PRL 660-8]

AIR POLLUTION PREVENTION AND CONTROL

Addition to the List of Categories of Stationary Sources

Section 111 of the Clean Air Act (42 U.S.C. 1857c-6) directs the Administrator of the Environmental Protection Agency to publish, and from time to time revise, a list of categories of stationary sources which he determines may contribute significantly to air pollution which causes or contributes to the endangerment of public health or welfare. Within 120 days after the inclusion of a category of stationary sources in such list, the Administrator is required to propose regulations establishing standards of performance for new and modified sources within such category. At present, standards of performance for 24 categories of sources have been promulgated.

The Administrator, after evaluating available information, has determined that grain elevators are an additional category of stationary sources meeting the above requirements. The basis for this determination is discussed in the preamble to the proposed regulation that is published elsewhere in this issue of the FEDERAL REGISTER. Evalution of other stationary source categories is in progress, and the list will be revised from time to time as the Administrator deems appropriate. Accordingly, notice is given that the Administrator, pursuant to section 111(b)(1)(A) of the Act and after consultation with appropriate advisory committees, experts, and Federal departments and agencies in accordance with section 117(f) of the Act, effective January 13, 1977, amends the list of categories of stationary sources to read as follows:

LIST OF CATEGORIES OF STATIONARY SOURCES AND CORRESPONDING AFFECTED FACILITIES

Source category	*Affected facilities*
* * * * *	
27. Grain elevators.	Truck unloading stations. Railroad hopper car and boxcar unloading stations. Equipment at barge and ship unloading stations. Grain handling operations. Grain dryers. Truck loading stations. Railroad hopper car and boxcar loading stations. Barge and ship loading stations.

NOTE.—Proposed standards of performance applicable to the above source category appear elsewhere in this issue of the FEDERAL REGISTER.

Dated: January 4, 1977.

JOHN QUARLES,
Acting Administrator.

[FR Doc.77-1101 Filed 1-12-77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART VI



DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRPORT AND AIRWAY DEVELOPMENT ACT AMENDMENTS OF 1976: CIVIL RIGHTS

Notice of Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 152]

[Docket No. 16419; Notice No. 77-1]

AIRPORT AND AIRWAY DEVELOPMENT ACT AMENDMENTS OF 1976: CIVIL RIGHTS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Part 152 of the Federal Aviation Regulations by implementing section 30 of the Airport and Airway Development Act (49 U.S.C. 1730) to assure that no person is excluded on the grounds of race, creed, color, national origin, or sex from participating in any project for airport development, airport master planning, or airport system planning conducted with funds received from a grant made under that part. This proposal also would require sponsors of projects for airport development to take affirmative action to ensure that minorities and minority businesses have a fair opportunity to participate in employment, in leasing opportunities, and in contractual opportunities which arise in connection with those projects.

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Persons furnishing comments are invited to express their views on whether the requirements of proposed Subpart E should be made retroactively applicable to all grants made under Part 152 between the date of enactment of section 30 (July 12, 1976) and the effective date of this proposed amendment if adopted. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before March 14, 1977, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Airport and Airways Development Act Amendments of 1976 (1976 Amendments; Pub. L. 94-353) added a new section 30 to the Airport and Airway Development Act of 1970 (AADA; Pub. L. 91-258). That section reads as follows:

> The Secretary shall take affirmative action to assure that no person shall, on the grounds of race, creed, color, national origin, or sex, be excluded from participating in any activity conducted with funds received from any grant made under this title. The Secretary shall promulgate such rules as he deems necessary to carry out the purposes of this section and may enforce this section, and any rules promulgated under this section, through agency and department provisions and rules which shall be similar to those established and in effect under title VI of the Civil Rights Act of 1964. The provisions of this section shall be considered to be in addition to and not in lieu of the provisions of title VI of the Civil Rights Act of 1964.

Section 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation provide, in pertinent part, that the Federal Aviation Administrator is delegated authority to carry out the functions vested in the Secretary by the Airport and Airway Development Act of 1970, except sections three and four thereof. Accordingly, the authority to implement section 30 rests with the Administrator of the FAA.

That authority, coupled with the current meaning of the words "affirmative action" and the Congressional intent expressed in enacting section 30, provide the basis for proposing that sponsors receiving grants for airport development projects maintain approved affirmative action plans and ensure that certain of their contractors, subcontractors, lessees, and sublessees maintain those plans. The FAA believes that the guidelines set forth in this proposal for the development of those palns would assure that minorities and minority businesses are afforded full and equal opportunity with respect to employment, contracting, and leasing of concessions on the sponsor's airport.

Part 152 of the Federal Aviation Regulations sets forth the policies and procedures for administering the Airport Aid Program for airport development and planning grant projects under the AADA. Applications for funds for those projects are filed under that part. Since section 30 of the AADA relates to activities conducted with funds reecived under the Airport Aid Program, the FAA believes that it would be appropriate to include in Part 152 any regulations promulgated under the authority of that section. Therefore, the amendments proposed herein are set forth in a new Subpart E to Part 152.

As previously noted, the provisions of this proposal apply to sponsors, and to certain of their employment, contractual, and leasing practices. With regard to the phrase "participating in any activity conducted with funds received from any grant made under this title", the FAA believes that the use of this language in section 30, coupled with congressional intent, warrants coverage of sponsors and provides authority for requiring sponsors to monitor certain of their contractors and subcontractors that participate in projects funded under Part 152.

Section 30 specifies that its provisions are to be considered in addition to, rather than in lieu of, the provisions of Title VI of the Civil Rights Act of 1964. The FAA believes that section 30 can reasonably be viewed as an effort to provide minority businesses with an opportunity, beyond that provided by Title VI, to obtain leases and subleases on the sponsor's airport to operate concessions. This view is reinforced by a Congressional intent indicating support of equal opportunity for those businesses. Therefore, this proposal would assure that minority businesses have a fair opportunity to lease or sublease property on the sponsor's airport for the purpose of operating concessions.

Section 152.155 of this notice proposes that a grant agreement between the FAA and a sponsor for airport development, airport master planning, or airport system planning contain clauses prohibiting the sponsor from excluding any person from participating in a project, and from discriminating against any business organization when awarding contracts, on the basis of race, creed, color, national origin, or sex. Under that section, grant agreements for airport development would contain additional clauses including those prohibiting discrimination in employment practices and in the awarding of leases for the operation of concessions on the airport. The sponsor, in turn, would be required to assure that similar clauses be placed in the leases of its lessees and sublessees and in the contracts of its contractors and subcontractors.

Grant agreements for airport development also would contain nondiscrimination clauses requiring affirmative action on the part of the sponsor. In this connection, § 152.159 proposes that grants to a sponsor for airport development be conditioned on submission by the sponsor, and approval by the Administrator, of an appropriate affirmative action plan. That section also would condition the award of certain contracts, subcontracts, leases, and subleases on the submission of appropriate affirmative action plans by contractors, subcontractors, lessees, and sublessees for approval by the sponsor. Proposed § 152.161 sets forth in detail the guidelines for developing an appropriate affirmative action plan.

Proposed § 152.163 would require the sponsor of a project for airport development to keep records and reports, as required by the Administrator, so that the latter can determine compliance with each of the requirements proposed herein, including the requirement to implement and maintain an approved affirmative action plan. That section also would require the sponsor to carry out this function to the extent necessary to determine compliance by certain of its contractors, subcontractors, lessees, and sublessees.

Since section 30 authorizes the Secretary to enforce any rules promulgated under that section, appropriate enforcement mechanisms must be developed. In this connection, it should be noted that, while the Administrator carries out most of the functions vested in the Secretary by the AADA, the Secretary, under this proposal, would conduct investigations and implement the procedures aimed at effecting compliance coincident with his exercise of similar functions under Title VI, which have been reserved to him.

Therefore, under § 152.165 of the proposal, persons who believe that they have been subjected to discrimination would be authorized to file their complaints with the Secretary. Under that section, the Secretary would make appropriate investigations to determine compliance, or failure to comply, with any requirement proposed herein. If noncompliance is found, an attempt would be made to resolve matters informally. In the event that informal efforts to achieve compliance fail, hearings concerning alleged violations could be granted as provided in § 152.169 of this proposal. Remedies for failure to correct any violations would include the termination of further funding under Part 152 until such time as compliance is achieved.

These amendments are proposed under the authority of section 30 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1730) and § 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 C.F.R. 1.47(f)(1)).

PART 152—AIRPORT AID PROGRAM CONTENTS

In consideration of the foregoing, it is proposed to amend Part 152 of the Federal Aviation Regulations as follows:

1. By amending § 152.1 by revising the introductory paragraph, and by adding a new paragraph (e), to read as follows:

§ 152.1 Applicability.

This part prescribes the policies and procedures for administering the Airport Aid Program for airport development and planning grant projects under the Airport and Airway Development Act of 1970 (Pub. L. 91-258), including section 30 as added by the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1730).

* * * * *

(e) Subpart E prescribes rules and procedures under section 30 of the AADA to promote nondiscrimination in the Airport Aid Program.

2. By amending § 152.7 by revising paragraph (a)(1)(i), and by adding a sentence to the flush paragraph immediately following paragraph (a)(1)(iii), to read as follows:

§ 152.7 Grant of funds: general policies.

(a) * * *

(1) * * *

(i) Any grant agreement made under the Federal Airport Act (49 U.S.C. 1101 et seq.) or the Airport and Airway Development Act of 1970, including section 30 as added by the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1730);

* * * * *

(iii) * * *

Denial of a grant of funds for failure to comply with the assurances required under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1), and § 21.7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 21), is determined under § 21.13 and other applicable provisions of Part 21. Denial of a grant of funds for failure to comply with the requirements of the Airport and Airway Development Act, including section 30 as added by the Airport and Airway Development Act Amendments of 1976 (49 U.S.C. 1730), and Subpart E of this part, is determined under that subpart.

* * * * *

3. By adding a new Subpart E to read as follows:

Subpart E—Nondiscrimination in Airport Aid Program

§ 152.151 Applicability.

General. This subpart prescribes requirements that apply to a sponsor that conducts a project for airport development, airport master planning, or airport system planning with funds received from a grant made under this part. However, if an action may be brought against a sponsor under Part 21 of the Regulations of the Office of the Secretary of Transportation (49 C.R.F. 21), that action may be brought against the sponsor under this subpart.

§ 152.153 Definitions.

As used in this subpart—

(a) "Administrator" means the Federal Aviation Administrator or his authorized representative within the FAA;

(b) "Affirmative Action Plan" means a set of specific and result oriented procedures to which a sponsor and its lessees, sublessees, contractors, and subcontractors commit themselves to achieve equal opportunity for minorities and minority businesses;

(c) "Airport development" means—

(1) Any work involved in constructing, improving, or repairing a public airport or portion thereof, including the removal, lowering, relocation, and marking and lighting of airport hazards, and including navigation aids used by aircraft landing at, or taking off from, a public airport, and including safety equipment required by rule or regulation for certification of the airport under section 612 of the Federal Aviation Act of 1958, and security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and including snow removal equipment, and including the purchase of noise suppressing equipment, the construction of physical barriers, and landscaping for the purpose of diminishing the effect of aircraft noise on any area adjacent to a public airport;

(2) Any acquisition of land or of any interest therein, or of any easement through or other interest in airspace, including land for future airport development, which is necessary to permit any such work or to remove or mitigate or prevent or limit the establishment of, airport hazards; and

(3) Any acquisition of land or of any interest therein necessary to insure that such land is used only for purposes which are compatible with the noise levels of the operation of a public airport;

(d) "Airport master planning" means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport, and it may include the preparation of an airport layout plan and feasibility studies, including the potential use and development of land surrounding an actual or potential airport site, and the conduct of such other studies, surveys, and planning actions as may be necessary to determine the short- intermediate-, and long-range aeronautical demands required to be met by a particular airport as a part of a system of airports;

(e) "Airport system planning" means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area to establish a viable and balanced system of public airports, and it includes identification of the specific aeronautical role of each airport within the system, development of estimates of system-wide development costs, and the conduct of such studies, surveys, and other planning action as may be necessary to determine the short-, intermediate-, and long-range aeronautical demands required to be met by a particular system of airports;

(f) "Contractor" means an individual, organization, or entity that participates, through contractual arrangements with a sponsor, in a project for airport development, airport master planning, or airport system planning funded under this part;

(g) "Department" means the Department of Transportation;

(h) "FAA" means the Federal Aviation Administration;

(i) "Grant" means Federal financial assistance in the form of funds provided to a sponsor under this part;

(j) "Lessee" means a person that leases or is negotiating to lease property from a sponsor on the sponsor's airport for the purpose of operating a concession, but does not include a person conducting an operation related solely to the carriage by aircraft of persons or property for compensation or hire;

(k) "Minority" means a person who is—

(1) Black and not of Hispanic origin (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

(3) Asian or Pacific Islander (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including persons having origins in China, Japan, Korea, the Philippine Islands, and Samoa); and

(4) American Indian or Alaskan Native (a person having origins in any of the original peoples of North America and maintaining cultural identification through tribal affiliation or community recognition).

These regulations are also applicable to women as an additional, separate, and distinct, covered group.

(l) "Minority business" means a business that is owned by, or is controlled by, a minority person or persons or other persons whose social or economic disadvantage arises by reason of race, creed, color, national origin or sex;

(m) "Secretary" means the Secretary of Transportation or his authorized representative within the Department of Transportation;

(n) "Sponsor" means any public agency that, either individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this part, an application for financial assistance, or that conducts a project for airport development, airport master planning, or airport system planning with funds received from a grant made under this part;

(o) "Subcontractor" means an individual, organization, or entity, that participates, through contractual arrangements with a prime contractor, in a project for airport development, airport master planning, or airport system planning funded under this part; and

(p) "Sublessee" means a person that leases or is negotiating to lease property from a sponsor's lessee on the sponsor's airport for the purpose of operating a concession, but does not include a person conducting an operation related solely to the carriage by aircraft of persons or property for compensation or hire.

§ 152.155 Nondiscrimination clauses.

(a) Each grant agreement made under this part for airport development, airport master planning, or airport system planning shall contain the following clauses:

(1) The sponsor agrees not to exclude any person from participating in a project for airport development, airport master planning, or airport system planning, funded under this agreement, on the grounds of race, creed, color, national origin, or sex.

(2) The sponsor agrees not to discriminate against any business organization in the award of any contract, in connection with a project for airport development, airport master planning, or airport system planning, funded under this agreement, because of the race, creed, color, national origin, or sex of the employees, managers, or owners of that organization.

(b) Each grant agreement made under this part for airport development shall contain the following clauses in addition to those specified in paragraph (a) of this section:

(1) The sponsor agrees to take affirmative action to ensure that all business organizations are permitted to compete for, and are considered for, the award of contracts, arising in connection with the project funded under this agreement, without regard to race, creed, color, national origin, or sex.

(2) The sponsor agrees not to discriminate against any employee or applicant for employment because of the race, creed, color, national origin, or sex, of that employee or applicant and agrees to take affirmative action to ensure that applicants for employment are considered for employment and that employees are treated during employment without regard to race, creed, color, national origin, or sex.

(3) The sponsor agrees not to discriminate against any business organization in the award of any lease for the operation of a concession on its airport, because of the race, creed, color, national origin, or sex of the employees, managers, or owners of that organization.

(4) The sponsor agrees to post in conspicuous places, available to its employees and applicants for employment, notices provided by the Administrator that describe the provisions of § 152.155 of the Federal Aviation Regulations.

(5) The sponsor agrees to furnish the Administrator with the information and reports required by § 152.163 of the Federal Aviation Regulations and to provide the Administrator with access to its books, records, and accounts, to determine compliance with that section.

(6) The sponsor agrees not to enter into any contract or contract modification for construction, for the furnishing of supplies or services, or for the use of real or personal property (including lease arrangements) with a contractor that has not met the requirements of this subpart.

(7) The sponsor agrees to state, in each advertisement for employees, and in each solicitation for services or materials from business organizations placed by it or on its behalf, that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract, without regard to race, creed, color, national origin, or sex.

(8) The sponsor agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement, contract, or understanding, a notice to be provided by the Administrator setting forth the sponsor's commitments under Subpart E of Part 152 of the Federal Aviation Regulations, and the sponsor agrees to post copies of that notice in conspicuous places available to employees and applicants for employment.

(9) The sponsor agrees that it will not, on grounds of race, creed, color, national origin, or sex, either directly or through contractual, leasing, or other arrangements—

(i) Deny a person any service or other benefit;

(ii) Provide any service or other benefit, which is different, or provide it in a different manner, from that provided to others;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, or other benefit;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or other benefit;

(v) Deny a person an opportunity to participate in the project or provide opportunities to some that are different than those afforded others;

(vi) Utilize criteria or methods of administration that have the effect of subjecting persons to discrimination or that have the effect of defeating or substantially impairing accomplishment of the objectives of this subpart; and

(vii) Select sites or locations for facilities with the purpose of excluding persons from, denying them the benefits of, or subjecting them to discrimination or with the purpose or effect of defeating or substantially impairing accomplishment of the objectives of this subpart.

(c) The sponsor of a project for airport development shall ensure that the clauses set forth in paragraphs (a) and (b) of this section are included, if applicable, in the leases of its lessees and sublessees and in the contracts of its contractors and subcontractors, and the sponsor of a project for airport master planning or airport system planning shall ensure that the clauses set forth in paragraph (a) of this section are included in the contracts of its contractors and subcontractors. However in those leases and contracts, the words "lessee", "sublessee", "contractor", or "subcontractor" shall be substituted for the word "sponsor", as appropriate. The words "lease", "sublease", "contract", or "subcontract", shall be substituted for the word "agreement", as appropriate, and the word 'sponsor" shall be substituted for the word "Administrator", as appropriate.

(d) The sponsor of a project for airport development shall take any action necessary to monitor its activities, those of its lessees and sublessees, and those of its contractors and subcontractors, to carry out affirmatively the purposes of this section, and shall implement the affirmative action plan approved by the Administrator under § 152.159 of this part.

(e) The sponsor of a project for airport development shall carry out any lawful sanctions and penalties against its lessees, sublessees, contractors, and subcontractors, as may be necessary to assure compliance with the requirements of this subpart. The sponsor of a project for airport master planning or airport system planning shall carry out any lawful sanctions and penalties against its contractors and subcontractors, as may be necessary to assure compliance with the applicable requirements of this subpart.

§ 152.157 Affirmative action plan: general.

The sponsor of a project for airport development shall—

(a) Develop and maintain an affirmative action plan to ensure that persons and businesses are not discriminated against because of race, creed, color, national origin, or sex;

(b) Ensure that minorities and minority businesses are afforded equal opportunity with respect to employment, contractual, and leasing opportunities on its airport; and

(c) Ensure that its lessees, sublessees, contractors, and subcontractors comply with the requirements of—

(1) Paragraph (a) of this section, if compliance is required under § 152.159 (b) or (c) of this part; and

(2) Paragraph (b) of this section.

§ 152.159 Development and submission of affirmative action plan.

(a) Each application for a grant under this part for airport development shall, as a condition to its approval and the award of any grant under the application, contain or be accompanied by the sponsor's affirmative action plan for review by and approval of the Administrator.

(b) As a condition to an award of a contract or subcontract in connection with a project for airport development, the sponsor shall require contractors and subcontractors, that will use not less than 15 employees and enter into a contract or subcontract of not less than $10,000, to develop a written affirmative action plan for review and approval by the sponsor for the project to be conducted.

(c) As a condition to an award of a lease or sublease to operate a concession on its airport, the sponsor of a project for airport development shall require lessees and sublessees, expected to use not less than 10 employees and to have gross receipts of not less than $250,000 within the first calendar year after the lease or sublease is made, to develop a written affirmative action plan for review and approval by the sponsor.

(d) The sponsor shall ensure that a lessee or sublessee complies with the requirement of paragraph (c) of this section if that lessee or sublessee uses not less than 10 employees and has gross receipts of not less than $250,000 during any calendar year of the lease or sublease.

(e) An affirmative action plan approved under paragraph (a), (b), (c), or (d) of this section shall be updated not less than once within each 12 calendar month period after the date of its approval and shall be maintained for review by the Administrator or by the sponsor, as appropriate.

(f) Positive efforts shall be made by the sponsor of a project for airport development to use small business and minority-owned business sources of supplies and services, and those efforts shall allow those sources the maximum feasible opportunity to compete for leases and subleases to operate concessions on the sponsor's airport, and for contracts and subcontracts arising in connection with projects for airport development. The sponsor shall ensure that its contractors, subcontractors, lessees, and sublessees comply with the applicable requirements of this paragraph.

§ 152.161 Affirmative action plan: contents.

(a) Each affirmative action plan submitted under § 152.159(a) of this part shall:

(1) Include a table of job classifications of the sponsor's airport management and work force, including job titles, prerequisite qualifications, principal duties, and rates of pay;

(2) Include the personnel of the sponsor's airport management and work force and an evaluation of utilization of minorities, including:

(i) Analysis of minority representation in all job categories;

(ii) A comparison of the percentage of minorities in the total work force in the minority representation with the percentage of minorities in the total work force in the area of operations;
area of operations;

(iii) An analysis of the general availability of minorities having requisite skills in the immediate labor area;

(iv) An analysis of minorities having requisite skills in an area in which the sponsor can reasonably recruit;

(v) An analysis of hiring practices for the past calendar year, including recruitment sources and testing, to determine whether equal employment opportunity is being afforded in all job categories; and

(vi) An analysis of upgrading, transfer, and promotion practices for the past calendar year to determine whether equal employment opportunity is being afforded;

(3) Set forth in detail a plan to ensure that minorities with requisite skills have equal opportunity to participate in employment in proportion to their availability in the immediate area or in the area of reasonable recruitment, and that minorities have an equal opportunity for promotion and upgrading;

(4) Establish specific goals and timetables to utilize minority employees in the proportion specified in paragraph (a)(3) of this section, if there has been a prior underutilization of minority employees;

(5) Contain a review of the procurement or leasing practices of the sponsor, for the calendar year preceding the date of submission of the affirmative action plan and an evaluation of the use of minority business in its procurement or leasing activities; including:

(i) An analysis of awards of contracts or leases to minority businesses during the preceding calendar year describing the nature of the premises leased or the goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts or leases to minority businesses (by number of contracts or leases and by total dollar amount involved) with the total procurement or leasing activity of the sponsor for the preceding calendar year;

(6) Set forth in detail the sponsor's plan to ensure that minority businesses are afforded an equal opportunity to do business with the sponsor both in terms of the number of contracts, subcontracts, leases or subleases, and the dollar amount involved, for the duration of the project and specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement or leasing decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts or leases by arranging, as applicable, solicitation time for the preparation of bids, quantities, specifications, and delivery schedules to facilitate the participation of minority businesses, and, to the extent practicable, by assisting minority businesses that are potential contractors or lessees in preparing bid materials and in obtaining and maintaining suitable bonding coverage;

(iv) Maintain records showing that the policies set forth in this subpart are being complied with;

(v) Submit quarterly reports of any records required by this subpart in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate, establish specific goals and timetables to utilize minority businesses in the performance of contracts, subcontracts, leases, or subleases awarded;

(7) Set forth in detail the methods by which the sponsor will implement and maintain the plan it submits;

(8) Include details of proposed contracts, subcontracts, leases and subleases, including, as applicable, a description of the services or products that will be sought, estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), and the manner in which contracts or leases will be awarded (e.g. competitive or sole source); and

(9) Give details, as applicable, regarding bidding procedures and information regarding other qualifications for doing business with a contractor, subcontractor, lessee, or sublessee.

(b) The sponsor may not approve an affirmative action plan submitted under § 152.159 (b) or (c) of this part unless that plan includes the information specified in paragraph (a)(1)–(9) of this section.

§ 152.163 Records and reports.

(a) Each sponsor of a project for airport development shall:

(1) Keep records and submit reports at times determined by the Administrator and containing the information specified by the Administrator, to enable him to ascertain if the sponsor has complied, or is complying, with the requirements of this subpart, and those reports shall show, with regard to the project—

(i) Procedures which have been adopted to comply with the policies set forth in this subpart, including the establishment of a source list of minority businesses;

(ii) Specific efforts to identify and award contracts, subcontracts, leases, and subleases to minority businesses; and

(iii) Awards to minority businesses;

(2) Permit access by the Administrator during normal business hours to books, records, accounts, and other sources of information, and to its facilities as may, in the opinion of the Administrator, be necessary to ascertain compliance with this subpart; and

(3) Make available to its contractors, subcontractors, lessees, sublessees, and other interested persons, information regarding the requirements of this subpart and the applicability of this subpart to the project, and that information shall be made available in a manner specified by the Administrator to inform those persons of the protections against discrimination assured them by this subpart.

(b) The sponsor shall ensure that its contractors, subcontractors, lessees, and sublessees comply with the requirements of paragraphs (a)(1)–(3) of this section, and the sponsor shall carry out the functions specified in that paragraph to ensure their compliance.

§ 152.165 Compliance reviews and conduct of investigation.

(a) *Periodic compliance reviews.* The Administrator from time to time reviews the practices of sponsors to determine if they are complying with this subpart.

(b) *Complaints.* Any person who believes himself to be subjected to discrimination prohibited by this subpart may file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) *Investigations.* The Secretary makes a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this subpart. The investigation includes, where appropriate, a review of the pertinent practices and policies of the sponsor, the circumstances under which the possible noncompliance with this subpart occurred, and other factors relevant to a determination of whether the sponsor has failed to comply with this subpart.

(d) *Resolution of matters.* (1) If an investigation under paragraph (c) of this section indicates a failure to comply with this subpart, the Secretary so informs the sponsor and the matter will be resolved by informal means if possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 152.167 of this part.

(2) If an investigation does not warrant action under paragraph (d)(1) of this section, the Secretary so informs the sponsor and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No sponsor or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this subpart, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subpart. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this subpart, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 152.167 Procedures for effecting compliance.

(a) *General.* If a sponsor is not complying with a requirement of this subpart, and if the noncompliance cannot be corrected by informal means, the Secretary may take any or all of the following actions:

(1) He may terminate Federal funding.

(2) He may refer the matter to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or under any agreement made under this part.

(3) He may recommend that an appropriate proceeding be brought under State or local law.

(4) He may pursue any other means authorized by law.

(b) *Noncompliance with subpart.* If a sponsor refuses to comply or continues in noncompliance, with a requirement imposed by this subpart, Federal funding may be terminated in accordance with the procedures of paragraph (c) of this section.

(c) *Termination or refusal to grant or to continue Federal funding.* No order suspending, terminating, or refusing to continue Federal funding shall become effective until:

(1) The Secretary has advised the sponsor of its failure to comply with this subpart and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for a hearing, of a failure by the sponsor to comply with a requirement imposed by this subpart; and

(3) The action has been approved by the Secretary under this subpart.

Any action to suspend or terminate or to refuse to continue Federal funding shall be limited to the sponsor concerning which the finding has been made and shall be limited in its effect to the particular project, or part thereof, in which noncompliance has been found.

(d) *Other means authorized by law.* No action under paragraph (a)(2)–(4) of this section to achieve compliance with a requirement of this subpart is taken by the Department until:

(1) The Secretary has determined that compliance cannot be achieved by voluntary means;

(2) The sponsor has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of not less than 10 days from the mailing of the notice to the sponsor during which period efforts shall be made to persuade the sponsor to comply with this subpart and to take any corrective action that is appropriate.

§ 152.169 Hearings.

(a) *Opportunity for hearing.* If an opportunity for a hearing is required under § 152.167(c)(2) of this part, reasonable notice is given to the sponsor by registered or certified mail, return receipt requested. The notice advises the sponsor of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice fixes a date not less than 20 days after the date of the notice within which the sponsor may request of the Secretary that the matter be scheduled for hearing or advises the sponsor that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. A sponsor may waive a hearing and submit written information and argument for the record. The failure of a sponsor to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, is considered a waiver of the right to a hearing under this subpart and consent to the making of a decision on the basis of any information that is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, D.C. at a time fixed by the Secretary unless he determines that the convenience of the sponsor or of the Department requires that another place be selected. Hearings are held before the Secretary, or, at his discretion, before an administrative law judge appointed in accordance with section 3105 of Title 5, United States Code, or detailed under section 3344 of Title 5, United States Code.

(c) *Right to counsel.* In all proceedings under this section, the sponsor and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of Title 5, United States Code, and in accordance with such rules of procedure that are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the sponsor shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the person conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted under this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied if considered reasonably necessary by the person conducting the hear-

ing. That person may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent that the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

§ 152.171 Decisions and notices.

(a) *Procedure on decisions by administrative law judge.* If the hearing is held by an administrative law judge, he shall either make an initial decision, if so authorized, or certify the entire record, including his recommended findings and proposed decision, to the Secretary for a final decision. A copy of the initial decision or certification shall be mailed to the sponsor. If the initial decision is made by an administrative law judge, the sponsor may, within 30 days after the mailing of the notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may on his own motion, within 45 days after the initial decision, serve on the sponsor a notice that he will review the decision. Upon the filing of exceptions or of notice of review, the Secretary reviews the initial decision and issues his own decision thereon including the reasons therefor. In the absence of either exceptions, or a notice of review, the initial decision shall, subject to paragraph (e) of this section, be the final decision of the Secretary.

(b) *Decisions on record or review by the Secretary.* If a record is certified to the Secretary for decision or he reviews the decision of an administrative law judge under paragraph (a) of this section, or if the Secretary conducts the hearings, the sponsor shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the sponsor and to the complainant, if any.

(c) *Decisions on record if a hearing is waived.* If a hearing is waived under this subpart, a decision is made by the Secretary on the record and a written copy of that decision is sent to the sponsor and to the complainant, if any.

(d) *Rulings required.* Each decision of an administrative law judge or the Secretary sets forth his ruling on each finding, conclusion, or exception presented, and identifies the requirement or requirements of this subpart with which it is found that the sponsor has failed to comply.

(e) *Approval by Secretary.* Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to continue Federal funding, or the imposition of any other sanction available under this subpart, is promptly transmitted to the Secretary personally who may approve the decision, may vacate it, or may remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to continue Federal funding, in whole or in part, for the project involved, and may contain any terms, conditions, and other provisions that are consistent with and will effectuate the purposes of this subpart, including provisions designed to assure that Federal funding will not thereafter be extended for that project to the sponsor in noncompliance with this subpart, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this subpart.

(g) *Post termination proceedings.* (1) A sponsor shall be restored to full eligibility to receive Federal funding under this part if it satisfies the terms and conditions of the order issued under paragraph (f) of this section or if it brings itself into compliance with this subpart and provides reasonable assurance that it will full comply with this subpart.

(2) A sponsor adversely affected by an order issued under paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal funding under this part. That request shall be supported by information showing that the sponsor has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he restores that eligibility.

(3) If the Secretary denies the request, the sponsor may submit a request for a hearing in writing specifying why it believes that official to have been in error. It shall then be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The sponsor is restored to eligibility if it proves at the hearing that it satisfied the requirements of paragraph (g)(1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

§ 152.173 Judicial review.

In the case of action (not otherwise subject to judicial review) terminating, or refusing to continue funding, upon a finding by the Secretary of failure to comply with any requirement of this subpart, any sponsor aggrieved may obtain judicial review in accordance with Title 5 U.S.C. section 701–706.

§ 152.175 Effect of subpart.

Nothing contained in this subpart is intended to diminish or supersede the obligations imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e), or Executive Order 11246 (42 U.S.C. 2000e (note)).

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Issued in Washington, D.C., on January 10, 1977.

JOSEPH A. FOSTER,
Assistant Administrator,
Office of Airports Programs.

[FR Doc.77–1245 Filed 1–12–77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART VII



ENVIRONMENTAL PROTECTION AGENCY

■

RADIATION PROTECTION PROGRAMS

Environmental Radiation Protection Standards for Nuclear Power Operations

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER F—RADIATION PROTECTION PROGRAMS

[FRL 659-6]

PART 190—ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR NUCLEAR POWER OPERATIONS

On May 10, 1974, the Environmental Protection Agency (EPA) published an advance notice of intent to propose environmental radiation protection standards for the uranium fuel cycle (39 FR 16906) and invited public participation. On May 29, 1975, EPA proposed regulations setting forth such standards (40 FR 23420) pursuant to the Atomic Energy Act, as amended, and Reorganization Plan No. 3 of 1970 (35 FR 15623). Numerous written comments were received, and a public hearing was held on March 8–10, 1976 (41 FR 1124 and 41 FR 5349).[1]

These regulations setting forth environmental radiation standards are hereby promulgated in final form. The standards specify the levels below which normal operations of the uranium fuel cycle are determined to be environmentally acceptable. A number of changes have been made in the proposed regulations in response to comments received. These changes modify and clarify the areas of applicability of the standards and their effective dates, and expand the conditions under which variances may be granted. The numerical levels of the standards have been retained as proposed.

The Agency has benefited from extensive public participation during the course of the development of these regulations. Sixteen comment letters were received in response to the Agency's May 10, 1974, notice of intent to propose standards, and 82 comment letters following the publication of proposed regulations on May 29, 1975. Letters were received from a broad cross-section of representatives of the general public, the industry, professional groups, the States, and Federal agencies. In addition, 17 parties participated in three days of public hearings and, in many cases, submitted extensive additional written testimony. In all, the contributed record comprises over 3500 pages. Comment letters, a transcript of the public hearing, and all submitted testimony are available for viewing and copying in the Agency's Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The Agency has considered all of this record in reaching its conclusions for these final regulations.

At the time these standards were proposed, EPA released a Draft Environmental Statement and solicited public comments. A Final Environmental Statement is being made available concurrently with the promulgation of these standards. This statement contains the comments received on both the proposed standards and the draft statement, and EPA's response to these comments. Single copies of the Final Environmental Statement and an additional document containing EPA's detailed responses to testimony received in connection with the public hearing are available from the Director, Criteria and Standards Division (AW-460), Office of Radiation Programs, Environmental Protection Agency, Washington, D.C. 20460. Persons interested in a summary discussion of the background, rationale, interpretation, and significance of these standards should consult the notice proposing these regulations and, for greater detail, the Final Environmental Statement.

Major Issues Raised During Review

Three major issues were raised by commenters. These were: (1) concern that procedures for implementation of the standards would be unnecessarily conservative or costly, (2) disagreement over the need for and cost-effectiveness of control of environmental releases of krypton-85 and other long-lived radionuclides, and (3) disagreement over the form of the relationship between effects on health and radiation dose assumed in deriving these standards.

A large number of commenters expressed the view that implementation would lead to more restrictive control of effluents than intended due to the use of unnecessarily conservative models for source terms, control capability, and environmental transport, and due to requirements for unreasonably large margins between normal operating levels and the standards, especially at sites containing a number of facilities. The authority to regulate fuel cycle facilities under these standards resides in the Nuclear Regulatory Commission (NRC), or, in some cases, the States, under agreements with NRC. The standards have been expressed in terms of the dose to members of the public, rather than to hypothetical receptors, in order to encourage the use of realistic models by the regulatory agency. In addition, the Agency has made its intent regarding realistic implementation clear, as, for example, in the discussion of these matters in the Final Environmental Statement and will continue to do so if necessary as implementation proceeds, to assure that unnecessary conservatism does not occur.

In this regard, the NRC has recently issued a revised set of regulatory guides for light-water-cooled reactors which implement their announced intent to use the most realistic models available when adequate experimental data exist to permit a prudent and scientific determination. These models are intended for use in implementing the recently-issued Appendix I to 10 CFR Part 50, which defines design and operating criteria for single reactor units. EPA has examined Appendix I and the accompanying regulatory guides and agrees that they provide the basis for realistic implementation of these standards for single reactor units. The existence of these requirements, coupled with the realization that most existing reactor licenses are for no more than one or two units on a site, makes it unnecessary, in the Agency's judgment, to reexamine the license conditions of these licensees for compatibility with these standards, unless the nearest neighboring site covered by this standard is within ten miles. In these latter cases small adjustments may be necessary. However, in the vast majority of situations, the sum of all reasonably postulable contributions from sources other than the immediate site will be small compared to these standards and should be ignored in assessing compliance. It would not be reasonable to attempt to incorporate into compliance assessment doses which are small fractions of the uncertainties associated with the determination of doses from the primary source of exposure. The Agency has also concluded that, except under highly improbable circumstances, conformance to these criteria should provide reasonable assurance of compliance with these standards for up to five units on a site. This conclusion is based, among other considerations, upon realistic consideration of anticipated site sizes and the relative location of individual units, as well as the stochastic nature of effluent releases.

A number of commenters, including the NRC, also noted that shutdown of nuclear facilities for minor deviations from the standards would not be reasonable. The Agency agrees, and notes that the use of such an extreme measure is not required under present compliance procedures for licenses issued pursuant to the Atomic Energy Act, and that these regulations do not add such a requirement. A graded scale of action is an appropriate regulatory response for achieving conformance. This may include, for example, requirements for corrective actions, appropriate penalties, and, in extreme cases, cessation of operations. The Agency is confident that the NRC will implement these standards in such a reasonable manner.

Some commenters expressed the view that it was not feasible to monitor con-

[1] In this connection the Agency received requests on behalf of Allied-General Nuclear Services (AGNS) on October 4 and December 2, 1976, for a supplemental hearing on certain aspects of this rulemaking, on the grounds that the Agency is, in part, relying upon information acquired subsequent to the public hearing which, in the view of AGNS, would be an essential basis for the rulemaking but is erroneous. The Agency has reviewed the materials submitted in support of this request and concluded that they would not provide a sufficient basis for altering its conclusions. A response to new matters addressed by this material has been appended to the Agency's commentary on testimony received in connection with the public hearing on these standards. In addition it is noted that the Agency has previously (40 FR 23420) made public its intent " * * * to maintain a continuing review of the appropriateness of these environmental standards * * * and to revise them, if necessary, on the basis of information that develops in the interval." In view of the above, the Agency has concluded that it is neither necessary nor appropriate to grant now the additional public hearing requested. We will, of course, welcome the submission of additional factual data on the matters concerned as it becomes available.

formance with these standards through the use of environmental measurements. The Agency agrees that routine monitoring based exclusively upon environmental measurements would not be a reasonable means for assuring conformance and the regulations do not contain such a requirement. Environmental objectives are generally best achieved through controls exercised at the source. For this reason effluent monitoring is generally preferable and such measurements, when combined with regulatory models for environmental transport, would provide quite adequate demonstration of conformance with the standards for the vast majority of situations, based upon existing experience. However, since varying degrees of conservatism and uncertainty exist in all environmental models, the Agency believes it will often be appropriate to supplement effluent monitoring with confirming environmental measurements, as is now the regulatory practice. In the case of light water reactors, models and monitoring requirements for demonstrating conformance with Appendix I of 10 CFR Part 50 are generally adequate for demonstrating conformance with these standards. Similar models and measurements would, in general, be appropriate for most other types of facilities.

In the special case of possible windblown effluents from mill tailings, the existence of operational measures (e.g., temporary or permanent stabilization) should normally be the criterion used for verifying compliance, in lieu of effluent and environmental monitoring, because of the difficulty associated with such measurements. It should be noted that doses resulting from exposure to radon and its daughters, which are discharged from a mill site (or result from material which has been discharged), are excluded, but that gamma radiation crossing site boundaries from any on-site source is covered.

In situations where members of the public are actually exposed, these standards, in effect, preempt those regulations which are based upon the Federal Radiation Protection Guides (25 FR 4402) insofar as exposure of the public is due to operations defined to be included in the uranium fuel cycle. For example, the dose limits in 10 CFR Part 20 would not be the limiting consideration regarding exposure of members of the public as a result of uranium fuel cycle operations. These standards do not, however, replace application of the Radiation Protection Guides to the regulation of sources not included within the scope of the uranium fuel cycle. Finally, the graded scale of actions established in 1961 (26 FR 9057) for use in implementing the Radiation Protection Guides do not apply to implementation of these standards, but would remain in effect for implementation of radiation protection guides for other radiation sources.

Several commenters expressed the view that a requirement for control of the unrestricted release of krypton to the environment from fuel cycle operations was: (a) beyond the jurisdiction of EPA, (b) unreasonably costly, (c) not achievable by 1983, the proposed implementation date (or, in the view of some commenters, was achievable prior to 1983), or (d) not a reasonable requirement of domestic industry until international agreements are achieved to restrict emissions from foreign sources.

The Agency has concluded that its jurisdiction is clear. Reorganization Plan No. 3 of 1970 specifically transferred to EPA from the Atomic Energy Commission the authority to establish standards for "* * * quantities of radioactive materials in the environment * * *" and attaches no conditions to this authority except a requirement that the standards apply outside the boundaries of licensees.

EPA has carefully reexamined the costs of control systems for krypton and has concluded that a substantial portion of the additional costs presented at the public hearings is correct. This analysis is reviewed in the Final Environmental Statement. However, in spite of these increased costs, the installation of controls for krypton-85 is believed to be justified by the public health benefits achievable. In today's dollars, the cost per unit radiation dose reduction at future reprocessing facilities will be $50–$75 per man-rem for whole body doses, and considerably less than this for doses to other organs. These values are more than an order of magnitude lower than limiting costs now specified in regulations governing the licensing of individual nuclear power reactors. It is recognized that the cost of retrofitting one facility which is expected to be in operation before 1983 will involve greater costs, and the regulatory agency is encouraged to explore means to minimize costs to this facility in its implementation of the standard for this pilot case.

Regarding the achievability of control over the release of krypton-85 to the environment by 1983, it is noted that this or similar control technology is already being offered commercially for nuclear reactors and fuel reprocessing facilities, and is currently being installed, or is on order, at several U.S. reactors and at a foreign fuel reprocessing facility by U.S. suppliers. The Agency, therefore, believes that 1983 is an achievable implementation date. However, a more accelerated schedule is not considered justified, in view of the small amount of reprocessing that will occur before that date and the present lack of operating experience with krypton controls.

Finally, we have examined arguments concerning the need for international agreement prior to the establishment of standards and do not find them persuasive. EPA fully supports the development of international agreements, and is presently participating in the development of international guidance for control of radioactive effluents from the fuel cycle under the auspices of the International Atomic Energy Agency. A number of countries are already committed to or are in the process of committing themselves to control of krypton releases. The Agency supports this trend and has concluded that the control of U.S. releases of krypton-85 is warranted on the basis of reducing its potential worldwide public health impact. In initiating a requirement for this control, the United States fulfills its responsibility, as the world's largest user of nuclear power, to provide leadership in this matter.

A number of commenters suggested that the proposed regulations should be amended to include standards for carbon-14 and, in some cases, other long-lived radionuclides. The Agency has studies of sources and controls for these materials underway and anticipates that proposals for appropriate environmental standards for carbon-14 can be made shortly, with consideration of proposals for other materials following at a later date. However, the knowledge base is not yet sufficient to permit incorporation into these standards now.

Comments were received reflecting many points of view on health effects issues. One group agreed with the Agency's primary reliance on risk estimates provided by the recent report to EPA of the National Academy of Sciences ("The Effects on Populations of Exposure to Low Levels of Ionization," Report of the Advisory Committee on the Biological Effects of Ionizing Radiation, NAS–NRC, 1972). These estimates are primarily based upon a linear interpolation between existing data on human populations and the assumption of no effects at zero dose. Another group believed this model is not sufficiently conservative to adequately protect public health, based upon several investigators' hypotheses concerning the shape of the dose-effect relationship at low doses. A third group believed these estimates to be too conservative at low doses and low dose-rates. Frequent reference was made by the third group to a report of the National Council on Radiation Protection and Measurements (Report No. 43) which implies that radiation standards should not be based upon numerical estimates of health effects, and a recent report of the Nuclear Regulatory Commission (NUREG–75/014) which presents, in addition to risk estimates based upon the National Academy of Sciences report, some lower risk estimates based upon a belief that dose-rate dependent phenomena exist for low linear energy transfer radiation (gamma rays and beta particles) which reduce the carcinogenic effect of radiation to levels lower than those predicted by the linear model. The Agency has examined the evidence for each of the above views and concluded that, while each may have validity under various assumptions or for various specific situations, the weight of currently available scientific evidence supports the continued use of a linear, nonthreshold model for deriving standards to protect public health.

Changes Made in the Proposed Regulations

A number of changes have been made in response to comments received on the proposed regulations. The following describes and provides the reasons for each of these changes:

1. Paragraph 190.02(b) has been changed to delete transportation as an operation covered by these standards and to specifically exclude waste disposal sites, which were previously not mentioned. The Agency is addressing the development of criteria and standards for management of radioactive wastes as a separate matter, as mentioned in the notice proposing these standards.

A number of commenters, including the NRC and the Department of Transportation, pointed out the difficulty of implementing these standards for transportation activities, particularly noting the problems near nuclear facilities. In such cases an apportionment of the dose limits would appear to be necessary in order to avoid unreasonably extensive monitoring requirements for members of the public. Since studies by both EPA and NRC show that most transportation-related doses are expected to remain at small fractions of these standards in any case, the implementation difficulty does not appear to warrant their inclusion in these standards limiting doses to individuals from uranium fuel cycle operations. The Agency will instead address this matter under its broad authority inherited from the former Federal Radiation Council, through the development of more general guidance to all Federal agencies concerning radiation exposure arising from the transportation of all types of radioactive materials, not just those from the uranium fuel cycle.

2. Paragraph 190.02(d) is changed to reflect the definition of "site" implied by Reorganization Plan No. 3 of 1970.

3. Paragraph 190.02(f) is changed by adding the word "spontaneously" to reflect the Agency's original intent.

4. Paragraph 190.02(g) is deleted and subsequent paragraphs in Section 190.02 are renumbered. This paragraph defined uranium ore as ore containing 0.05% or more uranium by weight. As pointed out by one commenter, it is not desirable to exclude ores containing less than this quantity of uranium, since future demand for ore may make the use of such ores economically feasible.

5. Section 190.11 has been broadened to permit a greater degree of discretion to the regulatory agency to develop and apply conditions for the granting of variances. As pointed out by a number of commenters, it is not reasonable to predicate the justification for variances solely on public need for orderly delivery of power. For example, a facility may have installed a control system which, in spite of good faith performance on the part of the supplier and the user, may fail to achieve operational capability on a timely basis, or, once installed may experience operational failure at some time, yet operation of the facility may not be essential to the "orderly delivery of electrical power." In addition, some portions of this standard are predicated upon the use of waste treatment systems not yet in general commercial use. Although in no case should operation continue if safety is compromised, it may easily be that excursions above these standards would occur in such cases to a degree that the added risk to the general public is small and the environmental effect is acceptable in comparison to the economic penalty that would be associated with cessation of operation or the anticipated public health and environmental impact of available alternative sources of power. For this reason, the variance provision has been broadened so that the regulatory agency may, if it deems it to be in the public interest, grant a variance in such situations. It should be noted, however, that the variance provision applies only to temporary and unusual situations. It is expected that continued operation under the variance provision will be predicated upon an approved plan to achieve compliance in an expeditious fashion, that is, in as short a time as is reasonably achievable.

The requirement for public documentation of variances has been clarified and extended to apply to this broadened provision. EPA will not review individual variances or compliance plans, which will be made public in accordance with the provisions of paragraph 190.11(b), but will maintain a general overview through periodic review of the use of this Section.

6. Section 190.12(a) has been changed to provide that the effective date for the standards limiting doses to individuals shall be December 1, 1979, for all operations except the milling of uranium ore, for which the effective date shall be December 1, 1980.

The NRC has carefully examined its existing programs for implementation of Appendix I at light-water-cooled reactors, and the feasibility of integrating implementation of these standards into that on-going process, as well as, in parallel, implementing these standards at other types of fuel cycle facilities through development and promulgation of new regulatory guides and individual license conditions. Finally, there are matters regarding reactors which will require generic treatment, such as the conditions required for compliance when there are multiple units on single sites. It is the conclusion of the NRC, and the Agency concurs, that the originally proposed two-year implementation period is insufficent and that three years will be required to complete this process. The NRC review of these matters regarding implementation has revealed that the case of mills is unique, since better information is required concerning a number of alternatives for stabilization of tailings—both as to their relative merit and the degree of periodic maintenance required. On June 3, 1976, the NRC published (41 FR 22430) a notice of intent to prepare a generic environmental statement on uranium milling operations. This effort will be completed in approximately two years, and includes field measurements with participation of both EPA and NRC personnel. In addition, the NRC issued proposed new effluent reporting requirements at mills on November 17, 1975 (40 FR 53230). In view of the above considerations, it is the jointly agreed upon conclusion of the Agency and NRC that a four-year implementation period is required at mills, rather than the three years provided for all other fuel cycle operations.

7. Section 190.12(b) has been changed to clarify the Agency's original intent that the standards specified in paragraph 190.10(b) apply to radioactive materials produced after the effective date.

The Agency anticipates that promulgation of these standards will serve, in addition to providing for necessary protection of public health, to alleviate some of the uncertainties associated with the design of environmental controls for fuel cycle facilities, and the consequent economic penalties, through stabilizing and providing direction to the process of development of standards and regulations. The economic and inflationary impacts of these regulations have been evaluated in accordance with Executive Order 11821 and it has been determined that an Inflation Impact Statement is not required. (The estimated annual cost of additional effluent controls required by these regulations is in no case greater than ten to twenty million dollars, which is significantly less than the one-hundred million dollar annual cost cut-off established as the minimum for which an Inflation Impact Statement is required.)

Notice is hereby given that pursuant to the Atomic Energy Act of 1954, as amended, and Reorganization Plan No. 3 of 1970 Title 40, Chapter I, of the Code of Federal Regulations is amended by adding a new Subchapter F and Part 190 as set forth below.

Dated: December 28, 1976.

RUSSELL E. TRAIN,
Administrator.

A new Subchapter F, consisting of Part 190, is added to 40 CFR Chapter I as follows:

SUBCHAPTER F—RADIATION PROTECTION PROGRAMS

PART 190—ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR NUCLEAR POWER OPERATIONS

Subpart A—General Provisions

Sec.

190.01 Applicability.
190.02 Definitions.

Subpart B—Environmental Standards for the Uranium Fuel Cycle

190.10 Standards for normal operations.
190.11 Variances for unusual operations.
190.12 Effective date.

AUTHORITY: Atomic Energy Act of 1954, as amended; Reorganization Plan No. 3, of 1970.

Subpart A—General Provisions

§ 190.01 Applicability.

The provisions of this Part apply to radiation doses received by members of the public in the general environment and to radioactive materials introduced into the general environment as the result of operations which are part of a nuclear fuel cycle.

§ 190.02 Definitions.

(a) "Nuclear fuel cycle" means the operations defined to be associated with the

production of electrical power for public use by any fuel cycle through utilization of nuclear energy.

(b) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel, to the extent that these directly support the production of electrical power for public use utilizing nuclear energy, but excludes mining operations, operations at waste disposal sites, transportation of any radioactive material in support of these operations, and the reuse of recovered non-uranium special nuclear and by-product materials from the cycle.

(c) "General environment" means the total terrestrial, atmospheric and aquatic environments outside sites upon which any operation which is part of a nuclear fuel cycle is conducted.

(d) "Site" means the area contained within the boundary of a location under the control of persons possessing or using radioactive material on which is conducted one or more operations covered by this Part.

(e) "Radiation" means any or all of the following: alpha, beta, gamma, or X-rays; neutrons; and high-energy electrons, protons, or other atomic particles; but not sound or radio waves, nor visible, infrared, or ultraviolet light.

(f) "Radioactive material" means any material which spontoneously emits radiation.

(g) "Curie" (Ci) means that quantity of radioactive material producing 37 billion nuclear transformations per second. (One millicurie (mCi) =0.001 Ci.)

(h) "Dose equivalent" means the product of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its spatial distribution in the body. The unit of dose equivalent is the "rem." (One millirem (mrem) = 0.001 rem.)

(i) "Organ" means any human organ exclusive of the dermis, the epidermis, or the cornea.

(j) "Gigawatt-year" refers to the quantity of electrical energy produced at the busbar of a generating station. A gigawatt is equal to one billion watts. A gigawatt-year is equivalent to the amount of energy output represented by an average electric power level of one gigawatt sustained for one year.

(k) "Member of the public" means any individual that can receive a radiation dose in the general environment, whether he may or may not also be exposed to radiation in an occupation associated with a nuclear fuel cycle. However, an individual is not considered a member of the public during any period in which he is engaged in carrying out any operation which is part of a nuclear fuel cycle.

(l) "Regulatory agency" means the the government agency responsible for issuing regulations governing the use of sources of radiation or radioactive materials or emissions therefrom and carrying out inspection and enforcement activities to assure compliance with such regulations.

Subpart B—Environmental Standards for the Uranium Fuel Cycle

§ 190.10 Standards for normal operations.

Operations covered by this Subpart shall be conducted in such a manner as to provide reasonable assurance that:

(a) The annual dose equivalent does not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ of any member of the public as the result of exposures to planned discharges of radioactive materials, radon and its daughters excepted, to the general environment from uranium fuel cycle operations and to radiation from these operations.

(b) The total quantity of radioactive materials entering the general environment from the entire uranium fuel cycle, per gigawatt-year of electrical energy produced by the fuel cycle, contains less than 50,000 curies of krypton-85, 5 millicuries of iodine-129, and 0.5 millicuries combined of plutonium-239 and other alpha-emitting transuranic radionuclides with half-lives greater than one year.

§ 190.11 Variances for unusual operations.

The standards specified in § 190.10 may be exceeded if:

(a) The regulatory agency has granted a variance based upon its determination that a temporary and unusual operating condition exists and continued operation is in the public interest, and

(b) Information is promptly made a matter of public record delineating the nature of unusual operating conditions, the degree to which this operation is expected to result in levels in excess of the standards, the basis of the variance, and the schedule for achieving conformance with the standards.

§ 190.12 Effective date.

(a) The standards in § 190.10(a) shall be effective December 1, 1979, except that for doses arising from operations associated with the milling of uranium ore the effective date shall be December 1, 1980.

(b) The standards in § 190.10(b) shall be effective December 1, 1979, except that the standards for krypton-85 and iodine-129 shall be effective January 1, 1983, for any such radioactive materials generated by the fission process after these dates.

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federal register

THURSDAY, JANUARY 13, 1977

PART VIII

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

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FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Final Rule and Advance Notice of Proposed Rulemaking

Title 49—Transportation

CHAPTER V—DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

[OST Docket No. 48]

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Agency: Department of Transportation.

Action: Final rule and advance notice of proposed rulemaking.

Summary: The first part of the preamble of this notice announces and discusses the issuance by the Department of Transportation (DOT) of a regulation establishing procedures to govern a one-year demonstration program of financial assistance to participants in certain administrative proceedings of the National Highway Traffic Safety Administration (NHTSA). This demonstration program has been established to determine whether the process governing the making of administrative decisions will be enhanced by financially assisting participants whose representation contributes or can reasonably be expected to contribute to a full and fair determination of the issues, but who would otherwise be financially unable to participate effectively.

The second part of the preamble is an advance notice of proposed rulemaking, inviting public comment on whether financial assistance to participants in administrative proceedings, under appropriate circumstances, on a department wide and permanent basis ought to be established. The public is invited to comment also on the applicable scope, criteria, and procedures that should govern such a program of assistance.

Dates: The regulation is effective on January 13, 1977. Comments on the Advance Notice of Proposed Rulemaking must be received on or before April 20, 1977.

Address: Comments on the Advance Notice of Proposed Rulemaking should be addressed to:

Docket Clerk, OST Docket Number 48, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590.

For further information contact:

Robert B. Donin, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590 (202) 426-4704.

Supplementary information: During the preceding year, the DOT has intensively considered promulgating regulations that would enhance the presentation of relevant information and points of view in its administrative proceedings. In reaching the position announced today, the DOT has taken cognizance of several legislative initiatives, S. 2715 and H.R. 12762, of the 94th Congress, 2d Session, to affirm the authority of Federal agencies to fund participants in administrative proceedings and to provide guidelines for the exercise of that authority. The DOT has also been considering an opinion of the Comptroller General, cited below, determining that the NHTSA already possesses sufficient authority to fund participants in its proceedings, and letters from Congressman John E. Moss and Senator Warren G. Magnuson, urging the NHTSA to use its existing authority to assist participants financially under the appropriate circumstances. This notice also responds to a petition for rulemaking submitted by the Center for Auto Safety, Environmental Defense Fund and Consumers Union. That petition requested that the DOT promulgate regulations to provide for compensation of costs incurred in the presentation of views in certain proceedings of the NHTSA and the other operating administrations of the DOT.

Part I: Demonstration Program

Purpose of the demonstration program. The goal of this demonstration is to provide added assurance that a full range of views and all relevant information are presented to the NHTSA in its consideration of regultory actions. The DOT has already sought to encourage wider consumer participation in decisionmaking through the formulation of a Consumer Representation Plan which outlines the opportunities for communication of views regarding regulation, policymaking and program development and sets out Departmental procedures intended to increase participation. (41 FR 42822, September 28, 1976)

In the past, however, it has sometimes been difficult for some consumer, environmental and other groups of citizens that are either widely dispersed or poorly financed to bear the cost of participating in federal regulatory proceedings. By contrast, better financed and organized groups, frequently representative of the regulated industry, are often able to participate vigorously and effectively. Of course, there are other adequately financed public interest groups to which this program may not pertain and there may be groups representing regulated parties which are not able to finance effective participation. There is a risk that because of this financial and organizational imbalance, the views of those who are now financially able to participate in regulatory proceedings may have a disproportionate influence on government decisionmaking. It is hoped that by removing some of the financial barriers to effective participation, under appropriate circumstances, this imbalance may be reduced or eliminated.

Where public interest groups have possessed sufficient resources to participate in administrative proceedings, they generally have made a valuable contribution. As Judge Harold Leventhal recently observed:

> Administrative law and regulation have been profoundly influenced by the participation, in both agencies and courts of public interest representatives who have identified issues and caused agencies and courts to look squarely at the problems that otherwise would have been swept aside and passed unnoticed. They have made complaints, adduced and marshaled evidence, offered different insights and viewpoints, and presented scientific, historical, and legal research. They have been of significant service to the entire decisional process.[1]

Although the reimbursement of costs that would otherwise pose a bar to future participation by such groups benefits the assisted participants, this demonstration program is primarily aimed at benefiting the general public by promoting fair, balanced, and effective regulation.

At the same time, designing a system to fund citizen participation in regulatory proceedings poses difficult questions of cost, feasibility and fairness. Among these issues are the criteria for eligibility, expense to the public (including both the cost of administration and the cost of disbursements), the appropriate procedure for selection of recipients of financial support, and the determination of what costs should be reimbursable by the DOT. In order to gain experience which will indicate whether, and in what form, such a program of financial support shall be permanently adopted, the DOT has decided to undertake a one-year demonstration limited in scope to certain proceedings of the NHTSA.

Statutory authority for program. The DOT has adequate statutory authority to conduct this program of assistance. Under the Department of Transportation Act, 49 U.S.C. § 1651, et seq. and related statutes,[2] the DOT and its component agencies have broad responsibility for safety regulation, energy conservation and the sound development of the various transportation modes. The Comptroller General has held that while 31 U.S.C. § 628 prohibits agencies from using appropriated funds except for the purpose for which the appropriation was made, an appropriation made for a particular object, purpose of program "is available to finance expenses which are reasonably necessary and proper or incidental to the execution of the object, purpose or program for which the appropriation was made . . ." 53 Comp. Gen. 351, 364 (1973). See also 50 Comp. Gen. 534, 536 (1971); 44 Comp. Gen. 312, 314 (1964); *Northern States Power Co.* v. *FPC*, 118 F. 2d 141, 143 (7th Cir. 1941). In an opinion issued February 19, 1976, (Decision B-92288) the Comptroller General advised the Nuclear Regulatory Commission (NRC) that, under this principle, it could lawfully reimburse intervenors in licensing proceedings where (1) it believes that such participation is required by statute or necessary to represent adequately opposing points of view on a matter, and (2) the intervenor is indigent or otherwise unable to bear the financial costs of participation in the proceeding.

A subsequent opinion has clarified both of these standards. (Decision B-139703, December 3, 1976). This opinion is addressed to the Food and Drug

[1] "Attorneys' Fees for Public Interest Representation," 62 ABA Journal 1134 (September, 1976).

[2] With respect to NHTSA, for example, see the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. § 1901, et seq., and the Highway Safety Act of 1966, 23 U.S.C. § 401, et seq.

Administration but appears equally applicable to other agencies. The December 3 opinion expressly provided that an agency need not determine that a person's participation is essential to a full and fair determination in a proceeding in order for the agency to be able to fund that person's participation. With respect to the second standard, the recent opinion stated

> * * * (I)t is our view that FDA may not extend financial assistance to a party requesting to participate which has the financial resources to participate but does not, for whatever reason, wish to use its resources for this purpose.

At the same time, the December 3 opinion rejected giving financial assistance based upon an applicant's having an economic interest in a proceeding that is small in comparison with the costs of effective participation. The GAO found that eligibility criterion to be unacceptable under its prior decisions and in the absence of specific statutory authority.

Since the appropriation for DOT and its component agencies provides for "necessary expenses," Pub. L. No. 94-387, 90 Stat. 1171 (1976), it is clear that DOT may, under appropriate circumstances, reimburse the cost of participation in the administrative proceedings of any of its operating components. Moreover, the Comptroller General has specifically advised that "the rationale of our February 19 decision to NRC is equally applicable" to the NHTSA, and that therefore payments may be made to cover participation in the NHTSA's proceedings. See letter of May 10, 1976, from R. F. Keller, Deputy Comptroller General, to Hon. John E. Moss, Chairman, Oversight and Investigations Subcommittee, House Commerce Committee (B-180224) (reprinted as Appendix B to Food and Drug Administration Advance Notice of Proposed Rulemaking, 41 FR 35855, 35860 (August 25, 1976)).

Standards and procedures of the program. The regulation set forth in this notice adopts a standard for compensation based on the Comptroller General's decisions discussed above. Funding determinations are to be made by a 3-member evaluation board composed of the following three officials or their delegates: the Assistant Secretary for Environment, Safety, and Consumer Affairs, the NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel. Applications may be submitted for funding for participation in any NHTSA rulemaking proceeding, selected by the Administrator, under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or any proceeding under section 152(a) of that Act for the presentation of data, views, and arguments following an initial determination of a noncompliance or safety-related defect. The possibility of funding participation in investigations preceding such initial determinations was also considered. Since investigations are not public proceedings and because it is desirable to keep the demonstration program limited in scope, the DOT decided not to fund participation in those areas. Applications may also be submitted for funding for participation in any proceeding, selected by the Administrator, under the Motor Vehicle Information and Cost Savings Act, as amended, and the Highway Safety Act of 1966, as amended.

Applications for a proceeding are to be submitted to the NHTSA official immediately responsible for the program under which the proceeding will be held. The appropriate official will be the Associate Administrator for Motor Vehicle Programs in the case of the Vehicle Safety Act and Titles I-IV of the Cost Savings Act; the Director of the Office of Automotive Fuel Economy in the case of Title V of the Cost Savings Act; and the Associate Administrator for Traffic Safety Programs in the case of the Highway Safety Act. The official receiving the applications may submit his comments regarding them to the evaluation board. The evaluation board may approve an application only if it makes positive findings on four criteria relating to representation of the applicant's interest and economic need. In brief, the evaluation board must find that (1) representation of the applicant's interest contributes or can be reasonably expected to contribute substantially to a full and fair determination of the issue involved; (2) participation by the applicant is reasonably necessary to represent that interest adequately; (3) the applicant can competently represent the interest it espouses; and (4) absent funding pursuant to this regulation, the applicant does not have available to it sufficient resources to participate effectively.

Where more than one applicant representing the same interest satisfies these criteria, the evaluation board may approve partial or complete funding of two or more applications or approve a single application after a comparison of the applicants' interest, proposals, and past performance in regulatory proceedings. However, the evaluation board may determine with respect to a proceeding under any of the above statutes, that in view of the public interest and the availability of funding for the demonstration program as a whole, no applications for compensation should be considered. Resources for this program are limited, and therefore some proceedings may go entirely unfunded since other more important proceedings may require intensive work by one or more funded participants.

To facilitate determinations by the evaluation board, applicants are to submit a sworn statement describing the work to be funded, the applicant's participation in other administrative proceedings, and the applicant's interest, organization and financial status.

Reimbursement will be limited to reasonable out-of-pocket costs of participation such as attorneys' fees, expert witness fees, and clerical and travel expenses, and will be paid at market rates for the kind and quality of service provided. Reimbursement will not be provided for time expended by any individual on his own behalf or by the staff of any group or organization on its behalf. Similarly, reimbursement will not be provided for the hiring of outside personnel when staff personnel are available and qualified to do the work. Advance payment of funds by an agency to an applicant in order to ensure the participation of that applicant in a proceeding is impermissible. See, Opinions of the Comptroller General, B-139703, September 22, 1976, and B-139703, December 3, 1976, and 31 U.S.C. § 529.

Part II: Advance Notice of Proposed Rulemaking

The Department of Transportation (DOT) is considering promulgating final regulations providing for financial assistance under appropriate circumstances, to participants in all administrative proceedings of the Department and its operating administrations. The purpose of this notice is to invite the public to comment on whether such financial assistance should be provided and suggest the applicable scope, criteria, and procedures which should govern such a program of assistance.

As discussed in Part I of this notice, announcing the NHTSA demonstration program, the DOT believes that the quality of administrative decisionmaking will be enhanced by broad citizen participation which provides a counterweight to the appeals of narrow, special interest groups. Given the ample financial resources of well-organized industry groups, however, there is a serious question whether effective citizen participation can be achieved in the absence of federal action to lessen the often substantial cost of developing a regulatory presentation.

It is clear that DOT and its operating administrations[1] have authority to provide such financial assistance under appropriate circumstances. Under the Department of Transportation Act, 49 U.S.C. § 1651 et seq. and related statutes,[2] the Department and its component agencies have broad responsibility for safety regulation, environmental quality and the sound development of the vari-

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[1] United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Administration, and St. Lawrence Seaway Development Corporation.

[2] See, for example, Federal Boat Safety Act, 46 U.S.C. § 1451 et seq., Deepwater Port Act, 33 U.S.C. § 1501 et seq., Federal Aviation Act of 1958, 49 U.S.C. § 1301 et seq., Airport and Airway Development Act of 1970, 49 U.S.C. § 1701 et seq., International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 1159a et seq., Federal-Aid Highway Act, 23 U.S.C. § 101 et seq., Federal Railroad Safety Act of 1970, 45 U.S.C. § 421 et seq., National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq., Highway Safety Act of 1966, 23 U.S.C. § 401 et seq., Urban Mass Transportation Act of 1964, 49 U.S.C. § 1601 et seq., Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., National Environmental Policy Act 1969, 42 U.S.C. § 4231 et seq., Noise Control Act of 1972, 42 U.S.C. § 4901, et seq., Clean Air Act, 42 U.S.C. § 1857f-10, Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.

ous transportation modes. The appropriation for the Department and its component agencies provides for "necessary expenses." Pub. L. No. 94-387, 90 Stat. 1171 (1976). Hence financial assistance for participants in Department and agency proceedings is legally permissible under the reasoning of recent Opinions of the Comptroller General, as discussed in Part I.

DOT expects to derive substantial guidance regarding the utility and feasibility of a system of reimbursement from the one-year NHTSA demonstration program. In addition, however, DOT welcomes public comment on the overall question of whether, and in what form, regulations governing DOT and all its operating administrations should be permanently established. Specifically, DOT seeks public comment on questions including, but not limited to, the following:

(1) Should DOT or any of its component agencies adopt permanent procedures to provide reimbursement for participation in administrative proceedings?

(a) If funds should be provided for participation in the proceedings of all components of DOT, should reimbursement be administered under a single Department-wide procedure or under separate procedures applicable to each operating administration?

(2) What changes should be made in the regulations governing the NHTSA demonstration program before they are permanently adopted and applied to proceedings by other operating administrations of DOT?

(a) In what types of proceedings (hearings, rulemakings, adjudications, public meetings) should reimbursement be made available?

(b) In addition to the findings specified by the Comptroller General as prerequisite to fundings, what additional criteria and standards should the agency adopt for evaluating the strength of an applicant's interest and its potential contribution to the proceeding?

(c) Where two or more applicants representing the same interest seek funds to participate in the same proceedings, should the agency use to seelct the applisingle applicant? If so, what criteria should the agency use to selet the applicant that will receive an award?

(d) With regard to any single proceeding, should the number of applicants that receive funds be limited?

(e) What types of expenses should be recoverable? Should reimbursement be available only for out-of-pocket costs (e.g., legal fees, travel expenses) or also for the value of work performed by an individual-applicant or the staff of organization-applicant in developing its presentation? With regard to the participant's presentation, should DOT fund scientific, technical, demographic or similar research, or should reimbursement be limited to the preparation of oral or written testimony based on existing data?

(f) What agency official(s) should make the funding determination? Should administrative appeal of this determination be provided? If so, to what agency official(s)?

(g) Should funding decisions be reached before the proceeding (based on the participant's planned presentation and projected costs) or after the proceeding (based on the quality of the participant's presentation and costs actually incurred)?

(h) Should funds be issued before, during or after the proceeding?

All comments received before the close of business on the comment closing date will be considered, and will be available for public inspection or copying from 9 A.M. to 5:30 P.M., Monday through Friday, except Federal Holidays, in Room 10100, DOT Headquarters, 400 Seventh Street, S.W., Washington, D.C. 20590. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The DOT will continue to file relevant material as it becomes available in thet docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Issued in Washington, D.C. on January 11, 1977.

WILLIAM T. COLEMAN, JR.,
Secretary of Transportation.

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

SECTION 1. *Purpose.* This regulation establishes procedures for a demonstration program for compensating individuals, groups, associations, partnerships, or corporations that are financially unable to participate in certain administrative proceedings of the National Highway Traffic Safety Administration.

SEC. 2. *Applicability.* This regulation applies to any individual, group, association, partnership, or corporation, seeking financial assistance for participation in proceedings of the National Highway Traffic Safety Administration.

SEC. 3. *Definitions.* As used herein—

"Administration" means the National Highway Traffic Safety Administration.

"Administrator" means the Administrator of the National Highway Traffic Safety Administration or his delegate.

"Applicant" means any individual, or any profit or nonprofit group, association, partnership, or corporation seeking financial assistance under this regulation to participate in proceedings.

"Appropriate Administration official" means—

(a) The Associate Administrator for Motor Vehicle programs in the case of applications submitted for proceedings under the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 et seq.) or Titles I–IV of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 et seq.).

(b) The Associate Administrator for Traffic Safety Programs in the case of applications submitted for proceedings under the Highway Safety Act of 1966, as amended (23 U.S.C. 401 et seq.).

(c) The Director of the Office of Automotive Fuel Economy in the case of applications submitted for proceedings under Title V of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2001 et seq.).

"Evaluation board" means a board composed of the Assistant Secretary for Environment, Safety, and Consumer Affairs, NHTSA Associate Administrator for Planning and Evaluation, and the NHTSA Chief Counsel, or their respective delegates.

"Proceeding" means any proceeding (a) which is a rulemaking proceeding under the National Traffic and Motor Vehicle Safety Act of 1966, as amended, the Motor Vehicle Information and Cost Savings Act, as amended, the Highway Safety Act of 1966, as amended, or a proceeding under section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, for the presentation of views, data, and arguments following an initial determination of a noncompliance with a Federal motor vehicle safety standard or of a defect related to motor vehicle safety,

(b) which commences prior to the end of the one-year period immediately following the effective date of this regulation,

(c) regarding which the Administrator has determined, in light of the public interest and the availability of funding under this program, that applications for assistance under this regulation should be considered.

SEC. 4. *Application period.* Applications may be submitted under this regulation during the one-year period immediately following January 13, 1977, the effective date of this regulation.

SEC. 5. *Application procedure.* Applications for financial assistance for participation in proceedings shall be marked for the attention of the appropriate Administration official and addressed to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Each application shall contain, in a sworn statement, the following information in the order specified:

(a) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purposes, structure, and tax status.

(b) An identification of the proceeding for which funds are requested.

(c) A description of the applicant's economic, social and other interests in the outcome of the proceeding for which funds are requested.

(d) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant in the matters involved in the proceeding for which funds are requested and in related matters.

(e) An explanation of how the applicant's participation would enhance the quality of the decision making process and serve the public interest by contributing views and data which would not be presented by another participant.

(f) A statement of the total amount of funds requested.

(g) With respect to the proceeding for which funds are requested, an itemized statement of the expenses to be covered by the requested funds and of the expenses to be covered by the applicant's funds.

(h) A description of the evidence, activities, studies or other submissions that will be generated by each of those expenditures.

(i) An explanation of how the applicant's obtaining the requested funds would result in enhancing the quality of the applicant's participation in the proceeding for which funds are requested.

(j) An explanation of why the applicant cannot use funds that it already possesses or expects to receive for the purpose for which funds are requested, including:

(1) A listing of the applicant's anticipated income and expenditures (rounded to the nearest $100) during the current fiscal year.

(2) A listing of the total assets and liabilities of the applicant as of the date of the application.

(k) An explanation of why the applicant cannot in other ways obtain the funds that are requested, including a description of the applicant's past efforts to obtain those funds in other ways and the feasibility of future attempts to raise funds in other ways.

(l) A list of all proceedings of the Federal government in which the applicant has participated during the past year (including the interest represented and the contribution made) and any amount of financial assistance received from the Federal government in connection with these proceedings.

SEC. 6. *Processing of applications.* (a) When the Administrator determines that the Administration will receive applications for funding under this regulation for a particular proceeding, an invitation for applications is published in the FEDERAL REGISTER. When practicable, the invitation is included in the notice commencing the proceeding. Each invitation specifies a deadline for submission of applications. Although applications will be received after the deadline, there is not any assurance that they will be considered.

(b) Within five working days after the deadline for receipt of applications, the appropriate Administration official forwards all applications received before the deadline, together with his comments, if any, on those applications to the evaluation board.

(c) Within five working days after the evaluation board receives the applications from the appropriate Administration official, it approves or denies in whole or in part, each of those applications. The evaluation board may approve an application, in whole, or in part, if it finds that:

(1) The applicant represents an interest whose representation contributes or can reasonably be expected to contribute substantially to a full and fair determination of the issues involved in the proceeding, taking into consideration the number, complexity, and potential significance of the issues affected by the proceeding, and the novelty, significance and complexity of the ideas advanced by the applicant;

(2) Participation by the applicant is reasonably necessary to represent that interest adequately;

(3) It is reasonably probable that the applicant can competently represent the interests it espouses, when assessed under the criteria of this regulation; and

(4) The applicant does not have available, and cannot reasonably obtain in other ways, sufficient resources to participate effectively in the proceeding in the absence of funding under this program.

In determining whether an applicant would be unable to participate effectively, the evaluation board examines the applicant's proposed expenditures for preparing its presentation in the proceeding, decides whether these projected costs are reasonable and compares them to the applicant's income and expenditures, including anticipated future income and expenditures, for the current fiscal year.

(d) In the event that two or more applications, which satisfy the criteria of paragraph (c) of this section and seek to represent the same or similar interest, contain significant differences in viewpoint, approach, or proposals, the evaluation board may partially or completely grant one or more of those applications.

(e) In selecting among the applications specified in paragraph (d) of this section, the evaluation board considers and compares the skills and experience the applicants possess, and the contents of their proposals. In particular, the evaluation board considers and compares:

(1) The applicants' experience and expertise in the substantive area with the Administration's or Department of Transportation's activities and procedures;

(2) The applicants' prior general performance and competence;

(3) Evidence of the applicants' relation to the interest they seek to protect or represent; and

(4) The specificity, novelty, relevance, and significance of the ideas the applicants propose to develop and present.

(f) The decision of the evaluation board whether to select any of the applicants that satisfy the criteria of paragraph (c) of this section is discretionary. In making its decision, the evaluation board may consider:

(1) Whether an applicant's proposal can be reasonably developed and presented with the time allotted; and

(2) The availability of funding for assistance under the program.

(g) A written decision of the evaluation board, stating why assistance has either been granted or denied in light of the criteria in paragraphs (c) through (f) of this section, is mailed to all applicants.

(h) Upon good cause shown by an applicant, the decision of the evaluation board regarding its application may be reconsidered.

SEC. 7. *Recoverable costs.* (a) Expenses compensable under this regulation are limited to reasonable attorneys' fees, expert witness fees, the expenses of clerical services, travel, studies, surveys and demonstrations, and other reasonable costs of participation actually incurred. In all cases, compensation is not greater than the prevailing market rates for the kind and quality of service provided.

(b) (1) Compensation is limited to reasonable out-of-pocket costs.

(2) Compensation is not provided for:

(i) Time expended by any individual on his own behalf or by the staff of any group or organization on its own behalf; or

(ii) The hiring of outside personnel when staff personnel are available and qualified to do the work.

SEC. 8. *Payments to applicants.* Payment of compensable expenses for approved applications is made by the Administration within 90 days after the applicant has submitted a completed claim, including bills, receipts or other proof of costs incurred. For good cause shown, payment to an applicant may be expedited.

[FR Doc.77-1296 Filed 1-12-77;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Subtitle A]

[OST Docket No. 48]

FINANCIAL ASSISTANCE TO PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Advanced Notice of Proposed Rulemaking

CROSS REFERENCE: For a document containing an advanced notice of proposed rulemaking concerning financial assistance to participants in administrative proceedings, see FR Doc. 77-1296 appearing in the FEDERAL REGISTER immediately preceding this cross reference.

federal register

THURSDAY, JANUARY 13, 1977

PART IX



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

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AUTOMOTIVE FUEL ECONOMY PROGRAM

First Annual Report to Congress, January 1977

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

AUTOMOTIVE FUEL ECONOMY PROGRAM

Report to Congress

JANUARY 11, 1977.

The attached document, "Automotive Fuel Economy Program First Annual Report to the Congress," has been prepared pursuant to Section 402(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163), which requires in pertinent part that

> Not later than January 15 of each year, beginning in 1977, the Secretary shall transmit to each House of Congress, and publish in the FEDERAL REGISTER a review of average fuel economy standards under this part.

JOHN SNOW,
Administrator.

JANUARY 5, 1977.

Hon. JAMES O. EASTLAND,
President pro tempore of the Senate,
Washington, D.C. 20510

DEAR SENATOR EASTLAND: Transmitted herewith is the first annual report to the Congress reviewing the progress made in formulating average automotive fuel economy standards, as required by Section 502 (a)(2) of the Energy Policy and Conservation Act (P.L. 94–163).

Respectfully,

WILLIAM T. COLEMAN, Jr.

JANUARY 5, 1977.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives,
Washington, D.C. 20515

DEAR MR. SPEAKER: Transmitted herewith is the first annual report to the Congress reviewing the progress made in formulating average automotive fuel economy standards, as required by Section 502 (a)(2) of the Energy Policy and Conservation Act (P.L. 94–163).

Respectfully,

WILLIAM T. COLEMAN, Jr.

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Section 1

SUMMARY

This report reviews the progress made by the Department of Transportation, National Highway Traffic Safety Administration (NHTSA), in the area of automotive fuel economy, following the passage of the Energy Policy and Conservation Act (EPCA; P.L. 94-163), which adds a new Title V to the Motor Vehicle Information and Cost Savings Act. Section 502(a)(2) of EPCA requires that an Annual Report be submitted to the Congress and published in the Federal Register by January 15, beginning in 1977. The Annual Report of 1979 is to include a comprehensive analysis of the automotive fuel economy program. Since passage of the Act, NHTSA has taken the following actions in implementing the requirements of Sections 501-509:

1. Established the Office of Automotive Fuel Economy reporting directly to the Administrator of NHTSA.

2. Organized personnel, tasks, and resources to begin the preparation of Notices of Proposed Rulemaking (NPRM) and implementation of administrative regulatory processes.

3. Established the mechanism for interagency coordination.

4. Published in the Federal Register:

   (a) Advance Notice of Proposed Rulemaking (ANPRM) for establishing fuel economy standards for passenger automobiles for model years 1981-1984.

   (b) NPRM for applications from industry for reducing passenger automobile standards for model years 1978-1980.

   (c) NPRM for fuel economy standards on nonpassenger automobiles for model year 1979.

   (d) NPRM for exemption applications for low-volume manufacturers.

(e) NPRM for classifying passenger, nonpassenger, and off-highway vehicles.

5. Produced drafts for:

(a) NPRM for establishing which manufacturer of a multistage vehicle is responsible for compliance.

(b) NPRM for automobile manufacturers' reports.

6. Established a research and development program in support of specific rulemaking actions, utilizing resources and facilities of both the Department of Transportation and outside contractors.

Section 2

BACKGROUND

The Energy Policy and Conservation Act (EPCA), P. L. 94-163, enacted December 22, 1975, amends the Motor Vehicle Information and Cost Savings Act (15 U. S. C. 2001 et seq.) to include a new Title V - "Improving Automotive Efficiency." This Title requires the Secretary of Transportation to define and implement a program for improving the fuel economy of new automobiles in the United States market.

To satisfy this EPCA requirement, the Department of Transportation (DOT) started work on the procedural and regulatory elements of a fuel economy program. Initial planning began with the formation of a working group with automotive fuel economy experience from the Office of the Secretary (Systems Development and Technology and Transportation Systems Center) and from the National Highway Traffic Safety Administration (NHTSA) to provide the technical, legal, and administrative support to carry out the functions required by the Act. The focus of this work was on preliminary development of Notices of Proposed Rulemaking (NPRM's), procedures, and administrative processes so that an overall implementation plan was produced. The process of interagency coordination, on regulations that have significant policy impact, was established. Finally, the DOT staffing, resources, organization, and R&D activities to support the specific rulemaking tasks were identified.

In May 1976, letters were sent to the House and Senate Appropriations Subcommittees, advising them that up to $1.7 million would be used for automotive fuel economy activities during fiscal year (FY) 1976 and the FY 1976 Transition Quarter (FY 1976 TQ). These funds were appropriated to the Office of the Secretary and made available by transferring priorities.

On June 22, 1976, authority to administer the program was delegated by the Secretary of Transportation to the Administrator of NHTSA, (Federal Register; 41 FR 25015). NHTSA's responsibilities under the Act can be divided into four major areas: (1) to establish and enforce automotive fuel economy standards, (2) to grant exemptions from applicable fuel economy standards, (3) to receive reports from automobile manufacturers, and (4) to report to the Congress on the fuel economy program.

This first report to the Congress reviews the progress of the NHTSA Office of Automotive Fuel Economy in developing automotive fuel economy standards for new passenger automobiles beginning with model year (MY) 1978, and for nonpassenger vehicles beginning with MY 1979.

Section 3

INTRODUCTION

Over the twenty years between 1955 and 1975, United States dependence on imported crude oil more than doubled (see Figure 1). Preliminary 1976 data show another 10 percent increase - with imports now amounting to about 43 percent of the Nation's total petroleum supply requirements. Long-range projections show that, if present consumption trends continue, domestic and world sources combined will be unable to meet the expected United States demand for petroleum. Figure 2, which projects sources and consumption of this commodity to the year 2025. illustrates the increasing gap between supply and demand. (The curves shown would vary somewhat with price fluctuations, since price has a demonstrated relationship to demand.)

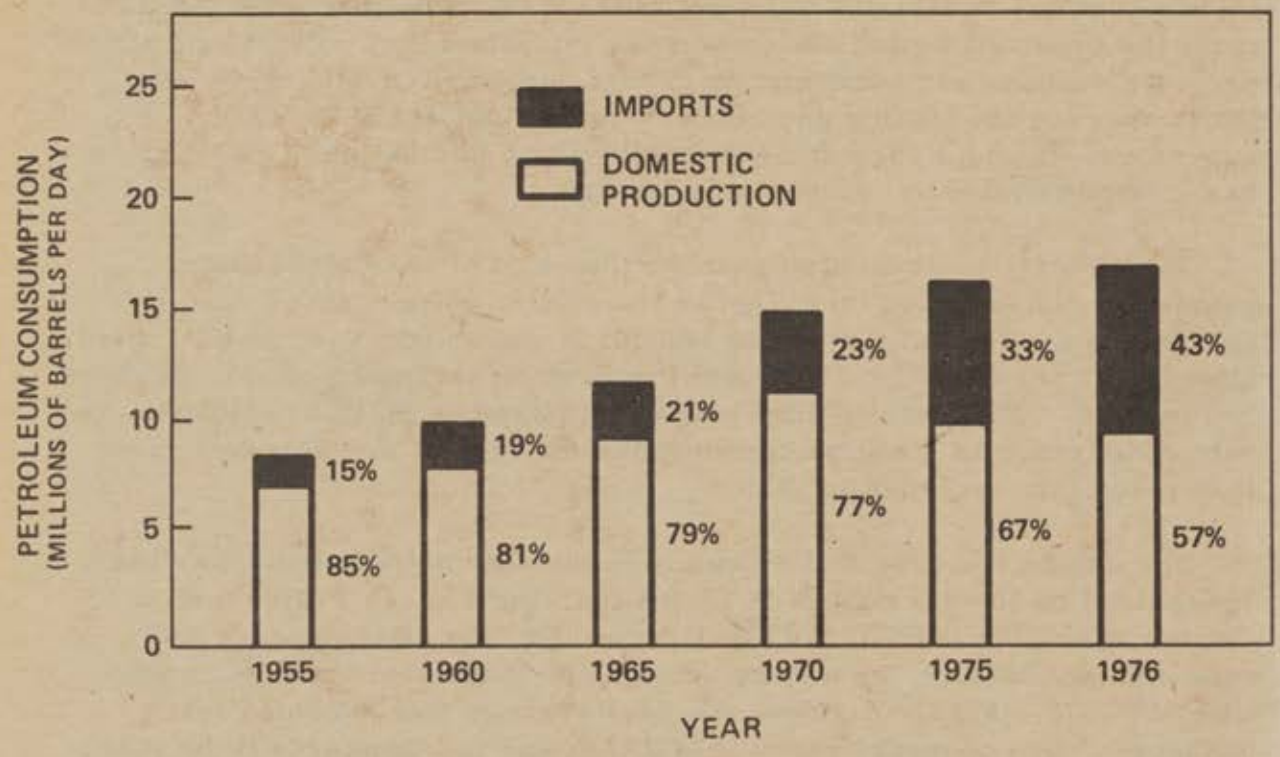
Transportation accounts for more than half of the United States petroleum consumption (see Figure 3); of this, 60 percent is used by automobiles. The daily average amount of motor fuel used in all United States vehicles for 1974, 1975, and the first nine months of 1976 is shown in Figure 4. The Federal Highway Administration (FHWA) estimates the rate of increase in gasoline consumption for 1976 at 5.7 percent, more than twice that recorded in 1975.

The urgent need for fuel economy in the automotive sector has been recognized by the passage of P.L. 94-163, the Energy Policy and Conservation Act (EPCA). This Act specifies the fleet average fuel economy standards to be met by automobile manufacturers, beginning with MY 1978. Figure 5 shows the fleet average fuel economy for passenger cars of model years 1974-1977, and the standards to be met under the EPCA from MY 1978 to MY 1985.

The fuel economy standard for MY 1978 passenger automobiles is set at 18 MPG, for MY 1979 at 19 MPG, and for MY 1980 at 20 MPG. The standards for MY 1981-1984 are to be determined by the Secretary and prescribed not later than July 1, 1977. The goal for MY 1985 and thereafter is 27.5 MPG, but this may be amended by the Secretary to a level which he determines to be the maximum feasible average fuel economy level. However, any change which increases the level above 27.5 MPG or below 26 MPG must be submitted to the Congress for approval. The standards for nonpassenger automobiles beginning in MY 1979 are to be determined by the Secretary. Fuel economy for

Figure 1

U.S. PETROLEUM CONSUMPTION, BY SOURCE (1955-1976)



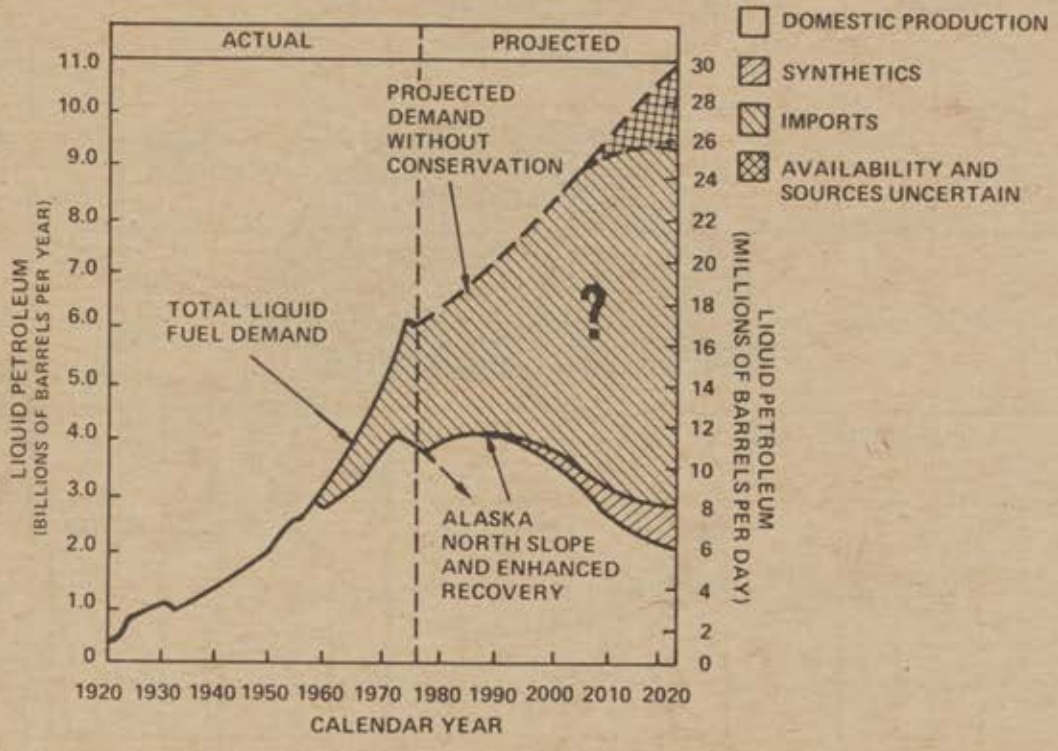
SOURCE: For '55-'70: National Energy Outlook, FEA
(Pg. 57. Fig. II-6)

For '75: Energy Statistics, FEA

For '76: NHTSA Estimate

Figure 2

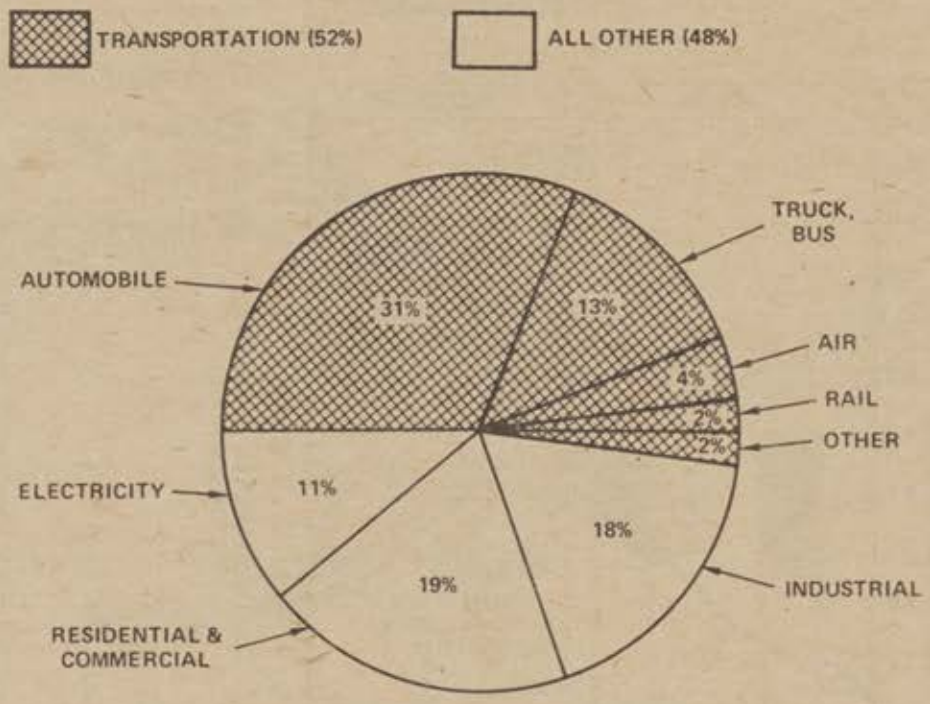
U.S. PETROLEUM CONSUMPTION AND SOURCES, 1920-2025



SOURCES: Historic Data:
1920 to 1963 Energy Facts
1964 to 1973 Annual Statistical Review, Petroleum Industry Statistics
1973 to 1975 FEA, Monthly Energy Review
Projected Data:
Synfuel Interagency Task Force, Vol. II (Nov. 1975), pg67, Figure 4-111-10, "High SynFuels Cost" case adjusted to include 2 million barrels per day

Figure 3

U.S. PETROLEUM CONSUMPTION BY SECTOR



Source: Draft report by the Federal Task Force on Motor Vehicle Goals Beyond 1980. May 1976.

Figure 4

GASOLINE CONSUMPTION REPORTED BY STATES (1974-1976)

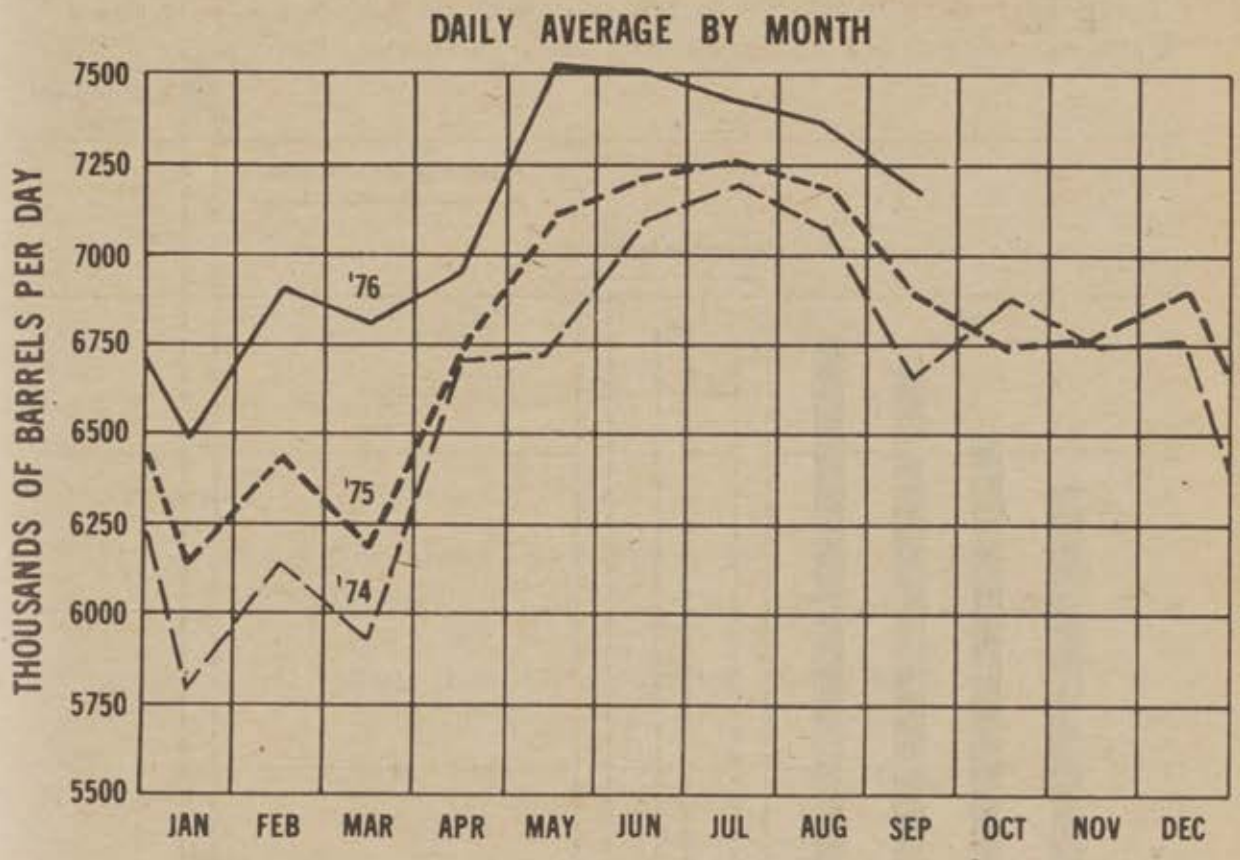
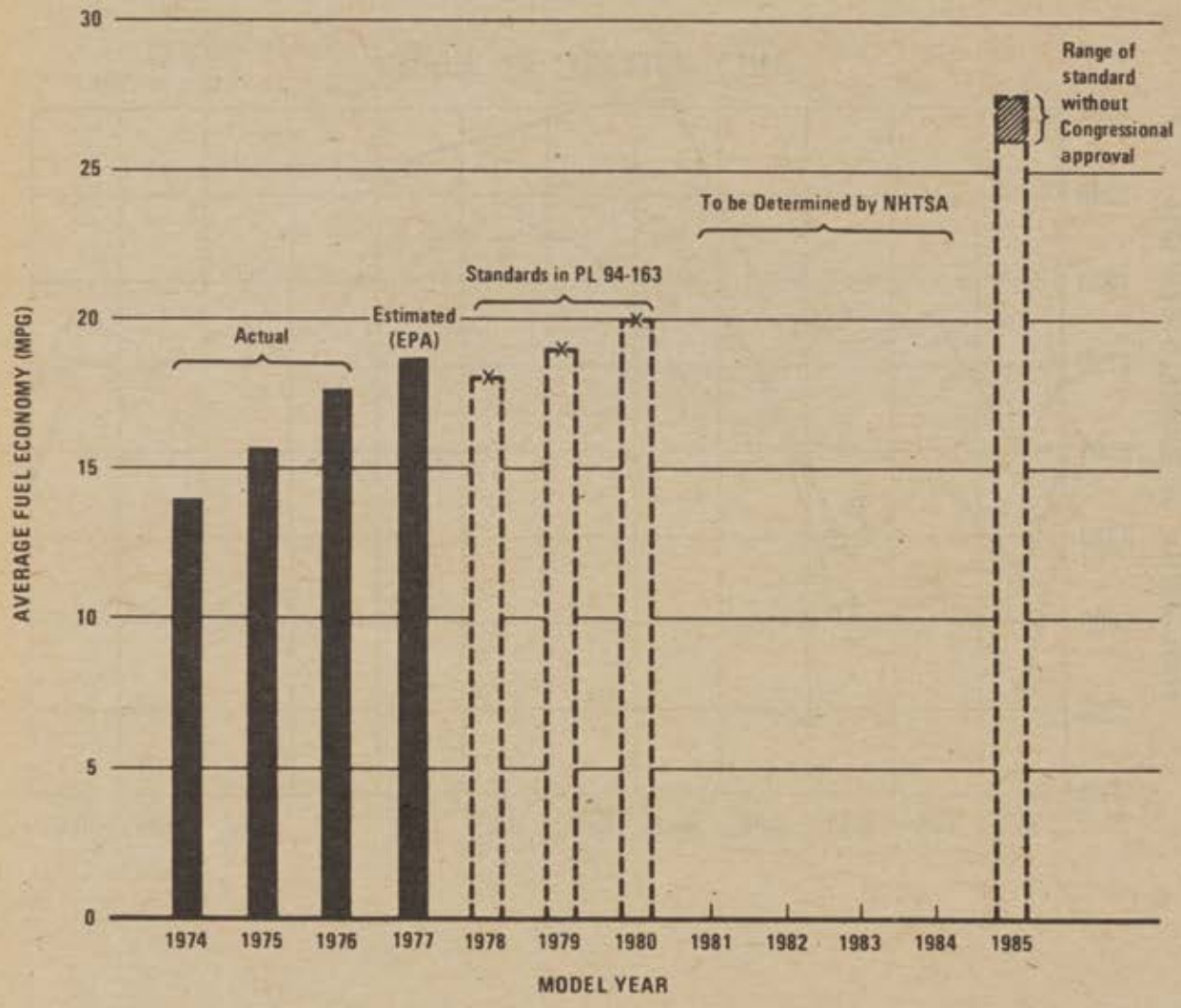


Figure 5

AVERAGE FUEL ECONOMY OF NEW AUTOMOBILES, MODEL YEARS 1974 - 1985 (U.S. Market)



Source: EPA, Office of Mobile Source Air Pollution Control. Summary Chart, September 19, 1975

each model type is to be measured, and fleet average fuel economy of a manufacturer is to be calculated, by procedures established on September 10, 1976, (41 FR 38674) by the Environmental Protection Agency (EPA) Administrator, who is required to report measurements and calculations to the Secretary of Transportation.

The equation used by EPA for computing city/highway combined fuel economy for each new model automobile in a given inertia weight class is:

$$MPG_{c/h} = \frac{1}{\frac{.55}{MPG_c} + \frac{.45}{MPG_h}}$$

Where:

$MPG_{c/h}$ = Combined city/highway fuel economy in miles per gallon.

MPG_c = Miles per gallon obtained on the EPA city driving cycle.

MPG_h = Miles per gallon obtained on the EPA highway driving cycle.

} EPA Composite Driving Cycle

For each manufacturer, the following formula is used to obtain the average fleet fuel economy:

$$MPG = \frac{1}{\sum f_i \left[\frac{1}{MPG_{c/h,\ i}} \right]}$$

Where:

MPG = Fuel economy for the model year (MPG)

f_i = Fraction of sales of model type i.

$MPG_{c/h,\ i}$ = City/highway combined fuel economy for model type i.

For example, if a manufacturer produced only three models with combined fuel economy of 18, 20, and 22 MPG and sales of 30, 20 and 50 percent respectively, the average fuel economy for this manufacturer's fleet in MPG is:

$$MPG = \frac{1}{\frac{0.30}{18\ (MPG)} + \frac{0.20}{20\ (MPG)} + \frac{0.50}{22\ (MPG)}} = 20.2$$

Table 1 shows the trends in the fleet average fuel economy for fourteen manufacturers in MY 1975-1977. Currently, only four automobiles, Fuji, Honda, Toyota, and Volkswagen, meet the 1985 fuel economy goal of 27.5 MPG - and all four are foreign made.

Table 1

FUEL ECONOMY FOR SELECTED MANUFACTURERS, 1975-1977

	1975	1976	1977
American Motors	19.0	18.3	19.2
Chrysler	15.5	16.5	16.6
Ford	13.6	17.3	17.1
General Motors	15.4	16.7	18.4
Audi	24.2	25.2	25.9
BMW	17.7	18.9	20.4
Fuji (Subaru)	26.5	29.7	30.2
Honda	31.3	32.6	35.6
Nissan (Datsun)	24.9	26.9	27.1
Porsche	19.8	20.5	19.8
Toyo Kogyo (Mazda)	16.7	21.9	26.1
Toyota	22.2	25.0	28.1
VW	27.4	28.3	30.4
Volvo	19.2	19.4	19.9
Fleet Average	15.6	17.6	18.6

Source: EPA "Light Duty Automotive Fuel Economy Trends Through 1977," SAE Paper #760795, September 1976.

Section 4

STATUTORY REQUIREMENTS

Sections 501-505 and 508 of the new Title V of the Motor Vehicle Information and Cost Savings Act direct the Secretary of Transportation to issue standards on fuel economy as follows:

(1) Section 501(1), (2) and (3) authorize the Secretary to prescribe rules defining and classifying "automobiles," "passenger automobiles," and "automobiles capable of off-highway operation."

(2) Section 501(8) directs the Secretary to prescribe rules for determining which manufacturer is responsible for compliance with the Act, in cases where there is more than one manufacturer of an automobile.

(3) Section 502(a) (3) requires the promulgation, by rule, of average fuel economy standards for passenger automobiles manufactured in each of the model years 1981 through 1984. The Title provides for the issuance of these standards by July 1, 1977.

(4) Section 502(b) of the Act provides that average fuel economy standards for nonpassenger automobiles be prescribed at least 18 months prior to the beginning of the model year to which they are applicable.

(5) Section 502(c) of the Act authorizes the Secretary to establish the format and content for an application, by a manufacturer who manufactures fewer than 10,000 passenger automobiles in a given model year, for an exemption from the generally applicable average fuel economy standards.

(6) Section 502(d) (1) of the Act requires the Secretary to issue a regulation covering applications by automobile manufacturers for reductions of passenger automobile fuel economy standards for MY 1978, 1979, and 1980.

There is no statutory deadline for issuance of this regulation, but Section 502(d) (1) permits manufacturers to apply for reductions of fuel economy standards at any time within 24 months prior to the beginning of the model year for which the reduction is sought.

(7) Section 503(d) (1) of the Act requires the EPA Administrator to establish fuel economy testing and calculation procedures for both passenger and nonpassenger automobiles, and report measurements and calculations to the Secretary of Transportation. Section 503(d) (3) provides that these procedures will be promulgated at least 12 months prior to the model year to which they are applicable. Section 503(f) requires the EPA Administrator to consult and coordinate with the Secretary in carrying out his duties.

(8) Section 505(a) (1) authorizes the Secretary to establish the format and content of the semiannual compliance reports to be filed by automobile manufacturers. The first report is to be filed during the 30-day period preceding the beginning of the manufacturer's 1978 model year.

(9) Section 508 covers civil penalties to be assessed by the Secretary for compliance violations, and the deduction from these penalties of credits given a manufacturer for achieving average fuel economy in excess of that required under the applicable standard.

Section 5

IMPLEMENTATION

The Secretary of Transportation has assigned the responsibility of implementing the applicable sections of Title V to the Administrator of NHTSA. The organizational structure of NHTSA has been expanded to add the Office of Automotive Fuel Economy, which reports directly to the Administrator (See Appendix A). The elements of the Office are shown in Appendix B. Positions and total dollar resources for the NHTSA fuel economy program for FY 1976TQ and FY 1977 are given in Appendix C.

RULEMAKING

Dockets have been established at NHTSA for all automotive fuel economy rulemaking actions. These files are available for public review. Rulemaking for seven fuel economy standards has been initiated:

1. Development of fuel economy standards for passenger automobiles for model years 1981-1985 and beyond, Docket # FE 76-01.

   Description

   This NPRM proposes a new regulation for specifying average fuel economy standards for passenger automobiles in model years 1981 through 1985 and beyond. An ANPRM was issued to obtain information and comments. Additional notice and opportunity to comment will be provided before the standards are issued.

2. Development of a regulation for applications from industry for reducing passenger automobile fuel economy standards for model years 1978-1980, Docket # FE 76-02.

   Description

   This NPRM proposes a new regulation specifying requirements for submission of petitions from manufacturers for

reducing the passenger automobile average fuel economy standards for model years 1978-1980. Such a reduction would partially offset any loss of fuel economy due to the application in those years of Federal emission, safety, noise, or damageability standards more stringent than those applicable to MY 1975. The NPRM also describes the procedures that NHTSA would follow in acting on the petitions.

The NPRM was published on October 26, 1976: 41 FR 46878

3. Development of standards for nonpassenger automobiles, Docket # FE 76-03.

Description

This NPRM proposes a new average fuel economy standard for nonpassenger automobiles of 6,000 pounds and less, beginning in MY 1979.

The final rule is scheduled for publication in March 1977.

4. Development of a regulation for exemption applications for low-volume automobile manufacturers.

Description

This NPRM proposes a new regulation specifying requirements for submission of petitions from manufacturers of less than 10,000 passenger automobiles per year for an exemption to the average fuel economy standards. Such exemptions may be granted only if NHTSA determines that the standard otherwise applicable is more stringent than the maximum feasible average fuel economy level which the manufacturer can attain. An exemption can be granted for a low-volume manufacturer only if NHTSA establishes

an alternative (maximum feasible level) standard for the manufacturer, or for such classes of automobiles as the manufacturer produces.

Estimated publication date of the final rule is April 15, 1977.

5. Vehicle classification.

Description

This NPRM proposes a new regulation to define automobiles, passenger automobiles, nonpassenger automobiles and automobiles having a significant feature (other than 4-wheel drive) designed to equip them for off-highway operation.

The rule is scheduled for publication by March 1, 1977.

6. Multistage manufacturer responsibility.

Description

This NPRM proposes a new regulation to prescribe rules for determining, in cases where there is more than one manufacturer of an automobile, which manufacturer is responsible for complying with the provisions of Title V.

The rule is scheduled for publication by March 1, 1977.

7. Development of a regulation for automobile manufacturers' reports on fuel economy.

Description

This NPRM proposes the content and format for the semiannual reports that automotive manufacturers are required to submit, beginning with MY 1978. The semiannual reports will contain pertinent information to support the program offices.

The rule is scheduled for publication by August 1977.

It is anticipated that additional regulations in the following areas will be required in the future:

Procedural

Rule on which vehicles with GVWR greater than 6,000 pounds and less than 10,000 pounds are automobiles.

Passenger Automobiles (MY 1978-1980)

Rule granting or denying reductions of average fuel economy standards applied for by manufacturers.

Rule prescribing procedures for formal compliance determination hearings for 1978 and later model years.

Rule governing carryback and carryover of credits for exceeding the average fuel economy standards in any model year.

Passenger Automobiles (MY 1981-1985)

Rule modifying the average fuel economy standard for MY 1985 passenger automobiles, if necessary.

Rule modifying standards for average fuel economy of MY 1981 to 1984 passenger automobiles, pursuant to modification of the standard for 1985 models, if necessary.

Nonpassenger Automobiles

Rule establishing average fuel economy standards for nonpassenger automobiles between 6,000 and 10,000 pounds GVWR, if required.

Low-Volume Manufacturer Applications

Rule granting or notice denying applications for exemption from average fuel economy standards and establishment of alternative standards.

Manufacturers' Reports and Recordkeeping

Rule prescribing records to be kept and information to be provided by the automobile manufacturers to aid NHTSA in implementing the fuel economy program.

RELATED ACTIVITIES

In connection with the formulation of the rules required under Sections 501-509 and preparation of public notices and reports to the Congress, NHTSA also performs many related activities. Since the passage of the Act, NHTSA has initiated actions to:

1. Establish and maintain appropriate relationships with consumer groups, the automotive industry, and other Federal agencies.

2. Develop and update economic and technological data bases.

3. Modify the automotive fuel economy research programs to incorporate the statutory requirements of Title V.

4. Formulate methods for the collection and reporting of information required to assess manufacturers' technological alternatives and corporate economic capabilities.

5. Set up procedures to ensure compliance with standards.

6. Recommend penalties for manufacturers failing to meet the standards.

7. Assess and evaluate program effectiveness.

EFFECTS OF SAFETY AND DAMAGEABILITY STANDARDS

All FMVSS's and damageability standards which have been issued, or which NHTSA plans to issue through 1980, have been analyzed to determine their effect on the fuel economy of post-MY 1975 automobiles. In this

analysis, it was assumed that any measurable effect on fuel economy could only be caused by an increase in electrical power consumption or an increase in vehicle weight of 10 or more pounds. Previous research indicates that it would be necessary to increase the weight of a small car by 100 pounds to reduce fuel economy by 0.29 MPG.

Analysis of issued standards reveals that only three safety standards and one damageability regulation currently in force may impact post-1975 vehicle weight by more than 10 pounds. No significant effect on electrical power consumption is anticipated. Fuel impacts of standards to be issued after 1980 will be evaluated in the future.

Existing Standards

FMVSS No. 215 - Exterior Protection - Passenger Cars

This standard, effective September 1, 1972, requires MY 1973 passenger cars to withstand barrier impacts of 5 mph front, and 2 1/2 mph rear, without damage to lighting, fuel, exhaust, cooling, and latching systems. An amendment, effective September 1, 1973, was issued to upgrade the barrier impact speed to 5 mph front, and 5 mph rear and to correct the mismatch that exists between passenger car bumpers by requiring impacts by a weighted pendulum at 5 mph front and rear.

Post-MY 1975 automobiles with a wheelbase of 120 inches or more, which were previously exempted from some of the impact requirements, must now meet them. Although this may mean an increase in bumper weight on these luxury cars, NHTSA estimates that the fleet average weight increase for all model years will be less than 10 pounds.

Part 581 - Bumper Standard

On March 4, 1976, NHTSA issued a final rule on Part 581, Bumper Standard. The purpose of this standard is to reduce physical damage to the front and rear ends of a passenger motor vehicle from low-speed collisions. NHTSA is proposing that manufacturers be given the option of complying with either FMVSS No. 215 or Part 581 until September 1, 1978, when compliance with Part 581 becomes mandatory. The new

standard permits the use of "soft face" bumpers as long as the damage to the vehicle does not exceed specified limits. Soft-face bumpers are expected to weigh 110 to 120 pounds, substantially less than many MY 1975 bumpers. NHTSA expects, therefore, that Part 581 requirements will likely result in a weight reduction compared to MY 1975 passenger cars.

FMVSS No. 301 - Fuel Systems Integrity - Passenger Cars

This standard specifies requirements for the integrity and security of fuel tanks, fuel tank filler pipes, and fuel tank connections in all passenger cars manufactured after January 1, 1968. An amendment to this standard upgrades passenger car fuel system performance requirements, effective September 1, 1975, and extends the applicability to multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less. As of September 1, 1976, it must be demonstrated that fuel loss in these vehicles will not exceed one ounce per minute in a static rollover, a 30-mph moving barrier crash, a 20-mph lateral moving barrier crash, and a 30-mph frontal barrier crash. All of the other vehicles subject to the standard must meet these requirements as of September 1, 1977.

NHTSA expects that the post-MY 1975 passenger car requirements of FMVSS No. 301 can be met with no increase in weight. Even if some manufacturers elect to meet the requirements through shielding rather than redesign, the fleet average weight differential still should be less than 10 pounds.

Planned Standards

Current plans for the period through FY 1978 indicate that NHTSA may issue new rules or amend existing standards in 32 areas which may affect MY 1979 and MY 1980 passenger cars.

While formal impact analyses have not been completed on all of these 32 standards, a preliminary review indicates that only FMVSS No. 108 (Lighting Equipment) and FMVSS No. 208 (Occupant Crash Protection) may possibly affect the fuel economy of pre-MY 1981 passenger automobiles.

FMVSS No. 108 - Lamps, Reflective Devices, and Associated Equipment
(Amendment)

This amendment to FMVSS No. 108 proposes requirements for side-turn signal lamps and high-intensity headlamps. The NPRM is scheduled to be issued in FY 1977, and the rule in FY 1978. Although improvements are being made in reducing the power consumption of vehicle lighting systems, the new side-turn signal lamps and higher-intensity headlamps will draw more power than MY 1976 lamps. However, preliminary analysis indicates that the total increase in fuel consumption will be less than one-half gallon per car per year.

INTRA-AGENCY AND INTERAGENCY COORDINATION

Intra-Agency Review

In delegating responsibility for developing fuel economy standards to the National Highway Traffic Safety Administration (NHTSA), the Office of the Secretary of Transportation (OST) has retained a review and concurrence authority which is exercised through the Assistant Secretary for Systems Development and Technology. As work progresses in developing a fuel economy standard, OST is kept informed and a completed Notice of Proposed Rulemaking (NPRM) or Final Rule (FR) is sent to OST for formal review and concurrence.

The formal review normally takes about one month, during which OST is briefed and specifies any changes required for concurrence.

Interagency Review

Fuel economy regulations proposed by NHTSA are also subject to interagency review, in accordance with an Office of Management and Budget (OMB) memorandum issued on October 5, 1971. This memorandum states that "agency regulations, standards, and guidelines pertaining to environmental quality, consumer protection and the occupational public health and safety" are to be submitted for interagency review 30 days prior to being proposed publicly.

NHTSA determines which agencies are asked to review particular rules and consults with OST and the OMB Transportation Branch if there is any doubt whether an agency should be involved. In addition to the Environmental Protection Agency (EPA), the Federal Energy Administration (FEA), and the Energy Research and Development Administration (ERDA), the agencies to be considered for review include the Department of Commerce, the Council on Environmental Quality (CEQ), the Council on Wage and Price Stability (COWPS), and the Economic Policy Board.

By far the closest involvement is with EPA. This agency is responsible for prescribing, by rule, the testing and calculation procedures and conducting the tests and making the calculations on the basis of which compliance with fuel economy standards is determined by NHTSA. EPA is also consulted on a continuing basis concerning the effects of the emission standards on fuel economy.

The rules issued by NHTSA on fuel economy and several rules promulgated by EPA that relate to fuel economy have been the result of coordination between the two agencies. NHTSA and EPA are continuing to develop more effective methods of cooperation.

Some of the major issues identified during coordination with FEA and EPA are presented in the Research and Development Section.

ERDA provides inputs to NHTSA on the status of advanced engine programs which could impact on the post-1985 fuel economy standards.

Section 6

THE RULEMAKING PROCESS

As a pattern for fuel economy rulemaking, NHTSA has adopted a process similar to that used by the agency in issuing Federal Motor Vehicle Safety Standards (FMVSS's). The most significant modification relates to the period permitted for completing the process. In compliance with the EPCA, the first group of fuel economy rules will be issued in final form by March 1, 1977, fourteen months after the Act was signed into law. To satisfy this schedule, the time allowed for accomplishing rulemaking milestones has had to be drastically reduced, while yet offering interested parties the opportunity to participate in the rulemaking process.

As required by the Administrative Procedures Act and implementing orders, NHTSA allows other Federal agencies, industry, and interested private citizens and groups to comment on fuel economy proposals. From these comments, it is expected that NHTSA will acquire information and opinions that will contribute to the issuance of final rules calculated to best achieve maximum feasible automobile fuel economy.

The fuel economy rulemaking process requires NHTSA to:

(1) Prepare an engineering draft which describes the technical specifics of the proposed rule and the reasons why particular engineering decisions were made.

(2) Prepare a rulemaking support paper (RSP), a preliminary impact assessment (PIA), and a review to determine if a draft environmental impact statement (DEIS) is needed. The RSP provides the technical basis for the PIA and the environmental review. The PIA contains such items as:

(a) Estimates of the cost impact on consumers, producers, or businesses, and on Federal State, or local governments.

(b) Effects on supplies of important materials, energy supply or demand, and automobile performance.

(c) Reasonable and practical alternatives and their impacts.

The environmental review evaluates the need for a DEIS by estimating the primary and secondary environmental effects of fuel economy on existing air, noise, and water pollution standards and on energy supply and natural resources development.

(3) Prepare the legal draft of the rulemaking document. The legal draft describes the nature of the proposal, the purpose of its issuance, the specific information requested or requirements to be satisfied, the expected impact and environmental effects, and the time allowed for comments.

(4) Obtain departmental concurrence.

(5) Conduct interagency coordination.

(6) Transmit the rulemaking document to the Federal Register for publication, for public review and comment.

These activities are in line with the President's goal of comprehensive regulatory reform and ensure that rulemaking proposals are supported by adequate analysis of anticipated costs and consequences before they become final rules.

Table 2 depicts the major steps associated with publication of a typical rule on automotive fuel economy.

Table 2

STEPS IN THE DEVELOPMENT OF AUTOMOTIVE FUEL ECONOMY RULES

1. Engineering Draft of Proposed Rulemaking
2. RSP, PIA, DEIS
3. Legal Draft of NPRM
4. Concurrence of Secretary and Interagency Coordination
5. Publication of NPRM in Federal Register
6. Public Hearings if necessary
7. Incorporation of comments
8. Engineering Draft of Rule
9. Legal Draft of Rule
10. Concurrence of Secretary
11. Interagency Coordination
12. Publication of Rule in Federal Register
13. Post-Rule Activities

Section 7

RESEARCH AND DEVELOPMENT SUPPORT

The NHTSA Automotive Fuel Economy (AFE) program is supported by research and development which contributes to the sound formulation, establishment, and enforcement of fuel economy standards and standards modifications.

The purpose of the AFE R&D support program is to enhance NHTSA's preparedness to (1) address and apply the statutory criteria of Title V of the Motor Vehicle Information and Cost Savings Act, (2) review and assimilate the responses and submissions made by manufacturers, consumers, and other interested parties during the rulemaking process, and (3) report to the Congress the progress made in implementation of Title V.

The objective of the support program is to develop, maintain, and update (1) the data bases (statistical, technological, engineering, manufacturing, cost, financial, economic, marketing, and other national impacts) and (2) the analytical tools (framework, methodologies, and specific approaches) necessary to evaluate the maximum feasible fuel economy level and related rulemaking actions.

In the AFE R&D program, the services of the DOT Transportation Systems Center (TSC) will be used to the maximum possible extent. TSC has the expertise and capability for the identification and acquisition of data and the analtyical techniques necessary to support rulemaking actions. The Center also has extensive experience in establishing a qualified contractor base in virtually all subjects of interest to the AFE program, and in dealing with auto manufacturers and the auto industry for informal exchange of information. It is planned to supplement the services of TSC with selected contracts with the private sector.

Those portions of the Motor Vehicle Goals study* which apply to fuel economy rulemaking will be modified and updated as necessary for use in

* "The Report by the Federal Task Force on Motor Vehicle Goals Beyond 1980." Draft report to the Energy Resources Council (ERC), September 2, 1976.

the AFE R&D support program.

These elements include (a) detailed breakdown of technological and economic information and analyses by manufacturer, (b) explicit inclusion of nonpassenger autos, (c) reformulation of baselines and projected baselines for the determination of impacts from AFE standards and (d) reconsideration of the effects of other Federal standards (emissions, safety, damageability, noise). In addition, existing data bases and analytical tools will be updated periodically.

To maintain administrative control and facilitate program review, the AFE R&D support program is divided into four task areas: (1) Assessment of Technological Options, (2) Industry Assessment, (3) Economics, Marketing, and Other Impacts, and (4) Integrated Evaluations.

Assessment of Technological Options initially refers to the evaluation of production and production-prototype hardware available to manufacturers for achieving fuel economy improvements. This encompasses potential for auto-weight reduction, engine and drivetrain improvements, and also includes the effects of other Federal standards on fuel economy.

Industry Assessment includes evaluation of manufacturability and costs of technological improvements, both individually and in combination, assessment of manufacturers' capabilities and leadtimes in implementing fuel economy improvements, and capital requirements and the feasibility of obtaining capital.

Economics, Marketing and Other Impacts involves such complex factors as the following:

- o Identification and allocation of costs and benefits to the manufacturer and consumer as a result of specific AFE standards.
- o Evaluation of consumer choices and preferences and the resulting impact on the manufacturer's ability to meet AFE standards.
- o Fuel price effects in the absence or presence of AFE standards.
- o Aggregated economic effects of AFE standards on the automotive sector of the economy, on the national economy, on petroleum and other national resources, on air quality, and on highway safety.

Integrated Evaluations consist of tasks devoted to systems integration to generate coherent analysis, evaluation, and documentation in response to specific rulemaking.

Following are the plans in these four areas during FY 1977:

Assessment of Technological Options

(1) Improve and develop tools, (engineering and statistical) to predict fuel economy as a function of performance, emissions, etc., including analysis and tests.

(2) Obtain data on lightweight internal combustion engines (spark ignition and diesel). The emphasis will be on the evaluation of engines that offer the "best" fuel economy for low horsepower-to-vehicle-weight ratios for given emission constraints. Potential costs will be evaluated. The effect of control logic for a number of engine/vehicle configurations will be studied.

(3) Evaluate the impact of advanced transmissions on emissions and fuel economy.

(4) Evaluate the weight-reduction potential of passenger and nonpassenger cars and utility vehicles considering comfort, safety, damageability, reliability, and initial cost. Manufacturing considerations will be included in the study.

(5) Define the performance of mass-produced engines, their efficiency as a function of emission control, and ancillary hardware and software requirements.

Industry Assessment

(1) Expand and improve the automotive manufacturing data base. Under this task, manufacturing cost data and methodology generated by the basic interview method, and consultant estimates for various components and vehicles, will be compared with the costing technique based on teardown of actual components or vehicles in order to verify and calibrate the manufacturing cost data bases.

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(2) Collect data and perform analyses of industry capital, labor and material requirements, production scheduling, and costs. Provide responses to specific industry concerns about production capacities, capital availability, changeover intervals and labor. Alternative strategies for meeting capital requirements will also be evaluated.

(3) Assess ease of manufacture (materials, labor, capital requirements and costs) for projected components and vehicles, e.g., innovative structures, conversion to smaller engines and gas-to-diesel engines.

(4) Evaluate engineering risks to the consumer and to the manufacturer associated with design changes that show fuel-economy benefits. Studies will include the investigation of possible degradation in durability and safety due to reduction in body-metal thickness, and increase in engine speed (for smaller engine size) to reduce vehicle weight.

(5) Expand and improve the maintenance cost data base to provide cost information on automotive maintenance inspection and diagnostic equipment. This task will also determine requirements for maintenance of advanced electronic control systems and other components, and provide information on costs to meet damageability standards.

Economics, Marketing and Other Impacts

(1) Develop financial analyses on each major manufacturer to assess his ability to underwrite technical changes which would improve fuel economy and the risks in doing so.

(2) Develop data and methodologies for assessing various strategies (extent and phasing of technolological innovation, production fleet mix, vehicle performance, and pricing) used by manufacturers to meet AFE standards. Determine the effects of such strategies on the consumer.

(3) Develop techniques for assessing consumer response to various alternatives offered by manufacturers in response to AFE standards.

(4) Determine the sensitivity of items such as corporate fuel economy, sales volume, fleet mix and vehicle miles traveled to various increases in fuel price.

Integrated Evaluations

(1) Synthesize information from each of the three major areas above, to determine the impact of proposed standards, for both passenger and nonpassenger automobiles, utilizing techniques similar to those applied in the Motor Vehicle Goals study.

(2) Provide technological, economic, marketing, and societal data bases for proposed AFE standards.

Economic Practicability

Title IIIA of the Energy Policy and Conservation Act, which adds a new Title V to the Motor Vehicle Information and Cost Savings Act, represents a new area of governmental regulatory activity, the regulation of automotive fuel economy. Heretofore fuel economy of automobiles has been left to market forces; now it is to be determined, at least in part, by governmental action. The purpose of the new regulatory program is to help ensure that scarce crude oil resources are used in ways which reflect the high economic costs incurred to make these resources available and the risks resulting from increasing U. S. dependence on imports from countries which have restricted the availability of crude oil to the United States.

The overriding objective of this program is to conserve fuel. In setting fuel economy standards the NHTSA Administrator is required to consider their economic practicability. The Congress has demonstrated an awareness that adverse economic effects could result from setting standards too high. To avoid these economic consequences, the Title

requires the Administrator to consider the economic practicability as well as the technological feasibility of establishing and implementing particular standards.

In addition to mandating fuel economy, the Act empowers the FEA to keep fuel prices below the levels that would exist in a normal market. Provision for government price controls on petroleum in the same legislation which seeks to conserve fuel may seem contradictory. Allowing the price of fuel to rise is one way to encourage conservation. Congressional rationale may rest on the following suppositions:

(1) As a result of actions by foreign suppliers, fuel prices under free market conditions have become so high that the American people should be protected against them.

(2) These high prices would result in unjustifiable gains to some American producers who could sell at prices which do not reflect the historical costs incurred in finding and producing oil.

For these reasons the price of crude oil to petroleum refiners is set at less than normal market clearing levels and, consequently, the price of gasoline to motorists is below the levels that would exist under free market conditions. Thus, without the fuel savings provisions of the EPCA, Americans would use fuel at greater rates than is justified by real costs or scarcity and would purchase automobiles that are comparatively fuel inefficient.

Congress did not provide a definition of the term "economic practicability." The Administrator is allowed considerable discretion in interpretation of the term. Two ways of approaching the concept of economic practicability are discussed below.

The first approach relies primarily on the premise that current fuel prices cannot be used as a guide for the scarcity of petroleum products. These prices are depressed by government control actions and to adequately measure the value of petroleum, the current world price must include the cost of supply interruptions. Under this interpretation, the Administrator should mandate fuel economy standards

which reflect a higher fuel price than now exists. The Administrator might also conclude that the risk of supply interruption is such as to cause a still higher "price" of fuel to be used as a guide to fuel scarcity. This conclusion would call for more stringent fuel economy measures.

The legislatively set goal of 27.5 MPG implies an as yet indeterminate fuel price. There is a price of gasoline at which the automobile fleets produced and sold in the United States would have this average fuel economy. The Administrator may reduce the minimum average fuel economy requirement from 27.5 to 26 MPG without Congressional review, if he determines that this reduction is the maximum feasible level of average fuel economy. In the absence of the EPCA fuel economy measures, 26 MPG fuel economy would be achieved by market forces at a somewhat lower fuel price than that necessary to achieve 27.5 MPG.

At this time we do not know whether the gasoline prices at which either 26 or 27.5 MPG would be achieved by market forces are near, above, or below those which would result from oil at world market prices. NHTSA's research program has as one of its goals the determination of the relationship between fuel prices and fuel economy of automobiles produced for the United States market.

It is anticipated that this research will provide answers to the following questions:

(1) What gasoline price would ultimately result in the production and sale of automobiles that would average 26 or 27.5 MPG?

(2) What would be the average fuel economy of automobiles if there were no fuel economy regulatory program and if gasoline prices were decontrolled to reflect world crude oil prices? How would the average fuel economy change if a premium were added to these prices to reflect the risks of interruption of the supply of crude oil?

A second approach of economic practicability is that the economic consequences of achieving various fuel efficiency levels must fall within acceptable ranges. The following impacts of fuel economy standards may be considered:

(1) The effect on prices of automobiles, and hence on their marketability and the consequent impact on fuel savings.

(2) The effect on the characteristics (e.g., size, capacity and performance) of automobiles and therefore on their marketability.

(3) The effect on employment in the automobile manufacturing and related industries.

(4) The effect on competition and on the economic health of firms in the automobile manufacturing and related industries.

(5) The effect on the amount of energy necessary to manufacture automobiles and their components as compared to the resultant effect on fuel consumption.

NHTSA's research program will investigate the two interpretations of economic practicability described above. The research will not determine economic practicability. That will be a matter in which the Department of Transportation and the Congress will exercise judgment.

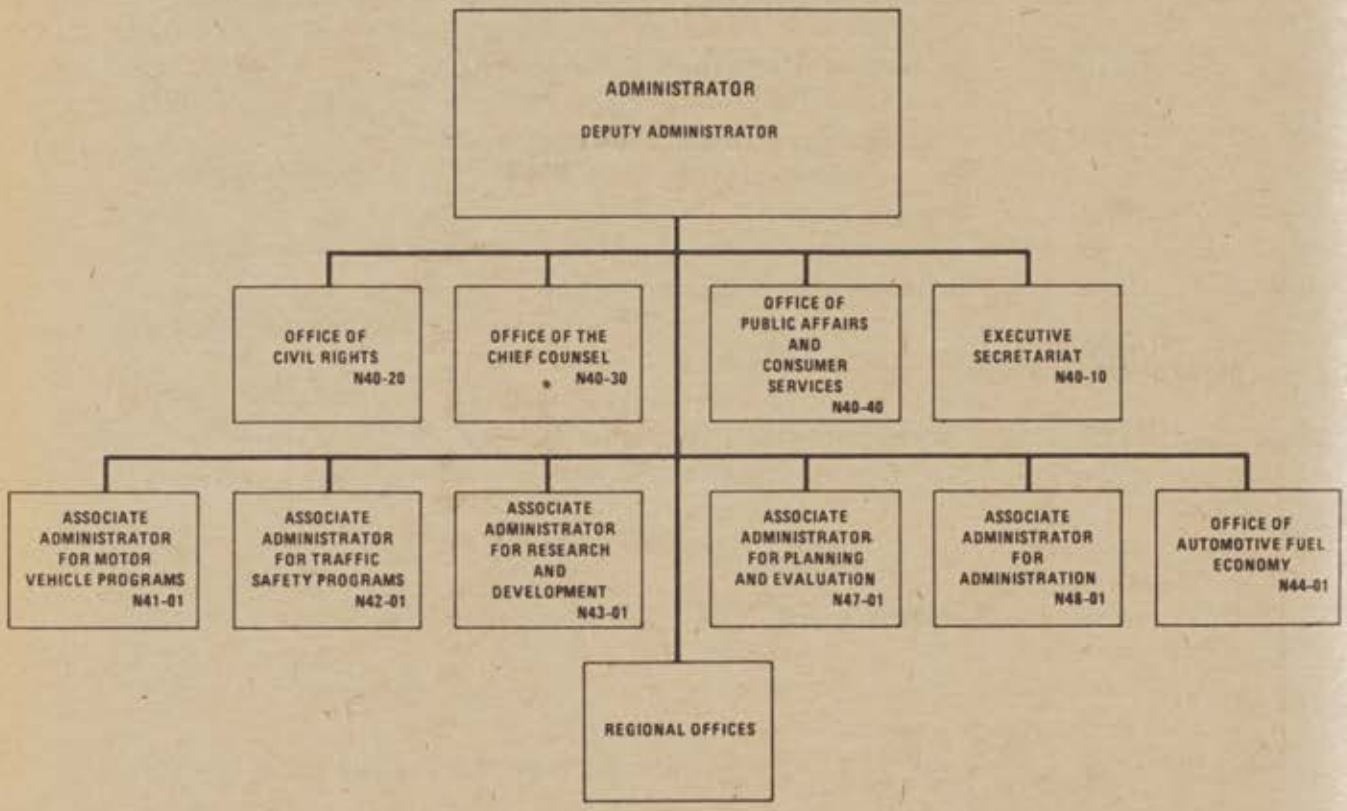
GLOSSARY

AFE	Automotive Fuel Economy
ANPRM	Advance Notice of Proposed Rulemaking
CEQ	Council on Environmental Quality
COWPS	Council on Wage and Price Stability
DEIS	Draft Environmental Impact Statement
DOT	Department of Transportation
EPA	Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
ERC	Energy Resources Council
ERDA	Energy Research and Development Administration
FE	Fuel Economy
FEA	Federal Energy Administration
FHWA	Federal Highway Administration
FMVSS	Federal Motor Vehicle Safety Standard
FR	Federal Register
FTC	Federal Trade Commission
GSA	General Services Administration
GVWR	Gross Vehicle Weight Rating

MPG	Miles Per Gallon
MY	Model Year
NHTSA	National Highway Traffic Safety Administration
NPRM	Notice of Proposed Rulemaking
PIA	Preliminary Impact Assessment
PL	Public Law
RSP	Rulemaking Support Paper
TQ	Transition Quarter
TSC	Transportation Systems Center

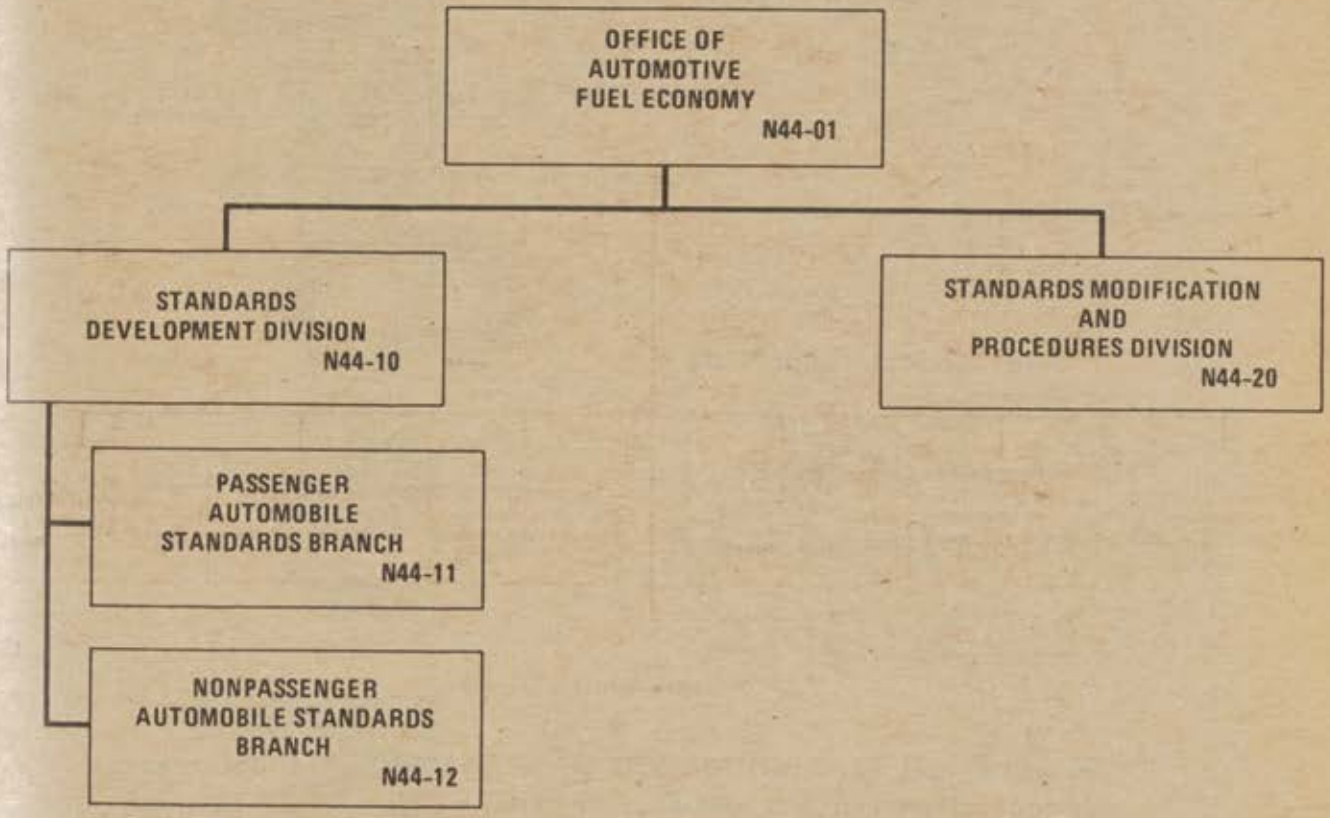
APPENDIX A

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION



APPENDIX B

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Office Of Automotive Fuel Economy



APPENDIX C

AUTOMOTIVE FUEL ECCNOMY PROGRAM

(Dollar amounts in thousands)

	FY 1976 TQ	FY 1977*
Positions	-	40
Dollars:		
Salaries and supporting expenses	-	900
Contract program		$2,100
TOTAL	$1,405	$3,000

*An additional $3.0 million will be requested in a supplemental appropriation request and $2.0 million will be added through internal reprogramming.

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[FR Doc.77-1221 Filed 1-12-77;8:45 am]

federal register

THURSDAY, JANUARY 13, 1977

PART X



OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

OFFICE OF MANAGEMENT AND BUDGET

BUDGET RESCISSIONS AND DEFERRALS

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report four new routine deferrals of funds totalling $685.0 million. The deferred funds were provided for the U.S. Railway Association and the U.S. Information Agency.

In addition, I am reporting routine revisions to five deferrals previously transmitted. They relate to programs of the Departments of Commerce and Health, Education, and Welfare, the General Services Administration, and the American Revolution Bicentennial Administration. The combined effect of the revisions is to increase the amount deferred by $130,000.

The details of each deferral are contained in the attached reports.

Gerald R. Ford

The White House, January 7, 1977.

SUMMARY OF PROPOSED DEFERRALS
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Commerce:	
	National Oceanic and Atmospheric Administration:	
D77-6A	Promote and develop fishery products and research pertaining to American fisheries.....	1,772
D77-9A	Fishermen's guaranty fund.....	544
	Health, Education, and Welfare:	
	Office of the Assistant Secretary for Health:	
D77-13A	Scientific activities overseas (special foreign currency program).....	2,113
	General Services Administration:	
D77-29A	Rare silver dollar program.....	1,797
	Other Independent Agencies:	
	American Revolution Bicentennial Administration:	
D77-31A	Commemorative activities fund....	198
	U.S. Information Agency:	
D77-41	Salaries and expenses (special foreign currency program).....	2,437
D77-42	Special international exhibitions.....	1,716
D77-43	Special international exhibitions (special foreign currency program).....	112
	U.S. Railway Association:	
D77-44	Payments for the purchase of Conrail securities.....	680,700
	Total, deferrals.....	691,389

SUMMARY OF SPECIAL MESSAGES
FOR FY 1977
(Amounts in thousands of dollars)

	Rescissions	Deferrals
Sixth special message:		
New items	---	684,965
Changes to amounts previously submitted	---	130
Effect of the sixth special message	---	685,095
Previous special messages	99,100	6,019,035
Total amount proposed in special messages	99,100 (in 4 rescission proposals)	6,704,130 (in 44 deferrals)

Note: All amounts listed represent budget authority except for $134,807,092 consisting of two general revenue sharing deferrals of outlays only (D77-26 and D77-27A). Reports for D77-26 and D77-27A are included in the special messages of October 1, 1976, and December 3, 1976, respectively.

D77-6A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014 (c) of P.L. 93-344

This report updates Deferral No. D77-6 transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This supplementary report reflects an increase in the amount deferred of $1,522 (from $1,770,716 to $1,772,238) from that previously reported for the program to promote and develop fishery products and research pertaining to American fisheries. This increase results from several partially-offsetting changes including an increase in unobligated balances, $1,278 of which is to be added to the deferral.

Deferral No: D77-6A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. _____) $ _____ * Other budgetary resources $10,517,238
Bureau National Oceanic and Atmospheric Administration	* Total budgetary resources 10,517,238
Appropriation title & symbol Promote and Develop Fishery Products and Research Pertaining to American Fisheries 13X5139	Amount to be deferred: Part of year $ _____ Entire year $1,772,238*
OMB identification code: 13-5139-0-2-403 1/	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other 7 U.S.C. 612C

*Justification:

An amount equal to 30% of the gross receipts from customs duties on fishery products is appropriated for fishery products resources research and assessment and American fisheries resource management and development. These funds supplement monies appropriated to the National Oceanic and Atmospheric Administration for the same purposes under the appropriation "Operations, research, and facilities." The amount requested for deferral, $1,772,238, represents the excess amount of receipts over the cost of currently planned program activities in FY 1977. Because no plans have been developed for use of these funds, they are requested for deferral at this time. The deferred funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects:

This deferral action has no effect on the program as currently planned for FY 1977.

Outlay Effects:

There is no outlay effect of this deferral because the funds would not be used if made available.

* Revised from previous report.

1/ The OMB identification code that appeared in the FY 1977 budget was 06-48-5139-0-2-403.

D77-9A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D77-9 transmitted to the Congress on October 1, 1976, and printed as House Document 94-650.

This supplementary report for the Fishermen's Guaranty Fund increases the deferred amount by $188,376. The increase is attributable to an identical increase from the amount originally estimated in unobligated funds brought forward from the transition quarter.

Deferral No: D77-9A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 94-362) $ 61,000 Other budgetary resources 725,926* Total budgetary resources 786,926 1/
Bureau National Oceanic and Atmospheric Administration	
Appropriation title & symbol Fishermen's Guaranty Fund 13X4318	Amount to be deferred: Part of year $ ____ Entire year 543,926*
OMB identification code: 13-4318-0-3-403 2/ Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification:*

This fund, established pursuant to the Fishermen's Protective Act of 1967, as amended, provides compensation to vessel owners and crews for financial losses resulting from the seizure of United States fishing vessels by foreign governments on the high seas on the basis of rights or claims to territorial waters not recognized by the United States. Losses payable are generally limited to the market value of fish caught before seizure which were spoiled or confiscated and up to 50% of gross income lost as a direct result of such seizures. Capital for this fund is derived from fees paid by vessel owners at rates established by the Secretary of Commerce and appropriations from the general fund.

The current program will finance the administrative expenses of this fund and payment of all outstanding claims leaving $543,926 that can be deferred, pending future seizures and resulting claims.

Estimated Effects:

Deferral of these funds will have no effect on the Fishermen's Guaranty Fund program as currently planned for FY 1977.

* Revised from previous submission.

1/ Includes $522,926 of unobligated funds brought forward from the transition quarter and $203,000 of estimated receipts from fishing vessel owners participating in the guaranty program during FY 1977.

2/ The OMB identification code that appeared in the FY 1977 budget was 06-48-4318-0-3-403.

Outlay Effect:

There is no outlay effect of this deferral because the funds would not be used if made available.

D77-13A

SUPPLEMENTARY REPORT

Report Pursuant to Sec. 1014(c) of P.L. 93-344

This report revises Deferral No. D77-13 transmitted in the special message of October 1, 1976,and printed as House Document No. 94-650.

This message reflects an increase in the deferred amount from $1,113,000 to $2,113,000 primarily as a result of the actual unobligated balance brought forward into FY 1977 being higher than previously estimated.

Deferral No: D77-13A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Health, Education, and Welfare	New budget authority (P.L. _____) $ 1,500,000*
Bureau Office of the Assistant Secretary for Health	Other budgetary resources 15,919,549*
Appropriation title & symbol 75X1102 -- Scientific Activities Overseas (Special Foreign Currency Program)	Total budgetary resources 17,419,549*
	Amount to be deferred: Part of year $ -0- Entire year 2,113,000*
OMB identification code: 1/ 75-1102-0-1-552	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification:

Appropriation Acts for the Department of Health, Education, and Welfare have provided funds for the Scientific Activities Overseas Program to "remain available until expended." Funding for this program comes from foreign currencies owned by the United States that have been determined by the Treasury Department to be in excess of normal U.S. needs in the countries concerned. There are now seven countries (Egypt, Burma, Guinea, India, Pakistan, Poland, and Tunisia) that the Treasury Department has designated "excess currency" countries in accord with its internal Treasury Department guidelines. The Treasury Department releases these funds to the Department of Health, Education, and Welfare (HEW) to use for scientific research projects in those countries; and the funds remain available to HEW until expended.

The amount of funds to be obligated during 1977 and the amount to be deferred to 1978 were determined after a careful review of the scientific merit of project proposals in the limited number of excess currency countries. HEW has decided which research projects in those countries will contribute to U.S. scientific needs and thus should be funded. The amount being deferred is in excess of current program requirements and is thus reserved for contingencies under provisions of the Antideficiency Act (31 U.S.C., 665).

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* Revised from previous report.

1/ The OMB identification code that appeared in the FY 1977 budget was 09-37-1102-0-1-552.

D77-13A

Estimated Effects:

No programmatic or outlay impact results from this action. This deferral reflects the budgetary resources that will remain available after meritorious scientific projects have been funded in fiscal year 1977.

Outlay Effect

There is no outlay effect of this deferral because the funds could not be used if made available.

D77 29A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report revises Deferral No. D77-29, transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This revision reflects a net increase of $88,053 in the amount to be deferred in fiscal year 1977 for the Rare Silver Dollar program of the General Services Administration. The increase in the deferral is a result of an identical increase in the unobligated balance carried into fiscal year 1977 for this program. The actual unobligated balance that developed was $88,053 higher than had been originally estimated.

Deferral No: D77-29A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: General Services Administration	New budget authority (P.L. ____) $ ____
Bureau:	Other budgetary resources 2,197,053
Appropriation title & symbol: Rare Silver Dollar Program 47X0701	Total budgetary resources 2,197,053
	Amount to be deferred: Part of year $1,797,053*
	Entire year ____
OMB identification code: 47-5255-0-2-999 1/	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other ____
Type of account or fund: [ ] Annual	Type of budget authority: [X] Appropriation
[ ] Multiple-year ____ (expiration date)	[ ] Contract authority
[X] No-year	[ ] Other ____

*Justification

This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 655), which authorizes the establishment of reserves for contingencies. Funds were appropriated in 1972 and 1973, without fiscal year limitation, for operating costs for disposal of rare silver dollars. To date, roughly $60.4 million (gross receipts) of silver dollars have been sold, with approximately $26.5 million still available for sale. However, current sales procedures severely restrict the amount of remaining coins which may be sold under the existing appropriation.

The contingency of $1,797,053 reflects revised disposal plans suspending all coin sales until legislation is passed revising current sales methods. Sales using past procedures are no longer deemed economically feasible, and consideration is being given to the effects of alternative terms and conditions on future Government sales of the coins as well as on the coin market in general.

Estimated Effects

The deferral of funds for operating expenses will have no adverse effect on the silver dollar sales program since current sales procedures have limited the amount of marketable coins. New legislation has been proposed to provide revised sales methods.

*Revised from previous report.

1/The OMB identification code that appeared in the FY 1977 budget was 23-30-5255-0-2-999.

D77-29A

2

Outlay Effects (estimated in millions of dollars)

Comparison with President's 1977 budget:

1. Budget outlay estimate for 1977	1.0
2. Outlay savings, if any, included in budget outlay estimate	
Current outlay estimates for 1977:	
3. Without deferral	2.1
4. With deferral	.4
5. Current outlay savings (line 3 minus line 4)	1.7
Outlay savings for 1978	-1.7

D77-31A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral D77-31A transmitted to the Congress on October 1, 1976, and printed as House Document No. 94-650.

This supplementary report reflects a decrease in the amount deferred from $1,345,874 to $197,950. The deferral had been established to assure that funds were available to meet all outstanding debts of the American Revolution Bicentennial Administration that are to be paid from the Commemorative Activities fund before ARBA is dissolved. There currently is no plan for obligation of the remaining $197,950 but such plans are expected to be developed and executed before ARBA's dissolution.

Deferral No: D77-31A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: American Revolution Bicentennial Admin.	New budget authority (P.L. 93-179) $4,563,750 *
Bureau: c/o U.S. Department of the Interior	Other budgetary resources 5,336,785 *
Appropriation title & symbol: Commemorative Activities Fund 76X5077-AR	Total budgetary resources 9,900,535 *
	Amount to be deferred: Part of year $ 197,950 *
	Entire year ---
OMB identification code: 76-5077-0-2-806 1/	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☐ Appropriation ☐ Contract authority ☒ Other Permanent, Indefinite, Special Fund

* Justification

These funds are being deferred because there is no immediate plan for their obligation. The deferral is being established as a reserve for contingencies in accordance with the Antideficiency Act (31. U.S.C. 665).

* Estimate Effects

None; these funds will be apportioned for program purposes as necessary in accordance with future agency budget plans.

Outlay Effect

There is no outlay effect of this deferral.

* Revised from previous report.

1/ The OMB identification code that appeared in the FY 1977 budget was 31-03-5077-0-2-806.

Deferral No: D77-41

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Information Agency	New budget authority (P.L. 94-362) $ 8,600,000
Bureau	Other budgetary resources 2,890,985
Appropriation title & symbol Salaries and Expenses Special Foreign Currency Program 67X0103	Total budgetary resources 11,490,985
	Amount to be deferred: Part of year $ ____ Entire year 2,437,000
OMB identification code: 1/ 67-0103-0-1-153	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other ____
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

The United States Information Agency is authorized by the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431 et seq.), Reorganization Plan No. 8 of 1953, the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451 et seq.), and Executive Order No. 11034 of June 25, 1962, as amended, to carry out international information activities abroad by the dissemination of information about the United States, its people, and its policies.

The Foreign Relations Authorization Act, Fiscal Year 1977 (P.L. 94-350, approved July 12, 1976) authorized to be appropriated for fiscal year 1977, $255,925,000 for "Salaries and expenses" and "Salaries and expenses (special foreign currency program)" for USIA. The Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977, (P.L. 94-362, approved July 14, 1976) appropriated $8,600,000, to remain available until expended, for the "Salaries and expenses (special foreign currency program)" account. The account is used for payment of USIA local program expenses in U.S.-owned foreign currencies in those countries where the Department of the Treasury determines that the supply of currencies is in excess of the normal requirements of the U.S. Government. In fiscal year 1977 the "excess" currency countries

1/ The OMB identification code that appeared in the FY 1977 budget was 33-25-0103-0-1-153.

are: Burma, Guinea, India, Pakistan, Tunisia, and Egypt. It was estimated in the 1977 Budget that additional budgetary resources of $1,268,000 would be available for 1977 from prior year unobligated balances brought forward, recovery of prior period obligations, and anticipated reimbursements from other agencies. Thus, total obligations of $9,868,000 were planned for 1977 in the 1977 Budget.

When final closing balances for the transition quarter were established, the 1977 beginning-of-period unobligated balance for this account, plus anticipated recoveries and reimbursements from other agencies, amounted to $2,890,985, or $1,622,985 more than the sum estimated in the 1977 Budget. The additional unobligated balances were realized from favorable exchange rate changes-mainly in India and Tunisia, lower inflationary increases than budgeted, added recovery of prior-period obligations, and net program adjustments including cancellation of a planned Bicentennial book project. Moreover, it is estimated that those changes further reduce requirements in 1977 by $814,015, resulting in a total program of $9,053,985. Since total availabilities of $11,490,985 in this account for 1977 exceed program requirements by $2,437,000, that amount has been deferred for the entire year. These funds will be available for use in 1978, reducing the need for 1978 new appropriations accordingly.

These funds are being reserved in accordance with the Anti-deficiency Act (31 U.S.C. 665).

Estimated Effects

None. The amount deferred could not be obligated before fiscal year 1978.

Outlay Effect

There is no outlay effect of this deferral, because the funds would not be obligated if made available.

Deferral No: D77-42

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Information Agency Bureau	New budget authority (P.L. 94-362) $ 4,841,000 Other budgetary resources 4,565,677 Total budgetary resources 9,406,677
Appropriation title & symbol Special International Exhibitions 67X0064	Amount to be deferred: Part of year $ — Entire year 1,716,000
OMB identification code: 67-0064-0-1-153 1/ Grant program ☐ Yes ☒ No	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other —
Type of account or fund: ☐ Annual ☐ Multiple-year — (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other —

Justification

Pursuant to authority in Section 102(a)(3) of the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2452) and under the President's delegation contained in Executive Order No. 11034 of June 25, 1962, as amended, the United States Information Agency carries out a major program of U.S. exhibitions overseas at international fairs and other demonstrations of American economic, social, industrial, scientific, and cultural accomplishments in order to increase mutual understanding between the people of the United States and the people of other countries.

The Foreign Relations Authorization Act, Fiscal Year 1977 (P.L. 94-350, approved July 12, 1976) authorized to be appropriated for fiscal year 1977, $4,841,000 for "Special international exhibitions," and the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977 (P.L. 94-362, approved July 14, 1976) appropriated that amount, to remain available until expended, to carry out the USIA functions under Section 102(a)(3) of 22 U.S.C. 2452, as cited above. It was also estimated in the 1977 Budget that additional budgetary resources of $912,000 would be available in 1977 from prior year unobligated balances brought forward and anticipated reimbursements from non-Federal sources. Thus, total obligations of $5,753,000 were planned for 1977 in the 1977 Budget.

When final closing balances for the transition quarter were established, however, the 1977 beginning-of-period unobligated balance for this account amounted to $4,565,677, or

1/ The OMB identification code that appeared in the 1977 budget was 33-25-0064-0-1-153.

$3,653,677 more than estimated in the 1977 Budget. These funds reflect a number of changes in 1976 and the transition quarter: reductions in the scope of exhibitions shown at international fairs in Bucharest, Plovdiv, and Zagreb; showings of the Satellite Exhibition in Yugoslavia; and showings of the Bicentennial exhibit, "Reflections", in Hungary, Poland, and Romania. Those reductions, which reduced requirements by some $1.1 million, were partially offset by net increases of $0.2 million for exhibitions shown in other areas, operating costs, and other changes. In addition, the Okinawa Fair required $0.8 million less than had been estimated. This reduction resulted from favorable exchange rate changes, favorable weather (which minimized exhibit maintenance costs), utilization of Defense Department shipping facilities, and cash donations from private sources. Funds amounting to $1,857,677 of the additional $3,653,677 unobligated balance brought forward into 1977 are required for obligation in 1977 primarily for activities previously planned for 1976 and the transition quarter. The remaining $1,716,000 is excess. Thus, this account has total budgetary resources of $9,406,677 available for 1977 and program requirements of $7,690,677. The excess of $1,716,000 is planned to be deferred for the entire year. These funds will be available for use in 1978, reducing the need for 1978 new appropriations accordingly. The deferred funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

None. These funds could not be effectively used during fiscal year 1977.

Outlay Effect

There is no outlay effect of this deferral, because the funds could not be used if made available.

Deferral No: D77-43

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency U.S. Information Agency	New budget authority (P.L. _____) $ _____ Other budgetary resources 117,315
Bureau	Total budgetary resources 117,315
Appropriation title & symbol Special International Exhibitions Special Foreign Currency Program 67X0069	Amount to be deferred: Part of year $ _____ Entire year 112,000
OMB identification code: 67-0069-0-1-153 1/	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification

New appropriations for the Special international exhibitions (special foreign currency program) account were terminated at the end of 1974, since the available uses of foreign currencies had become minimal and did not warrant a separate appropriation. The 1977 Budget estimated that all of the unobligated balances from prior years carried into fiscal 1976 would be obligated during that year for a project in Poland. However, the project did not materialize and funds were not obligated.

Use of "excess foreign currencies" is currently limited by the Department of the Treasury to six countries: Burma, Guinea, India, Pakistan, Tunisia, and Egypt. Under USIA's current program plan for international exhibitions, no local costs will be incurred in any of these countries during 1977. Therefore, deferral of the carry-over balances throughout fiscal year 1977 is planned. The funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665).

1/ The OMB identification code that appeared in the 1977 budget was 33-25-0069-0-1-153.

D77-43

2

Estimated Effects

None. The amount deferred could not be obligated before fiscal year 1978.

Outlay Effect

There is no outlay effect of this deferral, because the funds would not be obligated if made available.

Deferral No: D 77-44

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency UNITED STATES RAILWAY ASSOCIATION	New budget authority (P.L. _____) $ --
Bureau	Other budgetary resources 1,155,700,000
Appropriation title & symbol Payments for Purchase of Conrail Securities 98X0111	Total budgetary resources $1,155,700,000
	Amount to be deferred: Part of year $ -- Entire year 680,700,000
OMB identification code: 98-0111-0-1-404	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multiple-year _____ (expiration date) [X] No-year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other _____

Justification

Funds were appropriated in P.L. 94-252 to be used by the U.S. Railway Association to purchase securities of the Consolidated Rail Corporation (Conrail) pursuant to the Regional Rail Reorganization Act, as amended. Although appropriated, these funds are not required at this time to support the rehabilitation program and working capital needs of Conrail. The amount deferred is not expected to be needed during the current fiscal year. These funds are being reserved in accordance with the Antideficiency Act (31 U.S.C. 665).

Estimated Effects

This deferral action has no effect on the program as currently planned in FY 1977.

Outlays Effects

There is no outlay effect for this deferral since, under present projections, funds would not be used if made available.

[FR Doc.77-1241 Filed 1-11-77;11:36 am]

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

January 1977

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (P.L. 93-344). Section 1014(e) provides for a monthly report listing all current year budget authority with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of January 1, 1977, of the 4 rescissions and 40 deferrals contained in the first five special messages transmitted to the Congress for fiscal year 1977. These messages were transmitted to the Congress on July 29, September 22, October 1, November 5, and December 3, 1976.

RESCISSIONS (TABLE A AND ATTACHMENT A)

Two rescissions totaling $54.1 million in FY 1977 budget authority are presently pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of January 1, 1976. Attachment A shows the history and status of each rescission proposed for fiscal year 1977.

DEFERRALS (TABLE B AND ATTACHMENT B)

As of January 1, 1976, $5,871.8 million in 1977 budget authority was being deferred from obligation and another $106.4 million in 1977 obligations was being deferred from expenditure. Table B summarizes the status of deferrals reported by the President. Attachment B shows the history and status of each deferral proposed during fiscal year 1977.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the FEDERAL REGISTERS of:

Tuesday, August 3, 1976 (Vol. 41, No. 150, Part VI)
Monday, September 27, 1976 (Vol. 41, No. 188, Part III)
Thursday, October 7, 1976 (Vol. 41, No. 196, Part IV)
Wednesday, November 10, 1976 (Vol. 41, No. 218, Part VII)
Wednesday, December 8, 1976 (Vol. 41, No. 237, Part II).

JAMES T. LYNN,
Director.

TABLE A

STATUS OF 1977 RESCISSION PROPOSALS

	Amount (in millions of dollars)
Rescissions proposed by the President.....	134.1
Withdrawn (R77-4A, Special Message No. 4)...	-35.0
Currently proposed in special messages....	99.1
Accepted by the Congress.....	---
Rejected by the Congress.....	-45.0
Pending before the Congress:	
(Special Message No. 2, less R77-4 withdrawn in Special Message No. 4 by R77-4A).....	54.1

* *

TABLE B

STATUS OF 1977 DEFERRALS

	Amount (in millions of dollars)
Deferrals proposed by the President.....	6,019.0
Routine Executive releases (-38.9M) and adjustments (-1.9M) 1/ through January 1, 1977....	-40.8
Overturned by the Congress.....	---
Currently before the Congress.....	5,978.2 2/

1/ An amount equal to $135.5 million included in the "Adjustments" column of Attachment B to this report represents superseded deferrals. This amount is not included in the "adjustments" entry above because superceded deferrals are netted out in calculating the amount shown on the line "Deferrals proposed by the President" to avoid double counting.

2/ Includes $106.4 million of outlays in two Treasury deferrals--D77-26 and D77-27A.

ATTACHMENT A

STATUS OF RESCISSIONS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

As of January 1, 1977

Agency Bureau Account	Rescission Number	Amount Proposed for Rescission	Date Special Message Transmitted to Congress	Amount Rescinded	Date Rescission Act Signed	Amount Made Available	Date Made Available
Department of Defense-Civil							
Corps of Engineers-Civil:							
Revolving fund	R77-2	6,600	09-22-76				
Department of the Interior							
Bureau of Mines:							
Helium fund	R77-3	47,500	09-22-76				
Department of Transportation							
Federal Highway Administration:							
Highway crossing Federal projects	R77-4	[35,000]	09-22-76				
	R77-4A	0	11-05-76			35,000 1/	10-01-76
Other Independent Agencies							
Legal Services Corporation:							
Payment to the Legal Services Corporation	R77-1	[45,000] 2/	07-29-76			45,000	10-01-76
TOTAL		54,100				80,000	

1/ A supplementary report withdrawing the proposed rescission was transmitted to the Congress on November 5, 1976.
2/ These funds were not withheld during the 45-day Congressional consideration period.

Attachment B

STATUS OF DEFERRALS

B-1

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Funds Appropriated to the President

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Emergency Refugee and Migration Assistance Fund	D77-1		8,640	10-01-76					
				10-28-76	-1,000				
				11-12-76	-1,200				
				12-29-76	-2,000				4,440
International Security Assistance									
Military assistance, 1977	D77-37		73,000	12-03-76					73,000
Foreign military credit sales	D77-38		740,000	12-03-76					740,000
TOTAL			821,640		-4,200				817,440

Agency: Department of Agriculture

B-2

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Foreign Agricultural Service									
Salaries and expenses (Special foreign currency program)	D77-2		1,610	10-01-76					1,610
Agricultural Stabilization and Conservation Service									
Commodity credit corporation administrative expenses	D77-3		2,919	10-01-76					
				12-30-76	-2,629				290
Forest Service									
Expenses, brush disposal	D77-4		22,321	10-01-76					22,321
Licensee programs	D77-5		146	10-01-76					146
TOTAL			26,996		-2,629				24,367

STATUS OF DEFERRALS

B-3

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Commerce

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D77-6		1,771	10-01-76					1,771
Fisheries loan fund	D77-7		5,799	10-01-76					5,799
Offshore shrimp fisheries fund	D77-8		59	10-01-76					59
Fishermen's guaranty fund	D77-9		356	10-01-76					356
TOTAL			7,985						7,985

Agency: Department of Defense, Military

B-4

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Shipbuilding and conversion, Navy	D77-34		929,250	11-05-76					929,250
Military contruction, all services	D77-10	[76,483]		10-01-76					
				12-03-76				-76,483 1/	
	D77-10A		335,883	12-03-76					335,883
TOTAL		76,483	1,265,133					-76,483	1,265,133

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

B-5

Agency: Department of Defense, Civil

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Panama Canal									
Canal Zone Government: Capital outlay	D77-11		146	10-01-76					146
Miscellaneous Accounts									
Wildlife conservation, etc., military reservations	D77-12		363	10-01-76					363
TOTAL			509						509

Agency: Department of Health, Education, and Welfare

B-6

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Office of the Assistant Secretary for Health									
Scientific activities overseas (Special foreign current program)	D77-13		1,113	10-01-76					1,113
Office of Education									
Higher education	D77-14	[31,702]		10-01-76				-31,702 1/	
				11-05-76					
	D77-14A		303,862	11-05-76					303,862
Social Security Administration									
Limitation on construction	D77-15	[17,272]		10-01-76				-17,272 1/	
				11-05-76					
	D-77-15A		18,673	11-05-76					18,673
Special Institutions									
Howard University	D77-35		500	11-05-76					500
TOTAL		48,974	324,148					-48,974	324,148

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

B-7

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of the Interior

Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Superseded	Amount Transmitted in Special Message: Current	Date of Action	Releases Resulting From Subsequent Actions Taken by: OMB/Agency	House	Senate	Adjustments	Amount Deferred as of 01-01-77
Bureau of Land Management									
Oregon and California grant lands	D77-16		5,426	10-01-76					5,426
Bureau of Outdoor Reclamation									
Land and water conservation fund	D77-17		30,000	10-01-76					30,000
National Park Service									
Road construction	D77-18		3,245	10-01-76					
				10-01-76	-3,245				0
Geological Survey									
Payment from proceeds, sale of water	D77-19		30	10-01-76					30
Bureau of Mines									
Drainage of anthracite mines	D77-20		3,525	10-01-76					3,525
TOTAL			42,226		-3,245				38,981

B-8

Agency: Department of Justice

Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Superseded	Amount Transmitted in Special Message: Current	Date of Action	Releases Resulting From Subsequent Actions Taken by: OMB/Agency	House	Senate	Adjustments	Amount Deferred as of 01-01-77
Federal Prison System:									
Buildings and facilities	D77-21		1,900	10-01-76				1,900 1/	
TOTAL			1,900					1,900	

1/ This deferral resulted from anticipated savings attributable to a plan for leasing a New York State correctional facility. The lease proposal on which the deferral was based was not accepted by New York and the funds are needed to construct the facility as originally planned. Funds related to this deferral were not withheld.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

B-9

Agency: Department of Labor

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Employment and Training Administration									
Advances to the unemployment trust fund and other funds	D77-39		2,919,000	12-03-76					2,919,000
TOTAL			2,919,000						2,919,000

Agency: Department of State

B-10

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Administration of Foreign Affairs									
Acquisition, operation, and maintenance of buildings abroad	D77-22		14,225	10-01-76					14,225
TOTAL			14,225						14,225

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Transportation

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Coast Guard									
Acquisition, construction and improvements	D77-23		22,581	10-01-76					22,581
Federal Aviation Administration									
Civil supersonic aircraft development termination	D77-24		464	10-01-76					464
Facilities and equipment (Airport and airway trust fund)	D77-25		276,101	10-01-76					276,101
TOTAL			299,146						299,146

Agency: Department of the Treasury

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Office of the Secretary									
State and local government fiscal assistance trust fund	D77-26		113,732 1/	10-01-76					
				11-01-76	-28,433 1/				85,299 1/
State and local government fiscal assistance trust fund	D77-27	[10,000] 1/		10-01-76					
				12-03-76				-10,000 1/2/	
	D77-27A		21,075 1/	12-03-76					21,075 1/
State and local government fiscal assistance trust fund	D77-28		81,500	10-01-76					
				11-01-76	-226				
				12-01-76	-186				81,088
Loans to the District of Columbia for capital outlay	D77-36		51,002	11-05-76					51,002
TOTAL			132,502BA		-412BA				132,090BA
		10,000O	134,807O		-28,433O			-10,000O	106,374O

1/ Outlays only.
2/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

B-13

Agency: General Services Administration

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Rare Silver Dollar Program	D77-29		1,709	10-01-76					1,709
TOTAL			1,709						1,709

Agency: Other Independent Agencies

B-14

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 01-01-77
Action									
Operating expenses, international and domestic programs	D77-40		550	12-03-76 12-31-76	-15				535
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims	D77-30		10,833	10-01-76					10,833
American Revolution Bicentennial Administration									
Commemorative activities fund	D77-31		1,346	10-01-76	1/				1,346
Interstate Commerce Commission									
Payment for directed rail service	D77-32		13,700	10-01-76					13,700
National Commission on the Observance of International Women's Year									
Salaries and expenses	D77-33		680	10-01-76					680
TOTAL			27,109		-15				27,094
TOTAL, ALL DEFERRALS		125,457 10,0000	5,884,228BA 134,8070		-10,501BA -28,4330			127,357BA 10,0000	5,871,d27BA 106,3740

1/ A supplementary report reflecting release of most of this deferral is being planned for transmittal to the Congress.

[FR Doc.77-1242 Filed 1-11-77;11:36 am]

Just Released

CODE OF FEDERAL REGULATIONS

(Revised as of October 1, 1976)

Quantity	Volume	Price	Amount
_____	Title 45—Public Welfare (Part 500–end)	$6.40	$_____
_____	Title 47—Telecommunication (Parts 20–69)	5.00	_____
_____	Title 50—Wildlife and Fisheries	4.20	_____
		Total Order	$_____

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